

BOARD OF EDUCATION OF THE	:	
BOROUGH OF LITTLE FERRY,	:	
BERGEN COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
VILLAGE OF RIDGEFIELD PARK,	:	
BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
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SYNOPSIS

Petitioning Board Little Ferry sought Commissioner’s declaration that the April 30, 1997 organizational meeting of Respondent Board Ridgefield Park was null and void in that Little Ferry’s representative member to this Board, pursuant to N.J.S.A. 18A:38-8.1, was improperly precluded from voting on organizational issues at this meeting, including election of Board officers. Petitioner requested Commissioner to direct a new reorganization; to direct Ridgefield Park to include the vote of the sending district member with regard to organizational issues; and to enjoin Ridgefield Park from excluding the sending district member from voting on any other disputed matter without the consent of the Commissioner.

Having reviewed the parties’ arguments and in light of the interpretative clarification of N.J.S.A. 18A:38-8.1 provided by the May 30, 1997 decision of the Commissioner entitled *Board of Education of the Borough of Lincoln Park, Morris County v. Board of Education of the Town of Boonton, Morris County, Joy Northrop DeVincenzi, and Walter Angilly*, the Commissioner concluded that Little Ferry’s representative to the Ridgefield Park Board, by virtue of her statutorily granted membership on such Board, was entitled to vote in the election of Board officers and other procedural matters attendant to the orderly conduct of Board operations. Thus, Ridgefield Park’s impermissible exclusion of its sending district representative Board member from the vote for Board officers at its April 30, 1997 reorganization necessitated a voiding of such reorganization. Commissioner declared the reorganization void and directed the Board to reorganize consistent with his dictates and to confirm the completion of such with the County Superintendent. Citing *Pijoux* and other relevant cases, the Commissioner concluded that all subsequent actions of the Board and its *de facto* officers were accomplished within the scope of their authority and, as such, there was no basis upon which to invalidate such actions.

July 24, 1997

BOARD OF EDUCATION OF THE :  
BOROUGH OF LITTLE FERRY, :  
BERGEN COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION  
VILLAGE OF RIDGEFIELD PARK, :  
BERGEN COUNTY, :

RESPONDENT. :

\_\_\_\_\_ :

For Petitioner, Ferrara, Turitz, Harraka & Goldberg (Stanley Turitz, Esq.)

For Respondent, Fogarty & Hara (Rodney T. Hara Esq.)

This matter comes before the Commissioner of Education by way of a Petition of Appeal and a Motion for Emergent Relief filed by petitioner, Little Ferry Board of Education (hereinafter "Little Ferry"), on May 13, 1997. Little Ferry requests the Commissioner to declare the April 30, 1997 organizational meeting of respondent, Ridgefield Park Board of Education (hereinafter "Ridgefield Park"), null and void in that Little Ferry's representative member to this Board, pursuant to *N.J.S.A. 18A:38-8.1*, was improperly precluded from voting on organizational issues at this meeting, including the election of Board officers. It asks that the Commissioner, therefore, direct a new reorganization; that Ridgefield Park be directed to include the vote of the sending district member with regard to organizational issues; and that Ridgefield Park, further, be enjoined from excluding the sending district member from voting on any other disputed matter

without the consent of the Commissioner. Ridgefield Park filed its Answer to the Petition and Emergent Relief Motion on May 27, 1997. By letter dated May 28, 1997, the Director of the Bureau of Controversies and Disputes advised the parties that, upon review of the submitted papers in this matter, it appeared that a decision of the type envisioned in this case was not amenable to emergent relief and a subsequent determination on the merits but, rather, was a matter of first impression on an issue of law which would be more appropriately addressed by an expedited determination on the merits. As such, the parties were accorded 10 days from their receipt of the director's letter to submit any additional arguments supporting their respective positions on the merits of this case, and 5 days from their receipt of any submission of their adversary to file replies to such submission. By letter filed June 11, 1997, Respondent Ridgefield Park advised that it would rely on the arguments advanced in its previously submitted brief in opposition to petitioner's application for emergent relief, to support its position on the merits of the within matter. Upon expiration of the allotted time period for the filing of additional arguments, the record in this matter closed on June 12, 1997.<sup>1</sup>

