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<b>IN THE MATTER OF</b>	:	
<b>BRUCE J. WHITE,</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
<b><i>EWING TOWNSHIP</i></b>	:	<b>Docket No.: C18-99, C22-99</b>
<b><i>BOARD OF EDUCATION,</i></b>	:	<b>(Consolidated)</b>
	:	
<b><i>MERCER COUNTY</i></b>	:	<b>DECISION ON RETURN</b>

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**PROCEDURAL HISTORY**

On January 31, 2000, the School Ethics Commission adopted a decision finding Ewing Township Board of Education (Board) member Bruce White in violation of N.J.S.A. 18A:12-24(c) of the Act and recommending that the Commissioner of Education impose a sanction of removal from the Board. The Commissioner of Education returned the above-captioned matter to the School Ethics Commission by his decision dated March 15, 2000. In his decision, the Commissioner stated that he could not render a determination on the penalty until the Commission considered how the State Board of Education’s decision in the case, *In the Matter of Pannucci*, SB #16-97, which issued on March 1, 2000, affected its determination of violation and assessment of penalty.

The complaint alleged that Ewing Township Board member Bruce White violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when he entered into negotiations with members of the Ewing Township Education Association (ETEA) without Board authority. The complaint also alleged that he violated the Act by negotiating and voting on the contract with the ETEA when his spouse is a member of the New Jersey Education Association (“NJEA”), with which the ETEA is affiliated. The complaint alleged that Mr. White participated in such negotiations in 1994 and 1996 as well as 1999. Last, the complaint alleged that Mr. White violated the Act when he participated in negotiations and voted on contracts with the Ewing Township Administrators’ Association (ETAA) when he is a member of the Principals and Supervisors Association (PSA), with which the ETAA is affiliated. Mr. White was alleged to have voted for approval of the ETAA contracts on April 29, 1996 and May 10, 1999. The second complaint, which was consolidated with the first, alleged that Mr. White took it upon himself to negotiate a new teachers’ contract without board approval when his wife works as a teacher in Trenton.

At its meeting of March 28, 2000, the Commission considered the effect of the *Pannucci* decision on its finding of a violation and the penalty recommendation. The Commission reaffirmed that Bruce White violated N.J.S.A. 18A:12-24(c) of the School Ethics Act, and added that the facts also established a violation of N.J.S.A. 18A:12-24(a) and (b) and reaffirmed its recommendation that the Commissioner impose a penalty of removal from the Board. The reasons are set forth below.

## DECISION

In its January 31, 2000 decision, the Commission concluded that Mr. White violated N.J.S.A. 18A:12-24(c) of the Act by participating in negotiations with the ETEA in 1996 and 1999 and voting on contracts with the ETEA on three separate occasions in 1994, 1996 and 1999. The Commission discounted his voting in 1994, however, since the Commission had just issued the advisory opinion in 1994 that advised that voting on such contracts was in violation of the Act. The Commission also concluded that Mr. White 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.

The Commission finds that its decision that Mr. White violated N.J.S.A. 18A:12-24(c) of the Act by voting on the contracts with the ETEA and the ETAA has been reversed by *In the Matter of Frank Pannucci*. In the *Pannucci* decision, the State Board reversed the Commission's decision saying "we reject the view that status as a member of another local union within the same statewide union should, on a per se basis, preclude a board member from voting on a collective negotiations agreement in the district where he or she is a member." (Slip op. at p.13). The Commission found violations of the Act based on the fact that Mr. White voted on the collective bargaining agreements with the ETEA and the ETAA when his spouse was a member of the ETEA and he was member of the ETAA. Therefore, the Commission reverses its finding of a violation on those charges of the complaint.

However, the State Board noted that its decision addressed only the question involved in *Pannucci* and Advisory Opinion A10-93(b) and A07-94, that is, whether a board member who is a member of a statewide general union could vote on a contract with the local affiliate of the same statewide general union. Mr. White's votes on the contracts were not the conduct that was most disturbing to the Commission. As the Commission noted in its decision, Mr. White participated in negotiations with the ETEA. He took it upon himself to set up negotiations with the President of the ETEA without authorization from the Board or Board President. Furthermore, he did so before the contract was even scheduled to expire and thus, before the other associations that had been scheduled for negotiations due to expiring contracts had the opportunity to negotiate with the Board. The Commission has never heard of negotiations occurring in such a manner, although Mr. White said the ETEA contract was reached the same way in prior years. It is the secret negotiations about which the Commission is most concerned.

As the Commission previously stated, 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 scheduled to end in 1999, so Ms. Bua appointed contract negotiation teams for the support staff association (ETESSA), the administrators' association (ETAA) and the ETDCA. There was no team appointed to negotiate the ETEA contract. This testimony by Board President Bua was undisputed.

In response to the complaint, Mr. White stated in his affidavit:

Since my tenure on the ... Board contracts between the Ewing Township Education Association (“Association”) and the Board have been resolved outside of the typical, and often contentious, arena of negotiations. In the past, one or two board members along with the Superintendent of Schools, who served as the chief spokesperson, and one or two representatives of the Association, met informally to discuss the issues and reach an understanding. Each side presented the ideas to their own groups and the contracts were settled. There had been no negotiating teams or hours of negotiations.

I was approached during a break of a Board meeting in May of 1999 by the President of the Association. I was asked if the Board was interested in reaching a contract settlement with the Association in the same manner as in the past. I discussed this with the Superintendent of Schools, Timothy Wade, whom I assumed informed the Board President. A meeting was arranged between members of the Board and the Association. I was present at that meeting, but did not participate in the negotiations.

I believe I followed all the appropriate chains of command in arranging the meetings between the members of the Board and the Association since the matter was discussed with the Superintendent of Schools, who advised the Board President.

The Commission based its findings on Mr. White’s sworn affidavit and testimony. The meeting took place at a restaurant in Ewing on June 3, 1999. The Commission found the material facts to be undisputed, although there is a discrepancy in Mr. White’s answer at the conclusion of the above passage. At the end, Mr. White says the matter was discussed with the Superintendent, who advised the Board President, while at the beginning of the above passage, he indicates that he discussed the matter with the Superintendent who he assumed told the Board President. However, Ms. Bua testified that no one told her that the meeting was going to take place and that she did not find out until Mr. White told her on June 5, 1999, after it had been accomplished. Mr. White admitted that he did not tell her and does not dispute her testimony that she did not know.

The other Board member present at the meeting was Frank Fontana. The President and Vice President of the ETEA were present along with the Superintendent. Again, the Commission found these facts based on the testimony and affidavits of Bruce White.

Mr. White denied having actually negotiated with the ETEA. However, he admitted to arranging the meeting at the request of the union president, attending the meeting and being present throughout the meeting while a contract was being negotiated, all without notifying or being authorized by the Board president. Further, no other

negotiations were held with the ETEA prior to the presentation of the contract to the board membership on June 23, 1999. Given the foregoing, the Commission finds that Mr. White participated in negotiations. It does not find his denial that he actually negotiated to be credible, but it matters not whether he actually negotiated, since it is clear that the totality of his conduct with the ETEA constitutes participation in negotiations.

The Commission noted in its January 31st decision that, at the Board's June 23, 1999 meeting, when 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. The Commission listened to the tape of the meeting in which Mr. White responded, "I'll take the punishment because we got a good contract." This further supports the Commission's view that he participated in negotiations. Mr. White further indicated on the tape 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." The Commission now reaffirms that Mr. White's conduct violated N.J.S.A. 18A:12-24(c) and finds that such conduct violated other provisions of the Act as well.

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.

In A10-93, the Commission advised that a board member would violate N.J.S.A. 18A:12-24(c) of the Act if he were to participate in negotiations 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 School Ethics Act does not differentiate between whether the school official or his spouse has the involvement; either creates a conflict for the school official. The Commission reasoned in A10-93 that a reasonable member of the public would perceive that a board member could not be objective in negotiating for his or his spouse's fellow union members to receive a contractual award or service. This is because in determining contract settlements, it is a well-established practice for negotiating teams to compare salaries of neighboring and similar statewide districts. 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. The Commission notes that the district in which Mr. White serves is a neighboring district to the district where his wife teaches. The Commission finds the comparisons even more likely where the districts are neighboring districts such as Ewing and Trenton in the present case.

In addition, the Commission interprets N.J.S.A. 18A:12-24(c) in conjunction with N.J.S.A. 18A:12-22(a), which states,

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

Again, Mr. White did not just participate in negotiations on the contract with the local bargaining unit when his spouse was a member of the statewide general union with which he was negotiating. He arranged negotiations with the teachers' union without knowledge of or authorization from the Board or the Board President. The Superintendent's knowledge or presence does not absolve Mr. White of acting on his own initiative without the Board or Board President's authorization. The negotiation session was held out of the hearing of the public, as is the normal practice; however, the Board, the members of which constitute the duly elected representatives of the public, were also kept completely in the dark. Neither the Board nor the Board President had any knowledge that such negotiations were even being considered. There was no committee appointed, no discussion of parameters and to the Board's knowledge, no urgency to negotiate since the contract was not scheduled to expire until June 2000. The public, as well as the Board, has the right to know when negotiations are taking place and who will be negotiating. Mr. White's conduct robbed them of their right to such knowledge. By his actions, Mr. White engaged in conduct that would create a justifiable impression that the public trust is being violated further supporting a violation of N.J.S.A. 18A:12-24(c).

The Commission does not believe that the State Board's ruling in *Pannucci* applies to these circumstances. Voting is the act of approving that which others negotiated or otherwise worked upon, which is a ministerial act, albeit a necessary and important act. However, negotiations actually establish the benefits and rate of increases in salary which impact the rest of the school budget as well as the local tax base to be voted upon by the Board and ultimately the public. Mr. White's arrangement of a clandestine meeting went above and beyond merely voting. To obtain a contract despite the lack of authority to do so demonstrates a high level of financial involvement. Mr. White could have followed proper procedures and allowed Ms. Bua to choose a team to negotiate with the ETEA. Instead, he chose to begin the negotiations himself. A reasonable member of the public would easily perceive that Mr. White's spouse's ties to the statewide general union impaired his independence of judgment when he engaged in such conduct. Therefore, the Commission reaffirms its finding that Mr. White acted in his official capacity in a matter in which his spouse had an indirect financial involvement in violation of N.J.S.A. 18A:12-24(c).

In addition, on review the Commission finds Mr. White's conduct in violation of N.J.S.A. 18A:12-24(a), which states:

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.

Just as a school board member alone cannot hire someone, even with the Superintendent's approval, a school board member alone cannot decide to arrange a meeting to "discuss the issues and reach an agreement." When a board member takes it upon himself to make an agreement on behalf of the board without the authority of the board, it places the board in the untenable position of being forced to go along with the action of the board member or risk an unfair labor practice charge. The purpose of the School Ethics Act is to rid school boards of backroom deals to ensure a democratic process. This much is clear from N.J.S.A. 18A:12-22(a). Mr. White usurped the authority of the Board and acted as a Board unto himself when, through the Superintendent, he presented an agreement that was reached without the Board's knowledge. It is not in the public interest to reach a collective bargaining agreement in this fashion, no matter what the result. The Commission finds that Mr. White's meeting with the union president and reaching an agreement as he did, constituted engaging in a transaction that is in substantial conflict with the proper discharge of his duties in the public interest.

Similarly, on review, the Commission finds that Mr. White's conduct violated N.J.S.A. 18A:12-24(b), which 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.

It is undisputed that in June 1999, three contracts were scheduled to expire and the Board President appointed three negotiation teams for those bargaining units. As set forth above, the ETEA was not one of the units, as its contract did not expire until June 2000. By agreeing with the ETEA president to meet with him without the Board's knowledge, prior to the Board's negotiations with the other bargaining units, Mr. White gained a privilege and advantage for the ETEA to the exclusion of the other bargaining units. The ETEA was able to resolve its issues, reach an agreement and set the standard for the other units. Reaching an agreement a year ahead of schedule and before other units whose contracts are scheduled to expire is certainly to the ETEA's advantage. Reaching an agreement in the manner in which it was done is an unwarranted privilege. Mr. White gained a privilege for his spouse as well since she is a member of the general statewide union of which the local unit is an affiliate. It is always beneficial to set the standard to which other affiliates of the statewide general union will aspire. For the foregoing reasons, the Commission finds that Mr. White violated N.J.S.A. 18A:12-24(b) as well.

## **PENALTY**

Mr. White has consistently denied any knowledge of the Commission's prior advisory opinions that stated that a school official would violate the Act if he negotiated with a local bargaining unit of a statewide general union to which he or his spouse belongs. The Commission concluded in its January 31st decision that Mr. White's denial evidenced, at best, a serious lack of concern for the rules that govern his conduct. It concluded that it was Mr. White's duty as a former Board President, Board member and an administrator to familiarize himself with the rulings of the Commission as well as the School Ethics Act. Thus, the Commission does not find his stated lack of knowledge to mitigate in his favor.

In fact, the Commission could not find any mitigating factors that would apply to Mr. White. He did not act on the advice of an attorney nor was he newly elected to the Board. Although the Superintendent was with Mr. White at the meeting in question, he was there because Mr. White told him that the union president had asked that a meeting be arranged and he took it upon himself to arrange it. Therefore, the Commission does not find that the Superintendent's attendance was a mitigating factor. Indeed, since Mr. White has noted that the Superintendent's spouse was also a member of the NJEA, his attendance does nothing to improve the public's perception of this clandestine meeting.

The Commission stated its belief in its January 31st decision that, unless punished severely, Mr. White will continue to take actions on behalf of the Board without the authority of the Board. Mr. White does not find any fault with his conduct as he stated when he said, "I believe I followed all the appropriate chains of command." He acted as though he was at the top of the chain of command selectively disseminating information and leaving others in the dark. The Commission remains convinced that only the maximum penalty that it may recommend would convey to Mr. White that he acted in an unethical manner.

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

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, Mr. White 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.

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 rendered a decision on January 28, 2000, 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 *Pannucci* decision as instructed by the Commissioner of Education and determines that it does not alter its conclusion that the conduct of Bruce White constitutes a violation of the School Ethics Act; and

Whereas, the Commission reviewed the *Pannucci* decision with regard to the penalty and reaffirms 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) and N.J.S.A. 18A:12-24(a) and (b) of the Act and recommending a penalty of removal.

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Paul C. Garbarini, Chairperson

I hereby certify that this decision was authorized by the School Ethics Commission at its public meeting on March 28, 2000.

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Lisa James-Beavers  
Executive Director