



BOARD OF EDUCATION OF THE TOWN OF :  
HAMMONTON, ATLANTIC COUNTY, :

PETITIONER, :

V. :

HAMMONTON EDUCATION ASSOCIATION; :  
HAMMONTON ADMINISTRATORS' :  
ASSOCIATION; HAMMONTON SUPERVISORS :  
ASSOCIATION; TEAMSTERS INDUSTRIAL :  
UNION LOCAL 929; BERLIN TOWNSHIP :  
BOARD OF EDUCATION; BERLIN :  
TOWNSHIP EDUCATION ASSOCIATION; :  
CHESILHURST BOARD OF EDUCATION; :  
CHESILHURST EDUCATION ASSOCIATION; :  
CLEMENTON BOARD OF EDUCATION; :  
CLEMENTON EDUCATION ASSOCIATION; :  
LINDENWOLD BOARD OF EDUCATION; :  
LINDENWOLD EDUCATION ASSOCIATION; :  
PINE HILL BOARD OF EDUCATION; :  
PINE HILL EDUCATION ASSOCIATION; :  
PINE HILL PRINCIPALS AND :  
SUPERVISORS ASSOCIATION; WATERFORD :  
TOWNSHIP BOARD OF EDUCATION; :  
WATERFORD TOWNSHIP EDUCATION :  
ASSOCIATION; WATERFORD TOWNSHIP :  
SUPPORT STAFF ASSOCIATION; :  
TEAMSTERS LOCAL 676; WINSLOW :  
TOWNSHIP BOARD OF EDUCATION; :  
WINSLOW TOWNSHIP EDUCATION :  
ASSOCIATION; WINSLOW TOWNSHIP :  
ADMINISTRATORS ASSOCIATION; LOWER :  
CAMDEN COUNTY REGIONAL SCHOOL :  
DISTRICT NO. 1 BOARD OF EDUCATION; :  
LOWER CAMDEN COUNTY REGIONAL :  
EDUCATION ASSOCIATION; LOWER :  
CAMDEN COUNTY REGIONAL :  
ADMINISTRATORS ASSOCIATION, :

COMMISSIONER OF EDUCATION

DECISION

RESPONDENTS. :

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For Petitioner, William S. Donio, Esq. (Donio, Bertman & Donio)  
For Respondent Boards of Education of Berlin Twp., Clementon, Lindenwold,  
Pine Hill and Winslow Twp., Vito Gagliardi, Jr., Esq. (Ravin,  
Sarasohn, Cook, Baumgarten, Fisch & Rosen)

For Respondent Education Associations of Berlin Twp., Chesilhurst, Clementon, Lindenwold, Pine Hill, Waterford Twp, Winslow Twp. Lower Camden County Regional and Waterford Twp. Support Staff Association, Arnold M. Mellk, Esq. (Wills, O’Neill & Mellk) and Richard A Friedman, Esq. (Zazzali, Zazzali, Fagella & Nowak) (Co-Counsel)

For Respondent Hammonton Supervisors Association, Donna Schuster, Secretary/Treasurer

For Respondent Waterford Township Board of Education, Betsy Bisset, Esq. (Maressa, Goldstein, Patterson, Drinkwater & Oddo)

For Respondents Hammonton Education Assn., Pine Hill Principals & Supervisors Assn., Winslow Twp. Administrators Assn., Wayne J. Oppito, Esq.

For Respondent Board of Education of the Lower Camden County Regional School District No. 1, Barry Chatzinoff, Esq. (Weinberg, McCormick, Chatzinoff & Paul)

For Respondent Hammonton Administrator’s Assn., James Donoghue, President

For Respondent Teamsters Industrial Union Local 929, William H. Haller, Esq. (Freedman & Lorry)

