
IN THE MATTER OF	:	Before the School
	:	Ethics Commission
	:	
THERESA E. NIELSEN,	:	Docket No.: C32-96
WEST AMWELL BOARD OF EDUCATION,	:	
HUNTERDON COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a claim that Amwell Township board member Theresa Nielsen violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* On December 6, 1996, complainants Randolph Bannerman, Cynthia Magill, Robert Kascik and Michael Fleming filed this complaint alleging that Ms. Nielsen’s conduct violated N.J.S.A. 18A:12-22(a) and N.J.S.A. 18A:12-24(c) and (c) of the School Ethics Act. Specifically, the complainants alleged that Ms. Nielsen’s close relationship with the superintendent was a personal involvement that might reasonably be expected to impair her objectivity in matters dealing with the superintendent’s salary.

Ms. Nielsen filed her answer to the complaint on December 16, 1996. Therein, she denied having any personal involvement that would create a conflict of interest in violation of section 24(c) and denied violating the public trust as set forth in N.J.S.A. 18A:12-22(a).

The Commission invited the parties to attend the Commission’s meeting on May 27,1997 and present witnesses and testimony to aid in the Commission’s investigation. Both parties appeared with their witnesses and counsel. The Commission tabled the matter at its public meeting on May 27, 1997, and issued this decision at its meeting of June 24, 1997. After the hearing, the parties submitted supplemental briefs and documents that were considered in rendering this opinion.

FACTS

On the basis of the pleadings, testimony and documents submitted, the Commission finds the following facts to be undisputed. Complainant and respondents are all members of the West Amwell Board of Education. Respondent was first elected to the West Amwell board in 1980. She has served through the present time.

On June 23, 1992, the board moved to accept the Superintendent’s contract for the years 1992 to 1994. The motion was accepted unanimously by the board. On March 22, 1994, the board approved the superintendent’s contract for the years 1994 to 1996. On February 20, 1996, respondent made a motion to revise the superintendent’s contract in her capacity as chair of the negotiations committee. The board voted unanimously to prepare a revised contract based on

respondent's representation that an error had been made in the superintendent's contract. Mrs. Nielsen said that this error resulted in the superintendent having received a base wage for the years 1994-95 and 1995-96 that was \$4,051.00 less than he was supposed to receive under the terms of the contract that the negotiations committee initially approved.

Complainant Robert Kascik was at all relevant times a member of the West Amwell board. Complainant Randy Bannerman was appointed to fill an unexpired term on the board on February 1, 1996. He voted for the revised contract, but was not on the board when the other contracts were voted upon. Complainant Cynthia Magill filled the one-year vacancy after Mr. Bannerman was elected to a three-year term in April 1996. In April 1996, Complainant Michael Fleming was also elected for the first time to a three-year term on the board.

Regarding Ms. Nielsen's relationship with the superintendent, the facts set forth in Ms. Nielsen's answer under oath were undisputed. She met Anthony DeCanzio during her first year on the board when the board hired him. They were both new to the district. She considers Mr. DeCanzio a good friend, but no more than she considers herself a good friend of the school attorney, staff members and several board members. Mr. DeCanzio and his family have been her friends as well as friends of her husband and two children for several years. She denies that her judgment was ever colored or impaired regarding his contracts. She adds that his contracts have been standard with below average salary for a Superintendent in Hunterdon County with his fifteen years experience. Although complainants appear to allege a closer relationship in their complaint, they did not present any supporting evidence.

Complainants submitted evidence that respondent never explained the superintendent's retroactive pay increase to their satisfaction. The complainants still question how the error in salary was discovered and how it escaped the attention of Ms. Nielsen and the superintendent for so long after the signing of the superintendent's contract. However, it is undisputed that the complainants never took any action as board members to repeal the retroactive pay increase granted on February 20, 1996. The board did institute a policy on April 23, 1996, that states that the board attorney will review all future contracts or contract revisions to ensure that the paperwork supports the contract or revision. The Commission finds that it is the board's responsibility, not the Commission's, to resolve the question of whether the error necessitated the retroactive pay increase. It has no bearing on whether the respondent had a relationship with the superintendent that precluded her participation in the motion on the increase. It addresses this question below.

ANALYSIS

Complainants allege that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by making the motions and voting on the superintendent's contract and subsequent revisions. Specifically, they state that because of Ms. Nielsen's close relationship with the school superintendent and her many years of being the chairperson of the negotiations team, it might

reasonably be expected to have impaired her objectivity or independence of judgment when it comes to the recommendations of the superintendent's contract. Subsection (c) reads:

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.

Under subsection (c), the first inquiry is whether the school official, a member of her immediate family or a business interest has a financial or personal involvement in any matter in which she acted in her official capacity. In the present case, the matter is the superintendent's contract and revisions to it. Complainants never alleged that she had a direct or indirect financial involvement in the superintendent's contract. However, they did allege that she had a personal involvement that they refer to as a "close relationship." Regarding this relationship, complainant initially stated as follows:

In order for the commission to have a complete understanding of their close relationship, it is hoped that the commission interview school board members, the school board secretary and the custodial staff, each of whom can provide additional insight into the complexity of their relationship and what is believed to be ethical violations caused by this relationship.

The Commission believes that the complainants misunderstand the Commission's role with regard to the investigation of a complaint. The complaint should at least set forth the allegations clearly. The Commission will investigate charges for supporting information. However, in the present case, the complainants provided the Commission with no guidance as to what they were alleging to be a "close relationship". It appeared that the complainants were asking the Commission to investigate local rumors, which are not within its investigatory scope. Thus, the close relationship alleged was never established.

The Commission has never held that any relationship other than a marital, familial or business relationship would create a personal involvement that may preclude a school official from acting in her official capacity in a matter. It is difficult to show how an otherwise undefined relationship would reasonably be expected to impair one's objectivity or independence of judgment. The other difficulty would be establishing upon what matters she would be precluded from voting. The complainants appear to only contest the revision to the contract, although they have alleged that respondent should not have voted on the superintendent's contracts initially. If the Commission were to find that she should not have voted on the contract, the question would become on how many other matters would she be required to abstain because they involve the superintendent. Essentially every vote she cast that had anything to do with the superintendent would come under scrutiny. The Commission does not believe that the Legislature intended that the School Ethics Act was to be applied in such a way.

The facts do not support a finding of probable cause that respondent had a personal involvement that would require her to abstain from voting on the superintendent's contract and subsequent revision. Therefore, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. Therefore, it dismisses the charges against her.

Respondent requests that the Commission impose sanctions against complainants for filing a frivolous complaint. In order to find that a complaint is frivolous, the Commission must 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. [N.J.S.A. 2A:15-59.1.]

The Commission invites respondent's counsel to file a written statement setting forth her arguments as to why the complaint meets one of the criteria set forth above. The Commission will provide him with twenty (20) days from the date of this decision in which to do so. The complainants will then have twenty (20) days from the date sent to respond. Thereafter, the respondent may submit a brief rebuttal within ten days. The Commission will render a decision on whether to impose sanctions for filing a frivolous complaint at its September 23, 1997, meeting.

The decision dismissing the complaint 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 -- C32-96

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

Whereas, the Commission has found no probable cause to credit the allegations that respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismisses the charges against her; and

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

Whereas, the Commission agrees with the proposed 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 the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on June 24, 1997

Mary E. Torres
Acting Director