
REGINA C. DISCENZA

v.

**WILLIAM R. QUIST
LACEY TWP. BOARD OF ED.
OCEAN COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No. C31-07

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 23, 2007 by Regina Discenza alleging that William R. Quist, a member of the Lacey Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Because the complaint did not meet the requirements set forth in N.J.A.C. 6A:28-6.1 et seq., the complainant was provided the opportunity to submit an amended complaint. On June 21, 2007, the complainant filed an amended complaint alleging that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(a), (d) and (c) of the Code of Ethics for School Board Members. On August 16, 2007, after the grant of an extension for good cause, the respondent, through his attorney, Arthur Stein, Esq., filed an answer to the amended complaint. In early January 2008, the respondent filed a Motion to Dismiss, which was returned to the respondent because the Commission could not accept it based upon N.J.A.C. 6A:28-6.5, which allows a Motion to Dismiss for complaints alleging only a violation of the Code of Ethics for School Board Members. The Commission invited the parties to attend its July 22, 2008 meeting. Both of the parties submitted additional documentation prior to the meeting; the complainant sent additional exhibits, and the respondent sent a hearing brief. Both parties appeared at the meeting; the complainant appeared pro se and presented the testimony of Thomas Palczewski, a former board member. The respondent was represented by Mr. Stein and he presented testimony from Richard P. Starodub, the superintendent of the Lacey School District (District). At the public portion of the meeting, the Commission voted to find no probable cause and to dismiss the matter. The Commission directed its staff to prepare this decision, which was adopted at the Commission's August 26, 2008 meeting.

THE PLEADINGS

The complainant first alleges that on April 16, 2007, the respondent, then Board President and an incumbent candidate, used the district's Global Connect automated call system to remind people to get out and vote on the following day. (Complaint at p. 1, para. 1) The complainant alleges this was a violation of N.J.S.A. 18A:12-24(b) and 18A:12-24.1(c) and (d). The complainant asserts that because the respondent was a candidate, he should not have used his name and voice on the approximately 5000 phone calls targeted to parents and staff. (Id. at p. 2, para. 2) The complainant asserts that the

broadcast was not approved by the Board; rather, it was the superintendent who gave the respondent permission. (Id. at p. 3, para. 4)

The complainant next alleges that on April 13, 2007, approximately 12,733 newsletters were mailed with the Lacey School District's non-profit postage permit number 67. The complainant alleges this was a violation of N.J.S.A. 18A:12-24.1(d), because, as Board President, the respondent should not have allowed the newsletters to be sent since all board members never received a final copy prior to mailing. (Id., at p. 4, para. 5) The complainant also alleges that this was a violation of N.J.S.A. 18A:12-24.1(a), because the mailing violated Board policy R9120B.1. (Id., at p. 5, para. 7) Appended to the amended complaint are the following attachments:

- a memorandum from the complainant to the superintendent asking for confirmation that the District used Global Connect on April 16, 2007;
- a faxed memorandum from the superintendent to the respondent confirming use of Global Connect on April 16, 2007;
- a memorandum from the District's Office of Computer Education and Service regarding the Global Connect telephone system;
- the Global Connect call reports for April 16, 2007 showing that 5,834 calls were scheduled to go out and eventually went out;
- a copy of the *Lacey School News* volume 5, Issue 1, dated Spring 2007;
- a District memorandum regarding the history and the cost of production and dissemination of the *Lacey School News*;
- a postage statement showing that the District paid \$916.78 for mailing the newsletter; and
- a copy of sections of Board policy R9120.

In his answer, the respondent contends that he did not violate N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(a), (d) and (c). He indicated that he served as President of the Board from April 2006 until April 23, 2007. As to the complainant's first allegation, the respondent asserts that, approximately one week prior to April 16, 2007, the superintendent informed the respondent that he intended to use the automated call system to communicate with parents of the District on April 16, 2007, to remind them that the annual vote on the school budget would take place on April 17, 2007, and to urge eligible voters to vote on the budget. (Answer at p. 3) The respondent contends that the Board was never involved in the use of the automated call system, which was a responsibility of the superintendent. (Id., at p. 5) The respondent notes that there had been a history of low voter turnout in school board budget elections and, based on that history, the superintendent decided to use the automated call system to remind people to participate in the budget vote and encourage them to come out and vote. (Id., at pp. 3, 4) The superintendent decided that the person to make the call should be the Board President because the Board President had always served as spokesperson for the Board. (Id., at p. 5) Following is the script used by the respondent when he made the call:

“Good Evening - This is Lacey Township Board of Education President, Bill Quist, calling to remind you that the School Board Budget Vote takes

place tomorrow between the hours of 3:00 P.M. and 9:00 P.M. at your regular polling places. Thank you.”

The respondent noted that there were several Board meetings that were televised on local cable during which some Board members made pointed statements regarding the vote on the budget question, and even the complainant urged the public to go out and vote during a Candidate’s Night held by the high school Close Up Club. (Id., at pp. 6-12) The respondent asserts that there was no expense to the Board or the District for the use of the automated call system as the system was obtained by the superintendent by way of a grant. At the time that the calls were made, the superintendent was still working on the details of the operation of the system and deciding whether to keep the system. (Id., at p. 14) The respondent also notes that there has never been a vote by the Board on any particular use of the automated call system. (Id., at p. 16)

As to the complainant’s second allegation, the respondent noted that the *Lacey School News* is a newsletter that is a routine mailing undertaken by the Board for approximately 10 years. (Id., at pp. 17, 18) The respondent explained, by way of background, that production of the newsletter is a joint effort between the Board and the Lacey Township Education Association (LTEA), which resulted, a number of years ago, from a discussion between the Board and the LTEA regarding the need to communicate more effectively with members of the public regarding news about the District. The joint effort between the Board and the LTEA results in the production of the newsletter at a reduced cost to the Board of about one-fourth of the total cost, since the Board only pays for postage. (Id., at pp. 18, 19) The respondent acknowledges that, while the newsletter was introduced years ago, there was a period of time when the newsletter was not published; however, as a result of regular liaison meetings between the Board and the LTEA, the newsletter was published in 2007. (Id., at pp. 19, 20) The respondent contends that the Board authorized the superintendent and assistant superintendent to review and approve the contents of the newsletter and the Board approved the postage when it approved the regular budget. (Id., at p. 20) The respondent asserts that the complainant cites no laws, rules and regulations of the State Board of Education, rather she cites Board policy, violation of which would not rise to the level of a violation of the laws, rules and regulations of the State Board of Education. (Id., at p. 22) The respondent contends that he followed Board policy when he approved the contents of the newsletter and the mailing. (Id., at pp. 22-24) An affidavit of the superintendent is appended to the answer.

On July 9, 2007, the complainant submitted a DVD copy of the April 23, 2007 Board meeting, the minutes of the meeting and a copy of an article dated April 25, 2007 from the *Lacey Beacon* for the Commission’s review. Prior to the July 22, 2008 meeting, the complainant submitted the following additional documents for the Commission’s review:

- a letter dated October 23, 2007 from the US Postal service confirming Permit 67 from Forked River belongs to the Lacey Township school;
- a copy of the respondent’s candidate petition dated February 22, 2007;

- a certified copy of the April 17, 2007 official school election results from the Ocean County Clerk's office;
- a copy of the script used by the respondent for the Global Connect call on April 16, 2007;
- copies of Open Public Record requests made by the complainant to the District;
- a copy of the 2007 payroll report of the supervisor of computer services;
- a copy of a Global Connect contract dated April 19, 2007;
- a copy of an October 13, 2006 letter from the Chief of Police to the superintendent referring to Global Connect as an emergency notification system; and
- a copy of a four page bill for the month of April 2007 from the Board's attorney.

Also prior to the July 22, 2008 meeting, the respondent submitted a hearing brief for the Commission's consideration and review. Appended to the hearing brief as new additional exhibits are a copy of Pineiro-Gonzalez v. Gonzalez, Docket No. A-5478-06T1, (App. Div. June 23, 2008), a copy of Deluna v. Bertram, C31-06 (April 24, 2007), and a complete copy of Board Policy R9120.

EVIDENCE BEFORE THE COMMISSION

In addition to the pleadings and exhibits set forth above, testimony was provided on behalf of the complainant and the respondent. The complainant indicated that the issue before the Commission was the use of the automated call system, which is called Global Connect. She testified that districts need guidelines for the use of such systems. The complainant argued that this matter was different from the Deluna, matter. She testified that the District's automated call system is not a reverse 911 system. Rather, Global Connect requires the input of specific numbers prior to use. She stated that if this was a "get out the vote" message, it should have gone to everyone. The complainant argued that the use of a targeted audience makes a difference. Additionally, the complainant stated that using a candidate with name recognition, such as the respondent, was not appropriate. She testified that anyone could have recorded the message, and stated that not all seven board members were aware that the calls were going out.

Thomas Palczewski, a former member of the Board of Education, testified that he had no knowledge that calls were going to be made prior to the election in 2007 and he did not recall that it was discussed at meetings. In response to arguments raised in the respondent's brief, the complainant contended that the use of the Global Connect was different from the information being broadcasted on local cable since that goes to all homes rather than the targeted audience for Global Connect. The superintendent testified that he had authority to determine when and how Global Connect was used. He testified that he never went to the Board to notify them or ask permission for use of the call system. The superintendent testified that the call system was used again in 2008 by the current Board President.

As to the second count of her complaint, the complainant testified that no one recalled seeing the joint Board/LTEA publication for a number of years. She stated that people called her about the newsletter and she promised to look into it. She thought that a joint publication between the Board and the LTEA was an unusual arrangement. The complainant further stated that the Board did not see the newsletter before it was mailed and they had no chance to object to anything or have it edited. Further, Ms. Discenza queried how the Board recorded this donation from the LTEA. She stated that both the respondent and superintendent have attested to the cost but there has been no actual receipt for the printing. The complainant asserted that she did not think that the dissemination of the newsletter met district policy standards, but acknowledged that the Board claims to have given the authority to disseminate the newsletter to the Superintendent.

Mr. Palczewski testified that he did not know that newsletters were going out and he felt it was a very biased publication. The newsletters were never discussed to the best of his knowledge. He acknowledged that other publications went out without the specific knowledge of the Board and when he brought it to the attention of the superintendent, the superintendent indicated that everything was “run by” the attorney. The superintendent testified that the Board, through its Community Relations Committee, worked with the LTEA both on the format and the idea for the newsletter. The material was brought to him and his assistant superintendent to approve. The superintendent testified that the newsletter had the full acknowledgement of the Board and it was his administrative responsibility to review it. He found that it contained nothing objectionable or biased. The superintendent indicated that there were discussions with the Board about the process for developing the newsletter. He testified that the Board discussed payment of printing by the LTEA, with postage paid by Board and content review by the administration. The superintendent further testified that the Board President is the spokesperson for the Board on major issues and if there was something unusual, he would consult with the Board President. The superintendent stated that he did not think that an individual Board member would have had the authority to stop the dissemination of the newsletter. The superintendent testified that the newsletter was published again in 2008 with the same cooperative effort.

ANALYSIS

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. In making this decision, the Commission must consider whether sufficient evidence exists to support a claim of violation under the School Ethics Act. Here, the Commission finds there is insufficient evidence to proceed.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(b) when, on April 16, 2007, the respondent, then Board President and an incumbent candidate, used the district's Global Connect automated call system to remind people to get out and vote on the following day. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

The complainant argues that the respondent used his position as Board President to secure the unwarranted privilege of name and voice exposure targeted to parents and District staff on the day before the school election. However, there is no dispute that the respondent taped the message at the request of the superintendent. The Commission finds this matter is similar to the situation in Deluna v. Bertram, C31-06 (April 24, 2007), where or in that the script that the respondent read included only school-related information and did not identify the respondent as a candidate running for re-election. (Id., at pg. 6) There, the Commission concluded that the announcement did not include information that the respondent was running for election; the announcement merely mentioned the election and reminded people to vote. The Commission therein found that the respondent did not gain or attempt to gain an unwarranted privilege by making the announcement. The Commission finds nothing on this record to distinguish Deluna. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) when he made the April 16, 2007 call on the Global Connect system.

The complainant alleges that the respondent also violated N.J.S.A. 18A:12-24.1(c) in relation to the April 16, 2007 call on Global Connect. N.J.S.A. 18A:12-24.1(c) provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The complainant argues that the respondent did not confine his actions to establishing Board policy and did not duly consult the Board because there was no Board vote taken to initiate the April 16, 2007 call on Global Connect. However, on this record there is no dispute that the superintendent had the authority to administer the Global Connect automated call system. The complainant offers nothing to contradict the respondent's assertion that when he made the call, the respondent was acting in his role as Board President, the spokesperson for the Board, in response to a request from the superintendent. This record does not show a failure on the part of the respondent to confine his board action to policy making, planning and appraisal. The record also does not show that the respondent failed to help frame policies and plans only after the Board consulted those affected by them. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c) when he made the April 16, 2007 call on the Global Connect system.

The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(d) in relation to the April 16, 2007 call on Global Connect. 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.

The complainant further argues that the respondent acted alone without a Board vote on something that was not an ordinary day to day task. Pursuant to N.J.A.C. 6A:28-7.1, “administering the schools” means that a member of the board became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the District, or gave a direct order to an employee of the District. Here, the complainant acknowledges that the call on Global Connect was not an ordinary day-to-day task. As set forth above, there is no dispute that the superintendent was responsible for the administration of Global Connect and there had never been a Board vote to approve any particular use of the system. The respondent made the call on Global Connect after a request from the superintendent. The Commission cannot conclude, therefore, that in responding to the superintendent’s request, the respondent was not administering the schools. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d) when he made the April 16, 2007 call on the Global Connect system.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(a) in connection with the mass mailing of the *Lacey School News*, dated Spring 2007. The Commission initially notes that N.J.S.A. 18A:12-24.1(a) requires that school board members uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Additionally, N.J.S.A. 18A:12-24.1(a) requires that desired changes be brought through legal and ethical procedures. The Commission’s regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

At no time does the complainant allege that a final decision has been rendered with respect to the respondent from any court of law or administrative agency of this State finding that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical means. Therefore, the Commission

finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a) in relation to the Spring 2007 publication of the District's newsletter. The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(d), as set forth above, in relation to the mass mailing of the *Lacey School News*, dated Spring 2007. Yet there is no dispute that the mass mailing was done through a joint cooperative effort on the part of the Board and the LTEA. The complainant acknowledged in her testimony that the Board claims to have given the authority to the superintendent to disseminate the newsletter. Thus, one could reasonably conclude that the respondent properly fulfilled his duties in relation to the mass mailing by allowing the superintendent to administer the process for the mailing. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d) in relation to the Spring 2007 publication of the District's newsletter.¹

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that William R. Quist violated the Act and the Commission dismisses the complaint against him. 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

¹ The Commission notes that it will not address the complainant's allegation that the respondent violated Board policy R9120 because such policy is beyond the jurisdiction of the Commission.

Resolution Adopting Decision – C31-07

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

Whereas, at its meeting of July 22, 2008, the Commission found no probable cause to credit the allegations that William R. Quist violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; 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 its 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2008.

Joanne Boyle, Executive Director
School Ethics Commission