

IN THE MATTER OF DINO PETTINELLI ALPHA BOARD OF EDUCATION WARREN COUNTY	: : : : : : : : :	BEFORE THE SCHOOL ETHICS COMMISSION Docket No. C01-04 DECISION
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PROCEDURAL HISTORY

Complainant, Alpha Education Association, filed a complaint against the Alpha Board of Education (Board) on February 2, 2004 alleging violations of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(h). On March 4, 2004, in response to correspondence from the Commission, complainant amended that complaint to indicate that the complaint was filed by Laurie Ritz on behalf of the Alpha Education Association and to specifically name the Board members alleged to have violated the Act. The complainant alleges that the Board members violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(h) when they amended the board policy regarding nepotism, and then they voted to hire a Board member's brother for a combined position of technology coordinator/instrumental music teacher. Robert J. Merryman, Esq., attorney for the Board, filed an answer on March 5, 2004 on behalf of Michael Jenkins, Alfonso Marino, Larry Marino, Robert Melick, Dino Pettinelli, and Judith Wieland denying any violation of the School Ethics Act.

The School Ethics Commission advised the parties that it would discuss this matter at its meeting of March 23, 2004. The complainant did not appear. The respondents did not appear, but were represented by Mr. Merryman who testified before the Commission. The Commission also heard testimony from Dr. Sandra Moore who was the Superintendent of the Alpha School District at the time the allegations took place. The Commission requested additional executive Board minutes and upon a review of those minutes and based upon Dr. Moore's testimony, the Commission requested the testimony of Dino Pettinelli to determine a possible violation of N.J.S.A. 18A:12-24(c).

At its May 25, 2004 meeting, the Commission heard testimony from Dino Pettinelli. At its public meeting on May 25, 2004, the Commission voted to find no probable cause to credit the allegations that Mr. Jenkins, Mr. Alfonso Marino, Mr. Larry Marino, Mr. Melick, Mr. Dino Pettinelli and Mrs. Wieland violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(h). However, the Commission voted to find probable cause that Dino Pettinelli violated N.J.S.A. 18A:12-24(c). The reasons for this decision were set forth in a probable cause decision dated July 14, 2004.

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised Mr. Merryman that it would decide the matter on the basis of written submissions. Mr. Merryman was invited to provide a written submission to the Commission within 30

days of the date of the probable cause decision and set forth why the Commission should not find Dino Pettinelli in violation of N.J.S.A. 18A:12-24(c) for being present during an executive session meeting on July 24, 2003 when the hiring of his brother, L. Pettinelli, as a technology coordinator/instrumental music teacher was discussed, and for being present and twice participating in a discussion during an executive session meeting on August 11, 2003 regarding the hiring of his brother. He was also told that his written submission should include the respondent's position on an appropriate sanction should the Commission determine that the Act was violated. Mr. Merryman submitted a timely response on July 14, 2004 arguing that, since Dino Pettinelli did not benefit from his limited participation in the executive sessions, he should not be found in violation of N.J.S.A. 18A:12-24(c).

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted, testimony and Mr. Merryman's submission in response to the probable cause determination.¹

Since January 9, 1986 the board had a nepotism policy in place. Policy #4112.8 provides in pertinent part, "The Board of Education, in order to avoid both the reality and the appearance of conflict of interest in employment, will not appoint any member of the immediate family of a board member, nor of an administrator, to any employment position in this district, and directs that no person who is a member of the immediate family of a board member or administrator shall be placed in nomination for any vacant position." The board also had a bylaw pertaining to board member conflict of interest. Bylaw #9270 provides in pertinent part, "No spouse, sibling, parent or descendent of a service board member shall be considered for any paid employment in the district."

At a May 8, 2003 special meeting, the Alpha Board of Education voted unanimously to accept the resignation of J. R. as a math teacher. At that same meeting, upon the recommendation of the chief school administrator, a motion made by Mr. Jenkins to re-appoint E.C. as part-time instrumental music teacher failed with all voting "nay." The failure of this motion created an opening for a music teacher. Dino Pettinelli testified that he participated in Board discussions regarding the re-appointment of E.C. In May 2003, the Board suggested to Dr. Moore that the technology coordinator, E.K., be reassigned to teach math even though he was not certified to teach math. This reassignment created an opening for a technology coordinator.

At the June 26, 2003 regular meeting, the teacher hiring process was discussed by the Board and Dr. Moore. In that discussion, the past hiring process was reviewed by Dr. Moore who explained that it was her job to interview, check references and choose the top three candidates. Dr. Moore emphasized that she wanted to pick the best qualified candidate, adding that two of the candidates were relatives of Board members.

¹ The Commission recognizes that Mr. Merryman's submission sets forth that certain facts were disputed. Although the Commission finds these disputed facts to be immaterial to the disposition of this case, they have been incorporated herein.

She noted that the Board attorney advised that choosing these candidates would violate the ethics law.

On July 8, 2003, L.M. was interviewed for the position of technology coordinator. In Dr. Moore's comments in the Applicant Record she noted that L. M. had one year of experience, that she can troubleshoot, has a strong technology background and doesn't need to give a 60-day notice. On July 22, 2003, Dino Pettinelli's brother was interviewed for the position of technology coordinator/instrumental music teacher. In Dr. Moore's comments in the Applicant Record, she noted that he had an excellent background and is an excellent candidate. She also noted her concerns about the cost to hire him, the 60-day notice he would have to give and the problems with the ethics law.

At the July 24, 2003 executive session, the Board discussed the technology position. Dino Pettinelli was present throughout the entire executive session. He testified that he was aware that his brother was one of the applicants for the position and that the position would be discussed at the July 24, 2003 executive session. While he was not sure that his brother would be on the agenda, he assumed that his brother would be on the agenda. He also testified that he was advised by Dr. Moore not to participate in the discussions regarding his brother.

During the July 24, 2003 executive session, Dr. Moore advised that she was recommending L.M. for the position and indicated that she had interviewed Dino Pettinelli's brother who, she noted, was very competent, knew music, had 23 years experience and is an MA-30. To assist in the executive session discussion, the Board was presented with a memorandum from Dr. Moore discussing her concerns regarding the proposed recommendation of L. Pettinelli for the position of technology/instrumental teacher and a letter from the Board attorney also setting forth his concerns with the hiring of a brother of a Board member. Information from the New Jersey School Boards Association (NJSBA) related to the Act was also presented to the Board. Both Dr. Moore and the Board attorney's correspondence indicated their concern that the Board had a formal nepotism policy which prohibited them from hiring a brother of a Board member. Dr. Moore's memorandum also expresses her concern with combining the technology and music positions into one position. Her memorandum also raised her fiscal concerns with hiring L. Pettinelli due to his level on the guide. The Board discussed changing the nepotism policy and the fact that L. Pettinelli could teach both technology and music. The Board asked Dr. Moore whether she would recommend L. Pettinelli if the policy was changed. Dr. Moore stated that she would recommend L.M., but if it was voted down and if the Board were to change the policy, she would recommend L. Pettinelli.

During the public session meeting after the executive session on July 24, 2003, a motion was made to hire L.M. as the technology coordinator. The motion failed for lack of a second. The Board directed Dr. Moore to continue to look for another candidate and offer another recommendation. Dr. Moore testified that she could not recommend a Board member's brother because of the nepotism policy. During this public session, the Board discussed changes to the existing policy and bylaw on nepotism. After appropriate motions, the Board voted to amend both the policy and bylaw related to nepotism to add,

at the end, the following phrase: "...to secure any advantage or gain to any Board member, and that any related Board member will abstain from discussion and vote on such employment." Dino Pettinelli abstained from both votes and Board members Ms. Ortiz and Mrs. Robledo voted "nay." Mr. Melick was not present at the July 24, 2003 Board meeting.

At the August 11, 2003 meeting, the Board went into executive session for two-and-a-half hours, during which time the Board only discussed filling the open technology and music position. Dino Pettinelli was again present throughout the entire executive session. He testified that, at the outset, he asked Dr. Moore if he should stay in the executive session meeting. Dr. Moore responded that he could stay. He also testified that there was no Board attorney available for that executive session.

During the August 11, 2003 executive session, the Board discussed the fact that some relatives of Board members had been hired in the past. Dr. Moore said that those hirings occurred prior to the adoption of the School Ethics Act. During a discussion regarding L. Pettinelli's step on the guide, Dr. Moore made a statement about the number of years L. Pettinelli had worked as a teacher. Dino Pettinelli stated that the number of years was wrong. Ms. Robledo stated that Dino Pettinelli should not participate in the discussion. Dr. Moore discussed the credentials of both Ms. Matto for the position of technology coordinator and another candidate for the instrumental music position. Dino Pettinelli testified that, during a discussion of whether Dr. Moore had checked the references for the candidate for the instrumental music position, he commented that Dr. Moore should check with school officials in Parsippany because it was his understanding that the candidate had taught in Parsippany. Dr. Moore noted that, at that time, she could not recommend the other candidate under discussion, but she would recommend another technology teacher.

Also during the discussion, Dr. Moore expressed her concern with L. Pettinelli's placement on the guide because in the next year he would be off the guide and the highest paid teacher. A Board member asked Dr. Moore where she stood on the recommendation of L. Pettinelli and she responded that she had concerns with what it would do to the contract. There was a discussion of the salary amount and the need for L. Pettinelli to give a 60 day notice, which would require the hiring of a substitute. The Board asked Dr. Moore what she planned to do and she said that she would recommend L.M. for the technology teacher position. Board member, Mr. Jenkins stated that the Board did not ask the prior technology coordinator to take the math class because of L. Pettinelli and that he was not a factor in that decision.

