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| <b>IN THE MATTER OF</b>                     | : | <b>Before the</b>               |
|   | : | <b>School Ethics Commission</b> |
| <b>EDWARD MERCER</b>                        | : |                                 |
|   | : | <b>Docket No. C33-96</b>        |
| <b><i>BRICK TWP. BOARD OF EDUCATION</i></b> | : |                                 |
| <b><i>OCEAN COUNTY</i></b>                  | : | <b>DECISION</b>                 |

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### **PROCEDURAL HISTORY**

The above matter arises from a complaint filed by the Brick Township Board of Education against board member Edward Mercer for violating the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. The board filed this complaint on December 5, 1996, alleging that Edward Mercer violated N.J.S.A. 18A:12-24(a) through (f) of the Act when he gave his resume and those of his friends to the Account Manager for Blue Cross/Blue Shield. He did so after he had served on the Board’s Finance Committee, which had the responsibility of recommending a health insurance provider. Mr. Mercer answered this complaint on January 21, 1997, denying that his conduct violated the Act.

The Commission investigated the complaint and on March 17, 1997, sent out notices that it would discuss the case at its April 22, 1997, meeting. However, the case was adjourned and rescheduled for the meeting of May 27, 1997. The parties appeared at the meeting of May 27, 1997, and presented testimony. At its meeting of July 22, 1997, the Commission voted to find probable cause to credit the allegations that Edward Mercer violated N.J.S.A. 18A:12-24(c). It further determined that the material facts were not in dispute and thus, gave Mr. Mercer until August 22, 1997, to file his position in writing as to why the Commission should not find him in violation of the School Ethics Act. The Commission later consented to his attorney’s request to extend the deadline to September 15, 1997. The Commission received his written statement on September 16, 1997, and considered it in rendering the within decision on October 28, 1997.

## FACTS

The Commission has determined that the following material facts are not in dispute, based on the pleadings, the testimony of May 27, 1997, and the Commission's investigation. Mr. Mercer was elected to the Brick Township Board of Education (Board) for a three year term in April 1994. Mr. Mercer was a member of the Board in 1995 and became board vice-president in April 1996. Mr. Mercer is a licensed insurance provider in the State of New Jersey. He was employed by Metropolitan Life until October 23, 1995, when he accepted employment with Blue Cross/Blue Shield as a Team Service Representative. Mr. Mercer served on the Board's Finance Committee during 1995. During that time, the Finance Committee reviewed the issue of whether to change health insurance carriers. On June 27, 1995, the Board took a preliminary vote to change health insurance carriers from CIGNA to Blue Cross/Blue Shield. The Board voted to change insurance carriers because the change would result in significant savings to the district. Mr. Mercer abstained from the vote. Dr. Philip Nicastro, Business Administrator, issued a memorandum to all Board members dated June 29, 1995, recommending that the Board change from CIGNA to Blue Cross/Blue Shield. In that memo, he stated that he had been soliciting proposals for health insurance. On July 13, 1995, the Board took a final vote and voted to change health insurance carriers from CIGNA to Blue Cross/Blue Shield. Mr. Mercer made the motion to change companies and he voted in favor of the change. The motion carried making Blue Cross/Blue Shield the district's health insurance carrier effective September 1, 1995 through August 31, 1996.

On or about August 24, 1995, Mr. Mercer learned that his job at Metropolitan Life was in jeopardy due to planned downsizing and consolidation of offices. Accordingly, Mr. Mercer began to look for employment elsewhere. Around July 1995, Blue Cross/Blue Shield assigned Joseph M. DiBella, Account Manager, to the task of preparing for the takeover and enrollment of district employees. Consequently, Mr. DiBella and Mr. Mercer met by happenstance in a district office. They had not met previously nor were they acquainted with each other previously. As a result of their conversation during this meeting, Mr. Mercer forwarded his resume, along with the resumes of three friends of his who were in a similar situation, to Mr. DiBella. Mr. Mercer also had forwarded his resume to other insurance companies at this time. Mr. DiBella is not responsible for the hiring of individuals at Blue Cross/Blue Shield. Therefore, he forwarded the resumes he received from Mr. Mercer to Angela Buccino by memorandum dated August 25, 1995. Therein, he noted that Mr. Mercer was a member of the Board and that any assistance would be appreciated. Also, by letter dated August 24, 1995, Mr. DiBella advised Mr. Mercer that he had forwarded the resumes to the appropriate offices within Blue Cross/Blue Shield. Mr. DiBella never became involved in the hiring of Mr. Mercer or his friends. Mr. DiBella advised the Commission that it is not unusual for clients to give him resumes to pass on to the appropriate Blue Cross/Blue Shield office. Mr. DiBella did state that it is unusual, however, for him to receive a resume from an individual who was as well qualified for a position as Mr. Mercer.

In September 1995, Mr. Mercer was contacted by Blue Cross/Blue Shield for an interview. Mr. Mercer interviewed and took a test for a position as a Team Service Representative in the State Health Benefits Plan. Blue Cross/Blue Shield hired Mr. Mercer for

this position and assigned him to the Neptune office. Blue Cross/Blue Shield also hired one of Mr. Mercer's friends whose resume he had given to Mr. DiBella. Both Mr. Mercer and his friend were well qualified for the positions for which they were hired.

By decision dated July 23, 1997, the Commission found probable cause to credit the allegations in the Board's complaint that Mr. Mercer violated N.J.S.A. 18A:12-24(b) when he gave his resume and those of his friends to Mr. DiBella. N.J.S.A. 18A:12-24(b) prohibits a school board member from using his position to secure unwarranted advantage, privilege or employment for himself or others. The Commission stated that there is probable cause to believe that Mr. Mercer used his position as a board member to secure an unwarranted advantage, privilege or employment regarding the resumes he gave to Mr. DiBella. The Commission concluded that N.J.S.A. 18A:12-24(a), (c), (d), (e) and (f) were not implicated. Therefore, it dismissed the allegations that Mr. Mercer's conduct in giving the resumes to Mr. DiBella violated N.J.S.A. 18A:12-24(a) and (c) through (f). The Commission invited written statements as to whether Mr. Mercer violated N.J.S.A. 18A:12-24(b) of the School Ethics Act.

## **ANALYSIS**

The issue is whether Mr. Mercer violated the School Ethics Act, specifically N.J.S.A. 18A:12-24(b), in connection with the foregoing facts. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

In his written statement to the Commission, respondent argues that the Commission should not find him in violation of the Act because he did not use his membership on the board to secure unwarranted employment for himself or his friends with Blue Cross/Blue Shield. First, he states that Mr. DiBella's reference to his board membership in his correspondence to Angela Buccino was unknown to him. Mr. Mercer did not suggest that he mention his board membership and Mr. DiBella did not copy him on the correspondence to Ms. Buccino. Second, he argues that he received high scores on his interview and evaluation and was more than qualified for the position. He also argues that he gave his resume to Mr. DiBella because it would facilitate getting his resume to the appropriate office, a necessity in dealing with a large corporation such as Blue Cross/Blue Shield. Thus, he asks the Commission to conclude that he sought no special advantage due to his board membership and did not even need Mr. DiBella's assistance to gain employment with Blue Cross/Blue Shield.

In analyzing Mr. Mercer's conduct under subsection (b), the Commission accepts the arguments exerted by Mr. Mercer. He did not ask Mr. DiBella to mention his membership on the board to the person to whom he forwarded the resume. The Commission finds persuasive Mr. DiBella's sworn testimony before the Commission that he did not do for Mr. Mercer anything that he would not do for anyone else. He has received resumes from persons whom he meets

fortuitously on previous occasions and he generally forwards them to the human resources person. He further testified that he did not feel pressured to do so because Mr. Mercer was a board member and thus, a client. Moreover, Mr. DiBella advised the Commission that he did not do anything other than forward the resumes to human resources.

Also, the Commission does not dispute that Mr. Mercer possessed the qualifications for the job. It cannot conclude for certain that Mr. Mercer could have obtained a job with Blue Cross/Blue Shield without the assistance of Mr. DiBella. Without the assistance of Mr. DiBella, the resume may have languished for months in a pile full of equally qualified applicants. Nonetheless, Mr. Mercer's qualifications make it difficult to conclude that his employment was "unwarranted" under subsection (b).

The Legislature set forth in its findings and declarations that "board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." N.J.S.A. 18A:12-22(a). However, the Commission must find that respondent committed some prohibited act, N.J.S.A. 18A:12-24(b) in the present case, in order to find a violation. The facts of this particular case do not prove that Mr. Mercer violated subsection (b). Mr. Mercer did not pressure or cajole Mr. DiBella into accepting his resume. In addition, Mr. DiBella advised the Commission that he did not feel that Mr. Mercer used his position as a board member to secure any favors or special treatment. Considering the facts of this case, in particular the information provided by Mr. DiBella, the Commission cannot conclude that Mr. Mercer used or attempted to use his position to secure unwarranted privileges, advantages or employment. The Commission does not encourage or condone Mr. Mercer's conduct, but finds that he only committed an error in judgment that is not likely to recur since he is no longer a board member. The Commission understands that the complaints perceived that Mr. Mercer's sending the resumes while he was a board member and on the Finance Committee, appeared to place Mr. DiBella in the position of having to give him special consideration as a new client, but the facts indicate that he did not.

The Commission now concludes that Mr. Mercer did not use his position as a board member to secure unwarranted privileges, advantages or employment for himself and others by giving his resume and those of his friends to the Blue Cross/Blue Shield Account Manager assigned to handle the Board's account. The advantage he gained from having Mr. DiBella forward his resume to the appropriate person was no more than anyone else would have gained if he had been introduced to someone inside the corporation. Further, and most importantly, the job he received was one for which he more than met the qualifications. In reaching its conclusion in this case, the Commission does not intend to imply that it is appropriate for a board member to seek employment through a connection with a vendor. The Commission makes this ruling on the precise facts before it in this case.

## **DECISION**

For the foregoing reasons, the School Ethics Commission finds that Mr. Mercer exercised poor judgment in giving his resume to the Account Manager for Blue Cross/Blue Shield, but did not violate N.J.S.A. 18A:12-24(b) of the School Ethics Act. The Commission thus dismisses the complaint against him.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Respectfully submitted,

Paul C. Garbarini  
Chairperson

## **Resolution Adopting Decision -- C33-96**

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and if applicable, has considered the arguments raised by parties in subsequent submissions; and

Whereas, the Commission found probable cause to credit the allegations in the complaint that Edward Mercer violated the School Ethics Act; and

Whereas the Commission reviewed respondent's written statement in response to the finding of probable cause and now concludes that Mr. Mercer did not violate the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 28, 1997.

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Lisa James-Beavers  
Executive Director