

EDU #3304-96  
C # 30-97  
SB # 19-97

LORETTA COLANTONI, :  
 :  
 PETITIONER-APPELLANT, :  
 :  
 V. : STATE BOARD OF EDUCATION  
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 BOARD OF EDUCATION OF THE : DECISION ON MOTION  
 TOWNSHIP OF LONG HILL, MORRIS :  
 COUNTY, :  
 :  
 RESPONDENT-RESPONDENT. :

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Decided by the Commissioner of Education, January 23, 1997

Decision on motion by the State Board of Education, June 4, 1997

Decision on motion by the State Board of Education, January 6, 1999

Decided by the State Board of Education, March 3, 1999

For the Petitioner-Appellant, Bucceri & Pincus (Louis P. Bucceri, Esq., of Counsel)

For the Respondent-Respondent, Riker, Danzig, Scherer, Hyland & Perretti (Lance Kalik, Esq., of Counsel)

For the Morris-Union Jointure Commission, Martin R. Pachman, P.C.

On March 3, 1999, the State Board of Education issued its final decision in this matter, holding that the Long Hill Township Board of Education (hereinafter "Board" or "Long Hill Board") had violated petitioner's tenure rights by abolishing her position as a guidance counselor in 1994-95 and subsequently contracting with the Morris-Union

Jointure Commission to provide guidance services to its students, including its non-handicapped students.

The matter was initiated by a petition to the Commissioner of Education in February 1996, by which time petitioner had been transferred to a position as a classroom teacher under her instructional certificate with no loss of pay. Consequently, in an initial decision issued on October 18, 1996, the Administrative Law Judge (“ALJ”) found that petitioner was not entitled to any relief at that point. However, the ALJ concluded that the Long Hill Board could not properly subcontract with a jointure commission to provide guidance services to non-handicapped students.

On January 23, 1997, the Commissioner adopted that part of the ALJ’s decision which found that petitioner was not entitled to relief. However, the Commissioner rejected the ALJ’s determination that N.J.S.A. 18A:46-24 et seq. precluded the Board from subcontracting with a jointure commission to provide guidance services to non-handicapped students. Instead, the Commissioner concluded that there was nothing in the statute that would act to preclude a jointure commission from expanding the scope of its services to include non-handicapped students where the contracting districts found that this would contribute to the efficient delivery of services.

Petitioner then filed an appeal to the State Board. On October 29, 1998, the Long Hill Board moved for dismissal of the appeal, contending that the matter was moot since petitioner had retired from her employment with the district effective January 1, 1998.

In a decision issued on January 6, 1999, we denied the Long Hill Board’s motion to dismiss, finding that the public interest dictated that the State Board decide the

statutory question that had been raised notwithstanding the fact that the individual petitioner involved would not be afforded any relief as a result of our decision.

We also directed the Long Hill Board to supplement the record on appeal with the agreements and resolutions which had been submitted to the Commissioner for approval pursuant to N.J.S.A. 18A:46-24 et seq. to establish the Morris-Union Jointure Commission. The Long Hill Board submitted the pertinent documents as directed after obtaining them from the Morris-Union Jointure Commission.

After reviewing the documents submitted by the Long Hill Board, as well as the briefs filed by the parties, the State Board determined that the ALJ had correctly concluded that the Long Hill Board could not properly contract with a jointure commission established pursuant to N.J.S.A. 18A:46-24 for the provision of guidance services to non-handicapped students. In making this determination, the State Board relied on the express language of the applicable statutes. Finding the terms of the statutes to be clear and unambiguous, the State Board concluded that, as the Commissioner had recognized in Stuermer v. Board of Education of the Special Services School District of Bergen County, 1978 SLD 628, 631, the language of the statutes reflected that jointure commissions were created only for the purpose of educating and training handicapped students.

In that nothing in the statutory language provided the authority for the provision of services to non-handicapped students by a jointure commission, the State Board concluded that the Long Hill Board could not properly provide guidance services to its non-handicapped students by contracting with the Morris-Union Jointure Commission for those services. See Fair Lawn Ed. Assn. v. Fair Lawn Bd. of Education, 79 N.J. 574

(1979). While our conclusion was reinforced by review of the application for the establishment of the Morris-Union Jointure Commission, which the State Board of Education had approved on June 3, 1987 on the recommendation of the Commissioner, our decision was rooted in the language of the applicable statutes. However, because petitioner had not suffered any economic loss as a result of the Long Hill Board's action and had retired from her employment in the district, the relief we afforded was limited to the declaration set forth in the decision.

On April 1, 1999, the Morris-Union Jointure Commission filed a motion with the State Board for leave to intervene. By this motion, the Jointure Commission seeks reconsideration by the State Board of our decision of March 3, 1999. The Jointure Commission argues that it should be granted leave to intervene because it is substantially and directly affected by that decision. The motion is supported by an affidavit executed by Kim B. Coleman, superintendent for the Jointure Commission, which indicates in general terms that the Jointure Commission offers some activities to non-disabled pupils. The Commission also argues that our determination of March 3 was not the valid result of agency adjudication, but rather constituted an invalid exercise of our rulemaking authority.

After reviewing the arguments of counsel, we deny the Jointure Commission's motion.

This appeal resulted from a petition to the Commissioner by a tenured guidance counselor who alleged that her tenure rights had been violated by the Long Hill Board. Accordingly, the Morris-Union Jointure Commission was not a party to the proceedings that produced the instant appeal. Nor was it necessary for the Jointure Commission to

participate in those proceedings in order to resolve the statutory issue raised by petitioner's claim. See, e.g., Impey v. Board of Education of the Borough of Shrewsbury, 142 N.J. 388 (1995).

Nonetheless, the record in this matter indicates that the Jointure Commission's superintendent, Kim B. Coleman, did execute a certification in August 1996 for use in this litigation. That affidavit was filed in support of the Long Hill Board's motion to dismiss. As counsel for petitioner points out, the affidavit shows that Dr. Coleman was clearly aware at that point that an issue had been raised concerning the guidance services which the Jointure Commission had contracted to provide to the Long Hill Board. Moreover, when counsel for the Long Hill Board requested a brief extension of time to insure timely compliance with our directive of January 6, 1999, he indicated that such extension was necessary because it was the Morris-Union Jointure Commission which was providing him with the required documents. Yet the Jointure Commission made no attempt to intervene until it filed the instant motion on April 1, 1999, almost a full month after our final decision in this matter had been issued. Under these circumstances, we deny leave to intervene.

Nor has the Jointure Commission pointed to any other circumstances that would warrant reopening this case. In this respect, we stress that our decision of March 3 held only that the Long Hill Board could not properly provide guidance services to its non-handicapped students by contracting with a jointure commission. Because the issue was not before us in this litigation, we did not consider or pass upon the validity of any other activities in which the Morris-Union Jointure Commission may be engaged. Since our determination was based on the express language of the applicable statutes

and because that language is clear and unambiguous, we were not required to exercise our rulemaking authority before we could decide the matter. E.g., Metromedia, Inc. v. Director, Div. Of Taxation, 97 N.J. 313 (1984).

Although we have denied leave to intervene in these proceedings, we cannot ignore that the motion brought to our attention the fact that this jointure commission may be engaging in activities which are beyond the scope of its statutory authority. In view of our responsibilities for the supervision and control of public education in this state, N.J.S.A. 18A:4-10, we direct the Commissioner of Education to exercise his full authority to insure that the current operations of this jointure commission, as it was approved by the State Board pursuant to N.J.S.A. 18A:46-24 et seq., are in compliance with the applicable statutes. In this regard, we direct the Commissioner to report to us within sixty days as to the operation of the jointure commission and any of its activities that involve the provision of services to non-handicapped students.

S. David Brandt opposed.

May 5, 1999

Date of mailing \_\_\_\_\_