



HURON CITY SCHOOL DISTRICT
SPECIAL MEETING

April 2, 2013
7:30 p.m.

McCormick Junior High Auditorium

The Board of Education, Huron City School District, Erie County, Ohio met in a Special Meeting on Tuesday, April 2, 2013 in the McCormick Junior High School Auditorium, 325 Ohio Street, Huron, Ohio 44839

Mr. Slocum called the meeting to order at 7:30 P.M.

ROLL CALL: The following members were present: *Mr. Slocum, Mr. Sowecke, Mr. Asher, Mrs. Green and Mr. Caporini.*

NO. 6472 RESOLUTION AND ORDER OF TERMINATION

Mr. Sowecke moved, seconded by Mrs. Green, as follows:

WHEREAS, on September 6, 2012, after providing Frederick Fox ("Fox") with a "Loudermill" hearing, this Board determined to initiate proceedings under Ohio Revised Code Section 3319.16 to consider termination of Fox's employment contract; and

WHEREAS, on September 7, 2012, the Treasurer gave Fox written notice on behalf of the Board of its intent to consider termination of his contract with specification of the grounds for such termination; and

WHEREAS, Fox, upon receipt of this Board's September 6, 2012 resolution of intent to consider termination, demanded a hearing before a referee in accordance with the procedures appearing in R.C. 3319.16 and 3319.161; and

WHEREAS, the Superintendent of Public Instruction appointed Harry H. Taich as the referee to hear the case and make a recommendation in accordance with R.C. 3319.16 and 3319.161; and

WHEREAS, the referee conducted 10 days of hearing concerning the charges against Fox, which hearing Fox requested to be conducted in private; and

WHEREAS, on March 11, 2013, this Board received the referee's written report and recommendation with respect to whether Fox's employment contract should be terminated; and

WHEREAS, the Board for purposes of this Resolution, has attached the referee's report to this Resolution as Exhibit A; and

WHEREAS, this Board is now obligated under R.C. 3319.16 to accept or reject the referee's findings and recommendations pursuant to the standards set forth by the Ohio

Supreme Court in *Aldridge v. Huntington Local School District Bd. of Educ.*, 38 Ohio St.3d 154 (1988); and

NOW THEREFORE, BE IT RESOLVED by the Huron City School District Board of Education that the following findings and conclusions are made by the Board:

I. Findings of Fact

1. Improper Use of the District Email System. At page 19 of his report, the referee determined the following:

The Superintendent acknowledged that he participated in an inappropriate extramarital relationship that lasted for approximately eight months. (Tr. 22, 52-53) The Superintendent admitted that he utilized the District's e-mail system to communicate with the other woman and for personal use. (Tr. 22, 286-287)

The referee chose to discount the significance of Fox's admissions. The Board does not.

- 1a. The referee noted, at page 9 of his report, that Fox testified that he knew other employees used the District's email system for personal matters. The referee failed to acknowledge Board President Slocum's testimony that it would be the superintendent's job to initiate disciplinary action for policy violations. (T. 2599-2602) Treasurer Michael Weis also testified, "you've got to be a little bit better than the other guy if you're going to be leader." (T. 1015)
- 1b. Board President Slocum affirmatively testified that he was not aware of any other employee who had abused the District's email system as Fox did. (T. 2599) There was no evidence in the record that any other employee abused the email system in the manner or with the volume or frequency that Fox did.
- 1c. The referee conflated employee use of the Tiger Trader system with employee abuse of the District's email system. Unrebutted testimony showed that Tiger Trader is a separate platform from the email system, with its own computer icon, and that the District created it specifically to enable employees to post and sell or trade goods to other District employees. (T. 643-644, 1074-1075) If Fox believed employees' use of Tiger Trader was contrary to Board policy, it was his job to cause the activity to stop, not to use it as a justification to abuse the email system to conduct his extramarital affair.
- 1d. The referee failed to acknowledge any distraction or effect on District employees by Fox related to his conduct of his extramarital affair. Testimony from Shawnee Elementary Principal Tanny Vonthron and former high school Principal John Ruf was that, because Fox claimed to be with Vonthron when he was not, employees thought Vonthron was the woman with whom Fox was having his affair. Vonthron was very upset by this. (T. 365-367, 1069-1070)
- 1e. Fox's emails to his paramour, more than 250 over several months, were often exchanged during school hours (see Bd. Exs. 4 and 5). Review of the emails shows Fox and his paramour often discussed or arranged for phone calls and meetings, revealing further distractions of Fox's attention from his job duties. Testimony was that beginning in 2010, the District was no longer moving forward because Fox was distracted. (T. 494, 1576-1577) Even Fox's own exhibit (S. 65) shows that the District has hovered, but not moved forward since 2008-2009 school year.

2. Regarding free lodging. It is undisputed that Nelson provided and Fox accepted free lodging for two nights at the Kalahari Dells resort when Fox attended the wedding of Nelson's child. The referee appears to justify or excuse this conduct because rooms were offered to other Ohio guests who were not public employees,

and to Wisconsin public officials, at least one of whom was Nelson's family member. The Board notes that private citizens may accept such gifts and hospitality and are not subject to the ethical restrictions that apply to Ohio's public officials and employees. The Board also notes that there was no evidence that Wisconsin public officials - other than Nelson's relative - accepted the free lodging that was offered, or that they would have been subject to the same restrictions that applied to Fox as an Ohio public servant. The Board also notes that others' (mis)conduct would not excuse or justify Fox's violation of Ohio's ethical rules.

