New Jersey
Appleseed

November 30, 2017

The Hon. Thomas R. Vena, J.S.C.
Essex County Superior Court
Hall of Records
470 Martin Luther King Jr. Blvd., 4th Fl.
Newark, N.J. 07102

Re: **City of Orange Township Bd. of Education v. City of Orange Township, et al.**
Docket No. ESX-L-6652-17

Dear Judge Vena:

On behalf of Defendant Committee for an Elected Orange School Board ("Committee of Petitioners" or "COP") in the above-referenced matter, please accept this Letter Brief in connection with the Committee's Motion for Sanctions *Nunc Pro Tunc*, pursuant to R. 4:42-9, R. 1:4-8 and N.J.S.A 2A:15-59.1. The Committee had intended to submit this motion within a week after you rendered your decision in this matter, October 20, 2017. (Steinhagen Cert., Ex. A) The City of Orange Township Board of Education (the "BOE"), however, filed a motion for emergent relief in the Appellate Division on October 24, 2017, and jurisdiction was removed from this court.

New Jersey Appleseed
Public Interest Law Center of New Jersey
50 Park Place, Suite 1025
Newark, New Jersey 07102

Phone: 973.735.0523 Fax: 973.710.4653
Email: steinhagen_pilc@yahoo.com
Website: www.njappleseed.org

The Appellate Panel issued its decision on October 31, 2017; it not only denied the BOE's motion, but also summarily affirmed this Court's denial of injunctive relief and dismissal of the case. Id., Ex. B. We are now requesting that this court amend its final order in order to require the BOE to pay the Committee of Petitioners' attorneys fees and costs pursuant to court rules and statute. A R. 1:4-8 Notice and Demand to Withdraw the Complaint was timely served in this matter on September 22, 2017. Id., Ex. D.

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PRELIMINARY STATEMENT

This case involved a Complaint filed by the BOE against the Committee of Petitioners, and the Orange Township City Clerk and the Essex County Clerk seeking to prevent the Committee's proposed referendum question from appearing on the ballot in order to maintain the status quo. The City of Orange Township was also named as a defendant though no allegations challenged the City's actions. In fact, the City did not submit responsive papers; it simply supported the BOE's position in court. Instead, the BOE sued the City Clerk who just followed the law when she decided to deem the petition sufficient and valid.

The COP asserts that Plaintiff's lawsuit was initiated in bad faith for the improper purpose of interfering with the COP's statutory right of referendum. The BOE clearly sought to interfere with this substantive right by preventing the reclassification question form appearing on the ballot and depriving Orange voters of the opportunity to choose an elected school board rather than keeping an appointed board.

Pursuant to Tumpson v. Farina, 218 N.J. 450 (2014), New Jersey voters' statutory right of referendum is deemed a civil right, the deprivation of which constitutes a violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 ("CRA"). And, although attempts to interfere with civil rights must be accompanied by threats of violence to be actionable under that

Act, remedies for conduct that threatens the deprivation of civil rights may be assessed under frameworks other than the CRA. Consequently, it is the COP's assertion that the filing of a lawsuit solely to protect the political status quo and prevent voters from exercising their civil rights clearly constitutes an improper motive warranting sanctions. Cf. LoBiondo v. Schwartz 199 N.J. 62 (2009) (approving the use of the frivolous litigation statute and rule, together with their attorney's fee sanctions, as an appropriate means to combat Strategic Lawsuits Against Public Participation -- SLAPP -- suits); Maximus Real Estate Fund, LLC v. Marotta, No. A-5501-07T1, 2009 N.J. Super. Unpub. LEXIS 2228 (App. Div. Aug. 13, 2009)(granting sanctions in response to a SLAPP action).

Within this legal framework, the COP brings this Motion for Sanctions *nunc pro tunc* consisting of a demand for reasonable attorney fees and costs. The motion is relatively straight forward since it is clear from the pleadings, the previous efforts of the BOE to derail the voters' desire to change the status of the BOE itself and statements made by BOE members that the BOE knew or should have known when it filed its Complaint that it's central claim that the Frequency Restriction was triggered by a vacated election had no reasonable basis in law; that it filed the action solely for the improper purpose of depriving the COP of its statutory civil right of referendum;

and that it deliberately exaggerated the cost of special school elections in order to persuade the court that it was acting on behalf of the taxpayers rather than just its own institutional interest. It is under these and similar circumstances that New Jersey courts have determined that sanctions are the appropriate remedy.

STATEMENT OF FACTS

On July 6, 2016, the Orange City Council passed resolution 125-2016, calling for a referendum at the next general election, at which time the voters could decide whether to change from an appointed school board, a Type I school district, to an elected school board, a Type II school district. City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 451 N.J. Super. 310 (Ch. 2017)(hereinafter, "City of Orange Twp. Bd. of Educ."). In accord with the Council's resolution, the referendum question appeared on the November 8, 2016 General Ballot. The Orange electorate voted overwhelmingly to switch from an appointed school board to a board elected by the residents "with approximately 77% of the voters expressing their desire for the change." City of Orange Twp. Bd. of Educ., supra, 451 N.J. Super. at 316.

On March 28, 2017, a special school board election occurred at which time an additional two members were elected to the school board. Approximately one month later, this court

"voided" the election results of the referendum election as well as the special school board election, which was predicated upon the approval of the November referendum question. Steinhagen Cert., Ex. E. Specifically, with respect to the referendum that appeared on the November 8, 2016 General Election ballot, the trial court ordered that the "outcome of the Referendum . . . is hereby declared null and void and is vacated in its entirety." (Id., Ex. E) Similarly, the "March 28, 2017, [Special] election, predicated upon the passage of the Referendum, is also declared null and void and is vacated in its entirety." (Id.)

On August 22, 2017, the Committee of Petitioners submitted a petition to the Orange City Clerk requesting that a public question be placed on the November 7, 2017 General Election ballot, asking the Orange electorate again whether it wanted to change from a Type I school district to a Type II school district -- the Reclassification Referendum herein at issue. (Id., Ex. A2 at 3) Given the fact that the previous November referendum election was voided because of a "defective" public question and interpretive statement, the petition set forth a question and statement that closely adhered to the language employed by the Court in its City of Orange Twp. Bd. of Educ. opinion to ensure that an ample amount of detail was provided "to allow voters in the City to be sufficiently informed." Id. supra, at 328.

On August 25, 2017, the City Clerk wrote the COP via e-mail informing the Committee that she had been "informed by the Orange City Attorney that the Law Department ha[d] determined that the legality of resubmitting the petition, either by resolution or petition [was] prohibited. Therefore, at the direction of the Law Department" she could not proceed with verifying the COP's petitions. (Steinhagen Cert., Ex. D) Three hours later, she sent the COP a revised letter via e-mail, stating that the City Attorney had now decided that she could proceed with processing the submitted petitions. (Id., Ex. E) She additionally stated that she had determined that the petition was "valid and sufficient." (Id.) By letter dated August 28, 2017, the City Clerk certified that the COP's petition was "sufficient and valid," and submitted the Public Question and Interpretive Statement appearing on the petition (in three languages) to the County Clerk for further processing. (Steinhagen Cert., Ex. A2 at 3)

On September 15, 2017, the BOE filed an Order to Show Cause ("OTSC"), seeking temporary restraints, and a Verified Complaint, which was served on each of the defendants in this matter, including Anthony Johnson, the Chairman of the COP. A hearing was held before this Court on September 18, 2017, at which time he denied the BOE's request for temporary restraints finding that the BOE had not established either irreparable harm

and that the right underlying its claim was "settled law," or that the equities weighed in its favor and that it was likely to succeed on the merits. (Id., Ex. A3 at 2)

On October 2, 2017, the Committee of Petitioners filed a Motion to Dismiss, pursuant to R. 4:6-2(e) for failure to state a claim for injunctive relief; counsel for the City Clerk filed an Answer, and neither the City of Orange nor the County Clerk filed a responsive pleading. In accord with the OTSC, the BOE filed reply papers, and, in accord with R. 1:6-3(a), the COP filed, on October 16, 2017 a reply to the BOE's opposition to its Motion to Dismiss. The BOE then filed a sur-reply without leave of the court two days before the return date of the OTSC. On October 20, 2017, this Court held a hearing, heard oral argument and read its decision from the bench. Steinhagen Cert., Ex. A2. An Order was signed later that day. (Id., Ex. A1).

