
IN THE MATTER

OF

**RONALD UDY, DAVID A. EWART
and FRANK B. FRAZIER
*WOODSTOWN-PILESGROVE BOARD OF
EDUCATION
SALEM COUNTY***

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C20-03/C21-03

CONSOLIDATED DECISION

PROCEDURAL HISTORY

The above matter arises from a complaint filed by Woodstown-Pilesgrove Board of Education (Board) member John W. Morrison on May 2, 2003 alleging that fellow Board members Ronald Udy, David A. Ewart and Frank B. Frazier violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Complainant also named Matthew Nowicki in the complaint, but withdrew his complaint against him. First, the complainant alleges that Mr. Udy, Mr. Ewart and Mr. Frazier violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members when they overruled the recommendation of the superintendent to not renew the District's former Supervisor of Guidance (C.L.) and voted to retain C.L. for the same position. Second, the complaint alleges that Mr. Udy, Mr. Ewart and Mr. Frazier violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (f) when they voted to create a new administrative position for C.L. without the recommendation of the superintendent. Third, the complainant alleges that the respondents surrendered their independent judgment to supporters of C.L. in violation of N.J.S.A. 18A:12-24.1(f).

Mr. Udy and Mr. Ewart filed answers to the complaint through their counsel, John D. Jordan, Esquire, on June 13, 2003. Mr. Frazier filed a separate answer on June 3, 2003. In their answers, the respondents admit that they voted in favor of rehiring C.L. for the same position for which the superintendent recommended her non-renewal and voted to create a new administrative position for C.L. The respondents assert that it was in the best interest of the District to keep C.L. in the school system and that they had the legal right to take such action.

The Commission invited the parties to its August 26, 2003 meeting to present witnesses and testimony to aid in the Commission's investigation. Mr. Udy and Mr. Ewart were represented by Mr. Jordan. Mr. Frazier and the complainant appeared *pro se*. The Commission also heard testimony from board secretary, Susanne Fox; superintendent of schools, Michael Schreiner; and board members, Karen Malos and Patricia Parazewski. After hearing testimony, the Commission voted at its public meeting that Mr. Udy's conduct was in violation of the Code of Ethics, N.J.S.A. 18A:12-24.1(a), (c), (d) and (f). The Commission found the conduct of Mr. Ewart and Mr. Frazier to be in violation of N.J.S.A. 18A:12-24.1 (a) and (f) of the Code of Ethics.

FACTS

The Commission found the following facts to be undisputed.

At all times relevant to the allegations in the complaint, Mr. Udy, Mr. Ewart and Mr. Frazier were members of the Woodstown-Pilesgrove Board of Education. Mr. Udy was elected vice-president of the Board in 2002 and has worked 32 years in the District, serving as superintendent of schools, high school principal and teacher. Mr. Ewart has intermittently served on the Board, with more than 6 years of experience, and is currently serving as the Board president. Mr. Frazier is currently a member of the Board.

In 1999, the Board filled the position of Supervisor of Guidance. C.L. held a teaching certificate and supervisor certification from the State of New Jersey, but did not hold certification for the position of Director of Student Personnel Services. C.L. was hired by the Board with the understanding that she would obtain the aforementioned certifications. In January, 2000, the job title for the position of Supervisor of Guidance was changed to Director of Guidance and C.L. was “flagged” by the New Jersey Department of Education (NJDOE) for not having the necessary certification for the Director of Guidance position. The Board subsequently changed the title back to Supervisor of Guidance. No further “flags” were issued by the NJDOE.

A letter, dated January 17, 2001, to C.L. from the Pennsylvania Department of Education indicated:

We have carefully reviewed and evaluated your application and accompanying credentials using certification Standards and Regulations of the State Board of Education of Pennsylvania, Chapter 49 Certification of Professional Personnel. Based upon the information you have submitted, the evaluation reveals that you have not met the requirements for the certificated [of Pupil Personnel Services].

The Superintendent received a letter, dated September 6, 2001, from the New Jersey Department of Education stating that in order for C.L. to qualify to serve as a Director of Student Personnel Services, C.L. would need to present a regular New Jersey Student Personnel Services endorsement. At the Board meeting of April 4, 2002, the superintendent recommended the non-renewal of C.L. in the position of Supervisor of Guidance and indicated that C.L. did not possess the required certification.

On April 22, 2002, the Superintendent issued a letter of non-renewal to C.L. On May 15, 2002, a hearing was held on the matter, at the request of C.L., who provided a letter dated February 26, 2001, from the Associate Dean for the Center for Education at Widener University. The letter indicated that C.L. had completed the course requirements for certification as Pupil Personnel Services Supervisor. The Board solicitor attended the hearing and advised the Board

of N.J.A.C. 6:11-11.10 regarding the Director of Personnel Services certification, which provides in pertinent part:

(a) This endorsement is required for any person who is assigned as a director, administrator or supervisor of guidance and student personnel services of a school system, including the supervision of educational activities in areas related to and within the guidance program.

(b) The requirements are:

2. A standard New Jersey student personnel services certificate or its equivalent...

During the May 15, 2002 Board meeting, Mr. Udy made a motion to retain C.L. as the Supervisor of Guidance. The motion was defeated by 5-6 vote. Mr. Udy, Mr. Ewart and Mr. Frazier voted in favor of retaining C.L.

At the request of the Board president, the county superintendent confirmed, in his letter of May 30, 2002, that any person in the position of Supervisor or Director of Guidance is required to hold the required certifications for Director of Student Personnel Services. At its meeting of June 4, 2002, the Board approved, by 10-1 vote, a resolution encouraging C.L. to gain the Student Personnel Services Certification and encouraged the superintendent to leave open the Supervisor of Guidance position for one year, to give CL the opportunity to obtain the required certifications.

During the Board's meeting of June 6, 2002, Mr. Udy made a motion to create a new administrative position for C.L. The Superintendent was not present at the meeting to make a recommendation to create the position, but did write a letter to the Board members indicating that she had reviewed Mr. Udy's proposal and was supportive of it. The motion was defeated by 5-6 vote. Mr. Udy, Mr. Ewart and Mr. Frazier voted in favor of the creation of a new position for C.L.

After C.L.'s non-renewal, her supporters organized to recall the Board president and vice-president. Board member, Patricia Parazewski, testified that during the public session of the Board's meeting of May 15, 2002, she saw Mr. Udy call Margaret Scholl, a member of the recall committee who was sitting across the room, on his cell phone to tell her that the Board had defeated his motion to retain C.L. for the position of Supervisor of Guidance. Ms. Parazewski indicated that she did not hear Mr. Udy's conversation, but read his lips. Mr. Udy denied the allegation.

There is no information to show that C.L. obtained the necessary certification for Student Personnel Services from the State of New Jersey, or that she completed the necessary coursework to obtain the certification

ANALYSIS

Complainants allege that Mr. Udy, Mr. Ewart and Mr. Frazier overruled the recommendation of the superintendent and voted to rehire C.L. in violation of N.J.S.A. 18A:12-24.1(a). The Commission notes that in complaints alleging a violation of the Code of Ethics, the complainant has the burden of proving factually that the respondent's conduct is in violation of the Act.

Section 24.1(a) provides in pertinent part:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools.

The Commission notes that the respondents were advised by the Board solicitor of the legal requirements under N.J.A.C. 6:11-11.10(a) and (b)(2), which mandate that Supervisors of Guidance hold a certification in Director of Student Personnel Services or Student Personnel Services. The Commission also recognizes the notification from the New Jersey Department of Education advising the superintendent of schools that C.L. did not hold the requisite certification. There is no information to show that C.L. obtained the proper certifications. Mr. Udy, Mr. Ewart and Mr. Frazier argue that their decision to vote in favor of retaining C.L. was in the best interest of the District. The Commission disagrees. Although the Department of Education may not have "flagged" C.L. at the onset of her employment as Supervisor of Guidance, the law is clear. Under the aforementioned Department regulations, persons who hold the position of Supervisor or Director of Guidance must hold the Student Personnel Services certificate. Therefore, the Commission finds that Mr. Udy, Mr. Ewart and Mr. Frazier failed to enforce the regulations of the State Board of Education and violated N.J.S.A. 18A:12-24.1(a).

