



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

OAL DKT. NO. EDU 12958-18

AGENCY DKT. NO. 218-8/18

ARCHANGE ANTOINE,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF ROSELLE, UNION
COUNTY,**

Respondent.

Daniel Antonelli, Esq., for petitioner (Antonelli & Kantor, attorneys)

Allan C. Roth, Esq., for respondent (Law Offices of Allan C. Roth, attorneys)

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Archange Antoine (petitioner) contests his removal from respondent Roselle Board of Education (the Board) predicated on his alleged failure to attend three or more consecutive Board meetings. Petitioner filed a Verified Petition with the Commissioner of Education, accompanied by a motion for emergent relief. Petitioner

seeks an order enjoining the Board from enforcing its resolution removing him as a member of the Board, requiring his immediate reinstatement and voiding the Board's actions to remove him. The Department of Education transmitted the matter to the Office of Administrative Law, where it was filed on September 6, 2018, and scheduled for oral argument on September 12, 2018. In support of his application, petitioner relies upon the facts set forth in the Verified Petition and the exhibits attached thereto, and petitioner submitted a brief and a reply brief. The Board opposes the motion and submitted a brief, along with certifications of Board Members Donna Eleazer (Eleazer Cert.), Patricia Fabrizio (Fabrizio Cert.), Sherise Pollard (Pollard Cert.), Richard Villeda (Villeda Cert.) and Courtney Washington (Washington Cert.), and a certification by the District's Business Administrator/Board Secretary, Anthony Juskiewicz (Juskiewicz Cert.). Oral argument was entertained on September 12, 2018. Prior to oral argument, petitioner submitted an Amended Notice of Motion for Emergent Relief which, in addition to the earlier relief, requests an order restraining the Board from filling the vacant seat due to his improper removal. Subsequently, the Board filed a supplemental brief and a certification of counsel (Roth Cert.), which the undersigned received on September 24, 2018, and petitioner filed a supplemental brief and a certification of counsel (Antonelli Cert.), which the undersigned received on September 25, 2018.

FACTUAL DISCUSSION

A summary of the pertinent facts as gleaned from the documentation submitted follows.

The Board is a nine-member board of education whose elections are held in November of each year and duly elected members take their seats effective January 1. Petitioner was elected for a three-year term commencing January 1, 2018. (Verified Petition at ¶ 1.) On January 1, 2018, petitioner began his third consecutive term on the Board. (Juskiewicz Cert. at ¶ 12.)

On January 6, 2014, the Board adopted a policy, District Policy 0145, entitled “Board Member Resignation and Removal.” The policy states in pertinent part:

Any member who fails to attend three consecutive regular meetings of the Board without good cause may be removed from office on the affirmative votes of a majority of the remaining Board members, provided that:

1. The member’s removal was proposed at the immediately previous Board meeting; and
2. Notice of the proposed removal was given to the affected member at least forty-eight hours in advance of the meeting at which the vote will be taken.

[Verified Petition at Exhibit A; Roth Cert. at Exhibit C.]

At the Board’s meeting on January 29, 2018, the Board approved setting its regular meetings on the fourth Monday of each month when applicable, and an annual meeting schedule lists the regular public meetings scheduled in March through December 2018. (Verified Petition at Exhibit B.)

The duties of Business Administrator/Board Secretary Anthony Juskiewicz include advertising to the public all meetings of a quorum of the Board. (Juskiewicz Cert. at ¶ 2.) He does not advertise committee meetings, which are not considered regular meetings of the entire Board. (Ibid.) According to the certification of Mr. Juskiewicz, the Board has a practice of permitting Board members to call into a meeting in order to participate in a meeting, and appearance by telephone is considered to be full attendance at a meeting as the member’s vote is counted towards the voting tally. (Juskiewicz Cert. at ¶¶ 10, 11.) Petitioner had telephonically attended a meeting in 2018. (Id. at ¶ 10.)

It is undisputed that petitioner failed to attend five consecutive Board meetings on May 17, May 24, June 11, June 20, and June 25, 2018. (Petition at ¶¶ 5-9, 15-16; Juskiewicz Cert. at ¶ 8-9.) The meeting on June 25, 2018 was listed as a regular meeting on the Board’s annual meeting schedule. (Petition at Exhibit B.) The meetings on May 24, 2018 and June

11, 2018 were special meetings, and the meetings on May 17, 2018 and June 20, 2018 were workshop meetings. (Roth Cert. at Exhibit H.) These meetings were advertised meetings of the entire Board, where a quorum of the Board existed. (See Juskiewicz Cert. at ¶ 8.)

