

Before the School Ethics Commission
OAL Docket No.: EEC-05095-2020
SEC Docket No.: C69-19 and C70-19 (Consolidated)
Final Decision

Colleen Conway, Kelly Adams Phillips, and Karen Vaughan,
Complainants

v.

William Fenimore and Eileen Bowker,
Long Beach Island Consolidated Board of
Education, Ocean County,
Respondents

I. Procedural History

The above-captioned consolidated matter arises from three (3) separate but related Complaints. In the matter docketed by the School Ethics Commission (Commission) as **C62-19**, multiple Complainants filed an ethics Complaint alleging that William Fenimore (Respondent Fenimore) and John McMenamin (Respondent McMenamin), members of the Long Beach Island Consolidated Board of Education (Board), violated *N.J.S.A.* 18A:12-24(d) of the School Ethics Act, *N.J.S.A.* 18A:12-21 *et seq.*

In the matter docketed by the Commission as **C69-19**, Colleen B. Conway (Complainant Conway) filed an ethics Complaint alleging that Respondent Fenimore and Eileen Bowker (Respondent Bowker), members of the Board, violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (the Code). Finally, in the matter docketed by the Commission as **C70-19**, Kelly Adams Phillips (Complainant Phillips) and Karen Vaughan (Complainant Vaughan) filed a separate ethics Complaint alleging that Respondent Fenimore and Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e) of the Code.

By correspondence dated March 18, 2020, the parties were advised that, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-6.6, the Commission determined to consolidate C62-19, C69-19, and C70-19.

Following consolidation, and at its special meeting on April 21, 2020, the Commission adopted a decision finding that the Complaints were timely filed; **granting** the Motions to Dismiss as to the alleged violation of *N.J.S.A.* 18:12-24(d) by both Respondent Fenimore and Respondent McMenamin; and **denying** the Motions to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24.1(e) by both Respondent Fenimore and Respondent Bowker. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondents' request for sanctions.

Based on its decision, the matter docketed by the Commission as C62-19, which included the only violation of the Act filed against Respondent McMenamin, was dismissed. In addition, the Commission directed the remaining Respondents, namely Respondent Fenimore and Respondent Bowker, to file an Answer to Complaint (Answer) as to the alleged violation of *N.J.S.A.* 18A:12-24.1(e) of the Code. On May 7, 2020, Respondent Fenimore and Respondent Bowker filed an Answer as directed, and the above-captioned consolidated matter was transmitted to the Office of Administrative Law (OAL) as a contested matter.

At the OAL, the matter was assigned to the Honorable Elia A. Pelios, Administrative Law Judge (ALJ Pelios). *Initial Decision* at 1. On January 27, 2021, Complainant Conway filed a motion for summary decision, and Complainant Phillips filed a similar motion on February 8, 2021. *Id.* at 2. On March 10, 2021, Respondents filed an opposition to the motions for summary decision, and filed a cross-motion for summary decision. *Id.* On September 23, 2021, ALJ Pelios issued an order denying all motions for summary decision. *Id.* Subsequently, ALJ Pelios held evidentiary hearings on January 12, 2022; January 13, 2022; and January 18, 2022. *Id.* The record was then held open to allow for written summations, and the record closed on June 16, 2022. *Id.*

On December 14, 2022, ALJ Pelios issued an *Initial Decision* detailing his findings of fact and legal conclusions. The Commission acknowledged receipt of ALJ Pelios' *Initial Decision* on the date it was issued (December 14, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was January 30, 2023.¹ Prior to January 30, 2023, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions (if any). 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 until March 16, 2023.

Following a discussion at its special meeting on January 31, 2023, during which the full record was reviewed, the Commission voted, at its regularly scheduled meeting on February 21, 2023, to adopt the findings of fact from ALJ Pelios' *Initial Decision*; to adopt the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent Fenimore and/or Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e); and to adopt ALJ Pelios' decision to dismiss the above-captioned consolidated matter.

II. Initial Decision

In his September 23, 2021, order on summary decision, ALJ Pelios issued certain *factual findings*. *Id.* Specifically, ALJ Pelios found that on October 15, 2019, the Board passed a resolution that no discussion or decisions regarding the sale of the Ethel A. Jacobsen (EAJ) school property should be made prior to a referendum vote on December 10, 2019. *Id.* On November 13, 2019, Respondent Fenimore attended the Surf City Town Municipal meeting. At

¹ Forty-five (45) days after December 14, 2022, was, technically, Saturday, January 28, 2023; by rule, and because January 28, 2023, was a Saturday, the deadline was extended until the next business day, which was Monday, January 30, 2023.

that meeting, the Surf City Mayor, Francis Hodgson, made note of a previous offer of \$2.5 million made to the Board for the purchase of EAJ. *Id.* Respondent Fenimore asserts he did not raise the issue at the November 13, 2019, meeting, and he was not aware of the previous outstanding offer of \$2.5 million. *Id.*

Following the November 13, 2019, meeting, Mayor Hodgson called Respondent Fenimore and asked him “what needed to be done” to discuss purchasing the school. *Id.* at 2-3. Respondent Fenimore claims he told Mayor Hodgson that it would take at least \$3 million to purchase EAJ due to the state of the building. *Id.* at 3. Respondent Fenimore maintains that this conversation was not a formal negotiation, but rather a conversation of the value of the property and how much it would take to justify the sale of the property. *Id.* On November 18, 2019, Respondent Fenimore contacted Board counsel seeking legal advice regarding the discussion with Mayor Hodgson and the non-discuss period, as well as advice regarding his position on the Surf City Land Use Board. *Id.*

On November 19, 2019, the Board held a public meeting at which Respondent Fenimore brought up his conversation with Mayor Hodgson. *Id.* According to the meeting minutes, there was extensive discussion regarding Respondent Fenimore’s statement that he had a discussion with Mayor Hodgson regarding the sale of EAJ. *Id.* Respondent Fenimore again maintained that his conversation was not a formal negotiation, but rather a conversation on what it would take to purchase the school due to the property size and repairs it needs. *Id.* The public offered comments and inquired (1) when Board members were informed of the offer from Surf City, (2) the impact of the offer on the referendum, (3) the fair market value of the property, and (4) the specific content of Respondent Fenimore’s conversation with Mayor Hodgson. *Id.* At this same meeting, Respondent Fenimore brought a motion to rescind the non-discuss period instituted on October 15, 2019, which was approved by the Board (5-3). *Id.* The Board also voted to open formal negotiations with Surf City regarding the sale of EAJ (9-0), and to create a committee to begin the negotiation process (6-3). *Id.*

Respondent Bowker also discussed the EAJ property with Mayor Hodgson in a private conversation at the mayor’s home and referenced this conversation at the November 19, 2019, meeting. *Id.* Respondent Bowker maintains that the conversation occurred after she heard that EAJ was a topic of conversation at the Surf City town meeting. *Id.* Respondent Bowker maintains that the conversation only touched upon the referendum and did not include any negotiations, actions or personal promises, whereas Complainants allege that Respondents made personal promises to Mayor Hodgson regarding the sale of EAJ. *Id.* at 3-4.

In denying the motions for summary decision, ALJ Pelios determined that Complainants “had not shown how the conversations between the [R]espondents and the Surf City mayor constitute a ‘personal promise’ or ‘private action’ beyond the scope of their duties as board members that could compromise the Board.” *Id.* at 4. ALJ Pelios additionally determined that a hearing “consisting of additional testimony was necessary to determine the content of the conversations.” *Id.*

Consequently, hearings were held on January 12, 2022; January 13, 2022, and January 18, 2022, and testimony was presented by Respondent Fenimore, Respondent Bowker, Christine

Kelly (Board BA/BS), James Donahower (former Board member), Colette Southwick (former Board member), and Anthony Scarillo (Board counsel). *Id.* at 4-5.

