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| JOHN BALWIERCZAK, FRANCIS J. DUNNE, JOHN C. JOHNSON, JR., ROBERT KREIG, JAMES LESAK, PETER MARTINO, JAMES MATERIA, FRED MELCHIOR, RAMON PEREZ, AND TOMMASO PUGLIESE, | : | |
| PETITIONERS, | : | |
| V. | : | COMMISSIONER OF EDUCATION |
| BOARD OF EDUCATION OF THE TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY, | : | DECISION |
| RESPONDENT. | : | |

SYNOPSIS

Petitioners, school custodians who became employees of the Berkeley Heights School District subsequent to the dissolution of the Union County Regional High School District in 1996, alleged the Berkeley Heights Board failed to recognize their appropriate level of salary when they transferred to that constituent District from the Regional. Petitioners contended that the Board denied them their rights to salary guide placement to which they were statutorily entitled pursuant to *N.J.S.A.* 18A:13-64. Board sought to dismiss the petition as untimely under the 90-day rule, *N.J.A.C.* 6:24-1.2(c).

ALJ concluded that the Board violated petitioners' statutory entitlement to be placed on the salary guide at a step and level commensurate with their service in the now-dissolved Regional District. ALJ found that petitioners' entitlement derived directly from statute and was not an element of the employment contract. Pursuant to *Lavin*, the ALJ found that the right to relief was not governed by the regulatory limitation period. ALJ ordered the Board to compensate petitioners for the 1997-98 school year and to place them on the appropriate step of the salary guide for succeeding years, where applicable.

Commissioner determined to reverse the recommended Initial Decision and to dismiss the petition as untimely pursuant to *N.J.A.C.* 6:24-1.2(c). Commissioner noted that petitioners received notice of their salaries for 1997-98 by letter, dated June 9, 1997; yet, their petition was filed October 10, 1997, beyond the 90-day limitation period. Commissioner observed that petitioners neither disputed that their petition was outside of the 90-day limitation period, nor did

they provide any explanation or excuse for its untimeliness. Citing *Kaprow*, the Commissioner stressed that the 90-day rule is strictly applied. Moreover, the Commissioner found without merit petitioners' assertion that their claim for relief was a "statutory entitlement" within the intendment of *Lavin*, in that such claim to additional salary and correction of their salary guide placement was based solely on the benefits granted them by operation of *N.J.S.A.* 18A:13-64, triggered by the dissolution of the Regional District and bore no relation to their service to the Board. Specifically he determined that, upon the dissolution of a regional district, *N.J.S.A.* 18A:13-64 operates as a "save harmless" provision to preserve and protect benefits earned by affected individuals by virtue of their service in such regional district. Absent rights and benefits accrued through petitioners' prior employment, *N.J.S.A.* 18A:13-64 does not operate to independently create a benefit for them. Because petitioners were not entitled to any right or benefit independent from the administration of a school system but, rather, any right or benefit to be afforded them herein was wholly predicated upon services they previously rendered as Regional District employees, their claim did not fall within the narrow prescriptions delineated in Lavin which might entitle them to a waiver of the mandatory filing timelines. Consequently, *N.J.A.C.* 6:24-1.2(c) applied here to bar petitioners' claims and the Commissioner found no compelling or exceptional circumstances to relax the 90-day rule. Petition was dismissed as untimely.

December 8, 1999

OAL DKT. NO. EDU 11247-97
AGENCY DKT. NO. 390-10/97

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| JOHN BALWIERCZAK, FRANCIS J. DUNNE, JOHN C. JOHNSON, JR., ROBERT KREIG, JAMES LESAK, PETER MARTINO, JAMES MATERIA, FRED MELCHIOR, RAMON PEREZ, AND TOMMASO PUGLIESE,<br><br>PETITIONERS,<br><br>V.<br><br>BOARD OF EDUCATION OF THE TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY,<br><br>RESPONDENT. | : | COMMISSIONER OF EDUCATION<br><br>DECISION |

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and petitioners' reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

The Board's exceptions "vehemently object" to the Administrative Law Judge's (ALJ) decision, alleging that in reaching his conclusion therein the ALJ "misread" and/or "ignored" binding precedent and found facts which are unsupported by the record. (Board's Exceptions at p. 2) It argues that if the Initial Decision is left to stand, this, and other constituent districts involved in dissolution, will be burdened by baseless claims of their "inherited employees" who, notwithstanding that they receive incremental salary increases, are dissatisfied with their placement on salary guides. (*Id.*)

