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DR. CYNTHIA BAUMGARTNER	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
GEORGE KING	:	Dkt. No. C55-12
KEARNY BOARD OF EDUCATION	:	DECISION ON
HUDSON COUNTY	:	MOTION TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 19, 2012 by Dr. Cynthia Baumgartner alleging that George King, Board Member of the Kearny Board of Education violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 *et seq.* Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d) and (h) of the Code of Ethics for School Board Members (“Code”).

The respondent requested and received two extensions of time in which to file a responsive pleading. On March 16, 2013, the respondent filed a Motion to Dismiss in Lieu of an Answer, which included arguments that the complaint should be dismissed as untimely and for failure to state a claim upon which relief could be granted. The motion also included an allegation that the complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e).

The parties were notified by letter dated March 22, 2013 that this matter would be placed on the Commission’s agenda for its meeting on April 30, 2013 in order to make a determination regarding the respondent’s Motion to Dismiss, as well as the allegation of frivolousness. On April 4, 2013, the complainant requested and received additional time to respond to the Motion, which she did on April 12, 2013. At its meeting on April 30, 2013, the Commission considered the complaint, the Motion and the response thereto and found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2, but voted to grant the Motion to Dismiss the complaint as untimely filed as to the events on April 30, 2012, pursuant to N.J.A.C. 6A:28-6.1(b) and for failure to state a claim on which relief could be granted as to the events on June 26, 2012.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s) set forth in the complaint, if true, could establish a violation of the Act.

Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Because 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), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to support a finding that the respondents violated N.J.S.A. 18A:12-24.1 (b), (c), (d) and (h) of the Code of Ethics for School Board Members.

As a threshold issue, the attorney for the respondent argued the untimeliness of the complaint. Counsel argued that the complaint was filed more than 180 days after the events complained of took place and that the complaint should have been filed with the Commission no later than October 27, 2012 for the earlier events, occurring April 30, 2012 and December 23, 2012 for the later events occurring June 26, 2012. The complaint was filed on December 19, 2012.¹

The regulation governing the filing of complaints before the Commission is clear in that a complaint must be filed within 180 days of notice of the alleged violation, N.J.A.C. 6A:28-6.5(a). Counsel for the respondent argued that there was no reason to assume that the complainant was unaware of the events as she was present for both.

Moreover, she filed a petition with the Commissioner of Education based upon the same set of facts, asserting that respondent's actions not to renew her contract were arbitrary, capricious and unreasonable. Thus, counsel urged the Commission to dismiss the complaint as time-barred.

The complainant argues that the respondent failed to consider the Tolling Order issued by the New Jersey Supreme Court in the aftermath of Hurricane Sandy, which tolled the time between Monday, October 29, 2012 and November 16, 2012 for the purposes of filing deadlines. The Commission is not persuaded. This two-week period was to be treated as a "legal holiday" in the event that a filing deadline fell within this period. This "legal holiday" did not extend deadlines that did not fall within those two weeks; consequently the complainant was not given an additional two weeks to file her complaint. Moreover, the complainant could have filed her complaint with the Commission at any point after she filed her petition with the Commissioner of Education in order to preserve her rights.

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993), and the Commission must balance the public's interest in knowing of potential violations against

¹ Respondent's counsel argued that the entire complaint should be dismissed as untimely since both events exceeded the 180-day time limit when using December 27, 2012 as the filing date. However, the respondent was not aware that the complainant preliminarily filed her complaint by facsimile on December 19, 2012, thus tolling the time.

the important policy of repose and a respondent's right to fairness. As such, the Commission is mindful that the time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., C19-03 (June 24, 2003). Here, the complainant does not allege that she was unaware of the respondent's actions because she was present when they occurred and was the subject of them. Further, although the Commission recognizes that it has the discretion to relax this regulatory time period in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. The Commission finds, therefore, that the complaint is untimely pursuant to N.J.A.C. 6A:28-6.1(b) as to the events of April 30, 2012 only.

Having found the allegations concerning the June 26, 2012 hearing were filed timely, the Commission now turns its attention to the complainant's allegations that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d), and (h) of the Code. The complainant asserts that on June 26, 2012, the Board conducted a *Donaldson*² hearing at her request. She further asserts that at this meeting, the respondent again voted not to renew the complainant contract, thus ignoring the Superintendent's recommendation, and failed to discuss or comment on the reasons why the contract was not renewed. For this, the complainant maintains that the respondent violated the Code.

Pursuant to N.J.A.C. 6A:32-4.6, the regulations provide a non-tenured teacher with the right to informally appear before the district board to contest the decision not to renew the contract whenever a teaching staff member has requested in writing and has received a written statement of reasons for non-reemployment pursuant to N.J.S.A. 18A:27-3.2. The appearance before the Board is not adversarial, and its purpose is to give the teacher the opportunity to address the Board to convince the members to renew her employment.

In reviewing the record, the Commission notes that by letter of May 24, 2012, the Board's attorney advised the complainant of the reasons for her non-renewal as required and that, though unsuccessful, the complainant had the opportunity to appear before the Board. The Commission determines, therefore, that the Board has sufficiently complied with the regulations governing these circumstances. Accordingly, the Commission hereby grants the respondent's Motion to Dismiss for failure to state a claim upon which relief could be granted for the alleged violations of June 26, 2012.

REQUEST FOR SANCTIONS

At its meeting on April 30, 2013, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission does not find that the complainant "commenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "was without any reasonable basis in law or equity and could not

²Donaldson v. North Wildwood Board of Education, 65 N.J. 236 (1974)

be supported by a good faith argument for an extension, modification or reversal of existing law.” N.J.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent’s request for sanctions against the complainant.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to timely file the complaint and for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. 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: May 29, 2013

Resolution Adopting Decision – C55-12

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

Whereas, at its meeting of April 30, 2013 the Commission found that the complaint was untimely filed pursuant to N.J.A.C. 6A:28-6.1(b) as to the events of April 30, 2012; and

Whereas, the Commission further determined to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Code as to the events of June 26, 2012; and

Whereas, the Commission further found that the complaint was not frivolous; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the decision and agrees with the decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's 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 May 28, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission

