

NEW JERSEY SCHOOL BOARDS :  
ASSOCIATION, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF WYCKOFF,  
BERGEN COUNTY, :

RESPONDENT. :

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SYNOPSIS

Petitioner New Jersey School Boards Association (NJSBA) filed a Petition for Declaratory Judgment seeking an order directing Respondent Board of Education of the Township of Wyckoff (Board) to pay NJSBA \$106,206 in dues assessed to it for fiscal years 1993-1994 through 1999-2000 and to make future timely payments of assessed dues. The Board’s Answer raised four affirmative defenses: (1) NJSBA’s filing was untimely pursuant to *N.J.A.C.* 6:24-1.2(c); (2) under the terms of *N.J.S.A.* 18A:6-50, NJSBA may seek payment only for the Board’s proportionate share of NJSBA’s necessary expenses; (3) the Board is entitled to a setoff for the reasonable value of services normally provided to it during the period it was not paying dues to NJSBA; and (4) NJSBA may not assess to or recover dues from the Board because the provisions of *N.J.S.A.* 18A:6-50 violate N.J. Constit. Art. 4, sec. 7, par. 4, a claim which the Board did not pursue in its supporting briefs.

The Commissioner determined that, even if NJSBA’s appeal was, *arguendo*, untimely filed for fiscal years 1993-1994 through 1998-1999 because its claim for those years was submitted beyond the 90-day time limit set forth in *N.J.A.C.* 6:24-1.2(c), the factual circumstances of this matter—the Board’s admitted, intentional disregard of *N.J.S.A.* 18A:6-50 in refusing to pay dues assessed by NJSBA—warrant relaxation of the 90-day rule because a compelling public interest is presented.

The Commissioner found the Board’s remaining arguments to be entirely without substance, noting that the Board could have challenged the reasonableness of the dues before NJSBA’s Delegate Assembly, the body with the statutory power to approve NJSBA’s assessed dues, or in a legal forum of appropriate jurisdiction. The Commissioner rejected as meritless the Board’s claim of setoff amounting to the reasonable value of services denied to it by NJSBA when it revoked the Board’s “good standing” status, emphasizing that the Board’s intentional refusal to pay dues will not be rewarded by reducing the amount of monies owing to NJSBA.

The Commissioner ordered the Board to pay NJSBA the sum of \$106,206 for the assessed dues owing to NJSBA pursuant to *N.J.S.A.* 18A:6-50 for fiscal years 1993-1994 through 1999-2000 according to a mutually acceptable payment schedule to be approved by the Bergen County Superintendent of Schools and directed the Board to pay future dues in compliance with the provisions of statute.

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\_\_\_\_\_:

Cynthia J. Jahn, Esq. (New Jersey School Boards Association)

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**PROCEDURAL HISTORY**

This matter was opened before the Commissioner of Education (Commissioner) on September 13, 1999 through the filing of a Petition for Declaratory Judgment by the New Jersey School Boards Association (NJSBA) seeking an order that the Wyckoff Township Board of Education (Board) pay to the NJSBA \$106,206 in dues assessed to the Board pursuant to *N.J.S.A. 18A:6-50* for the fiscal years 1993-1994 through 1999-2000. The NJSBA also seeks an order that the Board make future timely payments of the assessed dues. The Board filed its Answer to Petition for Declaratory Judgment on September 28, 1999, requesting that the Commissioner not entertain the petition and in the alternative that he deny the requested relief. The Board's Answer also raised four affirmative defenses, i.e., the NJSBA's filing was untimely pursuant to *N.J.A.C. 6:24-1.2(c)*; under the terms of *N.J.S.A. 18A:6-50*, the NJSBA may seek payment only for the Board's proportionate share of the NJSBA's necessary expenses; the Board is entitled to a setoff for the reasonable value of services normally provided to it during the period it was not paying dues to the

NJSBA; and the NJSBA may not assess to or recover dues from the Board because the provisions of *N.J.S.A. 18A:6-50* violate N.J. Const., Art. 4, sec. 7, par. 9.<sup>1</sup>

On October 1, 1999, the parties were notified that the Commissioner would decide the matter on a declaratory judgment basis and a briefing schedule was established. Briefs were filed by the parties on October 26, 1999. A reply letter brief was submitted by the NJSBA on November 12, 1999 and a letter response to letter brief was filed by the Board on November 15, 1999, at which time the record closed.

### **STATEMENT OF FACTS**

Based upon review of the Petition for Declaratory Judgment and the Board's Answer thereto, the facts listed below are found to be undisputed by the parties.

1. A statement of dues was mailed to the Board for each of the following fiscal years.

<u>Fiscal Year</u>	<u>Amount of Dues</u>
1993-1994	\$15,981
1994-1995	\$15,981
1995-1996	\$15,981
1996-1997	\$15,981
1997-1998	\$15,981
1998-1999	\$10,320

2. In each of the six fiscal years, the NJSBA notified the Board of its dues assessment and responsibility to pay. The NJSBA has repeatedly requested payment through written correspondence, telephone conversations and personal appearances by NJSBA staff before the Board.

3. Despite repeated requests for payment, the Board has failed to pay dues assessed it for the above-listed six fiscal years by the NJSBA pursuant to *N.J.S.A. 18A:6-50*. The arrearage for these six years totals \$90,225.

4. The Board's assessment for dues for fiscal year 1999-2000 is \$15,981. Pursuant to the NJSBA's Bylaws, dues are to be paid by July 31 or within ten days after the next regularly scheduled board of

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<sup>1</sup> It is noted for the record that the Wyckoff Board of Education's legal arguments which were submitted to the Commissioner for his review in deciding this Petition for Declaratory Judgment did not advance such claims of unconstitutionality.

education meeting occurring after July 31. The Board met on August 31, 1999. The NJSBA has requested payment of the Board's assessed dues for 1999-2000.

5. The arrearage of assessed dues being sought by the NJSBA from the Board for fiscal years 1993-1994 through 1999-2000 totals \$106,206.

### **TIME BAR: LEGAL ANALYSIS AND DETERMINATION**

Preliminarily, the Board argues that the NJSBA's claim for dues for the period from 1993-1994 through 1998-1999 is barred by *N.J.A.C. 6:24-1.2(c)*, which mandates that a "petitioner shall file a petition no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing." The Board avers that the NJSBA has clearly been on notice that it was "intentionally" (Board's Brief in Opposition to Petition for Declaratory Judgment at 4) not paying dues that were assessed to it as early as June 1993, yet the NJSBA waited until September 1999 to request relief; thus, the Board contends the matter is time-barred for all past dues but fiscal year 1999-2000. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 *N.J.* 572 (1993).

The NJSBA urges that its claim for current and outstanding dues was timely filed because the claim is grounded in statute, *N.J.S.A. 18A:6-50*, which reads in pertinent part:

For the purpose of defraying the necessary expenses of the association, the various district boards shall pay the necessary expenses incurred by its delegates, *and shall appropriate annually such sums for dues as may be assessed by the association at any delegates meeting.*\*\*\* Dues shall be payable by the custodian of school moneys of the school district to the treasurer of the association. (NJSBA's Letter Brief at 4) (emphasis in original)

NJSBA maintains that the language of this statute clearly creates an entitlement for it to receive such dues as may be assessed, and imposes a mandatory obligation on school boards to pay those dues. The NJSBA further avers that its authority to impose an assessment for dues has already been judicially affirmed. *N.J. State AFL-CIO v. State Fed. of Dis. Bds. of Ed.*, 93 *N.J.*

*Super.* 31 (Ch. Div. 1966). Consequently, it argues that the 90-day rule cannot apply to defeat an obligation such as the statutory dues payment to the NJSBA at issue herein. In support of this legal position, the NJSBA cites *Lavin v. Hackensack Bd. of Ed.*, 90 N.J. 145 (1982), wherein the Court held that N.J.S.A. 18A:29-11 created a statutory right in a teacher for salary credit for military service because the military credit benefit was not directly related to the petitioner's employment services but rather represented the Legislature's goal to reward veterans for service to their country in time of war. Consequently, even though the teacher waited nine years to seek that credit, the Court determined that the statute of limitations did not bar the teacher's claim. *Lavin, supra* at 150-51.

As further support for its position that time limitations do not operate to bar a statutory right or obligation as presented in the instant matter, the NJSBA relies, *inter alia*, upon *North Plainfield Educ. Ass'n v. Bd. of Educ.*, 96 N.J. 587 (1984); various other earlier court decisions such as *Miller v. Bd. of Chosen Freeholders, Hudson County*, 10 N.J. 398 (1952), which was discussed by the Court in *Lavin, supra*; and a string of court decisions referenced in *Miller, supra*, and *Warren County v. Harden*, 95 N.J.L. 122 (1920).

The Board urges that the NJSBA's argument with respect to the applicability of *Lavin, supra*, to the instant matter is incorrect, averring, *inter alia*, that the 90-day rule in dispute herein, N.J.A.C. 6:24-1.2(c), was not at issue in *Lavin* but rather N.J.S.A. 2A:14-1, which deals with the six-year statute of limitations. As to this, the Board emphasizes that the wording of N.J.S.A. 2A:14-1 contains a listing of those types of actions to which the statute of limitations applies, none of which falls under the heading of what would be considered a statutory entitlement. The Board further argues that N.J.A.C. 6:24-1.2(c) contains no such listing and by its terms applies to all petitions which may be filed regardless of what they involve.

Having carefully considered the record and the legal arguments of the parties, the Commissioner initially finds it unnecessary to reach the question of statutory entitlement raised by

the NJSBA. Rather, the Commissioner finds and determines that even accepting *arguendo* that the instant matter does not raise a statutory right within the meaning of *Lavin, supra*, and, therefore, the NJSBA's appeal was untimely filed for fiscal years 1993-1994 through 1998-1999 because its claim for those years was submitted beyond the 90-day time limit set forth in *N.J.A.C. 6:24-1.2(c)*, the factual circumstances herein warrant relaxation of the 90-day rule because a compelling public interest is presented. Pursuant to the authority granted by *N.J.A.C. 6:24-1.15*, the Commissioner may relax the 90-day rule under exceptional circumstances or if there is a compelling reason to do so. *Kaprow, supra; DeMaio v. New Providence Board of Education*, 96 *N.J.A.R.2d* (EDU) 449, 453. As was recently stated by the Commissioner in *Board of Education of the Gloucester County Institute of Technology, Gloucester County v. Board of Education of the Lenape Regional High School District, Burlington County*, "Such authority, \*\*\* is rarely invoked unless strict adherence thereto would be inappropriate, unnecessary or where injustice would occur, *DeMaio* at 453, or where he finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Pacio v. Lakeland Regional High School District*, 1989 *S.L.D.* 2060, 2064." (Slip op. at 13)

Review of the record indicates that for seven consecutive fiscal years, commencing with fiscal year 1993-1994, the Wyckoff Board of Education has, by its own admission, intentionally disregarded<sup>2</sup> the statutory provisions of *N.J.S.A. 18A:6-50* by refusing to pay dues assessed by the NJSBA, an association to which, by law (*N.J.S.A. 18A:6-45*), all school boards must belong. The statutory obligation of the NJSBA, and its predecessor, the State Federation of District Boards of Education, has been for nearly a century to "encourage and aid all movements for the improvement of educational affairs of this state." (*N.J.S.A. 18A:6-47*). Moreover, there is no doubt that the Wyckoff Board of Education was fully aware of the statutory obligation of boards of

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<sup>2</sup> See Board's Brief in Opposition to Petition for Declaratory Judgment, wherein the Board states at page 2 that a review of its Board Secretary's affidavit and exhibits attached thereto can lead to no other conclusion than that "Petitioner knew Respondent hadn't paid the requested dues and in no way intended to do so." See also page 4,

education to pay their assessed dues to the NJSBA. If the Wyckoff Board desired to contest or dispute the payment of its assessed dues, the proper course of action would have been for it to seek redress through the legal forum of appropriate jurisdiction, *not* to take it upon itself to disregard intentionally and flagrantly the statutory provisions enacted by the New Jersey Legislature for payment of dues to NJSBA by all boards of education in this state. In this regard, the Commissioner cannot and will not countenance a board of education's long-standing refusal to fulfill its statutory obligation. Having determined that relaxation of the time limitation of *N.J.A.C.* 6:24-1.2(c) is deemed warranted, the Commissioner will now review the substantive issues in dispute in this matter.

### **POSITION OF THE PARTIES**

The Board's first point of argument in its Brief in Opposition to Petition for Declaratory Judgment asserts that *N.J.S.A.* 18A:6-50 requires only that necessary expenses be paid; thus, a review of what is "necessary" should be made by the Commissioner. As to this, the Board argues, *inter alia*, that the statute is silent as to how the determination of "necessary" is to be made. It does acknowledge, however, that *N.J.S.A.* 18A:6-50 provides a mechanism for determining how the *assessment itself* is to be made, i.e., by a vote of two-thirds of the delegates presented at a meeting called for that purpose and that Article VIII, Section 1 (a) of the NJSBA's Bylaws states that the annual dues are determined by the association's Board of Directors. In summation, the Board avers that it is calling into question whether the amount of dues sought by the NJSBA is, in fact, reasonable and that to ascertain whether the dues are reasonable, the Wyckoff Board must be afforded the opportunity to review and provide comment to the Commissioner upon the annual budgets, financial statements and audits for the years in question.

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wherein the Board states "As can be seen from the facts, the petitioner has been clearly aware that respondent was *intentionally* not paying dues that were assessed to it as early as June of 1993." (Emphasis supplied)

In response, the NJSBA avers that its dues structure is fully compliant with the statutory provisions of *N.J.S.A.* 18A:6-50 and that the structure for its operating dues is fully supported by the statutory language concerning the assessment of dues. *N.J.S.A.* 18A:6-50 reads:

For the purpose of defraying *the necessary expenses of the association, the various district boards shall pay the necessary expenses incurred by its delegates, and shall appropriate annually such sums for dues as may be assessed by the association at any delegates meeting.* The assessment of dues shall be made upon a graduated scale and shall be made only upon two-thirds vote of the delegates present at such delegates meeting, after notice of the taking of such vote shall have been given to each district board in writing at least 60 days before such delegates meeting. However, the dues assessed any board of education shall not be increased for any year by more than 33 1/3% of the dues assessed that board during the preceding year. Dues shall be payable by the custodian of school moneys of the school district to the treasurer of the association. (Emphasis supplied)

More specifically, the NJSBA argues that the above-cited statute requires boards of education to pay two separate items, the first being the necessary expenses of their delegates, the amount of which is limited by actual expenditures incurred by the delegates in carrying out their responsibilities, and the second being the payment of dues as may be assessed by the NJSBA at any delegates meeting based upon a graduated scale and made by a two-thirds vote of the delegates present at the delegates meeting. It is the NJSBA's position that this statutory language provides flexibility to the delegates to determine their own dues schedule and, in fact, the law was amended in 1973 to increase the ability of the delegates to establish their own dues without the statutory constraints that had previously existed, *P.L.* 1973, c. 120, sec. 1 effective May 9, 1973. It further argues, *inter alia*, that its dues structure is proportional in nature, based on each local district's current expense budget, the structure/formula of which is set forth in the NJSBA's Governance and Operations Manual, GO/3211, which reads:

The NJSBA dues formula is designed to be equitable, easy to administer, responsive to changing economic conditions and capable of sustaining Association services. The formula is:

$$\text{Base} + (.0012 \times \text{CEB}) = \text{Dues (limited by a Maximum)}$$

For the 1981-82 fiscal year, the Base figure equals \$750 and the Maximum figure equals \$10,000. In subsequent years, these two figures will be adjusted according to an inflation factor, defined as the budget cap for a district spending at the state average with respect to per pupil expenditures. This budget cap is calculated by multiplying  $\frac{3}{4}$  times the latest annual percentage increase in the total state equalized valuation, or the average of the last three years, whichever is higher. Should the state alter the formula by which it derives this cap figure, NJSBA will continue to compute its dues inflation factor in the manner described above. (NJSBA's Letter Brief at 11)

The NJSBA further asserts that the statutory language of *N.J.S.A. 18A:6-50* gives its delegates the authority to establish dues in accordance with the formula currently in place and, if the Wyckoff Board believes that a different structure is preferable or the assessed dues unreasonable, its recourse is to raise the issue at the association's Delegate Assembly, the originating body of the current dues policy. NJSBA's annual budgets and annual audit are public information that, during all the years in question herein, have been available for review by the delegates and member boards of education. Thus, the NJSBA contends, the Wyckoff Board had the ability to raise issues about the reasonableness of the assessed dues with the Delegate Assembly, a democratic process which the NJSBA avers was contemplated by the Legislature. (*See, e.g.*, Governor's Press Release on Signing A-2147, NJSBA's Exhibit II). Moreover, the NJSBA points out that its dues have not increased in any of the years at issue herein, which it attributes to the "effectiveness and democratic nature of the internal mechanism over NJSBA's dues assessment." (NJSBA's Reply Letter Brief at 2)

Lastly, the Wyckoff Board argues that it is entitled to a setoff amounting to the reasonable value of services denied to it by the NJSBA because, subsequent to the association's determining to deny Wyckoff "good standing" status, it denied to the Board the "accoutrements of membership," which presumably have some inherent monetary value and should, thus, be deducted from amounts claimed to be owed by respondent. In response, the NJSBA emphasizes, *inter alia*,

that it is not a fee-based organization and the value of services cannot be “unbundled” so as to place a dollar value on them.

### **COMMISSIONER’S DETERMINATION**

Upon full consideration of the record, the legal arguments advanced by the parties and the applicable statutory provisions in this matter, the Commissioner finds and determines that the Board is, as are all boards of education in the State of New Jersey, obligated by the clear and unequivocal language of *N.J.S.A. 18A:6-50* to pay the dues assessed to it by the NJSBA. The Board’s arguments to the contrary are found to be entirely without substance. If the Wyckoff Board wished to “call into question” the reasonableness of dues being assessed by the NJSBA, the appropriate recourse would have been to bring that issue before the association’s Delegate Assembly, since it is this body which by law has the statutory power to approve NJSBA’s assessed dues. Moreover, as stated earlier in this decision, if the Wyckoff Board desired to contest the constitutionality and/or reasonableness of the dues being assessed by the NJSBA, the proper course of action would have been to pursue such claims in a legal forum of appropriate jurisdiction. Intentional refusal to pay statutorily mandated dues to the NJSBA cannot and will not be countenanced.

The Commissioner likewise rejects as meritless the Board’s argument that it is entitled to a setoff amounting to the reasonable value of services denied to it by the NJSBA when the Board’s “good standing” status was removed by the association. When the Board embarked on its long course of intentional refusal to pay dues assessed by the NJSBA, it acted at its own peril and will not now be rewarded for such willful disregard of the law by having the amount of monies owing to the NJSBA reduced in the manner argued by respondent.

Accordingly, the Wyckoff Board of Education is directed to pay to the NJSBA the sum of \$106,206 for the assessed dues which are owing to NJSBA pursuant to the statutory requirements of *N.J.S.A. 18A:6-50* for fiscal years 1993-1994 through 1999-2000. Such payment

shall be pursuant to a mutually acceptable payment schedule to be arranged by the parties and approved by the Bergen County Superintendent of Schools. Further, the Wyckoff Board is directed to pay to NJSBA the dues it is assessed in future fiscal years in a manner which is in compliance with the provisions of statute.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 2, 2000

Date of Mailing: \_\_\_\_\_

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<sup>3</sup> 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.