The practice of Business Administrator/Board Secretary Juskiewicz is to contact, either by telephone, text or email, all Board members prior to a meeting to ascertain if the Board will have a quorum. (Juskiewicz Cert. at ¶ 3.) According to Mr. Juskiewicz's certification, petitioner did not respond to him that he could attend the meetings or, if he could not attend the meetings, the reasons he could not attend. (Id. at ¶ 4.) According to the certification of Board President Patricia Fabrizio, at no time prior to any of the meetings that petitioner missed did petitioner ever notify her that he was planning to miss an advertised meeting of the quorum of the Board, and petitioner did not contact her to request an excused absence. (Fabrizio Cert. at ¶ 10.)

At the Board's meeting on August 16, 2018, a motion and a second were made to give notice to petitioner that the Board would be considering removing him from the Board for missing more than three consecutive meetings of the Board. (Juskiewicz Cert. at ¶13.) On or about August 21, 2018, Business Administrator/Board Secretary Juskiewicz sent, via e-mail, to each board member, including petitioner, a chart indicating all of the Board members' attendance at meetings since January 2018. (Juskiewicz Cert. at ¶ 7; Roth Cert. at Exhibit B.) On August 22, 2018, the Board's attorney sent a letter to petitioner, which states:

Please be advised that pursuant to Board Policy 145, the Board has requested that you be provided notice that at its Monday, August 27, 2018 meeting, beginning at 7:00 p.m. in the Abraham Clark High School auditorium, the Board will discuss your removal from the Board for missing three consecutive meetings, pursuant to N.J.S.A. 18A:12-3 and Berg v. Blackhorse Pike Regional School District, 1981 SLD March 3.

[Verified Petition at ¶ 10 and Exhibit C; Roth Cert. at Exhibit B.]

Prior to the August 27, 2018 Board meeting, petitioner requested that the discussion be held in public session if the Board attempts to remove him from the Board. (Juskiewicz Cert. at ¶ 14.)

At the Board's meeting on August 27, 2018, a motion and a second were made to remove petitioner for missing three or more consecutive meetings of the Board. (Juskiewicz Cert. at ¶ 15.) Following the motion to remove petitioner, petitioner was given the floor to present evidence of whether he had good cause to miss the five consecutive meetings. (Id. at ¶ 16.) Petitioner presented evidence and handed out documents to the Board members. (Ibid.) Thereafter, a discussion was held by the Board and, following the Board's discussion, petitioner was given additional time to respond to the Board members' discussion. (Ibid.) At the conclusion of all discussion regarding the matter, the vote was taken to remove petitioner from the Board. (Id. at ¶ 17.) A majority of the Board voted to remove petitioner from the Board. (Ibid.; see Roth Cert. at Exhibit I.)

The Board submitted certifications of five Board members. Patricia Fabrizio has been a member of the Board since January 1, 2016 and has served as the Board President since January 1, 2018. (Fabrizio Cert. at ¶ 1.) Donna Eleazer has been a member of the Board since January 1, 2016 and currently serves as the Vice President of the Board. (Eleazer Cert. at ¶ 1.) Richard Villeda was a member of the Board in 2011, 2012, 2013, 2014 and is currently serving a three-year term which began on January 1, 2017. (Villeda Cert. at ¶ 1.) Sherise Pollard has been a member of the Board since January 1, 2016. (Pollard Cert. at ¶ 1.) Courtney Washington has been a member of the Board since February 26, 2018. (Washington Cert. at ¶ 1.) The five Board members certified that, once the motion was made and seconded to remove petitioner for missing three or more consecutive meetings, petitioner was given the opportunity to state his position and provide reasons why he missed the meetings; the Board members then discussed in front of petitioner their position on the motion; petitioner was then given the ability to respond; and each of the five members voted to remove petitioner because he did not have good cause to miss the meetings. (Fabrizio Cert. at ¶¶ 9, 11-13; Eleazer Cert. at ¶¶ 9-12; Villeda Cert. at ¶¶ 9-12; Pollard Cert. at ¶¶ 9-12; Washington Cert. at

¶¶5-8.) Each of the Board members further certified that, during their respective tenures on the Board, they have always understood “regular” board meetings to mean a meeting of a quorum of the Board that was advertised and consistent with the Open Public Meetings Act, as opposed to a committee meeting which does not consist of a quorum of the Board and is not advertised; they have always understood that any advertised meeting of the entire Board is considered to be a regular meeting of the Board, including, but not limited to, scheduled monthly calendar meetings, special meetings, emergency meetings, workshop meetings or any other full meeting of the Board; and they also understood that committee meetings are not considered meetings under District Policy 0145. (Fabrizio Cert. at ¶ 4; Eleazer Cert. at ¶ 4; Villeda Cert. at ¶ 4; Pollard Cert. at ¶ 4; Washington Cert. at ¶ 4.)

LEGAL DISCUSSION AND CONCLUSIONS

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief. The regulation instructs:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[N.J.A.C. 6A:3-1.6(b).]

Petitioner must satisfy all four prongs in order to establish entitlement to emergent relief.

Petitioner contends that, because he missed only one “regular” meeting, the Board removed him “in violation of its own duly adopted policy, and its actions are *ultra vires*, unlawful and improper.” To prevail on an application for an emergent relief, petitioner must make a preliminary showing of a reasonable probability of ultimate success on the merits of his claim and demonstrate that the legal right underlying his claim is settled. Crowe, 90 N.J. at 133. I **CONCLUDE** that petitioner has failed to shoulder his burden of proving both standards.

N.J.S.A. 18A:12-3 explicitly addresses a board of education’s authority to remove a board member for failure to attend meetings. The statute directs in pertinent part:

Cessation of membership.

Whenever a member of a local or regional board of education shall cease to be a bona fide resident of the district, or of any constituent district of a consolidated or regional district which he represents, or shall become mayor or a member of the governing body of a municipality, his membership in the board shall immediately cease; and, any member who fails to attend three consecutive meetings of the board without good cause may be removed by it. (Emphasis added.)

The principles governing statutory construction are well-settled. The “overriding objective in determining the meaning of a statute is to ‘effectuate the legislative intent in light of the language used and the objects sought to be achieved.’” McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The general rule of statutory construction requires an examination of the language of a statute to determine whether the language is clear or ambiguous and susceptible to more than one interpretation. The Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute’s plain language, ascribing to the words used “their ordinary meaning and significance.” We do not view the statutory words in isolation

but “in context with related provisions so as to give sense to the legislation as a whole.” If the Legislature’s intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

Pursuant to the plain and unambiguous language of the statute, the Legislature did not limit the discretionary authority of boards of education to remove a member to situations where the member has missed only regular meetings of the board. Rather, N.J.S.A. 18A:12-3 provides that a board of education is authorized to act if a board member fails to attend three consecutive meetings of the board without any limitation regarding the meeting’s designation as a “special,” “regular” or “workshop” meeting.

In Berg v. Black Horse Pike Reg’l Sch. Dist. Bd. of Educ., EDU 0875-80 and EDU 1007-80, Initial Decision (January 19, 1981), adopted, Comm’r (March 3, 1981),¹ the petitioner, who had missed two regular meetings, one special meeting and two work sessions, asserted that the board was barred by the statute from removing him since he missed only two regularly scheduled monthly meetings. In rejecting this contention, the Administrative Law Judge (ALJ) observed that the precursor of N.J.S.A. 18A:12-3 was N.J.S.A. 18:6-11, which provided that “[a] board member who shall fail to attend three consecutive regular meetings of the board without good cause may be removed by the board” (emphasis added), and that the new statute eliminated any reference to the type of meeting held by boards of education. The ALJ held that the “statute refers only to three consecutive meetings and not three consecutive regular monthly meetings as interpreted by petitioner,” [and] [t]he plain meaning of the words supports the former interpretation.” The Commissioner agreed and found the omission of the designation “regular” when the Legislature revised the statute to be “significant” and that “if the revised version of the statute had intended to mean ‘regular’ the Legislature would have so stated.”

The same rationale would appear to apply with equal force to this case and undermines petitioner’s likelihood of prevailing on his claim. The Berg decision further

¹ A copy of this unpublished decision is attached to the Roth certification as Exhibit D.

supports that the law vis-à-vis the intended scope of the word “meetings” in the statute is not settled in petitioner’s favor. “The Legislature is presumed familiar with prior legislation.” N.J. Coal. of Health Care Prof’ls v. N.J. Dep’t of Banking & Ins., 323 N.J. Super. 207, 256 (App. Div.), certif. denied, 162 N.J. 485 (1999). The Legislature’s deletion of the designation “regular” in the current statute reasonably evidences an intent on the part of the Legislature to expand the ability of a board of education to remove a board member for poor attendance.

The crux of petitioner’s argument is that, notwithstanding the statutory language, the Board has adopted a policy that provides “additional protections for board members” and limits the Board’s authority to remove him unless he missed three consecutive “regular” meetings.² Relying on Matawan Reg’l Teachers Ass’n v. Matawan-Aberdeen Reg’l Sch. Dist. Bd. of Educ., 223 N.J. Super. 504 (App. Div. 1988), petitioner argues that the courts have required public bodies to adhere to their own bylaws and, once adopted, the Board’s policy “became binding on the board in matters of board member removal.”

In short, Matawan Reg’l Teachers Ass’n is markedly distinguishable and does not purport to address the binding effect of a board policy that alters and restricts the statutory authority bestowed upon a board of education. The issue in Matawan Reg’l Teachers Ass’n concerned whether a local school board may lawfully adopt a plan, which included the closing and sale of a school building by a majority vote of its full membership after consideration at a single public meeting, even though its bylaws required adoption by a two thirds vote of its full membership after consideration at two public meetings. Although the court held that the board was bound by the bylaw that requires two public meetings for adoption of the plan, it explained that “the bylaw requiring that action on non-emergent matters of policy be considered at two public meetings does not conflict directly or indirectly with any statute [and] [i]ts purpose is not to remove the responsibility and authority to act from those members of a local board who are authorized by state law to act.” Id. at 509. Accordingly, the court held that, “[i]n the absence of any statute to the

² The Antonelli Certification attaches policies and bylaws of several school districts that also refer to a member’s failure to attend three consecutive “regular” meetings of the board.

contrary, the board’s bylaw requiring two public meetings to adopt the plan is binding.” Id. at 510. The court further held that the board was not bound by the bylaw that limits the authority of the majority. The court reasoned that “N.J.S.A. 18A:11-1 is silent with respect to the number of votes necessary to adopt rules and to govern and manage the district”; “[i]t must be assumed that by its silence the Legislature intended the common-law rule to apply, i.e., a majority vote of the members of the board constituting a quorum shall be sufficient”; and, thus, “the Legislature has empowered a majority of the majority of a local board to adopt bylaws and conduct the board’s business.” Id. at 507. In so ruling, the court rejected “the argument that the Legislature has merely established a minimum number of affirmative votes necessary for local board action, which the board may increase in its bylaws to assure a broader consensus.” Ibid.

The New Jersey Supreme Court has recognized that “[l]ocal boards of education are creations of the State and, as such, may exercise only those powers granted to them by the Legislature – either expressly or by necessary or fair implication.” Fair Lawn Educ. Ass’n v. Fair Lawn Bd. of Educ., 79 N.J. 574, 579 (1979). A board of education derives the authority to adopt bylaws and policies from N.J.S.A. 18A:11-1(c), which directs:

The board shall . . . [m]ake, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes. [Emphasis added.]

In addition, in the context of whether the State has preempted an area from municipal regulation, our courts have further recognized that a pertinent question for consideration is whether “the ordinance conflict[s] with state law, either because of conflicting policies or operational effect (that is, does the ordinance forbid what the Legislature has permitted or does the ordinance permit what the Legislature has forbidden).” Overlook Terrace Mgmt. Corp. v. Rent Control Bd. of W. New York, 71 N.J. 451, 461 (1976). In other words, “an ordinance will fall if it . . . forbids what a statute expressly authorizes.” Summer v.

Teaneck Twp., 53 N.J. 548, 554 (1969). Succinctly stated, if petitioner's asserted interpretation and binding nature of the Board's policy are accepted, the policy would in effect forbid the Board from removing a member for missing three consecutive meetings unless they were "regular" meetings, notwithstanding that N.J.S.A. 18A:12-3 expressly authorizes boards of education to take such action.

In sum, petitioner has failed to demonstrate that the law underlying his claim is settled. And, in view of the statutes and caselaw previously addressed, petitioner has also failed to demonstrate a likelihood of success on the merits of his claim. Accordingly, petitioner has failed to meet two of the required criteria and it is unnecessary to address whether petitioner has satisfied the remaining criteria.

Based upon the foregoing, I **CONCLUDE** that petitioner has failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting emergent relief.


ORDER

I **ORDER** that petitioner's application for emergent relief be and hereby is **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

September 27, 2018

DATE
jb



MARGARET M. MONACO, ALJ