

<p>IN THE MATTER OF</p> <p>RHONDA WILLIAMS BEMBRY HACKENSACK BOARD OF EDUCATION, BERGEN COUNTY</p>	<p>: : : : : : : : : : : : :</p>	<p>BEFORE THE SCHOOL ETHICS COMMISSION</p> <p>OAL DKT. NO.: EEC 07040-12 SEC DOCKET NO. C49-12</p> <p>FINAL DECISION</p>
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PROCEDURAL HISTORY

This matter arises from a complaint filed on November 7, 2012 by Interim Superintendent Joseph Abate, Jr. alleging that Rhonda Williams Bembry, a member of the Hackensack Board of Education, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24(b) of the Act as well as N.J.S.A. 18A:12-24.1(b), (c), (d), (e), (f), (g), (h) and (i) of the Code of Ethics for School Board Members.

On January 11, 2013, the respondent filed a Motion to Dismiss in Lieu of Answer and included an allegation that the complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e). The parties were notified by letter dated February 1, 2013 that this matter would be placed on the agenda for its meeting on February 19, 2013 in order to make a determination regarding the respondent’s Motion to Dismiss the complaint, as well as the allegation of frivolousness. At its meeting February 19, 2013, the Commission voted to deny the Motion to Dismiss the complaint and further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

The Commission conducted a probable cause review, and at its meeting on March 19, 2013, the tribunal found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) of the Act. The Commission then voted to transmit the matter to the Office of Administrative Law (OAL) for a plenary *de novo* hearing, pursuant to N.J.A.C. 6A:28-10.7(c)2.

After transmittal, the Administrative Law Judge conducted several days of hearing and closed the record on July 16, 2014. The Initial Decision of the ALJ and file were transmitted to the Commission on August 25, 2014, and the decision was mailed to the parties the next day. The ALJ concluded in his Initial Decision that respondent’s conduct constituted a violation of N.J.S.A. 18A:12-24(b) by creating a justifiable impression among the public that she used her official position to secure an unwarranted privilege for herself or others and recommended the sanction of reprimand.

Upon return of the matter from the OAL, 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 of time in which to issue its final decision in this matter. Pursuant to N.J.A.C. 1:1-18.4, the Deputy Attorney

General (DAG), representing the Commission, filed exceptions to the Initial Decision with the Commission on September 9, 2014, and on September 12, 2014, the respondent filed a reply thereto.

At its September 23, 2014 meeting, the Commission reviewed the record of this matter, the Initial Decision of the ALJ, and exceptions and reply filed in response at which time the Commission adopted the conclusions of the ALJ for the reasons expressed in his Initial Decision; however, the Commission modified the penalty and recommended censure instead of reprimand.

ANALYSIS

Upon careful and independent review of the record, the Commission finds that the record supports the ALJ's factual findings as well as the legal conclusion that the respondent violated N.J.S.A. 18A:12-24(b) as alleged in Counts 2 and 3 of the complaint.

In his thoughtful and well-reasoned Initial Decision, the ALJ found that on May 8, 2012, Respondent Bemby engaged in a course of conduct reminiscent of the behavior for which the School Ethics Commission issued a formal reprimand with the respondent's consent and acknowledgement that she violated the Code of Ethics for School Board Members (Code) by improperly voting against the appointment of the High School Principal. (See Dr. Edward Kliszus v. Rhonda Williams Bemby, Hackensack Board of Education, Bergen County, OAL Dkt. No. SEC 04301-11, C29-10 August 23, 2011). At the meeting on May 8, 2012, the respondent ignored the previously imposed penalty and once again voted against the reappointment of the very same High School Principal, claiming to have forgotten about the previous sanction.

The ALJ also found that Respondent Bemby again violated N.J.S.A. 18A:12-24(b) when she insinuated herself in the hiring of an acquaintance of hers. The ALJ found that the respondent attempted to use her position to secure the employment for her friend by approaching the Director of Building and Grounds, who felt pressured into interviewing this candidate. Once again, this behavior is also reminiscent of conduct, which she acknowledged as improper and in violation of the Code when she emailed two principals, promoting an applicant for a teaching position, as well as other emails endorsing other individuals for various positions. For these, Respondent Bemby received the penalty of reprimand.

In her exceptions, Respondent Bemby argues that the complainant failed to produce sufficient evidence to support a violation of N.J.S.A. 18A:12-24(b) since the ALJ's reliance on Advisory Opinion A06-08 was never mentioned in the earlier Kliszus decision as a foundation for the penalty. Moreover, no one thought that Respondent Bemby should abstain from the vote to reappoint the High School Principal since it was not a personal attack against him, but against the One Principal/Four Vice-Principal paradigm and "a challenge to the longstanding district practice of hiring 'only white men' as High School Principal." (Respondent's Exceptions, p. 17).

The respondent also contends that the record does not support a finding that she violated N.J.S.A. 18A:12-24(b) when she imposed her will to influence the hiring of her acquaintance by approaching the Director of Building and Grounds and further opines that the Act provides a

Board member some flexibility. She suggests that permission to make an inquiry for information on behalf of a constituent is not prohibited, pursuant to N.J.S.A. 18A:12-24(i).

