
Bergenfield Ed. Assoc. v. Bergenfield Bd. of Ed.
Cite as 6 *N.J.A.R.* 150

BERGENFIELD EDUCATION ASSOCIATION,
Petitioner,
v.
BOARD OF EDUCATION
OF THE BOROUGH OF BERGENFIELD,
BERGEN COUNTY,
Respondent.

Decided October 29, 1980

Initial Decision

SYNOPSIS

Petitioners challenged respondent's action in offering behind-the-wheel driver education training only in its adult evening school. The respondent filed a motion to dismiss the complaint based on arguments that the petitioner had exceeded the 90 day statute-of-limitations contained in *N.J.A.C.* 6:24-1.2, that the defense of laches was appropriate and that petitioner had no standing to pursue the matter.

The administrative law judge assigned to the case found that the respondent's action in putting behind-the-wheel driver education in the adult school took place in the spring of 1976 and went into effect in the 1976-1977 school year and that the association had not filed its petition until May 1980. The judge concluded that since no reasonable explanation had been heard as to why petitioner waited nearly four years to file its action, the petition was clearly beyond the limit of *N.J.A.C.* 6:24-1.2.

Cassel R. Ruhlman Jr., Esq., for petitioner, (Ruhlman & Butrym, attorneys)

Robert H. Greenwood, Esq., for respondent

MOSES, ALJ:

This matter was brought before the court as the result of a petition filed pursuant to *N.J.S.A.* 18A:6-9, which vests the Commissioner of Education with jurisdiction to hear and determine all controversies and disputes arising under the school laws. The case was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

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A prehearing conference was held on July 18, 1980. A Prehearing Order was issued, which delineated the legal issues to be determined as follows:

1. Whether or not the Board of Education has acted properly, and in compliance with the law, when it offers behind-the-wheel driver education training only in the adult evening school, for a monetary fee, taught by persons not certified by the State of New Jersey, while the classroom portion of the driver education course is offered, free of charge, as part of the regular school program?
2. Whether or not the petition should be dismissed as out of time, pursuant to *N.J.A.C.* 6:24-1.2?
3. Laches.
4. Whether or not the petitioner, Bergenfield Education Association, is the proper party to bring this matter, and whether or not said Association has a justiciable interest in this controversy, in response to which effective relief can be given?

The respondent, Bergenfield Board of Education, filed a Motion to Dismiss the Complaint, based on three issues: that the petitioner had exceeded the 90-day statute of limitations contained within *N.J.A.C.* 6:24-1.2, that laches existed, and that the Association had no standing to pursue this matter. Petitioner, Bergenfield Education Association, filed a Cross-Motion for Summary Judgment, based on the theory that the Association was entitled, as a matter of law, to summary judgment on all the assertions contained within the petition. Briefs in support of the Motion to Dismiss and the Cross-Motion for Summary Judgment, and in opposition thereto, were filed with the court on the appropriate dates. No oral argument was heard.

The movant-respondent, Bergenfield of Education, urges this court to adhere strictly to the limitations set forth in *N.J.A.C.* 6:24-1.2, which provide that:

To initiate a proceeding before the Commissioner to determine a controversy or dispute arising under the school laws, a petitioner shall file with the Commissioner the original copy of the petition, together with proof of service or a copy thereof on the respondent or respondents. Such petition must be filed within 90 days after receipt of the notice by the petitioner of the order, ruling or other action concerning which the hearing is requested.

The Board's attorney argues that the determination not to offer behind-the-wheel driver education in its regular school program was made and implemented by the Board in 1976. The instant petition

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was filed on May 16, 1980. He also argues that petitioner has presented no explanation whatsoever as to why this action was not timely filed, since the Association had received notice and been aware, since 1976, that the behind-the-wheel portion was available only in the adult evening school. Counsel relies on *Riely v. Hunterdon Central High School Board of Education*, 173 *N.J. Super.* 109 (App. Div. 1980), as well as various Commissioner's decisions.

Counsel for the Board also argues that the unexplained delay in filing is the equivalent of laches, a further basis for dismissal.

