

## **Summary**

OAL Judge Leslie Celentano has dismissed all charges against EBOE Assistant Superintendent of Schools Jerome Dunn and Coordinator of Network Services Alberto Marsal of violating the School Ethics Act.

In a 35 page decision the Court totally exonerated the pair saying there had been "no evidence provided" by the School Ethics Commission that they had violated the act.

The basis of the complaint brought by political allies of Elizabeth Mayor J. Christian Bollwage and State Senator Raymond Lesniak, charged Marsal with acquiring telephone numbers from school records for political robocalls, and providing them to the campaign of Jerome Dunn, who was Lesniak's opponent in the primary election. Also the complaint alleged that Dunn referred to himself as the Assistant Superintendent of Schools in campaign robocalls. The Judge concluded that the School Ethics Commission "provided no evidence that Marsal acquired telephone numbers from school records, and no evidence that Jerome Dunn referred to himself as the Assistant Superintendent of Schools in the robocalls sent out during the primary election campaign."

The key witness against the BOE was a former Director of Education Information Susan Mettlen. Mettlen admitted under oath that she was the

source of information to both Ted Sherman of the Star Ledger and James Russo in the Union County Prosecutor's office.

In terms of Mettlen and the complaining witness Michelle Cetta, the Court found their testimony "evasive and riddled with inconsistencies and illogical assertions. The testimony of (the School Ethics Commission's) witnesses in each case suggests a lack of candor, and the testimony of each was entirely unconvincing and no competent evidence substantiated any of their assertions."

The Court further said of Mettlen "respondents (Marsal & Dunn) have demonstrated irrefutably that even if Mettlen's testimony was credible and believable which it was not, it would have been impossible for Marsal to acquire the only telephone numbers at issue here."

The Court also noted "The hearing required more days than had been originally scheduled, following the failure on two separate occasions of Susan Mettlen to appear to testify."

Most telling, the 35 documents provided by Mettlen and considered by the Court as alleged evidence against Marsal, were actually forged in his name by Mettlen. As found by the Court, testimony and computer evidence demonstrated "Mettlen must have logged in changed Marsal's password, and then logged back in one minute later as Marsal."

The Court further determined "The unrefuted proofs established to be IP address of Susan Mettlen and accordingly established that it was Susan

Mettlen who logged in as Marsal.” The referenced IP address was actually at Mettlen’s home.

“The proofs established that in order for Marsal to have logged on from Mettlen’s IP address he would have had to have been at her computer at the time and remained there.”

Marsal has never been to Mettlen’s home.

Significantly, the Court did not rely on a December 1998 investigation of Mettlen by her former employer the University of Tennessee in discrediting Mettlen’s testimony. That report while describing similar conduct concluded:

1. Mettlen had a conflict of interest regarding her role in awarding computer contracts.

2. Mettlen “directed payments totaling \$16,000 to herself through a company called Burnett & Associates.” “The \$16,000 appears to have been used for mortgages and credit card payments and other personal expenditures.”

3. “Dr. Mettlen has caused employers to submit misleading payroll information.”

The audit concluded

“Also the payments were not appropriately disclosed to the University and were made after requests for extra pay through the

University were denied.”

In terms of Dunn and Marsal the court concluded,

“I find Dunn and Marsal to be believable and persuasive and their demeanor to be highly credible and I find their testimony to be extremely credible and hence part of the operative facts in this case.”

In terms of Cetta who filed the complaint over the robocalls the Court found she “is a committeewoman in her ward and had a ‘Bollwage for Mayor’ sign on the front law of her home in which she resides.”

Both Mettlen and Cetta were represented by Daniel McCarthy a major contributor to the campaign of Lesniak and Bollwage. McCarthy campaign contribution records were admitted into the case as evidence. McCarthy prepared the original complaint against Dunn and Marsal.

During the trial the Judge rejected the motion by respondents to have Mettlen’s testimony stricken when it came to the Court’s attention she was consulting with a McCarthy Law firm associate in the middle of her testimony.

The case included 3 witnesses for the complainant and 11 witnesses for the EBOE. Four witnesses specifically refuted testimony by Mettlen regarding her assertions relating to their conduct.

A summary statement made by the Court said, **“Short shrift may be made of the substance of the complaint in this matter. Respondents correctly articulate in their brief...the Commission produced no**

**credible evidence that Marsal acquired telephone numbers from school records and supplied them to the Dunn campaign.” Continuing, the Court noted “With regard to the allegation that respondent Jerome Dunn identified himself as ‘the assistant superintendent of schools for Elizabeth in the robocalls, the unrefuted proofs establish that he did not do so.’”**

Order- The findings of the OAL Judge will be forwarded to the School Ethics Commission. The Deputy Attorney General representing the Commission Geoffrey Stark can file exceptions and the Commission has 45 days to adopt, modify or reject the decision.