

background documentation. His name was brought before the Board for termination unless and until he fully satisfied all the employment requirements. At the Board meeting in February 2002, Ms. Jackson voted with the majority to terminate Mr. Adams due to his failure to provide the necessary documents.

Mr. Freeman testified that Ms. Jackson asked the Board to support Mr. Adams' reinstatement and informed the Board that Mr. Adams had the necessary paperwork, but that it had not been forwarded to the Department of Education. In a letter to Ms. Jackson, Mr. Freeman wrote, "I am in full support of reinstatement, particularly if documentation regarding the expungement was submitted to Human Resources and was not forwarded to the Department of Education."

Mr. Adams subsequently satisfied the employment requirements and was recommended by the Superintendent to be reinstated to the position of maintenance worker. On May 29, 2002, the majority of the Board, including Ms. Jackson and Mr. Freeman, voted for Mr. Adams' reinstatement.

In his employment application, Mr. Adams listed his address as 136 Everett Street. However, Mr. Freeman produced a National Comprehensive Report (NCR) showing a possible address for Mr. Adams to be that of Ms. Jackson. Mr. White testified that he sees Mr. Adams at the Jackson residence occasionally, but that when he is there, he stays on the couch. Ms. Jackson also testified that she jokingly refers to Mr. Adams as her fiancé, but they do not have an intimate relationship and he does not live with her. There is no information that Mr. Adams pays rent or otherwise compensates Ms. Jackson when he stays with her.

ANALYSIS

Complainant urges the Commission to find that Ms. Jackson violated N.J.S.A. 18A:12-24(b) and (c).

N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

Complainant alleges that Ms. Jackson used her position as a Board member to secure unwarranted employment for Mr. Adams when she voted to reinstate him. For the Commission to find probable cause under N.J.S.A. 18A:12-24(b), there must be information to show that Mr. Adams' reinstatement was unwarranted. The Commission does not reach this conclusion. The Commission finds that the information provided supports Mr. Adams' reinstatement. Mr. Adams was terminated for failing to provide the Board with necessary background documentation, but was reinstated, upon his satisfaction of the requirement on the superintendent's recommendation. The Commission also notes that Mr. Freeman wrote a letter to Ms. Jackson wherein he gave

his full support for the reinstatement of Mr. Adams and actually voted to reinstate him. Mr. Freeman appears to believe that Mr. Adams was entitled to reinstatement. For the foregoing reasons, the Commission finds that there is insufficient information to show that Ms. Jackson secured unwarranted employment for Mr. Adams when she voted to reinstate him.

Therefore, the Commission finds that there is no probable cause to credit the allegation that Ms. Jackson violated N.J.S.A. 18A:12-24(b).

Next, Complainant urges the Commission to find that Ms. Jackson violated N.J.S.A. 18A:12-24(c) when she voted to reinstate Mr. Adams. N.J.S.A. 18A: 12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has 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.

Initially, the Commission notes that Mr. Adams is not a member of Ms. Jackson's immediate family pursuant to N.J.S.A. 18A:12-23, as he is not her spouse. Therefore, in order to find a violation of N.J.S.A. 18A:12-24(c), the Commission must find that Ms. Jackson had a direct or indirect financial involvement with Mr. Adams' employment or a personal involvement that creates some benefit to her by his employment.

In that regard, Complainant sets forth that the address of record for Ms. Jackson is the same as the residence the NCR listed for Mr. Adams between August 1999 and April 2001 thereby implying that the two shared finances from a cohabitation arrangement. The Commission, however, notes that the NCR does not affirmatively report Mr. Adams' permanent residence. The report indicates that the addresses listed represent "possible addresses associated with Mr. Adams." Moreover, Ms. Jackson testified that she and Mr. Adams do not have an intimate relationship and that they are not live-in companions. The Commission is therefore without sufficient information from which to conclude that Ms. Jackson has a financial involvement that might reasonably be expected to impair her objectivity when voting on his employment. Similarly, the Commission does not have information as to how she has a personal involvement with Mr. Adams' reappointment that would constitute a benefit to her. It is only clear that they are friends and that he occasionally stays at her residence.

The Commission has previously held that where a school official is alleged to have a "close relationship" with a person whose employment is being considered by the Board, her vote on that person's contract did not violate N.J.S.A. 18A:12-24(c) of the Act. In the Matter of Nielsen, C32-96 (June 24, 1997). The Commission did however,

find a violation of N.J.S.A. 18A:12-24(c) where a school official negotiated and voted on a contract when his fiancé was a member of the local bargaining unit. In the Matter of Russo and Scarano, C12-97 (January 27, 1998). However, in C12-97, the school official married his fiancé within the term of the contract that had been negotiated, thereby impacting the finances of the marital household. The Commission was unable to establish that Mr. Adams and Ms. Jackson were actually engaged although she admitted referring to Mr. Adams jokingly as her fiancé. Therefore, the Commission must find that there is insufficient information to demonstrate that Ms. Jackson has a financial involvement that might reasonably be expected to impair her objectivity or a personal benefit that creates a benefit to her by voting on the reinstatement of Mr. Adams.

For the foregoing reasons, the Commission concludes that there is no probable cause to credit the allegation that Ms. Jackson violated N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the Commission finds no probable cause that Ms. Jackson violated N.J.S.A. 18A:12-24(b) or (c) of the School Ethics Act and dismisses the complaint against her.

RESPONDENT'S REQUEST FOR SANCTIONS

Respondent counterclaimed that the complaint brought by Philip E. Freeman, Sr. was frivolous and that he should be sanctioned under N.J.S.A. 18A:12-29(e). In order to find a counterclaim frivolous, the Commission must find, on the basis of pleadings and evidence presented, that the complaint was commenced or continued in bad faith; or that the non-prevailing party knew or should have known that the complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for extension, modification or reversal of existing law. N.J.S.A. 2A:15-59.1.

Although the Commission concludes that there is no probable cause to credit the allegations that Ms. Jackson violated the Act, it recognizes the unusual nature of Ms. Jackson's relationship with Mr. Adams. Ms. Jackson testified that she is good friends with Mr. Adams and that she has "jokingly" referred to him as her fiancé. A neighbor of Ms. Jackson's also testified that he has occasionally seen Mr. Adams at Ms. Jackson's residence and that Mr. Adams stays on her couch. Therefore, the Commission finds that Mr. Freeman's allegations were not made in bad faith and were not without any reasonable basis in law. Thus, the Commission does not find the present complaint to be frivolous.

The Commission therefore dismisses respondent's counterclaim against Mr. Freeman for filing a frivolous complaint.

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 – C18-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, at its meeting of August 27, 2002, the Commission found no probable cause to credit the allegations that Ms. Jackson violated 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

Whereas, the Commission has reviewed the decision and agrees with the 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 Resolution was duly adopted by the School Ethics Commission at its public meeting on October 29, 2002.

Lisa James-Beavers
Executive Director