

STEPHEN J. BLEISTINE	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
JAMES MCSHEA	:	
<i>SOUTH HARRISON TOWNSHIP</i>	:	Docket No. C48-11
<i>BOARD OF EDUCATION</i>	:	DECISION ON PROBABLE CAUSE
<i>GLOUCESTER COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 5, 2011 by Stephen J. Bleistine alleging that James McShea, a member of the South Harrison Township Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. By notice dated December 5, 2011, the complainant was notified that his complaint was deficient and, therefore, not accepted. On December 12, 2011, the complainant submitted an amended complaint, which was also deficient; by notice dated December 12, 2011, the complainant was so informed. On December 27, 2011, a second amended complaint was filed, which the Commission accepted. Therein, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act.¹

After being granted an extension for good cause shown, a Joint Motion to Dismiss² in Lieu of Answer was submitted on behalf of both respondents on February 16, 2012. The complainant was granted an extension of time to file a reply to the joint motion, which was submitted on March 15, 2012. By letter dated April 10, 2012, the Commission advised the parties that it would hear oral argument during its Executive Session on April 24, 2012 on their respective pleadings. By letter dated April 19, 2012, the Commission was notified that the complainant had obtained counsel.

On April 24, 2012, after oral argument, the Commission voted to deny the joint Motion to Dismiss the complaints on the basis of frivolousness and directed the respondent in this matter to file an answer in response to the complaint in accordance with N.J.A.C. 6A:28-7.2 within 20 days of the mailing date.

¹ It is also noted that on January 20, 2012 and February 14, 2012, the complainant submitted supplemental materials.

² At the same time, the complainant filed against Deborah Cunningham, a member of the South Harrison Township Board, Docket No. C49-11. Both complaints were the subject of an oral argument on Motion to Dismiss on April 24, 2012. After argument, the Commission decided that the complaints were not frivolous but voted to dismiss Docket No. C49-11 for failure to state a claim that would be a violation of the Act .

This matter was placed on the agenda for discussion at the Commission's meeting on November 27, 2012. At that meeting, the Commission voted to find no probable cause to credit the allegation that the respondent violated the Act.

SUMMARY OF THE PLEADINGS

The complainant alleges that Respondent McShea is a Science teacher at Cumberland Regional High School and a member of the New Jersey Education Association. According to the complainant, the respondent attended closed session discussions relative to contract negotiations with the local bargaining unit on June 7, 2011, July 26, 2011 and August 23, 2011. However, a memorandum of agreement (MOA) was not struck between the Board and the local bargaining unit October 28, 2011. The complainant alleges that the respondent's participation was contrary to Advisory Opinions A14-00 and A34-07³ and in violation of the Act, N.J.S.A. 18A:12-24(c). The complainant provided copies of minutes from the meetings in support of his claim.

ANALYSIS

The complainant alleges that the respondent participated in closed session discussions concerning contract negotiations between the Board and the local bargaining unit on three separate occasions. Complainant asserts that as a member of the local bargaining unit, the respondent is prohibited from attending or engaging in discussions and, thereby violated N.J.S.A. 18A:12-24(c). This subsection of the Act provides.

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In determining whether there is a violation of N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the respondent's objectivity or independence of judgment would be impaired because of some benefit that would flow to the Association, to its members or to the respondent.

The respondent argues no such review is necessary since he never participated in closed session to discuss the contract at any time. In support of his position, the respondent has submitted eight certifications from all of the remaining Board members, save the complainant, each attesting to the facts as asserted by the respondent, i.e. that he never attended such closed sessions, not these

³ To the extent that the complainant alleges that the respondents violated an advisory opinion issued by the Commission, both statute (N.J.S.A. 18A:12-28(a)) and regulation (N.J.A.C. 6A:28-6.1(a)) require that any complaint filed before the Commission allege a violation of the *School Ethics Act*. Citing to an advisory opinion as a potential violation does not meet this technical requirement.

or any others. He further contends that when confronted with any discussion that would cause a conflict, he left the session, as noted in the minutes. Evidence of this is reflected in the ninth certification, signed by the School's Business Administrator. She specifically recalls that the respondent either left the session or contract negotiations were never discussed. She regrets that the minutes are deficient or inaccurate on the facts, but her recollection is unwavering. All of these Board members, as well as the Business Administrator, have a very different recollection of the events from the complainant.

Under these circumstances, the Commission does not find that the respondent participated in contract negotiations or discussions between the Board and Association so as to potentially violate N.J.S.A. 18A:12-24(c). Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) and the complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: December 19, 2012

Resolution Adopting Decision – C48-11

Whereas, the School Ethics Commission has considered the complaint, respondent’s Brief on the Motion in lieu of an Answer, and all submissions; and

Whereas, at its meeting on November 27, 2012, the Commission determined to dismiss the complaint for failure to state a claim that would be a violation of the Act; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender
Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 18, 2012.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission