
**IN THE MATTER OF
ERIC HAMILTON,
HAMILTON TOWNSHIP
BOARD OF EDUCATION,
MERCER COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**OAL DKT. NO. EEC 4384-14
SEC DKT. NO.: C39-13**

FINAL DECISION

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on December 5, 2011, by George W. Fisher (Fisher), alleging that Eric Hamilton (Respondent), a member of the Hamilton Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated December 5, 2011, Complainant was notified that his Complaint was deficient and required amendment. On December 9, 2011, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:28-6.7. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(b), as well as N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

On January 17, 2012, and after being provided with an extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 6, 2012, Fisher filed a written response to the Motion to Dismiss, and to the allegation of frivolous filing. By correspondence dated January 25, 2012, the School Ethics Commission (Commission) notified the parties that this matter would be placed on the Commission's agenda for its meeting on February 28, 2012, in order to make a determination regarding the Motion to Dismiss, and the allegation of frivolous filing.

At its meeting on February 28, 2012, the Commission voted to grant the Motion to Dismiss, and to find the Complaint not frivolous. On May 9, 2012, Fisher filed a timely appeal of the Commission's decision in Superior Court, Appellate Division (Appellate Division), arguing that the Commission required an additional element not mandated by N.J.S.A. 18A:12-24(b), and that he had pled sufficient facts to withstand Respondent's Motion to Dismiss. On July 17, 2013, the Appellate Division found that the Commission had erred in granting Respondent's Motion to Dismiss, and remanded the matter to the Commission for further development.

At its meetings on December 19, 2013, and January 28, 2014, the Commission discussed the Appellate Division's decision. More specifically, it discussed the Appellate Division's finding that although Complainant did not plead that Respondent sought a personal benefit or that he made personal promises to Rodecker, the Complaint was sufficient to withstand the Motion to Dismiss because the public may construe the existence of the phone conversation with the candidate as a benefit to the candidate or as a basis to infer that promises were offered. According to the Appellate Division, such inferences may create the impression that the public trust may have been violated. As a result, and based on the Appellate Division's guidance, the

Commission found probable cause that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), and transmitted the matter to the Office of Administrative Law (OAL) for a plenary hearing.

II. INITIAL DECISION

At the OAL, the parties filed cross motions for summary decision. After closing the record on September 1, 2017, the Honorable Solomon A. Metzger, Administrative Law Judge Solomon A. Metzger (ALJ Metzger) issued his Initial Decision on September 13, 2017.

In his Initial Decision, ALJ Metzger noted that the following “relevant facts” were undisputed: In June 2011, Respondent was a member of the Board. At that time, the Board was seeking an interim superintendent, and John Rodecker (Rodecker) was one of four candidates invited to interview for the position in the Hamilton Township School District (District). Initial Decision at 2. Rodecker was set to retire as superintendent in another school district, and an administrator, Gregg Ficarra (Ficarra), from that district told Rodecker that he (Ficarra) was “friendly” with Respondent. *Id.* Rodecker and Respondent spoke by telephone on June 20, 2011. *Id.* When Rodecker appeared at the Board meeting that evening, he was asked whether he knew anyone on the Board, and subsequently disclosed the conversation with Respondent. *Id.* A member of the public found the conversation between Rodecker and Respondent to be objectionable, and filed a Complaint with the Commission. *Id.*

The motion record, which included certifications from both Respondent and Rodecker, contain additional background information, “but nothing more on the nature of the interaction between” Respondent and Rodecker. Initial Decision at 2. Although the certifications are “largely aligned,” they are not completely consistent. *Id.* Both Respondent and Rodecker state that their conversation was “brief, no more than ten minutes,” and that they discussed “the general nature of the community and school system.” *Id.* According to the certifications, “[n]either sought nor offered a benefit or advantage of any kind in connection with the Board’s pending interim appointment.” *Id.* Both deny that, other than “brief” conversation on June 20, 2011, they had ever met or had any other discussions. *Id.* The motion record also indicates that Respondent was not present at the Board meeting on June 20, 2011, and did not participate in the vote for the interim superintendent. *Id.* In addition, Rodecker withdrew his candidacy for the position of interim superintendent because of a “pension issue,” and he so advised the Board before the vote to appoint the interim superintendent. *Id.*

The dissonance in the certifications is whether Respondent knew that Rodecker was going to call him. Initial Decision at 2. Rodecker certified that Ficarra told him (Rodecker) that he (Ficarra) had spoken to Respondent, and Respondent indicated “it would be alright” for Rodecker to reach out to him (Respondent). *Id.* However, Respondent denies that he had a conversation with Ficarra, and was not expecting a call from Rodecker on June 20, 2011. *Id.* In ruling on the cross motions for summary decision, ALJ Metzger assumed Respondent “knew a call might be coming and that he was willing to engage Rodecker in some general talk about the community.” *Id.* at 3.

