
**DEENA NOONAN, NICHOLAS SALAMONE, JR.,
AND CATHERINE D. VILARDO**

v.

**JOAN GREENWOOD
MOUNT EPHRAIM BOROUGH
BOARD OF EDUCATION,
CAMDEN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C30-15

**DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a Complaint, filed on August 24, 2015, by Deena Noonan, Nicholas Salamone, Jr., and Catherine D. Vilaro, members of the Mount Ephraim Borough Board of Education (Board), alleging that Joan Greenwood, the Board President, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, Complainants alleged that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. By letter dated September 1, 2015, the Complaint was sent to the Respondent, notifying her that charges against her were filed with the Commission and advising her that she had 20 days to answer the Complaint. New counsel for the Respondent requested and received a brief extension in which to file a responsive pleading, and on October 13, 2015, the Respondent filed a Motion to Dismiss in Lieu of an Answer. After a brief extension, the Complainants filed a reply to the Motion on November 13, 2015, pursuant to N.J.A.C. 6A:28-8.2(a).

By letter of December 1, 2015, the Commission notified the parties that this matter would be placed on the agenda for the Commission's meeting on December 15, 2015, in order to consider the Respondent's Motion to Dismiss. At its December meeting, the Commission voted to dismiss the Complaint in its entirety for failure to state a claim upon which relief can be granted.

SUMMARY OF THE PLEADINGS

Count 1

Complainants/Board members allege that on July 13, 2015, Respondent/Board President authored and read a letter in public regarding the failed vote to renew the Superintendent's contract. The Complainants maintain that they were not shown the statement prior to publication nor did the Board have an opportunity to consider it. Moreover, she did not state that this was her opinion and that she did not speak for the Board. The Complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e).

Count 2

Complainants assert that the Respondent also violated the Code by making comments to the public and press regarding contentious Board matters and by discussing a personnel matter in public. Moreover, they assert that the Respondent's comments and letter without a disclaimer led the public to believe that she was speaking on behalf of the entire Board. The Complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e).

Count 3

Complainants allege that Respondent's representation that the District had improved under the Superintendent's leadership was her personal evaluation and that she did not provide a disclaimer that she was not speaking for the Board. The Complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e).

Count 4

Complainants assert that the Respondent's statement that the Board would revisit the vote on the Superintendent's contract inferred that the status of the contract will change in time but that the Respondent had no support for her position that the outcome would be any different in the future than it was at the time of the original vote. The Complainants maintain that this allegation has the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

In her Motion, the Respondent argues that the Complaint should be dismissed in its entirety because, even if true, Respondent's actions do not constitute personal promises or action beyond the scope of her authority. Revisiting the Superintendent's appointment was within her authority as Board President. Moreover, the Respondent asserts that she has the right to speak on her own behalf and Board approval is not required under the Act.

In reply to the Motion, Complainants contend that the allegations in their Complaint fully support the finding of a violation that the Respondent took action without the full authority of the Board, that the Respondent failed to recognize that authority rests with the Board, and that she made personal promises which had the potential to compromise the Board.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the Complainant and determine whether the allegation(s), 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. In order to prevail on a Motion to Dismiss, the Complainant must allege facts, which if true, would be sufficient to support a finding in the Complainant's favor. Thus, the question before the Commission was whether the Complainant alleged facts, which if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The circumstances surrounding this Complaint began at a special meeting of the Board on June 15, 2015, during which the Board voted on the renewal of the Superintendent's contract. The Complainants voted not to renew the contract, but the Respondent and three other Board members voted for renewal. Without the requisite five-vote majority to renew, pursuant to N.J.S.A. 18A:17-15, the motion to renew did not carry. Notice of the non-renewal of the Superintendent's contract was published in an article in the *Gloucester City News* on July 9, 2015. At the next regular meeting of the Board on July 13, 2015, the Respondent/Board President read a statement to the public in the presence of six Board members, including Complainants Noonan and Vilaro¹, explaining that five votes were required for renewal and since two Board members could not vote because of conflicts, the renewal fell short by one vote with three votes against the renewal and four in the affirmative. The minutes of the meeting reveal that the Respondent did not name the three members who voted against the renewal. (July 13, 2015 Board Minutes at 2259-2260)

The Commission determines that the Complainants have failed to meet their burden of alleging sufficient facts to state a claim under N.J.S.A. 18A:12-24.1(e). Based on Respondent's statement, the Commission finds that the Respondent did nothing to compromise the Board or act beyond the scope of her authority. The Commission finds Respondent's statement to be benign, factual and instructive. As President and leader of the Board, the Respondent took the opportunity to address the public during the "New Business" portion of the meeting to explain the meaning of the vote, to assuage public concerns by reassuring them that the positive gains in academic scores would continue, and to affirm there would be no upheaval in the day-to-day operation of the schools. The Respondent did not blame anyone for the vote; she simply stated factually why the contract renewal did not pass and what the future would hold. In fact, the public and the media already knew the make-up of the vote on the evening of the June 15, 2015 meeting. Moreover, even assuming that the Respondent did not discuss her statement with the Board prior to delivering it, her address to the public contained only the facts regarding the progress of the vote for Superintendent, and the status of the District, supported by the publicly available NJASK scores of the District.

¹Complainant Salamone did not arrive at the meeting until 8:50pm, after the Respondent delivered her statement and after the Motion to Recognize the Public since the only vote with seven members was the vote to adjourn, the last vote of the evening at 9:32pm.

Furthermore, the Commission does not find anything in the statement to support Complainants' allegation that the Respondent made a personal promise or took any private action that may have compromised the Board. The Respondent made her statement in an open public forum in the presence of the media; anyone who disagreed with her position could have voiced opposition in public that evening in the same venue. Additionally, the Commission does not find as true that the Respondent promised to bring the contract renewal to another vote. Given the term of the Superintendent's current contract, the Board has until February 2016 to notify the Superintendent of the nonrenewal of her contract, over six months time from the date of the incidents in question. The Respondent did not promise a second vote on the contract nor did she ensure a different outcome.

The Commission finds, therefore, that there are no facts set forth in the Complaint that would support a conclusion that the Respondent violated the Code under any of these subsections. Thus, even accepting as true all facts alleged by the Complainants in each Count of the Complaint, the Commission determines that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code and hereby dismisses these allegations and, by extension, the Complaint in its entirety for failure to state a claim upon which relief could be granted.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission granted Respondent's Motion to Dismiss and voted to dismiss the matter in its entirety with respect to all allegations claiming violations of N.J.S.A. 18A:12-24.1(e) for failure to state a claim upon which relief can be granted, pursuant to 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: January 27, 2016

Resolution Adopting Decision – C30-15

Whereas, the School Ethics Commission has considered the Complaint, the Motion to Dismiss filed on behalf of the Respondent, and the Complainants' reply to the Motion; and

Whereas, at its meeting on December 15, 2015, the Commission determined to grant the Respondent's Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted; and

Whereas, 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 January 26, 2016.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission