

CLARENCE TURNER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE : DECISION

INTERSCHOLASTIC ATHLETIC : ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioner, basketball coach for the Camden High School basketball team, challenged the determinations rendered by NJSIAA with respect to two incidents which occurred during the 1997-98 basketball season – failure of a coach (petitioner) to complete a game (at Camden-Bishop Eustace game on 2/24/98), which is a violation of the NJSIAA sportsmanship rule, and failure of a coach (petitioner) to supervise players sent to the locker room during a game (at Camden-Long Branch game on 3/11/98), which resulted in a “riotous situation.”

As to the 2/24/98 incident, the Controversies Committee found that petitioner acted in an unsportsmanlike manner. Controversies Committee placed petitioner on probation for not less than one year from the date of the violation and fined him \$300. The Camden High School Basketball program was placed on probation for a period of two years, beginning February 24, 1998. As to the 3/11/98 incident, the Controversies Committee found that, pursuant to its rules, the Camden Board was responsible for the unsportsmanlike conduct of its fans, and petitioner, as coach, was responsible for the actions of the players on his team. Controversies Committee determined, *inter alia*, that petitioner should be suspended from coaching at any NJSIAA school for the 1998-99 school year and should be fined \$300. Additionally, the basketball program was placed on probation for two years. Executive Committee affirmed that decision with modification that Camden was not on probation for the 1997 Atlantic City incident but was under requirement for a corrective action plan related to crowd control.

Having conducted an independent review of the over 700-page record of the proceedings, the Commissioner determined that petitioner was fully accorded due process; that the NJSIAA’s findings and conclusions were well-grounded in the record before him; and that petitioner, therefore, failed to establish that the NJSIAA’s determinations were arbitrary, capricious or unreasonable. Thus, the Commissioner may not overturn NJSIAA’s application of its rules absent a finding that the voluntary Association applied said rules in a patently arbitrary, capricious or unreasonable manner. Therefore, the Commissioner found no basis on which to overturn the NJSIAA’s decision and affirmed its determination.

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 _____:

For Petitioner, Arnold M. Mellk, Esq. (Wills, O'Neill & Mellk)

For Respondent, Steven P. Goodell, Esq. (Herbert, Van Ness, Cayci & Goodell)

This matter was opened before the Commissioner of Education on September 4, 1998 by the filing of a Petition of Appeal, wherein petitioner, a teaching staff member of the Camden Board of Education and a basketball coach for the Camden High School basketball team, challenges the determinations rendered by the NJSIAA with respect to two incidents which occurred during the 1997-98 basketball season. An Answer having been duly filed by the NJSIAA, a briefing schedule was established and the record of proceedings before the NJSIAA Controversies Committee and the Executive Committee were submitted to the Commissioner. Upon receipt of responsive briefs, the record of this matter was deemed closed on October 27, 1998.

Petitioner argues that the proceedings before the NJSIAA Controversies Committee and the Executive Committee were inherently unfair and biased. In support of this claim, petitioner notes that general counsel to the NJSIAA actively participated in the hearings before the Controversies Committee in the development and direction of the record before the

Committee, cross-examining Camden witnesses at times, and later participated in the Committee's adjudication. (Petitioner's Brief at pp. 4-6) Additionally, petitioner contends that the Executive Committee failed to accord him the deliberative process to which he is entitled. Petitioner asserts that the Committee's "blind acceptance" of the Controversies Committee's decision deprived him of any meaningful review of the findings against him (*Id.* at p. 6) In this regard, petitioner maintains he had the right to a "statement of reasons by the Executive Committee for its findings, particularly in light of the unsupported factual findings by the Controversies Committee." (*Id.*)¹

The NJSIAA argues that it provided petitioner with the process which he was due. (NJSIAA's Brief at p. 25) That is, petitioner was accorded a hearing with the right of counsel, the presentation of testimony under oath, cross-examination and the opportunity to submit relevant documents to the Controversies Committee. (*Id.*) Thereafter, the Controversies Committee issued a written decision, appealable to the Executive Committee. At the Executive Committee, litigants were permitted to submit written legal arguments, transcripts or any other relevant documents prior to the hearing. At the hearing, appellants were afforded the right to counsel, were given the opportunity to make oral arguments to the Committee and respond to the Committee's questions. NJSIAA contends that its decisions were neither arbitrary nor capricious; instead, it acted in accordance with its rules. (*Id.* at p. 27)

