

Before the School Ethics Commission
Docket No.: C49-18
Decision on Motion to Dismiss

Anthony Prezioso.
Complainant

v.

Kathleen Kolupanowich,
Monroe Township Board of Education, Middlesex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on July 31, 2018, by Anthony Prezioso (Complainant), alleging that Kathleen Kolupanowich (Respondent), a member and President of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code).

On August 3, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On September 7, 2018, and after receiving a brief extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On October 4, 2018, Complainant filed a Response to the Motion to Dismiss.

The parties were notified by correspondence dated November 19, 2018, that this matter would be placed on the Commission's agenda for its meeting on November 27, 2018, in order to make a determination regarding the Motion to Dismiss. At its meeting on November 27, 2018, the Commission considered the filings in this matter and, at its meeting on December 18, 2018, the Commission voted to grant the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)*.

II. Summary of the Pleadings

A. The Complaint

At a Board meeting on February 21, 2018, a motion was made by a Board member, Marvin Braverman (Mr. Braverman), to have the Board ask Dr. Michael G. Kozak, Superintendent, to withdraw his resignation. The motion¹ was carried with four (4) "yes" votes,

¹ The motion read, "The Secretary of the Board should ask, in writing, for Dr. Kozak to rescind his letter of resignation. This should be done within 5 days of this meeting. If and when Dr. Kozak rescinded his resignation, the Board President and Vice President should start negotiations to extend Dr. Kozak's contract for not less than 2 years. The

but three (3) Board members, including Respondent, voted against the motion, and another Board member abstained. Immediately following the passage of this motion, Dr. Kozak presented a letter to the Board Secretary, and he publicly declared that he was rescinding his resignation.

On March 27, 2018, there was a Board meeting that ended when a majority of the Board (the quorum) walked out after executive session. Following this meeting, Respondent authored a letter in which she advised Dr. Kozak that the Board would not be renewing his employment contract. According to Complainant, this letter was not discussed at the Board meeting, and the Board did not vote on whether to send notice of non-renewal to Dr. Kozak.

At a Board meeting on June 7, 2018, a Board member, Michele Arminio (Ms. Arminio), stated that although the Board voted to reconsider Dr. Kozak's employment contract, nothing was ever done. Ms. Arminio further stated that Respondent then unilaterally gave Dr. Kozak notice (on March 27, 2018) of non-renewal, but did so even though the Board had not voted on this decision. Ms. Arminio also indicated that Respondent had discussions with "the County Superintendent" and "School Boards," but the Board was unaware of these conversations, both of their occurrence and the substance. When Ms. Arminio asked for a summary of Respondent's discussions with "the County Superintendent" and "School Boards," she was advised that "there was no record of those meetings." Although a petition with over seven hundred (700) signatures was presented to the Board requesting that Dr. Kozak's employment contract be renewed, his employment with the Board ended on June 30, 2018.

Based on the facts as set forth above, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because she "took it upon herself to author a letter on behalf of the Board...without previously discussing the letter or contents within the letter with her fellow Board members." According to Complainant, Respondent acted alone in deciding to draft and deliver the notice of non-renewal to Dr. Kozak on March 27, 2018. She claims that this action also exposed the Board, and the school district, to a potential lawsuit because the Board did not vote on the decision to non-renew Dr. Kozak's contract, and the Board did not negotiate with Dr. Kozak about a potential extension (although it had previously approved action to do so).

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, arguing that the Complaint fails to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(e). Although Complainant alleges that Respondent acted alone in deciding to non-renew Dr. Kozak's contract, Complainant is a member of the public and does not have personal knowledge of the Board's closed session discussions. In addition, Respondent contends that Complainant did not present any facts to support his contention that Respondent did, in fact, act alone.

Respondent also asserts that at a meeting on March 22, 2018, those Board members who supported Dr. Kozak and voted in favor of seeking the rescission of his resignation failed to

negotiations should be done at a mutually agreed upon time within 10 business days of the notice to repeal his resignation."

attend and, in the absence of a quorum, the meeting was adjourned. At a meeting on March 27, 2018, a quorum was present; however, after a half hour, Dr. Kozak's supporters walked out of the meeting, again leaving not enough members for a quorum. Respondent asserts that since the negotiations regarding Dr. Kozak's employment contract were not successful, the Board was obligated, by a prescribed statutory timeline, to provide Dr. Kozak with written notice of non-renewal. Because these discussions occurred in closed session, and because Complainant is not a Board member, Complainant inaccurately asserts that Respondent acted alone.

Respondent further claims that at the Board meeting on May 23, 2018, the Board voted to post a job opening for the Acting/Interim Superintendent position. At the meetings on May 31, 2018, and June 7, 2018, the Board discussed Dr. Kozak's replacement and, as evidenced by the minutes from the latter meeting, the Board, with a quorum present, searched for Dr. Kozak's replacement. Additionally, at the June 13, 2018, meeting, only three (3) of the ten (10) members present voted to install Dr. Kozak as the Interim Superintendent. At this same meeting, the Board approved another individual, not Dr. Kozak, to serve as the Acting Superintendent. Respondent contends that these actions confirm that the decision-making was carried by a quorum of the Board, rather than unilaterally by Respondent.

Based on this information, Respondent argues that Complainant does not have any personal knowledge of the Board's closed session meetings, and did not present any factual basis for his assertion that Respondent acted alone or made any personal promises or took action beyond the scope of her duties with the potential to compromise the Board. Moreover, the Board as a whole began the search to replace Dr. Kozak, and Respondent failed to present any facts indicating that Respondent made any personal promises or took any action beyond the scope of her duties with the potential to compromise the Board. Respondent notes that the fact that Complainant and Respondent may have different views on Board matters does not constitute a violation of the Act.

C. Response to Motion to Dismiss

In his response to the Motion to Dismiss, Complainant reiterates that Respondent acted without required Board approval, without a public vote, and without public action when she issued a notice of non-renewal to the Superintendent. In addition, and according to Ms. Arminio, the Board was not involved in the drafting, or the issuance, of the notice of non-renewal to the Superintendent, and the Board never voted to non-renew his contract.

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary

basis. *N.J.A.C.* 6A:28-8.1 *et seq.* Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

B. *Alleged Code Violation*

Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e). This provision of the Code provides:

e. 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(5), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.

Complainant argues that by unilaterally writing a letter, on behalf of the Board, which advised the Superintendent that his employment was being non-renewed, and doing so without first discussing the letter and/or its contents with the other members of the Board, Respondent violated *N.J.S.A.* 18A:12-24.1(e). According to Complainant, this action exposed the Board to a potential lawsuit because the Board did not vote on the decision to non-renew Dr. Kozak's employment, and the Board did not negotiate with Dr. Kozak even though it had previously indicated, by way of motion, that it would do so. Respondent counters that Complainant does not have any personal knowledge of the Board's closed session meetings, and did not present any factual basis for his assertion that Respondent acted alone, or made any personal promises or took action beyond the scope of her duties with the potential to compromise the Board.

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e). In order to sustain a violation of *N.J.S.A.* 18A:12-24.1(e), Complainant needed to provide evidence that Respondent took action beyond the scope of her duties as a Board member, and evidence that those actions had the potential to compromise the Board. However, there is nothing in the record to suggest that Respondent did so when, in compliance with a prescribed statutory deadline, and in her capacity as the Board's President, she advised the Superintendent that his employment was being non-renewed.

Complainant principally relies on the alleged public comments of one Board member (Ms. Arminio) at a Board meeting as the basis for his contention that *the rest* of the Board did not know, or authorize, Respondent's issuance of non-renewal to the Superintendent. However, and as indicated in Complainant's filings, the referenced Board member (Ms. Arminio), and at least two (2) other Board members (including Mr. Braverman) who were "supporters" of the Superintendent, were absent/did not attend the Board meeting which immediately preceded the issuance of the notice of non-renewal to the Superintendent. Because they were absent, these Board members were not physically present to observe and participate in discussions regarding

the status of the Superintendent's employment, including a decision to authorize the Board President to issue a notice of non-renewal to the Superintendent.

In addition, when Ms. Arminio publicly expressed her alleged lack of knowledge about Respondent's actions, it appears from the available record that the other members of the Board did not voice similar sentiments; instead, and at this same meeting, the Board discussed and voted on an Interim Superintendent (not Dr. Kozak). Finally, the Commission notes that, as stated by Complainant, at least three (3) Board members (including Respondent) were initially opposed to asking the Superintendent to rescind his resignation at the February 21, 2018, Board meeting; therefore, there were at least three (3) Board members, not just Respondent, who were not supportive of his employment, and would have supported the issuance of a notice of non-renewal. For these reasons, the Commission finds that there is insufficient evidence to suggest, let alone establish, that Respondent acted on her own, and that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(e). Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission **grants** the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is 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, 2018

***Resolution Adopting Decision
In Connection With C49-18***

Whereas, at its meeting on November 27, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the Response to the Motion to Dismiss filed in connection with this matter; and

Whereas, at its meeting on November 27, 2018, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e); and

Whereas, at its meeting on December 18, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 27, 2018; and

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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 18, 2018.

Kathryn A. Whalen, Director
School Ethics Commission