

EDU #4546-96, #6243-96 and #957-97(consolidated)  
C # 585-97  
SB # 42-98

JOHN SCOTT, :  
PETITIONER-RESPONDENT, :  
V. :  
BOARD OF EDUCATION OF THE OCEAN: :  
COUNTY VOCATIONAL-TECHNICAL :  
SCHOOL DISTRICT, OCEAN COUNTY, : STATE BOARD OF EDUCATION  
RESPONDENT-APPELLANT, : DECISION  
AND :  
IN THE MATTER OF THE TENURE :  
HEARING OF JOHN SCOTT, SCHOOL :  
DISTRICT OF THE OCEAN COUNTY :  
VOCATIONAL-TECHNICAL SCHOOL, :  
OCEAN COUNTY. :

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Decided by the Commissioner of Education, November 13, 1997

For the Petitioner/Respondent-Respondent, Wills, O'Neill & Mellk (Arnold C. Mellk, Esq., of Counsel)

For the Respondent/Petitioner-Appellant, Shea & Novy (Robert C. Shea, Esq., of Counsel)

The Board of Education of the Ocean County Vocational-Technical School District (hereinafter "Board") certified tenure charges of unbecoming conduct against John Scott (hereinafter "appellant"), a tenured teaching staff member. On November 13, 1997, the Commissioner of Education rejected a proposed settlement agreement entered into between appellant and the Board. The Commissioner stressed

that while he did not preclude the possibility of a settlement in this case, he found it necessary to ensure that the terms of the settlement were in accord with the principles expressed in Cardonick v. Board of Education of the Borough of Brooklawn, decided by the State Board of Education, April 6, 1983. He therefore remanded this matter to the Office of Administrative Law for “revision of the settlement terms or other appropriate explication and clarification.” Commissioner’s Decision, slip op. at 8.

On February 6, 1998, appellant filed a notice of appeal from the Commissioner’s decision with the State Board of Education. On April 27, 1998, the Director of the State Board Appeals Office advised appellant that the briefing schedule was being placed in abeyance pending the State Board’s consideration of his request to file his notice out of time.

We find that the determination from which appellant is seeking to appeal is interlocutory in nature. Consequently, we have treated his notice as a request for leave to appeal an interlocutory decision. N.J.A.C. 6:2-2.3. After reviewing the papers submitted, we deny appellant’s request pursuant to our discretion under N.J.A.C. 1:1-14.10. “[I]nterlocutory review may be granted only in the interest of justice or for good cause shown.” In re Certain Sections of the Uniform Admin. Procedure Rules, 90 N.J. 85 (1982). We find that appellant has not demonstrated good cause requiring our review of the Commissioner’s determination at this time. We add, moreover, that appellant’s request was filed nearly three months after the Commissioner rendered his decision. N.J.A.C. 6:2-2.3 requires a motion for leave to appeal an interlocutory

decision to be filed within five days after that decision.<sup>1</sup> Hence, appellant's request was also untimely, and we find no basis in this instance for relaxing the filing requirement. We note, in addition, that interlocutory rulings may be subject to review by the State Board upon appeal from a final decision of the Commissioner on the merits of the case. N.J.A.C. 1:1-14.10.

June 3, 1998

Date of mailing \_\_\_\_\_

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<sup>1</sup> By contrast, we note that an appeal to the State Board from a final decision of the Commissioner must be taken "within 30 days after the decision appealed from is filed." N.J.S.A. 18A:6-28.