The NJSIAA further asserts that the Commissioner lacks jurisdiction to consider petitioner's appeal of the Controversies Committee decision with respect to the February 24, 1998 game between Camden High School and Bishop Eustace Prep since he did not appeal the decision rendered by the Controversies Committee regarding this incident to the

¹ Although petitioner asserts in the Petition of Appeal that he was also improperly transferred from his position in the Camden High School to a position in the middle school, he provides no legal argument in support of this claim. As the NJSIAA correctly notes, it "has no responsibility for, or control over, the actions of the Camden Board of Education. Any action taken by the Camden Board with respect to Petitioner's contract or employment status is the responsibility of the Board, and not the NJSIAA." (NJSIAA's Answer at p. 6) Accordingly, this claim is deemed dismissed.

Executive Committee. (*Id.* at p. 31) Indeed, at the Executive Committee hearing held on June 10, 1998, *infra*, then counsel for petitioner stated,

***I'm proud to represent Coach Clarence Turner. I know Mr. Turner to be a man who's willing to accept personal accountability when appropriate. He instructed me not to appeal the Bishop Eustace determination or penalty imposed upon him in that determination because it was based upon conduct which the committee found was his conduct. He asked me to communicate his apologies on his behalf for that incident. (Executive Committee Hearing, June 10, 1998, Transcript at p. 16; and Volume II, p. 634 of the record.)

Upon careful and independent review of this matter, the Commissioner determines to uphold the NJSIAA's determinations with respect to petitioner's actions at the February 24, 1998 game between Camden High School and Bishop Eustace Prep and the March 11, 1998 game between Camden High School and Long Branch High School. In so doing, he observes that the NJSIAA's findings and conclusions are well-grounded in the record before him.

With respect to the game between Camden High School and Bishop Eustace Prep held on February 24, 1998, the Controversies Committee issued a report on May 22, 1998, which included the following findings of fact, in pertinent part:

1. On February 24, 1998 Camden High School played a basketball game at Bishop Eustace Prep. The score was 58-52 when play was stopped with 6 seconds remaining because Camden fans had spilled onto the floor as they were exiting the gym.
2. A departing fan pulled a fire alarm, causing the public address announcer to announce that the gym should be cleared.
3. Play was halted for 15-20 minutes while security officers and the fire marshall investigated to make sure it was a false alarm. After they located the tripped alarm and notified school officials that the building was safe, Athletic Director Sam Tropiano approached the officials and Coach Turner and told them that the building was safe and that the game could be completed.
4. The National Federation casebook section dealing with free throw delays following a timeout did not apply in this situation, nor were the officials required to penalize Coach Turner by issuing technical fouls before terminating the game. This was an extraordinary situation and the officials' use of judgment in this unique situation

was appropriate. Coach Turner clearly knew that the gym was safe.

5. Despite being told repeatedly by officials Mike Jackson and Ron Leonard that he should bring his players onto the floor, Coach Turner refused to comply. He eventually put one player on the floor, but never made any attempt to put his entire team on the floor.
6. When it became clear that Coach Turner was refusing to complete the game, the officials terminated the contest. The final score remained Bishop Eustace 58, Camden 52.
7. Coach Turner's claims that he was ready to play; that he did not know the gym was safe; and that official Leonard had told him to just put one player on the court are all contradicted by other witnesses and lack credibility.
8. Throughout the discussions at the end of the game, Coach Turner's demeanor was intemperate and his language was inappropriate.
9. Failure of a coach to complete a game is a violation of the NJSIAA sportsmanship rule. The rule permits officials to terminate a game once it has begun and specifically cautions coaches not to refuse to play or to complete a game.*** (Controversies Committee Decision, In the Matter of Camden High School/Bishop Eustace Prep, May 22, 1998 at pp. 5, 6; Volume II, pp. 599, 600 of the record)

As a result of these findings, the NJSIAA Controversies Committee determined that Coach Turner acted in an unsportsmanlike manner, penalizing him pursuant to the Sportsmanship Rule, Article IX, Section 2E of the Bylaws.² The Controversies Committee placed petitioner on probation for not less than one year from the date of the violation and fined him \$300.³ Additionally, the Camden High School Basketball Program was placed on probation for a period of two years, beginning February 24, 1998.