3. Regarding the Dells Golf Trip. At pages 33-34 of his report, the referee notes that Nelson is a small shareholder in the Dells Kalahari resort, and a half owner of Kalahari Sandusky. The referee failed to acknowledge that Nelson also testified that he and his wife are 100% owners of the (Trappers Turn) golf course which is attached to the Kalahari resort in the Wisconsin Dells, and that Nelson is the President of all three of those entities. (T. 2226-2228, 2360-2361).

3a. The referee failed to explain why he credited the self-serving testimony of Fox over the plain text of the emails written at the time that Fox arranged the golf trip in 2010. In particular, the referee credited Fox's testimony that he called the front desk and got the same treatment as anyone else. That testimony directly contradicts the contemporaneous emails, as amplified by Nelson's testimony. Specifically, Fox contacted Nelson via Nelson's Kalahari email address on May 19, 2010 to say that Fox and a party of about 8 guys were looking to take a 3-day golf trip. Within an hour, Nelson directed Greg Sherrill - who he testified was his "number two in command" at the Dells resort - to book Fox a "Nyumba" villa/suite. (Bd. Ex. 7, p. 2; T. 2231-2233) A couple of hours later, Sherrill emailed Fox, with a copy to his boss Nelson, with a confirmation number and the web address for a description of the entertainment loft villa, and stated:

The rate on the room will be \$500/night, and golf at Trappers Turn will be compliments of Mr. Nelson. (Underlining added.)

(Bd. Ex. 7, p. 1) Asked about the email references to complimentary golf, Nelson stated (T. 2234):

I would think they could play as much as they would like to over and above what they had booked with their room.

That statement was followed by this question and Nelson's answer (T. 2234):

Q. So you said you can play golf compliments of me basically, right?
A. Yes.

3b. During his testimony, Nelson said he would "assume" that \$500 per night was a flex rate when Fox booked the room. However this contradicts his contemporaneous email of May 20, 2010, in which he apologized to Fox for the room rate and confirmed the complimentary nature of the golf, stating (Bd. Ex. 7, p. 1):

sorry on the rate. these rooms at that time of year go for \$1000 or more a night. we will make it up in golf and other stuff. (Bold and underlining added, lower case in original.)

- 3c. Referring to the web address cited by Sherrill, it is apparent that the description of the entertainment loft villa - designed for up to 18 guests - includes many amenities; it does not include golf. (Bd. Ex. 8) However, the room description makes clear that guests who reserve such villas must pay for the first night at the time of the reservation, and must pay a \$1000 advance damage deposit. Neither Nelson's nor Sherrill's emails imposed any such requirements on Fox or his party. Nor does the invoice charged to Fox's credit card show such a deposit. (Bd. Ex. 9)
- 3d. There is no evidence that Fox was given the same rate that someone who actually called the front desk without any intervention by Nelson would have gotten. Nelson testified that he just "assumes" it was a rate others could have gotten, though he denies having any part in setting the rate (T. 2236, 2238). Nelson admitted that Sherrill, who gave Fox the rate, knows Fox from Ohio. (T. 2238). The Trappers Turn golf course web page (Bd. Ex. 10) shows May to September with higher rates than the rest of the year. Nelson also testified that May to September was peak season. (T. 2296). And, ultimately, Nelson wrote in his email that the rate charged to Fox was half the normal rate for that time of year.
- 3e. The referee also disregarded testimony and evidence about the rates charged in 2012, as a measure of the kind of gift Fox was given in 2010. Matthew Markling testified that, as part of his Spring 2012 investigation, he checked rates on the resort website, and Board member Sowecke testified that he called the Kalahari Dells' general reservations number to ask about the rate for a room and golf package like Fox got for similar days in 2012. (T. 1366-1368, 2098-2099; also see Bd. Ex. 25, page 37) The rate quoted to Sowecke in May 2012 for the room alone was almost 20% more than what Nelson's email indicated was normal for the time period in 2010; when the cost of golf for 7 people for 2 days was added in, the total rates for 2012 offered to Sowecke by the reservations desk were more than triple the rate charged to Fox in 2010. Nelson confirmed that the web page lists rack rates, but Nelson was unable to testify that there had been a substantial rate increase from 2010 to 2012. (T. 2295-2296)
- 3f. Fox used the District's email system to arrange for the 2010 Golf trip to the Dells. (Bd. Ex. 7)
- 3g. It is undisputed that Fox invited his subordinate administrators to accompany him on the Dells golf trip. The referee acknowledged, at page 19 of his report, the un rebutted testimony that the subordinate administrators who accompanied Fox on the 2010 golf trip were not informed of the arrangements Fox had made, just the dollar amount he asked each of them to pay. (T. 85-86) William Lally, Superintendent of Northpoint ESC, testified that when Ruf consulted him about the wisdom of going on the trip, Ruf explained to Lally that Fox had called the golf trip a "team building experience," and implied he expected the invited principals to attend, but Fox had also told them not to wear any shirts with Huron City Schools insignia. (T. 1662) After discussing the ethics issues with Lally, Ruf decided not to go on the 2010 golf trip. (T. 1077)
- 3h. Kalahari Sandusky, which Nelson and his wife own half of, and of which he is President, is the beneficiary of tax abatements by Huron Schools and other area governments. (Bd. Ex. 27) The March 2011 agreement between the District and Nelson provides Kalahari Sandusky a 100% tax abatement for 15 years with the business making 25% payments in lieu of taxes for that period. The referee noted Weis's testimony that he negotiated the abatements for the District because of Fox's relationship with Nelson. The referee failed to address the sham nature of that claim, evidenced by Fox's statements to Lally and McCarthy. Fox told Lally that Weis would negotiate, but only after Weis and Fox had first discussed the abatement. (T. 1802) Fox made similar statements to McCarthy. (T. 1185-1186)
- 3i. As a member of the Erie County Tax Incentive Review Council, Fox voted in favor of continued tax benefits for Sandusky Kalahari in March 2009 and

