

FACTS

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

At all times relevant to this complaint, the respondents were members of the Rockaway Township Board of Education. At all times relevant to this complaint, the respondents were members of the Board's Curriculum Committee.

According to the District Superintendent, the Board approved a construction project to improve the science laboratory facilities at the District's middle school prior to the 2002-2003 school year. Bids for the project were advertised with the intent that it be completed in two phases, the first focusing on two science laboratories and the second focusing on two other science laboratories. The first phase was to be completed no later than the middle of the school year, because the middle school would lose use of the science laboratory facilities during construction. In the Rockaway School District, the eighth grade is the highest grade in the middle school and then the 8th grade students graduate to a regional high school with students from surrounding districts.

After the original bids were received, the Board learned that the project cost exceeded the anticipated budget and that the project would have to be revised and re-bid. The superintendent suggested that the administrators meet with the Board's Curriculum Committee to review the proposed project plans to determine what impact, if any, this would have upon the education of students at the middle school. Science classes and laboratory are part of the established curriculum. The superintendent invited the Committee to make recommendations as they deemed necessary.

The Curriculum Committee developed recommendations to present to the Board concerning the adoption of two policies. It first recommended the adoption of a policy that, on all construction projects involving major building changes, those employees who will be impacted by the construction will be given an opportunity to give their input on the project. The second recommendation it made was to adopt a policy that would provide the District's eighth graders with priority use of the science laboratory. These recommendations were adopted by the Board and implemented by the administration.

At a subsequent public meeting, a member of the teaching staff thanked the Committee for allowing it to participate in the process. According to Mr. Doty, Mr. Friedberger then advised the staff member, "If there is anything else we can do, come see us." Mr. Doty added that he heard the superintendent say that he shuddered at the thought of a Board president telling teachers they should "see the Board" if they need anything.

ANALYSIS

The issue before the Commission is whether the above facts establish that Mr. Friedberger, Mr. Giarratano or Ms. Salny violated 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.”

Mr. Doty alleges that the two recommendations made by the respondents in their capacity as the Curriculum Committee show that the Committee expanded its role into administration and away from classroom subject matter in violation of N.J.S.A. 18A:12-24.1(d). Pursuant to N.J.S.A. 18A:12-29(b), the burden of proof shall be on the accusing party to establish factually a violation of the code. The Commission finds that the complainant would need more information to prove that the respondents usurped the authority of the administration.

The complainant states in reply to the respondents’ answers that the superintendent’s affidavit supports his complaint. The Commission fails to discern how to view the affidavit in a light that is favorable to complainant’s position. The superintendent set forth that it was his suggestion that the administrators meet with the Board’s Curriculum Committee to come up with recommendations regarding the science laboratory project. The Committee, as charged, made two recommendations, which were presented to and accepted by the Board. The Committee did not then attempt to implement the recommendations, but presented them to the superintendent and other members of the administration for implementation. The superintendent goes on to note that the recommendations were proper and within the Committee’s authority and that he did not view them as an attempt to administer the schools.

While the superintendent’s opinion about the board members’ conduct is not dispositive of the case, his recitation of the facts, with which complainant does not appear to disagree, shows that the Committee was acting pursuant to his suggestion based on his concern that the project not interfere with the education of the students. The Commission cannot conclude, based on these facts, that the board members overstepped their bounds as a Committee. Therefore, the Commission finds no probable cause to credit the allegations that these respondents acted to administer the schools rather than see that they were well run in violation of N.J.S.A. 18A:12-24.1(d) and dismisses the charges against them.

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause and dismisses the complaint against the respondents Michael Friedberger, Frank Giarratano and Sue Shanik Salny.

Respondents have asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Act sets forth the same standard as in civil complaints set forth at N.J.S.A. 2A:15-59.1, which is:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall 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 nonprevailing 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.

The Commission gave great consideration to whether this complaint met either of the standards set forth above, but ultimately concluded that there was insufficient evidence of bad faith to meet the first standard and that the Code of Ethics, having been enacted in July 2001, was too new a law with very few cases interpreting it to meet the second standard. However, the Commission cautions complainant that any further complaints he files with the Commission will be given greater scrutiny and therefore, he should present more solid evidence if he believes that a violation has been committed.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision - C38-02

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 December 17, 2002, the Commission found no probable cause to credit the allegations that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against them; 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 on January 28, 2003 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 decision was adopted by the School Ethics Commission at its public meeting on January 28, 2003.

Lisa James-Beavers
Executive Director