
IN THE MATTER

OF

DR. COLETTE HAYES,
Spring Lake Heights Board of Education
Monmouth County

:
:
:
:
:
:
:
:
:
:

BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No.: C02-98

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed by Theresa Casagrande on January 29, 1998. Therein, she alleges that Spring Lake Heights Board of Education member Dr. Colette Hayes violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, she first alleges that Dr. Hayes violated N.J.S.A. 18A:12-25, the disclosure mandate when she failed to disclose on her disclosure statement that as a chiropractor, she received compensation from a business that is a party to a contract with the Board, namely CIGNA and AmeriHealth. Secondly, she alleges that Dr. Hayes violated N.J.S.A. 18A:12-24(c) when she served as Chair of the negotiations committee and participated in closed session discussions regarding contract parameters and the vote to approve the health insurance carrier for the past two years.

Dr. Hayes filed her answer to the complaint on February 20, 1998, denying that she received compensation from CIGNA and AmeriHealth and denying she violated the Act by participating in negotiations or voting on the health insurance carrier. She submits that Ms. Casagrande raised this issue at the August 27, 1997 Board meeting. Board attorney Francis Campbell, Esq., rendered an opinion addressing her concerns in executive session on September 15, 1997. She urges the Commission to find the complaint frivolous under N.J.S.A. 18A:12-29(e) considering that the timing of the complaint coincided with the April 1998 election.

The Commission notified the parties that it would discuss this matter at its April 28, 1998 meeting. The Commission indicated that the parties were not required to attend. Dr. Hayes appeared with the board attorney, Mr. Campbell, who stated he was present as a witness and not her attorney. Ms. Casagrande informed Commission staff that she would attend, but she did not. The Commission dismissed the complaint at the conclusion of its meeting and adopted this decision at its meeting of May 26, 1998.

FACTS

The Commission finds the material facts in this case to be undisputed. Ms. Casagrande and Dr. Hayes are members of the Spring Lake Heights Board of Education, a five-member Board. Dr. Hayes was elected in April 1996 for a three-year term. Ms. Casagrande was elected in April 1995 for a three-year term. She did not run for re-election in April 1998.

The Spring Lake Heights Board of Education currently provides medical benefits to its employees through a contract with AmeriHealth. AmeriHealth provides traditional coverage with a PPO incentive to the insured. Before AmeriHealth, the Board contracted with CIGNA.

Dr. Hayes is a chiropractor whose solo practice is located in her home in Spring Lake Heights. She is not a participating health care provider with a Preferred Provider Organization (PPO) or Health Maintenance Organization (HMO). She can only accept health insurance under traditional plans. Her patients are fully responsible for the cost of their treatment. Dr. Hayes has one patient whose health benefits are provided through AmeriHealth. All payments for services rendered to the aforementioned patient have been paid directly to Dr. Hayes by the patient. Any reimbursements by AmeriHealth have been made directly to the patient.

The School Ethics Act requires that school officials file financial and personal/relative disclosure statements. N.J.S.A. 18A:12-25. Question three on the personal/relative disclosure form, from N.J.S.A. 18A:12-25(a)(3), asks, "Do you or any relative **receive compensation from** or **have an interest in any business** which is a party to a contract with a school district in which you hold office or are employed." In response to this question, Dr. Hayes checked, "Not Applicable," on her May 2, 1997 statement. At the bottom of the statement, she certified that the statement contained no willful omission of material fact and constituted a full disclosure with respect to all matters required by the Act.

On June 5, 1997, the Board's Business Administrator drafted a memorandum to all board members indicating that CIGNA had increased its insurance rates 30% for the renewal of the Board's current policy. She states that AmeriHealth, the company that has underwritten the coverage that CIGNA had provided, committed to providing equal to or better coverage for the Board and their rates have come in lower than the current plan. Thus, she recommends that the Board contract with AmeriHealth. At the June 9, 1997 executive session of the Board, Dr. Hayes participated in the discussion regarding the carrier. At the public meeting on the same date, Dr. Hayes voted to approve AmeriHealth as the district's health insurance carrier. (She also had participated in this vote in 1996 when CIGNA was appointed as the health insurance carrier.) Dr. Hayes became chair of the Board's negotiations committee on July 14, 1997. Susan Ciallella, then President of the Board, recommended the appointment.