March 2010. (Bd. Ex. 48, p. 3, item 7; Bd. Ex. 49, p. 2, item 5 (also see p. 3, item 12))

3j. Documentary evidence (Bd. Ex. 13) shows that repeatedly, during the period from August 2006 through December 2010, Huron Schools has had a business relationship with Kalahari Sandusky in which the District holds events at the resort, and pays the resort for goods and services. The purchase orders and requisitions identify Kalahari as a vendor to the District. Some of the events for which the District paid the resort were employee reward nights. Fox testified that it was his suggestion that, to reward employees for the District's performance rating, the Board provide employees with passes and subsidized discounted group room rates at Kalahari Sandusky in 2008, 2009 and 2010 (T. 70-72, Bd. Ex. 13)

4. Fox's trip to Arizona raised several issues, including whether he should have used vacation leave for his non-conference days in Arizona, whether he was eligible for compensatory time for days he traveled to and from Arizona, and whether he improperly obtained reimbursement for renting a car and for his non-conference hotel nights. Evidence was not acknowledged by the referee, or the referee failed to explain why he chose to credit certain evidence and not other, or his citations to the transcript do not support the finding for which the referee cited that aspect of the record in connection with Fox's trip to Arizona:

4a. Regarding compensatory time as a past practice. It applies to hourly workers, not salaried employees like Fox. Treasurer Weis testified that the "past practice" of granting comp time was that it is offered in lieu of paying time and a half for overtime because it is cheaper. (T. 897-898). This testimony was confirmed by Ruf who stated (T.1080-1081):

Q Are you required by contract to work from 9 to 5 or some particular time?

A Administrative contract is you're a -- you know, you're a salaried employee, not an hourly employee, so from my point of view it -- at the high school you work when they -- when you're needed or a crisis comes up or it's required by whatever duty is being performed in that building or, you know, through the league, there's a whole variety of things.

Q Do you work on Saturdays sometimes?

A Often.

Q Sundays?

A Occasionally.

Q Did you ever seek comp time in connection with days that you worked other than weekdays?

A Meaning? If I worked a Saturday, did I take a day off?

Q Yeah.

A No.

Q How about if you went to a seminar, did you ever turn in comp time that you got a day off?

A No.

Q Are you familiar with the use of comp time in the Huron School District?

A The only use I had occasionally was with our hourly people, there would be -- for example, a custodian, a pipe breaks after school, they have to stick around,

sometimes they would ask to take, you know, comp time rather than put in for overtime. It was just my understanding that we had between me and the custodians.

- 4b. Like Ruf, Fox's contract (Bd. Ex. 1) is for salaried employment. Regarding Fox's status as a salaried employee, his contract reads in relevant part:

The Superintendent's rate of pay shall be calculated on the basis of 260 working days (full year). The Superintendent shall devote such time and energies as are necessary to perform the duties specified during normal business hours, but it is expressly agreed that the duties of this position will require the Superintendent to work during times other than normal business hours.

Fox's contract also makes other administrator benefits available to him by providing:

The Superintendent shall be entitled to all other benefits as outlined in the Administrative Fringe Benefit Schedule adopted December 19, 2005 and modified June 19, 2007.

The Administrative Fringe Benefit Schedule (Bd. Ex. 1) does not provide for comp time.

5. Regarding Fox's failure to use a vacation day. Fox attended a conference that began on Wednesday, March 2, 2011. (Bd. Ex. 16) It is undisputed that Fox did not take a vacation day for either Monday, February 28 or Tuesday, March 1, 2011. (Bd. Ex. 24)

5a. The Administrative Fringe Benefits Schedule incorporated into his contract (Bd. Ex. 1, page 6, ¶ 3) allows Fox the opportunity to accumulate and cash-out unused vacation days.

5b. Fox did cash-out unused vacation days after he was suspended without pay. (Weis, T. 2366-2367)

6. Regarding Fox's reimbursement for use of the rental car and non-conference hotel nights in Arizona. The Board did not offer to pay all other expenses if Fox paid his airfare. Fox informed the Board that he would be attending an Effective Schools Conference in Arizona, and that he had already purchased airline tickets for himself and his wife. (Bd. Ex. 22) Fox admitted that he did not discuss the car rental with the Board. (T. 165):

Q Now, you then -- did they know that you were going to rent a car when you were out there?

A I believe so. I mean, I went to Arizona. I mean I wasn't -- I wasn't driving there. I just assumed that they did.

Q Okay. Do you remember having any discussion about the car or not?

A No, I do not remember having a discussion about the car. I did with the treasurer. He saw no problems with it.

6a. Fox's stated reason for using a rental car for 7 days, with 424 miles driven, (see Bd. Ex. 18) was that the hotel restaurant was expensive. (T. 169) Fox proffered only one meal receipt other than an airport restaurant (Bd. Ex. 19) to show that he paid for inexpensive meals elsewhere. The conference brochure shows that the conference provided breakfasts on all conference days, as well as lunch on March 2, 2011. Fox also testified that he used the car to travel to the ballpark in Goodyear Arizona. A mapquest search shows that the ball park is 33.12 miles from the conference hotel.

6b. Fox accompanied Todd Nelson's sister to attend a professional baseball exhibition game in which a Huron School graduate played. (T. 347) Board

member Asher testified that Fox did not inform him that he wanted a rental car to attend the game, or even that he planned to attend the game (T. 1958); thus, that was not a factor in deciding whether a rental car was or should have been approved.

- 6c. Contrary to the Referee's findings at page 11 of his report, neither Board members Asher and Caporini, nor former Board member Bulea, testified that they had approved reimbursing Fox for the use of a rental car while in Arizona. Asher's testimony (T. 1901-1902) was:

Q Did you assume that he would use a rental car if he was out there for a week?

A Yes.

Q That was what your --

A Seemed awfully practical to me.

Q Do you recall specifically whether that actually came up or whether it was just something you assumed or don't you know?

A I don't recall if it came up specifically, but I assumed that.

Caporini did not testify about the car rental. The referee's lack of citation to his testimony confirms this.

Bulea testified (T. 2048-2049):

Q Okay. Well, we've got the record. If there was testimony by other board members that the rental of the car for the Arizona trip was not discussed among board members, would you agree with that or disagree or do you just not recall?

A I wouldn't say that specifics of anything that was paid for was discussed among the board members.

Q There was not specific discussion?

A There was a specific discussion on expenses. I wouldn't say that we said, you know, specific things should be paid for or not paid for.

- 6d. Fox's contract (Bd. Ex. 1, page 2) under Professional Growth provides for reimbursement of certain expenses; it reads:

The Superintendent is encouraged to attend those professional meetings that will enhance his/her capacity to deal effectively with the business of the Huron City Schools and that are approved by the Superintendent. The actual and necessary expenses of said attendance shall be paid by the District in accordance with Board Policy.

Fox attended an Effective Schools Conference. Substantive testimony from Curriculum Director Chris Standring, Principal Tanny Vonthron, and former Principal Ruf showed that Huron City Schools has not used the Effective Schools model for several years (T. 376-377, 1079, 1265, 1566-1567, 1665-1667), and that Fox never shared any conference information with his school building administrators; he merely had the Curriculum Director order a couple of books from a brochure, which Fox then shelved. (T. 377, 1079-1080, 1569-1570) Testimony from former Northpoint ESC Assistant Superintendent Dan McCarthy, who has previously taught educators about Effective Schools (T. 1153), was that it was a site-based program (meaning one to be implemented in each principal's school buildings) (T. 1177), and that it was a program designed for ineffective urban schools, while Huron Schools has always been a high-achieving district. (T. 1176-1177) McCarthy has known Fox for many years (T. 1157), Huron Schools is a client of

Northpoint ESC (T. 1039), and McCarthy resides in the Huron School district and his children were educated there. (T. 1165)

Fox's contract (Bd. Ex. 1, page 2) under Expenses provides for reimbursement of certain expenses; it reads:

The Board shall reimburse the Superintendent for all actual and necessary travel plus any other expenses required in the performance of the official duties during the employment under this contract subject to such limitations as provided by law and Board policy.

- 6e. Board Policy DLC-R (Bd. Ex. 21, ¶ 2D) specifically limits reimbursement for rental cars:

Car Rentals: Rental cars may be used only in cases of emergencies or when no other means of local transportation is practicable and the rental has been preapproved. Emergencies include: canceled airline flights or change in destination due to inclement weather or other circumstances.

There was no emergency. Insofar as his attendance at the conference was in furtherance of his official duties, there was no evidence that use of a rental car was required for his attendance at the conference. The rental was not preapproved by the Board; and neither his requisition nor his purchase order related to the conference (Bd. Ex. 19) included payment for a rental car.

- 6f. Weis's testimony on whether the audit of the reimbursements to Fox included an examination of whether they complied with Board policies was inconsistent. He first testified that the audit did not examine policy compliance. (T. 940-941, 1010-1011) When recalled as a witness by Fox, Weis changed his testimony, contradicting himself, stating that the audits considered Board policies; but, he further testified that those audits were the district's ordinary audits. (T. 2356-2357, 2371) The audit for the relevant period (July 1, 2010 through June 30, 2011) is a public record, and is posted on the Auditor of State's website at <http://www.auditor.state.oh.us/auditsearch/search.aspx>, and specifically states that it did not offer an opinion on whether there was compliance with laws, regulations or contracts.

7. Charges 2d, 3c and d and 4a concerned Fox's attempts to intimidate, and to influence witnesses. The referee asserted that he did not find the testimony of Green and Slocum on the attempted intimidation allegation "very convincing." (Report p. 16) However, the referee did not acknowledge or properly evaluate the testimony of Slocum, Green and others.

- 7a. Attempts to intimidate Green. Although she was not responsible for initiating the two Toolgate investigations, Green did play a role in each, to Fox's annoyance. (T. 2462). The referee did not acknowledge that the Toolgate investigations had positive results: Eventually the District's tools were inventoried and unnecessary purchasing ended. (T. 1286, 1327). While the referee found that Fox acknowledged frustration with Green and the tool investigation (Report, page 28), the referee did not acknowledge that, given the positive although incomplete results of the Toolgate investigation - a tool inventory being put into place and improper purchases stopped - Fox had no legitimate basis for frustration or annoyance, or for anger or threats directed at Green. The necessity of those corrections reflected poorly on Fox's leadership of the District.

- 7b. Steve Zeck, the District's mechanic, observed that Fox's main concern was with where the complaints were coming from. (T. 1276). As the referee noted, Fox was irritated when he told Zeck that "Donna Green better watch her back." Zeck reported this improper and threatening comment to Green. Employees told Green in 2011 that Fox had made threats against her. (T.

757) This is just one example in the record of Fox's predisposition to "kill the messenger." (T. 516, 1173, 1583-1584, 1274-1276)

- 7c. Green, in January 2012, obtained records from Weis disclosing (1) that Blodgett continued to claim local mileage for a year and a half after Fox reported to the Board that Blodgett would be instructed to use the extra district truck and (2) that Fox requested and got reimbursement from the District for renting a car and the cost of his hotel for non-work nights during his Arizona trip in 2010. Fox was separately overheard by both Ruf and Vonthron plotting to try to force Green to resign. (T. 383, 1062-1064)
- 7d. The referee also ignored the testimony of Lally, who recounted Fox's repeated admissions and statements related to his efforts to intimidate Green. Fox told Lally that "Green had stuck her nose into Toolgate ... and was now sticking her nose into the mileage." (T. 1197-1198, 1672-1675). Fox disclosed to Lally a plan to plant information harmful to Green in records being provided to the Sandusky Register newspaper and, on several occasions, told Lally to watch the newspaper, asserting that Green would quit the Board. (T. 1671-1675). While there is no evidence that Green was aware of the conversations between Fox and Lally, the evidence substantiates the testimony of Ruf and Vonthron regarding Fox's plotting, threats and efforts to intimidate Green.
- 7e. During the February 2012 Board meeting, the Morog Report (Bd. Ex. 35), which noted irregularities in tool purchases, was discussed. Fox yelled at Green and said she could be charged with a felony. (T. 119-120, 122-124, 719-720). While Green did not understand the reference to a "felony", she subsequently learned that Fox and Weis were alleging that she had misappropriated \$5900.00 for the Huron football stadium sign - an expenditure which the Board had approved. There was a dispute between the Treasurer and Green over whether she had said it was the Alumni Association or the Stadium Beautification Committee that would conduct fundraising to reimburse the district, but it was the responsibility of the Treasurer to verify the source of the reimbursement before issuing a check. The referee ignored evidence demonstrating that in 2010 Green was part of the Stadium Beautification Committee and had arranged for that committee to raise the money to cover the cost of the stadium sign. (T. 823-825, Bd. Ex. 38) When Green learned that Fox and Weis had raised an issue about the funding of the sign, including claims that she could be criminally charged, she viewed it as an effort by Fox and Weis to intimidate and harass her. (T. 798-800).
- 7f. Sowecke testified that Green informed him about Vonthron's complaints and concerns in February 2012 rather than dealing with this problem on her own because she was fearful because she had been involved in previous investigations. She felt abused, threatened, and "did not have the stomach for this fight." (T. 1341).
8. Attempts to intimidate Slocum. Although Slocum denied that he was intimidated by Fox's actions and comments, the record evidence demonstrates that Fox attempted to intimidate Slocum, and that is the allegation in Charge No. 3d. These efforts included Fox's statement to Slocum that former Board member and influential local citizen Sharon Barnes would go after Slocum. (T. 540-541, 2661-2662) Fox warned Slocum to "think about his legacy" on the night that the Board's majority voted to forward the Markling Report to the Ohio Ethics Commission. (T. 2663). The referee ignored Fox's admission to Lally that efforts were being made to obtain information from Slocum's former employer that would show that Slocum had been fired for wrongdoing, with the intent of holding this information over Slocum so that Slocum would agree to "bury" the Markling Report. (T. 1676-1677). This effort, although allegedly pursued by a third party Fox-supporter, could have been stopped by Fox had he chosen to do so. This effort to harass and intimidate Slocum continued. Fox, as part of his hearing strategy, subpoenaed Slocum's former employer to produce Slocum's employment records at the hearing. The subpoena was issued in the Fox termination matter despite the fact that a similar subpoena had been quashed by the Erie County Court of Common Pleas in a related

case. (T. 541-543). As the referee noted, no negative information was in Slocum's file. (Report, page 43).

9. Attempts to intimidate Subordinate Employees. Fox acknowledged that he spoke to employees, including Vonthron and Ruf, shortly before Markling interviewed them. While Fox may have understood from his lawyer, Lawrence Vuillemin, that Vuillemin would obtain tapes of employee interviews, Fox did not explain this to witnesses. Instead, he told them his lawyer would be told everything and would be talking to them after they gave their interview statements to Markling. Ruf and Vonthron testified that, from their perspective, Fox's comments were discomfoting, and made them uncomfortable and concerned about possible retaliation. When Vonthron revealed her concern during the interview, Markling stopped the interview to call Vuillemin and complain that he had not agreed to share his interviews tapes with Vuilleman. While there may have been a misunderstanding between the two lawyers, Fox's comments were made in such a way as to be taken as intimidating and threatening. (T. 390-394, 1068, 2102-2103).

II. Credibility of Witnesses

The referee stated that some evidence was relevant, and other evidence "was not utilized for various other reasons," but did not explain why he did not credit some testimony and documentary evidence. (Report, page 8)

The transcript of the proceedings shows that conflicting evidence was offered on a number of topics. The referee did not, however, explain why he gave credence to the testimony of some witnesses rather than others. The Board therefore must do its own evaluation of the witnesses' credibility to determine the preponderance of the reliable, probative and substantial evidence.

Some witnesses had a clear personal interest driving their testimony while others had potentially much to lose by testifying, or had no interest at stake at all.

1. Treasurer Weis has a significant interest with the continuation of Fox's employment as he has participated in a "co-superintendence," or, as he described it, the co-pilot stepping into the pilot's seat during Fox's absences. (T. 906, 1004-1005, 1045-1048). There is documentary and other evidence of imprudent payment of public funds contrary to Board policies, which not only weighs against the version of facts to which Fox and Weis testified, but could expose one or both to other sanctions. (T. 1046).
2. Likewise, Veelan Dover expressed to Vonthron and Markling, and in her own testimony during these proceedings, that her job security was dependent upon Fox staying in his position as Weis has long wanted her employment to be terminated. (T. 480-481, 2387, 2390-2391, Bd. Ex. 26, p. 25).
3. Both Weis and Dover testified that Fox's time at the District office did not decrease in the 2010-2011 school year. Yet, Fox himself acknowledged that he was frequently out of the District during the school day (T. 2422-2425). Curriculum Director Standring similarly observed Fox's absences. (T. 1574).
4. Vonthron spoke to Green in confidence, concerned about retaliation, (T. 389, 392-393), but was willing to speak to Markling and, although concerned about retaliation, was willing to testify about her concerns about Fox's inadequacies as a superintendent. She expressed her own anger and embarrassment that she was rumored to be Fox's paramour. (T. 365-370). No evidence in the record indicates that Vonthron had anything to gain by raising her concerns to Green, or by testifying in this matter.
5. The referee appeared to dismiss Ruf's testimony because Ruf had decided that, should an offer be forthcoming from Northpoint ESC, he was likely to accept the offer. However, Ruf's decision reflected the frustration that he had experienced over his last two years in the Huron District. (T. 1039). The referee's apparent position ignores that, when he testified, Ruf had no self-interest at stake, only the good of the District where he lives. Although Fox's attorney

tried to suggest during questioning that Ruf was in danger of being fired when he took the ESC position, no evidence was presented to substantiate the suggestion, and even Fox himself did not support this repeatedly made assertion. (T. 2476-2477).

6. Fox did attempt to sully Ruf's reputation and credibility, alleging that a union contract had to be modified because of an inappropriate personal relationship with a union employee. Ruf denied such a relationship. Fox presented no evidence to substantiate his allegation. Fox's allegation regarding the need to modify the union's contract was totally refuted by Union President Marta Esposito. Esposito had nothing to gain by testifying. She denied Fox's testimony (1) that she had complained to Fox about an improper relationship between Ruf and a Union employee on his staff, and (2) that the Union contract had to be altered in order for the employee to be transferred to another school in the District. (T. 2577-2580). By attempting to impugn Ruf's credibility with unsubstantiated accusations and false allegations, Fox impaired his own credibility.
7. The Board credits maintenance employee Steve Zeck's testimony that Fox made the "watch her back" comment to him, and that it was intended as a message to Zeck and Green. In light of recent information provided to the Board (Bd. Ex. 47), the Board credits Zeck's testimony about the longstanding maintenance problems with the facilities at Shawnee and Woodlands Schools. (T. 1280-1283, Bd. Ex. 47). Zeck had nothing to gain by testifying other than seeing that the truth would come out.
8. William Lally and Daniel McCarthy were long-time mentors and friends of Fox. (T. 1633-1635). Both retired from their administrative positions at Northpoint ESC effective January, 2013. Neither had any self-interest at stake, nor was reliable evidence presented to offer a challenge to the credibility of their testimony. The Board rejects as not credible Fox's testimony attempting to undercut the credibility of Lally and McCarthy by asserting that they resented Fox's hiring three Northpoint ESC employees and ceasing to lease part of the Shawnee School to Northpoint ESC. McCarthy's explanation on the last day of the hearing, in the Board's view, is to be credited over Fox's effort to impugn these witnesses' credibility. (T. 2687-2688, 2691, 2693). Additionally, Fox proffered a "conspiracy" theory that these proceedings are a vendetta for his role, during his employment with the Berlin-Milan school district in the 1990s, in the discharge and criminal conviction of a teacher. Lally's and McCarthy's testimony undercut this conspiracy theory by explaining their respective roles in that incident, and Fox's limited role.
9. As more than 20 school districts were affiliated with Northpoint ESC, and given his own experience as a superintendent, the Board credits Lally's "grading" of Fox's performance as superintendent. (T. 1689). The referee stated on the record that someone who worked with Fox day to day would have a good understanding of Fox's performance, (T. 1687), and, in his report, credited Weis's assigning a "A" grade to Fox. The credibility preponderance weighs in Lally's favor. Lally worked with many superintendents, whereas Weis had only worked in one small school district prior to being hired by Huron. (T. 851) Lally explained that, when compared to "similar" school districts, rather than those in the area immediately surrounding Huron, the District's scores were middle of the pack. (T. 1689, 1792-1796, Ex. 44), and he would assign a grade no higher than a "C" to Fox's performance in the last several years. (T. 1689) The referee ignored such evidence and that of Curriculum Director Standing (T. 1576-1577, 1588, 1604-1606) in finding that the District had "thrived" under Fox.
10. The Board also credits Standing's testimony that returning Fox to his position would be unreasonable, that employees would fear reprisals. (T. 1583). That testimony is supported by evidence in the record several incidents of Fox's retaliatory and "kill the messenger" behavior in the record of these proceedings.

