
JANINE WALKER CAFFREY

v.

ISRAEL VARELA
PERTH AMBOY BOARD OF EDUCATION,
MIDDLESEX COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

SEC Docket No. C35-13
OAL Dkt. No. EEC 00806-14
DECISION ON SETTLEMENT

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 22, 2013, by complainant, Janine Walker Caffrey, alleging that respondent, Israel Varela, a member of the Perth Amboy Board of Education, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* The complainant specifically alleged that Respondent Varela violated N.J.S.A. 18A:12-24.1(a), (c), (g), (i), and (j) of the Code of Ethics for School Board Members (Code). This matter was one of 11 cases filed by the complainant with the School Ethics Commission (Commission) against various Board members between April 23, 2012 and July 22, 2013. By letter dated July 29, 2013, the Complaint was sent to Respondent Varela, notifying him that charges against him were filed with the Commission and advising him that he had 20 days to answer the Complaint.

The parties were notified by letter dated September 27, 2013, that the Commission would consider this matter at its meeting on October 29, 2013, in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission would take one of several actions: decide to retain the complaint for a hearing by the Commission at a later date; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the Act.

Respondent Varela was also advised at that time that he had not filed a responsive pleading, and that if he did not file an answer or motion to dismiss in lieu of an answer by October 8, 2013, each factual allegation in the complaint would be deemed admitted. N.J.A.C. 6A:28-7.3(b). Respondent Varela retained counsel, who filed an Answer on his behalf on October 8, 2013, alleging that the complaint was frivolous. The complainant did not reply to the frivolous allegation.

At its meeting on October 29, 2013, the Commission voted to find the complaint not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Additionally, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this complaint to the Office of Administrative Law (OAL) for a *de novo* plenary hearing at which time the complainant would carry the burden to prove factually any violations of N.J.S.A. 18A:12-24.1

under the Code of Ethics for School Board Members within the standards set forth at N.J.A.C. 6A:28-6.4.

After transmittal of this matter to the OAL, the complainant contemplated filing a complaint in Superior Court against the Board for sundry civil rights violations and the Conscientious Employee Protection Act, *inter alia*. Counsel for the complainant suggested that the Board members, who were all potential parties in the future complaint, engage in pre-filing mediation in an attempt to settle all outstanding matters as well as those yet to be filed. Counsel for the parties contacted the Deputy Attorney General (DAG) representing the School Ethics Commission, on the three complaints in which the Commission found probable cause, seeking his participation in the global settlement. The DAG advised counsel that the Commission was not in a position to engage in negotiations of a global settlement at that time.

Sometime thereafter, without the Commission or DAG's knowledge, the parties settled all present and future matters, including the three SEC Code violation cases, in which Complainant Caffrey had the burden of proof. As a condition of the \$184,000 settlement, the complainant agreed to withdraw these matters before the Commission and signed the Settlement Agreement and General Release (Agreement) on June 13, 2014. At its meeting on June 19, 2014, the members of the Perth Amboy Board of Education, including Respondents Israel Varela, Samuel Lebreault, Obdulia Gonzalez and Milady Tejada, named respondents on the complainant's SEC Code violation cases, voted at approximately 12:56 a.m. on the morning of June 20, 2014 to approve the \$184,000 settlement. Pursuant to Paragraph 18 of the settlement document, the Agreement became effective after all the parties signed it.

On August 12, 2014, the OAL forwarded all three files cited in the Agreement marked as "Withdrawn" to the Commission. As the withdrawal of this matter was part of a multi-term Agreement, on September 16, 2014, the Commission returned the files to the Clerk of the OAL (North) for the issuance of an Initial Decision, pursuant to N.J.A.C. 1:1-19.1(b), to enable the Commission to properly review the Agreement. On September 26, 2014, only the instant file C35-13 was forwarded to the Commission for its review of the Initial Decision, in which the Administrative Law Judge (ALJ) concluded that the Agreement met the requirements of N.J.A.C. 1:1-19.1. 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 December 26, 2014, by which to issue its final decision in this matter.

