

New Jersey Commissioner of Education

Final Decision

Parsippany-Troy Hills Education
Association,

Petitioner,

v.

Board of Education of the Parsippany-
Troy Hills School District,
Morris County,

Respondent.

Synopsis

The Parsippany-Troy Hills Education Association (Association) represents Gregory Dalakian and Michael Iapicca – the Marching Band Directors (Directors) in the respondent school district’s two high schools – in this matter. The Association contended that the Board violated *N.J.S.A. 18A:25-3*, which protects teaching staff members from being obliged to report to school on a public holiday, when it required the Marching Band directors to participate in the township’s 2019 Memorial Day Parade. The school district’s marching bands have participated in this annual parade since at least 1993. In 2019, both Directors attempted to withdraw from the parade, but were informed by administration that they were required to participate and risked a disciplinary memorandum if they failed to do so. The Directors and their respective marching bands ultimately participated in the parade, and the Association filed a Petition for Declaratory Ruling, which was declined by the Commissioner, but transmitted to the OAL as a petition of appeal. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; *N.J.S.A. 18A:25-3* was not intended to allow staff members to decline to perform functions that are integral to an extracurricular duty, which by definition include obligations that take place outside normal school hours; the Directors knew when they accepted their assignments that the Memorial Day parade was an annual event for the marching bands; and student members of the marching bands were in fact advised in the band handbook that failure to participate in the parade would have negative consequences. The ALJ concluded that the Board acted within its authority to require the Directors to participate in the parade, and such requirement did not violate *N.J.S.A. 18A:25-3*. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and granted the Board’s motion for summary decision. In so doing, the Commissioner noted, *inter alia*, that the plain language of *N.J.S.A. 18A:25-3* protects teaching staff members from having to perform their regular duties on a school day; however, there is nothing in the statute that allows individuals who have accepted stipends to supervise extracurricular activities to decline to perform duties that fall on a public holiday that is not a school day. Accordingly, the Board’s motion for summary decision was granted and the petition was dismissed.

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.

December 28, 2020

OAL Dkt. No. EDU 14555-19
Agency Dkt. No. 220-8/19

New Jersey Commissioner of Education
Final Decision

Parsippany-Troy Hills Education
Association,

Petitioner,

v.

Board of Education of the Parsippany-
Troy Hills School District, Morris County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered.¹

Petitioner represents Gregory Dalakian and Michael Iapicca, who are employed by the Board as the Marching Band Directors (Directors) in the district's two high schools. Since at least 1993, the bands have participated in the township's annual Memorial Day Parade. In 2019, the Directors attempted to withdraw from the parade, but the district's administration informed the Directors that they were required to participate and would receive a disciplinary memorandum if they failed to do so. Both bands and both Directors ultimately participated in the parade. Petitioner filed a Petition for Declaratory Ruling, arguing that the Board's action contravened *N.J.S.A.* 18A:25-3, which protects teaching staff members from being obliged to

¹ The Board did not file a reply to petitioner's exceptions. The Board filed exceptions of its own, which were not timely pursuant to *N.J.A.C.* 1:1-18.4 and were therefore not considered by the Commissioner.

report to school on a public holiday. The Commissioner declined the request and transmitted the matter to the OAL to proceed as a petition of appeal.

The ALJ found that *N.J.S.A.* 18A:25-3 was not intended to allow staff members to decline to perform functions that are integral to an extracurricular duty. The ALJ noted that extracurricular duties, by their definition, include obligations that take place outside normal school hours and that the Directors undertook the band assignment knowing that the bands participated in the parade every year. In fact, participation in the parade was so critical to the program that students were advised in the band handbook that their failure to participate would have negative repercussions. The ALJ reviewed the cases cited by petitioner and found them unpersuasive, as they all pertained to staff being forced to attend school on a public holiday to teach or attend an in-service training related to their teaching duties. The ALJ concluded that the Board was within its authority to insist that the Directors fulfill their obligation to participate in the parade and that, in doing so, the Board did not contravene the requirements of *N.J.S.A.* 18A:25-3.² Accordingly, the ALJ granted the Board's motion for summary decision.

In its exceptions, petitioner argues that the plain language of the statute protects a teaching staff member's right to observe public holidays, and that the ALJ inappropriately read an exception into the statute where none exists. Petitioner contends that the Directors' band duties are part and parcel of their employment as teaching staff members, and thus they could not be required to perform those duties on a public holiday. According to petitioner, it was legal error for the ALJ to make a distinction for extracurricular duties. Petitioner urges the Commissioner to reject the ALJ's conclusion that the statute only applies when a public holiday

² The ALJ also granted the Board's motion to amend its answer to include the defenses of laches and waiver. The ALJ further found that neither doctrine barred petitioner's claims. The Commissioner concurs with these conclusions for the reasons outlined in the Initial Decision.

falls on a school day. Petitioner contends that whether participation in the parade is a part of the Directors' stipend is a genuine issue of material fact that should have precluded the entry of summary decision. Moreover, petitioner asserts that even if that fact were found to be true, the statute provides that any term of any contract in violation of the statute is null and void.

Upon review, the Commissioner concurs with the ALJ that this matter may be decided on a summary basis. A summary decision may be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." *N.J.A.C.* 1:1-12.5(b). A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 528-29 (1995).

While petitioner argues that there is a genuine issue of material fact regarding whether participation in the parade is a part of their stipend, the Commissioner does not find this argument persuasive. The joint stipulation of material facts indicates that the bands have participated in the parade since at least 1993, establishing a historical precedent and suggesting that this activity is integral to the band director position. Moreover, the job description for Marching Band Director specifically includes among its responsibilities: "[p]repare students for presentation at activities such as . . . parades" and "[p]rovide supervision for students during rehearsals, performances, and competitions." Exhibit J-2 to Joint Stipulation of Facts. Finally, the band handbook indicates that student participation in the parade is mandatory and, as the ALJ noted, it is unclear how the students could be required to participate if the Directors – whose job description clearly includes supervising students during performances – were not also required to

participate. Accordingly, the Commissioner finds that there are no genuine issues of material fact, and that summary decision is appropriate.

Next, the Commissioner concurs with the ALJ's conclusion that the Board's action did not contravene the requirements of *N.J.S.A.* 18A:25-3. The statute provides that "[n]o teaching staff member shall be required to perform his duties" on a public holiday. The construction of this provision demonstrates that the duties that cannot be required are those of a teaching staff member – duties that are separate and distinct from the duties of those employees who supervise extracurricular activities. Dalakian and Iapicca were not asked to perform the duties required of them as teaching staff members under the Collective Bargaining Agreement between petitioner and the Board, which consist of 25 to 30 periods per week, occurring within a seven-hour work day, 184 days per year. Instead, they were asked to perform the duties associated with their extracurricular positions, and no prohibition on performing such duties on a public holiday is included in the statute.³ Furthermore, *N.J.S.A.* 18A:25-3 provides that a board of education may not reduce a teaching staff member's salary "by reason of the fact that such a public holiday happens to be a school day." As the ALJ properly concluded, the plain language of the entirety of the statute protects teaching staff members from having to perform their regular duties on a school day. There is nothing in the statute that allows individuals who have accepted stipends to supervise extracurricular activities to decline to perform duties that fall on a public holiday that is not a school day. Petitioner's arguments to the contrary are reiterations of arguments made as part of its motion for summary decision, and the Commissioner finds that they were appropriately rejected by the ALJ, for all the reasons thoroughly outlined in the Initial Decision.

³ For similar reasons, petitioner's argument that any contract requiring them to perform their duties on a public holiday is void is unavailing. *N.J.S.A.* 18A:25-3 pertains to contracts for teaching staff members, such as the Collective Bargaining Agreement, rather than contracts for extracurricular positions.

Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 28, 2020
Date of Mailing: December 29, 2020

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 14555-19

AGENCY DKT. NO. 220-8/19

**PARSIPPANY-TROY HILLS EDUCATION
ASSOCIATION,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE PARPIPPANY-
TROY HILLS SCHOOL DISTRICT, MORRIS
COUNTY,**

Respondent.

William P. Hannan, Esq., for petitioner (Oxford Cohen, attorneys)

Katherine A. Gilfillan, Esq., for respondent (Schenck, Price, Smith & King,
attorneys)

Record Closed: October 5, 2020

Decided: November 13, 2020

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Petitioner, the Parsippany-Troy Hills Education Association (“the Association”), contends that the Parsippany-Troy Hills Board of Education (“the Board”), through its

administration, violated the statutory prohibition against requiring a teaching staff member to perform his duties on a public holiday when it required its Marching Band Directors to conduct their Bands at the annual Memorial Day Parade. N.J.S.A. 18A: 25-3. The Board replies that its actions, and that of its administration, were consistent with law.⁵

PROCEDURAL HISTORY

The Association filed a Petition for a Declaratory Ruling on August 22, 2019. An Answer was filed by the Board on September 5, 2019. Via letter dated October 1, 2019, the Commissioner of Education exercised his “discretion to decline the request pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 6A:3-2.1(a)(1), and instead direct that the matter proceed as a petition of appeal pursuant to N.J.A.C. 6A:3-1.1 et seq.” The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on October 10, 2019.

A Joint Stipulation of Fact was filed by the parties on December 20, 2019, but the parties engaged in continued discovery, with the Board asserting that unresolved factual disputes necessitated a plenary hearing. Several hearing dates were adjourned due to COVID-19. I conferred with the parties on August 26, 2020, and after reviewing the status of discovery, it appeared that any remaining factual disputes had been resolved. I granted the Association leave to file a Motion for Summary Decision, which it did on September 16, 2020. The Board filed a cross-motion on September 30, 2020. The Board’s moving papers included a Motion to Amend its Answer to include the affirmative defenses of laches and waiver.

A reply was filed by the Association on October 5, 2020, at which time the record closed.

⁵ The Board’s arguments to the contrary notwithstanding, whether the action compelling the Directors’ attendance at the Memorial Day parade was arbitrary and capricious is not an issue raised by the pleadings. I **CONCLUDE** that the Association’s petition asks only that I determine whether requiring these teaching staff members to perform professional duties on Memorial Day violates N.J.S.A. 18A: 25-3.

FINDINGS OF FACT

The parties stipulated to the following facts, and I **FIND**:

1. The Association is an employee representative organization within the meaning of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq., and is the exclusive representative for all non-supervisory certificated staff members employed by the Board.
2. The Board is a body corporate, organized and authorized under Title 18A and charged with the supervision of the public schools.
3. Gregory Dalakian and Michael Iapicca are teaching staff members employed by the Board; members of the Association; and at all times relevant to this dispute they served as Marching Band Directors for the district's two high schools, Parsippany High School and Parsippany Hills High School. They were paid for their duties via negotiated stipends.
4. Both Dalakian and Iapicca were reappointed as Marching Band Directors for the 2018-2019 school year. Dalakian was paid a stipend of \$7,775, together with a longevity payment of \$150. Iapicca was paid a stipend of \$7,775, together with a longevity payment of \$250.
5. In addition, at Parsippany High School, there were three Assistant Band Directors who received stipends in the amount of \$3,169.50; and one who received a stipend in the amount of \$3,019.
6. In addition, at Parsippany Hills High School, there were two Assistant Band Directors who received stipends of \$6,339 and \$6,646.
7. As Band Directors, Dalakian and Iapicca exercise authority and supervision over student participants in the Marching Band. Their job responsibilities are more fully set forth in a formal job description, which confirms that they provide instruction to their students; prepare them for parades, competitions, football games and special performances; and supervise them during these activities.

8. In addition to their duties as Band Directors, Dalakian and Iapicca instruct students enrolled in the Concert Band and Honors Concert Band courses at their respective high schools and did so during the 2018-2019 school year.
9. Both Dalakian and Iapicca received additional stipends for duties associated with such positions as Director of the Concert Band, Jazz Ensemble, and the "State and Regional Instrumental." Each of these additional duties comes with a stipend of \$1,763.
10. A Marching Band Handbook guides student participation in the Marching Band at Parsippany High School. The handbook for the 2018-2019 year was developed and revised by Dalakian. Students are reminded that scheduled rehearsals or performances are not optional and may be missed only due to a religious observance, death in the family, or a field trip that conflicts with the Band schedule. The handbook indicates that "Varsity Awards may be revoked if Memorial Day Parade responsibilities are not met."
11. The Parsippany-Troy Hills Township organizes and holds an annual Memorial Day Parade, and since at least 1993, the two Marching Bands have participated. The Band Directors have conducted the bands and supervised their performance each year at the parade.
12. The Band Directors have historically worked directly with Township personnel in arranging the Bands' participation in this event.
13. On or about April 23, 2019, and April 24, 2019, Dalakian and Iapicca advised Township personnel that the bands would participate in the Memorial Day Parade that year, and likewise reminded their students that participation was mandatory.
14. On or about May 14, 2019, and May 15, 2019, Dalakian and Iapicca advised Township personnel that they were withdrawing the Bands' participation in the Memorial Day Parade.
15. On or about May 21, 2019, the Band Directors were advised by district administration that they were required to participate in the Memorial Day Parade, and the Band Directors recommitted to do so. On or about May 21,

2019, the Directors advised their students that they would now participate in the Parade.

16. On May 23, 2019, counsel for the Association advised the Board attorney that “the order for the Band Directors to attend” the parade was unlawful and contravened N.J.S.A. 18A: 25-3 because Memorial Day is a public holiday.
17. The two Marching Bands, together with Dalakian and Iapicca, did participate in the parade on May 27, 2019.
18. At all times relevant to this dispute, the Board and the Association were parties to a Collective Negotiations Agreement in effect for the period from July 1, 2015, though June 30, 2018, as amended by two Memoranda of Agreement dated May 31, 2019 and July 12, 2019.
19. The parties commenced negotiations for a successor agreement on or about December 18, 2017.
20. These negotiations were concluded in July 2019 with the execution of the two additional memoranda noted in paragraph 18 above.

Both parties shared additional facts via certifications and accompanying documents. The salient facts remain undisputed. Dalakian shared that he had been serving as Band Director for some ten years when he was called into a meeting with his building principal and told that he “had to participate” in the Memorial Day Parade. His principal advised that if Dalakian failed to work on Memorial Day, he “would be written up.” Indeed, in a May 21, 2019 email to the high school principals, Superintendent of Schools Barbara Sargent advised that they direct their Band Directors to participate in the Parade; noting that “[i]t would be a shame for these fine teachers to have a disciplinary memo in their files over this matter, and I am prepared to do that if needed.” I thus **FIND** that a disciplinary memorandum was threatened if the Band Directors persisted in declining to perform on Memorial Day. I moreover **FIND** that no other disciplinary action, or loss of pay, was threatened.