The complainant now asks the Commission to find that Dr. Hayes violated the School Ethics Act by failing to disclose on her financial disclosure statement that she received compensation from CIGNA and AmeriHealth, who had contracts with the Board. In addition, she asks the Commission to find that Dr. Hayes violated the Act by chairing the negotiations committee and voting on the health insurance contract when the outcome could affect her business.

ANALYSIS

The first issue before the Commission is whether the act required respondent to indicate on her personal/relative disclosure statement that she received “compensation” from CIGNA or AmeriHealth pursuant to N.J.S.A. 18A:12-25(a)(3) of the School Ethics Act. This subsection provides:

On a form to be prescribed by the commission and to be filed annually with the commission, each school official shall state: ... (3) whether the school official or a relative is employed by, receives compensation from, or has an interest in any business which is a party to a contract with the school district with which the school official holds office or employment ... and, if so, the name of each such business.

Consequently, N.J.S.A. 18A:12-25(c) indicates that:

A school official who fails to file a statement or who files a statement containing information which the school official knows to be false shall be subject to reprimand, censure, suspension, or removal pursuant to the procedures established in ... N.J.S.A. 18A:12-29. ...

As set forth in the certification on the form, the omission of a material fact is equivalent to the falsification of a material fact.

This is a question of first impression for the Commission. The School Ethics Act and the regulations thereto, do not define the term, “compensation.” Therefore, the Commission looked to dictionary definitions, the first of which provides, “1. The act of compensating. 2. Something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc.; indemnity.” *The Random House College Dictionary*, Revised Edition, 1984 at 274. Black’s Law Dictionary similarly defines “compensation” as:

Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased. [*Black’s Law Dictionary*, 5th Ed., 1979 at 256.]

The Board Attorney, Francis Campbell, Esq. advised the Board, after conferring with his partners, that the payments made to Dr. Hayes were not “compensation” from the insurance company. Rather, they constituted an acceptance of an assignment of benefits payable to the patient by the insurer. He further advised that the payment was not for a debt that existed between the insurer and Dr. Hayes, but a debt that existed between the patient and Dr. Hayes. He therefore advised that Dr. Hayes’ receipt of payments from the insurer did not constitute compensation from a business which is a party to a contract with the School District as intended by the School Ethics Act.

The dictionary definitions and the Legislative Declarations set forth at N.J.S.A. 18A:12-22 of the School Ethics Act appear to comport with Mr. Campbell’s advice. The money paid by the insurer to Dr. Hayes is not something given or received as an equivalent for services, debt or loss. The insurance company is not indemnifying Dr. Hayes. As set forth above, Dr. Hayes is not a participating physician in any PPO or HMO. In the present case, the contractual relationship is only between the patient and Dr. Hayes. The insurer in a traditional plan agrees to pay the patient’s debt either to the patient or to Dr. Hayes. The plan does not circumscribe the amount of her remuneration. The patient must pay Dr. Hayes whether insurance coverage exists or not. There may be instances in which a doctor has a contractual relationship with an insurer such that insurance payments to her will be considered compensation, but this is not one of them. Thus, the Commission concludes that any money Dr. Hayes received from either CIGNA or AmeriHealth was not compensation required to be reported on Dr. Hayes’ disclosure statement pursuant to N.J.S.A. 18A:12-25.

