

172-00

NORTH BERGEN FEDERATION OF :
TEACHERS, LOCAL 1060, AMERICAN :
FEDERATION OF TEACHERS, AND :
AFL-CIO,

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF NORTH BERGEN,
HUDSON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioners challenged the Board's adoption of a policy prohibiting the possession and use of portable paging or telecommunication devices by employees during school hours. Subsequent to the initiation of the petition, the parties agreed that the employees would place their cellular phones and pagers in a mutually agreed-upon location, *e.g.*, an administrative office, and could use those devices during their lunch periods. A hearing was held on the remaining issue regarding employee use of cellular phones during their preparation or professional periods.

Initially, the ALJ concluded that petitioners challenged the policy as applied and that the case was properly before the Commissioner of Education and the Office of Administrative Law. The ALJ concluded that there is no constitutional right to cellular telephones and pagers and that there is no constitutional right specifically affected by their prohibition. The ALJ also concluded that the Board's policy was not vague as charged, since the conduct prohibited was clear and all employees received a copy of the policy and the superintendent's memorandum noticing employees that violation of the policy might result in appropriate disciplinary action. Finally, the ALJ concluded 1) that the Board had reasonable rationale to adopt the policy, 2) that there was insufficient reason to nullify the policy because it permits the superintendent on a case-by-case basis to allow personnel to have a portable pager or to issue disciplinary action for violating the policy and 3) that petitioners failed to demonstrate that the Board acted arbitrarily, capriciously or unreasonably in adopting a policy which forbids the employees from possessing cellular telephones and pagers during preparation or professional periods. Petition was dismissed.

The Commissioner adopted findings and determination in Initial Decision as his own.

June 12, 2000

OAL DKT. NO. EDU 9848-97
AGENCY DKT. NO. 289-8/97

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon his careful and independent review of the within record, the Commissioner concurs with the Administrative Law Judge that petitioners have failed to establish that the Board's adoption of a policy prohibiting the possession and use of portable paging or telecommunication devices by school staff during preparation or professional periods was arbitrary, capricious, unreasonable or a violation of their constitutional rights. Therefore, the Board's imposition of such restrictions was a reasonable exercise of its discretionary authority not subject to disturbance by the Commissioner.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons stated therein and the within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 12, 2000

Date of Mailing: June 12, 2000

* This decision, as the Commissioner's final determination, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.