



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

ERIC H. JASO
Chairman

STEPHEN M. HOLDEN
Commissioner

MARGUERITE T. SIMON
Commissioner

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Legal Counsel

PUBLIC SESSION MINUTES

March 28, 2023

Commissioner Stephen Holden, Legal Counsel Edwin Matthews, and Executive Director Jeffrey Brindle were present. Commissioner Marguerite Simon participated via webinar. Chairman Eric Jaso recused himself from this hearing.

A court reporter was available to record the proceedings. (See Transcript)

The Public Session Minutes will be available online on the Commission's website at: <http://www.elec.state.nj.us>.

The meeting convened at 1:00 p.m. in Trenton.

1. Open Public Meetings Statement

Legal Counsel Matthews called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

It was also posted on the Commission's website.

2. **Public Hearing – Personnel Matter**

The Commission conducted a public hearing concerning allegations of certain behaviors expressed by Mr. Brindle and a demand on ELEC that he be terminated.

3. **Statement by Executive Director Jeffrey Brindle**

Executive Director Brindle read a written statement as his testimony.

4. **Resolution Authorizing an Executive Session**

Whereas, there exists a need to hold an Executive Session for the purpose of deliberating the following matter, which fall within the exceptions of the Open Public Meetings Act, N.J.S.A. 10:4-12, et seq, to wit, and whereas it is unknown at this time when such discussion to take place in executive deliberative session will be disclosed to the public.

Now, be it resolved by the Election Law Enforcement Commission as follows:

This Executive Session meeting of the Election Law Enforcement Commission shall be closed to the public for discussion and deliberation as to the aforesaid referenced matters. And, two, the matters discussed during this Executive Session meeting shall be disclosed to the public at such time when reason for discussing and acting on same in Executive Session shall no longer exist.

On a motion by Commissioner Simon, seconded by Commissioner Holden, and passed by a vote of 2-0, the Commission resolved to enter Executive Session.

Return to Public Session

5. **Public Comments**

- Bruce Affran, Esq.

Commissioner Holden

Throughout its work as Commissioners the goal has always been to work through ELEC for accuracy and transparency in reporting political financial contributions. Our concern has been to protect the democratic processes from the excesses of mystery money and both the appearance and potential reality of manipulation by unknown factors.

There comes before us, as part of our work as Commissioners, the responsibility to address information presented in an investigation undertaken by the EEOC Office at the behest of the Executive Branch which, under other circumstances, would have been conducted solely by ELEC.

The narrow question before us seems to be, does the sending of an insensitive e-mail warrant the termination of a decades-long career of excellence? And do we have a responsibility to distinguish between personal style, beliefs, political opinions, and institutional performance? I believe that's our responsibility.

The evidence that has been reviewed by Judge Simon and I are 14 sets of written documents, which included witness statements by employees and others here at ELEC, testimony that was provided today, and, to the consternation of some public citizens who were invited, the taking of no extrinsic evidence.

For the purpose of this hearing the only thing that is eligible for consideration is the content of the reports presented to us by the Executive Branch with respect to our promise to the Executive Branch.

There were four categories of allegations under review. The Commissioners have reviewed all the documents, listened to the testimony, discussed them among themselves, and have determined that -- and have an obligation to determine whether they're substantiated or not.

One of the things that has always cautioned me is a pronouncement by George Orwell, who, as one of the dystopian authors, cautioned us to people who think in slogans speak in bullets.

The Commission neither thinks in slogans nor speaks in bullets, and arrives at conclusions asking the question of whether Mr. Brindle has properly pursued the goals of ELEC, whether there's any evidence that this e-mail created a hostile work environment at ELEC, and insists upon shying away from thinking in slogans.

There are four categories that ought to be addressed, and a balancing test that looks at aggravating and mitigating circumstances. The one is the failure to cooperate.

The Commission is satisfied that any basis for discipline, in the context of Mr. Brindle's failure to participate in interviews or sensitivity training, is not sustained. And It's not sustained because there was a significant question about the jurisdictional basis for that, and a significant question about the authenticity of those requests, as well as the concern by Mr. Brindle that he didn't know why he was being obligated to participate in sensitivity training.

It may be that at some point in the future some other matter that might be an appropriate measure.

But the Commissioners find that that failure to cooperate allegation is not substantiated, and our ruling is that there will be no discipline exercised by the Commission for that reason.

Judge Simon—Do you wish to add to that?

Commissioner Simon

I think you covered it adequately very well.

Commissioner Holden

Thank you.

With regard to the allegation of insubordination surrounded by the mask issue, we've read the reports, we've looked at the articles that were transmitted between Mr. Brindle and his deputy and others, and we listened to his testimony that the policy at work and in his office and for his staff was always to adhere to the Governor's articulated policy.