The Board of Education also urges the petition be dismissed because the Association has no justiciable interest in the case, is not the proper party, and is without standing to pursue this matter. He argues that there is no viable connection between the petitioner and the substantive issue raised, that no relief for the Association has been requested, nor can any be granted, and that no specific teacher has been injured. The attorney for the Board distinguishes the cases of *Camp v. Board of Education of Glen Rock*, 1977 *S.L.D.* 706 and *Winston v. Board of Education of South Plainfield*, 64 *N.J.* 582 (1974), which give teachers' associations standing, by pointing out that in each matter there were challenges by individual teachers. The Board asserts that, absent an individual teacher's claim that he or she has been deprived of some right guaranteed under the school law of this State, there is no reason to allow the Association to be the sole petitioner.

Petitioner responded to the Motion to Dismiss by arguing that the 90-day rule should not apply, because there has been a continuing violation of the school laws, the gravamen of which is centered on the current method of providing behind-the-wheel training. He cites *Terry v. Mercer County Freeholders Board*, 173 *N.J. Super.* 249 (App. Div. 1980), and *Decker v. Board of Education of the City Elizabeth*, 153 *N.J. Super.* 470 (App. Div. 1977), *aff'd*, 75 *N.J.* 612 (1978), cases dealing with violations of the Law Against Discrimination. The Association's counsel also points out that laches is not applicable here because the Board has not shown that they have been prejudiced at all by the delay.

Counsel for the Association argues vehemently that the Association, as the majority representative of all the teachers in the employ of the Board, has the requisite standing to pursue this matter and relies on *Camp v. Board of Education of Glen Rock*, 1977 *S.L.D.* 706, where the Association was granted separate standing in a joint suit with certified teachers of driver education. He also cites *Wyckoff Education Association v. Board of Education of Wyckoff*, 1980 *S.L.D.* (decided

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March 1980), *Schnedeker v. Hightstown Education Association v. Board of Education of East Windsor*, 1978 S.L.D. (decided June 6, 1978) and *Hutchins et al. v. Board of Education of Lumberton* 1980 S.L.D. (decided May, 1980), for the proposition that the Commissioner of Education has recognized the standing of education associations to pursue issues concerning the use of uncertified personnel. He urges this judge to follow the liberal New Jersey policies in regard to the granting of standing. See, *Urban League of Essex County v. Township of Mahwah*, 147 N.J. Super. 29 (App. Div. 1977), as well as *Dome Realty v. Paterson* 150 N.J. Super. 448 (App. Div. 1977), and *Urban League of New Brunswick v. Mayor and Council of Carteret*, 170 N.J. Super. 461 (App. Div. 1979).

The Association, in its Cross-Motion for Summary Judgment asserts that as a matter of law, certified teachers must be used to teach the behind-the-wheel portion of driver education (see, N.J.A.C. 6:11-7.18), that fees cannot be charged for behind-the-wheel instruction, see, *Willet v. Board of Education of Colts Neck*, 1966 S.L.D. 202, aff'd State Board of Education, 1968, that behind-the-wheel instruction should not be provided for public school students only in the adult evening school, see, N.J.A.C. 6:27-6.1, and that driver education is part of a thorough and efficient education as required in the Public School Education Act of 1975. The Board responds by arguing that there is no legal requirement that the behind-the-wheel portion of driver education must be offered, free of charge, as part of the regular school program by certified teachers, and relies on letters from the Attorney General and the Department of Education, as well as *Camp v. Board of Education of Glen Rock*, 1977 S.L.D. 706.

Both counsel stipulated to the following facts, which the court adopts as uncontroverted:

1. Driver Education, including both classroom instruction and behind-the-wheel instruction, was previously taught in respondent's schools as a part of its regular school program, available to all of its students of appropriate age without charge. The behind-the-wheel portion was deleted from the regular school program at the end of the 1975-76 school year. It was first offered in the evening adult school in 1977-78.
2. Respondent now offers only the classroom instruction portion of Driver Education as a part of its regular school program.
3. Respondent now offers the behind-the-wheel portion of Driver Education for pupils in its schools only in the evening adult

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school, operated by respondent, for which a fee is charged in the amount of \$105.

4. Behind-the-wheel Driver Education is taught in the respondent's adult evening school to the respondent's pupils by persons who do not hold certificates issued by the State Board of Examiners. All instructors in the evening adult school are licensed by the Division of Motor Vehicles, State of New Jersey, to teach behind-the-wheel driver training to students.

The court also finds the following to be fact:

5. The instant petition was filed on May 16, 1980, four years after the decision of the Bergenfield Board of Education to delete the behind-the-wheel portion of driver education from the regular school program.

The court will first decide petitioner's Cross-Motion for Summary Judgment, wherein the Association asks for an Order directing the Board of Education to provide behind-the-wheel driver education in its regular public schools, free of charge, to its students, to be taught only by persons holding appropriate certificates issued by the State Board of Examiners. The law is clear that a motion for summary judgment may only be granted if there are no genuine issues as to material fact. *Judson v. Peoples Bank and Trust Company of Westfield*, 17 *N.J.* 67 (1954). See also, *N.J.A.C.* 1:1-13.4(a). The dispositive issue in this motion is whether or not the behind-the-wheel portion driver education is a necessary component of a thorough and efficient education. The Association says yea; the Board says nay. There is clearly an issue here as to the material fact, and evidence would have to be heard on the components of a thorough and efficient education before this court could arrive at a decision. Therefore, the Association's Motion for Summary Judgment and for an Order directing the Board to include behind-the-wheel driver education, free of charge, in the regular school day, is **HEREBY DENIED**.

In reviewing respondent's Motion to Dismiss, the court must determine whether or not the instant petition was filed more than 90 days after the event giving rise to the claim, and therefore is in violation of *N.J.A.C.* 6:24-1.2. In order to decide that the court must determine if there has been a continuing violation of the school laws of this State, as well as of the New Jersey Constitution because of the Board's actions in regard to behind-the-wheel driver education. Even if there has not been a continuing violation, the court has to decide whether or not to relax the 90-day requirement by exercising the discretion given to the Commissioner of Education in *N.J.A.C.* 6:24-1.19.

Before deciding whether or not a continuing violation of the School Laws has occurred, the court carefully reviewed the cases cited by petitioner, which arose out of violations of the Law Against Discrimination. Both *Decker v. Board of Education of the City of Elizabeth*, 153 *N.J. Super.* 470 (App. Div. 1977) and *Terry v. Mercer County Freeholders Board*; 173 *N.J. Super.* 249 (App. Div. 1980) point out that payment of unequal wages and discriminatory refusal to promote female employees are continuing violations for the purpose of determining whether the female plaintiffs' claims were barred under the 180 day statute of limitations set forth in the Law Against Discrimination *N.J.S.A.* 10:5-12. Even if the violations occurred beyond the 180 days before the Complaint was filed. Both *Decker* and *Terry* were centered on individual petitioners whose rights were violated right up to the very date of the filing of the verified complaint, and even beyond. Those cases are inapposite to the instant matter, where specific action which gives rise to this petition took place in the Spring of 1976, was finally implemented in the 1976-77 school year, and where there had never been any allegation that the rights of any individual teacher were violated. Counsel's argument that petitioner is only complaining of the violation occurring at the present time does not hold water, because New Jersey courts have established that the accrual of a cause of action commences on the date on "which the right to institute and maintain a suit" first arose; that is to say the knowledge of injury or, pertinent to this specific circumstance, that time when the Association received notice that the Board was going to discontinue the behind-the-wheel portion of driver education in the daytime school *See, Rosenau v. City of New Brunswick and Gammon Meter Co.*, 51 *N.J.* 130, 137 (1968); *Burd v. New Jersey Telephone Company*, 149 *N.J. Super.* 20, 30 (App. Div. 1977), *aff'd* 76 *N.J.* 284, (1978). Certainly the accrual of this cause of action could have arisen no later than the 1977-78 school year, when the Association knew that the behind-the-wheel portion of driver education was offered at the fee of \$105 in the adult evening school. For the aforementioned reasons, this court finds that the petition was filed more than 90 days after the accrual of the cause of action, the last possible day the Association received notice of the action of the Board of Education.

Both the Commissioner of Education and the courts have been taking a firm position in regard to petitioners' failures to comply with *N.J.A.C.* 6:24-1.2. The New Jersey Supreme Court has ruled that a teacher must file a petition within 90 days of his receipt of notice of a Board's decision which affects him, (such as withholding of an increment), and that a teacher who proceeds to advisory arbitration

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is not relieved from compliance with this 90-day filing requirement. *Board of Education Bernards Township v. Bernards Township Education Association*, 79 *N.J.* 311, 326-327 (1979) *In accord*, *Riely v. Hunterdon Central High Board of Education*, 173 *N.J. Super.* 109 (App. Div. 1980), wherein Riely's petition of appeal was out of time because she had utilized arbitration machinery and waited more than a year from the date of the Board's action before filing her petition with the Commissioner. *See also*, *Miller v. Morris School District*, Commissioner of Education, February 25, 1980), where the Commissioner held that the petition would be dismissed as untimely, because that petitioner failed to file her petition until nine months after being notified she would not be reemployed as a non-tenured teacher.

However, before dismissing the petition out of hand, the court must consider whether the provisions of *N.J.A.C.* 6:24-1.19 should be applied, because strict adherence to the 90-day rule in this case might be inappropriate, unnecessary or might result in injustice. The Commissioner has determined in recent decisions, that the relaxation rule is to be applied sparingly. *See*, *Kallimanis v. Board of Education Carlstadt-East Rutherford Regional High School District*, Commissioner of Education, September 26, 1980).

This judge finds that the action of the Board in putting behind-the-wheel driver education in the adult school took place in the Spring of 1976, and was implemented in the 1976-77 school year. The Association was not surprised by the implementation as it understood what was happening, accepted the action and continued to work as usual until May 1980, when the instant petition was filed. The petition of the Association posits no excuse or explanation whatsoever as to why it did not file its claim for relief with the Commissioner of Education at the time the Board passed the resolution, or at the time the Board implemented its decision. There is no allegation of injury in fact to any individual member of the Association. Therefore, because no reasonable explanation has been given to this court as to why petitioner did not file suit within the appropriate time, but waited nearly four years to attempt to redress the alleged wrong and to enforce the statutory and constitutional rights it alleges have been violated, this court concludes that the discretion to relax the 90-day rule prescribed by *N.J.A.C.* 6:24-1.2 will not be exercised. The court further **CONCLUDES** that the petition was filed out of time, far in excess of the 90 days after the event which triggered the statute of limitations. It will order that the Board's motion to dismiss the instant petition be granted on the grounds that the petition was filed out of time, and was not in compliance with *N.J.A.C.* 6:24-1.2.

Notwithstanding its determination on the motion, the court finds it appropriate to comment briefly on the other issues raised in the motion to dismiss, in order to obviate possible further argument and determination.

Respondent also urged laches as a bar to the instant petition. That equitable theory rests on inexcusable delay and prejudice to the opposing party. *See, Allstate v. Howard Savings Institution*, 127 *N.J. Super.* 479 (Ch. Div. 1974). The Board of Education has not shown that prejudice inured as a result of the passage of time. The court has already commented on the lack of good reason for the delay in filing. Laches is not the appropriate avenue to travel in this matter.

Respondent also urged the court to find that the Association lacks standing to pursue the instant matter. The New Jersey courts have taken a liberal view in regard to the questions of standing in law suits. *See, Crescent Park Tenants Association v. Realty Equity Corp. of New York*, 58 *N.J.* 98 (1971), the seminal case, as well as *Common Cause v. New Jersey Election Law Enforcement Commission*, 74 *N.J.* 231 (1977), *Urban League of New Brunswick v. Mayor and Council of Carteret*, 170 *N.J. Super.* 461 (App. Div. 1979); *Homebuilders League of South Jersey v. Township of Berlin*, 81 *N.J.* 127, 179 and *Urban League of Essex County v. Township of Mahwah*, 147 *N.J. Super.* 28 (App. Div. 1977) certif. denied, 74 *N.J.* 278 (1977). In each of the aforementioned cases, the plaintiffs were granted standing because the challeng action caused them "injury in fact, economic or otherwise" and because the party seeking relief alleged such a personal stake in the outcome of the controversy that concrete adverseness was assured. *Crescent Park v. Realty Equity Corp.* 58 *N.J.* at 103-104. In each of the cases cited, the court found the public interest in determining exclusionary zoning regulations minimized the personal stake which had to be proven by the plaintiff, although it should be noted that each case had a plaintiff who alleged some specific harm, which had or might occur. In *Urban League v. Mahwah*, the Appellate Division did not comment on the standing of the Association, but found only that the two of the named plaintiffs, who worked in Mahwah, had a sufficient stake and injury-in-fact which would allow the case to proceed to decision.

The instant matter does not fall within the rubric of the exclusionary zoning cases because there has been no showing whatsoever by the petitioner Association that any of its members were injured by the action of the Board. Nor has there been a showing by petitioner that it is the appropriate vehicle to represent the public interest in a determination of the appropriate components of a thorough and

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efficient education. The case of *Winston v. Board of Education of South Plainfield*, 125 *N.J. Super.* 131 (App. Div. 1973) aff'd, 64 *N.J.* 582 (1974), wherein the Supreme Court permitted the teachers association, as the exclusive representative of the public employees, to participate, is inapposite to the case at bar, because *Winston* dealt with a specific grievance filed on behalf of a particular party. In accord, *Camp and Glen Rock Education Association v. Board of Education of the Borough of Glen Rock*, 1977 *S.L.D.* at 709, where the Commissioner found that, ". . . the Association is the representative for non-supervisory teaching staff employees *who may feel threatened* by the Board's action of contracting with persons not covered by the usual teacher contracts, for certain instruction to be completed during nonschool hours, which instruction was previously performed during the regular school day. This fact alone is sufficient to embrace the Association as an interested party to the dispute." (Emphasis added.) Since no specific teacher has indicated he or she may feel threatened by the Board's action, and since the Commissioner emphasized that the determination in *Camp* applied only to those facts, this court is unable to see where this Association has a sufficient stake in the outcome of the litigation to give it standing, despite a recognition of the aforementioned liberality in New Jersey. Such liberal treatment is also inapplicable to the instant matter because the petitioner seeks no relief for itself in the petition. See, *Kochman and Keansburg Teachers Association v. Board of Education of the Borough of Keansburg*, 1976 *S.L.D.* 748, 750. This court thus concludes that the Association does not possess the requisite adversity and personal stake in the outcome of the proceedings, and has not suffered an injury in fact, economic or otherwise, which would give it the appropriate standing and justiciable interest to bring this matter.

For all the aforementioned reasons, it is **HEREBY ORDERED** that the Board's Motion to Dismiss the instant petition is **HEREBY GRANTED**; and

It is further **ORDERED** that the instant Petition of Appeal is hereby **DISMISSED**.

After reviewing this Initial Decision, the
Commissioner of Education on October 29, 1980,
issued the following Final Decision:

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

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The Commissioner observes that exceptions were filed in a timely fashion by petitioner pursuant to the provision of *N.J.A.C.* 1:1-16.4a, b and c.

The Commissioner has carefully examined the record herein, and the exceptions filed to the initial decision rendered by Sybil R. Moses, ALJ. The Commissioner notes that the court considered whether the provisions of *N.J.A.C.* 6:24-1.19 should be strictly applied or if such application would be inappropriate, unnecessary or might result in injustice. The court found, properly, that the Commissioner has determined in recent decisions that the relaxation rule is to be applied sparingly. The court erred, however, in not extending such relaxation to include the present matter.

The Commissioner deems it important that the stipulation of facts, agreed to by counsel and determined by the court to be uncontroverted and true, be set down in its entirety:

1. Driver Education, including both classroom instruction and behind-the-wheel instruction, was previously taught in respondent's schools as a part of its regular school program, available to all of its students of appropriate age without charge. The behind-the-wheel portion was deleted from the regular school program at the end of the 1975-76 school year. It was first offered in the evening adult school in 1977-78.
2. Respondent now offers only the classroom instruction portion of Driver Education as a part of its regular school program.
3. Respondent now offers the behind-the-wheel portion of Driver Education for pupils in its schools only in the evening adult school, operated by respondent, for which a fee is charged in the amount of \$105.
4. Behind-the-wheel Driver Education is taught in the respondent's adult evening school to the respondent's pupils by persons who do not hold certificates issued by the State Board of Examiners. All instructors in the evening adult school are licensed by the Division of Motor Vehicles, State of New Jersey, to teach behind-the-wheel driver training to students.

The Commissioner finds the present record insufficient for certain determinations relevant to the present matter. The record does not show whether or not the behind-the-wheel portion of Driver Education offered to pupils in the evening adult school forms part of that pupil's permanent high school record. Alternatively, does the record of participation in behind-the-wheel training rest only within the records of the evening adult school? Is it required that a high school

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pupil desirous of behind-the-wheel training take, as a prerequisite, the classroom instruction portion of Driver Education offered within the regular school program? Alternatively, may a pupil take only behind-the-wheel training? What provision, if any, is made for pupils who cannot pay the \$105 fee required for behind-the-wheel training?

The Commissioner cannot agree with the court's determination that the Association has no standing in the present matter. *Camp, et al., supra*. Nor can the Commissioner agree that there was no justification to relax the 90-day requirement of *N.J.A.C.* 6:24-1.2. The Commissioner finds it important that the record in the present matter be amplified and embellished with facts necessary to answer the foregoing questions. Accordingly, this matter is remanded to the Office of Administrative Law for an expeditious resolution therein.

It is so directed.