With respect to the ALJ's finding that petitioners' claim "for salary increases" is a statutory entitlement, thus exempting their Petition of Appeal, which was concededly filed outside the mandatory timelines of *N.J.A.C.* 6:24-1.2(c), from the application of these timelines, the Board argues that such a determination clearly flies in the face of established precedent. In reaching this result, the Board argues, the ALJ relied on *Lavin, supra*, which "is the only reported case that found a statutory benefit to constitute an absolute statutory entitlement," where the court held that the limitation period did not apply "because the statute 'bears no relationship to the services to be rendered as an employee.' *Kaprow,* 131 *N.J.* at 584 (quoting *Lavin*, 90 *N.J.* at 150)." (Board's Exceptions at p. 3) The Board points out that in subsequent decisions the Supreme Court read its holding in *Lavin, supra,* narrowly. As an example, it asserts, in *Kaprow v. Berkley Tp. Bd. of Ed.*, 131 *N.J.* 572, 585-86 (1993), the Court found that tenure was not a "statutory entitlement" exempted from the mandatory 90-day limitations period, reasoning "that the proper focus is on the relationship between the statute and the employment; unless there is absolutely no functional relationship between the two, the 90-day limitations period will apply." (Board's Exceptions at p. 3) Likewise, it avers, in *North Plainfield Educ. Ass'n. v. Bd. of Educ.*, 96 *N.J.* 587 (1984), the Court concluded that the petition of two teachers seeking salary scale credit for time spent on sabbatical leave, filed subsequent to the expiration of the 90-day period, was untimely. In so doing, the Court, reasoning that a teacher's increment is basically a reward for meritorious service provided to the school district, specifically distinguished that matter from *Lavin:*

> From that perspective, salary increments accruing under *N.J.S.A.* 18A:29-11 are distinctly different from those awarded under *N.J.S.A.* 18A:29-8. The annual increment under *N.J.S.A.* 18A:29-11 accrues because of time spent in military service without regard to performance of the teacher. By contrast, the annual increment under *N.J.S.A.* 18A:29-8 is subject to annual

> evaluation of teacher performance. Consequently, that Court's analogy of an annual increment to the statutory entitlement for veterans is invalid. 96 *N.J.* at 594. (Board's Exceptions at p. 4)

The Board argues that it is evident that central to an analysis which could implicate *Lavin* is a determination "that the entitlement is wholly unrelated to performing duties for the board of education." Here, it advances, "the service of the Petitioners is the key to their claim: they contend that their service as school district employees entitles them to certain placement on the salary guide." (*Id.)* Because petitioners' claim is directly "related to the length and nature of their service as custodial employees," it does not qualify as a statutory entitlement pursuant to *Lavin*, and is, therefore, subject to the 90-day limitations period. (Board's Exceptions at pp. 4-5)

The Board charges that the ALJ ignores this persuasive precedent and proceeds to attempt to buttress his mistaken belief that, because the employment status of employees from a dissolving regional district is controlled by statute, it is a "statutory entitlement" by citing language from *Stagaard v. Contini, supra,* a case which the Board contends, did not involve a 90-day rule challenge nor did it deal with the issue of statutory entitlement pursuant to *Lavin.* (*Id.* at pp. 5-6) To illustrate the inapplicability of *Stagaard* as support for the ALJ's within determination, the Board points to two cases involving the same statutory provision and the same dissolution as is involved in the within matter, *American Federation of Teachers, Local 3417 v. Berkeley Heights Bd. of Educ.*, decided by the Commissioner November 30, 1998, and *Peter J. Lanzi v. Board of Education of the Township of Springfield*, decided by the Commissioner August 27, 1998, *aff'd* State Board December 2, 1998, wherein the 90-day rule was applied to bar employees' claims. (*Id.* at p. 6)

The Board urges that if the Commissioner disregards these previous precedential holdings to support the ALJ's recommended "nullification" of time limits, the resultant

consequences would be both illogical and dangerous. It avers that such a determination would subject "all six of the constituent school districts from which the employees of the dissolved Union County Regional District could select ***to suit at any time in the future if an employee is not satisfied with his or her placement on the constituent districts' salary guide." (Board's Exceptions at p. 7)

The Board next excepts to the ALJ's conclusion that, if the 90-day rule does apply, the facts in this case warrant the Commissioner's relaxation of the rule to "prevent a manifest injustice." (Board's Exceptions at p. 7) It proffers that his finding in this connection, that "Berkeley Heights renegotiated an unexpired contract for the obvious purpose of depriving former Union County Regional custodians of the benefits enjoyed by existing Berkeley Heights custodians (see Initial Decision at p. 9)," is unsupported by the record and incorrect given that the salary guide at issue "provides for approximately 2.0% to 4.0% raises for all custodians regardless of whether they began their career in Berkeley Heights or Union County Regional." (Board's Exceptions at pp. 7-8) Acceptance of petitioners' unfounded arguments "that their years of service at Union County Regional 'entitled' them to placement on a guide that is specifically *not* tied to seniority or years of service, [would result in] the former Union County Regional custodians [receiving] raises of between 7.8% and 31.9% ***, while the Berkeley Heights custodians' raises remain within the 2.0% to 4.0% range." (emphasis in text) (*Id.* at p. 8) As such, the Board argues, manifest injustice and inequality of treatment will result only if the Commissioner adopts the ALJ's Initial Decision. Moreover, the Board argues, relaxation of the 90-day rule in this case will subject the Board to a liability in excess of $100,000, as a result of the fact that it has been three years since dissolution during which period petitioners may be entitled to retroactive salary increases, and the fact that it took almost ten months for the issuance

of an Initial Decision in this matter. (*Id.* at p. 9) The ALJ's statement on page 9 of the Initial Decision that this case "is distinguishable from one in which a school district is exposed to unanticipated demands for back pay," it claims, is wholly erroneous. The within Board has not planned for such a liability, nor is there any way it could have reasonably been expected to do so. (Board's Exception at p. 9)

Finally, the Board excepts to the ALJ's determination that petitioners' are entitled to prevail on the merits of their claims. It advances that it is undisputed that when petitioners were placed on the lawfully negotiated salary guide in Berkeley Heights, each of them received a salary increase from their prior year's compensation as employees of the dissolved Regional District. What petitioners are objecting to herein, it advances, is that there are existing Berkeley Heights custodians with less seniority who are making more money than they are. The major defect in such a contention "is that -- as the parties stipulated -- *no custodians*, be they originally from the Berkeley Heights School District or the Regional District, are placed on the salary guide based upon seniority." (emphasis in text) (Board's Exceptions at p. 11) The Board hypothesizes that confusion in the Initial Decision may be based on specific language in *Stagaard*, 97 *N.J.A.R.*2d (EDU) at 220, which directed that teachers coming from the dissolving Regional District "were to be placed on the salary guide of the constituent district at the step and level appropriate for the years of service…." (*Id.*) *Stagaard*, it asserts, dealt with teachers moving from the dissolved Regional District to constituent school districts where all entities involved utilized years of service as the determining factor for placement on their salary guides. Here, however, it is uncontroverted that Berkeley Heights "always has been unique" with respect to its salary guide for custodians, as years of service are not considered for either initial placement or movement on its salary guide. (*Id.*) Therefore, the Board argues, the Initial

Decision, rather than prohibiting "two levels of compensation and benefits for comparable levels of training and experience, one for its long-time employees and one for its newly acquired employees," as it purportedly intends (see Initial Decision at p. 10), actually "creates" such a two-tier system by requiring that years of service be considered for placement of Regional District employees, while years of service remain irrelevant for the original Berkeley Heights employees. The anomalous result of this decision is that the original Berkeley Heights custodians receive wage increases of 2.0% to 4.0%, while the former Regional District employees receive increases in the general range of 15% to 30%. (*Id.* at pp. 11-12) Placement of the Regional custodians on the Board's existing scale, it avers, results in a more equitable result, all custodians receive raises in the same range. That some individuals with greater service would make less than others with less experience, it contends, is irrelevant. As recognized by the ALJ, such a disparity also exists among those custodians originally hired by Berkeley Heights. The Board posits that the fact that its custodian salary guide is difficult to understand does not make it unlawful and urges the Commissioner to reject the disparate result espoused by the ALJ's decision, *i.e.*, nullification of the guide only as to one class of custodians. (*Id.* at p. 12)

In their reply exceptions, petitioners assert that the Board's exceptions with respect to the essence of its argument here, *i.e*., that petitioners' claims are barred, pursuant to *N.J.A.C.* 6:24-1.2(c), because of their failure to file within 90 days of their receipt of a June 9, 1997 salary notice, provides no supplementation to the facts and law previously presented before the ALJ. Petitioners state that they fully endorse the ALJ's "cogent and thorough analysis" of the applicable law in this regard. (Petitioners' Reply Exceptions at p. 1) Petitioners aver that the Board's attempt to distinguish the applicability of *Lavin, supra*, herein is misplaced because, as recognized by the ALJ, the factual pattern existing in *Lavin* is "much

closer" to the one existing in this matter than is any other case cited by the Board. In support of this contention, petitioners argue:

> Lavin's claim was to salary guide credit. Petitioners' claim is to salary guide credit. Lavin's claim to credit was for time that was totally unrelated to the performance of duties for her employer (i.e., military service time). Petitioners claim credit for time totally unrelated to the performance of duties in Berkeley Heights (i.e., for service time in the Union County Regional School District). Lavin's claim was solely based on the operation of a statute (*N.J.S.A.* 18A:29-11). Without that statute, Lavin would have had no right to additional salary. Petitioners' claim is solely based on the operation of a statute (*N.J.S.A.* 18A:13-64). Without that statute, petitioners would have no right to claim additional salary. (Petitioners' Reply Exceptions at p. 2)

In contrast, petitioners assert, in *Kaprow, supra,* cited by the Board, the petitioner's claim related to tenure and seniority claims, which accrued solely because of his service to a school district, and it is on this basis that the Court found that Kaprow was not exempt from the 90-day rule pursuant to *Lavin*. Here, petitioners argue, "no aspect of [their] service to the respondent is involved in their claim," precisely the situation which created the exemption established in *Lavin. (*Petitioners' Reply Exceptions at p. 2) Likewise, petitioners advance, *Plainfield, supra*, which did not pertain to a claim based on the operation of a statute, is irrelevant in the instant case. "If it were not for the mandates of *N.J.S.A.* 18A:13-64, the within petitioners could not make their claim. It is because the school laws create the petitioners' salary entitlement that the regulatory limitation period does not apply." (*Id.*)

Petitioners next charge that the Board's claim that the ALJ's findings are not supported by the record is "wholly without substance." They posit that the record clearly establishes: At the time petitioners selected positions in its district, Berkeley Heights had a collective bargaining agreement in place for 1996-97 and 1997-98; Despite the existence of a two-year agreement, on June 9, 1997, the Board and its pre-dissolution employees entered into a

new salary agreement for 1997-98; The new salary guide established as a consequence of this agreement created "in-between" steps; The only people placed on these additional in-between steps were employees coming from the dissolving Regional District; The placement of the employees coming from the Regional District was at a lesser salary amount than that of existing Berkeley Heights employees with comparable years of service. (Petitioners' Reply Exceptions at pp. 3-4)

Petitioners next challenge the Board's assertion that denial of the 90-day limitation claim in this matter presents an unreasonable burden on the budget of the District. They aver that the Board's 1997-98 budget process was, by law, concluded before July 1997 and, as such, its financial obligations were not altered by the filing of the within petition on October 10, 1997, as opposed to September 1, 1997, or some earlier date. Moreover, petitioners aver, the period of time encompassed by this particular litigation has provided the Board ample opportunity to plan and budget for this potential expenditure. (*Id.* at p. 4)

In conclusion, petitioners dismiss as irrelevant the method normally utilized by the Board for placing new employees on the salary scale. Here, they assert, citing a quotation from *Stagaard, supra,* as support, "*N.J.S.A.* 18A:13-64 mandates that employees coming from a dissolved regional district *must* be placed in the same guide position as existing employees with similar terms of service.***" (emphasis in text) (Petitioners' Reply Exceptions at p. 5)

Upon his independent and comprehensive review of the record, the Commissioner determines, for the reasons detailed below, to reverse the recommended Initial Decision and to dismiss the within Petition of Appeal as untimely pursuant to *N.J.A.C.* 6:24-1.2(c). In so concluding, the Commissioner initially observes that the parties' stipulated facts in this matter confirm that the within petitioners received notice of their salaries for 1997-98 by letter, dated

June 9, l997, which it is acknowledged was received by each of them within a few days of this date. The record further establishes that the instant Petition of Appeal was filed on October 10, 1997. Petitioners neither dispute that their petition was outside of the 90-day limitations period prescribed by *N.J.A.C.* 6:24-1.2(c), nor do they provide any explanation or excuse for its untimeliness.