### BACKGROUND

The within parties are engaged in a sending/receiving relationship, pursuant to *N.J.S.A.* 18A:38-8, whereby Little Ferry sends its high school students, grades 9 through 12 to Ridgefield Park's High School. Subsequent to the January 1995 enactment of *N.J.S.A.* 18A:38-8.1, which provides that a sending district whose students comprise at least 10 percent of the total enrollment of students in the receiving district shall have a representative on the receiving district's board of education, a representative of Little Ferry was sworn in as a member of the

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<sup>1</sup> It is noted that by letter dated June 17, 1997, Petitioner Little Ferry filed a supplementation to its previously submitted brief in support of its arguments on the merits of this matter. Such submission was, subsequently, opposed by Ridgefield Park as untimely. Given the clear timelines established by the director's May 28, 1997 letter

Ridgefield Park Board at that body's 1995 reorganization meeting. The matter at issue herein occurred at the April 30, 1997 organizational meeting of Ridgefield Park where, subsequent to the swearing in of the Little Ferry representative, but prior to commencement of voting, the Board discussed the circumstances giving rise to the Little Ferry representative's right to vote, specifically, whether this individual would be permitted to participate in the election of the president and vice-president of the Board, and it moved to conduct a Board vote on this issue. After seeking advice of Board counsel, the motion was defeated by a vote of 5 to 5, and the Little Ferry representative was, consequently, precluded from voting for Board officers.

#### POSITION OF THE PARTIES

Little Ferry argues that the exclusion of its representative from the vote for Board officers, who possess "powers and authorities which directly impact and affect the education of Petitioner's students including presiding at meetings, appointment of committees and committee chairmen and other administrative functions which naturally devolve upon said officers," (Petitioner's Letter Memorandum at p. 2) is clearly in contravention of petitioner's statutory Board membership rights and "in violation of previous practice and agreements between the parties." (Petitioner's Petition of Appeal, #6, at p. 2) It posits that although *N.J.S.A. 18A:38-8.1* limits specific voting rights of its representative with respect to "issues confronting the board," the clear language of the statute and subsequent positions of the Commissioner dictate that this representative is, in all other respects, a full member of the Board. As such, it maintains that votes regarding procedural and organizational matters of the Board must include the sending district appointee. (Petitioner's Letter Memorandum at p. 2) Moreover, Little Ferry maintains that this position was, heretofore, recognized as a settled and accepted practice between the

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and in view of the fact that at no time during this allotted period did Little Ferry request an extension of time within which to file supplementary materials, its submission dated June 17, 1997 will not be considered herein.

parties in that its representative member has previously been included and permitted to vote for Ridgefield Park Board officers.

Little Ferry further argues that not only was its representative precluded from voting, but such member was not included in the calculation of voting requirements or quorum in direct violation of a Department of Education directive, dated February 22, 1995, stating that “the requirements for a quorum, as well as other voting requirements, must be amended to reflect the new total membership of the board.” (*Id.* at p. 3, quoting from Petitioner’s Exhibit A, Letter of Peter B. Contini, Assistant Commissioner) As such, Little Ferry asserts that even if it were possible to read *N.J.S.A.* 18A:38-8.1 so narrowly as to support Ridgefield Park’s exclusion of the sending district representative from the election of Board officers, “the voting requirements still need to reflect her membership [on] the board.” (*Id.*) Consequently, Little Ferry contends that voiding of the April 30, 1997 organizational meeting elections would still be required.

In reply, Ridgefield Park advances that, notwithstanding Little Ferry’s contention that its member representative’s right to vote for Board officers is “projected” by *N.J.S.A.* 18A:38-8.1, it fails to advance any statutory language in support of this position. (Ridgefield Park’s Reply Brief at p. 3) Rather, Ridgefield Park contends that this statutory provision clearly and concisely sets forth the scope of voting rights conferred upon a sending district representative to a receiving district’s board. Specifically, it asserts that this provision, on its face, “provides four specific areas in which a designated sending member may vote:

- a. Tuition to be charged the sending district by the receiving district and the bill lists or contracts for the purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district;
- b. New capital construction to be utilized by sending district pupils;

- c. Appointment, transfer or removal of teaching staff members providing services to pupils of a sending district, including any teaching staff member who is a member of the receiving district's central administrative staff; and
- d. Addition or deletion of curricular and extracurricular programs involving pupils of the sending district. [*N.J.S.A. 18A:38-8.1*]"

*(Id.)*

It argues that, pursuant to the canons of statutory construction which require a statute to be interpreted in accordance with its clear, unambiguous language, given that voting for the election of board officers is not a delineated subject matter in the clear, narrow, and specifically detailed list of instances where a sending district representative is entitled to vote, petitioner in this matter was properly excluded from voting. (*Id.* at p. 4)

Ridgefield Park further maintains that this position is also entirely consistent with the legislative history of the statute in that such "elucidates that the purpose for amending *N.J.S.A. 18A:38-8.1* was to clarify the voting rights conferred to representatives of a sending district on receiving district boards of education." (*Id.*) It posits that because the legislative intent was to avoid confusion with respect to voting rights, "the statute reflects restrictive language that was intended to be narrowly construed." (*Id.*)

With respect to Little Ferry's assertion that the exclusion of its representative violates past accepted practice, Ridgefield Park, while conceding that the representative was permitted to vote for officers at the Board's 1996 organizational meeting, contends that such action was mistakenly undertaken in violation of law. It advances that when the illegality of this practice was brought to its attention by Board counsel at the 1997 organizational meeting, the Board properly complied with the dictates of *N.J.S.A. 18A:38-8.1* by defeating the motion which would have permitted the Little Ferry representative to vote. It proposes that a prior incident that

is not consistent with the law is not binding upon the Board, citing *Naseef v. Cord, Inc.*, 90 N.J. Super 135, 142 (App. Div.), *aff'd*, 48 N.J. 317 (1966) as authority for this proposition. (*Id.* at p. 5)

Ridgefield Park next denies Little Ferry's allegation that it failed to comply with quorum and voting requirements at the reorganization meeting. In this regard it proffers

\*\*\*[t]he minutes from the 1997 reorganization meeting indicate that the respondent acknowledged petitioner's representative's membership, in that she was sworn in and her name appears on the roll list of members present and her absence was noted on all motions\*\*\*. Accordingly, respondent did calculate petitioner's representative into its total membership thereby rendering it a ten member board at the 1997 reorganization meeting.

(Ridgefield Park's Reply at p.

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Finally, Ridgefield Park urges that if Little Ferry's requested relief is granted and the Board's 1997 election of officers and other organizational issues are voided, the Board's ability to carry out its functions will be seriously impeded. (*Id.* at p. 7)

#### COMMISSIONER'S DETERMINATION

Upon review of the parties' arguments advanced in this matter and in light of the interpretative clarification of *N.J.S.A. 18A:38-8.1* provided by the recently decided matter entitled *Board of Education of the Borough of Lincoln Park, Morris County v. Board of Education of the Town of Boonton, Morris County, Joy Northrop DeVincenzi, and Walter Angilly*, decided by the Commissioner May 30, 1997, I conclude, for the reasons outlined below, that Little Ferry's representative to the Ridgefield Park Board, by virtue of her statutorily granted membership on such Board, was entitled to vote in the election of Board officers and other procedural matters attendant to the orderly conduct of Board operations.

It is observed that Ridgefield Park effectively argues, as did the respondent board in *Lincoln Park, supra*, that the rights of board membership of the sending district representative are controlled by that individual's statutory limitations on voting. I, again, reject this interpretation of *N.J.S.A. 18A:38-8.1* as unduly restrictive and find that such a circumscription of the representative's board membership rights cannot be reasonably inferred from the plain language of the statute nor is it supported by the legislative history and expressed intent of this provision. (For a comprehensive discussion of the legislative history and intent of *N.J.S.A. 18A:38-8.1* see *Lincoln Park*, at pp. 9-17.) As was elucidated in *Lincoln Park, N.J.S.A. 18A:38-8.1* addresses two distinct subjects, it 1) grants the sending district entitlement to membership on the receiving district's board of education as a representative of the sending district, and it 2) designates those matters before the board (emphasis added) upon which the representative is eligible to vote. I find that this recognition of the duality of the statute's purpose is key to the understanding and correct application of its directives. Consistent with this finding, it is undeniable that, notwithstanding that the representative of a sending district has limited voting rights on substantive matters which arise before the board, in all other respects such representative, by virtue of the statutory entitlement to a seat on the receiving district board, is empowered to function as a full member of the board. As determined in *Lincoln Park*, these membership rights include entitlement to copies of all information, documents and communications when distributed to other board members, even though these items are in areas falling outside this individual's voting eligibility, along with full deliberative and participatory rights on the merits of extra-statutory matters before the board.

Consonant with the interpretative framework established in *Lincoln Park*, I find and conclude that eligibility for full participation, including voting rights, in those procedural and



organizational matters necessary to ensure the effective operation of the board itself also inures to the sending district representative by virtue of that individual's board membership. Again, subsequent statutory restrictions governing the voting rights of the representative *on substantive issues arising before the board* cannot be superimposed on the separately granted membership rights, thereby depriving this individual of full and effective participation as a board member. As such, Ridgefield Park's impermissible exclusion of its sending district representative Board member from the vote for Board officers at its April 30, 1997 organizational meeting necessitates a voiding of such reorganization. Therefore, Ridgefield Park will be required to reorganize in accordance with *N.J.S.A. 18A:10-3* and *N.J.S.A. 18A:15-1*, recognizing the full participatory rights of all of its members.<sup>2 3</sup>

The Commissioner notes, however, that all other Board business conducted at the April 30, 1997 organizational meeting, pursuant to *N.J.S.A. 18A:10-5*, as well as that conducted at subsequent meetings, will be unaffected by the within determination, as disturbing these actions would be contrary to long-established law in this area. In the conducting of such business, the individuals identified as Board President and Vice-President performed as "de facto" Board officers in that "they held office under color of a known election or appointment and their ineligibility was unknown to the public at the time [they acted]." (*Maxine J. Pijaux v. Board of Education of the City of Orange, Essex County*, 94 *N.J.A.R. 2d* (EDU) 345, 346) As such,

[It]s members had certainly a color of title, and their actual incumbency was complete....Under these circumstances the acts of the board, in which third persons are interested, cannot be impugned on the ground that the title of the members is defective.

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<sup>2</sup> Despite the conclusion mandated in this matter, the Commissioner is persuaded that the actions of Ridgefield Park herein are not attributable to bad faith or ill will but, rather, were taken in a good faith effort to satisfy what appeared to be the dictates of a heretofore uninterpreted statutory provision.

<sup>3</sup> Given the within determination of the Commissioner, it was unnecessary to reach the parties' arguments with respect to voting or quorum requirements at the April 30, 1997 organizational meeting.

(*Pijaux*, at 346, quoting *Kimball v. Hendee*, 57 N.J.L. 307, 309 (S. Ct. 1894))

(Also see *Lesley Monsees et al. v. Board of Education of the Borough of Bloomingdale*, and *Theodore Lovell*, 1982 S.L.D. 1409; *Claire M. Egan and Basil H. Blair v. Joseph G. Brody et al.*, 1970 S.L.D. 153.) The Commissioner, thus, concludes that all subsequent actions of the Board and its *de facto* officers were accomplished within the scope of their authority and, as such, there is no basis upon which to invalidate such actions.

Accordingly, the April 30, 1997 organizational meeting of Ridgefield Park is hereby declared void. The Board is directed to reorganize, consistent with the dictates expressed herein, within 20 days of the date of this decision, and to confirm the completion of this action with the County Superintendent.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

July 24, 1997