

SEC #C51-05
C #220-06SEC
SB # 29-06

IN THE MATTER OF THE CENSURE OF :
JAMES CHIEGO PURSUANT TO N.J.S.A. : STATE BOARD OF EDUCATION
18A:12-29(c), UNION TOWNSHIP BOARD : DECISION
OF EDUCATION, HUNTERDON COUNTY. :

Decided by the School Ethics Commission, April 25, 2006

Decided by the Acting Commissioner of Education, June 16, 2006

Decision on motion by the State Board of Education, November 1, 2006

Decision on motion by the State Board of Education, June 6, 2007

For the Respondent-Appellant, Sills, Cummis, Epstein & Gross (Philip E. Stern, Esq., of Counsel)

For the Participants School Ethics Commission and Commissioner of Education, Sookie Bae, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey)

This matter arises out of a certification signed on September 26, 2005 by James Chiego (hereinafter "appellant"), a member of the Union Township Board of Education, which was submitted to the School Ethics Commission in the matter of Patricia Lee, et al. v. Barri Beck, Union Township Board of Education, decided by the School Ethics Commission, September 27, 2005, Docket No. C01-05, aff'd, Docket #A-1180-05T1 (App. Div. 2007). In that case, the appellant and seven other members of the Union

Township Board¹ alleged that Barri Beck, another member of the Board, had violated the School Ethics Act.² The certification contained information regarding the appellant's interpretation of what had occurred at a meeting of the Union Township Planning Board on September 22, 2005. In the final paragraph of his certification, the appellant averred that Frank Goldberg and Amy Bailey Goldberg, the complainants in the instant matter, appeared to have received preferential treatment from the Planning Board with regard to their application for a variance.

As related by the School Ethics Commission:

The [Union Township Board of Education] was on the agenda for the October 4, 2005 Planning Board meeting to discuss some facility issues. Prior to the appearance of the Board, Mr. Chiego's certification was discussed. One of its members said that Mr. Chiego "...disdains and insults every member of the Planning Board." One Planning Board member told the Board that School Board President Patricia Lee had not seen the certification until he had shown it to Ms. Lee that night. Another Planning Board member asked the Board President if she could explain the situation. The Board President said that, "the affidavit was filed individually by Mr. Chiego." She also indicated that she hoped that Mr. Chiego's action would not impact the Board's relationship with the Planning Board. A Planning Board member said that, "Mr. Chiego's action does not help the relationship." Another Planning Board member found it troubling.

School Ethics Commission's Decision, slip op. at 2.

The Goldbergs (hereinafter "complainants") filed the instant complaint against the appellant with the Ethics Commission, alleging that he had violated N.J.S.A. 18A:12-24.1(a), (c), (e), (f) and (g) of the School Ethics Act. They alleged that the

¹ We note that five of the complainants, including the appellant herein, were members of the Union Township Board of Education at the time the complaint was filed and two of the complainants subsequently became members of the Board.

² On September 27, 2005, the School Ethics Commission found that there was no probable cause to credit the allegations against Beck, and it dismissed the complaint and sanctioned the complainants \$250 for filing a frivolous complaint.

appellant had “knowingly lied under oath, denigrated board professionals, injured the school district and accused my wife and I of being conflicted and corrupt.” Complaint, at 1. The complainants charged that the appellant had acted on his own accord in filing the certification at issue, claiming that Patricia Lee, President of the Union Township Board of Education, had “stated on the record (see Exhibit C) that she was unaware of his sworn Certification and that she, Patricia Lee, ‘had not seen the Affidavit until he, Mr. Scott [a member of the Planning Board], had shown it to her tonight.” Id. at 2.

On April 25, 2006, the School Ethics Commission determined that the appellant had violated N.J.S.A. 18A:12-24.1(e) of the School Ethics Act, 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 explained:

To find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine whether Mr. Chiego’s action in signing the certification was private action. The Commission determined above that, based on the evidence, Mr. Chiego’s action was not board action. The same evidence that led to the Commission’s finding that the action was not board action also leads to a conclusion that the action was private action. The Board president, who was unaware that Mr. Chiego had filed the certification, told the Planning Board that Mr. Chiego filed the certification individually. Based on the evidence, the Commission finds that Mr. Chiego’s action in filing the certification with the Commission was private action.

