
WALTER CURIONI and	:	
CARMELLA CASTELLUZO,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	Docket No.: C23/C25-99
FRANK BALDINO and JOSEPH CAPIZZI,	:	Consolidated
LODI BOARD OF EDUCATION,	:	
BERGEN COUNTY	:	DECISION

PROCEDURAL HISTORY

The above-captioned matter arises from two complaints filed separately by Walter Curioni and Carmella Castelluzo alleging that Lodi Board of Education (Board) member Frank Baldino and Business Administrator/Board Secretary Joseph Capizzi violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., by changing the vote of Frank Baldino from a "yes" to an abstention on a vote to employ Mr. Baldino's wife.

Mr. Baldino responded that he initially voted "yes" on the motion for the Board to appoint his wife to a position with the Board, but then he leaned over to Mr. Capizzi and asked him to change his vote to an abstention. Mr. Capizzi also provided in his answer that Mr. Baldino asked him to change the vote to an abstention immediately after he voted "yes". Mr. Baldino and Mr. Capizzi denied having committed any violation of the School Ethics Act.

The parties were invited to appear at the Commission's February 22, 2000 meeting. All of the parties appeared and testified before the Commission. Mr. Capizzi was represented by Paul Griggs, Esq. The Commission did not render a decision at that meeting.

At the Commission's March meeting, the Commission listened to the tape of the relevant portion of the September 27, 1999 Board meeting during its executive session. It then voted to find no probable cause and dismiss the complaint. The Commission directed its staff to prepare a decision for adoption at the Commission's April 28, 2000 meeting. On April 28, 2000, the Commission voted to have staff prepare a decision and forward it to the parties upon completion.

FACTS

The following facts are based on the pleadings, the documents submitted, the Commission's investigation and the testimony of the parties.

On September 27, 1999, the Lodi Board of Education held its regularly scheduled public meeting. Ms. Castelluzo was in attendance in the audience at that meeting. Item

four of the Superintendent's monthly report was the teacher aide list. When the vote was taken on that item, Mr. Baldino vote "yes" for the appointment of the teacher aide list, which included Mr. Baldino's wife. Mrs. Castelluzo later reviewed the minutes of the meeting and they indicated that Mr. Baldino abstained from voting. She then listened to the tape of the meeting and heard only Mr. Baldino's "yes" vote on item four.

Item five of the Superintendent's report was the substitute teacher list. This list also included Mr. Baldino's wife. The parties do not dispute that when the vote was taken on this item, Mr. Baldino abstained.

At the October 25, 1999 meeting of the Board, the Board Vice President Thomas Kida voted against adopting the minutes of the September 27, 1999 meeting noting a discrepancy between having heard Mr. Baldino vote "yes" and the minutes that said that he abstained.

ANALYSIS

Ms. Castelluzo alleges that Mr. Baldino and Mr. Capizzi's conduct constituted a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq.¹ Neither complainant alleged any specific provision of the Act that was violated by the conduct of Mr. Baldino and Mr. Capizzi. However, the Commission finds the only relevant provisions to be N.J.S.A. 18A:12-24(c) and (b).

Frank Baldino

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.

The issue is whether Mr. Baldino acted in his official capacity in a matter in which he or a member of his immediate family has a direct or indirect financial or personal involvement of the type set forth above.

The Commission finds that the appointment of Mr. Baldino's wife to the teacher aide list would result in income to Mr. Baldino's family. Therefore, Mr. Baldino and his

¹ Ms. Castelluzo also alleges that Mr. Baldino and Mr. Capizzi violated the Open Public Meetings Act. The Commission does not have jurisdiction over complaints arising under the Open Public Meetings Act.

wife had a financial involvement in his wife's appointment that might reasonably be expected to impair his objectivity. For the same reason, he and his wife had a personal involvement that constituted a benefit to them. Thus, the question becomes whether he actually acted in his official capacity or abstained from the vote. The Commission could not discern from the cassette tape of the meeting that Mr. Baldino changed his vote. However, on the next vote when Mr. Baldino's wife was considered on the substitute list, he did abstain. The Commission finds Mr. Baldino's abstention on item number five to be circumstantial evidence that he intended to abstain on his wife's appointment in item number four. The Commission therefore finds his testimony credible that he did not intend to vote for his wife to be appointed to teacher aide list and requested that his vote be changed.

