
JOANNE GREEN TOBIAS

V.

**KRISTINA MENZEL HEINOLD AND
ALITA DAS THOMAS
FLORHAM PARK BOARD OF EDUCATION,
MORRIS COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C26-15

**DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a Complaint filed on July 20, 2015 by Joanne Green Tobias, alleging that Florham Park Board of Education (Board) members Kristina Menzel Heinold and Alita Das Thomas violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* By letter of July 21, 2015, the Complainant was notified that the Complaint was deficient. On August 3, 2015, the Complainant cured all defects and filed an Amended Complaint.

Specifically, the Complainant asserted that Respondent Thomas violated N.J.S.A. 18A:12-24(e) of the Act and N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members (Code), and that Respondent Heinold violated N.J.S.A. 18A:12-24(e) of the Act N.J.S.A. 18A:12-24.1(d), (e) and (f) of the Code. By letter dated August 17, 2015, the Complaint was sent to the Respondents, notifying them that charges against them were filed with the School Ethics Commission (Commission) and advising that they had 20 days to answer the Complaint. The Respondents retained counsel, who requested and received a brief extension to file a response. The Respondents filed a joint Motion to Dismiss in Lieu of an Answer on September 14, 2015, which included an allegation that the Complaint was frivolous. The Complainant filed a reply to the Motion to Dismiss and to the allegation of frivolous Complaint on September 29, 2015.

By letter dated September 30, 2015 the Commission notified the Complainant and Respondents that this matter was scheduled for discussion by the Commission at its meeting on October 27, 2015 in order to make a determination regarding the Respondents' Motion to Dismiss and the allegation of frivolous.

At its meeting of October 27, 2015, the Commission determined the Complaint timely filed, not frivolous and voted to grant the Motion to Dismiss the Complaint in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.8(a)(5).

SUMMARY OF THE PLEADINGS

Count 1

The Complainant alleges that after being sworn in at the reorganization meeting on January 5, 2015, Respondent/Board member Thomas requested that she be assigned to the Negotiating Team to participate in the on-going teacher contract discussions. Two weeks later, both Respondents were advised by Board Counsel that they were prohibited from serving on the Negotiations Team and voting

on the contract for a period of one year for receiving campaign donations from the President of the Florham Park Education Association (FPEA) or risk an ethics violation. The Complainant asserts that Respondent Thomas violated of N.J.S.A. 18A:12-24(e) of the Act and N.J.S.A. 18A:12-24.1(e) and (f) of the Code and Respondent Heinold violated N.J.S.A. 18A:12-24(e) of the Act.

Count 2

Complainant further alleges that on June 3, 2015, Respondent Heinold initiated, proposed, and voted in the affirmative on a motion to overturn the Superintendent's recommendation to non-renew a teacher. The Complainant asserts that Respondent Heinold violated N.J.S.A. 18A:12-24(e) and N.J.S.A. 18A:12-24.1(d), (e) and (f).

In their Motion to Dismiss, Respondents Heinold and Thomas assert that the complaint is time-barred and fails to state a claim on which relief could be granted as they are based on facts that do not substantiate violations of the Act. They admit that both were endorsed by the FPEA and each received a campaign contribution from its President. They aver, however, that neither made any personal promises to the Association nor did they believe that the contributions were provided to influence the discharge of their official duties. Further, Respondent Heinold's decision not to renew the teacher's contract was based solely on information she received during the teacher's "Donaldson" hearing before the Board and was not influenced by the FPEA.

In her response to the Motion, the Complainant maintains that the original Complaint was filed timely as it was postmarked on July 10, 2015. The Complaint was received on July 20, 2015. She also maintains that both Respondents admitted to accepting the Association's contributions and that the complaint is not frivolous.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the alleged facts in the light most favorable to the Complainant and determine whether the allegation(s) set forth in the Complaint, if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the Complaint alleged facts, which, if true, could support a finding that Respondent Thomas violated N.J.S.A. 18A:12-24(e) of the Act and N.J.S.A. 18A:12-24.1(e) and (f) of the Code, and that Respondent Heinold violated N.J.S.A. 18A:12-24(e) of the Act and N.J.S.A. 18A:12-24.1(d), (e) and (f) of the Code.

As a preliminary matter, the Commission notes that the Respondent argues that since the Complaint was filed on August 3, 2015, it is time-barred, pursuant to N.J.A.C. 6A:28-6.5(a). They contend that the time limitation set forth in the Code would have run on July 30, 2015, the 180th day after the January 19, 2015 Board meeting. The Commission recognizes that the original Complaint was filed on July 20, 2015, but the Complainant did not properly amend it until August 3, 2015. Since the Complaint was first filed on July 20, 2015, the Complaint was within the 180-day time limitation. Consequently, the Commission deems the Complaint timely filed as it was received the next business day following the actual 180th day from the January 19th meeting.

Allegations of Prohibited Acts: Respondents Thomas and Heinold

In Count 1 of the Complaint, the Complainant asserts that Respondent Thomas violated N.J.S.A. 18A:12-24(e), which provides:

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Complainant alleges that Respondent Thomas accepted a campaign contribution from the FPEA during her candidacy for a seat on the Board and should have known that the contribution was given with the intent to influence her in the discharge of her duties. In support of her claims, the Complainant avers that after taking her oath of office at the reorganization meeting on January 5, 2015, Respondent Thomas sought a position on the Board's Negotiating Committee at a time when the Committee was engaged with the FPEA in on-going contract negotiations. The Complainant maintains that this is evidence that Respondent Thomas' judgment and ethics have been compromised.

