
**ANTHONY CURETON, MIDLRED
DODSON, CARTER JACKSON
ROBERT H. ROBINSON and
BLANCHE M. STUART**

v.

**FRANCIS ALBOLINO, MARK STEIN,
VERONICA BOLCHIK-MCKENNA,
JEANNE DRESSLER and PHILLIP
CARROLL
HACKENSACK BOARD OF
EDUCATION
BERGEN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C52-11
DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 6, 2011 by Anthony Cureton, Midred Dodson, Carter Jackson, Robert H. Robinson and Blanche M. Stuart alleging that Francis Albolino, Mark Stein, Veronica Bolchik-Mckenna, Jeanne Dressler and Phillip Carroll, members of the Hackensack Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. On December 28, 2011, the respondents filed a Motion to Dismiss the complaint, alleging therein that the complaint was untimely. The complainants were accorded an opportunity to respond to the motion. Their reply was filed on January 12, 2012. The parties were advised that this matter was scheduled for discussion by the Commission at its meeting on February 28, 2012 in order to make a determination regarding the respondents’ Motion to Dismiss. At its meeting on February 28, 2012, the Commission voted to grant the respondents’ Motion to Dismiss the complaint.

SUMMARY OF THE PLEADINGS

The complainants allege that at the Board’s meeting on May 10, 2011, the respondents voted “yes” to approve the reappointment of non-tenured teaching staff members in a reduction in force (RIF). According to the complainants, at the June 7, 2011 Board meeting, Respondent Stein said that the reduction was effectuated based on seniority. The former Superintendent confirmed that the RIF was conducted based on seniority because the Board directed him to do so, notwithstanding that the Board’s policy requires that a RIF be based on competence. The complainants contend that, by directing the Superintendent to conduct the 2011-2012 RIF by seniority, the respondents “effectively took action on a personnel matter without the recommendation of the chief school administrator,” in violation of N.J.S.A. 18A:12-24.1(h) and the respondents became involved in the administration of the schools in violation of N.J.S.A. 18A:12-24.1(d).

ANALYSIS

In their Motion to Dismiss, the respondents argue that the May 10, 2011 vote falls 210 days from the December 6, 2011 filing date of the complaint. Additionally, to the extent that the complainants would attempt to argue that the June 7, 2011 date is operative herein, that date is 182 days from the filing date of the complaint. (Respondents' Motion at p. 2)

The Commission's regulations provide, in relevant part:

(a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events **or when such events were made public so that one using reasonable diligence would know or should have known.** N.J.A.C. 28-6.5. (emphasis added)

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). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. 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., Burlington County, C19-03 (June 24, 2003). Further, although the Commission recognizes that this regulatory time period may be relaxed, in its discretion, 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. Therefore, because the complainants allege that Respondent Stein made a statement at a public meeting on June 7, 2011 which became the triggering event for this complaint, that date is operative. The Commission finds that one using reasonable diligence would know or should have known of the events which form the basis of the alleged violation(s). Accordingly, the Commission dismisses the within complaint as untimely.

Moreover, even assuming that this complaint was timely filed, the Commission observes that the complainants herein essentially challenge an action, *i.e.*, a reduction in force, which was effectuated by the Board as a whole. In this connection, the Commission maintains that the School Ethics Act does not empower it to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. To the extent the complainants believe that the Board acted in a manner that is arbitrary and capricious, contrary to the Board's policy, or otherwise contrary to law or regulation, any such claim must be brought before the Commissioner of Education. Solar-Snyder v. Rose et al., Sussex Wantage Board of Education, Sussex County, C32-03 (December 16, 2003). *See, also, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County*, C01-08 (October 27, 2009).

DECISION

At its meeting on February 28, 2012, the Commission granted the respondents' Motion to Dismiss the complaint. 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 28, 2012

Resolution Adopting Decision – C52-11

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed by the respondents and the complainants' reply thereto; and

Whereas, at its meeting on February 28, 2012, the Commission determined to grant the respondents' Motion to Dismiss; and

Whereas, 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 27, 2012.

Joanne Boyle
Executive Director