

WRIGHTSTOWN BOROUGH COUNCIL, :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF NEW HANOVER,
 BURLINGTON COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioning Council alleged the Board improperly adopted a resolution that placed on the ballot a question to determine whether the membership of the Board should be reduced from nine to seven. Council alleged the resolution was barred by *N.J.S.A.* 18A:8-31. In prior proceeding, the Commissioner denied Council's motion to enjoin placement of the question on the ballot at the 1997 annual school election.

ALJ concluded that the Board acted within the compass of authority the Legislature granted it when, pursuant to *N.J.S.A.* 18A:12-12, it determined that it was in the best interest of the District that the membership of the Board be reduced and it put that question to the public. ALJ noted that even if the interpretation is less than liberal, the structure of Chapter 271 of the Laws of 1967 makes clear the legislative intent that any type II school district may increase or reduce its membership provided it follows the statutory prescription at *N.J.S.A.* 18A:12-12. (Consolidated school districts have all the powers and duties and are subject to the same restrictions as a board of education in a type II school district. *N.J.S.A.* 18A:8-28.) Petition was dismissed.

Commissioner adopted findings and determination in initial decision as his own, clarifying that New Hanover is a consolidated school district.

OCTOBER 2, 1997

OAL DKT. NO. EDU 2811-97
AGENCY DKT. NO. 78-3/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions were filed by the Board and replies thereto were timely filed by the Council in accordance with *N.J.A.C.* 1:1-18.4.

The Board takes exception only to the Administrative Law Judge's (ALJ) failure to include a finding as to whether or not New Hanover is a consolidated school district as provided by *N.J.S.A.* 18A:8-4.

Council recasts and reiterates arguments raised before the ALJ contending that Article 5 (of Chapter 8, Title 18A) does not authorize a change in the statutorily mandated number of board members in a consolidated school district.

Upon a careful and independent review, the Commissioner determines to uphold the determination of the ALJ finding the reasoning contained therein to be consistent with

applicable statutory provisions. In so ruling, the Commissioner is satisfied that the ALJ carefully considered Council's arguments and provided a basis for their rejection.

Further, the Commissioner recognizes that the ALJ did not render a declaration as to the status of the New Hanover School District. In that the parties stipulated that the District was consolidated for purposes of the within proceeding, the Commissioner concurs with the parties' assessment, and herein declares New Hanover to be a consolidated school district.

Accordingly, the Commissioner affirms the initial decision of the OAL, as clarified, and dismisses the instant Petition of Appeal.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

OCTOBER 2, 1997