In its decision, this Court stated:

> The inherent irreconcilable inconsistency of seeking to void an election that overwhelmingly approved the conversion to an elected school board and then seeking to bar the repeat of the referendum that presumably supplies what the plaintiff claimed (and the court agreed) was missing is obvious. (Id., Ex A2 at 5-6)

It further stated that "The Court's [previous] holding was predicated on the referendum appearing on the ballot again once it was deemed legally sufficient." (Id., Ex. A2 at 6)

On October 25, 2017, the BOE filed a Motion for Emergent Relief seeking to enjoin the Reclassification Referendum. The motion was denied and the Appellate Court "summarily affirmed" this court's denial of injunctive relief. (Id., Ex. B)

LEGAL ARGUMENT

I. PLAINTIFFS' COMPLAINT VIOLATES ALL THREE PRONGS OF R. 1:4-8(a).

A. As a Matter of Law, the BOE Commenced and Continued Its Lawsuit Against the Committee of Petitioners in Bad Faith Solely for the Purpose of Depriving Voters of Their Statutory Right of Referendum.

First and foremost, the Committee of Petitioners asserts that the Verified Complaint violates R. 1:4-8(a)(1) and N.J.S.A. 2A:15-59.1(b)(1), because it was brought in bad faith for the improper purpose of depriving the COP of its statutory right of referendum. The BOE clearly sought to prevent the COP, and the voters whom it represented, from exercising their substantive right by preventing the reclassification question from appearing on the ballot on a spurious basis and depriving Orange voters of the opportunity to choose an elected school board rather than maintaining an appointed board.

Pursuant to Tumpson v. Farina, 218 N.J. 450 (2014), New Jersey voters' statutory right of referendum is deemed a civil right, the deprivation of which constitutes a violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 ("CRA"). And, although attempts to interfere with civil rights must be

accompanied by threats of violence to be actionable under that Act, remedies for conduct that threatens the deprivation of civil rights may be assessed under frameworks other than the CRA. Consequently, it is our assertion that the filing of a lawsuit solely to protect the political status quo and prevent voters from exercising their civil rights clearly constitutes an improper motive warranting sanctions; such a lawsuit is similar to Strategic Lawsuits Against Public Participation ("SLAPP"), which are considered *per se* malicious. See LoBiondo v. Schwartz, 199 N.J. 62 (2009) (approving the use of the frivolous litigation statute and rule, together with their attorney's fee sanctions, as an appropriate means to combat SLAPP); LoBiondo v. Schwartz, 323 N.J. Super. 391, 423 (App. Div.) cert. denied 162 N.J. 488 (1998) (where the court stated that it "regard[ed] the bringing of a suit for the primary purpose of . . . suppressing legitimate public debate and protest as *per se* malicious"); Maximus Real Estate Fund, LLC v. Marotta, No. A-5501-07T1, 2009 N.J. Super. Unpub. LEXIS 2228 (App. Div. Aug. 13, 2009)(granting sanctions in response to a SLAPP action)(Steinhagen Cert., Ex. H).

At the heart of a SLAPP suit is a party's intention to interfere with a citizen's constitutional right to speak out and petition government. Judge Pressler in Lobiondo v. Schwartz, supra, 323 N.J. Super. at 418 defined a SLAPP suit, as one

"commenced by commercial interests for the purpose of intimidating ordinary citizens who exercise their constitutionally protected right to speak out." Id. She continued, "[u]ltimately prevailing in [SLAPP] litigation is not the point - rather the litigation exercise is undertaken in order to impose upon these citizens the expense and burden of defending a lawsuit against them." Id. Judge Pressler then concluded that "the court does not think litigation whose primary intent is to infringe upon another's [constitutional] rights can be otherwise regarded [than per se malicious]." Ibid. at 423. See also Turner v. Wong, 363 N.J. Super. 186, 204 (App. Div. 2003)(filing a claim for theft to discourage another from exercising her civil rights is per se malicious, citing Lobiondo v. Schwartz).

In this matter, the BOE ostensibly does not represent a commercial interest that is seeking to deprive citizens of their constitutional right to petition government or to protest. Rather, the court is faced with a municipal entity seeking to deprive its voters of their statutory right to legislate and participate in government. A statutory right that is akin to the First Amendment rights discussed in LoBiondo, and one that is similarly protected by the CRA. Tumpson v. Farina, supra, 218 N.J. at 450. Furthermore, although it is clear that the BOE desired to win its litigation, there is little doubt that it

also sought to impose upon the COP the expense and burden of defending against this action, and thus to send a chilling message to other parents who may desire to hold the BOE accountable. As the Appellate Division in Baglini v. Lauletta, 338 N.J. Super. 282 (App. Div. 2001) noted, SLAPP defendants are not the only parties injured by a SLAPP suit; rather "the common weal is obviously impaired as well since the consequence of a SLAPP suit is not only to silence the defendant, but to deter others who might speak out as well." Id. at 303 (quoting LoBiondo v. Schwartz). Accordingly, unless the BOE is sanctioned, it, like a typical SLAPP plaintiff, will be undeterred from initiating frivolous lawsuits or taking other actions designed to prevent the voters and taxpayers of the Township from securing greater control over the BOE and its budget.

The BOE's improper purpose of interference is not only evidenced by some of the BOE's actions prior to your Honor's decision in April 2017 (which set aside and vacated the results of the November 2016 reclassification referendum election), but more importantly, by several statements made by BOE members since that decision. For instance, after being informed by an attorney from the State School Boards Association that a vacated election does not trigger the Frequency Restriction in Title 18A's referendum provision, several BOE members explicitly

stated that they did not want an elected school board and instead wanted the BOE to remain appointed. See Tarver Cert., ¶2. BOE members may hold such opinions, may express them in an election campaign, but such sentiments cannot justify initiating a lawsuit in order to prevent Orange voters from exercising their civil rights, especially in face of a competent legal opinion from the State School Boards Association that such a claim would have no merit (under the circumstances). See M.W. v. R.L., 286 N.J. Super. 408, 412 (App. Div. 1995)(finding that lawsuits brought based on the party's knowledge of its own wrongful conduct are considered frivolous necessitating the award of fees and costs to the prevailing party).

More recently, the BOE has continued to show its true intent when it declined to take the procedural steps necessary to hold a January Special Election for two additional Orange Board School Board members, as it is lawfully required to do following a successful Reclassification Referendum. N.J.S.A. 18A:9-10. See Tarver Cert., Ex. B. Not only is the BOE required to hold an election for two additional seats, but the 86% of Orange voters who approved the Referendum this November also voiced their approval for holding a Special Election in January, 2018, as presented in the Petition as well as the Interpretative Statement that appeared on the ballot. Id. The BOE's recent failure to act, together with its failure last year to request a

Special Election in January 2017 and March 2017, and its refusal to respond to the County Clerk's outreach to the BOE with respect to this issue, are all further evidence that the BOE sought to deprive the voters of Orange of their statutory right to reclassify their school district when initiating this lawsuit; and now, after the BOE lost the election, to deprive them of their right to hold school board elections. The BOE's refusal to respect the results of the November 2017 Reclassification Referendum is a clear indication that the BOE wants to maintain the status quo, and is doing everything it can do to thwart the will of the voters. Such intent constitutes bad faith or improper purpose justifying the COP's request for sanctions.

