

SEC #C18-99 and #C22-99 (consolidated)

C # 91-00SEC

C # 169-00

SB # 33-00

IN THE MATTER OF BRUCE WHITE, :
EWING TOWNSHIP BOARD OF EDUCATION, : STATE BOARD OF EDUCATION
MERCER COUNTY. : DECISION

Decided by the School Ethics Commission, January 31, 2000

Remanded by the Commissioner of Education, March 15, 2000

Decision on remand by the School Ethics Commission, March 28, 2000

Decided by the Commissioner of Education, June 1, 2000

For the Complainants-Appellants, Edward H. Vickner, Jr., pro se, and Frank Ferrante, pro se

For the Respondent-Respondent, Parker, McCay & Criscuolo (Frank P. Cavallo, Jr., Esq., of Counsel)

For the Respondent School Ethics Commission, Thomas Russo, Deputy Attorney General (John J. Farmer, Jr., Attorney General of New Jersey)

This matter was initiated by two complaints, one filed by Edward Vickner, a member of the Ewing Township Board of Education, and another filed by Frank Ferrante, a resident of Ewing. Mr. Vickner alleged that Ewing Board member Bruce White had violated the School Ethics Act by entering negotiations with the Ewing Township Education Association although his wife was a member of the New Jersey Education Association. Mr. Vickner also alleged that Mr. White had improperly voted on contracts concerning the Ewing Township Education Association while a member of the

Principals and Supervisors Association. Mr. Ferrante's complaint made similar allegations.

The School Ethics Commission consolidated the two complaints and, on January 31, 2000, it adopted a decision finding that Bruce White had violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by participating in negotiations with the Ewing Township Education Association and by voting on contracts with the Association. The Ethics Commission recommended that the Commissioner of Education impose the sanction of removal from the Board.

By decision of March 15, 2000, the Commissioner remanded the matter to the School Ethics Commission. In doing so, the Commissioner stated that he could not determine the appropriate sanction to impose in this case until the School Ethics Commission considered the effect of the State Board's recent decision in In the Matter of Frank Pannucci, decided by the State Board of Education, March 1, 2000.

On March 28, 2000, the Ethics Commission considered the effect of Pannucci on this matter. By its decision, the Ethics Commission reaffirmed its previous finding that Bruce White had violated N.J.S.A. 18A:12-24(c), and added that the facts also established a violation of N.J.S.A. 18A:12-24(a) and (b). The Ethics Commission also reaffirmed its earlier recommendation that Mr. White be removed from his position as a member of the Ewing Board.

By decision of June 1, 2000, the Commissioner determined that the violations found by the School Ethics Commission did not warrant removing Mr. White from his position on the Board. Rather, the Commissioner found that, under the circumstances,

the appropriate sanction was Mr. White's suspension from the Board for a period of 45 days.

Both Mr. Vickner and Mr. Ferrante filed appeals to the State Board of Education from the Commissioner's determination of the penalty.

When review of the record revealed that Mr. Vickner and Mr. Ferrante had been complainants in the matter before the Ethics Commission, the appeal was referred to the Legal Committee of the State Board for review of whether they had standing to appeal to the State Board. By letters of June 25 and June 30, 2000, each complainant was advised that the State Board's decision in Pannucci had held that the complainant in that case did not have standing to appeal. However, all parties were afforded the opportunity to submit briefs on the issue of the complainants' standing to appeal in this case, and the briefing schedule was placed in abeyance pending resolution of that issue by the State Board.

All parties submitted briefs. In their brief, the complainants indicate that they are requesting standing for the purpose of supporting the recommendation of the School Ethics Commission to remove Mr. White from the Ewing Township Board of Education. In contrast, the Deputy Attorney General representing the School Ethics Commission argues that the appeal must be dismissed based upon the State Board's holding in Pannucci. Similarly, Mr. White's attorney argues for dismissal.

In Pannucci, the State Board concluded that a complainant did not have standing to prosecute an appeal from a Commissioner's determination of the appropriate sanction to be imposed for a violation of the School Ethics Act. That conclusion was based on a careful examination of the controlling statutes, which revealed that:

the role of a complainant was designed to provide the vehicle by which allegations against a school official would be brought to the School Ethics Commission, but that these statutes do not confer on the individual who files the complaint the right to prosecute the matter.

Pannucci, supra, slip op. at 6.

The State Board also found that:

Consistent with N.J.S.A. 18A:12-29(d) and the statutory framework governing appeals to the State Board, see N.J.S.A. 18A:6-27 through 6-29, the State Board's regulations delineate that "any party aggrieved by a decision...or by the School Ethics Commission finding a violation of the School Ethics Act may appeal to the State Board of Education." As set forth in N.J.A.C. 6:3-9.2, a complainant is the person bringing a complaint of an alleged violation of the School Ethics Act. Quite simply, given the role of a complainant as defined in the statute and implementing regulations, regardless of whether the proceedings result in a finding of a violation and the imposition of a penalty, a complainant is not an "aggrieved party" by virtue of his status as a complainant. In re Lazarus, 81 N.J. Super. 132 (App. Div. 1963).

Id. at 7.

The State Board stressed that even under the liberal approach taken by the New Jersey courts, standing is generally confined to situations in which the individual concerned with the subject matter of the litigation evidences a sufficient stake in the outcome and real adverseness. Id. at 8, citing New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. 57, 68 (1980); Crescent Park Tenants Ass'n v. Realty Equity Corp. of N.Y., 58 N.J. 98, 107 (1971). At the same time, the State Board, like the courts, recognized that lack of standing to invoke the power of judicial review may confer a conclusive character on administrative action to the possible detriment of the public and that a narrow approach

to standing may lose sight of the overriding need of the system to make sure that someone shall in fact be able to secure review of administrative action. Id. Hence, the State Board recognized that where a substantial public interest is involved, a slight interest may be sufficient to give standing to invoke judicial review. Id., citing New Jersey State Chamber of Commerce, supra; Elizabeth Federal Savings and Loan, supra.

However, as expressed by the State Board in Pannucci, supra, slip op. at 9:

...the function of a complainant is to bring acts by school officials which may indicate a violation of the School Ethics Act to the attention of the Ethics Commission so as to protect the public's confidence. See N.J.S.A. 18A:12-22. It is the Commission, not the complainant, which is charged in this context with acting as the guardian of the public interest.

The complaints in this matter reflect that both complainants are residents of Ewing Township. Although Mr. Vickner is also a member of the Ewing Board of Education, there is no expression that either complainant possesses any interest in this matter that is greater than that of any other member of the public. Specifically, neither complainant has shown that he has been affected adversely in any degree greater than the public generally by the Commissioner's determination that suspension from the Board was sufficient sanction. Moreover, we reiterate that it is not the function of the Ethics Commission or the Commissioner of Education in this context to adjudicate the rights of complainants vis-à-vis other school officials even if such a complainant is also a member of the district board. Id.

Therefore, for the reasons stated herein, we hold that neither complainant in this case has standing to challenge on appeal the Commissioner's determination that the appropriate sanction for the violations found by the School Ethics Commission was Mr.

White's suspension from the Board for 45 days. Accordingly, we dismiss the appeals filed in this matter.

September 6, 2000

Date of mailing _____