

SOL PINEIRO-GONZALEZ	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C02-07
FRANCISCO GONZALEZ	:	
ELIZABETH	:	DECISION
BOARD OF EDUCATION	:	
UNION COUNTY	:	

This matter arises from a complaint filed on January 18, 2007 by Sol Pineiro-Gonzalez alleging that Francisco Gonzalez, a member of the Elizabeth Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that respondent violated N.J.S.A. 18A:12-24(b) when he contacted administrative personnel in the Elizabeth School District (District) and the president of the local education association to notify them of a criminal mischief complaint that he had filed against the complainant who was subsequently suspended and demoted. The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24(b) in connection with the District's termination of her daughter.

On February 20, 2007, the respondent, through his attorney, Karen A. Murray, Esquire, requested that the Commission hold the complaint in abeyance pursuant to N.J.S.A. 18A:12-32 until the resolution of several matters alleging the same facts and the same issues. The Commission provided the complainant with time to respond to the request that the complaint be held in abeyance. The complainant responded through her attorney, Stephen B. Hunter, Esquire, that the complaint should not be held in abeyance because only the Commission has jurisdiction to grant the requested relief that the respondent be removed from the Board. The Commission advised the parties that it would consider the complaint and the respondent's request and complainant's response at its April 24, 2007 meeting. After reviewing the complaint, during the public session of the April 24, 2007 meeting, the Commission voted to dismiss the complaint because, on its face, it does not rise to a violation of the Act. At its May 22, 2007 meeting, the Commission voted to dismiss the complaint without prejudice and to adopt this decision.

**FACTS**

The Commission was able to discern the following facts based on the pleadings and the documents submitted.

At all times relevant to the allegations in this complaint, the respondent was a member of the Board. The complainant was employed by the Board since January 23, 1989. The complainant's daughter was also employed by the Board as a substitute school secretary. The complainant and the respondent were married on August 21, 2005. During the 2005-2006 school year, marital problems arose between the complainant and the respondent.

During the 2005-2006 school year, the complainant was assigned, under emergency certification, as a social worker. The complainant advised the superintendent that she was enrolled in college in order to receive the standard certification as a school social worker. The complainant was advised that, as long as she was involved in a matriculating program related to receipt of her standard certification, there would be no problems renewing her emergency certification in the future. During the 2006-2007 school year, the Board implemented layoffs within the District. The complainant was assured by District administrative personnel that any possible layoffs would not affect her continued employment and the continued employment of the complainant's daughter.

On June 17, 2006, the respondent filed a complaint against the complainant for alleged criminal mischief. The complainant then filed simple assault and harassment complaints against the respondent. On June 18 and 19, 2006, the respondent advised District administrative personnel of the criminal mischief complaint he had filed against the complainant. On June 20, 2006, the Board suspended the complainant and demoted her, which resulted in a loss in salary. On June 22, 2006, the complainant's daughter was terminated allegedly because of District budgetary cuts.

## **ANALYSIS**

Although the Commission was asked to review the complaint to determine whether to hold the complaint in abeyance pending the outcome of other litigation, it sees no need to do so when the complaint on its face does not rise to a violation of the Act.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(b) when he took retaliatory personnel actions against the complainant and her daughter. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

To find a violation of N.J.S.A. 18A:12-24(b), the Commission must find that the respondent used his official position to secure unwarranted privileges, advantages or employment for himself or the complainant. The Commission notes that, as spouse of the respondent, the complainant falls under the definition of "immediate family member" established in N.J.S.A. 18A:12-23. The facts show that the respondent advised the District's administrative personnel of the criminal mischief complaint that he filed against the complainant. However, there is no evidence to show that this was the cause of the complainant's suspension and demotion. Moreover, the Commission can find no evidence to show how the respondent's advising the District's administrative personnel of the criminal mischief complaint against the complainant constitutes using his position to secure an unwarranted privilege or advantage for the respondent. The facts also show that the District terminated the complainant's daughter due to its implementation of layoffs. There is no evidence that shows that the respondent was involved in the

complainant's daughter's termination or that the respondent used his position to secure the complainant's daughter's termination. The facts as alleged do not rise to the level of a violation of N.J.S.A. 18A:12-24(b). Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) and dismisses the allegations against him.

## **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that Francisco Gonzalez violated the Act and dismisses the allegations against him. Since the determination to dismiss the complaint was based solely on the pleadings, the Commission dismisses the complaint without prejudice.

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).

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C02-07**

**Whereas**, the School Ethics Commission has considered the complaint and documents; and

**Whereas**, the Commission hereby dismisses the complaint without prejudice; and

**Whereas**, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision to dismiss without prejudice the complaint as its final decision in this matter and directs its staff to notify all parties to this action of the Commission’s decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 22, 2007.

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C02-07