In the public meeting, after the executive session, a motion was made and seconded to hire L.M. as technology coordinator. The motion failed on a roll call vote with Dino Pettinelli abstaining, Mr. Melick, Mr. Larry Marino, Mrs. Wieland, Mr. Jenkins and Mr. Alfonso Marino voting "nay" and Ms. Ortiz, Ms. Rhody and Mrs. Robledo voting "aye." Given the rejection of the first candidate for the technology position, Dr. Moore recommended Larry Pettinelli as technology coordinator/instrumental music teacher. A motion was made and seconded for approval

of Dr. Moore's recommendation and the motion was approved on a roll call vote with all voting "aye," except for Ms. Ortiz, Ms. Rhody and Mrs. Robledo who voted "nay," and Dino Pettinelli who abstained.

At the August 21, 2003 Board meeting, the August 11, 2003 motion to hire L. Pettinelli was amended to include "on an emergent basis" after an appropriate motion with all voting "aye" except for Dino Pettinelli who abstained.

ANALYSIS

The Commission found probable cause that Dino Pettinelli violated N.J.S.A. 18A:12-24(c) of the Act when, as a member of the Board, he attended the July 24, 2003 executive session when the hiring of his brother, L. Pettinelli, as a technology coordinator/instrumental music teacher was discussed and when he attended and participated in discussions during the August 11, 2003 executive session. In his written submission in response to the probable cause finding, Mr. Merryman noted that the Commission found probable cause of a violation solely on the issue that the Commission itself raised. The Commission agrees that its finding of probable cause was solely on the issue it raised regarding a violation of N.J.S.A. 18A:12-24(c). N.J.S.A. 18A:12-28(b) provides the Commission with the authority to conduct investigations. It was after such an investigation into this complaint that the Commission determined that it would also consider whether Dino Pettinelli violated N.J.S.A. 18A:12-24(c). It is well within the Commission's authority to make such a determination.

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 involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

Subsection (c) looks to whether a school official has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity of judgment. Additionally, the subsection looks to whether he has a personal involvement that might create some benefit to him. As the Commission stated in Advisory Opinion A23-94, the Commission is not constrained to recognize conflicts of interest only when a matter affects a board member's immediate family member. The Commission has found conflicts of interest under subsection (c) where a board member negotiates a sibling's contract when the sibling is in the local bargaining unit. See I/M/O James Russo and Thomas Scarano, C12-97 (January 27, 1998). Further, the Commission noted in SEC v. Michael Kilmurray, C12-94 (January 27, 1998) that "when a school official has a conflict

of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated.” In Kilmurray, the Commission noted that the public may believe that a board member that sits in on a private session discussion regarding his sister-in-law is actively participating in the discussion behind closed doors, that the board member will tell his relative what was said, or at the least, that the other board members will be inhibited in their discussion of the matter because of his presence.

In the present case, Dino Pettinelli was present during and participated in two executive session discussions related to the hiring of his sibling. The August 11, 2003 executive session lasted for two and half hours and was solely devoted to the hiring of his brother. Not only was Dino Pettinelli present for those executive session discussions, but in the two and half hour long discussion he participated in the discussions on two occasions. On the first occasion, he corrected the Superintendent regarding his brother’s number of years of employment as a teacher. On the second occasion, he commented about another candidate that was being discussed in relation to the hiring of his brother. In its probable cause decision, the Commission noted that there appears to be a personal involvement related to the hiring of a brother that could create a benefit to Dino Pettinelli in the personal satisfaction of ensuring that a sibling obtains employment. The Commission also noted that being present for two executive session discussions and participating in those discussions appears to create a justifiable impression among the public that their trust is being violated as set forth in N.J.S.A. 18A:12-22(a).

In his written submission in response to the finding of probable cause, Mr. Merryman argues that in its probable cause decision, the Commission failed to recognize the amendment to N.J.S.A. 18A:12-24(c). Mr. Merryman noted that the amendment changed the circumstances in which a board member has a conflict due to a “personal involvement.” He argues that under the amended statute that it is not enough that the “personal involvement” might be expected to impair objectivity; there must be an actual benefit to the board member or the board member’s immediate family. He noted that in passing the amendment, the Legislature made it clear that it wanted to avoid the potential for arbitrary application of this section of the Act since “it is the School Ethics Commission which initially determines on a case by case basis what personal involvement might reasonably impair the objectivity of a school official and no guidelines have been established by the Commission as a reference point for school officials.” Assembly Committee Statement to Assembly No. 2635 (November 16, 1998).

