
IN THE MATTER

OF

**RAYMOND BONKER,
LENAPE VALLEY REGIONAL
BOARD OF EDUCATION
SUSSEX COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No.: C11-97

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed by the Lenape Valley Teachers' Association on May 1, 1997, alleging that Raymond Bonker violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, the Association alleges that Mr. Bonker violated N.J.S.A. 18A:12-24(b) of the School Ethics Act when he used his position as Board President, Board member and member of the Board's Technology Committee to obtain privileged information and release it as part of his personal campaign for re-election to the Board. This "privileged" information was the personal e-mail address of every Lenape Valley Regional High School employee. The Association alleges that respondent's use of this information was for personal prestige and personal gain in the form of re-election. The Commission found probable cause to credit the allegation that Mr. Bonker violated N.J.S.A. 18A:12-24(b) of the School Ethics Act by obtaining e-mail addresses of the teachers through his membership on the technology committee and using them to secure unwarranted advantages in his school board election campaign. At its meeting of December 16, 1997, the Commission found probable cause to credit this allegation and dismissed several other allegations.

The Commission determined that the material facts of the case were undisputed. Thus, rather than send the case to the Office of Administrative Law, the Commission requested that the respondent file a written statement by February 28, 1998. Therein, he was to set forth why the Commission should not find that he violated the School Ethics Act on the basis of the undisputed facts set forth in the letter decision. The Commission received a timely written statement from Mr. Bonker setting forth several arguments that it will address below. The Commission considered his statement in reaching this decision at its March 30, 1998 meeting.

FACTS

The Commission finds the following facts to be undisputed. These facts have been amended based on respondent's written statement wherein he noted corrections to the statement of facts in the probable cause determination. The Commission is accepting the facts he submitted as undisputed.¹ Respondent is a member of the Lenape Valley Regional High School (LVR) Board of Education. He represents Byram Township, a sending district to LVR, along with Stanhope and Netcong. In January 1997, Mr. Bonker was a member of the ad-hoc technology committee. The committee consisted of citizens, teachers, students, board members and the Chief School Administrator. At some time in late 1996 or early 1997, the technology coordinator, David Naysmith, asked each teacher to choose an e-mail address. He did not advise the teachers how the e-mail addresses would be used. At a January 20, 1997 teacher in-service designed to improve teachers' skills, teachers received a copy of the e-mail addresses, but they were not told the purpose of the addresses. Minutes from a January 23, 1997 meeting of the technology committee indicate that Mr. Naysmith distributed e-mail addresses to the committee for 96 mailboxes "within the LVR intranet." Minutes from subsequent board meetings indicate that Mr. Bonker consistently gave a technology report. However, the Commission's investigation has shown that he did not state in his reports that the e-mail addresses would be provided to the public.

In April 1997, Mr. Bonker ran for re-election to the Lenape Valley Regional Board of Education. Just before the election, Mr. Bonker received an updated list of e-mail addresses from Mr. Naysmith. He then prepared campaign literature that detailed his accomplishments during his prior term as a board member. He distributed the literature only to the residents of Byram, who are the only citizens who could vote for him. The document stated, in pertinent part:

We upgraded and increased the number of computers at LVR, again *not with new taxes* but with savings from other areas. LVR is now on the Internet (www.lvhs.org). Every teacher and administrator has a personal e-mail address, listed on the back of this page, so that you may easily contact them.

The e-mail address of each teacher was posted on the back of the document. At the time Mr. Bonker sent his campaign literature, neither the technology committee nor the board had authorized the public release or use of the e-mail addresses for any purpose. Mr. Bonker won re-election and became President of the LVR Board.

After the election, the Lenape Valley Education Association (LVEA), in a letter to the board, alleged that Mr. Bonker had acted unethically when he placed the e-mail addresses in his campaign material. At the April 28, 1997 meeting of the LVR board, Mr.

¹ Mr. Bonker adds as a correction to the statement of facts that the email addresses are intended for all taxpayers, not just parents of students. The Commission considers this to be more of an argument than a fact and thus will address it in its analysis.

Bonker responded to the LVEA's charges. He denied any ethical violations and insinuated that the LVEA's objective was to curtail the public accountability that they would face once parents have an electronic means of becoming involved with their child's education. The LVEA responded that their only objection was to Mr. Bonker's release of the e-mail addresses as a private citizen running for elected office. He did not have the approval of the Board to release the information to the public. At the April 28, 1997 meeting, the Board passed three resolutions: 1) to publish the e-mail addresses annually in the student handbook calendar; 2) to publish the e-mail addresses on the LVR Home Page on the World Wide Web; and 3) to prohibit the changing of any e-mail address for any active employee of the school system except by the technology coordinator.

As set forth above, the LVEA filed this complaint on May 1, 1997.

ANALYSIS

The issue is whether Mr. Bonker violated N.J.S.A. 18A:12-24(b) of the School Ethics Act by obtaining e-mail addresses of the teachers through his membership on the technology committee and using them in his school board election campaign. Subsection (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 its probable cause ruling, the Commission agreed with some of Mr. Bonker's defenses. It agreed that the listing of the names and e-mail addresses of the teachers did not violate the privacy rights of employees or breach confidentiality. The LVEA admitted at the April meeting that the public has a right to have the e-mail addresses and, indeed, the Board ultimately did approve the list for public dissemination. The Commission also noted that it is not an ethics violation for Mr. Bonker to breach the LVR board of education's code of ethics, so long as he does not violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. In summary, the Commission found no probable cause and dismissed the allegations that the listing could be construed as an LVEA endorsement, that his conduct violated employee privacy rights and that the conduct violated the LVR Board's policies. It also dismissed all claims that the information was privileged, because a citizen who desired to get the e-mail addresses could receive a copy from the Board.

The Commission found probable cause to credit the allegation that Mr. Bonker violated section 24(b) of the Act by releasing the e-mail addresses in his campaign literature before the board had discussed and approved releasing them to the public. The Commission also found probable cause to credit the allegation that Mr. Bonker sought to gain an unfair advantage over other candidates running for the board by obtaining and using the e-mail addresses as he did.

In response to the Commission's probable cause determination, Mr. Bonker argues that it is not unethical to publish non-privileged information. He argues that any other citizen, and specifically any other candidate, could have received a copy and published it. He notes that no other candidate has filed a complaint. He states that the Board did not need to formally authorize the release of the information since it was public domain. The information had already been distributed to the committee, which consisted of citizens and others. He concludes that if he used privileged information that other candidates did not have access to, then a charge could be filed. However, based on the finding that the information is non-privileged, he urges the Commission to conclude that there is no unwarranted privilege under subsection (b).

The Commission will address these arguments in turn. The Commission believes that it can be a violation of the School Ethics Act to publish non-privileged information if those who do not have access to inside information do not know that such information exists. Respondent's arguments fail on the basis that there is a difference between access in theory and access in reality. At the time that Mr. Bonker listed the e-mail addresses on the back of his campaign literature, he had access to them because of his work on the committee, but the public was not yet aware of their existence. Therefore, the public had access to the addresses in theory, but in reality, the public could ask for what they do not know exists. His releasing them on his campaign literature informed Byram residents of the existence of such information to the exclusion of the other towns' residents. A regional high school district should not provide information to one town and not the other two that form the district.

In addition, the Commission finds it significant that the technology coordinator notes in his correspondence that the addresses are for the LVR Intranet, not the Internet. Without being advised to the contrary, the employees had every reason to believe that they were choosing e-mail addresses for use within the school, not for use by every person in the three towns that make up the regional high school district. Clearly they believed that the e-mail addresses were for in-school use by the use of the cute names that some of the teachers picked that they would not likely choose if told that the addresses would be provided to the public. The Commission's staff searched several high school web sites on the internet and was unable to find any that provided all of the teachers' e-mail addresses. Thus, though the addresses were not confidential, the employees had the right to be advised prior to their release by the technology committee making such a recommendation to the full board at a public meeting.

The Commission thus concludes that the e-mail addresses were not privileged and confidential information. However, just as they were not the LVEA's to conceal, they were not Mr. Bonker's to release, especially not on his personal campaign literature to promote himself. In addition, he went to the technology coordinator to get the e-mail addresses because his status as a board member allowed him to do so. The Commission concludes that Mr. Bonker's unilateral dissemination was an attempt to secure unwarranted privileges or advantages for himself in violation of N.J.S.A. 18A:12-24(b).

If such information was going to be released, it should have been released officially, by resolution, as it ultimately was, and disseminated on an official Board document to the parents of students. The Commission sees little utility in disseminating teacher's e-mail addresses to all taxpayers in the regional school district, much less on the school's home page for anyone who may be browsing. This opens the teachers to e-mail solicitations that can waste the teacher's valuable time. Mr. Bonker's dissemination appears to have forced the district to distribute the information more widely than would have been necessary if he had not already distributed it to the residents of Byram. The Commission opines that the e-mail addresses of board members who are spending their tax dollars would be of greater interest to the public. The Commission notes that the home page does not set forth the names or e-mail addresses of the members of the Board.

CONCLUSION

For all the foregoing reasons, the Commission concludes that Raymond Bonker violated N.J.S.A. 18A:12-24(b) of the School Ethics Act.

In its probable cause letter, the Commission asked Mr. Bonker to comment on an appropriate penalty should the Commission find a violation. In his submission, Mr. Bonker filed this sarcastic response:

While I must admit that such a request seems perverse given my innocence in this matter, I have nonetheless listed below some suggestions:

1. Write a 500 word essay on the joys of unpaid public service through school board membership.
2. Conduct a seminar on the difficulties of implementing change in tenured, litigious environment.

The Commission believes that Mr. Bonker's response is an indication that he does not take these proceedings seriously. Since censure is a public sanction, it will underscore for Mr. Bonker the importance of complying with the Act. Therefore, the Commission recommends that the Commissioner of Education impose a sanction of censure.

Now that the Commission has adopted this decision by a formal resolution, the matter shall be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the 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.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision -- C11-97

Whereas, the School Ethics Commission has considered the pleadings, the testimony and the documents submitted in support thereof; and

Whereas, the Commission found probable cause to credit the allegations in the complaint and invited respondent to file a written statement in response; and

Whereas, the Commission has reviewed respondent's written statement and now concludes that respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby finds that Raymond Bonker violated the School Ethics Act and recommends that the Commissioner impose a sanction of censure; and

Be It Further Resolved that the Commission adopts the enclosed decision referenced as its decision in this matter.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 30, 1998. Commissioner Rosalind Frisch dissented from the finding of a violation, but agreed that since the Commission found a violation, a censure was the appropriate recommended sanction.

Lisa James-Beavers, Executive Director

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