

| | | |
|---------------------------|---|---------------------------|
| BOARD OF EDUCATION OF THE | : | |
| TOWNSHIP OF GREEN, SUSSEX | : | |
| COUNTY, | : | |
| PETITIONER, | : | |
| V. | : | COMMISSIONER OF EDUCATION |
| BOARD OF EDUCATION OF THE | : | DECISION |
| TOWN OF NEWTON, SUSSEX | : | |
| COUNTY, | : | |
| RESPONDENT. | : | |

SYNOPSIS

Petitioning Board Green Township sought Commissioner's declaration concerning the application of the provisions of *N.J.S.A. 18A:38-8.1* and of the Open Public Meetings Act (OPMA), *N.J.S.A. 10:4-6 et seq.*, to two areas of controversy: 1) the right of sending district representative members on a receiving district's board of education to share executive session discussions of this body with the sending districts' boards and 2) the impact of these statutory provisions on the quorum requirements of the receiving district's board.

Having reviewed 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 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*, and by the July 24, 1997 decision of the Commissioner entitled *Board of Education of the Borough of Little Ferry, Bergen County v. Board of Education of the Village of Ridgely Park, Bergen County*, the Commissioner declined to entertain the first issue as the *Lincoln Park* decision determined that, pursuant to *N.J.S.A. 18A:10-1* and the OPMA, such practice of sharing executive session discussions would be impermissible. As to the second issue, the Commissioner found that with respect to the quorum and voting requirements discernment of such requirements necessarily flows from an understanding of the underlying duality of purpose of *N.J.S.A. 18A:38-8.1*. This statutory provision 1) grants the district entitlement to membership on the receiving district's board as a representative of the sending district, and 2) designates those board matters upon which the representative is eligible to vote. (*Lincoln Park; Little Ferry*) Thus, while the sending district's representative has limited voting rights in substantive matters before the board, in all other respects this individual shall function as a full member of the board. Given that the Newton Board herein was expanded to an eleven member Board with the addition of its two representative members, the quorum necessary to convene any meeting, pursuant to *N.J.S.A. 10:4-8b*, will at all times be six. Commissioner further found that voting requirements for particular substantive resolutions before the Board will vary. On all procedural matters and those substantive matters before the Board where the representative members are eligible to vote, the vote required to carry a motion will be based on a total membership of eleven. On those substantive matters where such representatives are not eligible to vote, the vote required to carry the motion will be based on a total membership of nine. Commissioner directed Newton to conform its policies and procedures with regard to quorum and voting requirements consistent with his declaration herein.

August 5, 1997

AGENCY DKT. NO. 54-2/97

BOARD OF EDUCATION OF THE :
TOWNSHIP OF GREEN, SUSSEX :
COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWN OF NEWTON, SUSSEX :
COUNTY, :

RESPONDENT. :

For Petitioner, David A. Wallace, Esq.

For Respondent, Friedman, Siegelbaum (Philip E. Stern, Esq.)

This matter comes before the Commissioner of Education by way of a Petition for Declaratory Judgment, pursuant to *N.J.A.C. 6:24-2.1 et seq.*, filed by Petitioner Green Township Board of Education (hereinafter "Green") on February 7, 1997. Green requests that the Commissioner construe the provisions of *N.J.S.A. 18A:38-8.1* and the provisions of the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.* as these apply to two areas of controversy between the within parties, specifically 1) the right of sending district representative members on a receiving district's board of education to share executive session discussions of this body with the sending districts' boards and 2) the impact of these statutory provisions on the quorum requirements of the receiving district's board. Respondent Board of Education of the Town of Newton (hereinafter "Newton") filed its Answer in this matter on March 7, 1997.

BACKGROUND

The within parties are engaged in a sending/receiving relationship, pursuant to *N.J.S.A. 18A:38-8*, whereby Green sends its high school students, grades 9 through 12, to Newton's High School. Newton also has an essentially identical sending/receiving relationship with the Andover Regional Board of Education with respect to that body's grade 9 through 12 pupils. As a consequence of 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, Newton's nine member board was increased to eleven members with the addition of a representative from each of these sending districts. *N.J.S.A. 18A:38-8.1*, in addition to granting sending districts entitlement to membership on the receiving district's board, also identifies four specific matters upon which these representatives are eligible to vote. As a consequence of this statutory directive, the within parties refer to the matters for which the two sending district representatives are eligible to vote, pursuant to this statutory provision, as "eleven member issues" and those matters for which these individuals are not eligible to vote as "nine member issues," a distinction which is even reflected on the agendas for Newton Board meetings where each motion is designated as either a "Motion (11)" or a "Motion (9)." (Petition for Declaratory Judgment at p. 2)

POSITION OF THE PARTIES

On the first issue herein, Green advances the position that if the Newton Board discusses an "eleven member issue" in executive session, the Green representative has a right, if not a duty, to include this issue in a report to, and discussions with, the Green Board at an executive session of that body. (Green Petition for Declaratory Judgment at pp. 2-3)

Newton, on the other hand, posits that such report to, and discussions with, the Green Board are totally inappropriate, particularly with respect to Newton personnel issues which may require RICE notices. (Newton Reply at pp. 1-2)

With respect to the second question at issue, Green contends that “if a committee of the Newton Board meets to discuss a ‘nine member issue,’ the presence of five (5) Newton members *** (a majority of the nine (9) Newton members) represents a quorum and thus constitutes a Newton Board meeting within the meaning of the Open Public Meetings Act.” (Green Petition for Declaratory Judgment at p. 3)

Newton, however, maintains that the Board is now an eleven member Board, requiring six members to constitute a quorum. As such it asserts that five members do not constitute a quorum, notwithstanding the issue discussed or the composition of the committees at issue.

The parties urge that the Commissioner resolve through declaratory judgment these sensitive and recurring areas of disagreement which they perceive as fundamental to their sending/receiving relationship.

COMMISSIONER’S DETERMINATION

I have reviewed the submissions of the parties filed in this matter and considered these in light of the interpretative clarifications of N.J.S.A. 18A:38-8.1 provided by the recently decided matters 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, and *Board of Education of the Borough of Little Ferry, Bergen County v. Board of Education of the Village of Ridgely Park, Bergen County*, decided by the Commissioner July 24, 1997. Upon such review, it is apparent

that the first issue raised in this matter, the question of whether sending district representative members on a receiving district's board may share executive session discussions of this body with their sending district boards, has been squarely addressed and resolved by the Commissioner's decision in *Lincoln Park*, wherein it was determined that, pursuant to *N.J.S.A.* 18A:10-1 and the Open Public Meetings Act (OPMA), *N.J.S.A.* 10:4-6 *et seq.*, such a practice would be impermissible. (See *Lincoln Park* at pp. 19-23.) Thus, the Commissioner finds it unnecessary to entertain this portion of the within request for declaratory judgment.

With respect to the quorum and voting requirements necessitated by *N.J.S.A.* 18A:38-8.1 and the provisions of the OPMA, I find that discernment of such requirements necessarily flows from an understanding of the underlying duality of purpose of *N.J.S.A.* 18A:38-8.1. As was elucidated in *Lincoln Park* and reiterated in *Little Ferry*, this statutory provision 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 upon which the representative is eligible to vote. As such, while the representative of a sending district has limited voting rights in substantive matters before the board, in all other respects this individual shall function as a full member of the board. Therefore, the requirements necessary for quorum and voting must be amended to reflect the new *total* membership of the board. Given that the Newton Board herein has been expanded to an eleven member Board with the addition of its two representative members, the quorum necessary to convene any meeting, pursuant to *N.J.S.A.* 10:4-8b, will at all times be six.

Notwithstanding that the quorum requirement to convene meetings remains constant, voting requirements will vary dependent upon whether the sending district representatives are eligible to vote on the issue at hand. Thus, on all procedural matters, as set

forth in *Little Ferry, supra*, and on those substantive matters before the Board where the representative members are eligible to vote, the vote required to carry a motion will be based on a total membership of eleven. On those matters where such representatives are not eligible to vote, the vote required to carry the motion will be based on a total membership of nine.

Accordingly, the Newton Board of Education is hereby directed to conform its policies and procedures with regard to quorum and voting requirements consistent with the declarations herein.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

August 5, 1997