There were no contradictions with regard to that anywhere in the record that we were able to examine. And so as to what I'm framing as insubordination, though I don't believe it was called that in the papers, that that allegation is not sustained, and that the ruling will be no discipline will be provided.

Commissioner Simon

Agreed. 100 percent agree.

Commissioner Holden

With regard to the allegation of racism, that allegation was withdrawn by the EEOC Office. And so even though it was raised in the early communications, the EEOC Office itself dismissed that.

And in sociology there's an interesting concept. It's called the iron law of the instrument. And what that means is the instrument you have available to you is the one you apply. Brain surgery is required and all you have is a hammer, you figure out how to do it.

I'm convinced that, given the purpose and the good intentions of the EEOC Office, if there were any legitimate racism charge, it would have been addressed. And so it wasn't addressed. We find it's not sustained, and there's no basis for any discipline.

Commissioner Simon—Do you wish to say anything?

Commissioner Simon

I agree with the finding of no racism.

Commissioner Holden

With regard to the issue—to the allegation of homophobia, we've read witness' testimonies as reported by the EEOC carefully. We acknowledge that the EEOC investigation called it per se discrimination and raised a concern in its writing that the author of the EEOC report said, "it is also difficult to imagine that a member of the LGBTQIA community would feel comfortable working under Brindle and have confidence they will be treated fairly, impartially, and with respect and dignity."

There is no testimony in the record that there is anyone here who is not treated with fairness, dignity, and respect. Quite to the contrary.

In the record the testimony is that those who had worked with Mr. Brindle for many years never saw any trace of that behavior, beliefs, either through jokes or comments.

The Commission acknowledges that the e-mail at issue could be interpreted by an individual to feel that way, and the Commission acknowledges that to several of the staff interviewed they were offended by the meaning of that transmission in its worst light. The potential is there.

We could make an argument that it's an expression of First Amendment Rights or political speech. But it has an edge to it that has the capacity to insult, hurt, make someone feel bad. But there is no testimony in the record that suggests that the staff at ELEC feel they're in a hostile work environment.

Although intention isn't an issue when you examine these things, the testimony about intention that's in the record is that the person was certain Mr. Brindle didn't intend to offend them. But for the purpose of legal analysis, intention doesn't matter.

So, the question for us to examine is has – did this e-mail – has the career of Mr. Brindle resulted in the creation of a hostile work environment? And by a preponderance of the evidence there is no evidence that it does.

And so, from the point of view of the Commission, that allegation is not sustained, and the ruling is there will be no discipline entered.

Commissioner Simon

We have a balancing of consideration. And on one hand we have an e-mail which, taken facially, can be quite damning on one hand, and on the other hand we have the testimony before us of several employees that, through the years, they have seen no bias on the part of Jeff Brindle or anything that would create a hostile work environment.

And with regard to the one e-mail, which facially looked damning, we have testimony by Jeff Brindle that it was an attempt at satire or humor, and we can take that it was just a dumb attempt at humor.

That, I think, after several years as a Judge could we take one bit of evidence that can be interpreted different ways on one hand, and overwhelming amount of evidence by employees on the other hand, and, faced with that, I don't think there's no way we can impose any discipline upon someone who's been an outstanding individual in the field.

And I concur. I think that there should be no discipline against Jeffrey Brindle.

Commissioner Holden

Thank you, Judge Simon.

In conclusion, ELEC is proud to have a 50-year history and tradition of fairness and impartiality. Over those years, a number of remarkable people have, in unpaid status, worked as Commissioners, luminaries in the State who have gone on in the State and gone on in national government.

We all know that there is a piece of pending legislation, and I don't have it—this is not the place, and this is not the person to make comments about it. The press and others are doing an adequate job.

But for the last five years the Commissioners that are here today have done their best to advance the legislative purpose of ELEC. To maintain fairness, disclosure, bipartisanship, transparency.

Whomever it is the Governor appoints, we wish that they will have the same luxury of good conscience that those of us who have served for the last 50 years know that we have. The luxury of conscience of doing what is done right.

Does Judge Simon wish to say anything?

Commissioner Simon

Okay. Whatever happens after today, I have totally enjoyed working with Chair Jaso, my colleague, Stephen Holden, and all of the personnel at ELEC. It has been a pleasure. I leave impressed with the quality and character of the work, and we really never knew or never cared whether we were on as R's or D's. And I just hope that tradition continues.

Thank you.

6. Adjournment

On a motion by Commissioner Simon, seconded by Commissioner Holden, and passed by a vote of 2-0, the Commission resolved to adjourn at 2:55 p.m.

Respectfully submitted as true
and correct,

Joseph W. Donohue
Deputy Director

JMB/elz

Note: The March 28, 2023 minutes were not approved by ELEC commissioners.
The Commissioners resigned March 30, 2023.