

EDU #12572-95
C # 415-96
SB # 74-96

IN THE MATTER OF THE SPECIAL :
ELECTION HELD IN THE LACEY : STATE BOARD OF EDUCATION
SCHOOL DISTRICT, OCEAN COUNTY. : DECISION

Decided by the Commissioner of Education, September 25, 1996

For the Petitioner-Appellant, Thomas Palczewski, pro se

For the Respondent-Respondent, Arthur Stein, Esq.

For the Intervenor, Zazzali, Zazzali, Fagella & Nowak (Edward H. O'Hare,
Esq., of Counsel)

Thomas R. Palczewski (hereinafter "petitioner") filed a petition with the Commissioner of Education contending that irregularities had occurred during and prior to a bond referendum election held on December 2, 1995 in the Lacey Township school district. The Board of Education of the Township of Lacey (hereinafter "Board") filed a motion for summary decision, arguing, inter alia, that petitioner had failed to state a claim upon which relief could be granted and that his petition had not been signed by 10 individuals who had actually voted in that election, as allegedly required by N.J.S.A. 18A:14-63.12.¹

¹ N.J.S.A. 18A:14-63.12, which was repealed by L.1995, c. 278, s. 46, eff. March 14, 1996, provided that the Commissioner of Education was required to inquire into alleged violations of statutorily prescribed procedures for school elections "upon petition of 10 qualified voters at any school election."

The Administrative Law Judge (“ALJ”) recommended dismissing the petition, agreeing that the petition had not been signed by “10 qualified voters at any school election.” N.J.S.A. 18A:14-63.12. The ALJ also found that the majority of petitioners’ allegations failed to state a claim upon which relief could be granted.

The Commissioner adopted the ALJ’s recommended decision with modification. The Commissioner found it unnecessary to reach the question of whether the petition was required to be signed by ten individuals who had actually voted in the election since the statute at issue had been repealed and “given that the ALJ proceeded with a hearing on the merits.” Commissioner’s Decision, slip op. at 20. The Commissioner concluded that the “record does not substantiate the irregularities alleged to have occurred in this matter, nor that, even if they did occur, they were sufficient to have affected the outcome of the election....” Id. Consequently, he dismissed the petition.

After a careful review of the record, we agree with the Commissioner’s ultimate determination to dismiss the petition. We do so, however, for the reasons expressed herein, and modify his decision accordingly.

We find initially that petitioner has set forth several claims in his petition upon which relief could be granted. Petitioner alleges that teachers in the district involved students in a number of school activities designed to advocate passage of the bond referendum, in violation of N.J.S.A. 18A:42-4 and the Board’s rules implementing that statute.² Petitioner further contends that a school principal sent letters to alumni on

² N.J.S.A. 18A:42-4 provides:

No literature which in any manner and in any part thereof promotes, favors or opposes the candidacy of any candidate for election at any annual school election, or the adoption of any bond issue, proposal, or

district stationery urging their support for the referendum, in violation of the district's implementing rules prohibiting staff members from conducting political activities during school hours and on school property.

However, viewing the record in a light most favorable to petitioner, including the papers he filed in response to the Board's motion for summary decision, we are compelled to conclude that he has not come forward with any proofs or asserted any facts that would show a nexus between the violations alleged in his petition and the outcome of the election. In this respect, we stress that in order for an election to be invalidated, it must be shown that the irregularity influenced the election so as to have repressed a full and free expression of the popular will. In re Wene, 26 N.J. Super. 363, 383 (Law Div. 1953), aff'd, 13 N.J. 185 (1953). "It is well established that elections are to be given effect whenever possible and are not to be set aside unless it can be shown that the will of the people was thwarted, was not properly expressed, or could not fully be determined." In the Matter of the Annual School Election of the School District of Lacey Township, decided by the Commissioner, 91 N.J.A.R.2d (EDU) 3, 6, quoting In the Matter of the Annual School Election Held in the Township of Pittsgrove, decided by the Commissioner, 1976 S.L.D. 585, 589.

any public question submitted at any general, municipal or school election shall be given to any public school pupil in any public school building or on the grounds thereof for the purpose of having such pupil take the same to his home or distribute it to any person outside of said building or grounds, nor shall any pupil be requested or directed by any official or employee of the public schools to engage in any activity which tends to promote, favor or oppose any such candidacy, bond issue, proposal, or public question. The board of education of each school district shall prescribe necessary rules to carry out the purposes of this section.

In this instance, the bond referendum at issue passed by a vote of 2,254 to 1,907, a difference of 347 votes, and petitioner, in response to the Board's motion for summary decision, has failed to offer any proofs showing that the irregularities alleged in his petition, even if true, had the effect of thwarting the will of the electorate. An election will not be set aside on the basis of mere speculation that the result would have been different. See In re Clee, 119 N.J.L. 310 (1937); In the Matter of the Annual School Election Held in the Borough of Ringwood, decided by the Commissioner, 1974 S.L.D. 591.

In this context, we correct the Commissioner's apparent misconception that the ALJ conducted a hearing on the merits of this matter. The ALJ's recommended decision was based on a motion for summary decision, and there is no indication in the record that he conducted a hearing or considered the merits of petitioner's claims.

Accordingly, for the reasons expressed herein, we grant the Board's motion for summary decision and dismiss the petition. Given our determination, and in light of the fact that N.J.S.A. 18A:14-63.12 was repealed in 1996, we find no need to address the Board's contention that the petition was invalid because it had not been signed by ten individuals who had actually voted in the challenged election.

However, we cannot ignore the proofs submitted by petitioner regarding school activities conducted prior to the election, and we strongly admonish the Lacey Board that school children may not be "requested or directed by any official or employee of the public schools to engage in any activity which tends to promote, favor or oppose any...candidacy, bond issue, proposal or public question." N.J.S.A. 18A:42-4. We direct the Board to reexamine its rules governing such activities, along with its means

of implementing those rules, in order to insure that future elections do not involve any such conduct.

Since we have rendered our final determination in this matter, we deny as moot the Board's motion to accelerate the proceedings. We also deny the Board's request to file a response to petitioner's reply brief as unnecessary for a fair determination of this case.

February 5, 1997

Date of mailing _____