Although Complainants, over the course of the scheduled hearings, attempted to elicit testimony regarding “the content of the conversations ... [R]espondents had with Mayor Hodgson and whether they included any personal promises, negotiations, or other actions that could have compromised the Board,” ALJ Pelios stated, “ultimately what happened in those conversations is only known by the participants.” *Id.* at 6. One potential witness with knowledge did *not* testify as Complainants “compassionately determined not to insist given a medical situation the witness was facing.” *Id.* Although Respondent Fenimore and Respondent Bowker *did* offer sworn testimony, “nothing in the testimony offered provided any evidence of a promise made by [Respondent] Bowker or [Respondent] Fenimore and show that ultimately any action taken was action of the Board.” *Id.* Consequently, ALJ Pelios *found* “that there is insufficient evidence in the record upon which to base a finding that [R]espondents Fenimore or Bowker made a ‘personal promise,’ or acted outside the scope of a board member’s duties.” *Id.*

Based on the record, ALJ Pelios concluded that the “[t]he record reflects that there is insufficient evidence ... upon which to base a finding that [R]espondent Fenimore or [Respondent] Bowker made a ‘personal promise,’ or acted outside the scope” of their duties as members of the Board. *Id.* at 8. ALJ Pelios notes it is clear from the record “that a significant policy disagreement existed surrounding the sale of [EAJ] and the relationship to the upcoming referendum.” *Id.* Furthermore, it was “clearly a matter of obvious public concern, and many people of various sides of the discussion had very strong feelings.” *Id.* However, “[t]hat a policy disagreement elicits significant debate or disagreement in the community does not necessarily mean that one side is acting unethically or in violation of the [C]ode while seeking to advance their preferred position or promote its outcome.” *Id.* ALJ Pelios maintains the existence of conversations between elected officials regarding matters of mutual concern is also not a violation of the Code based on the facts presented. *Id.*

Therefore, ALJ Pelios *concludes* Complainants have not met their burden in demonstrating that Respondents violated *N.J.S.A.* 18A:12-24.1(e), and further *concludes* that the charges must be *dismissed*. *Id.*

III. Exceptions

The *Initial Decision* was sent to the parties on December 14, 2022, and stated, in relevant part, “Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the” Commission. As of December 27, 2022, which was thirteen (13) days after the *Initial Decision* was mailed to the parties, neither Complainants nor Respondents filed exceptions and/or requested an extension to do so.

IV. Analysis

Following receipt of an initial decision, the Commission “may enter an order or a final decision adopting, rejecting, or modifying” it. *N.J.A.C.* 1:1-18.6(a). The Commission is also authorized to “reject or modify conclusions of law, interpretations of agency policy, or findings

of fact not relating to issues of credibility of lay witness testimony,” but “may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record.” *N.J.A.C.* 1:1-18.6(b); *N.J.A.C.* 1:1-18.6 (c).

With the above in mind, and following a thorough, careful, and independent review of the record, the Commission finds an insufficient basis upon which to modify or to otherwise reject the findings of fact detailed in ALJ Pelios’ *Initial Decision*. Furthermore, in the absence of sufficient credible evidence that Respondent Fenimore and/or Respondent Bowker made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board, the record supports ALJ Pelios’ legal conclusion that neither Respondent Fenimore nor Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e).

V. Decision

Following its review, the Commission ***adopts*** the findings of fact from ALJ Pelios’ *Initial Decision*; ***adopts*** the legal conclusion that neither Respondent Fenimore nor Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e); and ***adopts*** the decision to dismiss the above-captioned consolidated matter.

Accordingly, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: February 21, 2023

***Resolution Adopting Decision
in Connection with C69-19 and C70-19 (Consolidated)***

Whereas, on or about May 7, 2020, the School Ethics Commission (Commission) transmitted the above-captioned consolidated matter to the Office of Administrative Law (OAL) as a contested matter; and

Whereas, the Honorable Elia A. Pelios, Administrative Law Judge (ALJ Pelios), issued an *Initial Decision* dated December 14, 2022; and

Whereas, in his *Initial Decision*, ALJ Pelios issued findings of fact and found that, based on the evidence presented, neither Respondent Fenimore nor Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e) as alleged; and

Whereas, neither party filed exceptions to ALJ Pelios' *Initial Decision*; and

Whereas, at its special meeting on January 31, 2023, the Commission reviewed and discussed the full record; and

Whereas, at its special meeting on January 31, 2023, the Commission discussed adopting the findings of fact from ALJ Pelios' *Initial Decision*; adopting the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent Fenimore and/or Respondent Bowker violated *N.J.S.A.* 18A:12-24.1(e); and adopting ALJ Pelios' decision to dismiss the above-captioned matter; and

Whereas, at its meeting on February 21, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on January 31, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on February 21, 2023.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission