

C #546-96
SB # 88-96

JENNIFER STAGAARD AND AMERICAN :
FEDERATION OF TEACHERS, LOCAL :
1017, :

PETITIONERS-APPELLANTS, :

V. :

PETER B. CONTINI, ASSISTANT :
COMMISSIONER , NEW JERSEY STATE :
DEPARTMENT OF EDUCATION, BOARD :
OF EDUCATION OF THE TOWNSHIP OF :
BERKELEY HEIGHTS, BOARD OF :
EDUCATION OF THE TOWNSHIP OF :
CLARK, BOARD OF EDUCATION OF THE :
BOROUGH OF GARWOOD, BOARD OF :
EDUCATION OF THE BOROUGH OF :
KENILWORTH, BOARD OF EDUCATION :
OF THE BOROUGH OF MOUNTAINSIDE, :
BOARD OF EDUCATION OF THE TOWN- :
SHIP OF SPRINGFIELD AND BOARD OF :
EDUCATION OF THE UNION COUNTY :
REGIONAL HIGH SCHOOL DISTRICT #1, :
UNION COUNTY, :

RESPONDENTS-CROSS/APPELLANTS. :
_____ :

STATE BOARD OF EDUCATION
DECISION

Decided by the Commissioner of Education, December 6, 1996

Decision on motion by the Commissioner of Education, December 10, 1996

Decision on motions by the State Board of Education, February 5, 1997

For the Petitioners-Appellants, Rand, Algeier, Tosti & Woodruff (Russell J. Schumacher, Esq., of Counsel)

For the Respondents-Cross/Appellants Boards of Education of Berkeley Heights, Kenilworth, Mountainside & Springfield, Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen (Vito A. Gagliardi, Esq., of Counsel)

For the Respondent-Cross/Appellant Board of Education of the Township of Clark, Kenney & Gross (Mark S. Tabenkin, Esq., of Counsel)

For the Respondent-Cross/Appellant Board of Education of the Borough of Garwood, Buttermore, Mullen, Jeremiah & Phillips (William S. Jeremiah, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Union County Regional High School District #1, Schwartz, Simon, Edelstein, Celso & Kessler (Lawrence S. Schwartz, Esq., of Counsel)

For the Intervenors Berkeley Heights Education Association, Clark Education Association, Garwood Teachers Association, Kenilworth Education Association, Mountainside Education Association and the Springfield Education Association, Klausner & Hunter (Stephen B. Hunter, Esq., of Counsel)

This matter was initiated by Jennifer Stagaard, a teacher employed by the Union County Regional High School District No. 1 (hereinafter “regional district”), and the American Federation of Teachers, Local 3417 (hereinafter “AFT”), the collective negotiations representative for teachers employed by the regional district, following approval for the dissolution of the regional school district as provided for by N.J.S.A. 18A:13-51 et seq. Petitioners sought a declaratory judgment from the Commissioner of Education with respect to the employment rights conferred by the education laws on teaching staff members upon dissolution of the regional high school district.

By decision issued on December 6, 1996, the Commissioner rejected the AFT’s position that dissolution of the regional school district would result in the creation of new school districts under N.J.S.A. 18A:6-31.3 et seq. Rather, the Commissioner concluded that because the six school districts that had been part of the regional district (hereinafter “constituent districts”) would continue to exist as autonomous

entities, although with the expanded purpose of providing programs in grades K-12, they would not constitute new school districts within the meaning of N.J.S.A. 18A:6-31.3 et seq.¹

The Commissioner further declared that upon dissolution of the regional district, staff members had a statutory right to “continue in the position of teacher, as it would have existed had the regional district not been dissolved.” Commissioner’s Decision, slip op. at 5. Distinguishing between a teacher’s rights in initial assignment and tenure rights, the Commissioner found that regional district staff members would become employees of the constituent districts upon dissolution of the regional district, with all periods of their employment credited for tenure and seniority purposes as if the entire term of their employment had been in the constituent district.

The Commissioner, however, found that the operative date for determining the entitlements of regional staff to continued employment under N.J.S.A. 18A:13-64 should be May 14, 1996, the date of the voter referendum approving the dissolution, rather than June 30, 1997, the date which he had determined would be the effective date for the dissolution pursuant to N.J.S.A. 18A:13-59. In doing so, the Commissioner analogized this situation to one involving district board action to reduce staff under N.J.S.A. 18A:28-9, to which Francey v. Salem Bd. of Ed., decided by the State Board, August 3, 1994, aff’d, 286 N.J. Super. 354 (App. Div. 1996), would be applicable. Under Francey, the scope of the tenure protection to which a tenured teaching staff member is entitled is determined as of the date on which the district board acts to

¹ We note that although only four out of the six districts will operate high schools, the other two districts will be responsible for providing a high school education to their students by such means as establishing a sending-receiving relationship.

abolish his or her position pursuant to N.J.S.A. 18A:28-9, rather than the date on which the reduction in staff is actually effectuated.

The Commissioner then made the determination that N.J.S.A. 18A:13-64 and statutory tenure protections would govern the salary benefits which must be preserved upon transfer of regional staff to the constituent districts. Accordingly, he found that regional district staff members should be placed on the salary guide of a constituent district at the step and level appropriate for their years of service in the regional district. In that the salary level of tenured staff may not be reduced, such teaching staff members would be held at their current salary level in those instances in which proper guide placement would result in a reduction of salary.

The Commissioner then dissolved the stay he had previously granted and directed that the staff selection process move forward within the parameters of the declaratory judgment.

The AFT appealed and the six constituent districts cross-appealed.

By its appeal, the AFT sought to reverse those aspects of the Commissioner's declaration which: 1) interpreted the right to continued employment conferred by N.J.S.A. 18A:13-64 so as to limit the entitlement of a teacher employed by the regional district to claim a K-8 position in a constituent district to those situations in which there is not a vacant position at the high school level for which that teacher is certified, 2) held that the constituent school districts will not constitute "new school districts" under N.J.S.A. 18A:6-31.3, and 3) did not delineate the other "similar benefits" to which regional staff would be entitled under N.J.S.A. 18A:13-64.

In their cross-appeals, the constituent districts objected to that portion of the Commissioner's declaration construing N.J.S.A. 18A:13-64 as requiring them to place the former staff members of the regional district on the appropriate salary guides of the constituent districts at the step and level appropriate for their years of service in the regional district. The constituent districts also challenged that portion of the Commissioner's ruling that might permit former regional staff members to exercise tenure and seniority rights in the constituent districts in those instances in which there is no vacancy at the high school level for which such staff members are certified.

By decision of February 5, 1997, the State Board granted a motion to intervene which had been made by the counsel for the six education associations in the constituent districts (hereinafter "NEA").

The intervening NEA locals contended that the operative date for establishing the tenure and seniority rights of teachers who had been employed by the regional district should be June 30, 1997, the effective date of the dissolution, rather than May 14, 1996, the date of the voter referendum approving the dissolution. In contrast to the AFT, the NEA locals argued that claims to continued employment under N.J.S.A. 18A:13-64 should be restricted initially to the school where the regional staff member's current assignment is located as that school will be constituted in 1997-98. If there is no such position, the staff member could then assert a right to a position at the high school level of the other constituent districts. Tenure and seniority could next be asserted K-8 in the constituent district where such member's current assignment is located, and finally to elementary positions in the other constituent districts.

On June 4, 1997, our Legal Committee issued its report in this matter. That report stressed that the appeal before us was from a declaratory judgment granted by the Commissioner. Because such declaration is intended to afford relief from uncertainty concerning a party's rights, the report also stressed that it could not be used to decide or declare rights upon a state of facts which were future, contingent and uncertain. Cf. N.J. Home Bldrs. Ass'n. v. Civil Rights Div., 81 N.J. Super. 243, 251 (Ch. Div. 1963); Lucky Calendar Co. v. Cohen, 36 N.J. Super. 300, 304 (Law Div. 1955), aff'd, 20 N.J. 451, 454 (1956). Hence, as we concluded in our decision of February 5, 1997, because events relating to implementation of the selection process subsequent to the Commissioner's declaration were not before him, the report did not consider them in reviewing the questions he had addressed. Further, while the supplemental briefs submitted by the parties had eliminated any doubt as to the standing of the employee associations involved here to bring this action and to litigate this matter, the report emphasized that our decision would not preclude subsequent adjudication of individual claims arising from the selection process.

The Legal Committee's report then recommended affirmance of the Commissioner's determinations with certain modifications. However, after the parties filed their exceptions, two opinion letters directed to the Commissioner by the Attorney General's office were brought to our attention. The first had been issued on March 27, 1995. 95-0036. Although that opinion letter was included in the appendix to appellant's brief to the State Board, it had not been part of the record before the Commissioner when he rendered his declaratory judgment. The second was issued on June 18, 1997. 97-0115. Consequently, the Commissioner had not had the benefit of

this letter either when he made his determination. In that these opinion letters might have bearing upon the instant appeal, we reviewed them as we considered the Legal Committee's first report in light of the exceptions filed by the parties. Additionally, we closely examined the legislative history with respect to the pertinent statutes in order to assure that we had arrived at a proper understanding of the Legislature's intent in enacting them.

Our review process resulted in revisions to the Legal Committee's initial report. Those revisions were embodied in a second Legal Committee Report, which was then mailed to the parties.

The AFT filed exceptions to the second report, objecting to the extent that the determination recommended therein was based on the opinion letter from the Attorney General's Office dated June 18, 1997. In addition, the AFT continues to argue that, upon dissolution of the regional district, N.J.S.A. 18A:13-64 confers on the regional employees the right to continue their employment by selecting positions at any grade level in any constituent district on the basis of their tenure status.

We reject those arguments. In so doing, we stress that, while we have reviewed the opinion letters from the Attorney General's Office, our determination in this matter is predicated on the reasons embodied in this decision.

As set forth in our Legal Committee's report, dissolution of a limited purpose regional school district such as that involved here is controlled by N.J.S.A. 18A:13-51 et seq. Under this statutory framework, once the Board of Review has consented to an application for dissolution, see N.J.S.A. 18A:13-56, the county superintendent fixes the date for a special school election at which time the voters of each of the constituent

districts decide the question. N.J.S.A. 18A:13-57. If the voters approve the question, N.J.S.A. 18A:13-59 provides that the dissolution “shall become effective upon a date to be determined by the commissioner of education.”

The date which the Commissioner establishes as the effective date for the dissolution pursuant to N.J.S.A. 18A:13-59 determines: 1) the date of expiration of the terms of the members of the regional board, N.J.S.A. 18A:13-60; 2) the date on which title and control of school grounds, buildings, and furnishings is to change and on which indebtedness is assumed by the constituent districts, N.J.S.A. 18A:13-61.1; 3) the date on which the division of assets and liabilities occurs, N.J.S.A. 18A:13-62; and 4) the date on which those assets and liabilities devolve upon the respective constituent district, N.J.S.A. 18A:13-63. The statute is silent, however, as to the controlling date for the allocation of personnel.

The specific statutory provision at issue in this case is N.J.S.A. 18A:13-64, which establishes the rights of all employees of a regional district in the case of a withdrawal from or dissolution of a regional district. That statute provides in its entirety that:

All employees of the regional district shall continue in their respective positions in the withdrawing district, or in each of the constituent districts in the event of a dissolution, and all their rights of tenure, seniority, pension, leave of absence and other similar benefits shall be recognized and preserved and any periods of prior employment in the regional district shall count toward the acquisition of tenure to the same extent as if all such employment had been under the withdrawing district or in any of the constituent districts in the event of a dissolution. In the event of a withdrawal, any tenured employee in a school located in the withdrawing district who desires to remain in the employ of the regional district, and whose seniority under existing tenure laws so permits, may apply for and shall be granted a transfer to a position with the regional district for which he is certified

which is vacant, held by a tenured employee with less seniority or by an employee without tenure; applications for such transfers shall be made within 45 days of the date of the special school election at which the withdrawal was approved.

Review of the legislative history indicates that until 1975, there had been no procedures providing for either withdrawal from or dissolution of a regional district. At that time, the Legislature adopted legislation setting forth the conditions and procedures for a constituent district to withdraw from a limited purpose regional school district. Senate Education Committee Statement to Assembly Bill No. 825 (October 6, 1975). In addition, the legislation provided for the transfer of teachers who preferred to remain in the regional district. Id.

In 1989, Article 13 of Chapter 13, "Regional School Districts," of Title 18A was amended to provide procedures for the withdrawal of a municipality from an all purpose regional district. N.J.S.A. 18A:13-66. Although not directly applicable to the instant case, the Senate Education Committee Statement which accompanied the legislation reflects that this legislative action was intended to provide a procedure "similar to that provided for withdrawal from a limited purpose regional school district" by application of the statutory provisions set forth in N.J.S.A. 18A:13-51 et seq., including N.J.S.A. 18A:13-64. The Statement also indicates that the procedure embodied in those statutory provisions was intended to insure that "all employees [would be] held harmless in the event of withdrawal, and all tenure, seniority, pension and similar rights and benefits [would be] recognized and preserved." Id.

Finally, the Legislature again amended N.J.S.A. 18A:13-51 et seq. in 1993 to establish a procedure for the dissolution of a limited purpose regional school district.

The Statement accompanying this legislation reflects that the Legislature intended to establish a procedure which “parallels the procedure provided for the withdrawal of a district from a limited purpose regional district.” The Statement further indicates that the legislation was intended to establish “a mechanism for the allocation of debt, property and personnel among the constituent districts” and to insure that “all employees are held harmless in the event of a dissolution and all tenure, seniority, pension and similar rights and benefits are recognized and preserved.”

We recognize that construction of a statute is ultimately a judicial, and not an executive, function. Middle Dept. Inspection Agency, Inc. v. New Jersey Dept. of Community Affairs, Div. of Housing and Development, 278 N.J. Super. 573 (App. Div. 1995), certif. denied, 140 N.J. 329 (1995); MCG Associates v. Department of Environmental Protection, 278 N.J. Super. 108 (App. Div. 1994). We further recognize that because administrative agencies such as our own exercise executive power in administering legislative authority which has been selectively delegated by statute, administrative adjudication does not constitute the exercise of judicial authority. City of Hackensack v. Winner, 82 N.J. 1, 28-30 (1980). However, we are also aware that courts generally accord substantial deference to the interpretation given by an administrative agency to a statute which that agency is charged with enforcing. E.g., GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298 (1993). Hence, we have been attentive to the judicial principles applicable in this context as well as appreciative of our executive nature and regulatory concerns as we reviewed the declaratory judgment in this case. Hackensack v. Winner, supra at 29-30.

Our duty in construing the statute involved here is to determine and effectuate the intent of the Legislature. E.g., *Jacobitti v. Jacobitti*, 135 N.J. 571 (1994); *St. James v. Department of Environmental Protection and Energy*, 275 N.J. Super. 342 (App. Div. 1994). The principal source of such intent is the legislation itself. *Midlantic Nat. Bank v. Peerless Ins. Co.*, 253 N.J. Super. 137 (App. Div. 1992). However, the policy behind the statute, concepts of reasonableness and the legislative history are also among the sources to be used to determine legislative intent. E.g., *Lesniak v. Budzash*, 133 N.J. 1 (1993); *Coalition of Concerned Nurses v. New Jersey Dept. of Higher Educ.*, 243 N.J. Super. 65 (App. Div. 1990).

We have therefore reviewed the statute at issue with close and careful consideration of its language, structure, purpose and history, as well as prior decisional law. *Fiore v. Consolidated Freightways*, 140 N.J. 452 (1995). We remain convinced that the Commissioner properly determined the scope of the employment rights of the employees of the regional school district upon dissolution of that district.

Again, the Commissioner distinguished between the rights attached to initial assignment and subsequent tenure/seniority entitlements. As articulated by the Commissioner:

Upon dissolution of the regional district, a staff member is entitled to continue in the position of teacher, as it would have existed had the regional district not been dissolved. This does not create an absolute entitlement for a displaced staff member to choose a particular initial assignment, any more than a particular assignment could have been chosen or rejected had employment continued in the regional district and a transfer been lawfully made by the board of education, whether in a subject area within the scope of a staff member's certificate or in building assignment. Once the initial assignment has been made and the statutory right

to continued employment thus honored, however, the regional staff member becomes an employee of the constituent district....

Commissioner's Decision, slip op. at 5.

This is consistent with the construction of N.J.S.A. 18A:13-64 set forth in the Commissioner's decision in Board of Education of the Central Regional High School District v. Board of Education of Lacey Township and the Central Regional Education Association (hereinafter "Central Regional"), 1980 S.L.D. 553. Central Regional involved the withdrawal of the Lacey Township Board from the regional high school district. The voters approved the withdrawal on December 14, 1977, to be effective July 1, 1978, and the Lacey Board sought a declaratory judgment from the Commissioner with respect to the rights of the parties.

The withdrawal in that case was to be effectuated when Lacey began to operate its schools in the 1980-81 school year to include grades seven and eight, which students would otherwise have attended Central Regional High School. Then, commencing with 1981-82, Lacey would provide an educational program for all of its students K-12. Central Regional, in turn, had stated its intentions to act pursuant to N.J.S.A. 18A:28-9 to reduce its staff by twenty-six teachers in 1980-81 and to reduce its staff again in 1981-82 when Lacey Township opened its high school.

The Administrative Law Judge found that N.J.S.A. 18A:13-64 provided equal, if not greater, protection to employees of a withdrawing school district than did numerous other statutes in Title 18A which protected employment rights, especially those of tenured teachers, in a variety of other situations. Stressing that N.J.S.A. 18A:13-64 protected the employment rights of all employees, the ALJ found it necessary for

Central Regional to establish the “seniority” status for tenured and non-tenured personnel in its employ. Accordingly, the ALJ declared that “those employees of the Central Regional School District, who were employed prior to July 1, 1978 and who [would] be the subject of a reduction in force as the result of the withdrawal of the Lacey Board...shall be granted a transfer to the Lacey Board’s Middle School for the 1980-81 school year and to the Lacey Board’s Senior High School for the 1981-82 school year.” 1980 S.L.D. at 568.

The Commissioner accepted the ALJ’s recommendations, but clarified that because the employment entitlements of N.J.S.A. 18A:13-64 applied to all employees, rather than only to tenured teaching staff members, the “seniority” lists created for purposes of effectuating the transfer were not to remain in force beyond the point at which the transfer of personnel between the two districts had been accomplished.

Although Central Regional involved a withdrawal rather than a dissolution, the legislative intent of N.J.S.A. 18A:13-64, as previously discussed, is identical in both situations in that the purpose of the statute is to insure that all employees will be held harmless in the event of either a withdrawal or a dissolution. However, in contrast to Central Regional, there is no indication that the regional district in this case has acted to reduce its staff pursuant to N.J.S.A. 18A:28-9. Accordingly, we have not been called upon to resolve any questions relating to such action in the context of this dissolution.

As the Commissioner determined in the case now before us, we find that the right conferred by N.J.S.A. 18A:13-64 on teachers employed by the regional district prior to July 1, 1997 is initially to continued employment as a teacher in one of the constituent districts. Because the entitlement to continued employment conferred by

that statute does not depend on tenure status, regional staff do not have the right under the education law to claim a particular assignment in a constituent district following dissolution, and the prerogative to determine the initial placement of former regional staff members ultimately lies with the constituent districts. Hence, the responsibility for effectuating such initial placements within the parameters of the law also rests with the boards of education of the constituent districts. Central Regional, supra at 572.

As the Commissioner recognized, the selection process in this case could properly be effectuated by allowing employees to select assignments which would be available in the constituent districts on the basis of the employees' relative length of service in the regional district at the point at which the dissolution was approved by the voters. Further, in that selections made on the basis of such comparisons do not implicate statutorily-derived seniority rights, such lists do not constitute determinations of seniority within the meaning of N.J.S.A. 18A:28-12 and may not be used for such purposes by any of the constituent districts after the dissolution is effected. Central Regional, supra. At the same time, we stress that the constituent districts must implement their selection process so as to effectuate the employment rights under N.J.S.A. 18A:13-64 of all regional staff members employed on the effective date of the dissolution. Central Regional, supra.

Again, in the absence of a reduction in staff under N.J.S.A. 18A:28-9 by the regional district prior to its dissolution, see Central Regional, supra, the initial assignments of the former regional teaching staff members by the constituent districts do not turn on tenure status or implicate statutory seniority rights. However, as the Commissioner recognized, once a constituent district employs the former staff member

by appointing that individual to a position within the scope of his or her certification, the statute requires that it must recognize and preserve all rights of tenure and seniority accrued by that individual by virtue of service with the regional district. This requires that in any subsequent personnel action, each of the constituent districts must credit teaching staff members who were previously employed by the regional district for all of their service to the regional district up to the date upon which the dissolution is effected.

We reiterate that initial appointments in each of the constituent districts made by the district board of those districts must be made in conformance with the parameters of the education law. Hence, we again stress that an individual aggrieved by such appointment may pursue a claim under the education laws by initiating proceedings before the Commissioner pursuant to N.J.S.A. 18A:6-9.

In all other respects and for the reasons expressed in the Commissioner's declaration, we affirm his decision in this matter, including his determination that the constituent districts are required to maintain the salary of tenured staff members when establishing their level of compensation under the salary guides of those districts. In so doing, however, we decline in this context to delineate what, if any, additional benefits former employees of the regional district may be entitled to under the education laws beyond those expressly enumerated in N.J.S.A. 18A:13-64. See Hyman v. Board of Education of the Township of Teaneck, decided by the State Board, March 6, 1985, aff'd, Docket #A-3508-84T7 (App. Div. 1986), cert. denied, 104 N.J. 469 (1986).

Attorney exceptions are noted.

October 1, 1997

Date of mailing _____