

C #546-96
SB # 88-96

JENNIFER STAGAARD AND AMERICAN :
FEDERATION OF TEACHERS, LOCAL :
1017, :

PETITIONERS-APPELLANTS, :

V. :

PETER B. CONTINI, ASSISTANT :
COMMISSIONER , NEW JERSEY STATE :
DEPARTMENT OF EDUCATION, BOARD :
OF EDUCATION OF THE TOWNSHIP OF :
BERKELEY HEIGHTS, BOARD OF :
EDUCATION OF THE TOWNSHIP OF :
CLARK, BOARD OF EDUCATION OF THE :
BOROUGH OF GARWOOD, BOARD OF :
EDUCATION OF THE BOROUGH OF :
KENILWORTH, BOARD OF EDUCATION :
OF THE BOROUGH OF MOUNTAINSIDE, :
BOARD OF EDUCATION OF THE TOWN- :
SHIP OF SPRINGFIELD AND BOARD OF :
EDUCATION OF THE UNION COUNTY :
REGIONAL HIGH SCHOOL DISTRICT #1, :
UNION COUNTY, :

RESPONDENTS-CROSS/APPELLANTS. :
_____ :

STATE BOARD OF EDUCATION
DECISION ON MOTIONS

Decided by the Commissioner of Education, December 6, 1996

Decision on motion by the Commissioner of Education, December 10, 1996

For the Petitioners-Appellants, Rand, Algeier, Tosti & Woodruff (Russell J. Schumacher, Esq., of Counsel)

For the Respondents-Cross/Appellants Boards of Education of Berkeley Heights, Kenilworth, Mountainside & Springfield, Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen (Vito A. Gagliardi, Esq., of Counsel)

For the Respondent-Cross/Appellant Board of Education of the Township of Clark, Kenney & Gross (Mark S. Tabenkin, Esq., of Counsel)

For the Respondent-Cross/Appellant Board of Education of the Borough of Garwood, Buttermore, Mullen, Jeremiah & Phillips (William S. Jeremiah, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Union County Regional High School District #1, Schwartz, Simon, Edelstein, Celso & Kessler (Lawrence S. Schwartz, Esq., of Counsel)

For the Intervenors Berkeley Heights Education Association, Clark Education Association, Garwood Teachers Association, Kenilworth Education Association, Mountainside Education Association and the Springfield Education Association, Klausner & Hunter (Stephen B. Hunter, Esq., of Counsel)

This matter was initiated by Jennifer Stagaard, a teacher employed by the Union County Regional High School District No. 1 (hereinafter "regional district"), and the American Federation of Teachers, Local 3417 (hereinafter "AFT"), the collective negotiations representative for teachers employed by the regional district, following approval for the dissolution of the regional school district as provided for by N.J.S.A. 18A:13-51 et seq. Petitioners sought a declaratory judgment from the Commissioner of Education with respect to the employment rights conferred by the education laws on teaching staff members upon dissolution of the regional high school district.

By decision issued on December 6, 1996, the Commissioner rejected the AFT's position that dissolution of the regional school district would result in the creation of new school districts under N.J.S.A. 18A:6-31.3 et seq., finding instead that dissolution would result in an expansion of purpose for the six school districts that had been part of the regional district (hereinafter "constituent districts"). The Commissioner further declared that upon dissolution of the regional district, staff members had a statutory

right to “continue in the position of teacher, as it would have existed had the regional district not been dissolved.” Commissioner’s Decision at 5. Distinguishing between a teacher’s rights in initial assignment and tenure rights, the Commissioner found that regional district staff members would become employees of the constituent districts upon dissolution of the regional district, with all periods of their employment credited for tenure and seniority purposes as if the entire term of their employment had been in the constituent district.

In establishing the operative date for determining the tenure rights of the regional teachers, the Commissioner analogized the situation to one involving district board action to reduce staff under N.J.S.A. 18A:28-9. On this basis, the Commissioner declared that the operative date for determining the scope of entitlements for affected staff would be May 14, 1996, the date on which the voters approved dissolution of the regional district. The Commissioner, however, carved out an exception for teachers who would meet the statutory conditions for tenure acquisition after the date of that referendum but prior to July 1, 1997, the date which the Commissioner had determined would be the effective date for dissolution of the regional district as provided by N.J.S.A. 18A:13-59.

The Commissioner then made the determination that N.J.S.A. 18A:13-64 and statutory tenure protections would govern the salary benefits which must be preserved upon transfer of regional staff to the constituent districts. Accordingly, he found that regional district staff members are to be placed on the salary guide of a constituent district at the step and level appropriate for their years of service in the regional district. In that the salary level of tenured staff may not be reduced, such teaching staff

members would be held at current salary level in those instances where proper guide placement would result in a reduction of their salary.

The Commissioner then dissolved the stay he had previously granted and directed that the staff selection process move forward within the parameters of the declaratory judgment.

The AFT appealed and the six constituent districts cross-appealed. Upon the AFT's request and with the agreement of the parties, we accelerated the briefing schedule. However, the counsel for the six education associations in the constituent districts (hereinafter "NEA") has moved to intervene. Additionally, both the AFT and the constituent districts have filed motions to supplement the record with materials relating to effectuation of the selection process subsequent to the Commissioner's declaration.

In that the rights under the education law of teachers represented by the six NEA locals may be affected by the outcome of this matter, and because the interests of these associations are distinct from any party, we grant their motion to intervene. N.J.A.C. 1:1-16.1(a). To minimize delay, we direct that the intervenors' brief must be filed within ten days of this decision.

We, however, deny both motions to supplement the record. Materials relating to events occurring after the Commissioner's declaration are not within the scope of this appeal. In this respect, we stress that the appeal herein is from a declaratory judgment granted by the Commissioner. Such declaration is intended to afford relief from uncertainty concerning a party's rights, and cannot be used to decide or declare rights upon a state of facts which are future, contingent and uncertain. Cf. N.J. Home

Bldrs. Ass'n. v. Civil Rights Div., 81 N.J. Super. 243, 251 (Ch. Div. 1963); Lucky Calendar Co. v. Cohen, 36 N.J. Super. 300, 304 (Law Div. 1955), aff'd, 20 N.J. 451, 454 (1956). Events relating to implementation of the selection process subsequent to the Commissioner's declaration were not before the Commissioner and are therefore not material to our review of the questions addressed by him. N.J.A.C. 6:2-1.9. Further, to permit such supplementation would increase the potential that disputes concerning events subsequent to the Commissioner's declaration would result in undue delay of our final agency decision in this matter.

February 5, 1997

Date of mailing _____