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| JANIS LEE CHASMER | : | BEFORE THE SCHOOL |
| | : | ETHICS COMMISSION |
| | : | |
| v. | : | |
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| LEONARD CALVO, ALICIA | : | Docket No. C39-04 |
| MOREJON, FELINA DEL NODAL, | : | |
| JOHNNY GARCES, JOSE MEJIA, | : | |
| JEANETTE PENA, CARLOS VALLEJO : | : | DECISION |
| <i>UNION CITY BOARD OF EDUCATION</i> | : | |
| <i>HUDSON COUNTY</i> | : | |
| | : | |

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 4, 2004, by Janis Lee Chasmer against the Union City Board of Education (Board) alleging that the Board violated the Code of Ethics for School Board Members in the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated June 14, 2004, the Commission requested Ms. Chasmer to name the Board members alleged to have violated the Act. In her reply of June 22, 2004, Ms. Chasmer named Leonard Calvo, Alicia Morejon, Felina Del Nodal, Johnny Garces, Jose Mejia, Jeanette Pena and Carlos Vallejo who are all Board members. Ms. Chasmer also named Superintendent Stanley Sanger, Assistant Superintendent of Personnel, Gerald Caputo and Mayor of Union City, Brian P. Stack. On July 2, 2004, the Commission notified Ms. Chasmer that it does not have jurisdiction to entertain a complaint against any mayor of any municipality. The Commission also notified her that administrators are not subject to the Code of Ethics for School Board Members and, therefore, it would be unable to find that Mr. Sanger or Mr. Caputo violated the Code of Ethics. The Commission further notified her that it would proceed to hear the complaint against the seven Board members only.

In her complaint, Ms. Chasmer alleges that respondents violated N.J.S.A. 18A:12-24.1(d), (f) and (h) when they voted to approve a resolution for her non-renewal. She contends that the real reasons she received a non-renewal letter are because the appointed Board takes their direction from the Mayor; that her cousin is supporting a candidate that the Mayor opposes; that her cousin is actively pursuing the option of having an elected school board; that she did not buy a ticket for the Mayor’s fundraiser; and that the Board President, Mr. Calvo, is also a Union City fireman who is being considered for a promotion to Captain over which the Mayor, has control. In her June 22, 2004 correspondence, Ms. Chasmer also alleges that the Board violated various Board policies and she questions if the members of the Board have filed the personal/relative disclosure statements as required by N.J.S.A. 18A:12-25 and 26 since several of the Board members hold jobs with the city and/or have relatives that work for the Board or the city. However, she did not specify which specific provision of the Act was violated. On December 6, 2004, Ms. Chasmer submitted additional information to the Commission in

which she further alleged that Mr. Vallejo violated N.J.S.A. 18A:12-24.1(f) because he is an elected County Committeeman for the Democratic party when the Party Chairman is the Mayor who appointed him to the Board.

Due to the vacation schedules of the seven respondents and their attorney, the Commission agreed to allow the respondents two 20-day extensions for the time to file an answer. On August 5, 2004, Mitzy Galis-Menendez, Esquire, attorney for the respondents, filed a motion to dismiss the complaint and requested the imposition of sanctions pursuant to N.J.S.A. 18A:12-29(e). Ms. Galis-Menendez argued that the complaint should be dismissed because it is materially defective in that it is not signed under oath and because it fails to allege facts constituting a violation of the Act. She contends that the Board members did not violate the Code of Ethics by exercising their discretion in non-renewing an employee eligible for tenure or because they are appointed by the Mayor. She also maintains that the Board members have not violated any Board policies and that all Board members have filed the required personal/financial disclosure statements. Finally she contends that the Board President does not violate the Code of Ethics for being a fire fighter and that Board members do not violate the Code of Ethics because they have family members who are employed with the Board or because they or their family members hold positions in the city.

On December 3, 2004, the Commission notified the parties that the complaint had been placed on the agenda for the December 21, 2004 Commission meeting. On December 8, 2004, the Commission clarified that the complaint had been placed on the agenda of the December 21, 2004 meeting for discussion of the motion to dismiss the complaint only and that the Commission would not be hearing testimony. At its public meeting on December 21, 2004, the Commission granted the respondent's motion to dismiss the complaint and denied the respondent's request for the imposition of sanctions.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. Where there was a dispute, the Commission, for the purposes of deciding the motion, relied on the facts of the complainant.