Mr. Merryman further argues that in its probable cause decision, the Commission devised a potentially arbitrary benefit whereby “personal satisfaction” is now a “benefit” for purposes of the Act. He maintains that such a subjective standard is contrary to the intent of the Legislature when it amended the Act and could result in countless violations of the Act by school officials. He maintains that there must be a direct and measurable benefit before a violation of N.J.S.A. 18A:12-24(c) can be found.

In *Advisory Opinion A16-00* (December 1, 2000) the Commission advised that a board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in

negotiations or vote on a contract with the local education association when his brother held a position in the maintenance department and is a member of the local education association of the district where he serves as a board member. In A16-00, the Commission analyzed the impact of the amendment to N.J.S.A. 18A:12-24(c) and found "...that the benefit set forth in the amendment need not be financial, otherwise, the "personal involvement" provision of N.J.S.A. 18A:12-24(c) would be redundant. The Commission considers an involvement to be personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district. Therefore, a benefit can be something of intrinsic value, but no monetary worth." Id. page 2. The Commission noted that the amended language to N.J.S.A. 18A:12-24(c) changed the standard from a "reasonable expectation" that a school official cannot be objective to a requirement that the involvement constitute "a benefit" to the school official. The Commission finds that there is a benefit of intrinsic value in the personal satisfaction that a board member receives in ensuring that a sibling obtains employment.

The Commission does not agree with Mr. Merryman's argument that this is a subjective standard especially when N.J.S.A. 18A:12-24(c) is read in conjunction with N.J.S.A. 18A:12-22(a), which provides:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

When a board member sits in on a private discussion regarding a relative behind closed doors, it creates a justifiable impression among the public that the public trust is being violated. This is even more evident when a board member, in a closed executive session, makes comments during discussions related to the hiring of a relative. Dino Pettinelli's comments were directly related to the hiring of his brother. This is exactly the type of conduct that board members must avoid in order to comply with the provisions of the Act.

Mr. Merryman argues that Dino Pettinelli did not actively participate in any board action that would benefit his brother since he abstained from the votes on the amendments to the nepotism policy and on the vote to hire his brother. He further notes that there is no evidence that Dino Pettinelli lobbied on behalf of his brother or coerced or pressured the board to hire his brother. While the Commission agrees with these facts as noted by Mr. Merryman, it is enough for Dino Pettinelli to sit on a closed executive session discussion related to the hiring of his brother and then to comment on the hiring of his brother in another closed executive session to create a justifiable impression among the public that the public trust is being violated.

Mr. Merryman also argues that the comments made by Dino Pettinelli were two innocuous comments that were limited to facts within his own knowledge that addressed tangential issues. Mr. Merryman cites the Commission's decision in Brooks v. Cecchino, C19-99 (March 28, 2000). However, the Brooks decision can be distinguished from the present case. In C19-99, the Commission found no violation of the Act when a board member, who was conflicted out of collective bargaining due to his wife's employment and membership in the bargaining unit, commented on the union's concerns with the ratification process during an executive session discussion. The Commission found those comments to be innocuous, but those comments did not involve negotiations since the board had signed a memorandum of agreement. Furthermore, the meeting during which the comments were made concerned the budget and the comments were made in terms of the budget and did not involve the terms of the contract. In the present case, the comments were made during a two and half hour executive session discussion devoted solely to the open technology coordinator and instrumental music positions for which the board was considering hiring Dino Pettinelli's brother. The comments related specifically to his brother's length of service as a teacher and to the references of another candidate that the board was discussing for the instrumental music position. The Commission finds that these comments are not innocuous comments, but are directly related to the hiring of his brother.

Finally, Mr. Merryman notes that Dino Pettinelli was never advised that he could not be present in executive session and was specifically told by Dr. Moore that he could be present. The Commission notes that this does not excuse Dino Pettinelli from his responsibilities under the Act. However, the Commission will take this into account in its penalty determination.

DECISION

For the reasons discussed above, the Commission finds that Dino Pettinelli violated N.J.S.A. 18A:12-24(c) when he was present for an executive session meeting on July 24, 2003 when the hiring of his brother as a technology coordinator/instrumental music teacher was discussed, and when he was present for and twice participated in a discussion during an executive session meeting on August 11, 2003 regarding the hiring of his brother. The Commission notes that Dr. Moore told Dino Pettinelli that he could sit in on the August 11, 2004 executive session; however, since he twice participated in that executive session, the Commission recommends that the Commissioner of Education impose a penalty of censure.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Mr. Merryman may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. 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 – C01-04

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

Whereas, at its meeting of July 27, 2004 the Commission found that Dino Pettinelli violated N.J.S.A. 18A:12-24(c) of the Act and recommended that the Commissioner of Education impose a sanction of censure; and

Whereas, at its meeting of July 27, 2004, the Commission reviewed a draft decision prepared by its staff 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 27, 2004.

Lisa James-Beavers
Executive Director

[PCG/LJB/MET/ethics/decisions/C01-04