In his consideration of this matter, the Commissioner is cognizant that it is well established that claims brought before the Commissioner must be brought in a timely manner. In this regard, *N.J.A.C.* 6:24-1.2(c) specifies that:

> The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

It is also well settled that this 90-day rule is strictly applied. *See Kaprow v. Board of Education of Berkeley*, 131 *N.J.* 572 (1993); s*ee also Nissman v. Board of Education of the Township of Long Beach Island*, 272 *N.J. Super.* 373 (App. Div. 1994), *certif. denied* 137 *N.J.* 315 (1994); *Morris-Union Jointure Commission v. Board of Education of the Borough of South River*, 92 *N.J.A.R.* 2d (EDU) 453; *Markulin & the Neptune Twp. Educ. Assn. v. Board of Education of the Twp. of Neptune*, 92 *N.J.A.R.* 2d (EDU) 406. The reasoning behind such a requirement for strict application of the limitations period was articulated by the Supreme Court in *Kaprow* wherein it stated:

> The [ninety day] limitations period provides a measure of repose, an essential element in the proper and efficient administration of the school laws. It stabilizes the relationship between teachers and the administration. ***The limitation period gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days. Moreover, because local school boards operate on a cash basis,

> claims must be filed promptly so that the local board can anticipate any back-pay requirements. *** (*Kaprow* at 582)

With the state of the law and its underlying rationale, along with the undisputed facts of this matter clearly in mind, the Commissioner turns to petitioners' claim that their particular cause of action is exempt from the application of this mandatory time requirement because, pursuant to *Lavin, supra,* it is a "statutory entitlement."

As was recognized by the ALJ, in 1982 the Supreme Court "carved out an exception to the general approach that the limitation period should be strictly enforced." (Initial Decision at p. 7) In this unique case, the Court dealt with a situation in which a school nurse was claiming a statutory entitlement to salary guide credit in her school district pursuant to *N.J.S.A.* 18A:29-11, which awarded such credit based upon an individual's prior military service. In considering the petitioner's claim in that case, the *Lavin* Court stated:

> [t]he core of the issue is whether the credit for military service, *N.J.S.A.* 18A:29-11, is an essential term of the petitioner's employment contract or whether it represents a statutory entitlement granted by the State in return for military service in time of war. (*Lavin* at 149)

Next, the Court reasoned:

> [w]hether the benefit flowing from a statute is to be considered a statutory entitlement or a term of the public employee's contract of employment depends upon the nature of the benefit and its relationship to the employment. Stating the problem in terms of incorporation in the employment contract or as a statutory benefit begs the question. Rather, *attention should be directed to the purpose of the statute and its relevance and materiality to the employment.* (emphasis added) *(Lavin* at 150)

In concluding that the petitioner's claim was a statutory entitlement, thus rendering the relevant statute of limitations inapplicable, the *Lavin* Court found:

> [t]he legislative purpose of *N.J.S.A.* 18A:29-11 is to reward veterans for service to their country in time of war. The reward

> takes the form of crediting the military service as teaching experience even though there is no functional relationship between the two. ***The emolument is not for services rendered or to be rendered for school teaching as such.*** (*Lavin* at 151)

The Commissioner's review persuades him that it is evident, from its refusal to make a similar finding in subsequent cases where such a claim was raised, that the Supreme Court intended its holding in *Lavin*, which exempts a matter from applicable timelines by virtue of its nature as a "statutory entitlement," to be very narrowly construed. (*See North Plainfield, supra*; a*lso see Kaprow, supra.*) Confirmation of such an objective can be found in *Kaprow* where the Court, itself, observed:

> *Lavin*, however, is the *only* reported case that found a statutory benefit to constitute an absolute statutory entitlement.*** (at 584) (emphasis added)