At all times relevant to the complaint, Ms. Morejon, Ms. Del Nodal, Mr. Garces, Mr. Mejia, Ms. Pena and Mr. Vallejo were all members of the Board and Mr. Calvo was Board President. Ms. Chasmer was employed at Emerson High School as an administrative clerk in the Student Relations Office. On May 24, 2004, Ms. Chasmer received a letter from the Assistant Superintendent of Personnel notifying her that the Board would be considering the non-renewal of her employment at its May 27, 2004 meeting. Ms. Chasmer exercised her right to have an open public discussion. Before she presented her case, three Assistant Superintendents were asked to leave the meeting. When Ms. Chasmer appeared before the Board to discuss her non-renewal, she gave each Board member a package that included copies of the School Ethics Act, her evaluations, a hand written note from her supervisor thanking her for the excellent job she was doing

and a list of her duties in the Student Relations Office. The Board voted 7 – 0 to pass the resolution for non-renewal.

Union City is a Type 1 District in which the Mayor appoints all members of the Board of Education. Ms. Chasmer alleges that her cousin is supporting a candidate that the Mayor opposes and is actively pursuing the option of having an elected school board. Ms. Chasmer did not buy a ticket for the Mayor’s fundraiser. The Board President, Mr. Calvo, is also a Union City fireman who is being considered for a promotion to Captain. Mr. Vallejo is an elected County Committeeman for the Democratic Party. The Party Chairman is the Mayor.

ANALYSIS

First, as a procedural matter, Ms. Galis-Menendez contends that the complaint should be dismissed because it is materially defective in that it is not signed under oath. However, attached to the complaint is a certification under oath dated June 2, 2004, which is signed by Ms. Chasmer and Public Notary, Teresa Samper. If Ms. Galis-Menendez did not receive a copy of this last page of the complaint, the Commission will provide a copy of it to her upon request.

Ms. Chasmer alleges that respondents violated N.J.S.A. 18A:12-24.1(d) (f) and (h) of the Code of Ethics for School Board Members when they voted to approve a resolution for her non-renewal. Pursuant to N.J.S.A. 18A:12-29, Ms. Chasmer bears the burden of factually establishing a violation of the Code of Ethics for School Board Members. 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 Commission cannot find any evidence that the Board administered the schools. There is not an allegation, nor do the facts establish that the Board acted without a recommendation of the Superintendent. The facts establish that Ms. Chasmer received a notice of non-renewal and the Board provided her an opportunity to address them regarding her non-renewal. After her presentation, the Board voted not to renew her employment. It is well within the Board’s discretion not to renew the contract of a nontenured employee. See, Board of Education of City of Englewood v. Englewood Teacher’s Association, 150 N.J. Super 265, 375 A.2d 669 (App. Div. 1977), certif. denied 75 N.J. 525, 384 A.2d 505.

Ms. Chasmer has not established facts to show that the Board failed to work together to see that the schools are well run. The facts establish that the Board acted together to hear her presentation and then together voted not to renew her employment. The Commission cannot find that the Board has failed to see that the schools are well run merely because it voted not to renew the contract of one of its employees. If that were the case, then the Board would be required to renew the contract of every employee that

came before them. The Commission finds that the Board did not administer the schools, but, together, the Board members carried out their responsibility to see that the schools are well run. Therefore, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24.1(d).

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.

In proving a violation of N.J.S.A. 18A:12-24.1(f), Ms. Chasmer maintains that the Board voted not to renew her employment because it takes its direction from the Mayor who appoints Board members. However, Ms. Chasmer did not provide any information that the Board surrendered its vote to the Mayor in its vote on the resolution for non-renewal. By simply stating that the Mayor appoints the Board, Ms. Chasmer has not proven that the Board acted on the Mayor's behalf when it voted not to renew her employment. Thus, Ms. Chasmer has not proven that the Board surrendered its independent judgment to special interest or partisan political groups.

Ms. Chasmer also maintains that the Board voted not to renew her employment because of activities of her cousin in supporting a candidate that the Mayor opposes and in pursuing the option of having an elected Board. Even if Ms. Chasmer proved that her cousin is a political opponent of the Mayor, she could not show that this was the motivating factor behind the Board's decision not to renew her employment. The facts do not show that the Board was even aware of her cousin's activities or the cousin's relationship to her. There is no evidence presented to show that the Board was supporting a particular partisan group when it did not renew Ms. Chasmer's employment. Thus, Ms. Chasmer has not proven that the Board surrendered its independent judgment to special interest or partisan political groups.

Ms. Chasmer further maintains that the Board voted not to renew her employment because she did not purchase a ticket for the Mayor's fundraiser. Ms. Chasmer has presented no information in her complaint to show that the reason the Board did not renew her was that she had not purchased a ticket. Thus, Ms. Chasmer has not proven that the Board surrendered its independent judgment to special interest or partisan political groups.

Ms. Chasmer further maintains that Mr. Calvo voted not to renew her employment because he is a Union City fireman and the Mayor has control over his promotion to Captain. Even if Ms. Chasmer shows that the Mayor has control over Mr. Calvo's promotion, she cannot link Mr. Calvo's vote on her renewal to his pending promotion to Captain. Thus, Ms. Chasmer has not shown that Mr. Calvo surrendered his independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends.