It should also be noted that, prior to the hearing held on May 6, 1998 before the Controversies Committee, the Olympic Conference conducted a hearing on April 23, 1998 before Michelle Ferner, Commissioner of the Olympic Conference, and a panel of school personnel. That Committee unanimously found that petitioner failed to comply with the officials'

² That rule states, "COACHES MUST BE CAUTIONED NOT TO REFUSE TO PLAY OR TO COMPLETE A GAME/MEET. SUCH DECISIONS ARE WITHIN THE JURISDICTION OF THE GAME/MEET OFFICIALS ONCE GAME/MEET HAS STARTED, OR REST WITH HOME MANAGEMENT AND/OR TOURNAMENT DIRECTOR IF THE GAME/MEET HAS NOT STARTED." (*New Jersey State Interscholastic Athletic Association Handbook, 1997-1998 at p. 51*)

request to resume the game. (*Id.* at p. 2; and Volume II, p. 596) The Olympic Conference Committee ordered, *inter alia*, that petitioner's compliance with the rules be monitored for one year. The 100-page transcript of the hearing before the Olympic Conference Committee was before the Controversies Committee.

With respect to the game between Camden High School and Long Branch High School held on March 11, 1998, the Controversies Committee issued a report on May 22, 1998, which included the following findings of fact:

1. On Wednesday, March 11, 1998, Camden High School met Long Branch High School in the Group III South-Central Semifinal game of the NJSIAA State Basketball Tournament.
2. The game was played at Brick Memorial High School, a neutral site.
3. Combined ticket sales totaled 1,950. The capacity of the gym was 2,200.
4. When the Camden team arrived at Brick High School, it went to the wrong locker room. The Brick Athletic Director elected not to remove the team out of the locker room, but switched the team benches so that each team would be sitting closer to its own fans. Because Camden was in the wrong locker room, players from both schools had to walk past opposing fans to get to their respective locker rooms.
5. The basketball court at Brick Memorial is set up with stands on each of the four sides of the gym. The North and West side stands were designated as Long Branch stands, while the South and East were Camden's stands.
6. The game itself was rough. Two players from Long Branch went to the hospital as a result of injuries sustained during the game, one for a cut in the mouth that required three stitches, the other for an elbow to the throat. Long Branch led throughout the game.
7. The crowd at the game was raucous and belligerent, particularly the Camden fans in the East side stands. Camden fans chanted, "Let's get violent" and "Let's get rowdy." The game had to be stopped at least twice by the site manager to calm the crowd. Extra security was sent to the East side stands to keep fans in their seats and to keep them from coming onto the floor between the stands and the court. The site manager had to announce a plan for spectators to leave the building, to keep fans separated.
8. With 1:03 to play in the game, a Camden player fouled a Long Branch player. As the teams gathered for the free throw, Camden player [A.S.] said, "you f***ing suck, you white mother f***er" to

³ The NJSIAA notes that the rules include a specific penalty when a coach refuses to complete a game. (NJSIAA Brief at p. 7, referencing Bylaws Article IX, Section 2E)

the referee. He was immediately disqualified from the game and sent to the bench.

9. Instead of keeping [A.S.] on the bench, supervised, as required by NJSIAA disqualification procedures, Camden coach Clarence Turner sent him to the locker room.
10. Two other Camden players, [T.J.] and [J.H.], were sent to the locker room at the same time. [S.], [J.] and [H.] were not escorted by any adults at that time, and were unsupervised.
11. Coach Turner then sent more team members to the locker room with an Assistant Coach, Ray Padilla.
12. As [S.], [J.] and [H.] walked past the Long Branch fans in the West stands, one of the players tossed a cup he was holding into the stands and showed his two middle fingers to the crowd in an obscene gesture. [J.] and [H.] then climbed into the stands.
13. When the Camden players went into the Long Branch stands, at least 200 Camden fans from the East side stands stormed across the gym floor and into the Long Branch stands, igniting what one police detective called a “riotous situation.”
14. Camden security and police worked beside law enforcement from Brick and neighboring communities to quell the disturbance, which spread outside the gym. Forty to 50 security and police responded. Police used pepper spray and canine patrols to assist them. Back up units from at least four neighboring municipalities responded. Police ultimately arrested two Long Branch residents.
15. Brick Memorial sustained at least \$344.00 in property damage. One police officer who was sent to the hospital, [incurred] hospital bills of \$138.00. Municipal police departments expended at least \$835.00 in overtime for officers who responded to the scene.
16. Game officials terminated the unfinished contest with the score Long Branch 58, Camden 47, and awarded the victory to Long Branch. (Controversies Committee Decision, In the Matter of Camden High School/Long Branch High School, May 22, 1998 at pp. 11, 12; Volume II, pp. 586, 587 of the record)