Based on the foregoing facts, ALJ Metzger granted Respondent’s motion for summary decision and, thereby, dismissed the complaint. Initial Decision at 4. In granting Respondent’s motion for summary decision, ALJ Metzger found that the case law cited by the Attorney

General, namely Lesinski v. Smallwood, School Ethics Commission Docket No. C14-14 (October 28, 2014), bore “little resemblance” to this matter. *Id.* at 3. ALJ Metzger also stated, “I have not been made aware of any broad principle that prohibits contact between Board members and candidates for school positions.” *Id.*

The Initial Decision was electronically transmitted to the Commission on September 13, 2017, and was also mailed to the parties on this same date; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was October 30, 2017. Prior to October 30, 2017, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties’ Exceptions. Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, and for good cause shown, the Commission was granted an extension until December 14, 2017.

III. EXCEPTIONS

A. Petitioner’s Exceptions

Petitioner’s Exceptions to the Initial Decision were received by the Commission on September 26, 2017. As detailed therein, Petitioner disagrees with ALJ Metzger’s legal conclusion that “there is no evidence of impropriety” by Respondent. Because Respondent admitted that he was a member of the Board, that he had contact with Rodecker prior to his interview, and that “the substance of the conversation” between he and Rodecker “concerned the background and logistics of the” District, Petitioner argues that a finding should be made that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e). By having a conversation with Rodecker, Petitioner contends that “Respondent bestowed an unfair advantage on the candidate,” as no other candidate was afforded this “benefit.” In addition, Respondent’s conduct “leaves the justifiable impression that the public’s trust is being violated.”

In support of this position, Petitioner cites language from the decision rendered in the Appellate Division, namely that Respondent’s conduct, if true, would violate the Act because it could “reasonably be inferred that [Respondent’s] conversation [with the candidate] provided an advantage to the candidate, an advantage not offered to any of the other prospective candidates.” The Superior Court, Appellate Division, also found that Rodecker’s withdrawal from candidacy was of no consequence, because it is Respondent’s actions, not those of the candidate, which are at issue.

Petitioner also cited the factual similarity between this matter and Lowell v. Smallwood et al., 2017 N.J. Super. Unpub. LEXIS 1267 (May 22, 2017) (Lowell). In Lowell, the Appellate Division affirmed the penalty of censure for school board members who went on an unauthorized site visit to meet with a candidate for employment. By having contact with a candidate for employment without first securing authorization from the Board, the Appellate Division found that such action had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(c) and (e). As in Lowell, Petitioner argues that Respondent had a conversation with a candidate for the position of interim superintendent without first securing authorization from the Board. Consequently, Petitioner argues that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e).

B. Respondent's Exceptions

Respondent's Exceptions to the Initial Decision were received by the Commission on November 2, 2017.¹ In his Exceptions, Respondent urges the Commission to adopt the Initial Decision as ALJ Metzger's findings were "sound and unassailable." The issue, according to Respondent, is whether Respondent, "by participating in a brief, unsolicited, innocuous telephone conversation with a candidate for an interim superintendent position regarding the general nature of the school district and municipality" before the Board voted to hire an interim superintendent, and a vote in which Respondent chose not to participate, violated the Act. Respondent argues that ALJ Metzger's finding that "there is no evidence of impropriety, nor would such an impression be justified," is sound and should be adopted.

Respondent further contends that Petitioner's argument that the Appellate Division "previously held that [Respondent's] conduct" violated the Act is mistaken, as the Appellate Division only determined that, based on the facts alleged in the Complaint, Petitioner met his burden of proof for filing a cause of action. It did not, as Petitioner argues, find that Respondent's conduct violated the Act.

Finally, Respondent argues that Lowell is inapposite because, in that matter, the Board members were specifically directed not to take action on an interim superintendent's candidacy prior to consulting with the school district's State monitor but, nonetheless, intentionally disregarded that directive. It was the Board members' actions in disregarding instructions/directive and actively advocating for a specific candidate that resulted in the finding of a violation of the Act. Those facts, according to Respondent, are not present here. Therefore, Respondent urges the Commission to adopt ALJ Metzger's Initial Decision.

At its meetings on October 31, 2017, and November 28, 2017, the Commission considered the record in this matter, including ALJ Metzger's Initial Decision and the parties' Exceptions. At its meeting on November 28, 2017, and for the reasons more fully discussed below, the Commission voted to adopt ALJ Metzger's findings of fact; to adopt the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24.1(e); to reject the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24(b); and to recommend a sanction of reprimand for the violation of N.J.S.A. 18A:12-24(b).

