

ALBERTA ALLEVA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
THOMAS BERG	:	Docket No. C50-06
PEQUANNOCK TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
MORRIS COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 11, 2006 by Alberta Alleva, a member of the Pequannock Township Board of Education (Board), alleging that Thomas Berg, President of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that respondent violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members in the Act when he attended a meeting with the teachers in the Pequannock Township School District (District) without knowledge of the Board and then failed to report back to the Board, when he visited the school buildings without contacting the superintendent and principals of the schools, when he violated the Open Public Meetings Act (OPMA) N.J.S.A. 10:4-6 et seq. on September 18, 2006 by yelling at the complainant, when he e-mailed the complainant and told her that if she planned to change her vote or position during public meetings then he should be notified before the meeting, when he represented the Board at the Town Council meeting on July 18, 2006 and other meetings, when he gave the business administrator approval to pay for the new superintendent’s wife to fly from Texas for an interview and had the new superintendent reside in his home during contract negotiations, and when he removed the complainant from his distribution list for the Board. The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members because grievances have been filed and teachers have resigned due to the complainant’s negative attitude toward the teachers.

After an extension to file the answer was granted for good cause, the respondent, through his attorney, David B. Rubin, Esquire, filed an answer wherein he denied the allegations, and maintained that, on its face, the complaint failed to state a violation of the Act. The respondent further answered that the Board approved of his meeting with the teachers and he reported back to the Board regarding the meeting. He answered that the teachers’ grievances covered a wide range of issues and he is not named as a party to any of the grievances. He further answered that he requested the entire Board to advise him in advance if any member intended to change positions solely to avoid disruptive surprises during Board meetings. Respondent also answered that he attended the July 18, 2006 Town Council meeting in his capacity as a private citizen and when he was asked about Board business he answered the questions. Respondent answered that the Board had agreed that it should meet with the new superintendent’s wife to determine whether

she was prepared to move to New Jersey and that the Board attorney handled most of the contract negotiations. He answered that he removed the complainant from his e-mail distribution list because she admitted disseminating e-mails involving confidential Board matters to others outside the Board and, based on advice from the Board's attorney, the respondent and the other Board members have ceased copying the complainant on confidential matters.

The Commission invited the parties to attend its January 23, 2007 meeting to present witnesses and testimony, but did not require that they be present. The Commission reminded the complainant that she had the burden of proving any violations of the Code of Ethics for School Board Members. The parties did not attend the meeting. During the public portion of the January 23, 2007 meeting, the Commission voted to find no violation of the Code of Ethics for School Board Members and dismissed the complaint.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted.

At all times relevant to the complaint, complainant was a member of the Board and respondent was President of the Board. Complainant taught in the District for over 36 years. At the September 18, 2006 Board meeting there were heated arguments and unpleasant exchanges between the members of the Board including the complainant and the respondent.

On June 13, 2006, the respondent met with approximately 60 of approximately 360 of the teachers who work in the district. Four Board members, including the respondent, certified that the Board was aware of the respondent's meeting with the teachers and one of those Board members certified that the respondent specifically mentioned the meeting to the complainant. Three Board members, including the respondent, certified that the respondent reported back to the Board regarding the meeting. The complainant certified that the Board had no knowledge of the meeting and that there was no follow up report.

On July 21, 2006, the respondent e-mailed the entire Board requesting to be advised in advance if any Board members intended to change their vote or position on anything that the Board was voting on that evening. Respondent certified that he sent the e-mail in an attempt to avoid disruptive surprises during the course of Board meetings.

The superintendent certified that the respondent does visit the schools frequently; however, the superintendent also certified that he has never been informed that respondent's visits have been disruptive or inappropriate. The superintendent also certified that he is unaware of any requirement that Board members follow any specific notification procedure when visiting the schools in the District. On September 8, 2006, the respondent e-mailed the Board to remind the members that they should follow the

normal protocol of informing the superintendent and the respective school principals before they visit a school. The superintendent further certified that the Board has assigned individual Board members to serve as liaisons to each of the schools and the Board President and Vice-President were not assigned to specific schools because they were to have a relationship with all schools.

On July 18, 2006, the respondent attended a meeting of the Town Council in his capacity as a private citizen and when he was asked about Board business he answered the questions. On August 31, 2006, the respondent met with approximately 65 parents of incoming freshmen.

The new superintendent stayed at respondent's home during the interviews for the position of superintendent. The Board agreed to meet with the wife of the new superintendent because of the possible relocation from Texas.

ANALYSIS

The Commission will initially address the complainant's allegation that the respondent violated the OPMA at the September 18, 2006 Board meeting, which was heated and argumentative. The Commission notes that it does not have jurisdiction to enforce the OPMA. The Commission's sole jurisdiction is to enforce the School Ethics Act. Therefore, the Commission dismisses this allegation.

The Commission notes at the outset that the complainant has the burden of factually proving a violation of the Code of Ethics for School Board Members pursuant to N.J.S.A. 18A:12-29(b). The complainant maintains that the respondent violated N.J.S.A. 18A:12-24.1(d) by conduct which will be discussed below. 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.