Finally, Ms. Chasmer maintains that Mr. Vallejo voted not to renew her employment because he is an elected County Committeeman for the Democratic Party and the Mayor is party chairman. These facts alone do not prove that Mr. Vallejo surrendered his independent judgment to any particular partisan political group when he voted not to renew Ms. Chasmer's employment. Her belief alone in what she sees as the reason for nonrenewal is insufficient to establish a violation of the Act. Thus, Ms. Chasmer has not proven that the Board surrendered its independent judgment to special interest or partisan political groups.

In reviewing the facts in the light most favorable to the complainant, the Commission can find no evidence that the Board surrendered its independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. Therefore, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24.1(f).

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

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator.

In proving a violation of N.J.S.A. 18A:12-24.1(h), Ms. Chasmer maintains that the Board failed to appoint the best qualified personnel available when they voted to approve the resolution of non-renewal. However, the Board is under a statutory obligation to appoint, transfer or remove an employee only upon the recommendation of the chief school administrator. See, N.J.S.A. 18A:27-4.1(a). Furthermore, N.J.S.A. 18A:12-24.1(h) requires the Board to vote only after consideration of the chief school administrator's recommendation. The Board considered the recommendation of the chief school administrator. The Board's vote to approve the resolution of non-renewal appears reasonably geared toward appointing the best qualified personnel. The Commission recognizes that Ms. Chasmer presented evidence of outstanding evaluations to the Board. However, the Commission cannot conclude that even with outstanding evaluations the Board failed to appoint the best qualified personnel when they voted on the resolution of non renewal. Therefore, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24.1(h).

In her June 22, 2004 correspondence, Ms. Chasmer speculates that the Board members may not have filed their personal/relative disclosure statements. The Commission will not address this point since it is not an allegation. Also in her June 22, 2004 correspondence, Ms. Chasmer notes that some of the Board members also work for the city and that some Board members have friends and/or relatives that work for either the city or the Board. However, Ms. Chasmer has not alleged which provision of the Act they violated nor has she provided any evidence to prove that they violated the provisions of the Act originally cited in her complaint, N.J.S.A. 18A:12-24.1(d), (f) and (h). These facts alone do not prove a violation of the Act. The Board members in these situations may need to abstain regarding certain matters. However, they certainly would not need to abstain regarding their vote on Ms. Chasmer's non-renewal. Therefore, the

Commission finds no probable cause that the Board members violated the Act simply because they also work for the city or have friends and/or relatives who also work for the city or the Board.

Also in her June 22, 2004 correspondence, Ms. Chasmer contends that the Board violated several of their own policies. However, she did not allege a specific provision of the Act which was violated by this conduct. Beyond a list of broad allegations of Board policy violations, no specific instance or specific Board member name is provided. Even if there was a violation of Board policy, such a violation does not constitute a violation of the Code of Ethics for School Board Members.

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that the respondents violated the School Ethics Act and therefore grants the motion of the respondents to dismiss the complaint in its entirety.

Respondents have asked the Commission to 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 is 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]

The two-prong test is one of objective reasonableness. See Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990).

Under the first prong of the test, Ms. Galis-Menendez argues that the complaint is frivolous and was filed in bad faith with the intent to harass and maliciously injure the Board members. She contends that Ms. Chasmer filed it because she was non-renewed and not because any Board member violated the Act. Ms. Galis-Menendez further contends that during Ms. Chasmer's appearance before the Board, she threatened the Board with an ethics complaint if she was not reappointed. The Commission notes that Ms. Chasmer provided a package of information to the Board that included her evaluations, a recommendation and a copy of the Act. If Ms. Chasmer indicated to the Board that she was going to utilize her right to file a complaint under the Act, the Commission cannot find that such an action is one of harassment. Such an action would merely be the attempt of an employee to utilize all avenues of redress available to her.

To prove the frivolous nature of the complaint, Ms. Galis-Menendez points out that Ms. Chasmer attempted to raise suspicion regarding the personal/financial disclosure statements even though she did not know whether the documents were properly filed. The Commission notes that Ms. Chasmer made it clear in her June 22nd correspondence that she did not know if the disclosures were filed. She raised the issue of the disclosures because of her contention that several Board members have relatives that work for the Board, not to raise suspicion regarding the disclosure statements themselves. The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino 132 N.J. 546 (1993). In viewing the term “frivolous” in a restrictive manner as suggested in McKeown, *supra*, the Commission finds that the first prong of the test has not been met. Therefore, the Commission finds that the standard for a frivolous complaint has not been met and does not impose 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).

Mark Finkelstein
Acting Chairperson

Resolution Adopting Decision – C39-04

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:12-21 et seq.; 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.

Mark Finkelstein, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 7, 2005.

*Paul C. Garbarini abstained from this decision.

Lisa James-Beavers
Executive Director