IV. ANALYSIS

Upon careful and independent review, the Commission **adopts** ALJ Metzger's factual findings as set forth above. Based on ALJ Metzger's findings of fact, the Commission **adopts** ALJ Metzger's legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24.1(e). Although Petitioner cited the Lowell case for the proposition that an unauthorized conversation with a candidate for employment is sufficient to sustain a violation of the Act and a penalty of

¹ The deadline for submission of Exceptions was, pursuant to N.J.A.C. 1:1-18.4(a), "within 13 days from the date the judge's initial decision was mailed to the parties," or by September 26, 2017. As such, Respondent's Exceptions were untimely. In addition, although N.J.A.C. 1:1-18.8(d) provides that a request to extend the time limit for filing exceptions "shall be submitted in writing to the transmitting agency head," Respondent did not submit such a request to the Commission.

censure, the Commission finds that the conduct of Respondents in Lowell was far more complicated than one (1) unauthorized, and potentially unexpected, telephone conversation.

However, based on the findings of facts as set forth above, the Commission **rejects** ALJ Metzger's legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24(b). As argued by Petitioner, and as established in the record, Respondent admitted that, while serving as a Board member, he had a "brief" conversation with a candidate for the position of interim superintendent, and also discussed with him the "the general nature of the community and school system." The record is clear that Rodecker was the only candidate for the position of interim superintendent who was afforded the benefit and advantage of a conversation with a Board member about "the community and school system" *before* his formal interview with the Board. The fact that Respondent did not participate in the vote to appoint a candidate for the interim superintendent position, and that Rodecker withdrew from consideration, does not negate the fact that Rodecker was provided with the benefit and advantage of a conversation that was not offered to any other candidate. If, as Respondent argues, he was not "expecting" a telephone call from Rodecker, he should have politely ended the conversation before discussing anything related to the position that Rodecker was applying for in the District. Instead, Respondent chose to engage Rodecker in a ten (10) minute conversation that directly related to the position for which he was applying. As a result, the Commission finds that Respondent used his official position to secure an unwarranted privilege, advantage or employment for an "other," and in this case, Rodecker.

V. DECISION

For the reasons more fully discussed above, the Commission adopts the findings of fact issued by ALJ Metzger, and also adopts the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24.1(e). However, the Commission rejects the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24(b) when he, as a Board member, engaged in a "brief" conversation with a candidate for the position of interim superintendent, and also discussed with him the "the general nature of the community and school system." The record is clear that Rodecker was the only candidate for the position of interim superintendent who was afforded the benefit and advantage of a conversation with a Board member about "the community and school system" *before* his formal interview with the Board.

VI. PENALTY

Based upon its finding that Respondent violated N.J.S.A. 18A:12-24(b) for the reasons set forth above, the Commission recommends that the Commissioner of Education (Commissioner) impose a sanction of reprimand. If additional facts had been proven regarding the exact nature and detail of the conversation between Respondent and Rodecker, the Commission may have recommended a greater sanction. However, based on the findings of fact issued by ALJ Metzger, and because Respondent should not have engaged Rodecker, to any extent, in a conversation while he was a Board member and Rodecker was a candidate for employment, the Commission believes that the recommended sanction of reprimand is appropriate. Although Rodecker is not a named Respondent in this matter, the Commission notes that it was not appropriate for him, as a candidate for the position of interim superintendent, to contact a member of the Board to discuss any aspect of the position, including "the general nature of the community and the school system."

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education (Commissioner) for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction and an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanction to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's finding of a violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4, *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of a violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's brief on appeal.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: November 29, 2017

RESOLUTION ADOPTING DECISION – C39-13

WHEREAS, on January 28, 2014, the School Ethics Commission (Commission) voted to transmit C39-13 to the Office of Administrative Law (OAL) for a plenary hearing; and

WHEREAS, at the OAL, the parties filed cross motions for summary decision; and

WHEREAS, in his Initial Decision dated September 13, 2017, the Honorable Solomon A. Metzger, Administrative Law Judge Solomon (ALJ Metzger) granted Respondent's motion for summary decision and, thereby, dismissed the allegations that Respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e); and

WHEREAS, Petitioner filed timely Exceptions on September 26, 2017, and Respondent filed untimely Exceptions on November 2, 2017; and

WHEREAS, at its meetings on October 31, 2017, and November 28, 2017, the Commission considered the record in this matter, including ALJ Metzger's Initial Decision and the parties' Exceptions; and

WHEREAS, at its meeting on November 28, 2017, the Commission voted to adopt ALJ Metzger's findings of fact; to adopt the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24.1(e); to reject the legal conclusion that Respondent did not violate N.J.S.A. 18A:12-24(b); and to recommend that the Commissioner of Education impose a sanction of reprimand; and

NOW THEREFORE BE IT RESOLVED, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on November 28, 2017.

Kathryn A. Whalen, Director
School Ethics Commission