
MICHAEL MASKALY, SR.

V.

**DENNIS CHEREPSKI, MARY ROSE
AMISTAD, CHRISTOPHER AVITA, FRED
GERSTLER AND GREGORY SETAR
CARTERET BOARD OF EDUCATION
MIDDLESEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C38-03

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint that certain members of the Carteret Board of Education (Board), violated the School Ethics Act N.J.S.A. 18A:12-21 *et seq.* Specifically, Complainant alleges that Board President, Dennis Cherepski, violated N.J.S.A. 18A:12-24(b) when he appointed the Board attorney as the “lone” CEA negotiation committee for the teachers’ salary contract to the exclusion of the Board members who did not have a conflict. Complainant alleges that Fred Gerstler and Gregory Setar also violated N.J.S.A. 18A:12-24(b) in connection with the contract, but does not provide a specific explanation regarding this allegation. Complainant further alleges that Board members Mary Rose Amistad, Christopher Avita, Fred Gerstler, Gregory Setar and Mr. Cherepski violated N.J.S.A. 18A:12-24.1(f) when they voted to adopt the teachers’ salary contract when they were in conflict, since there were a sufficient number of non-conflicted Board members to vote.

The respondents filed their answer by way of counsel, Viola Lordi, Esquire. In his answer, Mr. Cherepski admits that he did appoint Mr. Jankowski to represent the Board as negotiator, but denies that he violated N.J.S.A. 18A:12-24(b) of the Act. Mr. Gerstler and Mr. Setar also deny that they violated N.J.S.A. 18A:12-24(b) of the Act. The respondents each assert that they voted on the teachers’ salary contract based upon the understanding of the applicability of the Doctrine of Necessity and the advice of counsel and deny that their actions violated the Code of Ethics, N.J.S.A. 18A:12-24.1(f).

The Commission invited the parties to attend the Commission’s meeting on February 3, 2004, to present witnesses and testimony to aid in the Commission’s investigation. The respondents appeared represented by counsel, Viola Lordi, Esquire. Complainant appeared *pro se*.

During its public meeting of February 3, 2004, the Commission found no probable cause to credit the allegation that Dennis Cherepski, Fred Gerstler and Gregory Setar violated N.J.S.A. 18A:12-24(b) of the School Ethics Act. The Commission also found that the above-named respondents did not violate the Code of Ethics, N.J.S.A. 18A:12-24.1(f).

The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on February 24, 2004.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

The respondents were members of the Carteret Board of Education at all times relevant to this matter. Dennis Cherepski served as the president of the Board at all times relevant to this matter. The Board consists of nine members. At its June 18, 2003 meeting, Mr. Cherepski announced that he had appointed legal counsel, Joseph J. Jankowski, Esquire, to negotiate the teachers' salary contract on behalf of the Board, since five Board members were in conflict and could not negotiate. The contract involved a change in school finances which would affect 130 school accounts. The Board passed a resolution appointing the Board attorney as the "lone" CEA negotiation committee at the June 18, 2003 meeting. At the Board's July 30, 2003 meeting, Mr. Jankowski recommended that the Doctrine of Necessity be invoked before executive session. The Board invoked the Doctrine of Necessity at the same meeting. The minutes from the July Board meeting indicate that there was no Board vote taken to invoke the Doctrine of Necessity, but do show that the Board used the Doctrine of Necessity to vote in the teachers' salary contract. The Board adopted a resolution at the following meeting.

ANALYSIS

The complainant alleges that Mr. Cherepski's conduct was in violation of N.J.S.A. 18A:12-24(b) when he failed to appoint board member to the negotiating committee, leaving Mr. Jankowski to be the "lone" CEA negotiation committee for the teachers' salary contract. N.J.S.A. 18A:12-24(b) prohibits school officials from using or attempting to use their official position to secure unwarranted privileges/advantages or employment for others.

The Commission acknowledges the authority of the Board president to appoint a negotiating committee. In this case he chose not to appoint a committee of the Board, thus leaving the labor negotiator to negotiate on his own. The Commission notes that at its June 18, 2003 meeting, the Board passed a resolution appointing Mr. Jankowski as the "lone" CEA negotiation committee. There is no evidence to demonstrate that Mr. Jankowski's appointment was unwarranted. Therefore, the Commission finds that there is no probable cause to credit the allegation that Mr. Cherepski used or attempted to use his official position to secure unwarranted privileges for Mr. Jankowski in violation N.J.S.A. 18A:12-24(b).

The complainant also alleges that Mr. Gerstler and Mr. Setar violated N.J.S.A. 18A:12-24(b), but he does not provide any information to support his allegation. Therefore, the Commission finds no probable cause to credit the allegation.

Next, the complainant urges the Commission to find that the above named respondents violated the Code of Ethics N.J.S.A. 18A:12-24.1(f). Pursuant to N.J.S.A. 18A:12-29(b), the complainant has the burden of proving factually that the respondent's conduct is in violation of the Code of Ethics. N.J.S.A. 18A:12-24.1(f) 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 for the gain of friends.

Complainant asserts that Board policy dictates that a nine member board needs five "yes" votes to pass a teachers salary contract. Although evidence of this policy was not provided, the Commission notes that a board of nine members would require five members, a quorum, to pass a contract. The Commission set forth in In Re Edward De Young, et al., SEC Docket No. C07-96 (July 23, 1996) that a quorum of the board must be eligible to vote on a collective bargaining agreement with the teachers' association. In the absence of a quorum, the Commission found that the board members did not violate the Act by voting pursuant to the Doctrine of Necessity. In the present case, the Board has nine members, five of which were in conflict and prohibited from negotiating or voting on the teachers' salary contract. Under such circumstances, the Commission finds that invoking the Doctrine of Necessity was proper, since there was an insufficient number of eligible voters. There is no evidence to show that the respondents surrendered their independent judgment to special interest or partisan political groups or that they used the school for personal gain or the gain of friends. The Commission, therefore, finds that the respondents did not violate N.J.S.A. 18A:12-24.1(f). tomorrow

Notwithstanding the foregoing decision, the Commission notes that there were Board members who were not in conflict and apparently could have negotiated the teachers' salary contract. In such circumstances, the Commission encourages the use of school board members to negotiate, since board members are elected to address such matters.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Dennis Cherepski, Fred Gerstler or Gregory Setar violated N.J.S.A. 18A:12-24(b) of the Act. The Commission further finds that Mr. Cherepski, Mary Rose Amistad, Christopher Avita, Fred Gerstler and Gregory Setar did not violate the Code of Ethics N.J.S.A. 18A:12-24.1(f) and dismisses the complaint against the respondents.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C38-03

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

Whereas, at its meeting of February 3, 2004, the Commission found no probable cause to credit the allegation that Dennis Cherepski, Fred Gerstler and Gregory Setar violated N.J.S.A. 18A:12-24(b) and dismissed the charge against him; and

Whereas, at its meeting of February 3, 2004 the Commission further found insufficient evidence that Mary Rose Amistad, Christopher Avita, Fred Gerstler, Gregory Setar and Dennis Cherepski violated the Code of Ethics for School Board Members N.J.S.A. 18A:12-24.1(f) and therefore dismissed the charges against them and; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the draft decision and agrees with the 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 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 February 24, 2004.

Lisa James-Beavers
Executive Director

