
**MICHELLE D. HARLAN, MICHELLE
ROBERTSON, AND JAMES MALONEY, JR.,**

v.

**LINDA BOND-NELSON,
NORTH PLAINFIELD BOARD
OF EDUCATION,
SOMERSET COUNTY**

- AND -

**MICHELLE D. HARLAN, MICHELLE
ROBERTSON, AND JAMES MALONEY, JR.,**

v.

**BLANKA BUTLER, SANDRA DODD,
KATHLEEN MULLEN, AND THOMAS
ALLEN
NORTH PLAINFIELD BOARD
OF EDUCATION,
SOMERSET COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C04-18

DOCKET NO.: C05-18

**DECISION ON
MOTION TO DISMISS**

CONSOLIDATED

I. PROCEDURAL HISTORY

This consolidated matter arises from two (2) separate but related Complaints filed on January 16, 2018, by Michelle D. Harlan, Michelle Robertson, and James Maloney, Jr. (Complainants). In the first Complaint (C04-18), Complainants allege that Linda Bond-Nelson (Respondent Bond-Nelson), a member and President of the North Plainfield Board of Education (Board), violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code). In the second Complaint (C05-18), Complainants allege that Blanka Butler (Respondent Butler), Sandra Dodd (Respondent Dodd), Kathleen Mullen (Respondent Mullen), and Thomas Allen (Respondent Allen), also members of the Board, violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f) for engaging in the same conduct as Respondent Bond-Nelson, and at the request or direction of Respondent Bond-Nelson.

On January 22, 2018, the Complaints were sent to each Respondent, via certified and regular mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading. On February 14, 2018, Respondent Bond-Nelson (in C04-18) and Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen (in C05-18), filed Motions to Dismiss in Lieu of Answers (Motions to Dismiss), and also alleged that the Complaints are frivolous. On March 12, 2018, Complainants filed a response to Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen's Motion to Dismiss and allegation of frivolous filing, and subsequently filed a response to Respondent Bond-Nelson's Motion to Dismiss and allegation of frivolous filing on March 23, 2018.

By correspondence dated March 29, 2018, the parties were notified that, pursuant to its authority as set forth in N.J.A.C. 6A:28-6.6, the Commission consolidated the Complaints filed by Complainants against all of the Respondents. The Commission's decision to consolidate was based on a review of (1) the identity of the parties in each of the matters; (2) the nature of all questions of fact and law respectively involved; (3) the advisability generally of disposing of all aspects of a controversy in a single proceeding; and (4) other matters appropriate to a prompt and fair resolution of the issues. More specifically, because each Complaint was filed by the same Complainants, each Complaint alleges that the same conduct/action formed the basis for the alleged violations of the Code, and the same counsel represents the named Respondents in each matter, the Commission determined that, in the interest of efficiency, it could resolve both Complaints as a consolidated matter.

By correspondence dated April 16, 2018, the parties were notified that this consolidated matter would be placed on the Commission's agenda for its meeting on April 24, 2018, in order to make a determination regarding the Motions to Dismiss, and allegations of frivolous filings. At its meeting on April 24, 2018, the Commission considered the filings in this matter and, at its meeting on May 22, 2018, the Commission voted to grant the Motions to Dismiss in their entirety for failure to plead sufficient, credible facts to support a finding that any Respondent violated N.J.S.A. 18A:12-24.1(c) and/or N.J.S.A. 18A:12-24.1(f) as alleged in the Complaints, to find the Complaints not frivolous, and to deny Respondents' requests for sanctions.

II. SUMMARY OF THE PLEADINGS

A. The Complaints

In this consolidated matter, Complainants assert that in November 2017, upon realizing that the superintendent's contract would soon expire, but not having any indication as to whether the Board would renew his employment contract, the community rallied to support the superintendent's renewal. In this regard, an online petition was created on November 14, 2017, and by the next day, the petition was signed by two hundred fifty (250) people. At the Board's meeting on November 15, 2017, several students, parents, and teachers voiced their support for the renewal of the superintendent's contract. In addition, the New Jersey Education Association (NJEA) conducted a survey on November 30, 2017, and according to the results, sixty-eight percent (68%) of the people who participated in the survey supported the superintendent's renewal. Notwithstanding this support, the superintendent was placed on a paid leave of absence on December 1, 2017. On the morning of December 6, 2017, the agenda for that evening's Board meeting was posted, and it indicated that the superintendent's contract would be non-renewed, and his contract would terminate on June 30, 2018.

With the above in mind, Complainants argue that the superintendent was placed on a paid leave of absence and the decision to non-renew his employment contract was made before the public had the opportunity to voice its support for the renewal of his employment contract. More specifically, in Count 1, Complainants contend that Respondents initiated the process of non-renewal (placing the superintendent on paid leave, and listing his non-renewal on the Board's agenda) without publicly soliciting comments or feedback from the parents, students, teachers or staff directly. By failing to solicit this feedback before making a decision about non-renewal of

the superintendent's employment contract, Complainants assert that Respondents violated N.J.S.A.18A:12-24.1(c).

In Count 2, Complainants argue that "in the fall of 2016," it was communicated to at least one Complainant that the Board intended to non-renew the superintendent's employment contract. According to Complainants, it was Respondent Bond-Nelson who "introduced" the idea of non-renewing the superintendent's employment contract, and that her recommendation was based on comments from former teachers and administrators who, coincidentally, are her personal friends. Even though the superintendent had an overwhelming amount of community support, and more than fifty (50) people spoke in support of his renewal at the December 6, 2017, meeting, the Board, with the exception of one Board member who resigned prior to the vote, unanimously decided to non-renew the superintendent's employment contract. Based on these facts, and by solely relying on the comments from her friends (former teachers and administrators), it is alleged that Respondent Bond-Nelson violated N.J.S.A.18A:12-24.1(f). In addition, Complainants argue that Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen surrendered their independent judgment in violation of N.J.S.A.18A:12-24.1(f), when they relied solely on the judgment of Respondent Bond-Nelson in voting to non-renew the superintendent's employment contract.

B. Motions to Dismiss and Allegations of Frivolous Filings

In Response to the Complaint, Respondents filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. Respondents assert that while the Complainants' campaign to renew the Superintendent's contract may have been a strong one, there is nothing in the School Ethics Act (Act) that requires the Board to "acquiesce to the alleged majority view of the public when deciding whether to renew a superintendent's contract." Respondents assert they are entitled to have an unpopular point of view, and they properly exercised their independent judgment.

Respondents argue that the Complaint must be dismissed because Respondents' vote to non-renew the Superintendent's contract was confined to policy making, planning and appraisal after consulting those affected. They also argue that Complainants have not presented evidence to support a violation of N.J.S.A. 18A:12-24.1(c) nor does case law support their position. Respondents further assert that at the November 15, 2017, Board meeting, several students, parents and teachers voiced their support for the Superintendent, and at the December 6, 2017, meeting, the results of the NJEA survey were read. The December 6, 2017, Board minutes confirm that the public offered comments and concerns related to the employment of the superintendent, and that approximately one hundred seventeen (117) members of the staff and public appeared; importantly, all of this information was presented *before* the Board voted to non-renew the Superintendent. For the reasons mentioned, Respondents contend that Complainants fail to state a claim for a violation of N.J.S.A. 18A:12-24.1(c).

Respondents further argue that the Complaint must be dismissed because Complainants fail to allege that Respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion who adhere to a particular political party or cause. Complainants claim that Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen relied solely on Respondent Bond-Nelson's judgment, and also claim that Respondent Bond-Nelson inappropriately relied on comments from her friends, who

were former teachers and administrators; however, neither Respondent Bond-Nelson, nor her friends, constitute a special interest group or persons organized and voluntarily united in opinion who adhere to a particular political party or cause. Respondents also argue they are entitled to vote based on their own opinion (and that of the Board President (Respondent Bond-Nelson)). For these reasons, Respondents contend that Complainants fail to state a claim for violation of N.J.S.A. 18A:12-24.1(f).

