

to fine Complainant \$250 for the filing of a frivolous complaint pursuant to N.J.S.A. 18A:12-29 and N.J.S.A. 2A:15-59.1.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted and testimony. Respondents Frank Giarratano, Eric Smith and Sue Shanik Salny, at all times relevant to this complaint, were board members on the Rockaway Township Board of Education.

On March 18, 2003, an Articulation Meeting took place among the teachers of the Rockaway Township school district to discuss issues of concern. Respondents were present at this meeting. Problems at the middle school, where the principal served, were discussed.

On May 14, 2003, the Board considered the district Superintendent's recommendation to reemploy the middle school principal for the 2003-2004 school year. The recommendation did not receive four favorable votes and failed. Respondent Eric W. Smith voted to renew the principal. Respondent Frank P. Giarratano voted against his reappointment. Respondent Sue Salny was absent from the meeting.

ANALYSIS

N.J.S.A. 18A:12-24(a) provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

Complainant first contends that respondents' action or inaction violated N.J.S.A. 18A:12-24(a) set forth above. Complainant provided no information to show that Respondents "...engaged in a business, transaction, or professional activity" when they attended the Articulation Meeting. However, even if one were to stretch the definition of "professional activity" to use it to describe Respondents' attendance at an Articulation Meeting, there is no indication that their attendance at such a meeting is in substantial conflict with the proper discharge of their duties as board members. Consequently, the Commission does not find a substantial conflict to exist that would violate subsection 24(a).

N.J.S.A. 18A:12-24.1(d) provides

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.

Complainant quotes the language of N.J.S.A. 18A:12-24.1(d) to allege that Respondents attempted to administer the schools when they attended the Articulation Meeting that addressed concerns at the middle school. According to the Affidavit of the Superintendent of Schools, Articulation Meetings are held at all of the District's schools and were developed by the Board in conjunction with, and with the approval and consent of, the Administration. Parciak Affidavit, pp. 3-5 The Board members are invited to attend these meetings and the Superintendent does not view the attendance of board members at these meetings to be an impermissible attempt to administer the schools. Id.

N.J.S.A. 18A:27-4.1(b) provides, in pertinent part, that:

A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons...

N.J.S.A. 18A:27-4.1(b) allows a board of education to vote on whether or not to retain a non-tenured, certificated employee. The statute further offers an employee the "...right to an informal appearance before the board." The purpose of the appearance is to permit the staff member to convince the members of the board to offer reemployment." The statute clearly prohibits a board from withholding its approval on a renewal for arbitrary and capricious reasons, but this assertion was not made by Respondent, nor would it be appropriate for the Commission to rule on this matter if it were raised.¹ In summary, Respondents did not administer the schools when they voted on the principal's non-renewal and therefore, the Commission does not find that Respondents violated N.J.S.A. 18A:12-24.1(d).

DECISION ON REQUEST FOR SANCTIONS

Respondents assert that the complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e), which provides:

If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining

¹ It is not within the jurisdiction of the School Ethics Commission to determine whether a board has acted in an arbitrary or capricious manner with regard to a non-renewal since determinations under N.J.S.A. 18A:27-4.1(b) properly lie before the Commissioner of Education.

whether a complaint is frivolous shall be the same as that provided in...
N.J.S.A. 2A:15-59.1.

N.J.S.A. 2A:15-59.1(b) sets forth:

In order to find that a complaint, counterclaim, cross-claim or defense of the non-prevailing party was frivolous, the judge shall 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 non-prevailing 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.

Pursuant to case law, either prong of section 59.1(b) may be satisfied in order to find that a complaint is frivolous. Fagas v. Scott, 251 N.J. Super 169, 189 (Law Div. 1991). In the present matter, the Commission finds that this complaint meets both prongs of the above test in determining that this complaint is frivolous.

In determining whether a complaint meets the standard set forth at N.J.S.A. 2A:15-59.1(b)(1), the Courts must consider the totality of the circumstances. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993); Weed v. Casie Enterprise, 279 N.J. Super. 517, 532 (App. Div. 1995). In considering these circumstances, it appears that the allegations were made in bad faith for the purpose of harassment or malicious injury since there is no relationship between Respondents' attendance at the Articulation Meeting and the outcome of the vote on the principal's non-renewal. One voted in favor of the principal's renewal, one voted against it and one respondent was not even present to participate in the vote. Thus, one may conclude that this complaint was filed in an attempt to harass or maliciously injure the Respondents.

Additionally, Complainant knew, or should have known, that the complaint was filed without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law pursuant to section 59.1(b)(2). Neither statute cited applied to Respondents' participation in the non-renewal vote of the principal, or to their attendance at an articulation meeting. There is no provision in this Act prohibiting board members from attending an Articulation Meeting or from voting against a non-tenured employee's renewal. Complainant, who is familiar with the provisions set forth at N.J.S.A. 18A:12-21 et. seq., the School Ethics Act, as shown by his many complaints filed with the Commission in the past, should have known that this complaint was filed without any reasonable basis in law.

Complainant has filed seven complaints with the School Ethics Commission and is familiar with the provisions of the School Ethics Act and its procedures. He has been

fined previously for filing a frivolous complaint in Doty v. Friedberger, Puzio, Hodes, Giarratano, Smith, Salny and Parciak, Rockaway Township Board of Education, SEC Dkt. No. C22-03, decided August 26, 2003, where the Commission determined that the complaint was filed solely to harass and cause malicious injury to Respondents and had no reasonable basis in law. Prior to the Commission's finding and issuance of that fine, Complainant had been warned in two prior decisions, Doty v. Friedberger, Giarratano & Salny, Rockaway Township Board of Education, SEC Dkt. No. C38-02, decided January 28, 2003, and in Doty v. Giarratano, Puzio & Hodes, Rockaway Township Board of Education, SEC Docket No. C40-02, decided January 28, 2003, that if he continued to file complaints with no merit he would be sanctioned by this Commission.

Consequently, after consideration of the facts and circumstances surrounding this complaint, the Commission hereby imposes a fine of \$250.00 against Respondent for the filing of a frivolous complaint in this matter.

DECISION

Based on the foregoing, the Commission has determined to dismiss this complaint against all Respondents. Also, for the reasons expressed herein, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and Orders that the Complainant pay a fine in the amount of \$250.00.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Respectfully submitted,

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C25-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and testimony; and

Whereas, at its meeting of August 26, 2003, the Commission found no probable cause to credit the allegations that Frank Giarratano, Eric Smith and Susan Shanik Salny, violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against them; and

Whereas, the Commission finds that the complaint meets the standard set forth in N.J.S.A. 2A:15-59.1 for a frivolous complaint and therefore, believes that a sanction of \$250.00 is appropriate; and

Whereas, the Commission directed that its staff prepare a decision consistent with the aforementioned conclusions; and

Whereas; the Commission has reviewed the decision and agrees with the decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as it decision in this matter and the Complainant is hereby **ORDERED** to pay the Commission a \$250.00 fine for the filing of a frivolous complaint. The Commission directs its staff to notify all parties to this action of the Commission's decision herein and to collect the fine imposed above.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on September 23, 2003.*

Lisa James-Beavers, Executive Director

(PCG/LJB/PSC/C25-03)