The parties appear to disagree regarding whether participation in the Memorial Day Parade was “voluntary.” But the facts are clear, and I **FIND**, that directing the Band

on Memorial Day was part and parcel of Dalakian's and Iapicca's obligation as Marching Band Directors. The choice to serve as a Director was purely voluntary; the record reveals nothing to suggest otherwise. But for each of the many years that Dalakian and Iapicca chose to lead the Marching Bands, they participated in the Memorial Day Parade; they clearly embraced the Parade as part of their Marching Band responsibilities. Moreover, information supplied to student participants made it clear that marching in the Parade was obligatory. Query how participation possibly could be mandatory for the students, but not for the Directors? Indeed, Iapicca and Dalakian had accepted a stipend for a position whose job description expressly required that they "[p]rovide supervision for students during...performances..." I thus **FIND** that having volunteered to serve as Band Directors, Dalakian and Iapicca were now obliged to direct the Bands on Memorial Day. Relative to the Memorial Day at issue here, it is uncontroverted and I **FIND**, that the Directors for the first time declined to participate, and that their ultimate participation was under threat of disciplinary action by school district administration.

As for how the parties suddenly found themselves at odds regarding the Parade, it matters not for purposes of interpreting their rights and obligations under N.J.S.A. 18A:25-3. But here too, there appears to be no dispute. I **FIND** that, in an uncontested certification, Sargent relates that the decision not to participate in the Parade came on the heels of labor unrest in the district. Indeed, a statement by the local Teachers' Association accompanies the Sargent certification and states that "current conditions make it impossible...to continue the decades-long tradition of leading students in the annual community celebration."

I **FIND** that since initially the Directors had confirmed that they would participate, their change of heart was disruptive to student Band members, to their families, and to the Booster Clubs that support their activities.

CONCLUSIONS OF LAW

The Motions for Summary Decision

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Our regulation mirrors R. 4:46-2(c), which provides that “[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252. I **CONCLUDE** that this matter is ripe for summary decision, and that the Board is entitled to judgment as a matter of law.

The Association’s claims spring from N.J.S.A. 18:25-3, which provides as follows:

No teaching staff member shall be required to perform his duties on any day declared by law to be a public holiday and no deduction shall be made from such member’s salary by

reason of the fact that such a public holiday happens to be a school day and any term of any contract made with any such member which is in violation of this section shall be void.

An understanding of what is encompassed by the phrase “any day declared by law to be a public holiday,” can be derived by reference to N.J.S.A. 36:1-1, which lists public holidays and includes Memorial Day, the day at issue here.

Well-established rules of statutory interpretation govern my analysis of the Association’s claims. Our courts assume that the framers intended to ascribe to words their ordinary meaning. Jablonowska v. Suther, 195 N.J. 91, 105 (2008). The intent of a statute should be gleaned from a view of the whole and of every part of the statute, with the real intention prevailing over the literal sense of its terms. Schierstead v. City of Brigantine, 29 N.J. 220 (1959). I **CONCLUDE** that N.J.S.A. 18A:25-3 intended to protect teaching staff members from being obliged to report to school on a public holiday. The plain statutory language does not merely indicate that teaching staff members may chose not to perform their duties without penalty; it goes on to say that they should not be penalized because a holiday “happens to be a school day.” The statute thus contemplates relief from regular duties that take place during the school day.

I **CONCLUDE** that N.J.S.A. 18A:25-3 did not intend to allow staff members to decline to perform functions that are integral to an extracurricular duty; a duty that is optional, separately compensated, and one that the staff member chose to undertake in addition to his regular duties. By definition, “extracurricular” duties are ones “lying outside one’s regular duties or routine.” Merriam-Webster Online Dictionary. <https://www.merian-webster.com/>. The term “extracurricular” describes school programs designed to enhance the education of students outside the classroom or regular curriculum. See: Melnyk v Delsea Regional High School District Bd. of Educ., Dkt. No. EDU 12061-15, Initial Decision (June 12, 2017), adopted, Comm’r (October 12, 2017), <<http://njlaw.rutgers.edu/collections/oal/>>.

Extra-curricular duties thus by their nature include obligations that take place after school hours, and on weekends, evenings and holidays.⁶ And extracurricular duties are undertaken by staff members who assumedly know the obligations that their additional duty entails. This record offers me no reason to think that these Marching Band Directors undertook their responsibilities without eyes wide open; indeed, all agree that they directed the Bands on Memorial Day every year, until this year, when they suddenly asserted their purported right not to do so under N.J.S.A. 18:25-3.

The cases cited by the Association do not compel a contrary conclusion. Each pertains to a request made by a teaching staff member not to attend school on a public holiday; either to teach or participate in an in-service training day. In the most recent discussion of N.J.S.A. 18A:25-3, Corcoran v Queen City Academy Charter, EDU 02418-18, Initial Decision (September 20, 2018), adopted, Comm'r (November 2, 2018), <<http://njlaw.rutgers.edu/collections/oal/>>, the Commissioner determined that the charter school had violated N.J.S.A. 18A:25-3 when it docked a personal day from the petitioning teacher who was absent from a district-wide professional day program on Columbus Day. See also: Moldovan v. Hamilton Bd. of Educ., 1971 S.L.D. 246 (where staff declined to report to school on Columbus Day).⁷

The legislative history supports my interpretation of the statute's meaning and intent. N.J.S.A. 18A:25-3 was recodified in 1968. In its prior form, N.J.S.A. 18:13-115 provided that:

No teacher shall be required to teach on any day declared by law to be a public holiday, and no deduction from a teacher's salary shall be made by reason of the fact that a school day happens to be a

⁶ I can take judicial notice of the fact that in most public high schools, the Thanksgiving Day football game is a popular event, and one that requires the participation of the coaching staff who supervise our student athletes. And the Marching Band is also a typical participant in the half-time festivities that day. See: Penns Grove-Carneys Point Educ. Assn. v Bd. of Educ., 1983 S.L.D. 1022, 1032-33. Thanksgiving is a "public holiday." N.J.S.A. 36:1-1.

⁷ Other cases relied upon by the Association, such as Dohm v. West Milford Bd. of Educ., 1983 S.L.D. 13, are not on point. Counsel for the Board correctly urges that at issue in Dohm was the authority of the board to compel staff to make up days they had missed when they exercised their rights not to work under N.J.S.A. 18A:25-3. See also: Holcombe v. Freehold Reg. H.S. Bd. of Educ., 1977 S.L.D. 1057, where the issue addressed was the board's authority to add days to the academic calendar after acceding to a request to close schools on public holidays.

day declared by law to be a public holiday. Any contract made in violation of this section shall have no force or effect against a teacher.

While the statute now extends its breadth from “teachers” to “teaching staff members,” thus encompassing all certificated staff, it continues to articulate the plain meaning of its progenitor; that is, that professional staff are not required to perform their duties when a school day falls on a public holiday. See: Moldovan v. Hamilton Bd. of Educ., 1971 S.L.D. at 247.⁸

The only reported decision that directly touches upon the relationship of Marching Band duties and N.J.S.A. 18A:25-3 is Penns Grove-Carneys Point Educ. Assoc. v. Bd. of Educ., 209 N.J. Super. 115 (App. Div., 1986). But the primary issue there was the prerogative of the local board to select and assign staff to support what it viewed as a critical extracurricular music program. In upholding the board’s prerogative to do so, the court noted that an educational policy decision had been made that students be offered this type of programming; programming that necessitated rehearsals and performances after regular school hours. That prerogative likewise allowed the board to require that Band Directors perform their duties on Saturdays and Sundays, days which the court determined were not public holidays within the intent of N.J.S.A. 18A:25-3.⁹

As the Board correctly points out, the role of Marching Band Director was not imposed on Dalakian and Iapicca. They chose it. They understood that their duties encompassed work on Memorial Day. Indeed, the Parade was such a weighty

⁸ Counsel cite Middlesex Cnty. Educ. Serv. Comm. Educ. Assn. v. Bd. of Directors, 1987 S.L.D. 2642, 2651, a case which held that the statute “does not prohibit a district board from deducting from a member’s salary when the designated day on which the public holiday fell was a day when school was not in session and the member chose to celebrate it on a day when school was open.” This holding is unhelpful in resolving the issue presented here. But the State Board did confirm that “the statute is applicable only when a public holiday occurs on a day when school is open.” The State Board’s dictum thus supports the notion that N.J.S.A. 18A:25-3 limits its protections to days when staff must report to school on a public holiday.

⁹ That the requirements of N.J.S.A. 18A:25-3 were not the core issue presented in Penns Grove-Carneys Point is emphasized by the court’s statement that “[t]he Commissioner’s reasoning in relying upon these statutes to support his conclusion is not fully articulated...” Notwithstanding, the court noted it was “duty bound to affirm” unless the decision by the agency below was arbitrary or violated the statutory scheme. Penns Grove-Carneys Point, 209 N.J. Super. at 118.

obligation that the Directors let their student participants know that a failure to participate would come with negative repercussions. The Penns Grove-Carneys Point decision thus offers little solace to the Association. To the contrary, the Appellate Court's educational policy discussion supports the Board's position. An interpretation of N.J.S.A. 18A:23-5 that would permit staff members to abrogate parts of their extracurricular duties at will would run counter to sound educational policy; to the detriment of the Parsippany-Troy Hills students who have committed themselves to the Marching Band; and indeed, to the detriment of all New Jersey students who flourish via their participation in extra-curricular programming.

I **CONCLUDE** that the Board here was within its authority to insist that Dalakian and Iapicca fulfill their obligations to their Marching Band students on Memorial Day, and that in doing so, the Board did not contravene the requirements of N.J.S.A. 18A:25-3.

The Motion to Amend and the Laches and Waiver Defenses

Considering my ruling above, it is unnecessary to reach the Board's argument that the claims of the petition are barred by application of the doctrines of laches and waiver. But in the interest of completely addressing the arguments raised by the parties, I will address the Board's Motion to Amend its pleading, together with the substantive issue raised by that application.

The defenses of laches and waiver are not pled in the Board's Answer. The Board asks to amend its pleading to permit it to argue that the claims of this petition are equitably barred. The Board's application is governed by N.J.A.C. 1:1-6.2(a), which provides that "[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." See also: N.J.A.C. 6A:3-1.7(b). Our rules allow for liberal amendment of pleadings, and I **CONCLUDE** require that the Board's motion be granted. Doing so does not prejudice the Association, which has persuasively briefed the issue of the applicability of these equitable doctrines in its submission.

Laches is an equitable defense, defined by our courts as an inexcusable delay in asserting a right. Atlantic City v. Civil Service Commission, 3 N.J. Super 57, 60 (App. Div. 1949). Waiver is the intentional relinquishment of a known right. Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 259 (App. Div. 1978). I agree with the Association that N.J.S.A. 18A:25-3 precludes application of the laches and waiver defenses. The statute by its very terms allows a teaching staff member to opt not to work on a public holiday at will, and regardless of any prior commitment to do so, including a contractual one. Accordingly, I **CONCLUDE** that the fact that these Band Directors previously worked on Memorial Day without complaint would not bar them from declining to do so now, assuming the statute was otherwise applicable.

The Board cites Lavin v. Board of Education, 90 N.J. 145 (1982) for the proposition that laches can bar a statutory entitlement. But Lavin concerned a staff member who failed to timely assert a statutory right to military service credit on the salary guide under N.J.S.A. 18A:29-11, thus creating a substantial and unfair back pay burden for her employer. The rights and obligations of the parties under the statute at issue here are not analogous.

I **CONCLUDE** that the equitable doctrines of laches and waiver do not bar the claims of the Association.

ORDER

Based on the foregoing, it is **ORDERED** that Summary Decision be granted in favor of the Board, and that the petition of appeal is **DISMISSED**. The Association's Motion for Summary Decision is **DENIED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 13, 2020



DATE

ELLEN S. BASS, ALJ

Date Received at Agency:

November 13, 2020

Date Mailed to Parties:

November 13, 2020

sej