The Controversies Committee determined that among the causes of the melee was petitioner’s decision to send three unsupervised players to the locker room before the game ended, necessitating that they walk past opposing fans. (*Id.* at p. 12; Volume II, p. 587) The Committee added that “[t]his coach of 30 plus years said he was unfamiliar with the rule that requires ejected players to remain on the bench.”⁴ (*Id.*) Additionally, the Committee noted that

⁴ With respect to the procedures concerning the disqualification of coaches and players, The *New Jersey State Interscholastic Athletic Association Handbook, 1997-1998*, states, “***These NJSIAA procedures will supersede a playing rule which requires a coach or player to leave the premises upon disqualification; therefore, a player will be confined to the bench area to remain under the supervision of the coach. If said player continues to be disruptive or acts in an unsportsmanlike manner, the official may terminate the game/event. (*NJSIAA Handbook at p. 116*)

the players who were directed to the locker room instead climbed into the stands, after one player made obscene gestures to the crowd, exhibiting “an extraordinary lack of discipline.” The Committee concluded that, if the players were supervised, as Camden claimed, “that supervision utterly failed to control them.” (*Id.*)

The Controversies Committee found that, pursuant to its rules, the Camden Board of Education is responsible for the unsportsmanlike conduct of its fans, and petitioner, as coach, is responsible for the actions of the players on his team. The Committee determined, *inter alia*, that petitioner should be suspended from coaching at any NJSIAA school for the 1998-1999 school year and should be fined \$300. (*Id.* at p. 14; and Volume II, p. 589) Additionally, the basketball program was placed on probation for two years.⁵

Thereafter, Coach Turner appealed the Committee’s determination as to this event to the Executive Committee. The Executive Committee held a hearing on June 10, 1998 and issued a decision affirming, with modification, the decision of the Controversies Committee.⁶ In his petition, petitioner argues that the NJSIAA held him responsible and punished him for the events of March 11, 1998 notwithstanding “***the utter absence of any determination of responsibility for either Long Branch or Brick,***” thus rendering the Association’s decision

⁵ The Committee noted, “This is not the first time this Committee has found Camden High School to be responsible for a violent incident following a basketball game. In 1991, the basketball program was placed on probation for two years following a riot after a Camden-Trenton basketball game in the State Tournament. In 1997, Camden was found to be responsible for a disturbance which erupted after a basketball game with Atlantic City High School. That time, the basketball program was placed on probation for the 1997-98 season, and its participation in the State Basketball Tournament was conditioned on the school submitting a corrective action plan dealing with crowd control. The Committee notes that Camden was still serving that probation at the time of the Long Branch-Camden game. Finally, this Committee has also found that Coach Turner was responsible for prematurely terminating a basketball game played on February 24, 1998 against Bishop Eustace Prep, and has recommended that the school and coach be placed on probation as a result of that violation of NJSIAA rules. These events demonstrate a serious failure by the Camden administration to properly oversee the boys basketball program.” (Controversies Committee Decision, May 22, 1998 at p. 13; Volume II, p. 588) This conclusion of the Controversies Committee was modified by the Executive Committee, as noted in footnote 4, *infra*.

⁶ The decision of the Executive Committee stated, in pertinent part, that the Committee “determined to accept the findings and conclusions of the Controversies Committee relating to Coach Turner, by a vote of 29 to 1, with 1 abstention. The Executive Committee modified the Controversies Committee decision to take into account the fact that Camden was not on probation for the Atlantic City incident in 1997, but was instead under a requirement to provide and comply with a corrective action plan related to crowd control.***” (Executive Committee decision, June 10, 1998 at pp. 1, 2; Volume II at pp. 686-687 of the record.)

arbitrary, capricious and unreasonable, and suggesting bias and malice toward petitioner. (Petition of Appeal at p. 4)

