

VINCE ORDINI AND	:	BEFORE THE SCHOOL
BRUCE WHITE	:	ETHICS COMMISSION
	:	
v.	:	
	:	Docket No.: C01/C02-00
EDWARD VICKNER,	:	
Ewing Township Board of Education	:	
Mercer County	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Vince Ordini on February 7, 2000 and a complaint filed by Bruce White on February 14, 2000 alleging that Ewing Township Board of Education (Board) member Edward Vickner violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, Mr. Ordini alleges that Dr. Vickner violated the Act when, on July 26, 1999, he refused to recuse himself from discussions regarding the Ewing Township Educational Support Staff Association (ETESSA) contract held during an executive session meeting of the Board. Dr. Vickner's spouse is a teacher in Ewing and a member of the Ewing Township Education Association (ETEA). Both unions are affiliate members of the New Jersey Education Association (NJEA). Mr. Ordini alleges that Dr. Vickner knew that he was in violation of the Act because, at the previous meeting, he had cited a public advisory opinion of the Commission advising that such conduct would violate the Act and used it as the basis of his complaint against Mr. White.¹ Mr. White alleges in his complaint that Dr. Vickner violated the Act by: 1) sharing in the responsibility of appointing Mr. White to chair the ETESSA Negotiations Committee, thereby placing Mr. White at risk of violating N.J.S.A. 18A:12-24(c) as his spouse is a member of the NJEA; 2) participating in negotiations on the ETESSA contract when his spouse is a member of the ETEA; and 3) voting in favor of the ETESSA contract on April 14, 1997.² The Commission consolidated the complaints of Mr. Ordini and Mr. White for hearing.

¹ Mr. Ordini also alleged that Dr. Vickner violated the Act by bringing a complaint against Bruce White, thereby disrupting the activities of the Board and not alerting Mr. White to a potential conflict of interest prior to his bringing a complaint against him. The Commission advised Mr. Ordini when he appeared before the Commission that these were matters related to a case that the Commission had already resolved and that they could not serve as the basis of a new complaint before the Commission.

² Mr. White initially complained that the vote on the contract was April 17, 1996. Subsequent proceedings revealed that the vote was taken on April 14, 1997. Mr. White also alleged that Dr. Vickner violated the Act by filing an ethics complaint against him when Dr. Vickner had knowingly committed a more grievous offense. Again, the Commission finds that this allegation is not a new matter, but is related to the case that the Commission previously decided. Therefore, this allegation will not be addressed in this case.

Dr. Vickner filed his answer to the complaints on March 2, 2000, first noting that the two complaints were filed after the Commission found Mr. White in violation of the Act and recommended his removal from the Board. Dr. Vickner admitted that his spouse is a member of the ETEA and that he was aware of Advisory Opinion A10-93, but stated that the discussion on July 26, 1999 was only an update on the progress of negotiations, not a negotiation session. He also answered that he relied on Advisory Opinion A08-98, which issued on June 2, 1998, advising that a board member may participate in negotiations with affiliate groups when his spouse is a member of a different affiliate if the provisions of the contract are not linked.

The Commission notified the parties that it would discuss the complaint at its March 28, 2000 meeting and invited the parties to appear. All of the parties appeared to testify before the Commission pro se. At the meeting, the complainants produced minutes of meetings showing that Dr. Vickner also participated in executive session discussions concerning the ETESSA contract on the following dates: December 15, 1998; December 21, 1998; February 8, 1999; February 22, 1999; May 10, 1999; May 24, 1999; and June 14, 1999.³ Further, the complainants provided minutes from the executive session meeting of June 28, 1999 that showed that Dr. Vickner remained in the meeting when the Board discussed the ratification of the tentative ETEA successor agreement. They asked that these dates also be included in the charges against Dr. Vickner.

At its public meeting of June 27, 2000, the Commission found no probable cause and dismissed the complaint against Dr. Vickner.

STATEMENT OF FACTS

The following facts have been discerned from the pleadings, minutes, documents submitted, testimony and the Commission's investigation.

Edward Vickner was elected to the Ewing Township Board of Education (Board) in April 1996. His spouse is a teacher in Ewing and a member of the ETEA, an affiliate of the NJEA. Bruce White and Vince Ordini are also members of the Board.

