

PRECEDENTIAL

Filed May 8, 2003

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 01-3858

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MARSHA OTTO; F. NAYLOR EMORY;  
DENNIS A. ERB; ROBERT K. GILBERT;  
JAMES W. LOSSELL; BARBARA J. MCALLEY;  
WESLEY S. SEMPLE, On behalf of themselves  
and all other non-members similarly situated

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION-NEA;  
NATIONAL EDUCATION ASSOCIATION; SHALER AREA  
EDUCATION ASSOCIATION, On behalf of themselves and  
all other local associations similarly situated

Appellants

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No. 01-4110

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MARSHA OTTO; F. NAYLOR EMORY;  
DENNIS A. ERB; ROBERT K. GILBERT;  
JAMES W. LOSSELL; BARBARA J. MCALLEY;  
WESLEY S. SEMPLE, On behalf of themselves  
and all other non-members similarly situated,

Appellants

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION-NEA;  
SHALER AREA EDUCATION ASSOCIATION, On behalf of  
themselves and all other local associations similarly  
situated;  
NATIONAL EDUCATION ASSOCIATION;  
GROVE CITY AREA EDUCATION ASSOCIATION;  
JANE CAMPBELL; BARBARA LEIBY

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(D.C. Civil Action No. 96-cv-01233)

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**Present:** BECKER, *Chief Judge\**, SLOVITER, SCIRICA,  
NYGAARD, ALITO, ROTH, McKEE, BARRY, AMBRO,  
FUENTES, SMITH and STAPLETON\*\*, *Circuit Judges*  
and O'NEILL\*\*\*, *District Judge*

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**SUR PETITION FOR PANEL REHEARING  
WITH SUGGESTION FOR REHEARING *EN BANC***

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The petition for rehearing filed by Appellants having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges of the Circuit in regular active service, and a majority of the circuit judges of the Circuit in regular active service not having voted for rehearing by the Court *en banc*, the petition for rehearing is DENIED. Chief Judge Becker\* and Judge Nygaard would have granted rehearing *en banc*.

The judges who participated in the decision of the Court having voted for rehearing, the petition for panel rehearing is granted and the opinion and judgment entered April 3,

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\* Judge Becker was Chief Judge at the time for voting on the petition for rehearing.

\*\* Senior Judge Walter K. Stapleton, who sat on the original panel, is limited to panel rehearing only.

\*\*\* Judge Thomas O'Neill, Jr., United States District Judge for the Eastern District of Pennsylvania, sitting by designation, is limited to panel rehearing only.

2003 are vacated. An amended opinion is issued as of this date.

By the Court,

/s/ Thomas L. Ambro

Circuit Judge

Dated: May 8, 2003

A True Copy:  
Teste:

*Clerk of the United States Court of Appeals  
for the Third Circuit*