In light of this background, the Commissioner finds without merit the within petitioners' assertion that their claim for relief in this matter is a "statutory entitlement" within the intendment of *Lavin*, because such claim to additional salary and correction of their salary guide placement is based solely on the benefits granted them by operation of *N.J.S.A.* 18A:13-64, triggered upon the dissolution of the Union County Regional School District, and bears no relation whatsoever to their service to respondent. Rather, he concludes that such contention, when examined against the evaluative criteria set forth by *Lavin*, is untenable. Key to the determination of the existence of a statutory right, pursuant to *Lavin*, is a review of the underlying statute, its purpose, and "its relevance and materiality to the employment." (*Lavin* at 150) Here, *N.J.S.A.* 18A:13-64, in pertinent part, specifies:

> [a]ll employees of the regional district shall continue in their respective positions in the withdrawing district, or in each of the constituent districts in the event of a dissolution, and all of their rights of tenure, seniority, pension, leave of absence and other similar benefits shall be recognized and preserved and any periods

> of prior employment in the regional district shall count toward the acquisition of tenure to the same extent as if all such employment had been under the withdrawing district or in any of the constituent districts in the event of a dissolution.***

It is noted that the underlying purpose of this provision was considered and addressed in *Board of Education of the Central Regional High School District v. Board of Education of Lacey Township and the Central Regional Education Association and Ronald Villano, individually, Ocean County*, 1980 *S.L.D.* 553, 565, wherein it was recognized "that the Legislative intent [of this particular provision] was to protect the employment rights of those employees [of the regional district affected by the withdrawal] who have provided good and faithful service to the school district.***"

The Commissioner concludes that, upon full consideration of the statute and its legislative intendment, it is undeniable that *N.J.S.A.* 18A:13-64 was designed to operate, upon the dissolution of a regional district, as a "save harmless" provision to preserve and protect benefits earned by affected individuals by virtue of their service in such regional district. Absent rights and benefits accrued through their prior employment, *N.J.S.A.* 18A:13-64 does not operate to independently create a benefit for them. As such, petitioners' rights here are clearly distinguishable from the petitioner's right to military service credit in *Lavin*. They are not entitled to any right or benefit independent from the administration of a school system. Rather, any right or benefit to be afforded petitioners here is wholly predicated upon services they previously rendered as Regional District employees and, therefore, does not fall within the narrow prescriptions delineated in *Lavin* which might entitle them to a waiver of the mandatory filing timelines. Consequently, *N.J.A.C.* 6:24-1.2(c) applies here to time bar petitioners' within claims.

Having eliminated petitioners' reliance on a "statutory entitlement" to excuse the untimeliness of their within petition, the Commissioner next recognizes, notwithstanding that the limitations rule of *N.J.A.C.* 6:24-1.2(c) is to be strictly applied, he may, pursuant to his authority under *N.J.A.C.* 6:24-1.15, relax this rule under exceptional circumstances or if there is a compelling reason to do so. (*See Kaprow, supra,* at 590; *also* s*ee DeMaio v. New Providence Board of Education,* 96 *N.J.A.R.* 2d (EDU) 449, 453.) Such authority, the Commissioner observes, is rarely invoked unless strict adherence to the limitations rule would be inappropriate, unnecessary or where injustice would occur, *DeMaio* at 453, or where he finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Pacio v. Lakeland Regional High School District*, 1989 *S.L.D.* 2060, 2064. The Commissioner finds no such compelling or exceptional circumstances, nor other sufficient reason, to warrant relaxation or waiver of the 90-day rule. Specifically, the record reveals no indication, nor do the petitioners allege, that they suffered any loss, in either salary or benefits, such as to contravene the protection guaranteed by *N.J.S.A.* 18A:13-64. Rather, the record reflects that, upon moving from their Regional District positions to Berkeley Heights, petitioners received salary increases which were consistent with those awarded to existing Berkeley Heights custodians. Further, the Commissioner concludes that the underlying issues surrounding this matter are not of such compelling public interest so as to justify the extreme remedy of relaxation. To the contrary, he finds that, under the circumstances existing here, "the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar [petitioners'] action." *Kaprow, supra,* at 587, quoting *Farrell v. Votator Div.,* 62 *N.J.* 111, 115 (1973).

Accordingly, the Commissioner reverses the recommended Initial Decision of the OAL, grants the Board's Motion for Summary Decision, and dismisses the within Petition of Appeal.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 8, 1999

* This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.