#### BACKGROUND AND PROCEDURAL HISTORY

This matter arises from the impending dissolution of the Lower Camden County Regional School District No. 1 (hereinafter “LCCR”) pursuant to *N.J.S.A.* 18A:13-51 *et seq.* LCCR is currently a limited purpose regional school district which operates four schools located in Winslow Township, Lindenwold and Pine Hill educating pupils in grades 7–12 from the communities of Winslow Township, Lindenwold, Pine Hill, Clementon, Berlin, Chesilhurst and Waterford Township.<sup>1</sup> On or about October 10, 1997, LCCR constituent districts submitted an application to the Commissioner, pursuant to *N.J.S.A.* 18A:13-56, requesting that a Board of Review convene to authorize a public referendum to consider the dissolution of the LCCR. The parties were advised by letter, dated January 27, 1998, that the Board of Review had granted the application. At the ensuing public referendum, conducted on May 12, 1998, dissolution of the LCCR was approved by a majority of the voters in the seven communities and by five of the seven towns in accordance with *N.J.S.A.* 18A:13-59. As a result of the impending dissolution of the LCCR, the Board of Education of the Township of Waterford (hereinafter “Waterford”), one of the

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<sup>1</sup>Edgewood Junior and Senior High Schools in Winslow (serving primarily students from Winslow Twp., Waterford Twp. and Chesilhurst); Overbrook Junior High School in Lindenwold (serving primarily students from Berlin Twp.,

LCRR's constituent members which operates a K-6 district, was required to designate a district to receive its pupils in grades 7 through 12. Petitioner, Board of Education of the Town of Hammonton (hereinafter "Hammonton"), operates a PreK-12 school district in Atlantic County and shares a common border with Waterford. After extensive discussions and reviews, Hammonton and Waterford entered into a proposed sending/receiving relationship, pursuant to an agreement dated April 26, 1999, whereby Hammonton agreed to accept Waterford's 7-12 grade students. Such agreement was expressly conditioned upon the approval by Hammonton voters of a bond referendum to raise funds to build a new high school in Hammonton and renovate existing facilities in order to accommodate the increase in students.<sup>2</sup> The cost of this project is anticipated to be approximately \$33,840,000 and will be financed through the issuance of bonds for a likely term of 30 years, which it is envisioned will be repaid through state aid and Waterford's tuition payments. The bond issue was subsequently approved by Hammonton voters at a special referendum held on June 28, 1999. The agreement was further conditioned on a declaration by the Commissioner of Education with respect to three issues deemed essential by Hammonton prior to its consummation of this agreement.

The within matter was opened before the Commissioner on April 28, 1999, by the filing of a Petition of Appeal for Declaratory Judgment, pursuant to *N.J.A.C. 6:24-2.1*, by Hammonton.

Subsequent to the receipt of Answers to the Petition from respondents,<sup>3</sup> the Director of Controversies and Disputes advised the parties that the Commissioner had determined to accept the request for Declaratory Judgment in this matter, and established a schedule for the parties to fully brief their respective positions on the issues. With the receipt of the last scheduled submission, the record in this matter closed on October 27, 1999.

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Clementon, Lindenwold, Pine Hill and Winslow Twp.); and Overbrook Senior High School in Pine Hill (serving primarily students from Berlin Twp., Clementon, Lindenwold and Pine Hill).

<sup>2</sup>Hammonton currently receives the Borough of Folsom's pupils in grades 9-12 pursuant to a sending/receiving relationship with the Folsom Board of Education.

<sup>3</sup>Hammonton's requested relief was opposed only by the submission filed by Respondent "Education Associations" (Berlin Township Education Association, Chesilhurst Education Association, Clementon Education Association, Lindenwold Education Association, Pine Hill Education Association, Waterford Township Education Association, Waterford Township Support Staff, Winslow Township Education Association, and Lower Camden County Regional High School District No. 1 Education Association).

Hammonton's petition includes three counts, which seek the following declarations: that Waterford has the right to send its students to Hammonton pursuant to the parties' proposed Agreement (Count One); that Hammonton does not have any obligation, pursuant to *N.J.S.A. 18A:13-64 et seq.*, independently, or derivatively through Waterford, or otherwise, to employ any current employee of the LCCR because of the district's dissolution or because of the formation of a sending/receiving relationship between Hammonton and Waterford (Count Two); and that Hammonton and Waterford may enter into a sending/receiving agreement for a term of 30 years or, in the alternative, for a term of 10 years with the parties having the right to extend the period for two extension periods of 10 years each (Count Three).

#### COMMISSIONER'S DETERMINATION

In determining the application of the statutes at issue herein to the facts existing in this matter, consistent with his authority pursuant to *N.J.A.C. 6:24-2.1 et seq.*, the Commissioner finds as follows:

Initially, the Commissioner finds that education law poses no impediment to Hammonton entering a sending/receiving relationship with Waterford pursuant to the parties' proposed agreement.<sup>4</sup> The governing statute in this regard, *N.J.S.A. 18A:38-11*, Designation of high school of another district for attendance by pupils, specifies:

The board of education of every school district which lacks high school facilities within the district and has not designated a high school or high schools outside of the district for its high school pupils to attend shall designate a high school or high schools of this state for the attendance of such pupils.

As neither the clear language of this provision nor any other education law, regulation, or existing case law, in light of the circumstances which exist in this matter, precludes Hammonton and Waterford from entering into their proposed sending/receiving agreement, execution of such agreement is within the inherent powers of each respective Board.

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<sup>4</sup>It is also noted that Hammonton's request for relief on this Count of its petition is unopposed.

As to whether Hammonton has any responsibility to utilize employees of the dissolved LCCR district, the statutory provision at issue here is *N.J.S.A. 18A:13-64*, which establishes the rights of all employees of a regional district in the case of a withdrawal from or dissolution of a regional district.

This statute, in pertinent part, provides:

All 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.\*\*\*

This provision unmistakably envisions that employees of a dissolving district must look to the constituent districts for their employment rights. The right conferred by *N.J.S.A. 18A:13-64* on staff employed by the regional district prior to the dissolution date is initially to continued employment in one of the constituent districts. *See Stagaard v. Contini*, 97 *N.J.A.R. 2d.* (EDU) 217, *aff'd* State Board October 1, 1997. Moreover, this statutory right is confined to instances where regional staff members cannot be accommodated within their certification to available high school positions. *Id.* at 219. It is uncontroverted here that Hammonton is not a constituent district of the LCCR, nor is it claimed that Hammonton either had any input in the hiring or employment of LCCR employees, or played any role whatsoever in the referendum to dissolve the LCCR. As such, *N.J.S.A. 18A:13-64* does not operate to create an independent obligation for Hammonton to employ staff of the LCCR as a result of the district's dissolution.

Neither does Hammonton have any derivative responsibility, pursuant to *N.J.S.A. 18A:28-6.1*, to employ regional district staff by virtue of its proposed sending/receiving relationship with Waterford, as this statute is inapplicable in this matter. In this connection, the Education Associations urge that Waterford, as a constituent district, has an obligation pursuant to *N.J.S.A. 18A:13-64* to recognize and act to preserve the employment rights of the LCCR's employees and, therefore, Hammonton, as the receiving district for Waterford's students, has a duty, pursuant to *N.J.S.A. 18A:28-*

6.1, to recognize the tenure and seniority rights of LCCR staff who serviced the students of its sending district. *N.J.S.A.* 18A:28-6.1 specifies:

Whenever, heretofore or hereafter, any board of education in any school district in this state shall discontinue any high school, junior high school, elementary school or any one or more of the grades from kindergarten through grade 12 in the district and shall, by agreement with another board of education, send the pupils in such schools or grades to such other district, all teaching staff members who are assigned for a majority of their time in such school, grade or grades and who have tenure in office at the time such schools or grades are discontinued shall be employed by the board of education of such other district in the same or nearest equivalent position\*\*\*.

The N.J. Supreme Court undertook interpretation of this statute in *In re Jamesburg High School Closing*, 83 *N.J.* 540, and found that this particular provision is triggered *only* if a district closes a school and agrees with another district to send its pupils from such closed school to that district. Here, Waterford has not closed one of its schools. Neither does it have any staff that would be impacted by its proposed sending/receiving relationship with Hammonton, since all affected staff were employed by the LCCR rather than Waterford. Moreover, the situation for the affected LCCR employees has not been altered by Waterford's proposed agreement with Hammonton. These individuals will still be able to select positions in all seven of the constituent districts; they will just be unable to select positions in grades 7-12 in Waterford, a selection which would not be available to them under present circumstances. Similarly, the prospect of large scale unemployment of LCCR employees as a result of dissolution appears remote, as the parties' submissions indicate that there will be at least one additional school opening as a consequence of dissolution, notwithstanding the absence of the Waterford students.

In summary, because *N.J.S.A.* 18A:13-64 and the interpretation of this provision by the Commissioner and the State Board in *Stagaard, supra*, cannot be read to obligate Hammonton, as a non-constituent district, to accept any employees from the dissolved regional, and recognizing that *N.J.S.A.* 18A:28-6.1 has been found to be inapplicable to the situation existing here, there is no legal authority to support a conclusion that Hammonton has a responsibility, of any nature, to these employees.

Finally, Hammonton seeks a determination that the parties are not precluded from entering into a sending/receiving relationship for a contractual term of 30 years. A term of this length is

deemed vital in order to ensure the financial resources necessary to repay the bond obligation incurred to finance the construction and renovation of its schools required to facilitate the educating of Waterford's students. It is clear that education law operates to prevent the current boards of Hammonton and Waterford from committing to such a term. In this regard, it is well-established that boards of education, generally, have no authority to reach forward beyond their own official life and into the term of their successors. A board of education is a noncontinuous body whose authority is limited to its own official life and whose actions can bind its successors only in those ways and to the extent expressly provided by statute. *Gonzalez v. Board of Education of Union City*, 325 N.J. Super. 244, 252 (App. Div. 1999), citing *Skladzien v. Board of Educ.*, 12 N.J. Misc. 602, 604-05, 173 A. 600 (Sup. Ct. 1934), *aff'd*, 115 N.J.L. 203, 178 A. 793 (E. & A. 1935). The Legislature, apparently recognizing the unique nature of sending/receiving relationships and the need to offer some measure of protection for districts, such as Hammonton here, which must undertake construction or remodeling of facilities in order to allow them to accommodate the students of another district pursuant to such a relationship, carved out an exception to the general prohibition against binding future boards in its enactment of N.J.S.A. 18A:38-20. This provision specifies:

Whenever a board of education, now or hereafter furnishing elementary and high school education or either thereof for the pupils of another school district, finds it necessary to provide additional facilities for the furnishing of education to such pupils, it may, as a condition precedent to the provision of such additional facilities, enter into an agreement with the board of education of such other district for a term not exceeding 10 years whereby it agrees to provide such education to the pupils of such other district during the term of such agreement, in consideration of the agreement by the board of education of such other district that it will not withdraw its pupils and provide school facilities for them in its own or another district during the term of said agreement except as provided in this article, and that the sending district will provide for the payment of tuition in accordance with section 18A:38-19.

It must be presumed that in executing this provision the Legislature intended to strike a balance between the well-established stricture against binding future boards and the conflicting interests, such as the need for stability, which inherently arise in sending/receiving relationships and unambiguously designated its outside maximum limit of equipoise. Consequently, the within boards may not bind future boards beyond



the 10-year express prescription of the statute. It is equally evident that, at the expiration of this period, the boards then sitting are similarly authorized, pursuant to *N.J.S.A. 18A:38-20*, to enter into subsequent 10-year successor agreements if they so desire. See State Board decision in *Board of Education of the Borough of Lincoln Park v. Board of Education of the Town of Boonton*, 95 *N.J.A.R. 2d* (EDU) 493.

The Commissioner underscores, however, that, irrespective of the contractual timeframes specified in the parties' agreement, a sending/receiving relationship does not automatically terminate upon the expiration of this agreed-upon time period. Rather, such relationship cannot be altered or terminated except upon application made to and approved by the Commissioner, pursuant to *N.J.S.A. 18A:38-13*, upon his finding that the termination will result in no substantial negative educational, financial or racial impact.

Accordingly, the Commissioner determines that Hammonton and Waterford are not precluded from entering into a sending/receiving relationship; that Hammonton owes no duty, either independently or derivatively, to the employees of the LCCR; and that the current boards of Hammonton and Waterford may enter into a sending/receiving agreement for a contractual term of no longer than 10 years, with future boards having the right to enter into successor contracts, in 10-year increments, if they so desire.<sup>5</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 4, 2000

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<sup>5</sup> 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.