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**SUZANNE LOUTFY, YOLANDA DELGADO,  
LOUIS MANGIERI AND JAMES MANCUSO**

**V.**

**GREGORY SETAR  
CARTERET BOARD OF EDUCATION  
MIDDLESEX COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No. C33-03**

**DECISION**

### **PROCEDURAL HISTORY**

This matter arises from a complaint that Gregory Setar, member of the Carteret Board of Education (Board), violated the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1(e). Specifically, Complainants allege that Mr. Setar violated N.J.S.A. 18A:12-24.1(e) by directing a check to be released to an electrical contractor after the Board voted not to pay the contractor.

In his answer, Mr. Setar asserted that the work performed by PSG Systems, Inc. was approved by the Board and the Board approved the meeting minutes to this effect. The later vote not to pay the contractor was therefore void. Mr. Setar denies that he violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics. Mr. Setar counter claimed that the complaint is frivolous and urged the Commission to impose sanctions pursuant to N.J.S.A. 18A:12-29(e).

The Commission advised the parties that they had the right, but were not required to attend the Commission's meeting on December 16, 2003, to present witnesses and testimony to aid in the Commission's investigation. Neither the complainants, nor the respondent was present. The Commission tabled its decision at that time.

During its public meeting of February 3, 2004, the Commission found that Mr. Setar did not violate N.J.S.A. 18A:12-24.1(e) of the Code of Ethics. The Commission further found that the complaint was not frivolous. The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission voted to authorize the staff to send out the decision at its meeting on February 24, 2004.

### **FACTS**

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

The respondent was a member of the Carteret Board of Education and Chairperson of the Building and Grounds Committee at all times relevant to this matter. Complainant Suzanne Loutfy was the President of the Board at all times relevant to this matter. On May 20, 2003 a check was drawn up as payment for electrical work performed by PSG Systems for the Board.

The check was signed by Ms. Loutfy, the Board Secretary and the Treasurer of School Funds. The check represented payment for work regarding two separate projects, together totaling \$5,000.00. At its meeting of May 28, 2003 the full Board voted unanimously to approve the bill list including the aforementioned payment to PSG Systems. At its subsequent meeting on June 18, 2003, the Board voted to approve the minutes from its May 2003 meeting. The Board did not raise any concerns regarding the PSG Systems payment, at that time. Mr. Setar informed the district's Director of Building and Grounds that the Board had voted to approve the payment and therefore the payment had to issue. Board member James Mancuso, questioned the issuing of the check and directed the Accounts Payable Clerk to withhold payment to PSG Systems, based upon information that he believed warranted such action. The Board voted whether to ratify the payments made to PSG Systems at its July 30, 2003 meeting and the motion to ratify failed.

The Department of Education's Office of Compliance Investigation (OCI) investigated the allegation that the payment to PSG Systems was an unauthorized payment. Upon the conclusion of its investigation, the OCI reported that "the payment in question was a part of the approved bill list for the May 28, 2003 meeting. All of the payments in the detailed bill list were approved by the board. Therefore, [the] payment is authorized and legal."

## **ANALYSIS**

The complainants allege that Mr. Setar directed a check to be released to an electrical contractor, PSG Systems, when the Board voted not to pay the contractor. The complainant urges the Commission to find that Mr. Setar violated the Code of Ethics N.J.S.A. 18A:12-24.1(e). Pursuant to N.J.S.A. 18A:12-29(b), the complainants have the burden of proving factually that the respondent's conduct is in violation of the Code of Ethics. 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.

The Commission notes that the Board voted to approve a bill list including the payment of \$5,000.00 to PSG Systems. The Commission also notes that the Board approved the May 2003 meeting minutes. The Commission further notes that the OCI report confirmed that the payment to PSG Systems was "authorized and legal." For the foregoing reasons, the Commission finds that there is insufficient information to show that Mr. Setar made personal promises or took private action that compromised the Board in violation of N.J.S.A. 18A:12-24.1(e).

## **DECISION**

The Commission finds that Mr. Setar did not violate N.J.S.A. 18A:12-24.1(e) of the Act and dismisses the complaint against him.

Complainants have asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint,

counterclaim, cross-claim or defense of the non-prevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The non-prevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The Commission recognizes the failure of the motion to ratify the payments shows that the Board had concerns regarding the payment. Therefore, the Commission does not discern that the complaint was commenced or continued in bad faith to harass or injure Mr. Setar. The Commission further finds that the complaint was based on a feeling that Mr. Setar's instructions, though correct, were against the opinion of many Board members that the payment should not have been made. The Board members failed to express this opinion when it mattered, but the Commission cannot find that this complaint was without any reasonable basis in law.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C33-03**

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

**Whereas**, at its meeting of February 3, 2004, the Commission found that Mr. Setar did not violate N.J.S.A. 18A:12-24.1(e) and dismissed the charge against him; and

**Whereas**, at its meeting of February 3, 2004 the Commission further found that the complaint was not frivolous and therefore did not impose sanctions; and

**Whereas**, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

**Whereas**, the Commission has reviewed the draft 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.

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Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 24, 2004.

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Lisa James-Beavers  
Executive Director