B. The BOE Knew or Should Have Known That Its Claim Was Without a Reasonable Basis in Law

In addition to evidencing improper purpose, the BOE's Verified Complaint violated R. 1:4-8(a)(2) and N.J.S.A. 2A:15-59.1(b)(2), because the BOE's claim was not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law. In the Verified Complaint, the BOE asserted that "[t]o place the referendum question on the ballot would violate the clear proscriptions of N.J.S.A. 18A:9-4 and N.J.S.A. 18A:9-5." Ver. Compl. ¶29. It supported its position simply on the basis that an "election was

held" on the very same reclassification question. Ver. Compl. ¶14. This extremely narrow and literal interpretation of the statute was at best opportunistic, and, since it violated established principles of statutory construction was more likely yet another indication of improper purpose and malicious intent.

As argued in the COP's Memorandum of Law In Support of Its Motion to Dismiss, these statutory provisions cannot be viewed in isolation. Though found in Title 18A governing Education, these three related referendum provisions are also governed by Title 19 concerning Elections and must be seen in the context of other public referendum provisions that are littered throughout New Jersey statutes as well. In fact, referendums on public questions, such as the reclassification question at issue herein, can be contested under N.J.S.A. 19:29-1, and can be set aside under N.J.S.A. 19:29-9 (providing that "a certificate of elections" may be "annul[led]" and an election "set side") Indeed, it was the BOE's draft of the Final Judgment, dated April 24, 2017, which was signed by this Court, that employed the language of the election contest statutes when setting aside the Referendum election that appeared on the November 8, 2016 General Election ballot. Steinhagen Cert., Ex. E. Specifically, pursuant to that judgment, the Reclassification Referendum election was "vacated in its entirety" and the election "outcome" was declared "null and void." As a direct result of

this Final Judgment, the Referendum election that no doubt occurred as a matter of fact, was rendered without any legal or binding effect. As this Court held in its October 20, 2017 opinion:

> Both Plaintiff and Defendants acknowledge the November 8, 2016 referendum result was vacated and consequently the referendum itself had no effect and Plaintiff was granted injunctive relief, contrary to Plaintiff's strained construction that a referendum simply appearing on the ballot initiates the four-year waiting period. The statute, however, indicates that the four-year requirement begins after an election was held, and since the previous election was rendered meaningless, it was not actually held.
> (Steinhagen Cert., Ex. A2 at 5)

This reasoning was specifically affirmed by the Appellate Division that noted that the November 2016 referendum was "judicially declared a nullity" and therefore did not trigger the Frequency Restriction. Id., Ex. B at 2.

Both this Court and the Appellate Division noted that there is nothing in N.J.S.A. 18A:9-4 and N.J.S.A. 18A:9-5 and its Legislative history that prohibits the rerun of a Reclassification Referendum election that was vacated, and, thus, as a matter of law, did not occur or effectively, was not held. As the BOE told the Court during oral argument in support of its Order To Show Cause with Temporary Restraints, statutes should be construed with regard for to the intent of the Legislature seen through its Statements accompanying a bill from Committee to adoption by the full Legislature. As the New

Jersey Supreme Court stated in Board of Education v. Hoek, 38 N.J. 213 (1962):

> The legislative goal is a guiding consideration and accordingly, words in a statute must be interpreted in context to serve the spirit of the law. (citation omitted)

Id., 38 N.J. at 231. In this instance, the relevant Legislative statements were clear in intent: The Legislature desired to conform the frequency that a question of the reclassification of a school district could occur to be the same as the frequency that a question on a municipal charter study commission could then appear on the ballot, and wanted to prevent the losers of a reclassification referendum election from putting the question back on the "ballot every year, which becomes a frivolous expense to the taxpayers." Senate Education Committee Statement to Sen. No. 2357 (June 9, 2003). This is not a prohibition from expending any money on a second election if the first was declared null and void, but rather it evidences an intent "against repetitive unsuccessful referenda," Appellate Division Order, Steinhagen Cert., Ex. B at 2, and to grant the voters in a Reclassification Referendum election "the statutory right to have their vote binding for five years." Beaudoin v. Belmar Tavern Assoc., 216 N.J. Super. 177, 188 (1987)(Mandatory frequency restriction seen as grant of right to have the result of referendum election binding for five years). Since the

Reclassification Referendum election held in November 2016 was found to be illegal and its outcome was not binding, there was no barrier to the same question appearing on the November 2017 ballot, and the BOE knew or should have known that legal fact.

As such, the BOE's interpretation was found by this Court and the Appellate Division to be without merit; and indeed, this Court found its position to be inconsistent with its previous efforts, which were allegedly to make sure that voters were better informed before they voted. The COP asserts, however, that such inconsistency is simply further evidence of the BOE's attempt "to thwart the will of the voters" and ultimately to deprive them of their statutory right to referendum as set forth in Title 18A.

In short, the BOE and its attorney knew or should have known that its cause of action was without any merit under existing law and thus, the COP is now entitled to sanctions.

C. The BOE Manufactured Fictitious Allegations of Cost To Give Its Complaint A Facade of Legitimacy.

A third basis for granting the sanctions under R. 1:4-8(a)(3) is misrepresentation of fact by the non-prevailing party. In this case, the BOE deliberately misrepresented the cost of the March 2016 Special School Board election in its Verified Complaint and during oral argument, and falsely asserted therein that it was unaware that the City Clerk had

found the petition sufficient. The first misrepresentation was clearly employed to give the BOE cover that it was acting allegedly on behalf of taxpayers rather than serving its own institutional interests. The second misrepresentation was made perhaps to create an appearance of distance between the BOE and Township of Orange so that the City's support of the BOE's position would appear independent and strengthen the BOE's claim before the Court. As to reason behind the second misrepresentation one may only speculate, though it is clear that the BOE though it necessary to make such misrepresentation.

First, prior to filing the Verified Complaint, a member of the BOE was trying to convince the public that they should vote against an elected school board because of the alleged cost of the Special Election. See Tarver Cert., ¶8. The $45,000 number that was presented at the BOE meeting, later appeared in the Verified Complaint to support the BOE's position that the Frequency Restriction was a fiscally motivated provision rather than simply a prohibition against repetitive unsuccessful referenda. Records secured by the COP indicate however that the actual cost of the March 2017 Special Election was under $21,000 and was not $45,000. See Tarver Cert., Ex. B. This deliberate misrepresentation was employed by the BOE to its advantage, and should not be condoned.

The BOE also alleged that it had no knowledge that the City Clerk had deemed the COP's petition valid and sufficient until several weeks after the decision. However, on August 29, 2017, four days after Ms. Lanier sent a copy of her determination to City officials and the COP electronically (and one day after her letter was dated), Jeffrey Feld, a local stakeholder, informed all the BOE members and the public at a Special School Board meeting, that Ms. Lanier had found the COP's petition legal and sufficient, and that the question had been sent to the County Clerk for further processing. Tarver Cert., ¶6. It is unclear why the BOE made such false representations to the Court, but it is obvious that it did so to curry favor with the Court. Misrepresentations by the non-prevailing party, such as exaggerations of cost or lack of notice that have no factual basis, constitute grounds for the award of fees and costs under the frivolous litigation rule and statute, and should be awarded herein. See Ibelli v. Maloof, 257 N.J. Super. 324 (Ch. Div. 1992)(motion to dismiss for lack of personal jurisdiction was "frivolous" where it was based on misrepresentations of facts about the corporation's contacts with the state)

II. PURSUANT TO R. 1:4-8, AND THE NEW JERSEY FRIVOLOUS LAWSUIT STATUTE, N.J.S.A. 2A:15-59.1, THE COMMITTEE IS ENTITLED TO THE REIMBURSEMENT OF ANY AND ALL COSTS AND REASONABLE ATTORNEYS' FEES INCURRED.

As noted above, to succeed on a motion under Rule 1:4-8, a party must show either that the claim was presented for an improper purpose, or that the claims were not warranted by existing law, or the factual allegations did not have evidentiary support. R.1:4-8(a)(1)-(3).

Likewise, N.J.S.A. 2A:15-59.1, the Frivolous Action Statute, specifically provides for recovery against a party (but not its attorney) for all reasonable litigation costs and reasonable attorneys' fees, if the court determines that a Complaint of the non-prevailing party was

> (1) commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
>
> (2) The non-prevailing 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.
> (N.J.S.A. 2A:15-59.1(b))

To succeed on an application for sanctions, a litigant must only establish one of either of the three prongs of the Rule or two prongs of the statute. It is not necessary to prevail on all. In this case, however, the COP has established that the BOE has run afoul of all factors.

For example, as argued above, the BOE was aware or should have been aware prior to the filing of its Verified Complaint

that its claim for injunctive relief had no basis in law or equity. R.1:4-8(a)(2); N.J.S.A. 2A:15-59.1(b)(2).

Second, the BOE commenced its action in bad i.e., for the improper purpose of depriving the COP, and the voters it represented, of their statutory right of referendum. Furthermore, because a complaint that lacks both factual and legal bases at the outset is considered to be filed in bad faith and for an improper purpose, the spurious nature of the BOE's claims further supports the conclusion that it was filed only to preserve the status quo and to prevent the COP from effecting a reclassification of the school district. See Port-O-San Corp. v. Teamsters, 363 N.J.Super. 431, 439 (App. Div. 2003)(A complaint that lacks both factual and legal bases at the outset is considered to have been filed in bad faith).

Third, there was no evidentiary support for two of the BOE's factual allegations. R.1:4-8(a)(3) The BOE manufactured fictitious allegations of cost and lack of knowledge of the Clerk's actions to give its interpretation of the Frequency Restriction a facade of legitimacy and perhaps to engender sympathy and support from the Court. Without the allegation of significant cost, the BOE knew that its Complaint would fall on deaf ears and would not support its interpretation of the Frequency Restriction as a fiscally motivated provision. The manufactured allegations in the Complaint were thus offensive in

light of the context in which they were made and the improper purpose for which they were employed. Port-O-San Corp. v. Teamsters, 363 N.J.Super. at 440.

Accordingly, the COP is entitled to an award of reasonable attorneys fees, based on the "lodestar," the number of hours reasonably expended by a reasonable hourly rate. Rendine v. Pantzer, 141 N.J. 292, 335 (1995) As detailed in this fee application, the COP's counsel spent 70 hours preparing and defending this lawsuit both in the trial and Appellate Division, including the time preparing this Motion for Sanctions. See Steinhagen Cert., ¶¶7-9. The hours expended to litigate this case are reasonable. The hourly rate of $350/hour is reasonable given the length of time Ms. Steinhagen has been practicing law (30 years), and the fact that she was awarded such amount by the Court in 2014. Id., ¶6. In Blum v. Stenson, 465 U.S. 886 (1984), the Supreme Court held that non-profit, public interest attorneys are entitled to fees based on prevailing market rates, not the actual cost charged the client, if any. Id. at 894-95 See also Rendine v. Pantzer, 141 N.J. at 337. The hourly market rate in New Jersey for attorneys with Ms. Steinhagen's experience is well above the $350 that the COP seeks for her time in this case. See Steinhagen Cert., Ex. I.

CONCLUSION

For all the reasons set forth above, the COP is entitled to sanctions against the BOE and its attorney in the form of attorneys fees and costs under R.1:4-8 and the BOE under N.J.S.A. 2A:15-59.1.

Respectfully submitted,

Renée Steinhagen, Esq.

cc: Stephen Edelstein, Esq.
Eric Pennington, Esq.
Joseph Garcia, Esq.
Raj Parikh, Esq.