For a violation of N.J.S.A. 18A:12-24(e) to exist, the Complainant must show that the Respondent accepted the political contribution from the FPEA, with the understanding that the contribution was given for the purpose of influencing her in the exercise of her official duties. The Complainant asserts that Respondent Thomas' request to be assigned to the Negotiations Committee demonstrates the understanding between this Respondent and the Association that she would advocate for or otherwise benefit the FPEA during negotiations on its contract with the Board. In review of this allegation, the Commission determines that Complainant's claim is insufficient to support her contention. N.J.S.A. 18A:12-24(e) permits the acceptance of a political contribution to a Board candidate as long as there is no *quid pro quo* for the donation and accepting the donation creates a conflict for that Board member. The Complainant only asserts that Respondent Thomas, a newly sworn in Board member, made a *request* to be assigned to the Negotiations Committee and nothing more. Once advised by Board Counsel that she was conflicted due to the donation and that she could not serve in that capacity, Respondent Thomas willingly accepted assignment to a different committee. The Commission observes that the Respondent took no further action to bring her request to fruition and ultimately abstained from the vote to approve the contract. The Commission finds, therefore, that there are no facts set forth in this Count that would support a conclusion that Respondent Thomas violated the Act under this subsection. Consequently, even accepting as true all facts alleged by the Complainant in Count 1, such facts are insufficient to support a finding that Respondent Thomas violated the Act. Accordingly, the allegation in Count 1 that Respondent Thomas violated N.J.S.A. 18A:12-24(e) of the Act is dismissed.

In Count 2, the Complainant alleges that Respondent Heinold violated N.J.S.A. 18A:12-24(e) when she initiated, proposed and voted for the motion not to renew a teacher, contrary to the

Superintendent's recommendation. In its review of the Count, the Commission disagrees. It finds instead that Respondent Heinold conducted Board business in concert with the other Board members commensurate with her Board member duties. Subject to limitations arising from a conflict, any Board member may vote as she chooses from the moment she takes her oath of office. Moreover, Board members are not under any obligation to accept the Superintendent's recommended candidate for any position and may vote to select another candidate. Moreover, the Act does not prohibit a Board member from voting contrary to the other members nor does it silence a point of view that differs from the rest of the Board or the Superintendent.

The Commission finds, therefore, that there are no facts set forth in this Count that would support a conclusion that Respondent Heinold violated the Act under this subsection. Consequently, even accepting as true all facts alleged by the Complainant in Count 2, such facts are insufficient to support a finding that Respondent Heinold violated the Act. Accordingly, the allegation in Count 2 that Respondent Heinold violated N.J.S.A. 18A:12-24(e) of the Act is dismissed.

Allegations of Violations of the Code of Ethics for School Board Members:
Respondents Thomas and Heinold

In its review, the Commission considers the allegations in Counts 1 and 2 that Respondent Thomas violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code, and Respondent Heinold violated N.J.S.A. 18A:12-24.1(d), (e) and (f) of the Code. These subsections state, respectively:

- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. 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.

In order to prove a violation of N.J.S.A. 18A:12-24.1(d), the Complainant must provide factual evidence that the Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school, pursuant to N.J.A.C. 6A:28-6.4(a)4.

In order to prove a violation of N.J.S.A. 18A:12-24.1(e), the Commission requires that the Complainant provide factual evidence that the Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board, pursuant to N.J.A.C. 6A:28-6.4(a)5.

In order to prove a violation of N.J.S.A. 18A:12-24.1(f), the Commission requires that the Complainant provide factual evidence that the Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire

some benefit for the respondent(s), a member of his or her immediate family or a friend, pursuant to N.J.A.C. 6A:28-6.4(a)6.

In consideration of the Commission's dismissal of the alleged violations of the Act, from which these alleged Code violations emerged, *supra*, the Commission finds that these asserted violations of the Code cannot be sustained. Consequently, even accepting as true all facts alleged by the Complainant in Counts 1 and 2, such facts are insufficient to support a finding that Respondents Thomas and Heinold violated the Code. Accordingly, all remaining allegations in Counts 1 and 2 are dismissed.

Based on the above determinations, the Commission finds that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the Respondent violated the Act and hereby dismisses the Complaint for failure to state a claim upon which relief could be granted.

REQUEST FOR SANCTIONS

The Respondents assert that the Complaint herein is frivolous. At its meeting on October 27, 2015, the Commission considered the Respondents' request that the Commission find the Complaint frivolous and to impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might 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. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the Complaint is not frivolous and denies the Respondents' request for sanctions against the Complainant.

DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the Complainant, the Commission determines the Complaint timely filed and not frivolous, and votes to grant the Motion to Dismiss in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: November 25, 2015

Resolution Adopting Decision – C26-15

Whereas, the School Ethics Commission has considered the Complaint, the Motion to Dismiss with a frivolous allegation filed on behalf of the Respondents, and the Complainant's reply to the Motion to Dismiss and to the frivolous allegation; and

Whereas, the Commission determined the Complaint timely filed; and

Whereas, the Commission determined the Complaint not frivolous; and

Whereas, at its meeting on October 27, 2015, the Commission voted to grant the Respondents' Motion to Dismiss the Complaint in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5; and

Whereas, at its meeting on November 24, 2015, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 25, 2015.

Joanne M. Restivo
Acting Executive Director