

LOWER CAMDEN COUNTY REGIONAL :  
EDUCATION ASSOCIATION AND LOWER :  
CAMDEN COUNTY REGIONAL HIGH SCHOOL :  
DISTRICT NUMBER 1 PRINCIPALS AND :  
SUPERVISORS ASSOCIATION, :  
  
PETITIONERS, :  
  
V. : COMMISSIONER OF EDUCATION  
  
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION  
OF BERLIN, BOARD OF EDUCATION OF THE :  
BOROUGH OF CHESILHURST, BOARD OF :  
EDUCATION OF THE BOROUGH OF :  
CLEMENTON, BOARD OF EDUCATION OF :  
THE BOROUGH OF LINDENWOLD, BOARD :  
OF EDUCATION OF THE BOROUGH OF :  
PINE HILL, BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WATERFORD, AND BOARD OF :  
EDUCATION OF THE TOWNSHIP OF :  
WINSLOW, CAMDEN COUNTY, :  
  
RESPONDENTS. :

SYNOPSIS

This matter arose out of the dissolution of the Lower Camden County Regional High School District which was effective July 1, 2001, and involves the following issues: the employment rights of certain nontenured employees and health benefits following dissolution, and a claim of tenure rights violation by an individual employee, Joel McGuckin. The parties sought and were granted an Order of Partial Summary Decision on the first two issues by the ALJ in a decision issued July 1, 2002. The matter remained open as a contested case pending resolution of the individual employee’s claim of tenure rights violation. A settlement agreement on this issue was reached by the parties, and approved in the Initial Decision of the ALJ dated January 12, 2005, ending the contested case.

Upon full and independent review of the record in this matter, the Commissioner approved the settlement terms and adopted the settlement as the final decision on the tenure rights claims associated with Joel McGuckin, and that portion of the instant matter was dismissed subject to compliance with the terms of the settlement. Regarding the ALJ’s July 1, 2002 Order, the Commissioner determined that Partial Summary Decision was appropriately granted to the respondents. In so deciding, the Commissioner underscored that *N.J.S.A. 18A:13-64*, which establishes the rights of employees of a regional district in the event of withdrawal from or dissolution of a regional district, is intended to protect only those employment entitlements possessed prior to dissolution, and cannot be read to eviscerate the discretionary powers of a board relating to its nontenured employees nor to vest these individuals, as a result of dissolution, with an *enhanced* status over and above which they possessed in the Regional District. The Commissioner found and concluded that it cannot be plausibly argued that nontenured employees terminated as of June 30, 2001 enjoyed any legitimate claim to “continued” employment in the constituent districts upon the July 1, 2001 dissolution. Accordingly, the Initial Decision, along with the ALJ’s July 1, 2002 Order granting Partial Summary Decision to respondents, were adopted as the final decision in this matter and the instant Petition of Appeal 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.

OAL DKT. NO. EDU 962-00  
AGENCY DKT. NO. 83-3/00

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. It is noted that this matter is comprised of two components: 1) a settlement agreement covering a tenure and seniority claim of petitioner, Joel McGuckin; and 2) issues with respect to the rights of certain nontenured employees following dissolution of the Lower Camden County Regional School District, decided by an Order of Partial Summary Decision granted by the Administrative Law Judge (ALJ) on July 1, 2002.<sup>1 2</sup> Petitioners'

<sup>1</sup> On July 25, 2002 the Commissioner declined to review this Order on an interlocutory basis, so that it is now subject to review.

exceptions and respondent's reply exceptions, dealing solely with the employment rights of nontenured Regional District employees, were filed in accordance with *N.J.A.C.* 1:1-18.4, and were fully considered by the Commissioner in reaching his determination in this matter.