The NJSIAA is a voluntary association, which, while authorized to make and promulgate rules, is not bound by the requirements of the Administrative Procedures Act. *Burnside et al. v. NJSIAA*, 1984 S.L.D. 1677, 1686, aff'd 1984 S.L.D. 1695, 1700 (App. Div. 1984), *cert. denied*, 101 N.J. 236 (1985). Although N.J.S.A. 18A:11-3 expressly provides for appeals from NJSIAA determinations to the Commissioner, the Commissioner's scope of review is an appellate one. *Board of Education of the City of Camden v. NJSIAA*, 92 N.J.A.R. 2d (EDU) 182, 183. That is, the Commissioner may not overturn an action by the NJSIAA in applying its rules absent a finding that the Association applied the rules in a patently arbitrary, capricious and unreasonable manner. *B.C. v. Cumberland Regional School District*, 220 N.J. Super. 214, 231-232 (App. Div. 1987). Further, the burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera v. West Orange Bd. of Education*, 60 N.J. Super. 288, 297 (App. Div. 1960). In such cases, the Commissioner may not substitute his judgment for that of the NJSIAA, even when he might judge otherwise in a *de novo* review. *Dam Jin Koh and Hong Jun Kim v. NJSIAA*, 1987 S.L.D. 259.

Having conducted an independent review of the over 700-page record of proceedings below, the Commissioner is persuaded that petitioner has been fully accorded the process to which he is entitled, that the Association's findings and conclusions are well-grounded in the record before him and petitioner, therefore, has failed to establish that the NJSIAA's determinations were arbitrary, capricious or unreasonable. Even assuming, *arguendo*, that petitioner had the right to appeal the determination of the Controversies Committee with respect to the February 24, 1998 incident directly to the Commissioner, without having first appealed the decision to the Executive Committee, the Commissioner notes that the Controversies Committee fully reviewed the submissions of both Camden and Bishop Eustace (including game reports and

reports from the Pennsauken Police Department and the Fire Alarm Department) the 100-page transcript of the proceedings before the Olympic Conference Committee, a videotape of the game and testimony from the two game officials, the Olympic Conference Commissioner, the Bishop Eustace Athletic Director, Coach Turner and a witness offered by Camden as an expert in officiating. All parties were represented by counsel, testimony was taken under oath, recorded and transcribed, and the parties were permitted to supplement the transcript from the Olympic Conference hearing with additional testimony or cross-examination. (Controversies Committee Report/In the Matter of Camden High School/Bishop Eustace Prep, May 22, 1998 at p. 2; Volume II at p. 596 of the record)

Further, concerning the March 11, 1998 incident, the Controversies Committee heard from 15 witnesses, reviewed numerous documents, including 19 documents submitted by witnesses from Long Branch, and 35 documents submitted by witnesses from Camden; it also reviewed relevant portions of a game videotape. Again, all testimony was under oath, the proceedings were recorded and transcribed, and all sides were represented by counsel, having the opportunity to present evidence and cross-examine witnesses. (Controversies Committee Report/In the Matter of Camden High School/Long Branch High School, May 22, 1998 at p. 2; Volume II at p. 576 of the record)

With respect to petitioner's claim as to the injustice which resulted from the participation of the NJSIAA's General Counsel, the Commissioner notes that when this claim was raised below in connection with the hearing of the Controversies Committee regarding the Camden-Long Branch game, General Counsel for the NJSIAA assured petitioner that "the Controversies Committee hearing was not an adversarial proceeding between Camden and Long Branch. It was a hearing held by the Controversies Committee to determine facts that would enable it to make conclusions as to whether any party appearing before it violated NJSIAA rules.***" (Volume II at p. 569) Thereafter, General Counsel for the NJSIAA explained that his

“role was to facilitate the introduction of evidence and question witnesses on behalf of the Committee.” (*Id.*) Finally, the General Counsel noted that

***in the event any decision of the Controversies Committee is reviewed by the Executive Committee, I have in the past, and will continue to, instruct the Executive Committee not to consider my role as Hearing Officer as a factor in reaching a determination on the merits. In addition, my practice has always been that I do not provide any advice to the Executive Committee so as not to give the appearance of any conflict of interest. (*Id.* at p. 570)

Where, as noted, the NJSIAA is not bound by the requirements of the Administrative Procedures Act, and where petitioner points to no specific action on the part of the General Counsel which prejudiced his due process rights, the Commissioner rejects his claim as without merit.

Accordingly, the Commissioner finds no basis on which to overturn the NJSIAA’s decision and, therefore, affirms its determination.⁷

IT IS ORDERED.

ACTING COMMISSIONER OF EDUCATION

NOVEMBER 10, 1998

⁷ This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the Superior Court pursuant to *N.J.S.A.* 18A:11-3.

