
Salerno v. Old Bridge Bd. of Ed.
Cite as 6 *N.J.A.R.* 405

PATSY SALERNO,
Petitioner,
v.
OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,
MIDDLESEX COUNTY,
Respondent,

Decided March 6, 1984

Initial Decision

SYNOPSIS

A petitioning school board member sought an order declaring that certain board members were in a conflict of interest when they negotiate contracts with employee bargaining units since they have relatives in those bargaining units.

The administrative law judge assigned to the case concluded that a conflict of interest could be avoided if members abstained from voting on matters affecting individual relatives. In this instance, however, the judge concluded that the negotiated agreement was broad enough in scope so that no requirement that board members abstain would be imposed and thus, participation in the vote was proper.

Accordingly, the administrative law judge dismissed the petition.

Patsy Salerno, petitioner *pro se*

Steven J. Tripp, Esq., for respondent (Wilentz, Goldman & Spitzer, attorneys)

CAMPBELL, ALJ:

Patsy Salerno, a member of the Old Bridge Township Board of Education and the petitioner in this matter, seeks an order of the Commissioner of Education declaring that certain members of the Board are in conflict of interest when they negotiate contracts with employee bargaining units and that they be disqualified from such activity and from voting for or against the approval of any such employment contracts. The Old Bridge Township Board of Education (Board) admits that four Board members have relatives who are employed by the Board. However, the Board states that it is not a

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conflict of interest for a Board member whose wife, children, brothers, sisters, or in-laws are members of particular collective bargaining units, to vote on the ratification of the collective bargaining agreements with those units; that the petition fails to state a claim upon which relief may be granted; that the petition is untimely since it was not filed within 90 days of the Board's action, and that the four Board members referred to in the petition all abstained from voting on the ratification of the collective bargaining agreements and, therefore, the petition is moot.

A matter was opened before the Commissioner of Education and transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A. 52:14B-1 et seq.* and *N.J.S.A. 52:14F-1 et seq.* A prehearing conference was held before the Honorable Eric G. Errickson, ALJ, and it was agreed that the parties would file a joint stipulation of facts and that the matter would proceed to declaratory judgment on pleadings and briefs submitted according to an agreed-upon schedule.

The matter was transferred to the undersigned for disposition. I received all papers on January 27, 1984, and determined at that time that the record was complete and, therefore, closed.

I

It is stipulated and agreed between the parties that for the purposes of the disposition of this matter, the following facts are true:

1. Board President John F. Shepard, and Board member Edna Gordon, served on the Board's Negotiating Committee which negotiated with the Old Bridge Education Association, a collective bargaining agreement covering all employees of the Board of Education for the 1983-84 and 1984-85 school years.
2. Beth Shepard, the wife of Board President John Shepard, was employed by the Board during the 1982-83 school year as a nontenured teacher. As a result of a reduction in force, her employment was terminated at the conclusion of the 1982-83 school year. During the current school year, she is employed as a substitute teacher.
3. Tina Ruiz, the daughter of Board member Edna Gordon, is a tenured teacher who was employed by the Board both during the 1982-83 school year and currently. Mrs. Gordon's son-in-law Ricardo Ruiz, is a tenured teacher who was employed by the Board during the 1982-83 school year and is on personal

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- leave during the current school year.
4. Patti Ann Gecek, the daughter of Board Vice-President Ester Messenger, is a tenured teacher who was employed by the Board during the 1982-83 school year and currently. Another daughter, Linda Messenger, is a tenured teacher who was employed by the Board during the 1982-83 school year. She is on leave of absence during the current school year. A third daughter, Mary A. Messenger, is a substitute teacher in the district.
 5. Larry Karchmar, the brother-in-law of Board member Fern Cohen, is a maintenance man employed by the Board both during the 1982-83 school year and currently.
 6. At its June 28, 1983 meeting, the Board voted to ratify a collective bargaining agreement with the Old Bridge Education Association by a three to nothing vote. Board members Cohen, Gordon, Shepard, and Messenger all abstained, and petitioner Salerno did not vote.

Attached to the stipulation of facts are relevant portions of the minutes of the Board's June 28, 1983 meeting and a copy of the Board's current policy on conflicts of interest.

II

The petitioner's brief begins with several paragraphs concerning the New Jersey Education Association (NJEA) and certain of its political activities and contributions.

I **FIND** and **DETERMINE** that such matter is outside the scope of the petition and will not be addressed herein.

Although stated in conclusory terms, the essence of the petitioner's argument appears to be as follows. Board members with family members employed by the Board of Education cannot avoid the undue pressure that the family members receive from their co-workers. A Board member in such a circumstance should disqualify himself or herself from participating in teacher negotiations, grievance hearings, school closings, or items that affect his or her family.

A member of a board of education who is a teacher in another district should avoid the appearance of impropriety by not participating in teacher negotiations, grievances, and the like. By such action, he or she would avoid undue pressure from co-workers or the teachers' union.

Public confidence can be restored to Board actions by having one

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strong standard of ethics on conflict of interest for all elected or appointed officials.

In a case involving the West Orange Board of Education (*Bd. of Ed. of W. Orange v. Int'l Union of Operating Eng'rs*, 109 *N.J. Super.* 116 (App. Div. 1970)), the board refused to recognize the right of the union to represent two head custodians claiming they were part of management and could not be included in the same unit with employees they supervised. On an appeal to the Public Employment Relations Commission, the union won. One of the seven members of the Commission (the vote was unanimous) was an attorney who was also a partner in the law firm representing the union. The Appellate Division stated the attorney should have disqualified himself from participation in the decision of the Commission.

Even though there were sufficient votes to carry the decision after eliminating the interested vote, the court held the conflict of interest to be of such nature that it not only invalidated the vote of the disqualified member but also tainted and rendered void the action of the Commission as a whole.

The petitioner also argues, without elaboration, that the present appeal was timely filed.

III

The Board submits that its members with relatives employed by it should be permitted both to serve on the Board's negotiating committee and to vote on ratification of the collective bargaining agreement.

N.J.S.A. 18A:12-2 provides "No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board." This statute has been interpreted by the Commissioner to permit an individual to serve on a board of education notwithstanding the fact that an immediate family member is a board employee. *In re Bayless*, 1974 *S.L.D.* 595, rev'd St. Bd. of Ed., 1974 *S.L.D.* 603; *Elms v. Mt. Olive Bd. of Ed.*, 1977 *S.L.D.* 713.

In *Bayless*, the State Board determined that the employment of a spouse by the Lawrence Board of Education did not present a "substantial and materially sufficient" conflict of interest. *Bayless* was not disqualified from board membership. In *Elms*, the petitioners argued that *N.J.S.A.* 18A:12-2 barred certain board members whose close relatives were board employees from serving on the board because they had a direct and continuing interest in, among other things, ratification of a collective bargaining agreement that covered their

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relatives. In *Elms*, the Commissioner specifically noted the board's refutation of that argument:

With regard to the agreement between the Board and the Association, respondents declare that such an agreement is a unique contractual form. It is not a commercial contract that has been awarded to a relative of a Board member which would bestow special economic advantage on that individual but rather, assert respondents, it affects all of the teaching staff as a direct outgrowth of their collective statutory rights. [*Id.* at 720-21]

It is significant to note that the relationship in *Elms*, included spouse, sister, son and grandson. The Commissioner held that the existence of a collective bargaining agreement did not present a conflict of interest to those board members with close relatives employed in the district.

In the same decision, the Commissioner also held that the Board was precluded from entering into an ordinary commercial contract with a retail store owned by a Board member's son.

In the Board's view, the Commissioner has recognized a clear distinction between a commercial contract which provides a specific benefit to an individual and a collective bargaining agreement which benefits an entire class of employees. In this case, the collective bargaining unit covers a unit containing hundreds of Board employees. The connection between the economic benefit to a single family member is an indirect and remote consequence of participation in negotiations or a vote for ratification of the agreement. It cannot be disputed that labor relations is a major concern of any board of education. To foreclose a board member from participation in labor relations matters because a relative happens to be a board employee would severely and unduly restrict an individual's ability to perform his or her obligations as a board member. Of course, board members are required to abstain from voting on matters directly affecting their relatives. Examples would include, but not be limited to, renewal or nonrenewal of individual employment contracts. *See, Elms, supra.*

The Board also argues that the petitioner here offers no credible explanation as to why such drastic restrictions should be imposed on Board members. No evidence of impropriety has been alleged, let alone shown. The petitioner has failed to demonstrate a "substantial and materially sufficient" conflict of interest as required by *Bayless*.

The Board also asserts that the petitioner's reliance on *West Orange*, above, is misplaced. In that matter, a Commissioner of PERC was

a partner in a law firm which represented a union in proceedings before PERC. The Commissioner participated in the determination. On appeal, the court focused upon the quasi-judicial nature of the position and held that neither the Commissioner nor his firm could represent any clients in any controversy before PERC. That case has no bearing whatsoever on this matter. Both the position of Board member and the particular factual context present here are not analogous to those at issue in *West Orange*.

Finally, the Board notes that in *Jones v. Kolbek*, 119 *N.J. Super.* 229 (App. Div. 1972), it was held that membership in the NJEA does not disqualify a person for membership on a local board of education.

IV

In a reply to the Board's brief, the petitioner reasserts his belief that Board members whose family members are employed by the Board should abstain from voting on the ratification of the agreement with the teachers' union.

The petitioner also raises two ancillary arguments. The first has to do with the political activity of NJEA. This was addressed above. It lies wholly outside the scope of the original petition. As held above, it will not be considered here. The second concerns invalidation of the negotiated labor contract. The petitioner was advised by Judge Errickson to file a new petition in reference to any plea for invalidation of the current negotiated contract. He apparently has not done so; therefore, his prayer that this court now consider that question is denied. He may, whenever timely, file a prayer for relief on that question before the Commissioner of Education. Although there is great flexibility in the Uniform Administrative Procedure Rules of Practice, no litigant, whether *pro se* or represented, can infinitely expand and contract his petition. The issue or issues in contention must at some point be solidified. No to so require would present an unmanageable situation and would unduly prejudice the ability of the opposing party to respond.

V

While a conflict of interest may arise where the relatives of school board members are in the board's employ, a further determination must be made as to whether the conflict is substantially and materially sufficient so as to either: (1) disqualify the board members from holding their seats or (2) require the board members to abstain from

participation in and voting on matters affecting their family members.

As pointed out above, *N.J.S.A.* 18A:12-2 provides that no board member shall be interested directly or indirectly in any contract with or claim against the board. The Appellate Division has not applied this statute to a situation in which relatives of board members are in the board's employ. The courts have established that a teacher may not serve on a school board for the district in which he or she is employed. *Visotcky v. Garfield*, 113 *N.J. Super.* 263 (App. Div. 1971). This arrangement was described as "patently incompatible" because:

There are many potential conflicts of interest between the two. It is no answer to say that the conflict in duties outlined above may never in fact arise. It is enough that it may. . . . The widespread differences throughout our State in matters of salary negotiations, with resultant "job actions" by teachers and injunctions obtained by boards of education against teacher activities, remind us vividly of the conflict between teachers and boards of education. [*Id.* at 266]

The Appellate Division also has determined that no conflict of interest exists where a teacher is a board member in a district other than the one in which he or she is employed. *Jones*, above. The *Jones* court did not place emphasis on the possibility of a conflict in this situation. Rather, it described the test as "incompatibility in the *functions* or *duties* of office." 119 *N.J. Super.* at 300-01 (emphasis in original).

The leading school law decision construing the subject statute was rendered by the State Board of Education in *Bayless*, above. In that matter, a woman whose husband had supervised the school district's custodial services for 17 years was elected to the school board. The school board, after her election, sought a determination as to whether her taking a seat on the board would be in contravention of the statute.

The Commissioner determined that it was, but the State Board determined that the conflict was not serious enough to bar her from holding office. The standard for disqualification applied in *Bayless* was a substantial, materially sufficient conflict. When balanced against an individual's right to hold public office, the State Board did not find such a conflict, particularly when the potential conflict could be alleviated by her abstention from participation in and voting on matters relating to her husband.

In *Elms*, above, the Commissioner was also presented with a situ-

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ation in which various school board members had spouses and relatives in the board's employ. Although it was argued that *Bayless* was decided incorrectly, the Commissioner applied the *Bayless* standard and found that any potential conflicts could be cured by abstention.

It is important to note, however, that if the school board has adopted a policy to discourage the employment of relatives of board members, such a policy is valid, even though the potential conflicts could be cured by abstention.

Indeed, the Commissioner has determined that such a policy is within the discretion of a board despite the fact that the conflict may be no greater than the conflict in *Bayless* and *Elms. Scola v. Ringwood Bd. of Ed.*, 1978 *S.L.D.* 413.

VI

In sum, then, it appears that a conflict of interest arises when school board members have relatives who are employed by the district. However, the conflict can be cured if the board members abstain from participation in or voting on matters affecting their relatives.

In order to determine upon which matters it is proper for a board member to deliberate and vote, the standard of substantial and materially sufficient conflict as expressed in *Bayless* above, must be applied.

From a review of the whole record, and in consideration of the foregoing, **I FIND:**

1. A potential conflict of interest arises when school board members have relatives who are employed by the district.
2. The conflict can be cured if the board members abstain from participation in or voting on matters affecting their relatives.
3. It is not necessary for board members who have relatives employed by the district to abstain from participation in or voting on every matter affecting their relatives. Although a bright line is difficult to draw, the substantial and materially sufficient conflict standard enunciated in *Bayless* must be applied.
4. The negotiated labor agreement between a board and its employees obviously has an effect on all employees, whether they be related to board members or not. However, as stated by the Commissioner in *Elms*, it is not a commercial contract that would bestow special economic advantage on an individual. Rather, it affects all employees in a bargaining unit as a direct outgrowth of their statutory right to bargain collectively.

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5. Old Bridge Board of Education Policy No. 040, Section 13(J-2) does not, as in *Scola*, above, prohibit the employment of relatives of school board members.

Based upon the foregoing, **I CONCLUDE** that there has been no violation of *N.J.S.A.* 18A:12-2 or of policy of the Old Bridge Board of Education. Potential conflicts of interest were averted when certain Board members abstained from voting. It appears, however, that their abstention from voting on a collective bargaining agreement was overly cautious. Under the ruling in *Elms*, above, their participation in that vote would have been proper.

In view of the above, the remaining question need not be addressed.

Accordingly, the petition of appeal is **DISMISSED**. It is so **ORDERED**.

**After reviewing this Initial Decision,
the Commissioner of Education, on April 23, 1984
issued the following Final Decision:**

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner observes that no exceptions were filed by the parties pursuant to the provisions of *N.J.A.C.* 1:1-16.4a, b and c.

The Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own.

The Commissioner notes with approval the treatment herein describing safeguards to be observed by a member of a board of education who has close relatives in the employ of the board to avoid even the appearance of a conflict of interest, while still enabling that board member to constructively and properly discharge his duties to the board of education. *Bayless, supra; Elms, supra.*

The Commissioner so holds.