The Commission therefore finds no probable cause to credit the allegation that Mr. Baldino violated N.J.S.A. 18A:12-24(c) of the Act and dismisses the complaint against him.

The Commission does not find N.J.S.A. 18A:12-24(b) to be relevant to Mr. Baldino. 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.

Even if Mr. Baldino had not changed his vote, the Commission does not have information to indicate that Mr. Baldino used or attempted to use his official position to secure unwarranted privileges or employment for himself or his spouse. There is no indication in the pleadings or the testimony that Mr. Baldino's spouse received the appointment to the teacher aide list because Mr. Baldino voted or because he somehow attempted to influence the vote. Further, there is no indication that Mrs. Baldino's appointment was an unwarranted privilege or employment.

Joseph Capizzi

As Mr. Capizzi did not have a financial or personal involvement in the vote in question, N.J.S.A. 18A:12-24(c) does not apply to him. The only question is whether he used or attempted to use his official position to secure unwarranted privileges for Mr. Baldino in violation of N.J.S.A. 18A:12-24(b).

Mr. Curioni and Ms. Castelluzo believe that Mr. Capizzi changed Mr. Baldino's vote on the teacher aide list to an abstention. While such conduct would arguably constitute a violation of N.J.S.A. 18A:12-24(b), the Commission finds Mr. Baldino's testimony to be credible that he changed his vote to an abstention in such a way that was audible only to Mr. Capizzi. Again, although the tape is silent as to a changed vote and is therefore inconclusive, the Commission is persuaded that Mr. Baldino did not intend to vote on the teacher aide list containing his wife by the fact that he abstained on the next

agenda item. Mr. Baldino's and Mr. Capizzi's testimony was supported by other board members who said that they saw Mr. Baldino turn to Mr. Capizzi, although none said that they heard Mr. Baldino change his vote.

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Mr. Capizzi violated the School Ethics Act and dismisses the complaints against him.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaints and dismisses the charges against Frank Baldino and Joseph Capizzi.

This is a final decision of an administrative agency and therefore, it is appealable to the Appellate Division of the Superior Court of New Jersey.

DECISION ON SANCTIONS FOR FILING FRIVOLOUS COMPLAINT

The respondents have asked the Commission to find that the complaints against them were frivolous pursuant to N.J.S.A. 18A:12-29(e) because even if the facts that Mr. Curioni and Mrs. Castelluzo set forth were true, they would not constitute a violation of the Act. The standard for a frivolous complaint is set forth at N.J.S.A. 2A:15-59.1. It states:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing 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 an extension, modification or reversal of existing law.

Respondents' argument is not that the complaint was issued in bad faith, but that it was filed without any reasonable basis in law as set forth in the second part of the standard. The Commission does not agree. The complainants' argument was not just that Mr. Baldino said he abstained when he did not, but that he actually voted to hire his spouse. Although the Commission ultimately believed that Mr. Baldino did not intend to vote and changed his vote to abstain, the charge does have reasonable basis in law, as voting in favor of one's spouse to receive employment with the board would be a violation of N.J.S.A. 18A:12-24(c). Similarly, the Commission finds that if it were

proven that Mr. Capizzi in fact changed the vote of Mr. Baldino without having been requested to do so, then that could be construed as using one's position to secure unwarranted privileges for another in violation of N.J.S.A. 18A:12-24(b). Thus, there is a reasonable basis in law for the complaints and the standard has not been met.

Further, the Commission believes that these complaints could have been avoided had Mr. Baldino and Mr. Capizzi stated clearly to the public that Mr. Baldino wished to change his vote. However, the Commission does not find that the failure to do so constitutes a violation of the School Ethics Act. Rather, the Commission provides this as a reminder to the Lodi Board of Education that the purpose of a public meeting is to allow the public to know what action is being taken and how the members of the Board are voting on that action. The public was not appropriately informed in this instance.

For the foregoing reasons, the Commission does not find the complaints frivolous and declines to impose sanctions.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C23/C25-99

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

Whereas, the Commission has determined that no probable cause exists to credit the allegations in the complaint; and

Whereas, the Commission has reviewed the proposed decision of its staff and agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision finding no probable cause as its decision in this matter and directing its staff to notify all parties to this action of the Commission’s decision herein.

Paul C. Garbarini, Chairman

I hereby certify that the School Ethics Commission authorized that this decision be written and sent at its public meeting on April 25, 2000.

Lisa James-Beavers
Executive Director