III. Applicable Law and Board Conclusions

1. The Board of Education rejects the analysis and conclusions contained in the referee's "Report and Recommendation," including but not limited to his recommendation that the Board not proceed with termination of Fox's contract at this time.
2. It is the conclusion of the Board that Fox's substantial abuse of the District's email system to conduct his affair violated Board policy EDE and EDE-R. It also violated Fox's employment contract which required him to perform his duties consistent with Board policy. Fox's misconduct is not excused with an "everybody does it" attitude because as the District's leader he should have held himself to a high standard of compliance with Board policy, because it was his responsibility to cause employees to stop or to initiate disciplinary action if necessary if he was aware of employee violating the policy, and because there was no evidence in the record that any other employee deliberately and persistently abused the email system in the manner that Fox did.
3. The referee's finding that Fox was eligible for compensatory time is against the manifest weight of the evidence. Fox was a salaried employee. Compensatory time is permitted under federal law to compensate hourly public employees under an agreement reached before the work was performed in lieu of paying them at 1½ times their hourly rate of pay when they work in excess of 40 hours per week. 29 CFR 553.21(o)(2) Past practice only qualifies as an agreement if the person was hired before April 15, 1986. 29 CFR 553.21(o)(2)(B). Fox was not entitled to compensatory time for his weekend travel. His contract does not provide for compensatory time as a benefit, and undisputed testimony established that no Board policy provides for it.
4. The referee's finding regarding Fox's failure to use his vacation time for February 28 and March 1, 2011 is against the manifest weight of the evidence. Fox was not working on either of those dates. Fox's contract provides him with vacation days which he can use or cash-out. By failing to use his vacation days, he was able to retain those days for his future use or to cash-out. The Board concludes that by failing to use vacation leave for those dates, he acquired a benefit of financial value to which he was not entitled under his contract, and violated §3(b) [Accurate Reporting] of the Ohio Licensure Code of Professional Conduct for Educators.
5. The referee's finding that the Board approved reimbursing Fox for his car rental is against the manifest weight of the evidence, based on the evidence discussed above in ¶¶ 6a through 6f regarding Findings of Facts. None of the five witnesses who were Board members at the time of the trip testified that the car rental was discussed, and Fox admitted that he did not discuss it. Fox's contract did not permit reimbursement for the purposes he testified he wanted to rent the car. Neither did the Board policy. It was also undisputed that Fox claimed reimbursement for two night of his hotel stay in Arizona that were not conference-related, and that he did not repay the District until Green raised the matter during her review of reimbursement records in February 2012. It is the Board's conclusion that by obtaining those reimbursements, Fox violated his contract, Board policy and § 7(g) [Accepting Compensation for Self Promotion or Personal Gain], of the Ohio Licensure Code of Professional Conduct for Educators.
6. It is the conclusion of the Board that, as part-owner and President of Kalahari Sandusky, Nelson was in a business relationship with the District and was a beneficiary of tax arrangements with the District for which Fox was involved through discussions and voting; and, that the District conducted business with Nelson's enterprises and purchased goods and services from them repeatedly from 2006 through 2010. It is the further conclusion that as part-owner and President of Kalahari Dells and the business that owned its affiliated golf course, Nelson was in a position to provide Fox with free or reduced rate lodging at the Dells resort as well as complimentary golf at its affiliated course. It is the conclusion of the Board that the preponderance of reliable, probative and substantial evidence shows that Fox obtained something of value from Nelson when he was given half price lodging with golf compliments of Nelson for his 2010 golf

trip to the Wisconsin Dells, and when he accepted free lodging for two nights while attending the wedding of one of Nelson's children. The referee appears to excuse Fox's participation in the golf trip by noting that the subordinate administrators who Fox invited to accompany him on the 2010 Dells golf trip have not been punished. The Board concludes that nothing in the record shows that those subordinate administrators were aware of the arrangements that Fox had made. Similarly, the Board concludes that the acceptance of free lodging by private citizens or Wisconsin public officials does not excuse Fox's acceptance of such a thing of value in violation of R.C. 102.03 and § 7(b) [Accepting Compensation for Self Promotion or Personal Gain], of the Ohio Licensure Code of Professional Conduct for Educators

7. It is the conclusion of the Board that the preponderance of evidence in the record shows that Fox plotted against and attempted to intimidate Green. It is also the conclusion of the Board that the record shows that Fox supported efforts to intimidate Slocum by supporting efforts alleging criminal misconduct, although Fox's attempt at intimidation of Slocum was unsuccessful because the alleged misconduct had never happened. The record also shows that Fox's plotting and attempts to undermine Green were made in front of subordinate employees who were concerned about similar retaliatory conduct being directed against them if they made statements against Fox. And, the record shows that immediately before employees were to be interviewed by the investigator Markling, Fox made statements that caused the employees to be concerned that they could be questioned by Fox's attorneys based on whatever they might say during the investigative interviews. It is the conclusion of the Board that, through such actions, Fox engaged in unprofessional conduct.
8. The Licensure Code of Conduct for Professional Educators (Bd. Ex. 6) was adopted by the State Board of Education pursuant to H.B. 190 (127th Gen. A.). §9, and states (at page 14):

The Licensure Code of Professional Conduct for Ohio Educators applies to all individuals licensed by the Ohio Department of Education. The presumptive ranges are only applicable for disciplinary actions involving an educator's licensure or application for licensure. The presumptive ranges are not applicable for any discipline imposed at the local level. Possible discipline at the local level must follow all local contractual provisions, including but not limited to due process, progressive discipline, and just cause. However, an educator who violates one or more of the principles may be subject to discipline at both the state level and local level. (Underlining and bold added.).

