

November 28, 2000

FOR PUBLIC RELEASE

RE: Advisory Opinion A14-00

The School Ethics Commission is in receipt of your request for an advisory opinion. You have requested an opinion on behalf of a board that you represent as to whether members of the board who are employed as teachers in other school districts are able to participate in contract negotiations with the local teachers association, which is a local bargaining unit of the same statewide general union as the district in which they teach.

You have set forth that you have several board members who teach in districts that are within the State of New Jersey, but are not contiguous to their district. As an example, you have provided that one member teaches in a contiguous county, but not a contiguous district. Although you have provided an opinion on this matter as Board Solicitor, the board members are seeking an opinion from the Commission. They have specifically asked for clarification regarding their ability to participate in closed session meetings, in addition to negotiations and votes, in light of the State Board of Education's decision, *In the Matter of Pannucci*, SB #16-97 (March 3, 2000).

The State Board of Education held in *Pannucci*, that a school official did not violate N.J.S.A. 18A:12-24(c) per se by voting on a contract with a local bargaining unit of the New Jersey Education Association ("NJEA") when he was a teacher in another district and a member of the NJEA. N.J.S.A. 18A:12-24(c) is the relevant section of the Act that is pertinent to your question. It provides:

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

In the *Pannucci* decision, the State Board reversed the Commission's finding of a violation of N.J.S.A. 18A:12-24(c), saying "we reject the view that status as a member of another local union within the same statewide union should, on a per se basis, preclude a board member from voting on a collective negotiations agreement in the district where he or she is a member." (Slip op. at p.13). Therefore, based on the State Board view and the facts that you have described, the Commission finds that these board members would be able to vote on contracts with the local affiliate of the statewide general union.

The State Board noted that its decision addressed only the question involved in *Pannucci* and Advisory Opinion A10-93(b) and A07-94, that is, whether a board member who is a member of a statewide general union could vote on a contract with the local affiliate of the same statewide general union. The Commission has taken a different view with regard to negotiations. The Commission notes that the *Pannucci* case did not involve the issue of negotiations. The Commission did, however, address negotiations in *In the Matter of Bruce White (Decision on Return)*, SEC #C18/C22-99 (March 28, 2000), Commissioner (June 1, 2000). There, the Commission said,

The Commission does not believe that the State Board's ruling in *Pannucci* applies to these circumstances. Voting is the act of approving that which others negotiated or otherwise worked upon, which is a ministerial act, albeit a necessary and important act. However, negotiations actually establish the benefits and rate of increases in salary which impact the rest of the school budget as well as the local tax base to be voted upon by the Board and ultimately the public.

In A10-93, the Commission advised that a board member would violate N.J.S.A. 18A:12-24(c) of the Act if he were to participate in negotiations on a contract with a local bargaining unit if he or his immediate family member were a member of the same statewide general union with which the board is negotiating. The Commission said at that time that a reasonable member of the public would perceive that a board member could not be objective in negotiating for his or his spouse's fellow union members to receive a contractual award or service. This is because in determining contract settlements, it is a well-established practice for negotiating teams to compare salaries of neighboring and similar statewide districts. An increase in benefits or pay could influence an increase in the rate of pay to all members of the same statewide general union and thereby benefit the board member or his spouse. The Commission reaffirmed Advisory Opinion A10-93 in the *White* decision.

In addition, the Commission interprets N.J.S.A. 18A:12-24(c) in conjunction with N.J.S.A. 18A:12-22(a), which states,

In our representative form of government 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.

The Commission notes that votes are taken in public meetings, while negotiations are held in complete privacy. Not only are negotiations private at the time, the discussions in negotiations never become subject to public scrutiny as to how settlements were reached. Therefore, the Commission advises that the board members in question would violate N.J.S.A. 18A:12-24(c) by negotiating contracts with the local bargaining unit of the statewide general union to which they belong. In addition, due to the secrecy of negotiations, they would violate N.J.S.A. 18A:12-24(c) as well, by simply being present during negotiations since, as in the *White* case, there is no documentation of what was said by whom during the negotiation sessions.

The Commission recognizes that the above advice leaves a void between negotiations and the vote on the contract. Obviously, at some point in time, board members, who may now vote on the contract under *Pannucci*, have to be provided with the terms of the contract before voting. The Commission finds that the logical point at which to allow such board members to be apprised of the terms of the contract is after the memorandum of agreement has been reached. Prior to the time the memorandum of agreement is reached, anything that is said by board members during closed session meetings may have an impact upon negotiations. The Commission does not want board members whom it has concluded are prohibited from negotiating to negotiate by the back door by making their views known during closed session meetings while the negotiation team is updating the board on the status of negotiations.

A memorandum of agreement generally means that the parties have reached a settlement that is within the parameters that the union and the board have set at the start of negotiations. The memorandum of agreement is usually regarded as the end of negotiations although the Commission recognizes that additional details may be added after that time. The Commission therefore advises that the board members in question would not violate N.J.S.A. 18A:12-24(c) of the Act if they were to participate in closed session meetings after the memorandum of agreement has been reached. However, they would violate the Act if they were to participate in closed session meetings that provided updates on the status of negotiations prior to the time that the memorandum of agreement has been reached.

Additionally, given that a crucial element of negotiations is the setting of parameters prior to negotiations, the Commission advises the board members would be in

violation of N.J.S.A. 18A:12-24(c) if they were to participate in the closed session discussions concerning the parameters of negotiations. In addition to a violation of N.J.S.A. 18A:12-24(c), there is also a potential violation of N.J.S.A. 18A:12-24(f), which prohibits a school official from using information, not generally available to members of the public, for the purpose of securing financial gain for himself, his immediate family members or any business organization with which he is associated. The potential release of such important sensitive information as the parameters of negotiations would cause the public great concern even though the release may be to a different local affiliate. The Commission fears that the information would lead to comparisons that could hurt school boards in negotiations. Therefore, it is best that board members who are members of the same statewide general union not be privy to such information.

In summary, the Commission advises that, based on the information that you have submitted, these board members, who are teachers in another district where the teachers are members of the same statewide general union, may vote on collective bargaining agreements with the local teachers' affiliate in the district in which they serve. The Commission further advises that the same board members would violate N.J.S.A. 18A:12-24(c) of the Act if they were to participate in negotiations or be present at negotiations with the local affiliate of teachers. In addition, the Commission recognizes that there is a need for the board members who are conflicted from negotiations, but are able to vote on the contract, to have knowledge of the terms of the contract prior to the vote. Therefore, the Commission advises that the board members so situated may participate in closed session meetings of the board in which the contract is discussed after the memorandum of agreement has been signed without violating N.J.S.A. 18A:12-24(c). Until the memorandum of agreement has been reached, the Commission advises that the board members in question should not participate in discussions concerning the collective bargaining agreement, including the discussion of the parameters prior to the start of negotiations. They may be in violation of N.J.S.A. 18A:12-24(c) or (f) if they do so.

We hope this answers your inquiry. Because the Commission believes that many school officials are likely to request the same opinion, the Commission is making this opinion public.

Sincerely yours,

Paul C. Garbarini
Chairperson

I hereby certify that the School Ethics
Commission voted to make this opinion
public at its meeting on November 28, 2000.

Lisa James-Beavers, Executive Director