

submissions by both parties. As the complainants responded to the submission of Mr. White, the Commission allowed Mr. White the opportunity to respond to their submissions. His submission was received on January 18, 2000. The Commission rendered its decision on January 25, 2000 finding Mr. White in violation of N.J.S.A. 18A:12-24(c) of the Act and recommending a penalty of removal from the Board.

FACTS

Based on the pleadings, documents submitted, and testimony of the parties, the Commission found the following material facts to be undisputed.

Bruce White has served as a member of the Ewing Township Board of Education for 14 years. He served on the Board from 1984 to 1990 and was elected again in 1992. He served as Board President twice. Dr. Vickner was elected to the Board in April 1996.

At all times relevant to this complaint, Mr. White's spouse was a teacher in the neighboring district of Trenton and a member of the NJEA. On February 28, 1994 and September 16, 1996, Mr. White voted for approval of the ETEA contracts for 1994-1997 and 1997-2000 respectively.

Because the teachers' contract was not scheduled to expire until June 2000, Board President Maria Bua did not appoint a committee to negotiate with the teachers on the advice of the board attorney that it would be premature to do so. Three contracts were to end in 1999 so Ms. Bua appointed contract negotiation teams for the support staff association (ETESSA), the administrators' association (ETAA) and the ETDCA. Mr. White was named chair of the committee to negotiate with the ETESSA. He was not placed on any other negotiation team. Dr. Vickner was named chairperson of the ETAA negotiation team and was a member of the ETDCA team.

At a May 1999 Board meeting, Mr. White was approached by the President of the ETEA and asked if he was interested in reaching a contract settlement with the Association in the same manner as in the past. He discussed this proposal with the Superintendent and assumed that he informed the Board President. A meeting was arranged between members of the Board and the Association that was to take place after the Board's dinner for the retiring teachers in June. Mr. White said that he was present at that meeting, but did not participate in the negotiations. He said that the process took about 40 minutes. The other Board member present was Frank Fontana. The President and Vice President of the ETEA were present along with the Superintendent.

Mr. White notified Board President Bua on the first Saturday in June that he had met with the President of the ETEA and discussed a new contract. This was the first that she had heard of it.

At the Board's June 23, 1999 meeting, the Superintendent presented the contract for approval. Dr. Vickner raised the issue of Mr. White having a conflict of interest in

negotiating the contract because his wife is a member of the NJEA. After Board attorney John Dyer confirmed that Mr. White should not have participated in negotiations, Mr. White responded, "I'll take the punishment because we got a good contract." When an argument ensued, Mr. White indicated that he did not care whether Dr. Vickner filed an ethics complaint against him and said, "Go ahead and file it. Get it over with." Mr. White stated at that meeting that he was unaware that he was prohibited from negotiating.

Mr. White has been a dues-paying member of the PSA for 22 years. The ETAA is an affiliate of the PSA. On October 25, 1993, April 29, 1996 and May 10, 1999, Mr. White voted for approval of the ETAA contracts.

ANALYSIS

The complainants cite the Commission's prior advisory opinion A10-93(b) and A07-94 as evidence that Mr. White violated N.J.S.A. 18A:12-24(c). At the time that the conduct complained of occurred, this section set forth:

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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

N.J.S.A. 18A:12-24(c) now 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 believes that it would be appropriate to apply the statute that was in effect at the time that the alleged conduct occurred. However, it ultimately concludes that it is inconsequential which statute it applies because the conduct raises an issue of a financial involvement, which remains the same under both statutes.

In A10-93 and A10-93(b)/A07-94, the Commission advised that a board member would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act if he were to negotiate and vote on a contract with a local bargaining unit if he or his immediate family member were a member of the same statewide general union with which the board is negotiating. The Commission then said that it is reasonable for the public to perceive that a board member could not be objective in voting for his or his spouse's fellow union members to receive a

contractual award or service, as an increase in benefits or pay could influence an increase in the rate of pay to all members of the same statewide general union and thereby benefit the board member or his spouse. This constitutes an indirect financial involvement for the board member that might reasonably be expected to impair his objectivity or independence of judgment.

Bearing in mind the Commission's advisory opinion and the cases to follow, including *In the Matter of Frank Pannucci*, C08-96 (1996), it is clear that Mr. White violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. Not only did Mr. White vote on the contract of two local bargaining units in which he and his spouse were members of the statewide general union with which he was negotiating, but he set up negotiations with the teachers' union without knowledge of or authorization from the Board or the Board President. The Commission finds such action to be a flagrant disregard for the office he holds. Clearly Mr. White's arranging of a meeting with the teachers' union at the union president's urging, without the knowledge or authorization of the Board, provides the public even greater reason to perceive that he was attempting to acquire some benefit for the statewide general union to which his spouse belongs. Mr. White's representation to the union that he was acting with the Board's authority placed the Board in the untenable position of either approving the contract that had been formed at his clandestine meeting or face charges of an unfair labor practice if it declined to honor it. Again, a reasonable person would easily perceive that Mr. White engaged in such conduct because of his ties to the statewide general union.

PENALTY

The Commission has carefully considered the submissions of the parties in this matter. The complainants, in their submission, reject with incredulity Mr. White's representations that he did not know that the School Ethics Act prohibited his participation in negotiations with the teachers' association and the administrators' association and ask that he be removed. They note that Mr. White has served on the Board for approximately 14 years and served as Board President for two years. They also note that, prior to these actions, he raised an ethics issue and directed the Board attorney to seek an ethics opinion as to whether another board member could negotiate. Further, they note that Mr. White specifically denied having a conflict of interest on the night that the negotiation meeting took place and that even now, knowing that his conduct violated the Act, Mr. White deflects blame by stating that he was never properly advised. Overall, the complainants point to numerous acts of Mr. White that they believe evidence that he believes that he is above the law. Specifically, they note that although there was ample time during the retirement party prior to the private meeting with the union to tell the board members that he had been approached about negotiating, he chose not to tell anyone. They say that Mr. White's admission that this is not the first time that he has negotiated a contract with the union in such a manner further evidences his lack of respect for the law. Last, they point to his comments on the June 28, 1999 meeting tape such as "[g]o ahead. File a complaint. I don't care" as a demonstration of his arrogance and evidence that if not severely punished, he will continue to violate the rules.

In his submission, Mr. White argues that only a reprimand is warranted. He points out that he did not knowingly or intentionally violate the School Ethics Act although he acknowledges that his actions were a violation of N.J.S.A. 18A:12-24(c). He cites to a bill that was introduced in March 1999, which would have made Mr. White's conduct lawful under the School Ethics Act, A-2977, and states his belief that under the amended N.J.S.A. 18A:12-24(c), he would not have been found guilty of a violation. He also cites to various decisions of the Commission involving the attendance of a board member at a meeting where the board discussed a matter in which he had a conflict of interest and the Commission or the Commissioner imposed at most a censure. He states that his participation was limited in that he did not actually negotiate, but only participated in a side bar discussion with the other Board representative and the Superintendent. He urges the Commission to reject the representations of the complainants and rule consistently with the record and recommend no more than a censure.

The Commission has carefully reviewed the submissions of the parties. It is also aware of Mr. White's representations to the media indicating that Mr. Vickner's complaint stems from his opposition to prior litigation of Mr. Vickner. In a statement he released to the media, he charges Mr. Vickner with violating the Act and states that he should receive nothing more than a reprimand. The Commission notes parenthetically that Mr. White has never filed with the Commission any complaint against Mr. Vickner.

The Commission, while not finding Mr. White to have misrepresented his lack of knowledge, finds that it was Mr. White's duty as a former Board President, board member and administrator to familiarize himself with the rulings of the Commission. The fact that he was excused from attending training because of his continuous membership on the Board from 1984 to 1990 did not obviate the need for him to familiarize himself with the School Ethics Act, which became effective in 1992. In response to questions by Commission members, Mr. White represented to this body that he received the New Jersey School Boards Association (NJSBA) publication *School Board Notes*, but never read it, and received the PSA's publication, but recalled only that it focused on professional development. The Commission's advisory opinion was noted in both publications. The Commission finds that his representations to this body evidence, at best, a serious lack of concern for the rules that govern his conduct.

The Commission finds that the introduction of a bill in March 1999, which would render acceptable Mr. White's conduct in voting for the contracts, is irrelevant. The Commission can only render decisions based on the law as it currently exists. Further, the bill certainly did not address Mr. White's conduct in usurping the authority of the Board President and entering into negotiations without Board authority to do so. Regarding N.J.S.A. 18A:12-24(c) as it currently provides, the Commission has already stated that the amendment does not affect the outcome in this case.

Last, the Commission finds the cases that Mr. White has cited to be inapposite. The Commission has found that Mr. White violated N.J.S.A. 18A:12-24(c) of the Act by

participating in negotiations and voting on contracts with the ETEA on three separate occasions in 1994, 1996 and 1999. Even discounting Mr. White's 1994 participation as too close to when the Commission advised that the conduct would constitute a violation, the Commission has ample information to distinguish this case from the cases cited. The Commission has expressed particular concern about the manner in which Mr. White has stated that he entered into negotiations with the association and the way that negotiations were conducted in 1996 and 1999 without the appointment of a committee and without authorization. Mr. White also violated N.J.S.A. 18A:12-24(c) of the Act by voting on the ETAA contracts in 1996 and 1999 as set forth in the complaint. It was not demonstrated that Mr. White participated in negotiations on the ETAA contracts. Nevertheless, the Commission finds these facts to be unlike any other that it has previously decided based on the number and manner of the violations.

In the past, the Commission has recognized mitigating factors such as acting on the advice of an attorney or being newly elected to the Board. Neither of these is applicable here. Further, the Commission believes that unless punished severely, Mr. White will continue to take actions on behalf of the Board without the authority of the Board. Mr. White's continued reference to his violations of the Act as "technical," as though the term makes them less valid, and his attitude as evidenced on the tape of the meeting and in his representations to the press, indicate to the Commission that only the maximum penalty that it may recommend will convince Mr. White that he did anything wrong.

For the foregoing reasons, the Commission recommends that the Commissioner of Education impose a penalty of removal from the Board.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C18-99, C22-99 (Consolidated)

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

Whereas, the Commission concluded at its meeting of November 23, 1999, that respondent Bruce White violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the written submissions of the parties regarding the penalty to be imposed; and

Whereas, the Commission now finds that the appropriate penalty to be recommended to the Commissioner of Education is removal from the Board; and

Whereas, the Commission has reviewed a proposed decision setting forth its findings and conclusions; 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 of the Commission's decision herein finding Bruce White in violation of N.J.S.A. 18A:12-24(c) of the Act and recommending a penalty of removal.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on January 31, 2000.

Lisa James-Beavers
Executive Director