In his exceptions, the DAG accepts the ALJ's findings and conclusions of law, but argues that the penalty of reprimand is too lenient since the proper weight was not given to the aggravating factors in this case. (Complainant's Exceptions, p. 1). He maintains the finding that Respondent Bemby repeated substantially the same conduct for which she received a reprimand deserves greater consideration.

The Commission concurs. In its considered review, the Commission determines that in light of the previous penalty of reprimand, it was incumbent upon Respondent Bemby to have remembered the reasons for which the penalty was imposed. Instead, she repeated essentially the same conduct for which she first was disciplined. Her testimony that she had forgotten about the affidavit in which she acknowledged that she violated the Code because of her improper conduct strains credulity.¹

The Commission recognizes that these are matters that turn on the credibility of witnesses. In this regard, the Commission must give deference to the credibility determinations of the ALJ. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility." (In the Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), certif. denied, 121 N.J. 615 (1989)). Upon review of the record, the Commission hereby concludes that the ALJ's credibility determinations in this matter must be given deference and his findings based on those determinations cannot be overturned.

As such, the Commission does not have the authority to find otherwise unless it first determines that the "findings are arbitrary, capricious or unreasonable or not supported by sufficient complete and credible evidence in the record." N.J.S.A. 52:14B-10(c). Here, the Commission does not so find.

To the extent that the respondent contends that the ALJ misjudged the testimony and the documentary evidence, the Commission determines that the findings issued by the ALJ provide a sufficient basis for reviewing his conclusions and recommendations. As such, the Commission recognizes that "the ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them." (State, Dept. of Health v. Tegnazian, 194 N.J. Super. 435 at 442, 443.) The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefore." (Id. at 443) Here, the Commission finds that the ALJ fairly summarizes the testimony and evidence.

¹ On May 31, 2012, after the vote on May 5, 2012 and before the filing of this complaint on November 7, 2012, Respondent Bemby requested an advisory opinion from the School Ethics Commission inquiring whether she would be in violation Act if she voted on matters involving the High School Principal and Vice Principal in the future. On July 25, 2012, the Commission issued Advisory Opinion A13-12, advising her to recuse herself from any future discussions or decisions related to the employment of these individuals due to her negative animus for them.

It is clear that the ALJ found the Director of Buildings and Grounds credible when he testified that he felt pressure from Respondent Bemby to interview her candidate and would not have otherwise done so since the candidate was not qualified. (Initial Decision, p.12). On the other hand, the ALJ was unpersuaded by Respondent Bemby's testimony that she harbored no ill will or negative animus against reappointment of the High School Principal since he is one of the "men" she voted against in the Kliszus matter. Moreover, the reprimand she received, along with the legislative findings, published advisory opinions and decisions all placed Respondent Bemby on notice that she should have abstained from the vote. (Initial Decision, p.21) Moreover, the ALJ was also unpersuaded by respondent's testimony that contacting the Director of Buildings and Grounds was an "innocuous action on behalf of a constituent." (Initial Decision p.23) The ALJ concluded that handing nine resumes to the Interim Superintendent and creating pressure for the Director to interview her candidate created a justifiable impression among the public that Respondent Bemby used her position for the benefit others.

Further, while it is true, as the respondent contends, that N.J.S.A. 18A:12-24(i) permits a Board member to make inquiries for information on behalf of a constituent, the subsection does not permit lobbying for privileges on behalf of the constituent. Moreover, simply because Advisory Opinion A06-08 was not mentioned in the Kliszus matter, the ALJ is not prohibited from relying on it here.

Based on the foregoing, the Commission determines that the ALJ's factual findings provide a reasonable basis for his conclusions of law, there is no cause to disturb his decision on the merits only.

However, in view of Respondent Bemby's prior acknowledgement and recognition of her improper conduct and its concomitant penalty in the Kliszus matter and because she repeated substantially the same improper conduct in this instant matter, the Commission hereby modifies the ALJ's recommended penalty of reprimand and recommends to the Commissioner of Education the penalty of censure.

DECISION

For the reasons set forth above, the Commission accepts the Initial Decision of the ALJ and concludes that the respondent violated N.J.S.A. 18A:12-24(b) of the Act and voted to modify the penalty recommend in the Initial Decision.

PENALTY

The Commission recommends the penalty of censure for respondent's violation of N.J.S.A. 18A:12-24(b).

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education 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 violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

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

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4, et seq. within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown 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 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 (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 briefs on appeal.

Robert W. Bender, Chairperson

Decision Mailed: October 29, 2014

Resolution Adopting Decision – C49-12

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, the Administrative Law Judge concluded that respondent's conduct violated N.J.S.A. 18A:12-24(b) of the Act; and

Whereas, the parties filed exceptions to the ALJ's decision and replies; and

Whereas, after consideration of the full record, at its meeting on September 23, 2014, the Commission concluded that, given the facts, the recommended penalty in the Initial Decision of the ALJ should be modified, and

Whereas, the Commission recommends the penalty of censure of the respondent for her actions; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

Now Therefore Be It Resolved, the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 28, 2014.

Joanne M. Restivo
Acting Executive Director