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**IN THE MATTER OF**

**ROBERT BUCCO,  
MIDDLETOWN TOWNSHIP  
BOARD OF EDUCATION,  
MONMOUTH COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No.: C11-98**

**DECISION**

### **PROCEDURAL HISTORY**

This matter arises from a claim that Middletown Township Board Member Robert Bucco violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when he accepted a position with an engineering firm at around the same time as the Board was considering bids from the firm to perform geotechnical services. The firm eventually received the contract with the Board.

Diane Swaim and the Middletown Township Education Association (MTEA) filed the above complaint on April 27, 1998 alleging that Robert Bucco violated N.J.S.A. 18A:12-22a and 18A:12-24(b), (c), (d), (e) and (f) when he served on committees and participated in discussions concerning awarding a contract for geotechnical services and accepted employment with French and Parello, the firm that was awarded the contract. Mr. Bucco filed his answer on May 20, 1998 admitting to his ex-officio membership on the committees and to his later acceptance of employment with the firm, but denying any unethical conduct. He answers that he did not become employed by the firm until after the contract had been awarded and never voted on any matter concerning French & Parello (F & P) thereafter.

The Commission invited the parties to attend the Commission's meeting on September 22, 1998, and present witnesses and testimony to aid in the Commission's investigation. Ms. Swaim appeared with another member of the MTEA who did not testify and Mr. Bucco appeared with his attorney, Robert Schillberg, Esquire. The Commission tabled decision at the conclusion of that meeting.

During its public meeting of October 26, 1998, the Commission voted to find no probable cause and dismiss the complaint for the reasons set forth below.

## FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Robert Bucco became a member of the Middletown Township Board of Education (Board) in April 1995. He was re-elected in April 1998. From April 1997 to April 1998, he served as president of the Board and, as such, served as ex-officio member of all board of education committees.

On October 8, 1997, the Board's architects, the Hillier Group, sent a letter to the Superintendent of Schools listing proposals received from three firms to perform geotechnical services. The Hillier Group recommended the firm of Melick-Tully, at a price of \$21,600. At a Board meeting of October 28, 1997, the Board's facilities committee chairperson reported that the committee was awaiting new proposals for the geotechnical contract after three proposals had been rejected. On November 3, 1997, Mr. Bucco attended a facilities committee meeting, at which the committee met with the Board's architects, the Hillier Group. At this meeting, the committee rejected the Hillier Group's proposals for hiring a firm to provide geotechnical services in connection with the Board's referendum construction projects. The chair of the committee believed that the proposed price was too high and Hillier did not distribute its Request for Proposals (RFPs) to a large enough number of firms. The Hillier Group agreed to reissue its request to a larger number of firms and specifically agreed to add the PMK Group and F & P to the distribution list. It was at this time that Mr. Bucco recalls becoming aware of Hillier's October 8, 1997 letter recommending the appointment of another firm to perform the work. Mr. Bucco also attended a Facilities Committee meeting on November 10, 1997, along with the architects, but he does not recall a discussion of the geotechnical services contract at that meeting. This was the last Facilities Committee meeting that he attended prior to becoming an employee of F & P.<sup>1</sup>

On December 16, 1997, the Board awarded a contract of \$22,675 to F & P to perform the geotechnical services pursuant to the statute that permits a Board to contract for professional services without competitive bidding. Mr. Bucco was absent for the vote because he was attending a Matawan Borough Council meeting since he was their engineer.

According to Mr. Bucco, for over twenty years, until December 31, 1997, Mr. Bucco was an employee of Schoor DePalma, Inc., an engineering firm in Manalapan, New

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<sup>1</sup> The former Business Administrator for the Board, Mr. Evan Gillingham, certified that he could find no minutes from Facilities Committee meetings before November 1997 or any evidence that such minutes were kept before that time. The Board attorney confirmed that the Facilities Committee was referred to as the Buildings and Grounds Committee at that time. He indicated that the Board used the terms interchangeably. The 1997 minutes labeled as those of the Buildings and Grounds Committee comport with the dates noted above.

Jersey. As such, he was engineer for the Borough of Matawan. On December 16, 1997, Mr. Bucco revealed to the Matawan Borough Council at its meeting that he would be leaving Schoor DePalma.<sup>2</sup> He submitted his resignation from Schoor DePalma on December 17, 1997 and began informing clients that he was leaving the firm. Prior to submitting his resignation, he did not take steps to obtain a new position. Early in the week of December 22, 1997, Mr. Bucco called Lawrence French, a principal in the firm of F & P, to inform him that he had resigned from Schoor DePalma. He had known Mr. French for a number of years and thought that he would be interested in hiring him. Mr. French did express such an interest. On December 22, 1997, at a Board workshop meeting, Mr. Bucco told Mrs. Donna Pinamonti, a citizen attending the meeting, that he was starting a new job on January 5<sup>th</sup> in response to her question as to whether he could make a meeting. Mr. Bucco and Mr. French met on December 30, 1997 to discuss terms of employment. They continued such discussions through the holiday weekend and he began working for F & P on Monday, January 5, 1998.

On February 24, 1998, the Board approved a motion increasing the amount of the F & P contract from \$22,675 to \$27,675. Mr. Bucco abstained without stating a reason for doing so. The increase was due to additional borings that were needed that none of the firms had previously addressed. On March 24, 1998, when a \$14,800 payment to F & P was before the Board for approval, Mr. Bucco abstained stating, according to the minutes, that he recently switched jobs and this company is now his employer. He further stated, according to the minutes, that at the time the contract was awarded, he was working for a different company, but felt that he could not vote for the payment of the bills.

## **ANALYSIS**

Ms. Swaim and the MTEA allege that Mr. Bucco was soliciting employment from F & P at the time that the Board was voting to hire the firm. The issue before the Commission is whether the above facts establish that Mr. Bucco violated N.J.S.A. 18A:12-22a or 18A:12-24(b), (c), (d) or (e) of the School Ethics Act as set forth in the complaint.

### **Did Mr. Bucco Violate N.J.S.A. 18A:12-22a of the School Ethics Act?**

The Legislature set forth in its findings and declarations that “board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” N.J.S.A. 18A:12-22(a). Complainants assert that Mr. Bucco’s acceptance of a position with F & P, even if he did so shortly after the time that the Board considered and awarded

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<sup>2</sup> The complaint alleged that at the December 16, 1997 council meeting, Mr. Bucco revealed that he would be starting a job with French & Parello on January 5, 1998; however, Mr. Bucco denied having said this and the minutes from that council meeting only note that he was resigning from Schoor DePalma.

the company a contract, creates a justifiable impression that the public trust is being violated.

The Commission has consistently held that in order for it to carry out its mandate to give school officials specific standards to guide their conduct as set forth in N.J.S.A. 18A:12-22(b), it must find that respondent committed some prohibited act, the provisions of N.J.S.A. 18A:12-24 in the present case, in order to find a violation of the School Ethics Act. See *In the Matter of Mercer*, C33-96 (October 28, 1997). The Commission uses the Legislature's findings and declarations set forth at N.J.S.A. 18A:12-22(a) as a guide as to how to interpret those prohibited acts. If the Commission were to find a violation on the basis of an impression of violation of the public trust alone, it would be an unduly vague standard and would not promote the uniform maintenance of standards among school officials. The Commission therefore finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-22(a) without making a specific determination as to whether Mr. Bucco created a justifiable impression that the public's trust is being violated.

#### **Did Mr. Bucco Use His Position to Secure Unwarranted Privileges or Employment for Himself or for French & Parello?**

N.J.S.A. 18A:12-24(b) prohibits a board member from using his position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. The complainants do not appear to allege that Mr. Bucco used the fact that F & P was seeking a contract with the Board to gain employment with the firm. In any event, Mr. Bucco, having been an engineer for over 23 years, appears more than qualified for the position. He would have no motive to try to gain employment in such a fashion, nor is there evidence to suggest that he did so. Therefore, there is no probable cause to credit the allegation that he used his position to secure employment for "himself" in violation of N.J.S.A. 18A:12-24(b).

The next question, and what complainants appear to allege, is whether he used his position to secure unwarranted privileges for others, i.e., F & P. Complainants point to the fact that the Facilities Committee rejected the original proposals when they did not include a bid from F & P. Further, they note that after the RFP was redistributed and new bids came to the Board, F & P still was not the recommended choice of the Hillier Group. Rather, F & P's proposal was said to be incomplete and the firm was allowed to submit a revised proposal, which was then accepted by the Board at its December 16, 1997 meeting. Of the second group of proposals, F & P did have the lowest bid, although by law, the Board did not have to accept the lowest bid and so stated at its meeting.

The chair of the facilities committee has indicated that he was responsible for rejecting the early bids, although Mr. Bucco agreed with his reasoning. While the Commission would prefer to have reviewed the minutes from these meetings, the Commission has to make a decision based on the information it is able to obtain. The minutes cannot be obtained. There is no indication in any minutes of what occurred

between the Hillier Group's recommendation of a different firm after the second set of proposals and the offering of the contract to F & P. Thus, the Commission accepts Mr. Bucco's testimony that since the F & P proposal was the lowest, they determined that they should request that the firm address the items that the other firms had addressed. Without any indication to the contrary, the Commission finds there to be adequate explanation for the Board's award of the contract to F & P, and it cannot be concluded that Mr. Bucco used his position or influence to secure an unwarranted privilege for them. Thus, the Commission concludes that there is no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(b).

**Did Mr. Bucco Act in His Official Capacity in a Matter in Which He Had a Personal or Financial Involvement that Might Reasonably Be Expected to Impair His Objectivity in Violation of N.J.S.A. 18A:12-24(c)?**

The next issue is whether Mr. Bucco violated section 24(c) of the Act by participating in the Facilities Committee or Buildings and Grounds Committee discussions involving the contract for geotechnical services, given his ensuing discussions and subsequent employment with F & P. In order to find such a violation, the Commission would have to determine that Mr. Bucco had a direct or indirect personal or financial involvement with F & P when he participated in those meetings prior to the awarding of the contract in December 1997. Mr. Bucco abstained from all matters concerning F & P after he began working for the firm. The Commission has no information to indicate such an involvement prior to his employment. Mr. Bucco was an employee of School DePalma at the time that he participated in the discussions with the architect about the proposals for geotechnical services. Further, although Mr. Bucco testified that he had known Mr. French for a number of years, such a collegial relationship would not create the type of personal involvement contemplated under the act. There is no dispute that Mr. Bucco began employment with F & P on January 5, 1998. After that date, he abstained on all matters having to do with the firm. Therefore, the Commission does not find probable cause to credit the allegations that Mr. Bucco acted in his official capacity in a matter in which he had a personal or financial involvement reasonably expected to impair his objectivity in violation of section 24(c).

**Did Mr. Bucco Undertake Any Employment That Might Reasonably Be Expected to Impair His Objectivity or Independence of Judgment?**

Complainants next assert that Mr. Bucco violated N.J.S.A. 18A:12-24(d) of the Act by undertaking employment that might reasonably be expected to impair his objectivity or independence of judgment in the exercise of his official duties. When the Commission finds such a violation, it requires the school official to either relinquish the employment or resign his seat on the board, as the two positions are inherently incompatible. The Commission does not believe that Mr. Bucco's employment rises to this standard of incompatibility.

Mr. Bucco testified that he does not perform geotechnical services as an engineer for F & P. Therefore, he will not be performing the services for which the Board is paying. Further, F & P does not have an ongoing relationship with the Board like the Board architect or the Board solicitor such that bills will be presented from the firm all year long and there will be constant communication and transactions between the vendor and the Board. The contract with F & P is a contract for specific services with a specific time period during which they must be completed. In such a case, the Commission concludes that Mr. Bucco's abstaining from matters involving the contract, such as changes in services or payment of bills, is sufficient to handle the conflict of interest. The record shows that he has done so since he began employment with F & P. The School Ethics Act does not require that a board member inform the public of the reason that he is abstaining, although the Commission encourages such disclosure. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Bucco violated N.J.S.A. 18A:12-24(d) of the Act.

**Did Mr. Bucco Solicit or Accept a Promise of Future Employment Based Upon an Understanding that It Was Given for the Purpose of Influencing Him, Directly or Indirectly, in the Discharge of His Official Duties?**

N.J.S.A. 18A:12-24(e) sets forth that a school official shall not solicit or accept a promise of future employment based upon an understanding that it was given to influence him in the discharge of his official duties. Complainants allege that Mr. Bucco solicited a promise of future employment based on the understanding that he would assist F & P in obtaining the contract for geotechnical services with the Board. As set forth in the discussion of whether Mr. Bucco violated N.J.S.A. 18A:12-24(b), there is no information from which to conclude that Mr. Bucco's gaining employment with F & P constituted a reward for his support of F & P's obtaining the contract for geotechnical services with the Board. In order to reach such a conclusion, the Commission would have to completely discount Mr. Bucco's testimony that he had been employed as an engineer for 23 years and anticipated having no difficulty finding employment with another engineering firm after leaving Schoor DePalma. Mr. Bucco also testified that he contacted Mr. French because he had known Mr. French for a number of years and Mr. French was familiar with his work. The close proximity in time between the vote to approve the contract with F & P and Mr. Bucco gaining employment with the firm is not sufficient to show that Mr. Bucco understood that his getting employment was based on his support of F & P's bid for the services. The Commission therefore finds no probable cause to credit the allegations that Mr. Bucco violated N.J.S.A. 18A:12-24(e).

**Did Mr. Bucco Use His Public Office, or Any Information, Not Generally Available to Members of the Public, Which He Acquired by Reason of His Office, for the Purpose of Securing Financial Gain for Himself, Any Member of His Family, or Any Business with Which He Is Associated?**

Section 24(f) of the School Ethics Act prohibits a board member from using his office or information acquired by reason of it, to secure financial gain for himself or a business with which he is associated. There is no information to suggest that Mr. Bucco secured any financial gain from F & P's contract with the Board. As set forth above, he does not perform geotechnical services. Further, although his employment with F & P is a financial gain, there has been no showing that he used his office or information revealed during discussions of geotechnical services to gain such employment. In addition, there is no information from which to conclude that Mr. Bucco secured a financial gain for a business with which he is associated since he was not associated with F & P at the time the firm was submitting bids and Mr. Bucco attended the meetings at which such bids were discussed. Therefore, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(f).

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Robert Bucco violated provisions N.J.S.A. 18A:12-22(a) or 24(b), (c), (d), (e) or (f) of the School Ethics Act. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C11-98**

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony of parties in executive session, in addition to its independent investigation; and

Whereas, the Commission has found no probable cause to credit the allegations that respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismisses the charges against him; and

Whereas the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 26, 1998.

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Lisa James-Beavers  
Executive Director