The Initial Decision of the ALJ, approving the Settlement Agreement and Mutual Release, was reviewed by the Commission at its meeting on November 25, 2014. The Commission determined to modify the Initial Decision of the ALJ and only accepted the withdrawal of this matter with prejudice, as set forth on Paragraph 9, p.7 of the Settlement Agreement and General Release and further adopted the Initial Decision as modified as the final decision in this matter, dismissing the complaint with prejudice.

ANALYSIS

The parties to the Agreement fully set forth the terms of the settlement and considered it a complete release of all claims arising out of the facts of this controversy and any future claims

that the complainant may wish to assert against this respondent. Moreover, the complainant agreed to withdraw her complaint docketed as C35-13, among others pending before the School Ethics Commission in exchange for a \$184,000 payout and the release of this respondent from his liability for alleged violations of the School Ethics Act. Finally, since the agreement resulted from private mediation, its terms received no judicial oversight or review. The ALJ had the first opportunity to do so and, nonetheless, concluded that the Agreement met the requirements of N.J.A.C. 1:1-19.1 and that it is consistent with the law.

The School Ethics Commission is limited to enforcing the School Ethics Act, a set of minimum ethical standards by which all school officials must abide. While the provisions of the Act are broad in their scope, they simply do not prohibit all conduct by a school official that might be considered unprofessional, inappropriate or in violation of other State or Federal laws or regulations. Because the Commission has jurisdiction *only* over matters arising under the Act, it shall not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4.

Consequently, the Commission does not have jurisdiction to determine whether bargaining with an individual to leave town in exchange for a monetary settlement, which are terms of the Settlement Agreement, is constitutional or consistent with public policy. Further, the Commission does not have jurisdiction to determine if it is lawful for an individual to refuse to willingly testify in probable cause matters still pending before this Commission but would do so only if subpoenaed, even though this complainant filed these complaints and sought redress in this forum. Such a term of settlement holds the judicial process hostage to self-serving concerns; yet, these outcomes are beyond the jurisdiction of the Commission to review and enforce. This tribunal, however, is profoundly troubled by these terms and with the precedent they may set.

In contrast, the Act grants to the Commission exclusive jurisdiction over the ethical conduct of school officials and Board members. Accordingly, the Settlement should not have become effective until this Commission had the opportunity to review the withdrawal. Most importantly, the Commission is genuinely alarmed that this respondent voted for approval of the Agreement, using public funds to escape liability for own his unethical actions as alleged in the Complaint. The impropriety of Respondent Varela's involvement in the discussion of the Agreement and his vote to approve should have been obvious to him and the other Board members.

Moreover, the Commission is mindful that Respondent Varela's conduct has the potential to compromise the Board. The very purpose of the School Ethics Act states:

...it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A.18A:12-22

The Commission finds that by his conduct, the respondent cast a shadow on the validity of the vote to approve the Settlement from which he so clearly benefitted. By dint of his vote, the public may now have lost its respect and confidence for this member and the Board, which are now compromised and the people's trust violated. The public had the right to expect leadership and selflessness from their elected officials. On the early morning hours of the vote to accept the Settlement Agreement, the public received neither.

DECISION

Upon review and for the reasons set forth above, the Commission modifies the Initial Decision of the ALJ and accepts only the withdrawal of this matter with prejudice, as set forth on Paragraph 9, p.7 of the Settlement Agreement and General Release and adopts the Initial Decision as modified as the final decision in this matter. The matter is hereby dismissed with prejudice.

Robert W. Bender
Chairperson

Mailing Date: December 17, 2014

Resolution Adopting Decision – C35-13

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 (OAL) for hearing; and

Whereas, while at the OAL, the parties to this matter executed a Settlement Agreement and Mutual Release setting forth the terms and conditions of a settlement, including the withdrawal of this matter; and

Whereas, the Administrative Law Judge concluded that the Agreement met the requirements of N.J.A.C. 1:1-19.1; and

Whereas, the Commission accepted the withdrawal by the complainant of the matter with prejudice, but not the Administrative Law Judge's conclusion that the Agreement met the requirements of N.J.A.C. 1:1-19.1; and

Whereas, at its meeting on November 25, 2014, the Commission determined to accept the withdrawal of the matter only; and

Whereas, the Commission finds that the within decision accurately memorializes its modification of the Initial Decision accepting the Agreement;

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it 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 16, 2014.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission