

CHARLES J. CAREY, JR.	:	BEFORE THE SCHOOL ETHICS COMMISSION
	:	
v.	:	
	:	
MATTHEW McDEVITT, PENNSAUKEN BOARD OF EDUCATION BURLINGTON COUNTY	:	Docket No. C14-04 DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 8, 2004, by Charles J. Carey, Jr., a member of the Pennsauken Board of Education (Board), alleging that respondent, Matthew McDevitt, President of the Board, violated the School Ethics Act (Act) N.J.S.A. 18A:12-21 et seq., when he signed a contract with the Board counsel without the approval or knowledge of the Board. On March 29, 2004, complainant filed an amended complaint specifying that respondent’s conduct violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members in the Act.

The respondent, through his counsel, Edward J. McBride, Jr. Esq., was granted an extension of the time to respond to the complaint and an answer was filed on May 3, 2004. In his answer, respondent admits that, in his capacity as Board President, he signed the 2003-2004 contract for the professional services of the Board counsel. Respondent argues that, at the April 2003 Board meeting, the Board approved the appointment of various professionals including the appointment of the Board counsel and the contract resulted from that Board approval. He further argues that Board policy, which lists the duties of the Board President, includes the requirement for the Board President to sign documents authorized by the Board. Further, the respondent affirmatively sets forth that complainant knew or should have known that he had no reasonable basis for claiming that a violation of the Code of Ethics for School Board Members occurred. Respondent also sets forth that complainant filed the complaint because he was an opposition candidate and he was being investigated by the Board for improper conduct. Respondent sets forth that the complaint is frivolous and he seeks to have sanctions imposed against the complainant.

On May 18, 2004, the Commission was notified that John C. Eastlack, Jr. Esq., had been retained by the respondent to replace Mr. McBride as counsel for respondent. After adjourning the hearing for good cause from the June 22nd and July 27th Commission meetings, the Commission invited the parties to attend its meeting on August 24, 2004, to present witnesses and testimony to aid in the Commission’s investigation. Complainant attended the hearing and testified. Respondent, with his attorney, and four other members of the Board attended the hearing and testified.

At its public meeting on August 24, 2004, the Commission voted to find no probable cause and dismissed the allegations that respondent violated N.J.S.A. 18A:12-24.1(e) and (f). The Commission also voted to find that the complaint was not frivolous and denied respondent's request for the Commission to sanction the complainant. The Commission adopted this decision at its meeting of September 30, 2004.

FACTS

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

At all times relevant to this complaint, respondent was the President of the Board and complainant was a member of the Board. At the April 30, 2003 Board meeting, the Board, through a resolution, approved the appointment of various professionals for the 2003-2004 school year that included the Board counsel. The resolution also established the fee for each professional appointed and it established a fee of \$125 per hour for Board counsel. On July 1, 2003 the respondent, in his capacity as Board President, signed a contract for the professional services of the Board counsel. Board policy BCB, adopted on 11/19/81, lists the duties of the President of the Board, which includes the signing of documents authorized by the Board or required to be executed on its behalf. Board policy BBAA, adopted on 2/20/75, provides that members of the Board have authority only when the Board is legally in session.

The 2003-2004 contract for professional services of the Board counsel was similar to the 2002-2003 contract except for a change in the hourly fee from \$115 to \$125 and a provision that paralegal or legal assistants' time shall be billed at \$40 per hour. The 2002-2003 contract was signed by the former Board President on July 18, 2002. Respondent testified that the former Board President had negotiated the 2002-2003 contract with the Board counsel and had agreed to pay for the Board counsel to attend the New Jersey School Boards Association (NJSBA) convention in order to avoid an increase in his fees.

Respondent and four other Board members testified that they were aware of both the 2002-2003 and the 2003-2004 contract for the professional services of the Board counsel and were also aware that all contracts were available for their review in the business office. Complainant testified that he did not become aware of the contract with the Board counsel until the January 2004 Board meeting when he questioned a bill authorizing payment for the Board counsel to attend the NJSBA convention and the Board counsel replied that it was in the contract. One Board member testified that the specific provisions in the 2002-2003 contract were not discussed at a Board meeting. He further testified that all contracts are available for Board members to review prior to Board meetings.

In previous years, complainant had served as President of the Board. Complainant testified that while he was President, he never signed a contract for the

professional services of a Board counsel. The testimony revealed that the Board voted to approve payment for the Board counsel to attend the NJSBA convention.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24.1(e) and (f) by signing a contract with the Board counsel without the approval or knowledge of the Board. N.J.S.A. 18A:12-24.1(e) 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.

Complainant bears the burden of proving any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29. When the respondent, in his capacity as Board President, signed the 2003-2004 contract for the professional services of the Board counsel, he did so after the Board had voted to appoint the Board counsel with an increase in the hourly fee from \$115, which was in the 2002-2003 contract, to \$125. The 2003-2004 contract resulted from the Board's approval of the appointment and the fee increase. Respondent and four Board members testified that they were aware of the provisions of the 2002-2003 contract and that their approval would require a change in that contract. Thus, respondent did not act without the authority of the Board when he signed the 2003-2004 contract. Furthermore, pursuant to Board policy BCB, it was respondent's duty as Board President to sign the contract, which was a document that resulted from the Board's approval of the appointment and fee increase for the Board counsel. Although the Board did not vote on the payment of paralegal and legal assistant's time, the Commission is persuaded that respondent signed a contract that he believed was authorized by the Board's vote on April 30, 2003. In addition, the Commission independently confirmed that Board counsel has never billed for paralegal or legal assistant time because he has no paralegals or legal assistants.

There is no evidence that respondent made any personal promises or took any private action that would compromise the Board. Respondent's action in signing the 2003-2004 contract as Board President was not a personal promise nor a private action because the Board had approved the appointment of the Board counsel and the increase in the hourly fee. Respondent's action certainly did not compromise the Board since this was a renewal rather than a new contract and the Board had the opportunity to review the provisions of the 2002-2003 contract when they approved the appointment of and fee increase for the Board counsel. Thus, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(e).

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.

As noted previously, when respondent signed the 2003-2004 contract, he did so with the prior approval of the Board for the appointment of and fee increase for the Board counsel. There were no special interest groups or partisan political groups involved. The respondent did not receive any personal gain when he signed the contract. Furthermore, there was no evidence that the Board counsel was respondent's friend or that the respondent used the schools for the gain of Board counsel. There is no evidence that respondent refused to surrender his independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(f).

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the Code of Ethics for School Board Members under the School Ethics Act and therefore dismisses the complaint in its entirety. However, the Commission notes that complainant was unaware of the existence of either the 2002-2003 or the 2003-2004 contract for the professional services of the Board counsel. It is apparent from the testimony that while contracts are available for the Board to review at the business administrator's office, that contracts are not provided at the Board meeting. The Commission encourages the Board to provide full public disclosure of the terms of contracts at public Board meetings in the future.

REQUEST FOR SANCTIONS

Respondent has asked 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]

Based on the testimony of complainant, it is clear that he was unaware of the provisions of either the 2002-2003 or the 2003-2004 contracts for the professional services of the Board counsel. Furthermore, when he served as President of the Board, he never signed a contract with the Board counsel. It was also clear that complainant believed that there was a reasonable basis for the complaint because of his lack of knowledge regarding the existence of a contract. There is no evidence that the complaint

was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's 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 – C14-04

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 finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24.1(e) and (f); 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 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 September 30, 2004.

Lisa James-Beavers
Executive Director

PCG/LJB/MET: e/decisions/C14-04