
IN THE MATTER	:	Before the School
	:	Ethics Commission
OF	:	Docket No.: C02-94
	:	DECISION
GERARDO FERNANDEZ and	:	
JOSEPH GARCIA, Respondents,	:	
PASSAIC CITY BD. OF EDUCATION	:	
PASSAIC COUNTY	:	

PROCEDURAL HISTORY

This matter arises from a claim that respondents Gerardo Fernandez and Joseph Garcia violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Mr. Italo Ubaldini brought this complaint on February 4, 1994, alleging that the respondents violated N.J.S.A. 18A:12-24(c) of the Act when they voted against implementing a time clock system for use by district employees when their spouses were employees of the school district. Mr. Fernandez, through counsel Xavier Rodriguez, Esq., filed his answer on February 25, 1994, denying that any of his actions violated the School Ethics Act. Mr. Garcia, through counsel Patrick Quagliana, Esq., filed his answer on March 8, 1994, also denying any unethical conduct.

By letter of April 14, 1994, the Commission advised the parties that it had placed the case on the agenda for discussion at the Commission’s April 28, 1994 meeting. The matter was adjourned and not discussed at that meeting. By letter of May 6, 1994, the Commission advised the parties that it would discuss the case at a special meeting to be held by teleconference on May 12, 1994. The parties were not required to appear. The case was tabled at that public meeting. By letter of May 16, 1994, the Commission advised the parties that it would discuss the case again at the Commission’s May 26, 1994, regular meeting. The Commission advised the parties by letter of May 27, 1994, that the Commission had found probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. The matter was then transmitted to the Office of Administrative Law (“OAL”) for a hearing pursuant to N.J.S.A. 18A:12-29.

The parties held a pre-hearing conference with Administrative Law Judge Simonelli on January 13, 1995. At that time, Judge Simonelli placed the case on the inactive list. On April 27, 1995, the Commission decided to withdraw the case from the OAL to allow for further investigation. The parties signed a consent agreement in June 1995 consenting to remand the case to the School Ethics Commission for further factual investigation.

The Commission undertook further investigation and now reconsiders its finding of probable cause and dismisses the case against Gerardo Fernandez and Joseph Garcia.

FACTS

Mr. Fernandez and Mr. Garcia were members of the Passaic City Board of Education (“Board”). Both board members have spouses who are employed by the Board. The Board had a policy requiring employees of the district to sign in to indicate their presence for the day. However, on December 15, 1993, the board held a work session to discuss adopting a resolution to spend \$60,000 to implement a time clock system for use by district employees. At the work session, the president of the board requested that the board attorney render an opinion as to whether or not the members of the board who have members of their family employed by the board should vote on the resolution. The board attorney advised that the board members should not vote on this issue because their family members would be directly affected by the time clocks since the time clocks would more precisely track their work arrivals and departures. The board attorney advised Mr. Fernandez and Mr. Garcia to abstain on the resolution to purchase and utilize time clocks.

On December 20, 1993, the board members cast votes against the adoption of the time clock system. Shortly thereafter, the President of the Board, Mr. Ubaldini, filed this complaint against them. The Commission now decides whether a board member who has a spouse or member of his or her immediate family working in the school district may vote on the implementation of a time clock system that will affect his family member.

ANALYSIS

Complainant alleges and the Commission initially found probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24(c). Subsection (c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Initially, it appeared that respondents did act in their official capacity in a matter in which their spouses had a personal involvement that might reasonably be expected to impair their objectivity. However, upon reconsideration and further investigation, the Commission now finds that N.J.S.A. 18A:12-24(h) provides for an exception to this subsection (c) in this case. This section provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any

greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group.

The Commission's investigation did not reveal that the time clocks were more detrimental to the spouses than the use of the sign-in procedure. The Commission's investigation also did not reveal that the spouses of the respondent board members would benefit from the defeat of the time clock resolution to any greater extent than any other district employee. Accordingly, after reconsideration, the Commission now concludes that N.J.S.A. 18A:12-24(h) allowed the board members to vote on the resolution to purchase and utilize time clocks.

DECISION

For the foregoing reasons, the Commission now vacates its May 27, 1994, finding of probable cause and finds no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(c) and dismisses the complaint against respondents Gerardo Fernandez and Joseph Garcia.

This 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 -- C02-94

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

Whereas, the Commission decided at its meeting of September 23,1997, to vacate the prior finding of probable cause and find, upon reconsideration, that there is no probable cause to credit the allegations in the complaint; and

Whereas, the Commission directed staff to prepare the decision setting forth its conclusion and fax it to the members for approval; and

Whereas, the Commission reviewed the proposed decision of its staff finding no probable cause and dismissing the complaint and approved the decision; and

Whereas, the Commission directed that the decision be sent to the parties and placed on the agenda for formal adoption at its next public meeting;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter.

Paul C. Garbarini, Chairman

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 16, 1997.

Lisa James-Beavers
Executive Director