
ADAM PARKINSON

V.

MATTHEW CHENG
WEST NEW YORK BOARD OF EDUCATION,
HUDSON COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C20-14
DECISION
SUMMARY DISPOSITION

PROCEDURAL HISTORY

This matter arises from a Complaint filed on May 1, 2014 by Adam Parkinson, alleging that Matthew Cheng of the West New York Board of Education (Board), violated the School Ethics Act (Act). N.J.S.A. 18A:12-21 et seq. The Complaint specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members (Code). By letter dated May 14, 2014, the Commission notified the respondent that charges were filed against him and advised him that he had 20 days to answer the Complaint. On June 6, 2014, the respondent filed his Answer, alleging that the Complaint was frivolous. The complainant filed a reply thereto on August 25, 2014, pursuant to N.J.A.C. 6A:28-8.2.

The parties were notified by letter dated July 31, 2014 that the School Ethics Commission (Commission) would consider this matter at its meeting on August 26, 2014 in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission would take one of several actions: Decide to retain the Complaint for a hearing by the Commission at a later date; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the Complaint where the allegations in the Complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act.

At the meeting on August 26, 2014, The Commission voted to find that the above-captioned Complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2¹; and, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this Complaint for hearing at a later date. The Commission also determined that since no material facts were in dispute, the Complaint shall be resolved by summary decision pursuant to N.J.A.C. 6A:28-10.7(c)1. The Commission thereby accorded the respondent 20 days from the date of the notice to submit a written Statement setting forth the reasons why he should not be found in violation of the Act. The complainant filed his submission on October 15, 2014.

At the meeting on February 24, 2015, the Commission reviewed the record and the respondent's Statement and determined that the complainant failed to prove by a preponderance of the credible evidence that the respondent violated N.J.S.A. 18A:12-24.1(c) or (e) of the Code and dismissed for failure to state a claim upon which relief could be granted.

¹ The Commission did not consider the complainant's response to the allegation of frivolous because it was filed out of time.

SUMMARY OF THE RECORD

The single issue before the Commission is limited to the respondent's alleged violation of N.J.S.A. 18A:12-24.1(c) and (e) in which he is claimed to have taken private action that compromised the Board when he contacted the complainant by email to gauge his interest in signing a petition to call for a Special Meeting without first consulting the Board. The respondent does not dispute that he sent the email but asserts that he did so within the scope of his authority as a Trustee of the Board.

The complainant explains that on November 6, 2013, the residents of the Town of West New York voted to approve a referendum that changed the structure of the Board of Education from a Type I Board to a Type II Board. The new paradigm created a nine-member Board elected by the voters instead of a seven-member Board appointed by the Mayor. At a Special Election in January, 2014 the voters elected two new Trustees to the Board of Education, creating a nine-member body. The respondent was one of the newly elected members.

The record establishes that at the first Board meeting with the new members, as well as with all other members present, the Board was provided an overview of the Code of Ethics for School Board Members. (Complainant's Exhibit B, Board Minutes, February 12, 2014.) Moreover, Board members' ethical obligations were further memorialized in detail in Board Counsel's memorandum of February 18, 2014. (Complainant's Exhibit C.) The complainant alleges that on February 24, 2014, the respondent acting in concert with other Board members but without consulting the full Board, took private action that compromised the Board when he sent an email to the complainant seeking his interest in signing a petition to call a Special Meeting to challenge the Town's Resolution (Resolution) to move school elections to November. (Complainant's Exhibit A.)

In his Statement, submitted pursuant to N.J.A.C. 6A:28-10.7(c)(1), the respondent argues West New York Board Bylaw 0161 (Bylaw 0161) states that a Special Meeting "may be called by the Board Secretary at the request of the President or upon the presentation to the Board Secretary of a petition requesting a meeting and signed by the majority of the full Board." (Respondent's Exhibit A.)

The respondent does not object to the resolution of this matter on a summary basis.

Complainant's Exhibits

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| Exhibit A | Respondent Cheng's February 24, 2014 email to Complainant Parkinson |
| Exhibit B | Minutes of the February 12, 2014 Board Meeting |
| Exhibit C | Board Counsel's Ethics Memorandum of February 18, 2014 to Board Members |

Respondent's Exhibit

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| Exhibit A | West New York Board of Education Policy 0161 |
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FINDINGS OF FACT

The Commission finds the following to be undisputed facts:

1. Respondent Matthew Cheng was elected to the West New York Board of Education on January 28, 2014 and sworn into office at the February 12, 2014 Board meeting.

2. At the meeting of February 12, 2014, Respondent Cheng and all Board members present received an overview of their ethical responsibilities.
3. Board Counsel prepared a Memorandum, dated February 18, 2014, for all Board members further instructing them on their ethical obligations.
4. Bylaw 0161 states that a Special Meeting “may be called by the Board Secretary at the request of the President or upon the presentation to the Board Secretary of a petition requesting a meeting and signed by the majority of the full Board.”
5. Respondent Cheng’s Statement that the Board President failed to call for a Special Meeting to discuss the Resolution to move the elections to November is unchallenged.
6. On February 24, 2014, Respondent Cheng transmitted an email to the complainant to determine his interest in joining the petition to discuss the Resolution.

ANALYSIS

The complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations and the facts supporting them, which gave rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints entirely or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

The Commission considers the allegations that the Respondent violated N.J.S.A. 18A:12-24.1(c) and (e), which state, respectively:

- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.²
- 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.³

² The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the Respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the Respondent’s duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

³ (e) Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the 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. N.J.A.C. 6A:28-6.4(a)5.

The complainant contends that the respondent took board action in violation of N.J.S.A. 18A:12-24.1(c) when he unilaterally sent an email to the complainant without first consulting the Board. To violate this subsection, the complainant must prove by a preponderance of the credible evidence that the respondent took board action to bring about policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty. A fair reading of complainant's Exhibit A demonstrates that after a meeting with the Superintendent and Board Secretary, during which they discussed the Town's Resolution to move the School Board elections to November, the respondent communicated with the complainant to ask him to contact the Board Secretary about petitioning for a Special Meeting to discuss the Resolution because the Board President "declined" to do so. Moreover, the respondent took direction from Bylaw 0161 (Respondent's Exhibit A) which provided that a Special Meeting "may be called by the Board Secretary ... upon the presentation to the Board Secretary of a petition requesting a meeting and signed by the majority of the full Board." There is no showing that the respondent pressured the complainant to vote for or against the petition, or that he emailed en masse the requisite number of Board members to form a quorum in violation of the OPMA. The respondent simply followed Bylaw 0161. It appears certain from the email that the respondent did not act unilaterally, but initially discussed the matter with the Superintendent and Board Secretary, followed the procedure outlined in Bylaw 0161, and merely reached out to a fellow Board member to move the discussion of the Resolution before the full Board. Further, the complainant has provided no proof that the respondent attempted to deviate from his duties as a Board member as required to find a violation of N.J.S.A. 18A:12-24.1(c). Consequently, the Commission finds that the respondent did not take any "board action" but acted within the scope of his duty as a Board member when he sent the email to the complainant.

In order to find that the respondent violated N.J.S.A. 18A:12-24.1(e), as set forth above, the complainant must provide evidence that the respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the Board. N.J.A.C. 6A:28-6.4(a)5. Here, there is no allegation that the respondent made any personal promises.

For the same reasons discussed, *supra*, the Commission determines that the respondent did not act beyond the scope of his authority for the purposes of this subsection, but nonetheless considers whether the respondent's actions may have compromised the Board. The Commission determines these actions did not. First, the complainant provides no examples, proofs or evidence how the respondent's action in sending an email to him jeopardized the Board, its members, or its decisions. Second, calling a Special Meeting to discuss whether the Board Counsel should challenge the Resolution, which affects the timing of its own elections would seem a benefit to the Board and provide an opportunity for the Board and the voters in the Town to air the topic and consider the arguments for and against the plan. It was an occasion for the Board to have a role in a decision which greatly affected its members. The Commission finds no compromise of the Board in this setting.

Thus, the Commission finds that the complainant has failed to prove by a preponderance of the credible evidence that the respondent violated N.J.S.A. 18A:12-24.1(c) or (e) of the Code and further finds that the Complaint fails to state a claim upon which relief could be granted. The Complaint is hereby dismissed.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to prove by a preponderance of the credible evidence that the respondent violated N.J.S.A. 18A:12-24.1(c) or (e) of the Code, and for failure to state a claim upon which relief could be granted. The Complaint is hereby dismissed. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: March 25, 2015

Resolution Adopting Decision – C20-14

Whereas, at its meeting on August 26, 2014, the Commission voted to resolve this matter by summary decision, pursuant to N.J.A.C 6:28-10.7(c)1; and

Whereas, at its meeting on February 24, 2015, the School Ethics Commission has considered the pleadings filed by the parties, and the respondent's Statement; and

Whereas, at its meeting on February 24, 2015, the Commission determined to dismiss the Complaint for failure to prove by a preponderance of the credible evidence that the respondent violated N.J.S.A. 18A:12-24.1(c) or (e) of the Code, and for failure to state a claim upon which relief could be granted; and

Whereas, at its March 25, 2015 meeting, 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 24, 2015.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission