
JOAN-MARIE FREDERICKS

v.

**JAMES FOODY,
WEST MILFORD TOWNSHIP BOARD OF
EDUCATION, PASSAIC COUNTY**

:
: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
: **SEC DKT. NO.: C51-17**
: **OAL DKT. NO.: EEC-18243-17**
:
: **FINAL DECISION**
:

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on May 30, 2017, by Joan-Marie Fredericks (“Complainant”) alleging that James Foody (“Respondent”), then a member and President of the West Milford Township Board of Education (the “Board”), violated the School Ethics Act (the “Act”), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleged that Respondent violated N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), N.J.S.A. 18A:12-24.1(h), and N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members (the “Code”).

On June 5, 2017, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (the “Commission”), and advising that he had twenty (20) days to file a responsive pleading. On July 24, 2017, and after receiving an extension, Respondent filed a Motion to Dismiss in Lieu of Answer (“Motion to Dismiss”) and alleged that the Complaint is frivolous. Following a brief extension, Complainant filed a written response to the Motion to Dismiss and allegation of frivolous filing on September 5, 2017.

The parties were notified by correspondence dated September 18, 2017, that this matter would be placed on the Commission’s agenda for its meeting on September 26, 2017, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 26, 2017, the Commission considered the filings in this matter and, at its meeting on October 31, 2017, the Commission voted to grant the Motion to Dismiss in part (as to the alleged violations of N.J.S.A. 18A:12-24.1(f) and N.J.S.A. 18A:12-24.1(i)); deny the Motion to Dismiss in part (as to the alleged violations of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(h)); find the Complaint not frivolous; deny Respondent’s request for sanctions; direct the filing of an Answer to Complaint (“Answer”) as to the remaining allegations; and to transmit the matter to the Office of Administrative Law (“OAL”) following receipt of the Answer. On November 16, 2017, Respondent filed an Answer as directed, and the matter was transmitted to the OAL pursuant to N.J.A.C. 6A:28-10.8.

At the OAL, and after a prehearing status conference and the scheduling of hearing dates, Respondent filed a Motion for Summary Decision on July 11, 2018, Complainant filed her opposition on August 3, 2018, and Respondent filed a sur-reply on August 20, 2018. After review, and in his Initial Decision dated September 11, 2018, Julio C. Morejon, Administrative

Law Judge (“ALJ Morejon”), found that the matter should be dismissed because, although there were no issues of material fact in dispute, there was insufficient evidence to support a violation of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h). ALJ Morejon also concluded that the Complaint should be dismissed because Respondent is no longer on the Board and, therefore, the matter was moot.

The Commission acknowledged receipt of ALJ Morejon’s Initial Decision on September 11, 2018; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was October 26, 2018. Prior to October 26, 2018, 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 December 10, 2018. Complainant filed Exceptions on September 24, 2018, and Respondent filed a Reply to Complainant’s Exceptions on October 10, 2018.

Following receipt of Complainant’s Exceptions, and Respondent’s Reply to Complainant’s Exceptions, the Commission considered the full record in this matter at its meeting on October 30, 2018. Thereafter, at its meeting on November 27, 2018, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Morejon’s findings of fact; to adopt the legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(d), there is insufficient evidence to support the finding of a violation; to adopt the legal conclusion that although there are no issues of material fact in dispute regarding the alleged violation of N.J.S.A. 18A:12-24.1(e), there is insufficient evidence to support the finding of a violation; to adopt the legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(h), there is insufficient evidence to support the finding of a violation; to reject the legal conclusion that the Complaint should be dismissed because “the matter is rendered moot because [Respondent] is no longer on the Board”; and to adopt the decision to dismiss the Complaint because, based on the record, there is insufficient evidence to establish a violation of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h).

