

H. GORDON PETHICK, and	:	BEFORE THE SCHOOL
JACQUELINE R. ATTINELLO	:	ETHICS COMMISSION
	:	
v.	:	Docket No. C51-06
	:	
KEVIN DEGEROLAMO	:	DECISION
PHILLIPSBURG	:	
BOARD OF EDUCATION	:	
WARREN COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 13, 2006 by H. Gordon Pethick and Jacqueline R. Attinello alleging that Kevin Degerolamo, a member of the Phillipsburg Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., and the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq. Complainants specifically allege that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he personally contacted individual board members regarding their position on negotiations with the teachers’ unit of the local education association. The respondent filed a response in which he denied that he violated the Act and noted that the Commission does not have jurisdiction to determine violations of the OPMA.

The Commission invited, but did not require, the parties to attend its February 27, 2007 meeting. The parties were advised of their right to bring counsel and witnesses. The complainants were advised that, pursuant to N.J.S.A. 18A:12-29(b), they had the burden of proving violations of the Code of Ethics for School Board Members. The complainants attended the hearing and testified before the Commission. During the public portion of the February 27, 2007 meeting, the Commission voted to find that the respondent did not violate N.J.S.A. 18A:12-24.1(e) 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, testimony and the documents submitted.

The respondent is a member of the Board and, since April 2006, he has been Chair of the Negotiations Committee, which he still chairs. Mr. Pethick is the Superintendent of the Philipsburg School District (District) and Ms. Attinello is an Assistant Superintendent. At the August 28, 2006 Board meeting, the Board approved Policy 9272 *School Board Use of Electronic Communications*. The respondent objected to the policy and, along with three other Board members, voted against the policy.

The complainants testified that the Board was in a difficult negotiation process with the teachers' unit, which involved 12 long negotiation sessions. Prior to the negotiations meeting scheduled for September 19, 2006, the respondent called three Board members at home to ask their opinion on the current teachers' negotiations. At the September 19, 2006 negotiations session, the negotiations committee reached an impasse in the negotiations. At the September 25, 2006 Board meeting, the respondent asked the Board if it wanted to make one last effort to settle with the teachers and not go to impasse. The respondent also indicated that he tried to reach out to Board members prior to the last negotiations session, which he could not attend. The respondent indicated that a four percent one-year agreement might settle the contract.

ANALYSIS

The Commission initially notes that it only has jurisdiction to determine violations of the Act and does not have jurisdiction over matters arising under the OPMA. Therefore, the Commission will not address the allegation that the respondent violated the OPMA. The Commission also 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.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he personally contacted individual board members regarding their position on negotiations with the teachers' unit of the local education association. 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.

To prove a violation of N.J.S.A. 18A:12-24.1(e), complainants allege that respondent took private action when he contacted individual Board members regarding the teachers' negotiations. The complainants allege that this private action could have compromised the negotiations, especially when, at the September 25, 2006 Board meeting, the respondent suggested that a four percent one-year agreement might settle the contract. Previously, in Sophia LaPorte v. Rashun Stewart and Cornell Davis, C26-05, (September 27, 2005), the Commission found that two board members had taken private action when they participated in a press conference as private citizens. The Commission reasoned that the two board members had not acted in their capacity as members of the board, but rather in their capacity as private citizens. Id. page 4. In the present complaint, the Commission notes that the respondent was chair of the negotiations committee and, when he called the three board members, he did so to discuss the negotiations. Thus, the respondent was acting in his capacity as a Board member and as chair of the negotiations committee and not in his capacity as a private citizen. Also, when the respondent made the suggestion regarding the negotiations at the September 25, 2006 Board meeting, he did so in his capacity as a Board member participating in a meeting of the Board. The Commission notes that it is the role of a member of the board

to make suggestions and offer ideas, especially here, where the topic of discussion was negotiations and the Board member was chair of the negotiations committee. Furthermore, the Commission notes that it is common practice for board members to individually discuss board matters. Because the Commission finds that the respondent was acting in his capacity as a Board member, it will not address the complainants' allegation that the respondent's action could have compromised the Board. Based on the foregoing, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(e) and dismisses this allegation.

DECISION

For the reasons expressed above, the Commission finds that Kevin Degerolamo did not violate the School Ethics Act and dismisses the allegation against him.

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 – C51-06

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

Whereas, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-21 et seq.; 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 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 March 27, 2007.

Lisa James-Beavers
Executive Director