Petitioner's exceptions argue that, pursuant to *N.J.S.A.* 18A:13-64 and the Commissioner's interpretation of this statute in *Stagaard v. Contini*, 97 *N.J.A.R.* 2d (EDU) 217 (1996), *aff'd*. State Board October 1, 1997, all nontenured teachers employed by the Regional District were entitled to have their employment continued in one of the constituent districts subsequent to dissolution of the Regional District. Specifically, they point to the Commissioner's discussion of what they contend is this very issue in *Stagaard, supra*, wherein he held:

[t]he statute in question may not reasonably be found to create an open market where all positions at all constituent districts are subject to preferential claim by staff from the dissolving district, as such a finding would create potential chaos, confer extraordinary rights upon regional staff and effectively usurp the managerial prerogative of the constituent Boards of Education. Rather, the statute must be read to ensure that, for staff affected by the dissolution of their employing district, employment in their current position (Teacher) will be maintained. (Emphasis supplied.) (Petitioners' Exceptions at 4-5)

Petitioners contend this "guarantee" was violated in the case of nontenured teachers who were not offered employment in the constituent districts because "[t]heir current position" was not "maintained" as required by the statute. (*Ibid.*) Further supporting their position that nontenured individuals were entitled to this protection, petitioners cite to other language in *Stagaard, supra*, which states that the selection process for positions of employment in the constituent districts could properly be effectuated by allowing Regional District employees to select positions

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<sup>2</sup> By letter dated January 24, 2005 from counsel for respondents and letter dated February 1, 2005 from counsel for petitioners, the Commissioner was advised that the issue with regard to employee health benefits addressed in the ALJ's July 1, 2002 Order has been resolved to the parties' satisfaction through collective bargaining and, therefore, is rendered moot, leaving only review of employment rights of nontenured individuals for the Commissioner's consideration here.

available in these districts on the basis of the employees' relative "length of service" in the Regional District. Use of this particular language, it contends, rather than the term "seniority," which only attaches after the acquisition of tenure, clearly demonstrates that a guarantee of employment pursuant to the statute was due to both tenured and nontenured staff members. (*Id.* at 5) Because the respondent constituent districts did not guarantee employment to all individuals with "length of service" but, rather, only did so for those enjoying tenure, petitioners charge that they have violated *N.J.S.A.* 18A:13-64, as interpreted by previous decisions of the Commissioner and the State Board. As a remedy, petitioners seek that each nontenured Regional District employee not employed by a constituent district be compensated his or her full salary for the entire school year subsequent to dissolution. (*Id.* at 6)

In reply, respondents first present the sequence of facts which they aver are necessary to the understanding of this matter:

[b]y referendum on May 12, 1998, voters of the communities served by the Regional District voted to dissolve that district and to have its facilities and functions assumed by the Constituent Districts. From March 13, 2000 through April 6, 2000, the Regional District employees selected positions they would take in the constituent districts based on their tenure and seniority rights following dissolution, pursuant to *N.J.S.A.* 18A:13-64. The Commissioner of Education established a dissolution date of July 2001.

The Regional District's non-tenured employees also participated in the selection process. By way of instructions contained in an informational packet distributed to the Regional District's certificated staff on March 1, 2000, non-tenured staff members were advised that, while "they were not guaranteed a position anymore than they would be in the absence of dissolution, they [could] identify a preference for any building and subject available." (*See* Certification of Thomas O. Johnston, Exhibit "B")

The Constituent Districts had positions available for some, but perhaps not all, non-tenured employees from the Regional District \*\*\*. In any event, all non-tenured employees from the Regional District received the requisite notification of non-renewal under

*N.J.S.A. 18A:27-10.* (See Johnston Certif., Exhibit “F”.) (emphasis in text)  
(Respondents’ Reply Exceptions at 2-3)

Consequently, respondents submit, nontenured teachers were provided with all rights to which they were entitled. To accept petitioners’ position that nontenured Regional District employees were “guaranteed” employment in one of the constituent districts, they argue, serves to confer tenure protection, pursuant to *N.J.S.A. 18A:13-64*, upon individuals who did not otherwise possess tenure. (*Id.* at 3) Moreover, petitioners’ reliance on the Commissioner’s ruling in *Stagaard, supra*, for support is misplaced, respondents charge. Rather, in that decision:

the Commissioner found that *N.J.S.A. 18A:13-64* ensures that, for staff affected by a dissolution of their employing district, employment in their current position will be “maintained” and “all previously accrued tenure and seniority rights will transfer” to the constituent district. The Commissioner further noted that employees will continue employment in the constituent district “as if the entire term of employment had been with the constituent district.” Thus, *N.J.S.A. 18A:13-64* mandates that the Regional District’s employees’ rights to tenure and seniority merely be “preserved” upon continuing employment with a constituent district. In the case at bar, the Regional District’s non-tenured employees had no tenure or seniority protections to “preserve.” Nonetheless, petitioner requests that these employees’ employment rights be enhanced through dissolution.  
(Respondents’ Reply Exceptions at 4) (citations omitted)

Similarly misguided, they propose, is petitioners’ ascribing of significance to the State Board’s use of the words “length of service” rather than “seniority” in describing the staff selection process in *Stagaard*. Such reference, they assert, was merely intended “to establish an order for employees to proceed through the selection process, not to confer on them extra rights via dissolution -- rights to guaranteed continued employment -- which they would certainly not possess without dissolution.” (emphasis in text) (*Id.* at 5-6)

Pointing to *Wyckoff Bd. of Educ. v. Wyckoff Educ. Assoc.*, 168 *N.J. Super* 497 (App. Div. 1979), respondents submit that it is well-established that a board’s decision whether

to renew the contracts of its nontenured employees is a managerial prerogative. Further, citing *Getz v. North Hunterdon-Voorhees Regional District Board of Education*, 96 N.J.A.R. 2d (EDU) 606, respondents claim that it is likewise well-settled that a board has “virtually unlimited discretion in hiring or renewing non-tenured teachers.” (*Id.* at 5) Here, respondents maintain, nontenured Regional District employees were accorded all of the protections afforded them by statute. The constituent districts were required to “preserve” tenure and seniority rights of these employees subsequent to dissolution, which they did. However, they “were under no obligation to preserve what the non-tenured employees did not have.” Contrary to the contention of petitioners, respondents urge that N.J.S.A. 18A:13-64 does not operate to confer tenure protections on nontenured employees; these individuals are not guaranteed employment after a dissolution any more than they would be guaranteed continued employment without one. (Respondents’ Reply Exceptions at 6).

Upon his full and independent review of the record of this matter, the Commissioner has initially considered the Settlement Agreement and General Release and Initial Decision issued by the Office of Administrative Law, pursuant to N.J.A.C. 1:1-19.1. Upon such consideration, he approves the settlement terms and adopts the settlement as the final decision on the claims associated with Joel McGuckin in this matter. That portion of the instant matter is, therefore, dismissed, subject to compliance with the terms of the settlement.

Turning to review of the ALJ’s July 1, 2002 Order, the Commissioner determines that Partial Summary Decision was appropriately granted to respondents, as he finds that nontenured Regional District employees received all of the protections to which they were entitled pursuant to N.J.S.A. 18A:13-64.

N.J.S.A. 18A:13-64, which establishes the rights of employees of a regional district in the event of a withdrawal from or dissolution of a regional district, in pertinent part, specifies:

[a]ll 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 of 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 has been under the withdrawing district or in any of the constituent districts in the event of a dissolution.\*\*\*

The underlying purpose of this provision was considered and addressed in *Board of Education of the Central Regional High School District v. Board of Education of Lacey Township and the Central Regional Education Association and Ronald Villano, individually, Ocean County*, 1980 S.L.D. 553, 565, wherein it was recognized “that the Legislative intent [of this provision] was to protect the employment rights of those employees [of the regional district affected by the withdrawal] who have provided good and faithful service to the school district.” Full consideration of this statute and its legislative intent demonstrate that it was designed to operate, upon the dissolution of a regional district, as a “save harmless” provision to preserve and protect benefits earned by affected individuals by virtue of their service in such regional district. *Balwierzczak et al. v. Board of Education of Berkeley Heights, Union County*, decided by the Commissioner December 8, 1999, *aff’d* State Board May 3, 2000. However, as recognized by the Commissioner in *Stagaard, supra*, N.J.S.A. 18A:13-64 “must be applied in a manner which preserves the continued employment and accrued rights of such staff, but does not result in the wholesale disruption of existing districts \*\*\*[or] confer extraordinary rights upon regional staff and effectively usurp the managerial prerogative of the constituent boards of education.” (*Stagaard* at 219)

Against this backdrop, the Commissioner finds it by now well-established that *N.J.S.A.* 18A:13-64 guarantees “[u]pon 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 not been dissolved,” *Stagaard, supra*, at 219, with such entitlement not being conditioned on tenure status. *Central Regional, supra; Stagaard, supra*. However, it is also without question that the employment protections guaranteed nontenured individuals are circumscribed by virtue of their nontenured status. ((*N.J.S.A.* 18A:27-10 *et seq.*; *N.J.S.A.* 18A:27-3.1 *et seq.*; *N.J.A.C.* 6 :3-4.1). *Central Regional, supra*. As 10-month contractual employees, nontenured individuals can harbor no expectation of continued employment from one year to the next. It is undisputed that a local board of education has the virtually unlimited discretionary authority to decline to reemploy them, pursuant to the non-renewal provisions of *N.J.S.A.* 18A:27-10 *et seq.*, or to terminate their employment in accordance with the notice provision specified in the parties’ contract. (See *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447 (App. Div. 1982); *John Kufel, Jr. v. Board of Education of the Union County Vocational-Technical School District, Union Co.*, 96 *N.J.A.R.* 2d (EDU) 14, *aff’d*. State Board, 96 *N.J.A.R.* 2d (EDU) 446, *aff’d*. 97 *N.J.A.R.* 2d (EDU 317 (App. Div. 1997) It must, therefore, be underscored that *N.J.S.A.* 18A:13-64, as a *save harmless* provision, is intended to protect only those employment entitlements these individuals possessed prior to dissolution. Neither this statute nor any prior case law interpreting it can be read to eviscerate the discretionary powers of a board vis-à-vis its nontenured employees or operate to vest these individuals, as a result of dissolution, with an *enhanced* status over and above that which they possessed in the Regional District.

Here, all staff affected by the dissolution were entitled to select *available* positions in the constituent districts based on their relative length of service in the Regional District as of May 12, 1998, the date the voters of the constituents comprising this district voted

to approve dissolution. The within record indicates that this selection process, which included both tenured and nontenured staff members, took place March 13, 2000 through April 6, 2000. The record further reflects that, by letter dated April 11, 2001, nontenured Regional District employees were notified, pursuant to *N.J.S.A. 18A:28-10*, that their employment was not being renewed and “all current and future entitlements to employment” with the District would cease at the end of their current contractual term. Thus, the Commissioner finds and concludes that it cannot be plausibly argued that these individuals, terminated as of June 30, 2001, enjoyed any legitimate claim to “continued” employment in the constituent districts upon the July 1, 2001 dissolution.<sup>3</sup>

Accordingly, the Initial Decision, along with the ALJ’s July 1, 2002 Order granting Partial Summary Decision to respondents, are adopted as the final decision in this matter and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: April 13, 2005

Date of Mailing: April 13, 2005

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<sup>3</sup> It must be emphasized, however, that any nontenured person who believed that the Board’s nonrenewal of his or her employment was in violation of constitutional or legislatively-conferred rights could have pursued such claim through a Petition of Appeal before the Commissioner pursuant to *N.J.S.A. 18A:6-9*.

<sup>4</sup> This decision 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. 6A:4-1.1 et seq.*