

STATEMENT OF FACTS

The Commission discerned the following facts from the pleadings, the documents submitted and its investigation of this matter.

Ms. Davis was elected to the Camden City Board of Education in April 1999. She was a teacher in the Camden City School District from 1969 to 1991 and retired as an administrator on December 31, 1996. As a retired administrator, Ms. Davis received prescription insurance through the Board's policy of allowing retirees to pay premiums directly to the insurance carrier. She did not receive health insurance coverage through the Board. She submitted a premium directly to the carrier for prescription coverage.

On September 15, 1999, the Board's Labor Attorney, Karen Murray, Esquire, requested a written opinion from the School Ethics Commission asking whether a conflict of interest existed based solely on Ms. Davis' former status as a teacher and member of the Camden Education Association. On September 28, 1999, the Commission issued advisory opinion A13-99 stating that no conflict exists regarding retired members of a union and therefore, she may participate in negotiations without violating N.J.S.A. 18A:12-24(c). The Commission was unaware that Ms. Davis was receiving any benefits from a district-provided plan.

Ms. Davis began serving on the negotiating committee. Ms. Murray acknowledged in a February 2000 letter to Vito Gagliardi, who was then serving as Special Assistant to the Commissioner of Education, that Ms. Davis received prescription benefits from the Camden City School District. The letter then provided that she was withdrawing from the plan to avoid a conflict of interest. Ms. Davis enrolled in the State Health Benefits Prescription Plan in the summer of 1999 when the State Pension System offered a revised prescription plan that offered the same benefit that she was receiving from the district and did not require her to pay for her prescription up front. However, the State Prescription Plan did not become effective until January 2000.

Fiabane Associates administers the premium account that provided for Ms. Davis' prescription coverage. Ms. Davis paid \$381.00 per quarter based on the Board's cost of the plan. On February 4, 2000, Fiabane notified her that her prescription coverage would be terminated on February 14, 2000 for failure to pay the premium due on January 1, 2000. The letter indicated that once coverage was terminated, she would lose the option of reinstatement. Her coverage from the district's Fiabane insurance officially terminated on February 14, 2000.

Ms. Davis testified that when she served on the negotiations committee, the committee tried to negotiate a higher co-payment on prescriptions from the Education Association. Ms. Davis was not subject to the co-payment because her costs were based on the costs to the district. Raising the co-payment for the Education Association would lower the district's costs.

The Board ratified its contract with the Camden Education Association at its meeting of April 17, 2000. The effective term of the Agreement with the Association was from July 1999 to June 2002.

Mr. Johnson, in his submission on behalf of Ms. Davis, urges the Commission to adopt the following additional facts. Based on the affidavit of Camden Board Secretary Leon Freeman and the contract between Fiabane Associates and the Board, the Commission finds these facts to be correct. The Camden Board of Education executed a contract on July 13, 1999 with Fiabane Associates that established the cost of the prescription plan for the Board of Education from July 1, 1999 to June 30, 2000. The cost of the plan was established by the historical cost of the plan experienced by the Board and Fiabane Associates over the prior contract year. Although the terms of the collective bargaining agreement between the Camden Education Association and the Board were made retroactive to July 1, 1999, the conditions of the prescription plan were not changed retroactively. The prescription plan continued to be based on the contract with Fiabane Associates as executed on July 13, 1999.

ANALYSIS

The Commission found probable cause to credit the allegation that Ms. Davis' conduct in serving on the negotiations committee was in violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act. N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges for himself, members of his immediate family or others. The Commission stated that by negotiating benefits with the Education Association, specifically negotiating a higher co-payment for prescription coverage, Ms. Davis used her position to attempt to secure unwarranted privileges for herself in violation of N.J.S.A. 18A:12-24(b).

The Commission based its finding of probable cause on the information that Ms. Davis had negotiated a privilege in the form of a lower quarterly premium since her cost was based on the cost to the district, which would be lowered if the Association paid a higher co-payment. Based on the above facts, the Commission no longer finds that Ms. Davis' costs would be lowered if the district's costs were lowered. Although the district ultimately lowered its costs by having the Association pay a higher co-payment, the higher co-payment was not retroactive, so the higher co-payment did not lower Ms. Davis' cost before she left the district plan and began to receive state prescription benefits. Because the contract that Ms. Davis helped to negotiate did not affect the prescription drug benefit that Ms. Davis received through the Board, the Commission cannot conclude that she used her position to secure unwarranted privileges for herself. Therefore, the Commission does not find that Ms. Davis violated N.J.S.A. 18A:12-24(b) and dismisses that charge against her.

The Commission also found probable cause to credit the allegation that Ms. Davis' conduct in participating in negotiations was in violation of N.J.S.A. 18A:12-24(c), which 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.

The Commission found probable cause that Ms. Davis had a financial involvement with the Board's benefits plan that might reasonably be expected to impair her objectivity or independence of judgment in negotiating with the Education Association in violation of N.J.S.A. 18A:12-24(c). In addition, it found probable cause that, as a participant in the prescription coverage plan through the Board, Ms. Davis had a personal involvement with negotiations that created a benefit to her. The above findings were based on the information that if negotiations resulted in lower costs to the district, they would also result in lower costs to Ms. Davis. Again, the Commission has found this information to be incorrect.

The Commission now concludes that the contract that was negotiated between the Board and the Camden Education Association did not affect prescription drug benefits that were in effect during the time that Ms. Davis received benefits through the district. Ms. Davis' benefits were only affected by the contract between Fiabane Associates and the Board that was executed on July 13, 1999. The negotiations did not make the increased co-payment amount for prescription drug benefits retroactive to July 1999 when Ms. Davis possibly could have stood to gain from it. Ms. Davis was receiving benefits through the state prescription benefits plan by the time the negotiated contract began to affect prescription drug coverage for district employees. Therefore, she did not have a financial involvement that might reasonably be expected to impair her objectivity nor did she have a personal involvement that created a benefit to her.

Based on the foregoing, the Commission cannot find that Ms. Davis violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. It therefore dismisses this charge against her.

DECISION

For the foregoing reasons, the School Ethics Commission finds that Sara Davis did not violate the School Ethics Act and dismisses the complaint against her.

The Commission notes, for future reference, that if all the facts regarding this matter had been presented regarding Ms. Davis receipt of prescription benefits through the district when she sought the advisory opinion, then this matter could have been avoided, as well as the resulting appearance of impropriety that caused this complaint to be filed. The Commission asks those seeking advice from the Commission to provide all the relevant

facts in the request so that its opinion is based on the correct information. The Commission further cautions that, while in this case the timelines did not match in such a way that Ms. Davis benefited from her negotiations, school officials must take great care in participating in negotiations where it may appear that they will be a recipient of the benefits that they are negotiating.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C10-01

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and the testimony of the parties as well as the written submission in response to the finding of probable cause; and

Whereas, at its meeting of September 25, 2001, the Commission concluded that that Respondent did not violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against her; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Now therefore be in resolved that the Commission has reviewed and hereby agrees with the draft and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this decision was authorized by the School Ethics Commission at its public meeting on October 23, 2001.

Lisa James-Beavers
Executive Director