On April 14, 1997, the agenda for the regularly scheduled Board meeting included the ratification of the contract with the ETESSA. Six of nine Board members were present. The Board entered into executive session to discuss the proposed agreement with the ETESSA. Vince Ordini recused himself from the discussion and left the room because his wife is a member of the ETESSA. Mr. White remained in the executive session meeting. In the public meeting,

³ The complainants also submitted minutes of the executive session meetings of January 25, 1999, February 16, 1999, April 26, 1999 and June 28, 1999. However, the Commission did not discern from the minutes that the ETESSA contract was being discussed in those meetings. The minutes generally stated that negotiations were discussed and Mr. Ordini, who would usually leave the room during discussions of the ETESSA contract, remained in the room, indicating that the ETESSA contract was not discussed.

when the Board voted on the contract, Mr. Ordini abstained and Dr. Vickner voted in favor of it. The contract was thus ratified by a vote of five to zero with one abstention.

On July 26, 1999, the Board held its regularly scheduled monthly meeting. The Board entered into executive session to discuss the status of negotiations with the ETESSA. Mr. Ordini, whose spouse is a member of the ETESSA, left the executive session. However, Dr. Vickner remained in the session. Mr. Ordini told Dr. Vickner that he should not be present, but Dr. Vickner chose to remain.

Dr. Vickner also participated in executive session discussions concerning the ETESSA contract leading up to the July 26, 1999 contract ratification on the following dates: December 15, 1998; December 21, 1998; February 8, 1999; February 22, 1999; May 10, 1999; May 24, 1999; and June 14, 1999.

At a June 28, 1999 executive session meeting of the Board, Dr. Vickner remained in the meeting when the Board discussed the ratification of the tentative ETEA successor agreement. At the public Board meeting on June 28, 1999, Dr. Vickner informed the Board of the Commission's Advisory Opinion A10-93, which provided that a board member would violate the Act if he were to negotiate with the same statewide general union to which he or his spouse belonged. He argued then that Mr. White had a conflict of interest and should not have participated in negotiations with the ETEA because his wife is a member of the same statewide general union.

The ETEA and ETESSA contracts for the time periods in question do not have linking provisions.

ANALYSIS

The issue before the Commission is whether Dr. Vickner violated the N.J.S.A. 18A:12-24(c) of the Act when he participated in an executive session discussions regarding negotiations and voted on contracts with the ETESSA on April 14, 1997 and July 26, 1999. Complainants allege that Dr. Vickner's conduct violated 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.

Regarding the April 1997 contract ratification, in Advisory Opinion A10-93, the Commission advised that a board member would violate the School Ethics Act if he were to negotiate with a bargaining unit of the same statewide general union to which he or his spouse belonged. Advisory Opinion A10-93(b)/A07-94 further advised that a board member would violate the Act if he were to participate in discussions or vote on a contract with members of the same statewide general union to which he or his spouse belongs. Dr. Vickner testified before the Commission, however, that because only six board members were present on April 14, 1997 and Mr. Ordini's spouse belonged to the ETESSA, the Board invoked the Doctrine of Necessity. He stated that the Board would have been unable enter into executive discussion to discuss the contract or to ratify the contract with fewer than five members. Mr. White denied that he or the Board had invoked the Doctrine of Necessity.

The Commission has reviewed the minutes of the April 14, 1997 and there is no indication that the Doctrine of Necessity was invoked in order to discuss the contract in executive session or ratify the contract. Indeed, if the Doctrine of Necessity had been invoked, then Mr. Ordini would have been allowed to vote along with Dr. Vickner. The Doctrine of Necessity allows all members present to vote where the Board would lose a quorum and be unable to vote on a crucial matter if all of the members with a conflict of interest did not participate. The fact that Mr. Ordini left the room during the executive session and abstained from voting on the contract indicates that the Doctrine was not invoked.

Therefore, the first question is whether Dr. Vickner violated N.J.S.A. 18A:12-24(c) by voting to ratify the contract with the ETESSA on April 14, 1997 or July 26, 1999. The Commission concludes that it cannot find probable cause to credit the allegation that Dr. Vickner violated the Act by voting on these contracts. The State Board ruled in *In the Matter of Pannucci*, SB #16-97 (March 1, 2000), that it was not a per se violation of the Act for a board member to vote on a bargaining unit's contract when his spouse was a member of the same statewide general union. Thus, the Commission would have to conclude that the contract provisions were linked or that the support staff generally received wages and benefits either the same as or in some set proportion to that of the teachers such that Dr. Vickner would have a financial involvement in the outcome of the ETESSA contract. The Commission does not have the information to discern such linkage or other reliance on the teacher's contract. Therefore, it must find no probable cause to credit the allegation that Dr. Vickner violated N.J.S.A. 18A:12-24(c) of the Act by voting on the contract.

Regarding the issue of participation in discussions in executive session prior to the contract ratification, this was not an issue discussed in *Pannucci*. In April, the negotiations with the ETESSA had been completed and resulted in the contract coming up for a ratification vote on April 14, 1997. Therefore, the purpose of the executive session discussion was to allow board members to ask questions regarding the terms of the settlement. The Commission finds that Dr. Vickner's remaining in such discussions is not equivalent to serving on the negotiations committee or otherwise negotiating a contract, which the Commission found to constitute a violation of N.J.S.A. 18A:12-24(c) in *I/M/O Bruce White*, C18/C22-99 (March 28, 2000). The

Commission believes that if the State Board in *Pannucci* allowed a board member who has a spouse in the same statewide union to vote on the contract, then it most likely contemplated that the board member would be able to view the contract and have it explained to him prior to the ratification vote. Thus, the Commission finds no probable cause to credit the allegation that Dr. Vickner's participation in the executive session discussion prior to the ratification of the ETESSA contract was a violation of N.J.S.A. 18A:12-24(c).

Regarding Dr. Vickner's participation in contract discussions leading up to the July 26, 1999 ratification vote, Dr. Vickner testified that he relied on Advisory Opinion A08-98 and believed that he could participate in the executive session discussion on the ETESSA contract. On June 2, 1998, the Commission issued Advisory Opinion A08-98. It advised that a board member who had a spouse who was a member of a teacher's union in the district would not violate the Act by negotiating with the support staff union in the district if the contracts did not have provisions that linked them. The Commission did not have facts before it to indicate that both bargaining units were affiliates of the same statewide union, but rather assumed that they were separate and distinct bargaining units, like teachers and administrators. If the bargaining units were members of the same statewide general union, then a board member negotiating with the affiliate union when his spouse is a member of the other would violate Advisory Opinion A10-93. Although the Commission did not intend for A08-98 to allow a board member in Dr. Vickner's position to participate, the Commission did not expressly state that the board member would not be able to negotiate if the two bargaining units were affiliates of the same statewide general union. Therefore, it cannot hold Dr. Vickner responsible for his misunderstanding of the opinion.

The Commission also found as fact that Dr. Vickner participated in executive session discussions on seven occasions between December 15, 1998 and the July 26, 1999. Because the Commission found that a board member with a spouse who was teacher in the district could negotiate a support staff contract so long as the contract provisions were not linked, the Commission is constrained to find that Dr. Vickner could reasonably rely on Advisory Opinion A08-98 to believe that he was allowed to participate in such discussions if the contracts were not linked. The Commission has reviewed the ETESSA and ETEA contracts and does not find any provisions of the contract are linked such that Dr. Vickner could not rely on A08-98 when he participated in the discussions.

Therefore, the Commission finds no probable cause to credit the allegation and dismisses the charge that Dr. Vickner violated N.J.S.A. 18A:12-24(c) by participating in the executive session discussions on the ETESSA contract between December 1998 and July 26, 1999.

The last issue is whether Dr. Vickner violated the Act by discussing the ETEA contract in executive session on June 28, 1999. The Commission's investigation has shown that the subject of this executive session discussion was not the terms of the contract, but how the contract came to be before the Board when the Board President had not appointed a negotiation team to bargain with the ETEA as of June 1999. The Commission finds no probable cause to credit the

allegation that Dr. Vickner violated the Act by questioning the procedures used to reach a contract settlement with the ETEA.

DECISION

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Dr. Vickner violated N.J.S.A. 18A:12-24(c) by voting to ratify the collective bargaining agreements of the ETESSA on April 14, 1997 or July 26, 1999. In addition, the Commission finds no probable cause in connection with Dr. Vickner's participation in executive session meetings on April 14, 1997 or December 1998 through the ratification date of July 26, 1999.

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

Paul C. Garbarini,
Chairperson

Resolution Adopting Decision – C01/C02-00

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 before it; and

Whereas, the Commission finds no probable cause to credit the allegations in the complaint; and

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

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter 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 duly adopted by the School Ethics Commission at its public meeting on June 27, 2000.

Lisa James-Beavers
Executive Director