

IN THE MATTER	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
OF	:	
	:	SEC Docket No.: C53-04
	:	OAL Docket No. EEC9123-05
PATRICIA LEE,	:	
<i>UNION TWP. BOARD OF EDUCATION,</i>	:	FINAL DECISION
<i>HUNTERDON COUNTY</i>	:	

On June 28, 2005, the School Ethics Commission found probable cause to credit the allegation that Union Township Board President Patricia Lee violated N.J.S.A. 18A:12-24.1(e), (g) and (j) of the Code of Ethics for School Board Members when she: 1) excluded a fellow board member from a closed meeting that discussed the superintendent, among other matters; 2) refused to provide her fellow board member with information regarding a parental complaint filed against her; and 3) threatened her fellow board member and retaliated against her by removing her from the education committee. The Commission transmitted the finding to the Office of Administrative Law (OAL) for a hearing in accordance with N.J.S.A. 18A:12-29(b). On February 2, 2007, the Administrative Law Judge (ALJ) concluded in her initial decision that the probable cause finding was not sustained and dismissed the Commission’s finding of probable cause.

The record of this matter and the Initial Decision of the ALJ have been reviewed by the Commission. The Deputy Attorney General representing the Commission (DAG) submitted exceptions and Respondent submitted a reply in accordance with N.J.A.C. 1:1-18.4. The exceptions and reply were also reviewed by the Commission. At its meeting of March 27, 2007 the Commission adopted the conclusions of the ALJ and dismissed the probable cause finding.

The DAG first argues that the ALJ erred in according improper weight to the Becks’ filing of additional legal documents in her assessment of their credibility. The ALJ had found Mr. and Mrs. Beck’s testimony to be self-serving, as they had filed a Notice of Tort Claim prior to the hearing and then filed a complaint in civil court for damages “shortly after” the hearing was completed. The DAG argues that the Respondent’s testimony was equally self-serving because her actions are at issue in the civil suit as well and Respondent faces the added prospect of facing a penalty from the Commissioner as a result of this pending School Ethics Commission matter.

The Commission recognizes that these are matters that turn on the credibility of witnesses. In this regard, the Commission must give deference to the credibility determinations of the ALJ. “The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is

better qualified to judge their credibility.” In the Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), certif. denied, 121 N.J. 615 (1989).” Upon review of the record, the Commission hereby concludes that the ALJ’s credibility determinations in this matter must be given deference and her findings based on those determinations cannot be overturned.

The DAG’s second exception is in connection with the ALJ’s dismissal of the allegation that Ms. Lee violated the Code of Ethics in connection with discussing the superintendent in a closed session to which Ms. Beck was denied access. The DAG urges the Commission to find that the ALJ erred in relying solely on the Commissioner’s decision affirming an Initial Decision denying the complainant’s application for emergent relief made prior to the filing of the present complaint. The Commission agrees that the standard for an emergent relief application is different from a decision on the merits and thus, the merits were never decided by the Commissioner; however, the Commission agrees with the response to the exceptions as well. The response notes that the ALJ based her decision to dismiss the allegation on the fact that the entire Board discussed the superintendent and did not have Ms. Beck brought back into the closed session on advice of counsel. The Commission concludes that the ALJ did not rely solely on the Commissioner’s decision on the emergent relief application, but based her decision on other factors as well; including that it was the decision of the full board not to ask her to return to the meeting based on the advice of the Board attorney. Therefore, the Commission cannot overturn the ALJ’s dismissal of this allegation.

Last, the DAG argues that the ALJ erred in dismissing the probable cause finding that Respondent violated N.J.S.A. 18A:12-24.1(j) when she failed to refer the parents’ complaints to the Chief Administrative Officer before taking action. The Commission notes that the particular complaints in question were not referred to the superintendent and therefore, does not agree that the charge was “absurd” as noted by the ALJ. Rather, Respondent set forth reasons for not referring the matters to the superintendent at the hearing before the ALJ that were not articulated in the probable cause hearing before the Commission. The evidence that superintendent had been given the opportunity to respond to the complaints and failed to do so leads the Commission to similarly conclude that the probable cause finding was not sustained.

For the foregoing reasons, the Commission accepts the conclusions of the Administrative Law Judge and dismisses the probable cause finding against Respondent. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division pursuant to New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C53-04

Whereas, the Commission found probable cause to credit the allegation that Patricia Lee violated N.J.S.A. 18A:12-24(e), (g) and (j), in connection with conduct that she engaged in as president of the Union Township Board of Education; and

Whereas, the Commission transmitted the matter to the Office of Administrative Law for a hearing; and

Whereas, the Administrative Law Judge concluded that the charge had not been sustained and therefore dismissed the finding of probable cause; and

Whereas, the complaining party filed exceptions to the ALJ's decision and respondent replied; and

Whereas, the Commission fully considered all of the documentation filed in response to the ALJ's decision and voted to reluctantly accept the conclusions of ALJ's decision; and

Whereas, the Commission agrees with the draft decision dismissing the complaint;

Now Therefore Be It Resolved that the Commission hereby adopts the decision 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 School Ethics Commission adopted this decision at its public meeting on April 24, 2007.

Lisa James-Beavers
Executive Director