The next issue is whether Dr. Hayes’ participation on the negotiations committee and vote on the insurance carrier was in violation of N.J.S.A. 18A:12-24(c) of the School Ethics Act. N.J.S.A. 18A:12-24(c) of the School Ethics Act provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Thus, the question is whether Dr. Hayes had a direct or indirect financial or personal involvement that might reasonably be expected to impair her ability to objectively participate in negotiations with the Spring Lake Heights Education Association or vote on the insurance carrier. Ms. Casagrande argues in her complaint that a major cost consideration in the negotiated contract is health benefits. She alleges that the health benefits issue could affect Dr. Hayes’ ability to receive compensation. For example, she says, if the district’s deductible goes up staff members may be less likely to go to her for treatment. Also, if the district switches to an HMO instead of traditional coverage, the change will affect her practice. She argues that Dr. Hayes is negotiating a medical package the benefits of which presently pay her fees. Last, she states that Dr. Hayes

should not have participated in the vote to approve the contract with a health insurance carrier when she knew she was treating staff members with such coverage.

As set forth above, the Commission finds that the patient is responsible for the payment of Dr. Hayes' fees, not the insurance company. Therefore, if Dr. Hayes treats certain staff members, one could argue that she should avoid discussing and voting on issues involving those specific staff members. But she does not have to avoid discussing the contract, inclusive of health benefits, that covers all staff members. Dr. Hayes will be paid by her patient whether he or she has health insurance or not. The information before the Commission indicates that Dr. Hayes' chiropractic practice could not reasonably be expected to impair her objectivity in negotiating the contract. Furthermore, the Commission does not have any information before it to indicate that the outcome of negotiations could have a potential adverse impact on Dr. Hayes' practice. Therefore, the Commission does not find that Dr. Hayes had a personal or financial involvement that might reasonably be expected to impair her objectivity in negotiating the contract.

Regarding the vote on the carrier, the documents submitted by Ms. Casagrande indicate that the Board was required to provide staff members with a health benefits package equal to or better than their current one. The Spring Lake Heights Business Administrator indicated in her memorandum to the Board that she recommended AmeriHealth because it could provide an equal benefits package at a lower cost to the Board. The information before the Commission does not provide a reasonable basis to expect that Dr. Hayes could not objectively vote on a health insurance carrier for the staff. Therefore, the Commission does not find that Dr. Hayes had a personal or financial involvement with the insurance carrier with which the Board entered into a contract and finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act.

CONCLUSION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-25 by failing to state that she received "compensation" from the insurance carrier for the board's employees. It further finds no probable cause to credit the allegations that her participation in negotiations and vote on the insurance carrier violated N.J.S.A. 18A:12-24(c). The Commission therefore dismisses all of the charges against respondent Dr. Hayes.

Respondent has asked that the Commission find this complaint to be frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In support of this request, she notes that Ms. Casagrande raised these issues in August 1997 and the Board Attorney advised that respondent did not violate the School Ethics Act at a meeting in September 1997. She argues, however, that Ms. Casagrande filed her complaint in January 1998 to coincide with the expiration of her term in office and to influence the election.

N.J.S.A. 18A:12-29(e) provides that the standard for determining whether a complaint is frivolous shall be the same as that set forth in N.J.S.A. 2A:15-59.1. The latter provides:

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 New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993). The Commission cannot find, nor does the respondent argue, that the complaint meets the second standard since the School Ethics Act does not define “compensation” and complainant’s interpretation is not unreasonable. Rather, respondent seems to argue that the complaint was filed in bad faith, solely for the purpose of harassment or malicious injury. The Commission does not find the complaint meets this stringent standard. The complainant appears to sincerely believe that respondent violated the Act. Since the Commission had never before addressed this issue, it cannot say that the complaint clearly was commenced in bad faith. Regarding the timing of the complaint, the Commission notes that Dr. Hayes’ term of office does not expire until 1999 and Ms. Casagrande chose not to run for office in 1998. Therefore, the Commission cannot conclude that the timing of the complaint supports the assertion that the complainant acted in bad faith to influence the election. In summary, the Commission does not find the complaint to be frivolous and does not impose sanctions.

The decision finding no probable cause and dismissing the complaint constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C02-98

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony presented; and

Whereas, the Commission found no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-25 or N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission adopts the proposed decision referenced as its decision in this matter finding no probable cause and dismissing the complaint against Dr. Colette Hayes.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 26, 1998.

Lisa James-Beavers
Executive Director

[c0298dec/c:lisajb/decision]