

[J-56-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MECHANICAL CONTRACTORS : No. 50 EAP 2004
ASSOCIATION OF EASTERN :
PENNSYLVANIA, INC. : Consolidated Appeal from the Order of the
 : Commonwealth Court Entered on October
v. : 20, 2004 at No. 13 M.D. 2004

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF EDUCATION, VICKI :
L. PHILLIPS. SECRETARY OF :
EDUCATION AND THE SCHOOL : 860 A.2d 1145 (Pa. Cmwlt. 2004)
DISTRICT OF PHILADELPHIA :

APPEAL OF: SCHOOL DISTRICT OF :
PHILADELPHIA : ARGUED: April 6, 2006

MECHANICAL CONTRACTORS : No. 52 EAP 2004
ASSOCIATION OF EASTERN :
PENNSYLVANIA, INC. : Consolidated Appeal from the Order of the
 : Commonwealth Court Entered on October
Appellant : 20, 2004 at No. 13 M.D. 2004

v.

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF EDUCATION, VICKI :
L. PHILLIPS. SECRETARY OF : 860 A.2d 1145 (Pa. Cmwlt. 2004)
EDUCATION AND THE SCHOOL :
DISTRICT OF PHILADELPHIA :

Appellees : ARGUED: April 6, 2006

GENERAL BUILDING CONTRACTORS : No. 53 EAP 2004
ASSOCIATION, INC., PENNSYLVANIA :
SCHOOL BOARDS ASSOCIATION, : Consolidated Appeal from the Order of the
PENNSYLVANIA ASSOCIATION OF : Commonwealth Court Entered on October

SCHOOL BUSINESS OFFICIALS, : 20, 2004 at No. 280 M.D. 2004
PLEASANT VALLEY SCHOOL :
DISTRICT, PENNSBURY SCHOOL :
DISTRICT, GENERAL CONTRACTORS :
ASSOCIATION OF PENNSYLVANIA :
MASTER BUILDERS ASSOCIATION OF : 860 A.2d 1145 (Pa. Cmwlth. 2004)
WESTERN PENNSYLVANIA, :
PENNSYLVANIA STATE COUNCIL OF :
CARPENTERS AND AIA PHILADELPHIA, :

Appellees

v.

COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF :
EDUCATION AND VICKI L. PHILLIPS, :
SECRETARY OF EDUCATIO, IN HER :
OFFICIAL CAPACITY, :

Appellants

ARGUED: April 6, 2006

MECHANICAL CONTRACTORS :
ASSOCIATION OF EASTERN :
PENNSYLVANIA, INC. :

54 EAP 2004

v.

Consolidated Appeal from the Order of the
Commonwealth Court Entered on October
20, 2004 at No. 13 M.D. 2004

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF EDUCATION, VICKI :
L. PHILLIPS, SECRETARY OF :
EDUCATION AND THE SCHOOL :
DISTRICT OF PHILADELPHIA :

860 A.2d 1145 (Pa. Cmwlth. 2004)

CROSS-APPEAL OF: :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF EDUCATION AND :
VICKI L. PHILLIPS, SECRETARY OF :
EDUCATION :

ARGUED: April 6, 2006

GENERAL BUILDING CONTRACTORS : 59 EAP 2004
ASSOCIATION, INC., PENNSYLVANIA :
SCHOOL BOARDS ASSOCIATION, : Consolidated Appeal from the Order of the
PENNSYLVANIA ASSOCIATION OF : Commonwealth Court Entered on October
SCHOOL BUSINESS OFFICIALS, : 20, 2004 at No. 280 M.D. 2004
PLEASANT VALLEY SCHOOL :
DISTRICT, PENNSBURY SCHOOL :
DISTRICT, GENERAL CONTRACTORS :
ASSOCIATION OF PENNSYLVANIA :
MASTER BUILDERS ASSOCIATION OF : 860 A.2d 1145 (Pa. Cmwlth. 2004)
WESTERN PENNSYLVANIA, :
PENNSYLVANIA STATE COUNCIL OF :
CARPENTERS AND AIA PHILADELPHIA, :

Appellants

v.

COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF :
EDUCATION AND VICKI L. PHILLIPS, :
SECRETARY OF EDUCATION, IN HER :
OFFICIAL CAPACITY, :

Appellees

ARGUED: April 6, 2006

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: November 21, 2007

While I agree with the result reached by the majority, I have several differences with its reasoning. For example, whereas the majority finds one potentially material aspect of the Mandate Waiver Program to be unambiguous by way of reference to a dictionary, see Majority Opinion, slip op. at 12-13, I find the ambiguity that the majority

ultimately recognizes to be more pervasive in the statute. Moreover, I consider the relevant policy considerations to be more greatly mixed than the majority portrays, see id. at 15.

Nevertheless, in the end analysis, had the General Assembly intended Section 751(a) to be non-waivable, it had the opportunity to clarify this design in the most clear and straightforward manner by simply adding Section 751(a) to the list of non-waivable provisions. Absent such direction, I believe that it is appropriate to defer to the administrative interpretation, unless and until there is further direction from the Legislature. To the extent, moreover, that the Separations Act might independently apply notwithstanding any valid waiver of Section 751(a), I would conclude that the latter provision effectively replaces the former one for purposes of public school properties, as any other interpretation would render Section 751(a) of little practical effect. See generally Allegheny County Sportsmen's League v. Rendell, 580 Pa. 149, 163-64, 860 A.2d 10, 19 (2004) (indicating that, for purposes of statutory construction, courts should avoid interpretations that render a statutory provision of no effect).