Finally, Respondents urge that the Complaint is frivolous and was filed in bad faith and solely for the purpose of harassment. According to Respondents, Complainants knew or should have known that the Complaint is without any reasonable basis in law and is deficient; as a result, Complainants should be fined.

C. Responses to Motion to Dismiss and Allegations of Frivolous Filing

In their response to the Motion to Dismiss and allegation of frivolous filing, Complainants reiterate that Respondents' actions were taken without first consulting with those to be affected by the decision, namely the public. Complainants also argue that Respondents' decision was directly impacted by former administrators, and the opinion of former administrators should not have been a factor in the decision to non-renew the superintendent's employment contract. As for the allegation that their Complaint is frivolous, Complainants assert that they only filed their Complaint after consulting with appropriate field personnel.

III. ANALYSIS

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainants), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainants have alleged facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f).

B. Alleged Code Violations

In this consolidated matter, Complainants assert that Respondents violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f). These provisions provide, respectively:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

1. Alleged Violations of N.J.S.A. 18A:12-24.1(c)

Pursuant to N.J.A.C. 6A:28-6.4(a)(7), factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to their duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

In support of their claims that Respondents violated N.J.S.A. 18A:12-24.1(c), Complainants argue that Respondents initiated the process of non-renewal (by placing the superintendent on paid leave, and listing his non-renewal on the Board's agenda) without first publicly soliciting comments or feedback from the parents, students, teachers or staff directly. By failing to solicit feedback from the community before making a decision about whether to renew the superintendent's employment contract, Complainants assert that Respondents violated N.J.S.A. 18A:12-24.1(c).

Based on the record, and in reviewing the allegations in the light most favorable to Complainants, there is insufficient evidence to establish a violation of N.J.S.A. 18A:12-24.1(c). Although the record indicates that the Board took preliminary action in anticipation of non-renewing the superintendent's employment contract, the Board did not actually take action to non-renew the superintendent's employment contract until the evening of December 6, 2017. Prior to the Board's vote on the evening of December 6, 2017, and as corroborated by Complainants' own filings, the online petition was presented to the Board; the results of the NJEA's survey were read to the Board; and a significant number of people (parents and students alike) had the opportunity to address the Board and to voice their support for the renewal of the superintendent's contract. In short, all of this information was presented to the Board before it took any public/formal action with regard to the superintendent's employment status. Additionally, it was only after all of this information from the community was presented to the Board that the Board did, in fact, take public action to non-renew the superintendent's employment contract. The Commission also agrees, as Respondents argue, that the Board's decision to take action which appears inconsistent with that of the community does not, in and of itself, constitute a violation of the Act, or otherwise mean that the Board failed to consider the opinion of the public.¹

Therefore, the Commission finds that even if all of the facts as alleged in the Complaints are true, there is insufficient credible evidence to support a finding that any Respondent violated N.J.S.A. 18A:12-24.1(c).

¹ If members of the public are dissatisfied with the Board's decision to non-renew the superintendent's employment contract, they can always seek to ensure that those Board members are not re-elected to a new term(s). In addition, if the superintendent believes that the Board engaged in unlawful action(s) when it placed him on administrative leave, or otherwise violated the terms of his employment contract, he is free to pursue appropriate legal remedies. In this case, the Commission is constrained to evaluating the merits of the Board member's actions based on the requirements in the Act.

2. Alleged Violations of N.J.S.A. 18A:12-24.1(f)

As set forth in N.J.A.C. 6A:28-6.4(a)(6), factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that Respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that each Respondent used the schools in order to acquire some benefit for him/herself, a member of his/her immediate family, or a friend.

