



At its meeting of July 25, 2000, the Commission adopted this written decision embodying its prior determination.

## **FACTS**

Based on the pleadings and the Commission's investigation, the Commission believes that the following facts are undisputed. Respondent, Robert Hosley, was at all times relevant to this complaint, a member of the Lincoln Park Board of Education (Board). He was serving his second three-year term when these allegations surfaced. He is no longer a member of the Board. He was elected president of the Board in April 1997. Mr. Hosley's wife is a teaching staff member in another district and is a member of the New Jersey Education Association (NJEA). Respondent Debra Martin is a member of the Board. She is a teacher in another district and a member of the NJEA. The Lincoln Park Education Association (LPEA) is a local affiliate of the NJEA, which represents non-supervisory teaching staff members. At a public meeting of the Board on May 13, 1997, Mr. Hosley and Ms. Martin participated in a discussion of what insurance carrier should provide health benefits to the LPEA. At the time, the LPEA had a memorandum of agreement with the Board as a result of collective bargaining. On April 22, 1997, as President of the Board, Mr. Hosley chose the members of the Board's negotiation committee and thereby changed the members who had previously been involved in negotiating with the LPEA. On May 27, 1997, respondents abstained from the Board's vote on the carrier.

## **ANALYSIS**

Complainants allege that respondent Robert Hosley directed the discussion of staff health benefits plans, a very significant component of a recently negotiated, yet to be ratified, LPEA contract. They allege that he actively solicited the health care insurer that was the preferred health care insurer by the LPEA and NJEA. Regarding respondent Debra Martin, complainants allege that Ms. Martin actively participated in discussion of staff health benefits plans. They also allege that the health insurer that respondents advocated, which was the preferred health care insurer of the LPEA and NJEA, could not provide "givebacks" that had been successfully negotiated by the Board's bargaining team during an 18-month bargaining process. The complainants believe that respondents' participation in said discussion had the potential to result in interference with the negotiating team's tentative agreement with the LPEA. The complainants further allege that respondents' participation was an attempt to interfere with the Board bargaining team's tentative agreement with the LPEA. Additionally, complainants allege that on April 22, 1997, respondent Mr. Hosley, acting as newly elected President of the Board, assigned and changed the Board's negotiation team prior to the ratification of a tentative agreement. The complainants allege that all of the above constituted knowing, impermissible involvement in violation of N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24(a).

N.J.S.A. 18A:12-24(a) of the School Ethics Act provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

The allegations in the complaint do not set forth any assertion that because Mr. Hosley's wife is a member of the NJEA or because Ms. Martin is a member of the NJEA, the respondents have such a substantial conflict that they cannot perform their duties in the public interest. The Commission does not believe that the Legislature intended that board members who are members of the NJEA or who have spouses who are members of the NJEA could not serve as board members if the local bargaining unit was affiliated with the NJEA. In the present case, the allegation is that the respondents participated in a board discussion when they had a conflict of interest with the subject matter. This presents an issue under N.J.S.A. 18A:12-24(c), not N.J.S.A. 18A:12-24(a). Thus, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24(a).

The complainants argue that Mr. Hosley and Ms. Martin tried to influence the outcome of negotiations by discussing the health benefits carrier in violation of N.J.S.A. 18A:12-24(c) of the School Ethics Act. In addition, they argue that Mr. Hosley violated N.J.S.A. 18A:12-24(c) when, acting in his capacity as President, he changed the membership of the negotiation team in an attempt to alter the agreement with the LPEA. N.J.S.A. 18A:12-24(c) 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.

Thus, the threshold question is whether the respondents had a financial or personal involvement with the selection of a carrier. The Commission notes that the discussion at issue was not about the level of health benefits. The issue was what company would be the provider of insurance. Nevertheless, the complainants argue that the discussion of the carrier was crucial to the level of benefits because the carrier supported by the respondents could not provide the "givebacks" that the negotiation team had negotiated with the union. The Commission finds this argument to be too speculative. In order to find a prohibited financial or personal involvement based on the fact that the respondents discussed the insurance carrier, the Commission would need to make three findings. First, that at the time of the discussion, the contract with the

Lincoln Park Education Association (LPEA) was still subject to negotiation, even though a memorandum of agreement had been reached. Second, that the State plan was preferred by the LPEA and, therefore, by association, the NJEA. Third, that respondents had knowledge that the choice of carrier could interfere with the “givebacks” that the board negotiation committee had negotiated in the tentative agreement with the LPEA. The Commission cannot make all of these findings.

With regard to the first finding, the Commission recognizes that a memorandum of agreement is not the same as a ratified contract. It appears that the contract had not yet been ratified. Nevertheless, a memorandum of agreement provides a tacit understanding of what the parties agreed within their parameters of negotiation. Therefore, the Commission finds that the negotiations had sufficiently concluded such that the discussion of an insurance carrier would not negate what had occurred during the negotiation process. Regarding the second finding, the Commission is without sufficient information to conclude that the LPEA and thus, the NJEA, would prefer the State carrier to the other. The Commission will not presume that the LPEA would be better off with the State carrier when the LPEA negotiated for a carrier that would provide “givebacks.” Regarding the third finding that the Commission would have to make, the complainants have sufficiently demonstrated that Mr. Hosley was aware of the “givebacks” in the memorandum of agreement, but have not demonstrated that Ms. Martin was aware. In any event, without a showing that the NJEA favored the State carrier that Mr. Hosley was allegedly advocating and that the Board’s decision could ultimately impact upon his spouse in some way, the Commission cannot find that his participation in the discussion constituted acting in a matter in which he or his spouse had a financial or personal involvement.

The Commission previously recognized the distinction between voting for the level of benefits and voting on the provider. In *I/M/O Robert Wilgus*, 96 N.J.A.R. 2d (EDU) 1042 (1996), the Commission ruled that a board member did not violate N.J.S.A. 18A:12-24(c) when he voted for the appointment of Delta Dental as the dental insurer for employees within the school district where his spouse was employed. The Commission finds that, just as in *Wilgus*, the respondents were not prohibited from discussing the choice of insurance carrier, especially when the discussion was held in an open public session where any interested member of the public could attend. Therefore, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24(c) by discussing the insurance provider.

Regarding Mr. Hosley’s changing of the negotiation committee members, the Commission does not find that a board president who has a spouse who is a member of the same statewide general union with which the local unit is affiliated is prohibited from selecting the members of the committee. In order to find that Mr. Hosley’s action constituted a violation, the Commission would be assuming that his selection had some pro-union bias. The Commission can not make that assumption and there is nothing in the record that would support a finding that the people he chose were pro-union. The Commission finds that there is a difference between negotiating and choosing the

committee to negotiate. The connection between the president's choice of members and the outcome of the contract is tenuous at best. In any event, the State Board of Education has ruled that it is not a per se violation of N.J.S.A. 18A:12-24(c) for a board member in Mr. Hosley's circumstances to vote on a contract. Given the State Board's ruling, the Commission is not inclined to expand the rule to prohibit such a board member from selecting the negotiation committee. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Hosley violated N.J.S.A. 18A:12-24(c) by selecting the negotiation committee.

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Robert Hosley or Debra Martin violated the School Ethics Act and dismisses the complaints against them.

This is a final decision of an administrative agency. Therefore, it is appealable directly to the Superior Court – Appellate Division.

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C15-97**

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission has determined that no probable cause exists to credit the allegations in the complaint; and

Whereas, the Commission has reviewed the proposed decision of its staff and agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision finding no probable cause as its 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 School  
Ethics Commission adopted this decision  
at its public meeting on July 25, 2000.

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Lisa James-Beavers  
Executive Director