Complainant also alleges that Mr. Udy, Mr. Ewart and Mr. Frazier voted to create a new position without the recommendation of the superintendent in violation of N.J.S.A. 18A:12-24.1(a), (c), (d) and (f).

The Commission has found that the respondents violated N.J.S.A. 18A:12-24.1(a) for failing to adhere to the law and voting to retain C.L. Similarly, the Commission finds that Mr. Udy, Mr. Ewart and Mr. Frazier did not adhere to the law when they voted to create a new position for C.L., despite the requirement of N.J.A.C. 6:11-11.10(a) and (b)(2). Therefore, the Commission finds that Mr. Udy, Mr. Ewart and Mr. Frazier violated N.J.S.A. 18A:12-24.1(a).

Section 24.1(c) provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission finds that Mr. Udy's motions to retain C.L and to create a new position for her when there was no evidence that C.L. did hold the required certification, went beyond his duty of policy making, planning and appraisal.

Section 24.1(d) of the Code of Ethics provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

Based upon Mr. Udy's extensive experience, serving in the District for 32 years and holding such positions as the superintendent of schools, it is presumed that he knows the laws pertaining to the schools. The Commission finds that Mr. Udy attempted to undermine the authority of the superintendent and circumvent the requirements under N.J.A.C. 6:11-11.10 when he made the aforementioned motions. Therefore, the Commission finds that Mr. Udy administered the schools in violation of N.J.S.A. 18A:12-24.1(d).

Section 24.1(f) states:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The Commission finds that Mr. Udy, Mr. Ewart and Mr. Frazier violated N.J.S.A. 18A:12-24.1(f) when they voted to retain C.L. as Supervisor of Guidance and voted to create a new position for her, although there was information to demonstrate that she had not gained the necessary certification and no evidence to show that she had completed the necessary coursework to obtain the certification for the position. The Commission finds that the facts lead one to conclude that this was done for C.L.'s gain, because she was a friend.

However, the Commission finds insufficient proof that Mr. Udy, Mr. Ewart and Mr. Frazier surrendered their independent judgment to the supporters of C.L. in violation of the second prong of N.J.S.A. 18A:12-24.1(f). Since it does find that all three respondents violated the first part of the section, the Commission finds a violation of N.J.S.A. 18A:12-24.1(f).

DECISION

For the foregoing reasons, the Commission finds that Mr. Udy violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (f) of the Code of Ethics and Mr. Ewart and Mr. Frazier violated N.J.S.A. 18A:12-24.1(a) and (f).

PENALTY

Based on the findings set forth above, demonstrating that Respondents violated the Code of Ethics for Board Members, the Commission recommends that the Commissioner of Education impose a penalty of censure regarding Mr. Ewart and Mr. Frazier. The Commission further recommends to the Commissioner the penalty of removal from office for Mr. Udy.

This decision, having been adopted by the Commission, 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 to the parties, the respondent 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 – C20/21-03

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

Whereas, the Commission found that Ronald Udy violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (f) and David A. Ewart and Frank B. Frazier violated N.J.S.A. 18A:12-24.1(a) and (f) of the Code of Ethics For School Board Members; and

Whereas, the Commission believes that the penalty of removal is the appropriate sanction for Mr. Udy and the penalty of censure is appropriate for Mr. Ewart and Mr. Frazier;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding the respondents in violation of the Code of Ethics and recommends that the Commissioner of Education impose the aforementioned penalties.

Paul C. Garbarini, Chairman

I hereby certify that the School
Ethics Commission adopted this decision
at its public meeting on September 23, 2003.

Lisa James-Beavers
Executive Director