

TED DOTY,	:	
	:	
V.	:	BEFORE THE SCHOOL ETHICS COMMISSION
	:	
MICHAEL FRIEDBERGER, MICHAEL PUZIO, STEVE HODES and FRANK GIARRATANO,	:	SEC Docket No.: C40-02
ROCKAWAY TWP. BOARD OF EDUCATION, MORRIS COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint alleging that Rockaway Township Board of Education (Board) members Michael Friedberger, Michael Puzio, Steve Hodes and Frank Giarratano violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, when they accepted the endorsement of the Rockaway Township Education Association and voted in favor of the contract with the Association. The complaint alleges that the respondents undertook a service which might reasonably be expected to prejudice their independence of judgment in violation of N.J.S.A. 18A:12-24(d) and represented a party other than the school board in violation of N.J.S.A. 18A:12-24(g) of the Act. The complaint further states that, if it is determined that the respondents represented a party other than the Board, then they are not entitled to indemnification by the Board for their legal fees in defending this complaint under N.J.S.A. 18A:12-20.

The respondents filed answers to the complaint setting forth that the allegations are virtually identical to those set forth in a previous complaint by Ted Doty filed against the same Board members, C34-02, as well as complaints filed by another complainant, C13/C14/C15-02. Therefore, they referred the School Ethics Commission to the previously filed answers to those complaints and denied that their conduct violated the Act.

The parties were invited to attend the Commission’s meeting on November 26, 2002, at which their case was discussed. None of the parties appeared. At its public meeting of December 17, 2002, the Commission voted to find no probable cause to credit the allegations in the complaint. The Commission found that the complaint was not frivolous, but indicated that the complaint was very close to being frivolous. The Commission adopted this decision at its meeting of January 28, 2003.

FACTS

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

At all times relevant to this complaint, the respondents were members of the Rockaway Township Board of Education. Mr. Friedberger has served on the Board for eight years. He was last re-elected in April 2001. Mr. Puzio was newly elected in April 2001. Mr. Hodes has served on the Board for seven years. He was last re-elected in April 2002. Mr. Giarratano was newly elected in April 2002. The Rockaway Township Education Association is the bargaining unit for the teachers in the Rockaway School District.

Complainant Ted Doty campaigned for election to the Board in 2001. He was offered \$250.00 from the RTEA to assist his campaign. He declined the offer considering it an attempt to influence his vote, if elected.

In March 2001, the RTEA PAC invited all candidates running for election to the Board to a question and answer session. Mr. Friedberger, Mr. Puzio, Complainant Ted Doty and three other candidates running for the Board attended. Approximately one or two weeks after the session, the RTEA PAC decided to endorse Mr. Friedberger and Mr. Puzio among other candidates. Mr. Friedberger and Mr. Puzio were not involved in the RTEA PAC's decision to endorse them. At the end of March 2001, the RTEA PAC advised Mr. Friedberger that it was going to support his candidacy for re-election and that it was willing to make a financial contribution to his campaign. The RTEA PAC did not state or infer that the support was contingent upon any action of Mr. Friedberger that he would be expected to take as a Board member. By letter of March 30, 2001, Mr. Friedberger replied to the notice of endorsement that, although he welcomed the endorsement, he would not be influenced in his decision-making process as a Board member. He also rejected the RTEA PAC's offer to give a financial contribution to his campaign. He accepted signs and mailings that the RTEA PAC made and posted on his behalf.

During the spring of 2002, the RTEA PAC invited all candidates running for a position on the Board to a "Meet the Candidates Night." Mr. Hodes was invited to the meeting, but did not attend. Mr. Giarratano attended the meeting with one other candidate. At the meeting, the candidates were asked questions and the candidates stated their positions on various issues.

Mr. Hodes and Mr. Giarratano were endorsed by the RTEA PAC and had mailings sent and signs posted on their behalf. Mr. Hodes sent a letter to the Co-Chair of the RTEA stating that he felt uncomfortable with the endorsement and asked that the RTEA withdraw its endorsement. When the RTEA's signs endorsing him were not removed, Mr. Hodes began removing them, which caused legal problems for him. Although Mr. Giarratano did not seek withdrawal of the endorsement, he had no input

into the endorsement or the mailings and signs done on his behalf. He did not receive any monetary contribution to his candidacy from the RTEA PAC.

Mr. Hodes requested an advisory opinion from the Commission in May 2002 asking whether he would violate the School Ethics Act by participating in negotiations or voting to ratify the final negotiated agreement when he was endorsed by the RTEA without his request or consent. The Commission advised him in *Advisory Opinion A11-02* that he would not.

The term of the current contract between the Board and the RTEA is 2002 to 2005. Negotiations for this contract began approximately early January 2002 and concluded with the signing of a Memorandum of Agreement on February 25, 2002. The contract was ratified by the Board in May of 2002. The respondents were not members of the Board's negotiating team. The respondents voted on the ratification of the Memorandum of Agreement that had been negotiated by the Board's negotiating team and the RTEA's team. They received advice from Board Counsel that they would not violate the Act by doing so.

On June 26, 2002, the respondents voted in favor of monetary stipends for the co-presidents of the RTEA to serve as ESL Coordinator and Head Nurse respectively, which amounted to \$3,620.00 each. Both had served in these positions for approximately five years previously and received stipends for doing so. Also, at that June 26, 2002 meeting, the respondents voted to approve payment to one of the RTEA co-presidents for the development of policies and procedures for the District's health office over the summer at the rate of \$36.20 per hour. She has received such a stipend for over five years. Both the stipends and the payment were recommended by the Superintendent.

ANALYSIS

The first issue before the Commission is whether the above facts establish that Mr. Friedberger, Mr. Puzio, Mr. Hodes or Mr. Giarratano violated N.J.S.A. 18A:12-24(d), which prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

The Commission cannot find any employment or service that the respondents engaged in that is set forth in the allegations of the complaint. The respondents received an endorsement by the political action committee of the local union. There are no allegations that the respondents were either employed by the RTEA or undertook any service on behalf of the RTEA. Therefore, N.J.S.A. 18A:12-24(d) is irrelevant to the allegations set forth and the Commission must find no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(d).

The complainant next alleges that the respondents violated N.J.S.A. 18A:12-24(g), which provides:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the district in which he serves or in any proceeding involving the school district in which he serves.... This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

The Commission again fails to discern how this section is applicable to the present facts. The Commission could not discern from the allegations or its investigation any instance of the respondents representing any person or party other than the school district. Complainant appears to be alleging that the respondents took actions that were favorable to the RTEA, but at all times they were acting as Board members representing the school District. The Commission has not found any instance where the respondents ever appeared before the Board to represent the interests of the RTEA. Furthermore, although a labor union is a business under N.J.S.A. 18A:12-23 of the Act, a school official cannot have an “interest” in a labor union under N.J.S.A. 18A:12-23 such that the respondents could be found to have violated N.J.S.A. 18A:12-24(g) because the RTEA represents parties other than the Board. Therefore, the Commission finds that N.J.S.A. 18A:12-24(g) is not applicable to the present situation and finds no probable cause to credit the allegation against the respondents.

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause and dismisses the complaint against the respondents Michael Friedberger, Michael Puzio and Frank Giarratano.

Respondents have asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Act sets forth the same standard as in civil complaints set forth at N.J.S.A. 2A:15-59.1, which is:

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.

The Commission considered whether this complaint met either of the standards set forth above. Although, as the respondents point out, this complaint is almost identical to the first complaint filed by Mr. Doty, C34-02, the Commission issued a decision on that complaint after he filed the present one. The Commission will give Mr. Doty the benefit of the doubt that he raises a different theory on the indemnification issue. Therefore, he arguably sets forth a good faith argument for modification of existing law. However, the Commission cautions Mr. Doty that the next complaint he files with the Commission may meet one of the standards in light of the Commission's prior decisions on the complaints that he has filed.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C40-02

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

Whereas, at its meeting of December 17, 2002, the Commission found no probable cause to credit the allegations that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against them; and

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

Whereas, the Commission has reviewed the 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 on January 28, 2003 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 decision was adopted by the School Ethics Commission at its public meeting on January 28, 2003.

Lisa James-Beavers
Executive Director