
ROSE ABREU	:	BEFORE THE SCHOOL ETHICS COMMISSION
v.	:	
JULIA PRESLEY	:	SEC Dkt. No. C34-13
FRANKLIN TOWNSHIP BOARD OF EDUCATION, SOMERSET COUNTY	:	OAL Dkt. No. EEC 759-14
	:	FINAL DECISION

PROCEDURAL HISTORY

This matter arises from a Complaint filed on July 2, 2013 by Rose Abreu, alleging that Julia Presley, President of the Franklin Township Board of Education, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* The Complaint specifically alleged that the Respondent violated N.J.S.A. 18A:12-24.1(e), (f), (i), and (j) of the Code of Ethics for School Board Members (Code). By letter dated July 3, 2013, the Respondent was notified that charges against her were filed with the Commission and advised that she had 20 days to answer the Complaint. On July 24, 2013, Respondent's attorney requested and was granted a brief extension of time to file a responsive pleading. Respondent filed a Motion to Dismiss in lieu of an Answer on July 29, 2013. Complainant did not file a response to the Motion.

By letter dated September 10, 2013, the Commission notified Complainant and Respondent that this matter was scheduled for discussion before the Commission on September 24, 2013, in order to make a determination regarding the Respondent's Motion to Dismiss. At its meeting on September 24, 2013, the Commission granted the Motion to Dismiss Count 2 of the Complaint but denied the Respondent's Motion to Dismiss on all claims alleging violations of N.J.S.A. 18A:12-24.1(e) and (f) in Counts 1 and 3. Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit the matter to the Office of Administrative Law (OAL) for a *de novo* plenary hearing as a contested case after the submission of the Respondent's Answer and so advised the parties by Decision on Motion to Dismiss dated October 29, 2013.

On November 19, 2013, the Respondent filed her Answer to the Complaint, and on December 31, 2013, the matter was transmitted to the OAL for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1-15, N.J.S.A. 52:14F-1-13.

After transmittal, the Administrative Law Judge (ALJ) conducted a hearing on June 4, 2015 and October 5 and 6, 2015, at the conclusion of which the record closed. On November 4, 2015, the Initial Decision of the ALJ was transmitted to the Commission, and mailed to the parties on November 5, 2015. The Commission received the file from the OAL on November 12, 2015.

The ALJ concluded in her Initial Decision that Complainant's proofs were insufficient to support the claims that the Respondent violated the Code and dismissed the Complaint. No exceptions to the Initial Decision were filed by either party, pursuant to N.J.A.C. 1:1-15.4 *et seq.*

Upon return of the matter from the OAL, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8 and for good cause shown, the Commission was granted an extension of time until February 4, 2016, in which to issue its Final decision. At its November 24, 2015 meeting, the Commission reviewed the record in this matter and the Initial Decision of the ALJ, at which time the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in her Initial Decision.

ANALYSIS

The Complainant asserted that the Respondent violated the Code when she allegedly engaged in private action to gather a majority of Board members to vote against the renewal of the Complainant's contract and when she allegedly used her position for the benefit of her grandson, thus violating N.J.S.A. 18A:12-24.1(e) and (f), respectively. Upon review of the record and the preponderance of relevant evidence as adduced through the testimony of the Respondent, S.H., Eva Nagy, and Keisha Smith-Carrington, which she found credible and persuasive, the ALJ determined that the Respondent had not violated the Code and dismissed the Complaint as presented to her.

The Commission recognizes that this case turns on the credibility of the witnesses. In this regard, the Commission must give deference to the credibility determinations of the ALJ. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility." (In the Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), certif. denied, 121 N.J. 615 (1989)). Therefore, an agency head "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). Consequently, a litigant challenging factual findings rendered by an ALJ must provide the Commission with relevant portions of the transcript of the hearing in order to permit the Commission to assess the merits of those exceptions. In re Morrison, 216 N.J. Super. 143, 157-158 (App. Div. 1987) Here, the Complainant did not file exceptions or provide a transcript. Upon review of the record, the Commission concludes that the ALJ's credibility determinations in this matter must be given deference and her findings based on those determinations cannot be overturned.

The Commission also concludes that the findings issued by the ALJ provide a sufficient basis for reviewing her conclusions and recommendations and further recognizes that "the ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them." (State, Dept. of Health v. Tegnazian, 194 N.J. Super. 435 at 442, 443.) The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefore." (Id. at 443) Here, the Commission finds that the ALJ fairly summarizes the testimony and evidence.

Upon careful and independent review, the Commission finds that the record supports the ALJ's factual findings as well as the legal conclusion that the Complainant failed to meet her burden to prove by a preponderance of the credible evidence that the Respondent violated N.J.S.A. 18A:12-24.1(e) or (f) of the Code of Ethics for School Board Members. Consequently, the ALJ could find no violation of the Act and dismissed the Complaint. The Commission concurs for the reasons set forth in the ALJ's decision. Moreover, this tribunal has determined that the record and decision in this matter are no longer under seal.

DECISION

The Commission determines to adopt the ALJ's Initial Decision, dismissing the Complaint in its entirety. This decision is a Final Decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson
School Ethics Commission

Mailing Date: December 16, 2015

Resolution Adopting Decision – C34-13

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, at its meeting on November 24, 2015, the Commission received and considered the Initial Decision of the Administrative Law Judge, including the record and all documents submitted to the ALJ; and

Whereas, neither party filed exceptions in response to the ALJ's decision; and

Whereas, the Administrative Law Judge concluded in her Initial Decision that the Complaint should be dismissed for failure of the Complainant to meet her burden to prove a violation of the Code by a preponderance of the credible evidence; and

Whereas, at its meeting of December 15, 2015, the Commission determined to adopt the Initial Decision of the ALJ as the Final Decision and to unseal the record; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution
was duly adopted by the School Ethics
Commission at its public meeting on
December 15, 2015.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission