

MELISSA ANN FITZPATRICK

BEFORE THE SCHOOL
ETHICS COMMISSION

V.

Docket No.: C35-02

CENTRAL REGIONAL BOARD OF EDUCATION,
generally and members CARMEN AMATO,
CHERYL MACKENZIE, BENJAMIN KEISER,
RICHARD KIMMEL, DENISE PAVONE-WILSON
and MICHAEL TSUCALAS, specifically,
OCEAN COUNTY

PROCEDURAL HISTORY

This matter arises from a complaint that the Central Regional Board of Education (Board) generally and certain specific members violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. First, complainant alleges that the Board voted against her reappointment, despite the superintendent of schools, assistant superintendent, building principal and subject area supervisor's recommendations in favor of her reappointment, in violation of N.J.S.A. 18A:12-24.1(a) and (h). Second, complainant alleges that the Board did not "Rice"¹ her prior to its decision to deny her reappointment, although it had sufficient time to do so, in violation of N.J.S.A. 18A:12-24.1(a). Third, complainant alleges that the Board voted against her reappointment without reviewing the evaluation materials in her file, in violation of N.J.S.A. 18A:12-24.1(d). Fourth, complainant alleges that Board president, Carmen Amato, disclosed a letter from a parent to a supervisor in the school district and certain Board members, when it was addressed to the building principal with a copy to Mr. Amato, in violation of N.J.S.A. 18A:12-24.1(g). Fifth, complainant alleges that the Board, specifically Mr. Amato and Cheryl MacKenzie, voted against her reappointment on the basis of the letter, when the matter had been resolved prior to the Board's vote and no referral to the Superintendent of Schools was made, in violation of N.J.S.A. 18A:12-24.1(j). Sixth, complainant alleges that Mrs. McKenzie, worked on behalf of one of her friends to have complainant removed from her position and was biased in violation of N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f). Complainant alleged that after the Board received notification of the present complaint, Mrs. MacKenzie acted on behalf of her friend and amended the minutes of the April 11, 2002 Board meeting, in violation of N.J.S.A. 18A:12-24.1(e). However, in complainant's amendment to her complaint, she indicates that she was mistaken when she alleged that Mrs. MacKenzie amended the Board's minutes. Complainant sets forth that "[she] was told that [Mrs. MacKenzie] only requested that the minutes to the April

¹ This term refers to the case, *Rice v. Union Cty Reg. High School Bd. of Ed.*, 155 N.J. 69, 73-74 (App. Div. 1977)(employee has a right to advance notice that a board of education intends to discuss him or her in closed session.).

11, 2002 Board meeting be revised.” The Commission therefore sets aside this allegation.²

In its answer, the Board asserts that the majority of its members, including Ms. Amato and Mrs. MacKenzie, voted against complainant’s reappointment based on information in her file and other information it received from parents, students and other individuals regarding complainant’s teaching performance. The Board set forth that any and all information that was received by Board members was also forwarded to the district administration. The Board asserts that its April 11, 2002 meeting minutes clearly show the Board’s concerns regarding complainant. The Board further asserts that it advised complainant of her right to a hearing to discuss its vote against her reappointment, but did not receive a response. The Board denies any violation of the School Ethics Act, including the Code of Ethics.

The Commission invited the parties to attend the Commission’s meeting on December 17, 2003, to present witnesses and testimony to aid in the Commission’s investigation. The Commission advised the parties that they had the right, but were not required to appear before the Commission. The Commission also advised the parties that they could file affidavits from non-party witnesses in lieu of testimony. None of the parties appeared, but affidavits were filed by Board president, Carmen Amato and Board members, Cheryl MacKenzie and Denise Pavone-Wilson via counsel, Thomas G. Gannon, Esquire.

The Commission tabled the matter at its December 17, 2002 meeting. At its public meeting of January 28, 2003, the Commission voted to find no probable cause and dismissed the complaint. The Commission adopted this decision at its meeting on February 25, 2003.

FACTS

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

Complainant was hired as a new staff teacher in the district in 2000/2001. At all times relevant to this complaint, Carmen Amato was the president of the Central Regional Board of Education and Cheryl MacKenzie, Michael Tsucalas, Denise Pavone-Wilson, Richard Kimmel and Benjamin Keiser were members of the Board.

On January 12, 2001, a student of complainant reported in writing to the school principal that complainant uses profanity in class and refers to students in derogatory terms. The school principal held a meeting with complainant, the student and student’s mother on January 17, 2001. According the school principal’s minutes from the meeting, complainant admitted that it is possible that students may perceive her humor in the wrong way. The school principal expressed his concern about the allegation with respect

² Complainant also references N.J.S.A. 18A:27-4.1(b). However, the section does not fall within the purview of the School Ethics Act and therefore cannot be considered in the present matter.

to improper vocabulary in front of students and directed her to “think before [she] used humor so that students do not misinterpret [her] humor.”

In his memorandum of May 7, 2001 to complainant, the school principal set forth that he was able to substantiate allegations that complainant enabled a student to effectively change a grade on another student’s report card. In a memorandum to her, the school principal also cautioned “as a first year teacher, your job was put in jeopardy. This is the second letter being placed in your personnel folder. You need to understand that a future incident, determined to be unprofessional, will result in a non-renewal of your contract for the following school year.”

In his letter of September 11, 2001, the drama club president reported to the administration and the school principal that complainant, who was the advisor of the drama club, refused to perform any of her duties and had the students organize and execute all aspects of club activities and programs, including meetings, plays and field-trips. The drama club president also indicated that complainant often left the students unsupervised during meetings and rehearsals and frequently used profane language when addressing the students.

On February 27, 2002, the school principal received a letter from a parent indicating that her son advised her that complainant was using profane language in class. The Board president was also apprised of the matter in a letter dated March 3, 2002.

At its regular meeting of its April 11, 2002, the Central Regional Board of Education passed a resolution to hold a special closed session for the purpose of discussing personnel and student matters. Upon the Board’s return to public session, a Board member indicated that the superintendent, assistant superintendent and a school supervisor recommended the reappointment of a list of 54 non-tenured staff members. At that time, a motion was made and the Board unanimously voted to reenter executive session to discuss personnel. Upon its return to public session, a motion was made to reappoint complainant, who at that time was eligible for tenure as a teaching staff member. The motion was defeated by a 3-6 vote against complainant.

Complainant requested a reason for her non-renewal. The Board forwarded correspondence to complainant and her attorney explaining its reasons for the non-renewal of her contract and also advised her of her right to a hearing. The Board did not receive a request for a hearing from complainant or her attorney.

In their answers, Board president, Carmen Amato, and Board members, Cheryl MacKenzie and Denise Pavone-Wilson, each set forth in their affidavits that the Board’s decision not to reappoint complainant was based upon a number of letters from parents and students, as well as, complainant’s personnel file. Mr. Amato noted that all complaints and letters that he receives regarding students or teachers are forwarded to the superintendent’s office. Mr. Amato, Mrs. MacKenzie and Ms. Pavone-Wilson also testified that complainant was advised by the Board attorney of her right to a hearing, but did not respond or request a hearing.

ANALYSIS

Complainant urges the Commission to find that the Board as a whole violated N.J.S.A. 18A:12-24.1(a), (d), (g) and (j). Complainant specifically alleges that Mr. Amato violated N.J.S.A. 18A:12-24.1(g) and Mrs. MacKenzie violated N.J.S.A. 18A:12-24.1(e), (f) and (c). Each section will be discussed as it relates to the aforementioned allegations.

The Commission notes that under the School Ethics Act, N.J.S.A. 18A:12-29(b), the complainant has the burden of proving factually that the respondent's conduct is in violation of the Code of Ethics.

Complainant first alleges that the Board voted against her reappointment, despite the recommendations of the superintendent and other administrators, in violation of N.J.S.A. 18A:12-24.1(a) and (h). N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission notes that the complainant was employed as a new staff teacher in the 2000/2001 school year and since that time has been associated with three incidents where students and parents have reported that she behaved inappropriately. The fact that the superintendent recommended her reappointment despite these incidents did not prevent the Board from voting against the reappointment. The Commission has no basis from which to conclude that the Board was arbitrary in its decision.

The Commission does not make any determination with respect to the Board's decision not to reappoint complainant. That is a matter which should have been brought before the Board. The question before the Commission under N.J.S.A. 18A:12-24.1(a) is whether the Board failed to uphold the laws, rules and regulation of the State Board of Education or court orders pertaining to the schools. The Commission finds that the Board reconsidered the recommendation to reappoint complainant in closed session and in public session voted not to reappoint complainant, based on the information in her file and letters from parents and students. The Commission cannot discern any laws, rules or regulations of the State Board of Education to be violated as result of the Board's actions and therefore finds no probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-24.1(a).

Complainant next alleges that she did not receive a "Rice" notice prior to the Board's discussion of her employment in violation of N.J.S.A. 18A:12-24.1(a). The Commission is not the appropriate forum to address defects in "Rice" notifications, when the complainant did not give the Board any opportunity to correct any defects that may have existed. Upon complainant's request, the Board advised her of its reasons for voting not to reappoint her. The Commission also notes that the Board advised complainant of her right to a hearing wherein she could have addressed any perceived defects in the

process. Complainant failed to respond and did not request a hearing. The Commission therefore finds that there is no probable cause to credit the allegation that the Board failed to uphold the laws, rules and regulation of the State Board of Education or court orders pertaining to the schools, in violation of N.J.S.A. 18A:12-24.1(a).

Second, complainant alleges that the Board violated N.J.S.A. 18A:12-24.1(h), which requires school officials to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer. The Commission notes that N.J.S.A. 18A:12-24.1(h) does not require the Board to accept all recommendations from the chief administrator, but rather requires that the Board consider them. The Commission finds that it is precisely the consideration of the superintendent's recommendation that prompted the Board to go into closed, executive session for discussion at its April 11, 2002 meeting. The Commission cannot find that the Board failed to appoint the best qualified personnel, based on the information before it. Therefore, the Commission does not find probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-24.1(h) when it reconsidered the superintendent's recommendation and voted not to reappoint complainant.

Third, the complainant alleges that the Board voted against reappointment without reviewing the evaluation materials in her file, in violation of N.J.S.A. 18A:12-24.1(d), which provides:

I will carry out my responsibility not to administer the schools, but together with my fellow Board members to see that they are well run.

There is no information to show that the Board failed to review complainant's file. The Board denies the allegation. The Commission has found that the Board's decision not to reappoint complainant was based upon its review of her record, including information from her file and other reports from students and parents. Therefore, the Commission finds no probable cause to credit the allegation that the Board administered the schools or failed to work with one another to ensure that the schools are well run.

Fourth, complainant alleges that Mr. Amato, disclosed a letter from a parent to a supervisor in the school district and certain Board members, although it was addressed to the building principal with a copy to Mr. Amato, in violation of N.J.S.A. 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

For the Commission to find probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-24.1(g) complainant must prove that the information disclosed

was confidential and caused her needless injury. In his affidavit, Mr. Amato set forth that all complaints and letters that he received were forwarded to the superintendent's office, as required by the Code of Ethics. The Commission notes that at least one letter was sent to the building principal. The Commission further notes that there is no information to show how the Board or the school supervisor received the letters. The Commission, therefore, cannot find that Mr. Amato disclosed the letters when other school personnel were in possession of the letters and there is no information to specifically show who disseminated them.

For the foregoing reasons, the Commission must find no probable cause to credit the allegation that Mr. Amato violated N.J.S.A. 18A:12-24.1(g).

Fifth, complainant alleges that the Board, Mr. Amato and Mrs. MacKenzie specifically, voted against her reappointment on the basis of a letter, when the matter set forth in the letter had been resolved prior to the Board's vote and no referral to the superintendent of schools was made, in violation of N.J.S.A. 18A:12-24.1(j). This section requires board members to refer all complaints to the chief administrative officer, and to act on the complaints at public meetings only after failure of an administrative solution.

The Commission notes that Mr. Amato answered that he forwarded all complaints and letters he received to the superintendent's office. The Commission further notes that in their affidavits, Mr. Amato, Mrs. MacKenzie and Mrs. Pavone-Wilson, indicated that the Board based its decision on several letters from parents and students, as well as, information in complainant's file and not merely one letter. The above-referenced letters alleged that complainant used profane language when addressing students and that she had to be cautioned by the principal for unprofessional conduct that could result in the non-renewal of her contract for the following school year." The Commission also notes that the following school year a letter was received by the school principal, dated February 27, 2002, regarding complainant's teaching performance and her alleged use of profane language when addressing students. Based on the foregoing, the Commission finds that the Board did not fail to refer complaints to the chief administrative officer. The Commission also finds that the Board's decision not to reappoint complainant was not an action in response to a complaint, but a decision made in its process of determining which teaching staff contracts would be renewed. The Commission therefore finds no probable cause to credit the allegation that the Board violated N.J.S.A. 18A:12-24.1(j).

Sixth, complainant alleges that Mrs. MacKenzie acted on behalf of her friend, who was one of the parents who complained to the school regarding complainant's teaching performance, in violation of N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f). N.J.S.A. 18A:12-24(c) provides in pertinent part:

No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

There is no information to show that Mrs. MacKenzie is friends with any of the parents who reported complainant's conduct to the school. In any event, the Commission has never held that a friendship alone would create a personal involvement that would create a benefit to the school official. Therefore, the Commission can discern no personal involvement that is or creates any benefit to Mrs. MacKenzie and finds no probable cause to credit the allegation that she violated N.J.S.A. 18A:12-24(c).

Complainant also alleges that Mrs. MacKenzie violated N.J.S.A. 18A:12-24.1(f), which prohibits board members from using the schools for personal gain or for the gain of friends.

There is insufficient information to demonstrate that Mrs. MacKenzie has any personal relationship with any of the parents who made allegations regarding complainant's conduct. Thus, the Commission cannot find that Mrs. MacKenzie used the schools for the gain of a friend when she voted against the reappointment of complainant. The Commission therefore finds that there is no probable cause to credit the allegation that Mrs. MacKenzie violated N.J.S.A. 18A:12-24.1(f).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that the Board violated the School Ethics Act and dismisses the complaint against it.

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 – C35-02

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 January 28, 2003, the Commission found no probable cause to credit the allegations that the Board violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against it; and

Whereas, the Commission requested that its staff 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.

Paul C. Garbarini
Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 25, 2003.*

Lisa James-Beavers
Executive Director

*Commissioner Muriel Beekman abstained from all discussions and votes regarding this matter.