

EDU #5877-02
C # 646-03
SB # 1-04

KATHLEEN DONVITO, :
 :
 PETITIONER-RESPONDENT, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE : STATE BOARD OF EDUCATION
 NORTHERN VALLEY REGIONAL :
 HIGH SCHOOL DISTRICT, BERGEN : DECISION
 COUNTY, :
 :
 RESPONDENT-APPELLANT, :
 :
 AND :
 :
 LOUISE RYAN, :
 :
 INTERVENOR. :
 _____ :

Decided by the Commissioner of Education, December 4, 2003

For the Petitioner-Respondent, Bucceri and Pincus (Louis P. Bucceri,
Esq., of Counsel)

For the Respondent-Appellant, Sills, Cummis, Radin, Tischman, Epstein
and Gross (Cherie L. Adams, Esq., of Counsel)

For the Intervenor, Springstead & Maurice (Harold N. Springstead, Esq.,
of Counsel)

On December 4, 2003, the Commissioner of Education granted summary
decision to the petitioner, Kathleen Donvito, who claimed that the Board of Education of
the Northern Valley Regional High School District (hereinafter "Board") had violated her

tenure and seniority rights when it decided not to reemploy her for the 2002-03 school year. The Commissioner directed that the petitioner be reinstated to a full-time position held by any nontenured or less senior teacher within the petitioner's certification, with back pay and emoluments.

On December 31, 2003, the Board filed the instant appeal to the State Board of Education. On January 14, 2004, the intervenor filed a notice of appeal joining in the appeal filed by the Board.

By letter dated January 16, 2004, the Director of the State Board Appeals Office notified counsel for the intervenor that review of the notice of appeal indicated that it had been filed beyond the 30-day statutory time limitation of N.J.S.A. 18A:6-28, and, consequently, that this matter was being referred to the Legal Committee of the State Board for consideration of the effect of his failure to file the notice in a timely manner. Counsel was informed that he could submit a certification setting forth the circumstances of the late filing by January 26, 2004.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board of Education must be taken "within 30 days after the decision appealed from is filed." The State Board may not grant extensions to enlarge the time specified for appeal. N.J.A.C. 6A:4-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6A:3-1.3(d); N.J.A.C. 6A:3-1.16, the time limit within which an appeal must be taken to the State Board is statutory, and, given the jurisdictional nature of the statutory time limit, the State Board lacks the authority to extend it. Mount Pleasant-Blythedale Union Free School District v. New Jersey Department of Education, Docket #A-2180-89T1 (App. Div. 1990), slip op. at 5. The Appellate Division has "consistently concluded" that appeals must be timely filed and that "neither an agency nor our court on appeal may

expand a mandatory statutory time limitation.” In the Matter of the Special Election of the Northern Burlington County Regional School District, Docket #A-1743-95T5 (App. Div. 1996), slip op. at 3, citing Scrudato v. Mascot Sav. & Loan Ass’n, 50 N.J. Super. 264 (App. Div. 1958).

As the Court explained in Scrudato, supra at 269: “Where a statute sets up precise time limits within which an aggrieved party may seek recourse to administrative adjudication, those limits have been held mandatory and not subject to relaxation. The agency is without power to waive them and proceed to hearing and determination notwithstanding noncompliance.” The Court in Scrudato found that the fact that an application to the Commissioner of Banking and Insurance was filed only two days after the statutory deadline for such filing did not mitigate the invalidity of such action. The Court stressed that “[e]ven a minor deviation from the statutory limit in a particular case is fatal....This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation.” Id. at 271.

In Schaible Oil Co. v. New Jersey Dept. of Env’tl. Protection, 246 N.J. Super. 29 (App. Div. 1991), certif. denied, 126 N.J. 387 (1991), the Court stressed that “[f]irmly embedded in our law is the principle that ‘[e]nlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature...and not with the agency or the courts.’ Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396, 193 A.2d 868 (App. Div. 1963), certif. denied, 41 N.J. 308, 196 A.2d 530 (1964) (citations omitted)....”

In Yorke v. Board of Education of the Township of Piscataway, decided by the State Board of Education, July 6, 1988, aff'd, Docket #A-5912-87T1 (App. Div. 1989), the Court upheld the dismissal of an appeal by the State Board where it found that the notice of appeal had been filed one day late by the appellant's counsel, who alleged that he had misread or misunderstood the applicable regulations. The Court added that even if the statute could be construed to permit enlargement of the time for filing an appeal, the appellant therein had failed to establish good cause. See also In the Matter of the Grant of the Charter School Application of the International Charter School of Trenton, etc., Docket #A-004932-97T1 (App. Div. 1998) (the Court, upon reconsideration, upheld the State Board's dismissal of an appeal filed one day late).

In the instant case, the Commissioner's decision was rendered on December 4, 2003 and mailed on December 5. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on December 8, 2003, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6A:4-1.3(a); N.J.A.C. 6A:4-1.4(a), as computed under N.J.A.C. 6A:4-1.4(c), the intervenor was required to file a notice of appeal to the State Board on or before January 7, 2004. As previously indicated, the intervenor's notice was not filed until January 14, seven days after the statutory deadline.

Even if N.J.S.A. 18A:6-28 can be construed to provide us with the authority to enlarge the time limit for filing an appeal, we find no substantive basis to warrant doing so in this instance. Despite being provided with the opportunity to submit a certification setting forth the circumstances of the late filing, counsel for the intervenor has failed to do so.

Accordingly, we dismiss the intervenor's appeal for failure to file notice thereof within the statutory time limit as computed under the applicable regulations. We direct that this matter proceed to a determination of the Board's appeal, which was filed in a timely manner, and we reestablish the briefing schedule. The petitioner's answer brief is due on or before March 26, 2004. The Board may file a reply brief within ten days after service of the answer brief.

March 3, 2004

Date of mailing _____