To find a violation of N.J.S.A. 18A:12-24.1(d), the Commission must determine if the respondent's conduct rose to the level of administering the schools. Previously in I/M/O Julia Hankerson, C36-02 (June 24, 2003), the Commission found that a board member's conduct rose to the level of administering the schools when she interviewed and hired a teacher and a nurse without the superintendent's recommendation. The Commission found that the board member had attempted to subvert the superintendent. The Commission also found that a board member's conduct rose to the level of administering the schools in I/M/O Willam Lahn, C25-05 (December 20, 2005), when the board member went directly to the guidance secretary and requested SAT reports, and when he inspected the boys' lockers to determine if new lockers were needed and, in doing so, instructed district employees to provide more supervision when the students were present. The Commission reasoned that the board member administered the schools because he instructed district employees regarding their job duties. Id. pages 3-4.

However, in Sanders v. Smith, C03-04 (July 27, 2004), the Commission found that the actions of a board member going into the schools to determine the district needs does not rise to the level of administering the schools.

In this complaint, the complainant has alleged that the respondent's conduct rose to the level of administering the schools when he attended a meeting with the teachers in the District without knowledge of the Board and then failed to report back to the Board. However, the evidence and factual findings show that the Board was aware of the meeting and the respondent reported back to the Board after the meeting. The complainant has not shown that the respondent in any way instructed the teachers as to their job duties. Based on the factual evidence, the Commission finds that this conduct does not rise to the level of administering the schools.

The complainant has also alleged that respondent's conduct rose to the level of administering the schools when he e-mailed the complainant and told her that if she planned to change her vote or position during public meetings then he should be notified before the meeting. The Commission notes that the respondent sent this e-mail to the entire Board. The Commission also notes that, as President of the Board, respondent, in sending the e-mail, was attempting to avoid disruptions during the meeting. The Commission also notes that respondent's e-mail message was a suggestion that the complainant could have disregarded. The e-mail in question is related solely to Board business and does not involve the administration of the schools. The Commission can find no further factual evidence to prove that this conduct rises to the level of administering the schools.

The complainant has also alleged that the respondent's conduct rose to the level of administering the schools because he visits the school buildings without contacting the superintendent and principals of the schools. The Commission can find no factual evidence to show that the respondent does not inform the superintendent or the school principals when he visits the schools. The Commission can also find no factual evidence to show that respondent's visits to the schools disrupt the school environment. Based on the factual evidence, the Commission finds that this conduct does not rise to the level of administering the schools.

The complainant further alleged that respondent's conduct rose to the level of administering the schools when he represented the Board at the Town Council meeting on July 18, 2006 and other meetings. The evidence and factual findings show that the respondent attended the Town Council meeting in his capacity as a private citizen and only responded to questions that were put to him. He never indicated to the Town Council that he was representing the Board or the District. Respondent's additional meeting with the parents of incoming freshmen does not show that respondent administered the schools. Based on the factual evidence, the Commission finds that this conduct does not rise to the level of administering the schools.

The complainant also alleged that respondent's conduct rose to the level of administering the schools when he gave the business administrator approval to pay for

the new superintendent's wife to fly from Texas for an interview and had the new superintendent reside in his home during contract negotiations. The Commission can find no factual evidence to show that the respondent personally gave the business administrator the approval to pay for the new superintendent's wife to fly from Texas. The facts show that the Board was aware of the flight and wanted to interview the new superintendent's wife to address the relocation from Texas to New Jersey. The Commission can also find no evidence to show that the respondent interviewed and hired the new superintendent without the superintendent's recommendation. Based on the factual evidence, the Commission finds that this conduct does not rise to the level of administering the schools.

Finally, the complainant alleged that respondent's conduct rose to the level of administering the schools when he removed the complainant from his distribution list for the Board. The respondent has certified that he was acting on the advice of the Board attorney when he ceased copying the complainant on e-mails containing confidential Board matters. Based on the facts presented, the Commission finds that this conduct does not rise to the level of administering the schools.

The Commission can find no evidence to factually prove that respondent administered the schools. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(d) and dismisses all of the above allegations.

Next, the complainant alleged that the respondent violated N.J.S.A. 18A:12-24.1(i) because of the numerous grievances that have been filed in the District and because of respondent's negative attitude towards the teachers. The complainant also maintains that the respondent has sent a strong message to staff that they can be replaced and that the staff feels threatened by respondent. N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

Previously, in I/M/O Charles Fischer, C30-03 (February 24, 2004), the Commission found that a board member violated N.J.S.A. 18A:12-24.1(i) when he called an employee at home and became angry when she refused to provide him with the reports that he had requested. Also, in I/M/O Karen Jackson, C08-05 (December 20, 2005), the Commission found a board member violated N.J.S.A. 18A:12-24.1(i) when she made a derogatory statement regarding a teacher's lesson on the Holocaust at a public meeting of the board. The Commission can find no factual evidence to show that any of the filed grievances involve the respondent who has certified that he is not named as a party to any of the grievances. The Commission can find no evidence to show that the staff is threatened by the respondent or that the respondent has sent any message to the staff that they can be replaced. A negative attitude towards teachers does not rise to the level of a violation of N.J.S.A. 18A:12-24.1(i).

The Commission can find no evidence to factually prove that respondent failed to support and protect school personnel in the proper performance of their duties.

Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(i) and dismisses all of the above allegations.

DECISION

For the reasons discussed above, the Commission finds that Thomas Berg did not violate the Code of Ethics for School Board Members in the Act and the Commission dismisses the allegations against him.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C50-06

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

Whereas, at its meeting of January 23, 2007, the Commission voted to find no violation of the School Ethics Act and to dismiss the allegations against Thomas Berg; and

Whereas, the Commission reviewed a draft decision prepared by its staff 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 27, 2007.

Lisa James-Beavers
Executive Director

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