
IN THE MATTER

OF

**JOHN F. KROSCHWITZ, II and WENDY
STURGEON, Respondents,
HAMILTON BOARD OF EDUCATION
MERCER COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket #C29-03

AMENDED DECISION

PROCEDURAL HISTORY

This matter arises from a complaints filed against John Kroschwitz, II and Wendy Sturgeon for violations of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, the Hamilton Township Board of Education alleges that respondent Sturgeon entered schools and took photographs of the kitchens in order to damage the reputation of food service contractor Sodexho whose contract the teachers’ union opposed. Ms. Sturgeon and Mr. Kroschwitz had been endorsed by the union. The complaint also alleges that Mr. Kroschwitz and Ms. Sturgeon appeared on a television program broadcast on WZBN complaining of Sodexho’s management of the kitchens.

Mr. Kroschwitz filed an answer to the complaint admitting to having been endorsed by the political action committee of the unions, but stating that the board president and two other board members were also so endorsed. He admitted to being interviewed on WZBN and expressing concerns about the sanitary conditions and management of the kitchens by Sodexho. He denied having committed any violation of the School Ethics Act. Ms. Sturgeon filed an answer to the complaint admitting that she was endorsed by the union’s political action committee, but stating that because she was elected in April 2003, she was not present for the majority of meetings where the union expressed its objections to Sodexho. She stated that it was her belief that it was her duty to inspect the cafeterias prior to voting on whether to renew the contract and does not believe that she violated any provision of the School Ethics Act.

The School Ethics Commission advised the parties that it would discuss this matter at its meeting of September 23, 2003. The parties were advised of their right to bring counsel and witnesses. All parties appeared with counsel and witnesses. The complainants were represented by board attorney, Dennis DeSantis, Esq. The respondent was represented by Diane Proulx, Esq. The Commission heard testimony from the parties and complainant’s witness, Robert Foster, Board President. At its public meeting on September 23, 2003, the Commission voted to find probable cause to credit the allegations that Ms. Sturgeon violated N.J.S.A. 18A:12-24.1(j) of the Code of Ethics for School Board Members of the School Ethics Act in connection with the conduct taken in opposition to Sodexho. The Commission neglected to render a decision on Mr. Kroschwitz and therefore, the matter was placed on the agenda of the October 28, 2003 meeting. The Commission adopted this decision at a special meeting of October 31, 2003 that was called to continue the agenda from its regularly scheduled meeting of October 28, 2003.

The decision concludes that Ms. Sturgeon and Mr. Kroschwitz violated N.J.S.A. 18A:12-24.1(j) of the Code of Ethics for School Board Members of the School Ethics Act and recommends a penalty of censure.

FACTS

Mr. Kroschwitz is a member of the Hamilton Township Board of Education who was elected in April 2002. Ms. Sturgeon is a member of the Hamilton Township Board of Education who was elected in April 2003. Both respondents were endorsed by the Hamilton Township Friends of Education, the political action committee formed by the Hamilton Township Education Association (HTEA) and the Hamilton Township School Secretaries' Association (HTSSA) when they ran for election to the Board. The HTEA represents all teaching staff members, educational assistants, custodians and kitchen workers. The HTSSA represents all school secretaries employed by the Complainant Board.

On June 26, 2002, the Board entered into a contract with Sodexo Management, Inc. to manage the food services in the District. Sodexo began performing these services on July 1, 2002. The agreement provided that the District would continue to maintain its current staff of kitchen workers who were members of the HTEA. However, these workers would be managed by Sodexo and any further vacancies would be filled by Sodexo and those replacement employees would no longer be employees of the complainant or members of the HTEA.

After July 1, 2002, HTEA and HTSSA representatives appeared repeatedly at monthly Board meetings objecting to the hiring of Sodexo and criticizing its performance. The Sodexo contract was scheduled to expire on June 30, 2003 and the Board agenda for May 28, 2003 set forth the consideration of the renewal of the contract for an additional one year period.

On May 8, 2003, two board members visited Nottingham High School to inspect the cafeteria. On May 9, 2003, Mr. Kroschwitz and another board member visited the school. Ms. Sturgeon was aware of the visits by these board members.

On May 13, 2003, Ms. Sturgeon made visits to Nottingham High School, Grice Middle School and Reynolds Middle School. The principals of all the middle and high schools in the District were attending a meeting at the Board office that day. Ms. Sturgeon did not notify any of the administrators in those buildings of her visit in advance nor did she ask for any administrator when she arrived. She wore her badge identifying her as a board member. She went to the main office and asked to enter the kitchen where she took photographs. She did not sign in or out and did not advise the Board's central administration of what she had done or inform them of what she had found. At Grice and Reynolds Middle Schools, she asked for a specific custodian that she had been told to request by a staff member. The custodian, who had been advised by a union representative that Ms. Sturgeon would be coming, took her through the kitchen and answered her questions.

At no time after her visits to the three schools did Respondent Sturgeon advise any administrators of the three schools or any members of the Central Office Administration that she

had visited, the reason that she did so or the result of her visits. She did not provide copies of the photographs to the administrators.

On May 19, 2003, Ms. Sturgeon went to a television station with the pictures and taped a program that was to air on May 20, 2003. Mr. Kroschwitz appeared on the program with Ms. Sturgeon. Members of the Board saw the program and were upset that neither they nor the Board had been given advance notice of her findings. On May 21, 2003, the *Trenton Times* newspaper printed an article quoting both Respondents regarding their complaints as to the sanitary conditions of the kitchens in the three schools. At the Board's agenda meeting on May 21, 2003, the Respondents advised the Board and the chief administrative officer for the first time of Ms. Sturgeon's visit to the schools and their complaints about the condition of the schools' kitchens. Officers and members of the HTEA and HTSSA publicly spoke about the cleanliness of the kitchens managed by Sodexo in opposition to the renewal of its contract.

Respondents voted not to renew the contract with Sodexo at the Board meeting on May 28, 2003. The contract with Sodexo was renewed.

ANALYSIS

Complainants allege that Ms. Sturgeon's conduct violated N.J.S.A. 18A:12-24.1(c), (d) and (j) of the Code of Ethics for School Board members. In addition, complainants allege that both respondents violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f) because they undertook such action after having been endorsed by the political action committee of the HTEA and the HTSSA.

N.J.S.A. 18A:12-24.1(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 reviewed Ms. Sturgeon's conduct in relation to N.J.S.A. 18A:12-24.1(c) and concludes that Ms. Sturgeon's conduct could arguably be viewed as "appraisal," which is permitted under the Code of Ethics. The Commission does not view the rest of this section to be particularly pertinent to the facts of this case. Ms. Sturgeon undertook an appraisal of the kitchens in order to inform her vote as to whether to renew the contract with Sodexo. She was not setting out to formulate a policy. The Commission does not view this conduct as a violation of N.J.S.A. 18A:12-24.1(c).

N.J.S.A. 18A:12-24.1(d) sets forth:

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.

The Commission does not view Ms. Sturgeon's conduct as an attempt to administer the schools. Further, one could argue that she was attempting to see that the schools are well run although she undertook the investigation without the knowledge of the other board members.

The Commission believes that there are other sections that are more applicable to the conduct alleged and concludes that Ms. Sturgeon did not violate N.J.S.A. 18A:12-24.1(d).

N.J.S.A. 18A:12-24.1(j) provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Ms. Sturgeon admitted that she did not advise the chief administrative officer of her intent to visit the schools because she heard complaints of less than sanitary conditions at the schools that she visited. She further admitted that she did not take her complaints to the chief administrative officer after she visited the kitchen and took pictures of what she believed confirmed the complaints. Instead, she took her complaints to a television station and provided an interview to the local newspaper. In doing so, she gave the chief administrative officer no opportunity to solve the problem before making her complaint public. The Commission finds that her doing so was a clear violation of N.J.S.A. 18A:12-24.1(j).

Complainants next allege that both Ms. Sturgeon and Mr. Kroschwitz violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f) in connection with the fact that both were endorsed by the political action committee of the HTEA and the HTSSA.

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 Commission advised in Public Advisory Opinion A13-02 that board members who were endorsed by the local education association would violate N.J.S.A. 18A:12-24(c) if they were to participate in negotiations and vote on the contract in the year of the endorsement. In such a case there was a direct relationship between the union endorsement and the union contract. Therefore, the Commission concluded that a personal involvement was created by the endorsement by the association and that a benefit was created by the services attached to that endorsement and the board members endorsed in the year in which contract negotiations began had a personal involvement with the association that constituted a benefit to them. Thus, the board members' participation in negotiations and voting on the teachers' contract would violate N.J.S.A. 18A:12-24(c). In the present case, the complainants seek to broaden that opinion and rule that a board member endorsed by the teachers' union is not only prohibited from negotiating and voting on the union contract, but is also prohibited from voting on matters coming before the board where the union has advocated a certain position. The Commission declines to expand the prohibition to this extent. The Commission declines to rule that board members endorsed by the union have a personal involvement that constitutes a benefit to them in issues that impact upon

the union outside of the contract. The benefit that such board members would acquire is not clear. Also, such a ruling could conflict endorsed board members from voting on any matter before the Board that could impact the union either positively or negatively. For the foregoing reasons, the Commission finds no probable cause to credit the allegation that the Respondents' conduct violated N.J.S.A. 18A:12-24(c).

Last, complainants argue that both Respondents' conduct violated N.J.S.A. 18A:12-24.1(f), which provides:

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

The opposition of the HTEA and the HTSSA to the Sodexo is undisputed. While the Commission believes that both Respondents could have exercised independent judgment in voting against the renewal of Sodexo's contract, the Commission believes that the motivating factor behind Ms. Sturgeon's visits to the schools and her and Mr. Kroschwitz's appearance on television describing the poor conditions of the schools' kitchens was the opposition of the unions to Sodexo's contract with the Board. The Commission finds this to be a reasonable inference that can be drawn from the Respondents' endorsement by the HTEA and HTSSA's political action committee, the surreptitious investigation into the kitchens without the knowledge of the administration and the Respondents' choice to present the information to the media rather than the administration. This is evidence that they were more concerned about seeing that the contract was not renewed than correcting the problem. For the foregoing reasons, the Commission finds that there is ample evidence that Ms. Sturgeon and Mr. Kroschwitz surrendered their independent judgment to a special interest group in violation of N.J.S.A. 18A:12-24.1(f).

DECISION

For the foregoing reasons, the Commission finds that Ms. Sturgeon violated N.J.S.A. 18A:12-24.1(j) by not presenting her complaints to the chief administrative officer and giving him an opportunity to address them before discussing them on a television program and finds that Ms. Sturgeon and Mr. Kroschwitz violated N.J.S.A. 18A:12-24.1(f) for surrendering their independent judgment to a special interest group.

In determining the penalty to recommend, the Commission had to consider that the Respondents were addressing a potential hazard to students in the Hamilton School District. The Commission disagreed with their methods for addressing the problem and concluded that those methods were motivated by the involvement of the union in the contract issue. For this violation of the Code of Ethics, the Commission recommends that the Commissioner of Education impose a penalty of censure against both Respondents.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C29-03

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

Whereas, at its meeting of September 23, 2003, the Commission found that Wendy Sturgeon violated N.J.S.A. 18A:12-24.1(j) and at its meeting of October 31, 2003, the Commission found that both Ms. Sturgeon and John Kroschwitz, II violated N.J.S.A. 18A:12-24.1(f) of the Act and recommended that the Commissioner of Education impose a sanction of censure for both; and

Whereas, the Commission staff prepared a decision consistent with the aforementioned conclusion; and

Whereas, at its meeting of October 31, 2003, the Commission reviewed the draft decision and agreed with the decision;

Whereas, at its meeting of November 25, 2003, the Commission noted an error in its prior decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed amended 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 November 25, 2003.

Lisa James-Beavers
Executive Director