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| KENNETH FLOOD | : | BEFORE THE SCHOOL |
| | : | ETHICS COMMISSION |
| v. | : | |
| | : | |
| DOLORES CALLAWAY, STEPHANIE | : | |
| DAVIES-KHAN, SCOTT EVANS, | : | Docket No. C32-06 |
| SOPHIA LaPORTE, ROCHELLE | : | |
| SALWAY & PAMELA JONES | : | |
| ATLANTIC CITY | : | DECISION |
| BOARD OF EDUCATION | : | |
| ATLANTIC COUNTY | : | |

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 11, 2006, by Kenneth Flood alleging that Dolores Callaway, Stephanie Davies-Kahn, Scott Evans, Sophia LaPorte, Rochelle Salway and Pamela Jones, members of the Atlantic City Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that respondents violated N.J.S.A. 18A:12-24.1(f) and (h) of the Code of Ethics for School Board Members when they targeted him and did not approve his hiring as principal.

The Commission granted the respondents an extension of time to file an answer for good cause. Through their attorneys, Jeffrey O. Casazza, Esquire, and Chris Meikle, Esquire, the respondents filed an answer wherein they denied that they failed to vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer and denied surrendering their independent judgment to special interest or partisan political groups or using the schools for personal gain or for the gain of friends. The respondents also asked the Commission to impose sanctions against the complainants pursuant to N.J.S.A. 18A:12-29(e).

The Commission invited the parties to attend its November 28, 2006 meeting, but did not require that they attend. It reminded the complainant that he had the burden of proving factually any violations of the Code of Ethics for School Board Members. The complainant did not attend the meeting. The respondents Dolores Callaway, Stephanie Davies-Kahn, Scott Evans, Sophia LaPorte and Rochelle Salway attended the meeting with their attorneys, Mr. Casazza and Mr. Meikle. This complaint was consolidated with C19-06, C20-06, C21-06, C22-06, C23-06, C24-06, C25-06, C26-06 and C29-06¹ for a hearing because it involved the same respondents and similar issues regarding personnel decisions. The complainant in C29-06 and her two witnesses testified before the Commission. At the end of the testimony, the respondents' attorney made a motion to dismiss this complaint and the above listed complaints. After deliberation, the Commission voted to grant the respondents' motion to dismiss all of the complaints. At

¹ Scott Evans was not include as a respondent in C29-06.

its December 19, 2006 meeting, the Commission voted to find that this complaint and the above listed complaints were not frivolous and adopted this decision.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted.

All of the respondents are members of the Board. At the March 28, 2006, Board meeting, the complainant was recommended by the superintendent for the position of principal. The respondents voted not to hire the complainant as principal. The complainant alleges that the respondents are politically aligned with the Atlantic City Council President, Craig Callaway, and that the complainant was targeted because he openly supported opposition candidates to Mr. Callaway during the April 2006 Board election.

ANALYSIS

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party.

The complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when they voted against hiring him as principal. N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To prove a violation of N.J.S.A. 18A:12-24.1(f), complainant alleges that the respondents surrendered their independent judgment to Atlantic City Council President Craig Callaway when they voted against hiring him as principal because he was politically aligned with Board candidates not endorsed by Mr. Callaway. The complainant offers no factual proof to substantiate his allegation that respondents' vote was connected to Mr. Callaway.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that the respondents surrendered their independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. Therefore, the Commission grants the respondents' motion to dismiss the complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(f).

The complainant also alleges that the respondents violated N.J.S.A. 18A:12-24.1(h) of the Code of Ethics for School Board Members when they voted against hiring him for principal. N.J.S.A. 18A:12-24.1(h) provides:

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator.

To prove a violation of N.J.S.A. 18A:12-24.1(h), the complainant alleges that the actions of the respondents were arbitrary and capricious. The Commission notes that N.J.S.A. 18A:12-24.1(h) does not require the Board to accept all recommendations of the chief administrative officer; it only requires that the Board consider the recommendations. See, Fitzpatrick v. Central Regional Board of Education Members, C35-02 (February 25, 2003). The Commission cannot find that the respondents failed to consider the recommendation of the chief administrative officer.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondents failed to vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator. Therefore, the Commission grants the respondents' motion to dismiss complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(h).

DECISION

For the reasons expressed above, the Commission grants the respondents' motion to dismiss the complaint.

REQUEST FOR SANCTIONS

At its December 19, 2006 meeting, the Commission considered the respondents' request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The respondents do not provide any specific argument as to why the Commission should find that this complaint is frivolous. The Commission can find no evidence to show that the complainant filed the complaint in bad faith solely for the purpose of

harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that this complaint is not frivolous and denies the respondents' request for sanctions against the complainant.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C32-06

Whereas, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission granted the respondent's motion to dismiss the complaint; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision granting the respondent's motion to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2006.*

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C32-06

*Commissioners Rosalind Frisch and Maragarita Roig voted against granting the motion to dismiss.