As to this allegation, Complainants contend that by solely relying on comments from her friends (former teachers and administrators) in deciding to non-renew the employment contract of the superintendent, Respondent Bond-Nelson violated N.J.S.A. 18A:12-24.1(f). In addition, Complainants assert that Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen also surrendered their independent judgment in violation of N.J.S.A. 18A:12-24.1(f) by voting to non-renew based solely on the recommendation of Respondent Bond-Nelson.

With the standard for establishing a violation of N.J.S.A. 18A:12-24.1(f) in mind, the record is clear that a violation cannot be found based on the evidence in the record. The Complaint alleges that Respondent Bond-Nelson solely relied on comments from her friends in deciding to non-renew the superintendent's employment contract. Even if this is true, Respondent Bond-Nelson's friends are not a special interest group or persons organized and voluntarily united in opinion. There is also no allegation and no evidence which establishes, or even suggests, that the non-renewal of the superintendent's employment contract benefitted Respondent Bond-Nelson and/or her friends. As to the allegation that Respondent Butler, Respondent Dodd, Respondent Mullen, and Respondent Allen surrendered their independent judgment in violation of N.J.S.A. 18A:12-24.1(f) when they solely relied on Respondent Bond-Nelson's recommendation to non-renew the superintendent's employment contract, Respondent Bond-Nelson, like her friends, is not a special interest group or persons organized and voluntarily united in opinion. In addition, there is no allegation, and no evidence which establishes, or insinuates, that Respondent Bond-Nelson, Respondent Butler, Respondent Dodd, Respondent Mullen, or Respondent Allen acquired any kind of benefit from the non-renewal of the superintendent's employment contract. Therefore, the Commission finds that even if all of the facts as alleged in this consolidated matter are true, there is insufficient credible evidence to support a finding that any Respondent violated N.J.S.A. 18A:12-24.1(f).

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined that Complainants have not alleged any facts which, if true, could support a finding that any Respondent violated N.J.S.A. 18A:12-24.1(c) or N.J.S.A. 18A:12-24.1(f) as alleged in this consolidated matter. Therefore, the Commission grants the Motions to Dismiss in their entirety.

IV. REQUEST FOR SANCTIONS

At its meeting on April 24, 2018, the Commission considered Respondents' requests that the Commission find the Complaints frivolous, and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). Despite Respondents' argument, the Commission cannot find evidence which

might show that Complainants filed the Complaints in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainants knew or should have known that the Complaints were without any reasonable basis in law or equity, or that they could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the Complaints are not frivolous, and denies Respondents' requests for sanctions.

V. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission grants the Motions to Dismiss in their entirety for failure to plead sufficient, credible facts to support a finding that Respondents violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f) as alleged in the Complaints. The Commission also finds that the Complaints are not frivolous, and denies Respondents' requests for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainants and Respondents that, for the reasons set forth above, this consolidated matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: May 23, 2018

**RESOLUTION ADOPTING DECISION
C04-18 AND C05-18 (CONSOLIDATED)**

WHEREAS, at its meeting on April 24, 2018, the School Ethics Commission (Commission) considered the Complaints, the Motions to Dismiss in Lieu of Answer (Motions to Dismiss) and allegations of frivolous filing, and the Responses to the Motions to Dismiss and allegations of frivolous filing, filed in connection with this matter; and

WHEREAS, at its meeting on April 24, 2018, the Commission discussed granting the Motions to Dismiss in their entirety for failure to plead sufficient, credible facts to support a finding that Respondents violated N.J.S.A. 18A:12-24.1(c) and N.J.S.A. 18A:12-24.1(f) as alleged in the Complaints, and dismissing this consolidated matter; and

WHEREAS, at its meeting on April 24, 2018, the Commission discussed finding the Complaints not frivolous; and

WHEREAS, at its meeting on May 22, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from April 24, 2018; and

NOW THEREFORE BE IT RESOLVED, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 22, 2018.

Kathryn A. Whalen, Director
School Ethics Commission