

BONNIE CANDY PHILLIPS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
SCOTT STRECKENBEIN,	:	
JANE STRECKENBEIN,	:	Docket No. C44-04
JOHN BARBOUR and MEMBERS	:	
OF THE EDGEWATER PARK	:	
BOARD OF EDUCATION	:	DECISION
BURLINGTON COUNTY	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 21, 2004 by Bonnie C. Phillips, against Scott Streckenbein, Superintendent of the Edgewater Park School District (District); Jane Streckenbein, technology coordinator for the District and wife of the Superintendent; John Barbour, Esquire, solicitor for the District; and members of the Edgewater Park Board of Education (Board). Complainant alleges that respondents violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* when, at the May 19, 2003 Board meeting, the Superintendent recommended and the Board approved a one-year contract for the reappointment of the Superintendent's wife in the position of technology coordinator. Complainant maintains that since the contract was effective from July 2003 until June 2004, her filing of the complaint on June 21, 2004 fulfilled the requirements of the one-year statute of limitations set forth at N.J.A.C. 6A:28-6.1(b). On September 1, 2004, the complainant filed an amended complaint wherein she set forth the specific provisions of the Act that she alleged were violated. Specifically, she alleges that the Superintendent was in violation of N.J.S.A. 18A:12-24(b) for recommending his wife for the technology coordinator position, which is an administrative position. She further alleges that the Board was in violation of N.J.S.A. 18A:12-24.1(a) when they approved the appointment of the technology coordinator without an independent investigation and in violation of the Open Public Meetings Act (OPMA). Complainant did not specify which sections of the Act were violated by Mrs. Streckenbein or Mr. Barbour.

The respondents submitted a joint response by way of counsel, Roger A. Barbour, Esq., wherein they deny that they violated any provision of the Act, and aver that the Superintendent recused himself from the appointment of his spouse. They also assert that all professional appointments made at the May 19, 2003 reorganization meeting were made upon the recommendation of the Personnel Committee. The respondents further answer that the Board did not violate the OPMA at the May 19, 2003 reorganization meeting and that the technology coordinator position is not an administrative position. The respondents raised affirmative defenses that the complaint was not filed within the one-year statute of limitations set forth at N.J.A.C. 6A:28-6.1(b) and that the Commission does not have jurisdiction over the respondents, Mr. Barbour, Esq. and Mrs.

Streckenbein. The respondents, except for Board member John Alexander, request that the Commission sanction complainant for filing a frivolous complaint, pursuant to N.J.S.A. 18A:12-29(e). Complainant responded that Mrs. Streckenbein's titles were continuously changed resulting in her achievement of tenure at a level higher than a teacher.

The Commission invited the parties to attend its November 23, 2004 meeting to present witnesses and testimony to aid in the Commission's investigation, but did not require that they be present. However, the Commission did not have a quorum on November 23, 2004 and did not take any action on the matter. On November 30, 2004, the Commission notified the parties that the matter was rescheduled for the December 21, 2004 meeting at which time the Commission would only discuss whether the complaint is timely pursuant to N.J.A.C. 6A:28-6.1(b).

At its December 21, 2004 meeting, the Commission voted to dismiss the complaint because it was not filed within the one-year statute of limitations set forth at N.J.A.C. 6A:28-6.1(b). The Commission, therefore, will not consider the merits of this matter.

FACTS

The Commission based its determination of the timeliness of the complaint on the following facts from the complaint.

On January 14, 2003, the County Superintendent approved an annual request to use an unrecognized title for Mrs. Streckenbein's position, but noted that she would accrue tenure as a teacher. At its May 19, 2003 meeting, the Board voted to approve a one year contract for Mrs. Streckenbein, which began July 1, 2003 and ended June 30, 2004.

Mrs. Phillips filed this complaint on June 21, 2004.

ANALYSIS

Respondents assert that the complaint was not filed within the one-year statute of limitations set forth at N.J.A.C. 6A:28-6.1(b), which provides:

All complaints must be filed within one year of notice of the alleged violation.

In the present matter, the Board voted to appoint Mrs. Streckenbein at the May 19, 2003 Board meeting. Complainant filed this complaint on June 21, 2004, which is one month beyond the one year limitation. Complainant maintains that since the Board voted to appoint her for a one-year contract that began July 1, 2003 and ended June 30, 2004, that her filing of the complaint on June 21, 2004 fulfilled the requirements of the one-year statute of limitations. The Commission notes that in her complaint, complainant

alleges violations of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(a). Neither of these provisions could be violated by the fulfillment of the one-year contract. If a violation occurred, it occurred at the May 19, 2003 Board meeting when the Board approved the one-year contract. The complaint should have been filed within a year of that meeting. Therefore, pursuant to N.J.A.C. 6A:28-6.1(b), the Commission finds that the complaint is time-barred.

DECISION

For the reasons expressed above, the Commission has determined to dismiss the complaint.

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]

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

Mr. Barbour, Esq. asserts that the complainant was aware of the one-year statute of limitations because she had filed a previous complaint on the same issues raised in this matter and the Commission had dismissed the previous complaint because it was not filed within the one-year statute of limitations. See Phillips v. Streckenbein et al., C19-03 (June 24, 2003). Mr. Barbour maintains that the complainant is also well aware that in Phillips, the Commission ruled that continued daily employment cannot constitute an on-going continuing ethics violation. Mr. Barbour further asserts that the complainant knew that her allegations were false because she misrepresented one of the exhibits in her complaint. The Commission notes that, in Phillips, it did not rule that continued daily employment cannot constitute an on-going continuing ethics violation; it merely did not find the violation alleged in the complaint to be ongoing. The finding indicated that the violation happened at a certain point in time and that the complainant did not allege a violation after that point. See Phillips, *supra*. Pg. 2. The Commission also notes that

complainant did not misrepresent an exhibit; she merely had a different interpretation of the exhibit than Mr. Barbour's interpretation.

In applying the two-prong test to this matter, it is apparent to the Commission that complainant believed that a violation of the Act had occurred. It is also apparent that complainant believed that the one-year contract approved by the Board violated the Act. Thus, she maintains that the complaint fell within the one-year statute of limitations. This interpretation does not show bad faith on the part of the complainant, nor was it an unreasonable interpretation of the Act. Therefore, the Commission can find no evidence that complainant brought the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. Furthermore, the Commission can find no evidence that complainant knew, or should have known, that the complaint was without any reasonable basis in law or equity. The Commission believes that it should view the law in a restrictive manner as suggested in McKeown, *supra*. Therefore, the Commission finds that neither prong of the test has been met.

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

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C44-04

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 that the complaint is time barred pursuant to N.J.A.C. 6A:28-6.1(a); 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 February 7, 2005.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C44-04