II. INITIAL DECISION

Following receipt of Respondent’s Motion for Summary Decision, and after reviewing Complainant’s Statement of Material Facts, Respondent’s Reply to Complainant’s Statements of Facts, along with certifications, and documentary exhibits filed by Respondents, ALJ Morejon stated that, “With limited exceptions, the facts in the case are uncontroverted.” Initial Decision at 3. More specifically, and based on the parties’ filings, ALJ Morejon issued the following findings of fact:

1. Complainant is employed by the Board as a school bus driver and serves as a Co-President of the West Milford Bus Drivers Association (“Association”).
2. Respondent was a Board member on April 25, 2017, and served as Board President and Chairperson of its negotiations committee on that date.

3. The Board is comprised of nine (9) members.
4. On April 25, 2017, there was a Board meeting, at which both Complainant and Respondent were present.
5. During the April 25, 2017, Board meeting, Complainant addressed the Board regarding three (3) agenda items: (a) the current renewal of the Transportation Supervisor, Charles Mazzei (“Mazzei”), for the 2017-2018 school year; (b) a retroactive salary increase for Mazzei for the 2016-2017 school year; and (c) the contract renewal of Matt Wilm (“Wilm”), a general maintenance mechanic.
6. Regarding the renewal of Mazzei’s contract, Complainant cited the “morale of the bus drivers and their respective treatment by Mazzei, as the basis for her comments and concerns that the Board not renew his contract.”
7. As for the renewal of Wilm’s contract, Complainant read a letter signed by the Association’s members in support of his contract renewal.
8. Mazzei’s contract renewal, along with other “unaffiliated administrative personnel and support staff,” was placed on the agenda with the recommendation of the Superintendent.
9. The Board’s vote on Mazzei’s contract renewal was five (5) against, three (3) in favor, and one (1) abstention. The contracts for the remaining employees listed in the motion were approved unanimously.
10. The resolution providing Mazzei with a retroactive salary increase for the 2016-2017 school year was placed on the agenda, but not with the Superintendent’s recommendation.
11. The Board’s vote on Mazzei’s retroactive salary increase was five (5) against and four (4) in favor, with Respondent voting in favor of the retroactive salary increase.
12. The Board’s vote on Wilm’s contract was seven (7) in favor and two (2) against, with Respondent voting against the renewal of the contract.
13. The reappointment of the Association members (school bus/van drivers) for the 2017-2018 school year was placed on the agenda with the recommendation of the Superintendent.
14. The Board’s vote on the reappointment of the Association members was eight (8) in favor and one (1) against, with Respondent voting against the reappointment.
15. Following the vote on Mazzei’s contract renewal for the 2017-2018 school year, Respondent is seen “making a facial expression, and when asked by another Board member, ‘how do you really feel,’ [Respondent] responded, ‘Well, negotiations are coming up.’”

16. The minutes from the April 25, 2017, Board meeting reflect that not all agenda items were voted unanimously and that, in some instances, one or two Board members did not vote with the majority of the Board.

In his Motion for Summary Decision, Respondent argued, relying on multiple cases, that “the allegations in the complaint are moot because his service as a member of the Board ceased in November 2017, when he was not reelected to the Board.” Initial Decision at 5. In her opposition to Respondent’s Motion for Summary Decision, Complainant argued that the cases relied upon “do not involve the interpretation of the...Act,” and board members “have been unable to evade the jurisdiction of the [Commission] in circumstances similar to [Respondent].” *Id.* at 6. Complainant offered a multitude of cases in support of her position that the matter is not, in fact, moot, and should not be dismissed. *Id.* at 6-7.

In his sur-reply, Respondent contended that the cases cited by Complainant “concern[ed] matters of conflicts of interest on the part of the respective board members and clearly did involve ‘matters of substantial importance, likely to reoccur, but capable of evading review,’ such that they were not dismissed due to mootness.” *Id.* at 7. Respondent additionally argued that “the only allegations which survived his motion for dismissal...are predicated on facts, involving votes cast by [Respondent] and, in one instance, comments and expressions ascribed to him by [Complainant].” *Id.* at 7. Therefore, Respondent argued that ALJ Morejon should grant his Motion for Summary Decision.

Before addressing Respondent’s mootness argument, ALJ Morejon found that “[a] review of the certifications provided by [Respondent] and [Complainant], along with a reading [of] the minutes of the April 25, 2017[,] Board meeting and review of the video,” failed to provide evidence that Respondent violated N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h). Initial Decision at 9-11. Although he found that there were no issues of material fact in dispute as to any alleged violation of the Act, he also found that there was insufficient evidence to establish a violation of the Act; as such, ALJ Morejon concluded that each alleged violation should be dismissed. *Id.* at 9-11.

In finding insufficient evidence to establish a violation of the Act, ALJ Morejon indicated he was “not swayed that [Respondent’s] sole vote not to renew the Association[’]s contract demonstrates a violation of N.J.S.A. 18A:12-24.1(d). As to N.J.S.A. 18A:12-24.1(e), there were “[n]o proofs...that [Respondent] failed to recognize the Board’s authority or that he made personal promises or took any private action that would compromise the Board”. Finally, regarding the alleged violation of N.J.S.A. 18A:12-24.1(h), ALJ Morejon noted that Respondent was not the only person to vote in favor of the retroactive raise for Mazzei, not the only person to vote against Wilm’s contract, and Respondent’s sole vote against approval of the Association contract “is also uncorroborated, inasmuch as the allegations that [Respondent] ‘scowled’ and ‘chuckled’ and stated, ‘Well, negotiations are coming up,’ were made at the end of the vote not approving Mazzei’s contract[,] and not the Association.” Initial Decision at 9-11.

Turning to the issue of mootness, although ALJ Morejon agreed that the Commission is not necessarily divested of its jurisdiction after a board member leaves a board, he concluded that

because “the underl[y]ing facts in this case do not concern an allegation of conflict of interest, or facts that would need to be addressed in a hearing because they could arise again with another board member,” but instead were specific to Complainant’s “belief” about Respondent’s vote, comments, and expressions, the matter “is rendered moot because [Respondent] is no longer on the Board.” *Id.* at 12.

III. EXCEPTIONS

On September 24, 2018, Complainant filed Exceptions, and disagreed with ALJ Morejon’s determination that the matter is moot. More specifically, Complainant argued that the Commission has “determined repeatedly” that a board member’s exit from the board does not render a complaint moot. Contrary to ALJ Morejon’s decision, the Commission has issued penalties in similar instances. In I/M/O Carol Scudillo, 97 N.J.A.R.2d (EDU) 617, the Commission recommended a penalty of censure for Scudillo even though she lost her bid for reelection; in I/M/O Gabriella De Tolla, Agency Dkt. NO. 308-10/08, the Commission imposed a penalty of censure, the highest allowable penalty because De Tolla was no longer on the board; and in I/M/O Anne Pirillo, Agency Dkt. No. 352-10/04, although Pirillo resigned from the board the Commission imposed the highest penalty of censure. Moreover, Complainant contends that if ALJ Morejon’s conclusion is correct, then the Commission would never have jurisdiction to adjudicate complaints against former board members.

Complainant also disagrees with ALJ Morejon’s determination that Respondent did not violate N.J.S.A. 18A:12-24.1(d). Complainant asserts that Respondent attempted to “subvert” the Superintendent by voting to provide a retroactive raise to the Transportation Supervisor without the Superintendent’s recommendation and, in doing so, administered the schools. According to Complainant, it is immaterial that other Board members may have voted with Respondent. Based on this information Complainant argues that the Commission should reject the ALJ’s conclusion and find that Respondent violated N.J.S.A. 18A:12-24.1(d).

Complainant further disagrees with ALJ Morejon’s determination that Respondent did not violate N.J.S.A. 18A:12-24.1(e). Complainant asserts that Respondent’s actions compromised the Board because his actions called into question issues, deliberations, and votes taken by the Board and Respondent, exposed the Board to a possible charge of unfair labor practices, and took action beyond the scope of his authority by confronting, intimidating and embarrassing not just Complainant, but the Association. As argued by Complainant, Respondent reacted in a threatening and intimidating manner when Complainant commented about resolutions that were eventually defeated by the Board. Respondent’s threat regarding the upcoming negotiations touched upon future issues, deliberations and votes to be taken by the Board. Therefore, Complainant contends that the Commission must reject ALJ Morejon’s Initial Decision that Respondent did not violate N.J.S.A. 18A:12-24.1(e).

Finally, Complainant argues that ALJ Morejon’s conclusion that Respondent did not violate N.J.S.A. 18A:12-24.1(h) must be rejected. Complainant asserts that Respondent’s votes and his threat about upcoming negotiations were the “manifestations of a vindictive and retaliatory animus,” and of his intention to confront, intimidate and bully Complainant and the Association. According to Complainant, the evidence demonstrates that is why Respondent

voted against the recommendation of the Superintendent to rehire the very members represented by Complainant, and favored and voted for a resolution calling for a retroactive raise that was not on the agenda with the Superintendent's recommendation. Moreover, Complainant also takes issue with the ALJ's reasoning that Respondent's vote in favor of the retroactive raise is unremarkable because there were other Board members that voted the same way. Complainant argues that this conclusion is erroneous and must be rejected because the fact that other Board members may have voted on a personnel matter not recommended by the Superintendent is inconsequential.

In the Reply to Complainant's Exceptions filed on October 10, 2018, Respondent denies any improper conduct, and maintains that he voted in the best interest of the West Milford Township School District. In support of his vote against the rehiring of the Association's members, Respondent notes that a few weeks following the April 25, 2017, meeting, several incidents occurred regarding the behavior of bus drivers that jeopardized students' safety. Respondent also notes that Complainant's allegation that Respondent "exposed the Board to a possible charge of unfair labor practices ..." was not part of the initial Complaint and relies on an unpublished opinion and, therefore, is improper for Complainant to raise *de novo*. Respondent maintains that all of his actions were taken in good faith, and in the furtherance of his duties and responsibilities to the Board. Respondent denies any violation of the Act and argues that ALJ Morejon's Initial Decision should be accepted. Finally, Respondent asserts that the penalty of censure that Complainant is seeking is of such severity that it should not be exacted absent a plenary hearing.¹

IV. ANALYSIS

Complainant bears the burden of factually proving the alleged violations of the Code in accordance with the standards enumerated in N.J.A.C. 6A:28-6.4(a). N.J.S.A. 18A:12-29(b). Upon careful and independent review of the record, the Commission finds that the record supports ALJ Morejon's findings of fact; supports ALJ Morejon's legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(d), there is insufficient evidence to support a violation; supports ALJ Morejon's legal conclusion that although there are no issues of material fact in dispute regarding the alleged violation of N.J.S.A. 18A:12-24.1(e), there is insufficient evidence to support a violation; and supports ALJ Morejon's legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(h), there is insufficient evidence to support a violation.

Notwithstanding the above, the Commission unequivocally rejects ALJ Morejon's legal conclusion that the Complaint should be dismissed because "the matter is rendered moot because [Respondent] is no longer on the Board." Although ALJ Morejon appropriately recognized that, "One would have to be naïve to believe that once a Board member no longer is on the board that

¹ Following receipt of Respondent's Reply to Complainant's Exceptions, Complainant offered a brief response noting that she had, contrary to Respondent's assertion, previously raised the issue of an unfair labor practice and, therefore, it was appropriate to address in her Exceptions. Respondent, following receipt of this brief response, reiterated that because the unfair labor practice charge was not addressed in the Initial Decision, it could not serve as the basis for an Exception.

an ethics violation against said person is automatically moot because of the same,” he stated that “the underl[y]ing facts in this case do not concern an allegation of conflict of interest, or facts that would need to be addressed in a hearing because they could arise again with another board member.” Initial Decision at 12. ALJ Morejon further indicated that the allegations in the Complaint were specific to Complainant’s “belief” that Respondent’s votes, comments, and expressions (as ascribed to him by Complainant) involve matters of substantial importance. *Id.* at 12. If the Commission were to adopt this legal conclusion, then all board members would be able to avoid the finding of a violation, and the imposition of an appropriate penalty, by simply resigning from the board. Absent from ALJ Morejon’s analysis is the fact that Respondent, like any other board member, can always serve, whether by election or appointment, as a board member in the future unless, by statute, he is ineligible to serve. As a result of this undisputed fact, it is the Commission’s position that for as long as an individual, such as Respondent, can return to serve as a board member, the allegations in an ethics complaint are always capable of arising again or reoccurring in the future. Therefore, an ethics complaint should never be dismissed as moot merely because a board member resigns; the dismissal of an ethics complaint because of a resignation, without more, allows a board member to subvert the legislative intent and the provisions of the Act.

Despite its rejection of ALJ Morejon’s conclusion that the matter is moot, the Commission adopts the decision to dismiss the matter because, as set forth in ALJ’s Morejon’s decision, based on the record, there is insufficient evidence to establish a violation of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h).

V. DECISION

After review, the Commission adopts ALJ Morejon’s Initial Decision dismissing the Complaint based on Complainant’s failure to satisfy her burden to prove that Respondent violated N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h). Therefore, 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
School Ethics Commission

Mailing Date: November 28, 2018

**RESOLUTION ADOPTING DECISION
IN CONNECTION WITH C51-17**

WHEREAS, pursuant to N.J.A.C. 6A:28-10.8, the School Ethics Commission (“Commission”) voted to transmit the above matter to the Office of Administrative Law for a hearing; and

WHEREAS, Julio C. Morejon, Administrative Law Judge (“ALJ Morejon”) issued his Initial Decision on September 11, 2018; and

WHEREAS, in his Initial Decision, and following the filing of Respondent’s Motion for Summary Decision, ALJ Morejon found that the matter should be dismissed because, although there were no issues of material fact in dispute, there was insufficient evidence to support a violation of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h). ALJ Morejon also concluded that the should be dismissed because Respondent is no longer on the Board and, therefore, the matter is moot; and

WHEREAS, on September 24, 2018, Complainant filed Exceptions to ALJ Morejon’s Initial Decision; and

WHEREAS, on October 10, 2018, Respondent filed a Reply to Complainant’s Exceptions to ALJ Morejon’s Initial Decision; and

WHEREAS, at its meeting on October 30, 2018, the Commission reviewed and discussed the record, including ALJ Morejon’s Initial Decision, Complainant’s Exceptions, and Respondent’s Reply to Complainant’s Exceptions, and

WHEREAS, at its meeting on October 30, 2018, the Commission discussed adopting ALJ Morejon’s findings of fact; adopting the legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(d), there is insufficient evidence to support the finding of a violation; adopting the legal conclusion that although there are no issues of material fact in dispute regarding the alleged violation of N.J.S.A. 18A:12-24.1(e), there is insufficient evidence to support the finding of a violation; adopting the legal conclusion that although there are no issues of material fact in dispute relating to the alleged violation of N.J.S.A. 18A:12-24.1(h), there is insufficient evidence to support the finding of a violation; rejecting the legal conclusion that the Complaint should be dismissed because “the matter is rendered moot because [Respondent] is no longer on the Board”; and adopting the decision to dismiss the Complaint because, based on the record, there is insufficient evidence to establish a violation of N.J.S.A. 18A:12-24.1(d), N.J.S.A. 18A:12-24.1(e), and/or N.J.S.A. 18A:12-24.1(h); and

WHEREAS, at its meeting on November 27, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from October 30, 2018; and

NOW THEREFORE BE IT RESOLVED, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly
was duly adopted by the School Ethics Commission
at its public meeting on November 27, 2018.

Kathryn A. Whalen, Director
School Ethics Commission