The Board therefore concludes that Fox may be subject to contract termination for his multiple violations of that Code, as well as his violations of his contract and Board policies and other unprofessional conduct.

9. The referee relies on *Bertolini v. Whitehall City School District Board of Education*, 139 Ohio App. 3d 595 (10th Dist. 2000) to conclude that Fox's conduct does not warrant termination. The referee's reliance is misplaced. *Bertolini* concerned a charge of sexually harassing conduct that rested, in part, on emails sent to a subordinate employee. However, the alleged victim of the administrator's conduct testified that his conduct did not affect her work, and that district's board policy allowed personal email messages. *Bertolini*, 139 Ohio App. 3d at 607. By contrast, Huron's Board policy EDE-R states that its email system "shall only be used for purposes related to education or administration of the school district," and "personal use of the system is strictly prohibited." Additionally, there was evidence that Vonthron was upset that Fox's conduct caused her to be rumored to be his paramour, that Fox grossly violated the Board policy with hundreds of emails to his paramour and often did so during working hours, and that Fox was distracted or away from his office, thus allowing a confusing shared power structure to develop because of Fox's leadership vacuum.
10. While the Board may weigh Fox's performance history, it is not required to do so, especially where the disciplinary charges involve multiple incidents of

misconduct. *Hykes v. Board of Education of the Bellevue City School District*, (6th Dist.) 2012-Ohio-6059, ¶¶ 23-24. However, if the Board does consider Fox's performance history, it chooses to consider the entire history. The referee attributed the District's excellent rating and good facilities solely to Fox, then used that attribution to suggest that the Board must weigh that record against the disciplinary charges and proven violations of Board policy and the Licensure Code. The Board also notes that the referee cited Vonthron's testimony as support for his position that the District has thrived under Fox's leadership. (Report pages 22, 45). However, the referee ignored the full context of the questions posed and her responses. She was asked whether the District had prospered between 2010 and 2012, setting aside the problems with her building's boiler and "the educational stuff," specifically with respect to test scores. She responded that District's scores had gone up in some areas, but not others, and it was rated excellent in some areas but not others. When asked if the District had prospered, Vonthron responded that it done so in spite of the things going on with Fox, a reference not limited to his inappropriate relationship. (T. 470-471) The Board considers that this District has long been a very good District academically, and that it remains so because of the efforts of many staff members, this Board and the support of the students, parents and community. Evidence in the record shows that while facilities improvements like windows and boilers were made during Fox's tenure, he failed to ensure that his Director of Maintenance pursued correction of deficiencies in those improvements, or other maintenance of the facilities, although Fox was repeatedly told of maintenance problems. Evidence in the record also shows that Fox has failed to focus on academic leadership and technology planning to support students' academic performance. The record also shows poor leadership through Fox's focus on threats of retaliation and "killing the messenger," rather than fixing the problem that the message concerned - whether it was about maintenance issues, or allegations of improprieties in the bus garage. Finally, the Report ignores the evidence about Fox's role in sending the District into difficult financial straits several years ago.

11. Ohio law authorizes the superintendent to suspend and expel students who violate policies, rules and conduct codes. Fox's job description (Bd. Ex. 2) assigns the superintendent responsibility for recommending disciplinary action against personnel, and the responsibility to "serve as a role model for students in how to conduct themselves as citizens and as responsible, intelligent human beings," and "to instill in students belief in and practice of ethical principles." By his conduct, as evidenced in the record of these proceedings - including, as examples, pursuit of a personal relationship using the District's non-private email system, failing to record use of vacation, obtaining improper reimbursements, and accepting gifts or things of value - Fox violated his duties and responsibilities as superintendent and his contractual duty (see Bd. Ex. 1) "to perform the duties specified in the Job Description" and "to perform all duties as prescribed by law and consistent with Board Policy." It is the conclusion of the Board, in light of Fox's conduct as reflected in the record of the hearing, that Fox can neither effectively lead the District, nor be a role model for ethical conduct, nor be an effective disciplinarian for students or employees.
12. It is the conclusion of the Board that Charges 1(a)-(e), 2(a)-(i), 3(c) and (d), and 4(a), (b), (d) and (e), as set forth in the September 6, 2012 resolution and the notice of charges, are supported by the preponderance of reliable, probative and substantial evidence on the record. The Board further concludes that Fox's conduct and actions as evidenced in the record constitute "good and just cause" to terminate Fox's contract of employment with the Board of Education.

BE IT FURTHER RESOLVED that Fox's contract of employment with the Board of Education is terminated, effective immediately, for good and just cause in accordance with R.C. 3319.1 6.

BE IT FURTHER RESOLVED that the Treasurer is authorized and directed promptly to furnish Fox by certified mail with written notice of his termination, which notice shall include a full-text copy of this Resolution and Order of Termination. The Treasurer is

further authorized and directed simultaneously to furnish a copy of the written notice to Fox's legal counsel.

BE IT FURTHER RESOLVED, that the Treasurer is authorized and directed promptly to furnish Fox, by certified mail, with written notice of his separation from employment pursuant to the preceding paragraph, which shall include a full-text copy of this Resolution.

**ROLL CALL: Ayes: Green, Slocum, and Sowecke
Nays: Caporini, Asher**

NO. 6473 ADJOURN

Mrs. Green moved, seconded by Mr. Sowecke , to adjourn the meeting at 9:41 p.m.

**ROLL CALL: Ayes: Caporini, Green, Slocum, and Sowecke
Nays: None**

Scott Slocum
President

Michael Weis
Treasurer

