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| <hr/> | : | BEFORE THE SCHOOL |
| MARC SOVELOVE | : | ETHICS COMMISSION |
| | : | |
| v. | : | |
| | : | |
| PAUL BREDA | : | Docket No. C49-05 |
| MINE HILL TOWNSHIP | : | |
| BOARD OF EDUCATION | : | DECISION |
| MORRIS COUNTY | : | |
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PROCEDURAL HISTORY

This matter arises from a complaint filed on November 14, 2005 by Marc Sovelove alleging that Paul Breda, president of the Mine Hill Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The Commission made several requests of the complainant to provide citations to the specific provision(s) of the Act which were alleged to be violated. On March 17, 2006, the complainant specifically alleged that respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (e) of the Code of Ethics for School Board Members when, as Board president, he sent a letter to the Mine Hill Township Council (Council) regarding a vacancy on the Board and accepted an application to fill the vacancy after the advertised date had passed. Complainant maintains that these actions were politically motivated.

Through his attorney, Andrew B. Brown, Esquire, respondent filed a motion to dismiss in lieu of an answer. In the motion to dismiss, respondent argues that the complaint generally alleges a violation of the Act with respect to a vacancy on the Board, but that the complaint is devoid of facts to support the allegations. The respondent also requests that the Commission find that the complaint is frivolous and impose sanctions on the respondent.

The Commission forwarded the motion to the complainant and provided the complainant with an opportunity to file an answer. However, the complainant did not file an answer to the motion to dismiss.

The Commission considered the complaint and motion to dismiss at its July 25, 2006 meeting. During the public portion of the meeting, the Commission granted the motion to dismiss the complaint. The Commission also voted to find that the complaint was not frivolous.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

At all times relevant to the allegations in this complaint, the respondent was president of the Board and complainant was president of the Council.

A vacancy on the Board was created when, on or about August 1, 2005, a member of the Board retired. The Board advertised for a replacement. The respondent accepted an application after the advertised date had passed. The respondent provided the following additional facts. The Board's advertisement referenced two dates, September 9, 2005 for letters of interest and September 12, 2005 for attendance at the meeting where interviews would be conducted. The Board received five letters of interest. Three letters were dated prior to the advertised deadline of September 9, 2005; a fourth letter was undated; and a fifth was dated September 12, 2005, the date of the meeting. One applicant withdrew from consideration and the Board interviewed the four remaining applicants at the September 12, 2005 meeting. The applicant chosen to fill the Board vacancy submitted her letter of interest on September 8, 2005.

On September 26, 2005, respondent sent a letter to the Council on behalf of the entire Board. In the letter, respondent indicates the Board's "outrage and disappointment at the inappropriate effort of [complainant] to manipulate this Board's choice of appointed school board member." In the letter, respondent then mentioned that the complainant had approached the superintendent and at least one Board member indicating that if one of two individuals interested in the vacant Board seat were selected that the Council would voice its opposition in a public way. On October 24, 2005, the attorney for the Council responded to respondent's September 26, 2005, letter and indicated that the complainant was merely sharing information with the superintendent and Board members which would raise serious questions as to one person's ability to serve on the Board. The respondent provided the following additional facts. On September 26, 2005, in a closed session of the Board, the Board discussed the incident in which the complainant approached the superintendent and one other Board member in an attempt to influence the Board's selection of an applicant to fill the vacant Board position. The Board then authorized the respondent, as Board president, to send a letter to the Council advising it as to the complainant's actions.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (e) of the Code of Ethics for School Board Members when, as Board president, he sent a letter to the Council regarding a vacancy on the Board and accepted an application to fill the vacancy after the advertised date had passed. Complainant maintains that these actions were politically motivated. N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

To prove a violation of N.J.S.A. 18A:12-24.1(a), the complainant argues that the respondent violated the advertised notice for application to fill the Board vacancy when he accepted an application after the advertised date has passed. The complainant has not indicated what law, rule or regulation of the State Board of Education or court order pertaining to the schools that this action has violated. In any event, the Commission only has jurisdiction over the Act. Absent a determination from a court of law or an administrative agency of this State finding that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, or court orders pertaining to schools, the Commission cannot find that the respondent violated N.J.S.A. 18A:12-24.1(a).

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondent failed to enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(a).

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.

To prove a violation of N.J.S.A. 18A:12-24.1(c), complainant argues that when the respondent noted in his September 26, 2005 letter to the Council that the Board "hope[d] to continue to enjoy a sound and appropriate relationship with the town council through this election year and beyond," he failed to confine his Board action to policy making, planning and appraisal. The Commission fails to see how the maintenance of a good relationship with the Council falls outside of the respondent's role of policy making planning and appraisal. The Commission notes that one role of a board of education is to maintain a relationship with various institutions such as the local governing body and the local police department.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondent failed to confine his Board action to policy making, planning, and appraisal, and failed to help to frame policies and plans only after the Board has consulted those who will be affected by them. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(c).

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.

The complainant argues that the respondent's conduct violated N.J.S.A. 18A:12-24.1(e) because the complainant had been advised that the September 26, 2005 letter was not sent on behalf of the entire Board. However, the complainant provides no factual proof that the letter was not sent on behalf of the entire Board. The respondent certifies that during the Board's closed session on September 26, 2005 the Board members directed him, as Board president, to send a letter to the council on behalf of the Board. The Commission also notes that the complainant previously argued that the respondent's conduct in sending the letter violated N.J.S.A. 18A:12-24.1(c) because the action was Board action which went beyond policy making, planning and appraisal. The Commission agrees with the respondent that the action is Board action, and, therefore, it cannot be private action.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondent failed to recognize that authority rests with the board of education or that the respondent took private action that may compromise the board. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(e).

DECISION

For the reasons expressed above, the Commission grants the respondent's motion to dismiss the complaint.

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]

The respondent argues that the complaint was filed in bad faith with the intent to harass the respondent because the complainant offered no factual evidence to prove the allegations in the complaint. The Commission does not agree that the failure to factually prove a violation is evidence that a complaint was filed in bad faith for the purpose of harassment. Here the complainant failed to fulfill his burden of proof. The Commission can find no evidence to show that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. It is apparent to the Commission from the complaint that the complainant believed that the respondent's conduct violated the Code of Ethics even in the absence of factual proof. The Commission has no information to suggest that he should have known otherwise. 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 – C49-05

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 grants the respondent's motion to dismiss the complaint; 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 grant the respondent's motion 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 26, 2006.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C49-05