The Commission must next determine if Mr. Chiego took private action that may compromise the Board. Mr. Chiego’s certification contained information regarding his interpretation about what occurred at the September 22, 2005 Planning Board meeting. The Board was on the agenda for the October 4, 2005 Planning Board meeting to discuss facility issues. The evidence shows that the Planning Board was so concerned with the certification that

Mr. Chiego filed, that at the October 4, 2005 meeting, prior to the Board's appearance before the Planning Board, Planning Board members asked the Board president to provide an explanation of the situation. At that Planning Board meeting, there was also a discussion between the Board president and the Planning Board regarding the impact of Mr. Chiego's action on the relationship of the Board with the Planning Board. One Planning Board member said that "Mr. Chiego's action does not help the relationship." The Planning Board ultimately referred the matter to their attorney. Based on the evidence, the Commission finds that when Mr. Chiego filed the certification with the Commission, he took private action that may compromise the Board. Therefore, the Commission finds that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e)....

School Ethics Commission's Decision, slip op. at 4.

The School Ethics Commission recommended that the appellant be censured. On June 16, 2006, the Acting Commissioner of Education,³ emphasizing that a determination by the Ethics Commission as to violation of the School Ethics Act was not reviewable by her and that her jurisdiction was limited to reviewing the sanction to be imposed following a finding of a violation by the Ethics Commission, N.J.S.A. 18A:12-29(c), accepted the Commission's recommended sanction and directed that the appellant be censured.

The appellant filed the instant appeal to the State Board, contending that his action did not violate the School Ethics Act. On November 1, 2006, we granted a motion to participate in this matter filed by the Deputy Attorney General on behalf of the School Ethics Commission and the Commissioner.

On June 6, 2007, we granted the appellant's motion to supplement the record with an affidavit of Patricia Lee, President of the Union Township Board of Education at

³ We note that on October 16, 2006, Acting Commissioner Lucille E. Davy was confirmed as the Commissioner of Education.

the time the appellant submitted the certification at issue. In her affidavit, Ms. Lee avers that she “was fully aware that Mr. Chiego was asked to file the subject Certification before he filed it. Moreover, I was fully aware that Mr. Chiego filed the subject Certification in furtherance of the Board’s interests in its School Ethics case against former Board member, Barri Beck.” Affidavit of Patricia Lee, at 1-2. She adds: “At no time did I consider the subject Certification to be a private effort on Mr. Chiego’s part. To the contrary, the subject Certification from Mr. Chiego was part of the Board’s effort’s [sic] to challenge the credibility of witnesses who testified on behalf of former Board member, Barri Beck, in the Board’s School Ethics case against her.” Id. at 2.

After a thorough review of the record as supplemented on appeal, we remand this matter to the School Ethics Commission for any further proceedings which it deems necessary in order to determine in the first instance whether, on the basis of the record as supplemented, the appellant had “take[n] any private action that may compromise the board” in violation of N.J.S.A. 18A:12-24.1(e), and, if so, to recommend an appropriate sanction to the Commissioner. In so doing, we recognize that there are apparent contradictions between statements attributed to Ms. Lee in the minutes of the Planning Board’s meeting of October 4, 2005, Complaint, Exhibit C, and statements made by Lee in her supplemented affidavit. Consequently, we direct that the School Ethics Commission, as part of its review of this matter, take any steps which it deems necessary for the purpose of resolving those inconsistencies.

In light of our determination, we set aside the censure imposed by the Acting Commissioner pending a determination on remand of whether the appellant violated the School Ethics Act and, if so, the appropriate sanction. We do not retain jurisdiction.

Maud Dahme recused herself.

August 1, 2007

Date of mailing _____