

BARBARA R. O'HERN, VINCENT :  
CRAPELLI AND DARRYL HUGHES, :  
 :  
 PETITIONERS, : COMMISSIONER OF EDUCATION  
 :  
 V. :  
 :  
 : DECISION  
 :  
 BOARD OF TRUSTEES OF THE :  
 RED BANK CHARTER SCHOOL, :  
 MONMOUTH COUNTY, MICHAEL :  
 STASI, GAYLE HORVATH, DARRELL :  
 JACKSON AND DEBRA LOCK, :  
 :  
 RESPONDENTS. :  
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SYNOPSIS

This matter arose out of a decision by the Board of Trustees of Red Bank Charter School to bar further involvement on the Board by Vincent Crapelli and Darryl Hughes, who had been serving as Trustees prior to discovery that they had not been elected by majority vote in accordance with the school's bylaws. The single issue presented was whether Crapelli and Hughes were duly elected members of the Board who could not be removed by the Board's failure to pass a ratification vote.

The ALJ found that that the Board elected Crapelli and Hughes to membership by acclamation, and that the men went on to serve with the same authority enjoyed by other Trustees for several months. The ALJ acknowledged that the bylaws of the charter school require a majority vote of the Board to seat a new trustee, but asserted that functionally the acceptance by acclamation expressed the will of the Board, and, to the extent that an imperfection in the process existed, it was corrected when the Board adopted its annual report in July 2004 listing Crapelli and Hughes as Trustees. The ALJ ordered the men to be reinstated to active Board membership immediately, and emphasized that the majority of a board ought not to find refuge in a perceived technicality to carry forward its purposes. The ALJ pointed out that the Board is authorized under its bylaws to remove Trustees by majority vote, but no such vote was taken in this case.

The Commissioner concurred with the findings and conclusions of the ALJ. The Commissioner held that, under the circumstances, no ratification vote was necessary to legitimize Crapelli and Hughes' election to the Board, and that the vote taken in this instance could not be used to nullify the Board's prior action and effectively remove duly sitting Board members with whom the majority had become dissatisfied without following the process for such removal established in the charter school's bylaws. The Initial Decision was adopted as the final decision, and the Commissioner directed the Board of Trustees to ensure that future Board elections are conducted in accordance with its charter and bylaws. The Commissioner also reminded charter schools generally of the importance of compliance with their own rules of governance with respect to election of Board of Trustee members.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 499-05  
AGENCY DKT. NO. 5-1/05

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Pursuant to *N.J.A.C.* 1:1-18.4, respondents filed timely exceptions, to which petitioners replied.

In their exceptions, respondents object to the minimal weight accorded the November 23, 2004 letter from the Department of Education to Board President Stasi, to statements by the Administrative Law Judge (ALJ) that the Board of Trustees acted hastily and arbitrarily in voting not to ratify the appointment of petitioners Crapelli and Hughes to the Board, and to the ALJ's disregard of *Prickett, supra*, the case law precedent cited by respondents. (Respondents' Exceptions at 1-4) In reply, petitioners object to respondents' characterization of the Department's letter and urge adoption of the ALJ's conclusions, describing respondents'

actions as “[taking] the law into their own hands” by failing to conduct the necessary legal and factual review before acting.<sup>1</sup> (Petitioners’ Reply at 1-2)

Upon review, the Commissioner concurs with the ALJ that, under the particular circumstances of this matter, it is appropriate to look beyond form to the substance of the Board’s actions and to reinstate Crapelli and Hughes to Board membership on that basis. Meeting minutes plainly show Crapelli and Hughes to have been accepted as members by the Board of Trustees on May 12, 2004 and to have functioned in all respects as full, voting Board members thereafter. Most significantly, minutes of the Board’s July 14, 2004 meeting show that “all members present,” including respondents Stasi, Horvath and Lock, “approved” the listing of Board members to be submitted to the Department in the Charter School’s 2003-04 Annual Report. The excerpt from that report incorporated into the meeting minutes not only specifically includes Crapelli and Hughes as voting Board members, but additionally explains that the Board was comprised of seven members until April, when the eighth and ninth members were approved; it further incorporates an annotation in the minutes explaining that, although the Annual Report indicates that the men were approved in April, their actual approval came in May, April being the time when interviews and tours were conducted.

Clearly, as found by the ALJ, notwithstanding the absence of a recorded majority vote specifically for the purpose of “electing” Crapelli and Hughes as required by the charter school’s bylaws, the Board in effect elected them in May, with any defect in the election process corrected by the Board’s recorded vote to accept the Annual Report on July 14. Under these

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<sup>1</sup> Petitioners also claim that “certain factions within the Red Bank Charter School may be sending [the Commissioner] letters or a petition to influence [the Commissioner’s] decision in this matter” and they object to any consideration being given to such submissions, which they have not seen and which are not submitted by parties to this matter. (Petitioners’ Reply at 2) It is noted that submissions of this type are never considered by the Commissioner in deciding a contested case, since the Commissioner’s decision must be made based solely on the record developed pursuant to applicable procedural rules.

circumstances, despite any suggestion to the contrary in the Department’s November 23, 2004 letter—which, the Commissioner notes, was issued without benefit of the factual record and legal perspective developed at hearing—the Board did not need a subsequent ratification vote to legitimize Crapelli and Hughes’s election, and the one taken cannot be used to nullify the Board’s prior action and effectively remove duly sitting Board members with whom the majority has become dissatisfied without following the process for such removal established in the charter school’s bylaws.<sup>2 3</sup>

Accordingly, the Initial Decision of the OAL, ordering that Vincent Crapelli and Darryl Hughes be forthwith reinstated to membership on the Board of Trustees of the Red Bank Charter School, is adopted as the final decision in this matter. The Board of Trustees is directed to ensure that future Board elections are conducted strictly in accordance with the provisions of its charter and bylaws, and charter schools generally are reminded of the importance of compliance with their own rules of governance in this regard.

IT IS SO ORDERED.<sup>4</sup>

#### COMMISSIONER OF EDUCATION

Date of Decision: April 19, 2005

Date of Mailing: April 19, 2005

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<sup>2</sup> In objecting to the ALJ’s characterization of their actions as arbitrary and capricious, respondents note that “the seven existing Board members had six months of experience working with Crapelli and Hughes as *de facto* Board members on which to base their considered decisions. The vote not to elect Crapelli and Hughes was far less arbitrary than a vote six months earlier would have been.” (Respondents’ Exceptions at 2)

<sup>3</sup> The resolution of Crapelli and Hughes’ status on July 14 also renders inapplicable the case law precedent cited by respondents, even granting, *arguendo*, that it is germane to charter school Board members as claimed.

<sup>4</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*