
JOHN BELLONE,

v.

**RICHARD CZAJKOWSKI,
STAFFORD TOWNSHIP BOARD
OF EDUCATION,
OCEAN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C42-18

**DECISION ON
MOTION TO DISMISS**

I. PROCEDURAL HISTORY

This matter arises from a Complaint that was initially filed on June 21, 2018, by John Bellone (Complainant), alleging that Richard Czajkowski (Respondent), a member of the Stafford Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated June 28, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On July 9, 2018, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:28-6.3. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(d) and N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On July 11, 2018, the Complaint was sent to Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On August 3, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 12, 2018, Complainant filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated September 17, 2018, that this matter would be placed on the Commission's agenda for its meeting on September 25, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 25, 2018, the Commission considered the filings in this matter and, at its meeting on October 30, 2018, the Commission voted to grant the Motion to Dismiss in its entirety. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

In this matter, which is related to another ethics matter involving the same parties, Complainant alleges that, on or about May 10, 2018, Respondent made him (Complainant) feel "uncomfortable" and "distressed" when Respondent approached him in his (Complainant's)

office, interrupted Complainant's work day, and then asked him (Complainant) to step out into the hallway, a location that Complainant identified as outside the earshot of his secretary. During this discussion, Respondent invited Complainant out to lunch to discuss his (Complainant's) resignation and the shared services agreement between the Pinelands School District and the Little Egg Harbor School District, as Complainant is the Vice President of the Little Egg Harbor Board of Education.

Complainant asserts that, by engaging Complainant in this conversation, Respondent violated N.J.S.A. 18A:12-24.1(d) because he (Respondent) approached Complainant without the knowledge of, and without first consulting with the Superintendent or the Board, and "wanted to discuss the Facilities Department." Complainant further alleges that Respondent violated N.J.S.A. 18A:12-24.1(i) because he approached Complainant despite being "told numerous times" to not speak directly to District employees concerning the operation and administration of the Facilities Department.

B. Motion to Dismiss and Allegation of Frivolous Filing

Upon receipt of the Complaint, Respondent filed a Motion to Dismiss and also argued that the Complaint is frivolous. Respondent argues that his "lunch invitation" to Complainant was only to thank him for his service, to resolve any misinformation that may have led to his resignation, and to discuss any concerns that Complainant may have had with Respondent personally. Respondent asserts that Complainant declined the lunch offer at first but, following a second attempt from Respondent, Complainant said he would think about it and accepted Respondent's cell phone number. According to Respondent, Complainant's actions and response did not indicate "distress." Respondent also argues that, before parting, he congratulated Complainant on his new job and asked him how the shared services agreement "would end up working for Little Egg Harbor" because he knew that Complainant was the Vice President on the Little Egg Harbor Board of Education. Complainant responded the agreement would save the district "a lot of money."

Respondent asserts that the meeting, invitation to lunch, and all discussions were not an attempt to individually administer Complainant's department and did not undermine the proper performance of his duties; therefore, Respondent submits that he did not violate N.J.S.A. 18A:12-24.1(d) and N.J.S.A. 18A:12-24.1(i). Respondent also alleges the Complaint is frivolous because Complainant should have known the "second of his unjustified attacks" is without reasonable basis in law.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In his response to the Motion to Dismiss and allegation of frivolous filing, Complainant reasserts that Respondent has been on school grounds without the Superintendent's consent "numerous times," "prying for information" from various District employees, and that this put Complainant in an uncomfortable position. Complainant also asserts that Respondent violated his oath and requests that Respondent be barred from entering school grounds, censored or removed as a Board member, and offer Complainant an apology.

III. ANALYSIS

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(d) and N.J.S.A. 18A:12-24.1(i) as set forth in the Complaint.

B. Tort Claim Notice

On September 19, 2018, counsel for Respondent advised the Commission's staff that, on or about September 11, 2018, the Board (not Respondent) was served with a "Notice of Claims" from Complainant, indicating his intent to file a lawsuit against the Board. The "Notice of Claims," a copy of which counsel provided to the Commission's staff on September 20, 2018, listed the "General description of injuries, damages, or losses, known at present time" as follows:

Constructive termination in violation of public policy, CEPA violations, hostile work environment, false light invasion of privacy, OPMA, School Board Ethics Act, New Jersey Constitutional Rights as a result of members of the Board...attributing false conduct to Mr. Bellone and speaking with non-board members concerning his employment in an attempt to falsify reports, and conducting an investigation of Mr. Bellone without Board knowledge or approval.

Prior to reviewing this matter at its meeting on September 25, 2018, the Commission initially discussed whether, in light of the "Notice of Claims" filed by Complainant, it was required, pursuant to N.J.S.A. 18A:12-32 and N.J.A.C. 6A:28-1.5, to hold this matter in abeyance. Ultimately, the Commission decided that because the subject of the "Notice of Claims" was not, based on the information available to the Commission as of September 25, 2018, actually pending in a court of law or administrative agency of the State, it was not required to hold the matter in abeyance, and could proceed to review and make a recommendation relative to Respondent's Motion to Dismiss and allegation of frivolous filing.

C. Alleged Code Violations

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(d) and N.J.S.A. 18A:12-24.1(i) of the Code, and these provisions provide, respectively:

d. 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.

i. I will support and protect school personnel in proper performance of their duties.

1. Alleged Violation of N.J.S.A. 18A:12-24.1(d)

As set forth in N.J.A.C. 6A:28-6.4(a)(4), factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(d). By being on school property, entering Complainant's office, interrupting Complainant's work day, and "directing" Complainant into the hallway to have a conversation with him, Complainant suggests that Respondent violated N.J.S.A. 18A:12-24.1(d) because this conversation occurred without the knowledge of the Superintendent or the Board. Other than asking Complainant to step out in the hallway, there is no evidence that Respondent gave a direct order to Complainant, or otherwise engaged in conduct that violates N.J.S.A. 18A:12-24.1(d). Therefore, the Commission finds that this allegation should be dismissed.

2. Alleged Violation of N.J.S.A. 18A:12-24.1(i)

Pursuant to N.J.A.C. 6A:28-6.4(a)(9), factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(i). By being on school property, entering Complainant's office, interrupting Complainant's work day, and "directing" Complainant into the hallway to have a conversation with him, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(i) because he (Respondent) was "told numerous times" not to speak with District employees "concerning the operation and administration of the facilities department." However, based on Complainant's factual allegations, Respondent merely engaged Complainant in a conversation about his resignation (which had already been tendered), and inquired as to whether Complainant would be willing to have a more detailed conversation/meeting with Respondent outside of the school day. The two also discussed, briefly, a shared services agreement between two other boards of education. Notably, there is no evidence that the two discussed any specifics about the operations or the administration of the Facilities Department. In addition, there is no evidence that the conversation between Complainant and Respondent undermined, opposed, compromised, or harmed Complainant, even though it is clear that Complainant did not welcome, or even appreciate, the conversation. Therefore, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(i) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(d) or N.J.S.A. 18A:12-24.1(i). Therefore, the Commission grants the Motion to Dismiss in its entirety.

IV. REQUEST FOR SANCTIONS

At its meeting on September 25, 2018, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence which might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

V. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants the Motion to Dismiss in its entirety. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: October 31, 2018

**RESOLUTION ADOPTING DECISION IN
CONNECTION WITH C42-18**

WHEREAS, at its meeting on September 25, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to the Motion to Dismiss and allegation of frivolous filing, filed in connection with this matter; and

WHEREAS, at its meeting on September 25, 2018, the Commission discussed granting the Motion to Dismiss in its entirety, and dismissing this matter; and

WHEREAS, at its meeting on September 25, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

WHEREAS, at its meeting on October 30, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 25, 2018; and

NOW THEREFORE BE IT RESOLVED, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 30, 2018.

Kathryn A. Whalen, Director
School Ethics Commission