

C # 162-02L
C # 275-02L
SB # 24-02
App. Div. #A-3860-02T3
App. Div. #A-4276-02T3

BOARD OF EDUCATION OF THE :
NORTHERN BURLINGTON COUNTY :
REGIONAL SCHOOL DISTRICT, :
BURLINGTON COUNTY, :

PETITIONER-APPELLANT, :

V. :

WILLIAM L. LIBRERA AND WALTER KEISS, :
BURLINGTON COUNTY SUPERINTENDENT :
OF SCHOOLS, :

RESPONDENTS-RESPONDENTS, :

STATE BOARD OF EDUCATION

DECISION

AND :

TOWNSHIP OF MANSFIELD, BURLINGTON :
COUNTY, :

PETITIONER, :

V. :

WILLIAM L. LIBRERA AND WALTER KEISS, :
BURLINGTON COUNTY SUPERINTENDENT :
OF SCHOOLS, :

RESPONDENTS. :

Decided by the Commissioner of Education, April 12, 2002

Decision on motion by the State Board of Education, July 2, 2002

Decided by the Commissioner of Education, July 19, 2002

Decided by the State Board of Education, March 5, 2003

Remanded by the Appellate Division, October 14, 2004

For the Petitioner-Appellant Northern Burlington County Regional School District, Parker McCay (Frank P. Cavallo, Jr., Esq., of Counsel)

For the Respondents-Respondents, Allison Colsey Eck, Deputy Attorney General (Peter C. Harvey, Attorney General of New Jersey)

For the Intervenor Township of North Hanover, Costa, Vetra & LaRosa, P.C. (Joseph A. D'Aversa, Esq., of Counsel)

This matter is before us pursuant to a remand by the Appellate Division. The case arose from a reapportionment by the Burlington County Superintendent of the nine seats comprising the Board of Education of the Northern Burlington County Regional School District (hereinafter "Regional Board"). The Regional School District includes four constituent school districts, and the reapportionment was effectuated pursuant to N.J.S.A. 18A:13-8 and -9 as the result of the 2000 census. Based on the data from the 2000 census and calculated under the "equal proportions" formula, North Hanover lost one of its two seats on the Regional Board and Chesterfield gained a seat. In calculating the population figures that led to this result, the County Superintendent included military personnel and inmates despite the fact that the statutory terms called for their exclusion.

The Regional Board and the Township of Mansfield filed petitions with the Commissioner of Education challenging the County Superintendent's reapportionment of the Regional Board's seats. The Commissioner sustained the County Superintendent's use of the equal proportions method to reapportion seats on the regional board and his inclusion of the inmates of a State facility in Chesterfield in his population figures.

The State Board affirmed the Commissioner's determination that use of the equal proportions method in this case was proper and, based on the legislative history of N.J.S.A. 18A:13-8, also concurred with the Commissioner that inmates residing in State facilities were properly included in determining the population for purposes of reapportionment.

In its decision of October 14, 2004, the Appellate Division affirmed that portion of the State Board's decision which had found the use of the equal proportions method to be proper, but, based on the plain language of N.J.S.A. 18A:13-8, reversed the State Board's determination that inmates residing in State facilities were properly included in the population for purposes of reapportionment. The Appellate Division declined to address the petitioners' contention that discovery was necessary in order to resolve disputed issues of material fact, but remanded the matter to the State Board for proceedings consistent with its opinion.

By letter of November 23, 2004, the parties were asked to advise the State Board in writing by December 8, 2004 as to whether there were any remaining issues that required resolution. None of the parties responded.

Since there appeared to be no issues remaining between the parties, they were notified by letter of January 21, 2005 that the State Board would consider dismissing the matter at its next public meeting on February 2, 2005. In response to that letter, the deputy attorney general representing the Commissioner and the County Superintendent indicated by letter of January 26, 2005 that it was her understanding that dismissal of the matter meant "remand without retention of jurisdiction to the Commissioner to carry out the re-apportionment consistent with the Appellate Division's October 14, 2004 decision."

By letter dated January 27, 2005, counsel for the Board of Education of the Northern Burlington County Regional School District indicated that he agreed with the deputy attorney general and, further, “specifically request[ed] that this matter be remanded to the Commissioner of Education immediately for a determination based upon the Appellate Division’s decision and in light of the February 28, 2005 deadline for filing of Petitions by candidates for election to boards of education. It is in all of the parties’ best interest that any determination made by the Commissioner, if at all practical, be implemented at the upcoming 2005 school election.”

Therefore, the State Board of Education remands the matter to the Commissioner. In so doing, we note that our determination does not alter the obligation of the County Superintendent under N.J.S.A. 18A:13-9 to immediately reapportion the seats on the Regional Board consistent with the Appellate Division’s decision.

February 2, 2005

Date of mailing _____