
IN THE MATTER	:	Before the School
	:	Ethics Commission
OF	:	
	:	Docket No.: C32-97
FRANK SANTANGELO,	:	
<i>EGG HARBOR TOWNSHIP</i>	:	
<i>BOARD OF EDUCATION,</i>	:	DECISION
<i>ATLANTIC COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a claim that Egg Harbor Township Board member Frank Santangelo violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, former Egg Harbor Township Board member Barry Levine alleges that respondent Mr. Santangelo violated N.J.S.A. 18A:12-24(c) when he participated in negotiations with the Egg Harbor Township Education Association (EHTEA), of which his wife is a member, and discussed the collective bargaining agreement after he was told by the board attorney that he could no longer participate. Dr. Levine also alleged in his complaint that Mr. Santangelo harassed him about his participation in a talk show, that he pressured board members to vote for the transfer of an assistant principal, and that he engaged in generally harassing behavior.

Mr. Santangelo filed an answer with the Commission denying having violated any provisions of the School Ethics Act. He further asserted that the complaint was filed solely in retaliation for his filing a complaint against Dr. Levine. He urges the Commission to find that the complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e).

The Commission notified the parties that the matter would be discussed at its April 28, 1998 meeting and invited them to attend. Mr. Levine appeared with Board member Howard Minnichbach. Mr. Santangelo appeared with former Superintendent Fred Nickles and Assistant Superintendent Joy Miller. The Commission tabled the matter at its April meeting. It rendered a decision at its meeting of May 26, 1998 finding probable cause on the first allegation of the complaint regarding participation in the collective bargaining agreement and dismissing the remainder of the allegations. The Commission invited Mr. Santangelo to submit a written response. He submitted a timely response and requested to appear. He did so at the Commission's June 23, 1998 public meeting.

At its July 30, 1998 meeting, the Commission found Mr. Santangelo in violation of N.J.S.A. 18A:12-24(c) for participating in negotiations with the teachers when his wife is a member of the EHTEA, but dismissed the allegations that he continued to participate after he was no longer on the committee. The Commission adopted this decision at its meeting of July 30, 1998 recommending that Mr. Santangelo receive a reprimand.

FACTS

Please refer to the Commission's determination on probable cause dated May 27, 1998 for facts concerning the charges that the Commission previously dismissed. Regarding the allegation on which the Commission found probable cause, the Commission finds the following material facts to be undisputed. At all times relevant to this complaint, Mr. Santangelo was a member of the Egg Harbor Township Board of Education ("Board"). Before Mr. Santangelo became a Board member, and at all times relevant to this complaint, Mr. Santangelo's wife was a teacher in the Egg Harbor Township School District and a member of the EHTEA.

Dr. Levine became President of the Board after the April 1996 board elections. As such, he appointed Mr. Santangelo to chair the negotiations committee and appointed Mr. Galvin, Mr. Minnichbach and Mr. Calabro to serve on the committee. On September 3, 1996, the Board's attorney provided a memorandum to all Board members setting forth that five of the nine Board members had a conflict of interest that prohibited them from negotiating with the EHTEA or voting on the contract. He then advised that all Board members may participate in negotiations and vote on the contract in such circumstances pursuant to the Doctrine of Necessity.

On December 2, 1996, the Board's attorney sent another memorandum to the Board. This memorandum informed the members that the Doctrine of Necessity no longer applied to the Board because the Commission ruled that a member of a college faculty association would not have a conflict of interest preventing him from negotiating with the teachers' association. Thus, he informed them that Mr. Kodgis was eligible to participate and only four members had a conflict of interest. The memorandum also set forth that the Commission had ruled that the Doctrine of Necessity applies only to the vote on the contract, not to negotiations if there are other board members who are able to serve. As a result, a new negotiations committee was appointed and Damien Kodgis became the chair.

The following facts are disputed. In an uncertified statement, Mr. Kodgis says that after he became chair of the committee, he discussed negotiations with Mr. Santangelo to determine their status. They discussed concerns about the step arrangement and the distribution of salary increments. Mr. Kodgis indicates that future conversations with Mr. Santangelo were limited. Mr. Kodgis indicates that he felt that he had to speak to Mr. Santangelo to discuss the form, content and logic of the step arrangement because Mr. Santangelo started negotiations and he felt uninformed as to the details.

Mr. Santangelo disputes Mr. Kodgis' recitation of facts and strenuously argues that the Commission should not have considered them as they were set forth in an uncertified statement. Mr. Santangelo states that he was elected in April 1996. He indicates that after becoming the chair of the negotiations committee, he met with the teachers' union just

once. At that time, the Board had a labor negotiator who met with the union without the presence of board members. At a point when negotiations were going nowhere, he asked to be relieved from the committee. He was then advised that Mr. Kodgis would take his place. Mr. Santangelo indicates that he only explained to Mr. Kodgis what a scattergram was. He said that any further discussions regarding a scattergram were about the Principals and Supervisors Association (PSA) scattergram and he had no conflict with the PSA that would prohibit him from participating in such discussions. In support of this, he indicates that he had to explain what a scattergram was to Mr. Kodgis because there was no settlement with the teachers and therefore, there was no scattergram.

The Commission now determines whether Mr. Santangelo violated N.J.S.A. 18A:12-24(c) in connection with negotiations.

ANALYSIS

Mr. Santangelo asserts in his written submission and in testimony before the Commission that he met with the teachers' unit only once before being removed from the committee. After that, he only answered Mr. Kodgis' question as to what a scattergram was and explained that it was similar to a grid or a chart.

N.J.S.A. 18A:12-24(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.

Mr. Santangelo's wife was a teacher in Egg Harbor Township and thus, a member of the EHTEA. Therefore, there is no question that Mr. Santangelo had a personal involvement that might reasonably be expected to impair his objectivity when negotiating the teachers' contract. Although it was clear that Mr. Santangelo had a conflict of interest, the Board Attorney advised in September 1996 that the Doctrine of Necessity allowed him to participate in negotiations because there were five board members who also were perceived to have a conflict of interest. However, at this time, there were four board members who were known not to have any conflict of interest who could have negotiated the contract. The necessity to waive the members' conflict of interest existed only to allow the members to vote to approve a contract. There was no such necessity with respect to negotiations.

The facts show that Mr. Santangelo chaired the negotiations committee even before the Board Attorney's written advice saying that the Doctrine of Necessity allowed him to do so. Nevertheless, the Commission understands that Mr. Santangelo was appointed and

served relying on the Board Attorney's advice. However, well before the attorney's September 1996 memorandum, the Commission had issued an advisory opinion indicating that when there were six of nine board members with a conflict of interest with a bargaining unit, the three members without a conflict had to serve as the negotiations committee. *Advisory Opinion A55-95* (January 23, 1996). This opinion, which is contrary to the advice of the attorney, was made public. Thus, the Commission now holds, as it has in prior decisions, that a board member's reliance on attorney advice will be considered in mitigating a penalty, but the Commission cannot overlook a violation of the School Ethics Act. By participating on the negotiations committee and meeting with the teachers' unit of which his wife was a member, Mr. Santangelo acted in his official capacity in a matter in which he had a personal involvement that might reasonably be expected to impair his objectivity. Thus, the Commission finds that Mr. Santangelo violated N.J.S.A. 18A:12-24(c) of the Act on that basis.

The second question is whether Mr. Santangelo continued to participate in negotiations after his removal from the committee by having discussions with Mr. Kodgis. The Commission accepts that Mr. Santangelo asked to be removed from the committee at the time of the issuance of the December 2, 1996 memorandum of the Board Attorney indicating that Mr. Santangelo should no longer serve on the negotiations committee. The Commission also accepts that Mr. Santangelo only discussed what a scattergram was in order to assist Mr. Kodgis and answer his questions after Mr. Santangelo no longer was a member of the committee. The Commission finds that Mr. Santangelo was acting as a resource and did not offer any opinions on a settlement with the teachers. Therefore, the Commission dismisses the allegation that Mr. Santangelo violated N.J.S.A. 18A:12-24(c) by discussing the collective bargaining agreement after he left the committee.

DECISION

For the foregoing reasons, the Commission concludes that Mr. Santangelo violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when he participated in negotiations with the teachers' bargaining unit of which his wife was a member. The Commission dismisses the allegation that he continued participating in teachers' negotiations after his removal from the committee. Thus, the question that remains is the appropriate penalty to recommend.

In deciding the appropriate penalty to recommend to the Commissioner of Education, the Commission considered all of the above information. Mr. Santangelo participated in negotiations in reliance on the attorney's advice to the Board President that the Doctrine of Necessity allowed all of the Board members to participate in negotiations. The Commission also considered that the Board President, who filed this complaint, appointed Mr. Santangelo to chair the negotiations committee. Last, while the Commission would consider it a serious violation had Mr. Santangelo negotiated the agreement to a settlement, Mr. Santangelo's limited participation did not give him a substantial opportunity

to influence the outcome. Considering the foregoing, the Commission finds that the lowest penalty is appropriate and recommends that the Commissioner of Education impose the sanction of reprimand.

The Commission has concluded that Mr. Santangelo's request for sanctions is moot since the Commission has decided that Mr. Santangelo violated the School Ethics Act.

This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, 100 Riverview Plaza, PO Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C32-97

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

Whereas, the Commission concluded at its meeting of May 26, 1998, that there was probable cause to credit the allegation in the complaint that respondent violated the School Ethics Act with regard to negotiations; and

Whereas, the Commission has reviewed Mr. Santangelo's written submissions and heard his statements in response to the Commission's finding of probable cause; and

Whereas, the Commission has determined that there is reason to dismiss the allegation that Mr. Santangelo continued discussing the contract after leaving the negotiations committee, but that it was a violation for him to ever participate in negotiations when his wife is a member of the EHTEA; 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 July 30, 1998.

Lisa James-Beavers
Executive Director