

#202-12 (OAL Decision: Not yet available online)

ALLEN LOUIE,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
BOROUGH OF GLASSBORO,	:	
GLOUCESTER COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner, a private citizen of the Borough of Glassboro, contended that the respondent Board violated *N.J.A.C. 6A:23A-5.2(e)* when it hired a consulting firm – Heather Simmons of Heather Simmons Communications (Simmons) – to, allegedly, launch a campaign to pass the Board’s school budget. Petitioner argued that the Board should be enjoined from compensating Simmons and should be required to reimburse monies already paid to the consultant. The petitioner filed a motion for summary decision; the Board opposed petitioner’s motion, and filed a motion to dismiss.

The ALJ found, *inter alia*, that: *N.J.A.C. 6A:23A-5.2(e)* states – in pertinent part – “All activities involving promotional efforts to advance a particular position on school elections or any referenda are prohibited”; in the instant matter, petitioner presented no evidence that the Board had engaged in any one-sided, biased promotion; any evidence that might perhaps have put “some meat” on petitioner’s “bare-bones” allegation of misconduct by the Board could have been uncovered in discovery, which petitioner elected to forego; flimsy claims cannot replace actual proof of wrongdoing as support for a petition that charges violations of law; and summary decision is unwarranted. Accordingly, the ALJ denied petitioner’s motion for summary decision, and granted respondent’s motion to dismiss the petition.

Upon independent review of the record, the Initial Decision, and petitioner’s and respondent’s exceptions thereto, the Commissioner concurred with the findings of the ALJ. The Initial Decision of the OAL was adopted as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

May 17, 2012

OAL DKT. NO. EDU 13642-11
AGENCY DKT. NO. 277-9/11

ALLEN LOUIE, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 :
 : DECISION
 BOARD OF EDUCATION OF THE :
 BOROUGH OF GLASSBORO, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :

This controversy was initiated by petitioner, who alleges that the respondent Board hired a consultant – Heather Simmons Communications (Simmons) – to campaign for the School budget, in contravention of *N.J.A.C.* 6A:23A-5.2(e). In lieu of conducting discovery and participating in a fact-finding hearing in the Office of Administrative Law (OAL), petitioner elected to move for summary disposition. Upon review of the record, the Commissioner adopts the Initial Decision.

In that decision, the Administrative Law Judge (ALJ) acknowledged the probability that the Board had contracted with Simmons but could not conclude from the proposed contract language that prohibited activities were contemplated:

giving the petitioner the benefit of the doubt here, and inferring the proofs in his favor for the purposes of the motion to dismiss, it is reasonable to assume that a contract [between the Board and Simmons] was agreed upon. Yet, even with that assumption, there is no basis to assume, much less to infer, that the Board actually undertook any prohibited, one-sided activities to promote the passage of the budgets in any of the three years in question. In fact, while the headings used by Simmons in her proposal and her retrospective language might perhaps appear to suggest that the actions were perhaps one-sided, that is, the goal of passing the budget involved some “campaign” in favor of that result to the

exclusion of [a] fair presentation . . . , the list of objectives and goals set forth by Simmons does not read at all as if it is necessarily a one-sided, biased, promotion. It calls for contacts, meetings, the provision of information to “thoroughly inform” the electorate, contact with certain interest groups such as senior citizens and the like. (Initial Decision at 10-11)

More significantly, the ALJ referred to prior cases in which *N.J.A.C. 6A: 23A-5.2(e)* was found to have been violated, and correctly concluded that they involved actual activities undertaken by Boards – not merely language in vendor proposals or unsigned contracts. By way of contrast, in the instant case, he found no evidence – provided by petitioner or respondent – that established that the respondent Board had engaged in activities prohibited by *N.J.A.C. 6A: 23A-5.2(e)*:

If a pattern or practice of improper, one-sided action by the Board regarding any or all of the school budget elections during the three years exists, the evidence offered by Louie does not even begin to demonstrate the reality of such misconduct. This does not mean that the untoward implications he seems to draw from the language of the Simmons proposals and the contracts that may indeed have followed upon her memos, may not be borne out by actual deeds of the Board and/or its authorized agent, but with that concession, it is most important here to emphasize that nothing offered to this point serves as evidence to support such a concrete defalcation on the Board’s part. And while discovery might perhaps uncover information that would put some meat upon what is at this point nothing much more than a bare-bones allegation, the petitioner has chosen to eschew discovery before filing for summary decision. (Initial Decision at 11-12)

In light of the foregoing, the ALJ declined to grant summary disposition to petitioner. He further granted the Board’s motion for summary decision, because the sworn affidavit of Simmons – averring that no prohibited actions were undertaken – was un rebutted by petitioner. He noted “I cannot say that there is not some proof to support petitioner’s [sic] case, but his chosen path in this matter has not offered any demonstration of such worthy of the name.” (Initial Decision at 13)

Petitioner's exceptions place great significance on the use of the word "campaign" by the consultant in her memoranda. Petitioner urges that the use of that word signifies that the Board hired Simmons to present a biased account of the budget to the public. However, the descriptions – in the consultant's memoranda – of the "campaign" activities that were proposed to educate the public about the annual school budgets did not clearly suggest an intent to disseminate one-sided information about them.

In summary, 1) petitioner did not show that the Board's/Simmons' use of the word "campaign" signified an intent to violate *N.J.A.C. 6A: 23A-5.2(e)*; and 2) despite the fact that Simmons had already been hired two or three times to educate the public concerning the school budget, petitioner presented no evidence that she had ever dispensed imbalanced information, in violation of *N.J.A.C. 6A: 23A-5.2(e)*. Finally, the Commissioner finds unpersuasive petitioner's argument, in his exceptions, that possible biased campaigning warrants the same management as possible potential murder plots.

Accordingly, petitioner's motion for summary disposition is denied, respondent's motion for summary disposition is granted, and the petition is dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 17, 2012

Date of Mailing: May 18, 2012

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.