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<b>PATRICIA HODGES,</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>V.</b>	:	
	:	<b>Docket No.: C15-01</b>
<b>DAVID BALL,</b>	:	
<b>LAKEHURST BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
<b>OCEAN COUNTY</b>	:	

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**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Patricia Hodges on March 26, 2001 alleging that respondent David Ball violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, Ms. Hodges alleges that Mr. Ball: 1) participated in closed session meetings where negotiations were discussed when his wife is a member of the local education association and 2) initiated a discussion of his spouse's employment with the Superintendent during a board meeting. She did not allege a specific provision of the Act that had been violated.

Respondent filed his answer to the complaint stating that his wife is a teacher assistant and member of the Lakehurst Education Association, but he believes that he was allowed to participate in the closed sessions in question. He further answers that he asked a question of the Superintendent that was questioning how the calculation of his wife's hours was reached. He set forth that any board member would have asked the same question.

The Commission advised the parties that it would discuss this Complaint at its meeting on June 26, 2001. They were advised of their right to attend and present witnesses and testimony to aid in the Commission's investigation. Neither party appeared at the meeting. The Commission tabled its decision at that time.

At its public meeting of July 24, 2001, the Commission found that the first allegation of the complaint was out of time since the allegations arose from 1998 and 1999 closed session meetings. It found no probable cause to credit the allegations in the second paragraph of the complaint against Mr. Ball and dismissed the complaint against him.

**FACTS**

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

David Ball is a member of the Lakehurst Board of Education (Board). The Board employs Mr. Ball's wife as a teacher assistant. She has been employed in that capacity and has been a member of the Lakehurst Education Association since before the time that Mr. Ball became a member of the Board three and a half years before the filing of this complaint.

Mr. Ball participated in closed session meetings in which the stated subject matter was negotiations with the Lakehurst Education Association on November 17, 1998, September 22, 1998 and March 24, 1999.

During a Board meeting in November 2000, the Superintendent reported that Mrs. Ball's hours would be increased to 19.5 hours per week. Mr. Ball questioned the Superintendent as to why his wife's hours were only being increased to 19.5 hours per week. Teacher assistants receive a starting hours of 3.25 hours per day at the negotiated rate equaling 16.25 hours per week. At the Board meeting in question, the Board discussed the need for a teacher assistant for a third grade class to work at an additional 1.5 hours per day. Mr. Ball calculated that the additional time would add 7.5 hours per week onto the 16.25 bringing his wife's total hours per week to 23.75. Therefore, he questioned why his wife's employment was being increased to 19.5 hours per week, rather than 23.75.

Ms. Hodges and Mr. Ball were opponents in the Board election of April 1999. Mr. Ball was elected. Ms. Hodges was not.

## **ANALYSIS**

The issue before the Commission is whether the above facts establish that Mr. Ball violated N.J.S.A. 18A:12-24(b) or (c) of the School Ethics Act.

The Commission must address a threshold question of the timeliness of the first allegation of the complaint. Ms. Hodges alleges that Mr. Ball participated in closed session meetings in violation of the Act on September 22, 1998, November 17, 1998 and March 24, 1999. The most recent of these allegations occurred over two years before the filing of the Complaint. Complainants are to file a complaint within one year of the alleged violation pursuant to N.J.A.C. 6A:28-1.8(a). However, the Commission has allowed cases to proceed that were filed after the statute of limitations when extenuating circumstances were involved. For example, if a citizen advises the Commission about a board member committing a serious offense, but does not file an actual complaint because the board member resigns or is not re-elected to the board, the Commission will allow the complainant to file that complaint if the board member regains a seat on the board. In such a case, it is reasonable for a complainant to believe that the charges are moot due to the board member leaving the board, but then desire to file the complaint once the board member decides to seek office again.

The Commission can think of no extenuating circumstances in this case. Mr. Ball has been a member of the Board continuously since the first alleged violation in September 1998. The Commission believes that the information that Mr. Ball had participated in the closed session meetings in question was available within the year before the time that the complaint issued. The Commission therefore finds that N.J.A.C. 6A:28-1.8(a) prohibits the Commission from rendering a decision on the above matter.

For future reference, however, the Commission believes that it is important for Mr. Ball to be clear that in some instances, his participation in closed session meetings regarding collective bargaining will be in violation of the Act. The Commission advised in Advisory Opinion A14-00 (November 28, 2000) that board members who have spouses who are members of the same local bargaining unit with which the board is negotiating will violate N.J.S.A. 18A:12-24(c) of the Act if they participate in closed session meetings of the board on negotiations prior to the signing of a memorandum of agreement. The board member may participate in closed sessions after the signing of the memorandum of agreement because there will not be an opportunity for him to influence negotiations with which he has a conflict. The dismissal of the present allegation does not prevent Ms. Hodges from filing a complaint in the future if she finds that Mr. Ball does not adhere to the Commission's advice.

The second issue is whether Mr. Ball violated the Act by discussing his wife's employment with the Superintendent at a Board meeting. This issue raises questions under N.J.S.A. 18A:12-24(b) and (c).

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others. The Commission has found that Mr. Ball questioned the Superintendent's recommendation to increase his wife's employment to 19.5 hours per week because he could not determine how the Superintendent arrived at that figure. The number of hours contradicted the stated need for increased teacher assistant hours in her grade level. Based on the facts that the Commission determined, the Commission has insufficient information from which to conclude that Mr. Ball was attempting to use his position to secure unwarranted privileges for his spouse. It therefore finds no probable cause to credit the allegations that Mr. Ball violated N.J.S.A. 18A:12-24(b) in connection with the question asked of the Superintendent.

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.

Mr. Ball has stated that he understands that he must abstain from voting on matters pertaining to his wife's employment. The law is also clear that he must abstain from discussing matters involving his wife's employment because he has a financial involvement with her employment. The question that the Commission must address, therefore, is whether a board member who has a financial involvement is prohibited by N.J.S.A. 18A:12-24(c) from any discussion whatsoever involving his spouse's employment, even if he believes that a calculation regarding that employment is in error. While the Commission would have preferred that another Board member question the calculation, it must deal with the facts as presented. The Commission concludes that, according to the facts that it has found, Mr. Ball was allowed to ask the question of the Superintendent. In so concluding, it is striking a balance between the prohibitions set forth in the School Ethics Act and Mr. Ball's duty as a board member to question a matter on the agenda that he feels could result in an error being made. The Commission therefore finds no probable cause, but cautions Mr. Ball that the Commission is finding no probable cause based on the specific reason that he gave for interjecting a question in a matter concerning his wife's employment. Any further comments that he makes as a board member regarding his wife's employment will be closely scrutinized and may result in a different outcome under N.J.S.A. 18A:12-24(c).

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that David Ball violated N.J.S.A. 18A:12-24(b) or (c) of the School Ethics Act and dismisses the complaint against him.

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

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C15-01**

Whereas, the School Ethics Commission has considered the pleadings, documents and its investigation; and

Whereas, the Commission has found the first allegation to be out of time and no probable cause to credit the allegation that David Ball violated N.J.S.A. 18A:12-24(b) or (c) in connection with his wife's employment; and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the decision 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 August 28, 2001.

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Lisa James-Beavers  
Executive Director