

SABINO VALDES	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	Docket No.: C03-02
CARL JOHNSON,	:	
<i>UNION CITY BD. OF EDUCATION</i>	:	DECISION
<i>HUDSON COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 4, 2002 alleging that respondent, Carl Johnson, Business Administrator for the Union City Board of Education, violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq.¹ Specifically, complainant alleges that respondent used his position to secure unwarranted employment in connection with the hiring and retention of various employees in violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act. Complainant supplemented his complaint with two amendments filed on March 20, 2002 and March 26, 2002. These amendments also alleged that Mr. Johnson violated N.J.S.A. 18A:12-24(b) of the Act and set forth additional facts to support a finding of a violation.

Respondent filed an answer on May 16, 2002, admitting to some of the allegations, but denying that he committed any violation of the School Ethics Act.

The Commission informed the parties that it would discuss this case at its meeting of June 25, 2002. The parties appeared to give testimony, Mr. Johnson with counsel. The Commission tabled the decision on the complaint at its public meeting on that date. At its July 23, 2002 meeting, the Commission found no probable cause to credit the allegations that Carl Johnson violated the School Ethics Act and directed staff to draft the decision for adoption at its next meeting. The Commission adopted this decision at its meeting on August 27, 2002.

STATEMENT OF FACTS

The following facts have been discerned from the pleadings, the documents submitted, the testimony and the Commission’s investigation.

Carl Johnson was at all times relevant to this complaint, the Business Administrator for the Union City Board of Education (Board). The Board has a dual type of administration in that the superintendent directs the instructional department and Mr. Johnson supervises the non-

¹ Initially, the complainant filed his complaint against the Union City Board of Education. However, the Commission informed Mr. Valdes that, since he had only made allegations against Carl Johnson, it was dismissing the Board as a respondent.

instructional employees. Mr. Johnson is responsible for making recommendations regarding hiring and purchases of property and services by the Board.

Sabino Valdes was employed by the Board as a plumber in July 1994. In March 1999, Mr. Valdes applied for a position as the director of buildings and grounds. Up until that time, he had no disciplinary actions against him. According to the testimony, after that time, he was subjected to a series of disciplinary actions culminating in the Board's filing of tenure charges against him, which are still pending. In addition, his district car and office were taken away and he was followed by a private investigator. He did not get the position as director of buildings and grounds. John Knudsen was hired as director and became Mr. Valdes' supervisor. Mr. Johnson claims that he never received Mr. Valdes' application.

In 1998, Mr. Johnson recommended the hiring of Eduardo Nunez. Mr. Nunez was employed by the Board for three years and ten months as a custodian and carpenter. In addition, Mr. Nunez was hired for a brief time to a second position as a night security guard. He was dismissed from the night security guard position in 2000. Mr. Nunez is the brother-in-law of complainant Valdes. Mr. Nunez is the brother-in-law of Mr. Johnson's secretary, Ms. Michelson. It is Ms. Michelson's responsibility to process school employees' background checks and send them to the Office of Criminal History review in the New Jersey Department of Education. When Mr. Nunez was hired in 1998, he had a criminal record from another state. Following an incident concerning Nunez's behavior in August 2001, Mr. Valdes contacted the State to determine whether Nunez's criminal record, of which he was aware, disqualified him from public school employment. The State informed him that the record did disqualify Mr. Nunez and that the record could not be expunged. Mr. Valdes informed the Board President of this information by letter of August 28, 2001. The complainant advised Mr. Johnson that Mr. Nunez had a disqualifying criminal record by the August 28th letter and a letter to the board attorney dated September 21, 2001 that were both copied to him. Mr. Johnson learned from the Department of Education on September 12, 2001 that no one there ever received Mr. Nunez's fingerprints. Mr. Johnson had them sent to the Department of Education on September 17, 2001. On December 12, 2001, Mr. Johnson received the letter stating that Mr. Nunez failed the background check due to a disqualifying conviction. On December 13, 2001, the Board terminated his employment for failing the criminal history background check.

Mr. Johnson recommended John Knudsen for the position of Director of Buildings and Grounds on or about June 22, 1999. Mr. Knudsen had previously been employed by the Union City Police Department for 25, years. In December 2000, Mr. Knudsen took a leave of absence due to "work-related stress." Mr. Valdes found out about Mr. Knudsen's leave through Mr. Knudsen's testimony at a court hearing. Although the leave should have been discussed at a public meeting of the Board when it occurred, there is no record that it was. However, Mr. Johnson made the leave public on November 15, 2001. In contrast, Mr. Valdes was investigated by a private investigator hired by the Board when he was absent for 28 days due to an injury.

Mr. Knudsen returned from his leave of absence in January 2002. Mr. Valdes' wife complained to Mr. Johnson in February 2002 that Mr. Knudsen drove slowly by her home on two occasions. On March 8, 2002, Mrs. Valdes filed a complaint against Mr. Knudsen for stalking after he allegedly stood outside of her office in Washington School until she made eye contact with him. Mr. Knudsen left his position again on or about March 11, 2002.

Mr. Knudsen's status as a retired police officer allowed him to carry a firearm. Mr. Valdes found out through Mr. Knudsen's testimony at a court hearing that he was carrying the firearm on the grounds of the school District against school policy. After Mr. Johnson became aware that Mr. Knudsen was carrying a firearm on school grounds, he advised him not to do so anymore. Mr. Knudsen was never disciplined for carrying the firearm.

Mr. Knudsen was a friend of the former mayor of Union City, who is now deceased. Mr. Johnson was a friend of the former mayor. A picture was taken of the former mayor, Mr. Knudsen and Mr. Johnson on a fishing trip together.

An employee who was a witness to one of the charges of Mr. Valdes' suspension won a bid to purchase a 1991 Dodge pick-up truck from the District for \$500.00. The employee was the only bidder. The sale of the pick-up truck was never discussed at a board meeting; however, Mr. Johnson advertised the public sale. He did not provide a minimum bid.

ANALYSIS

Respondent correctly noted that, of the many allegations in the original complaint and amendments thereto, there are just four that fall under the jurisdiction of the Commission. The first is that Mr. Johnson hired Mr. Nunez despite knowledge of his criminal record, allegedly because of his relationship to Mr. Johnson's secretary. The second is that Mr. Johnson illegally sold a pick-up truck owned by the Board to an employee to be a witness against the complainant. The third allegation is that Mr. Johnson failed to investigate a claim that complainant's wife was being stalked by an employee. Last, is an allegation that Mr. Johnson showed favoritism to Mr. Knudsen in hiring him and refused to fire him despite the fact that he carried a gun on school property. It is also alleged that Mr. Johnson misled the citizens of Union City about Mr. Knudsen's leave of absence.

Each of the four allegations is argued to be a violation of N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

Hiring and Retention of Eduardo Nunez

Complainant alleges that Mr. Johnson hired and retained Eduardo Nunez as an employee despite his having a criminal record that would disqualify him from employment with a school district. Respondent answered that he had no knowledge of Mr. Nunez's criminal history. He testified that it was his secretary's responsibility to send to the Department of Education's Criminal History Unit, the fingerprints and transmittal form for the background check. He further testified that, at that time, the Criminal History Unit would not send notice to the Board that someone passed the check; it would only send notice that a potential employee had a disqualifying criminal record. The Unit sent the approval notice only to the employee and the Board did not request a copy. In the case of Mr. Nunez, Mr. Johnson testified, no information was received indicating that Mr. Nunez had a disqualifying criminal record, so he continued employment with the District for over three years. The complainant advised Mr. Johnson that Mr. Nunez had a disqualifying criminal record by letters copied to him dated August 28 and September 21, 2001. Mr. Johnson learned from the Department of Education on September 12, 2001 that no one there ever received Mr. Nunez's fingerprints. Mr. Johnson had them sent to the Department of Education on September 17, 2001. On December 12, 2001, Mr. Johnson received the letter stating that Mr. Nunez had a disqualifying conviction. Between September and December 2001, Mr. Johnson took Mr. Nunez out of contact with children and placed him in an office job. The Board terminated his employment for failing the criminal history background check on December 13, 2001.

While the Commission finds it disconcerting that an employee with a disqualifying criminal history could continue working in a school district for over three years without detection, the Commission does not have sufficient information upon which to base a finding of probable cause that Mr. Johnson violated the School Ethics Act. There is clearly a question as to whether Mr. Nunez's prints were ever sent to the Department of Education. If Mr. Johnson's secretary neglected to send them in order to assist her brother-in-law in retaining a job, then she should be disciplined for the omission. However, she is not subject to the Commission's jurisdiction. Even if she did withhold the information from the Department, the Commission cannot conclude that Mr. Johnson was complicit in the omission because, at that time, the Department did not send notice to school districts that employees passed the background check. Therefore, if no notification was received, Mr. Johnson could assume that the employee was approved for employment. Unfortunately, this creates a situation where employees could still be working for the Union City Board of Education under the same circumstances since Mr. Johnson admitted that he never went back through the records of employees hired during the time of Mr. Nunez to resubmit the fingerprints to the Department. In light of the fact that it was Mr. Johnson's responsibility to establish a process that guarded the District from tainted employees, he appears to have been negligent in his duties. However, the Act does not prohibit negligence, only using your position to secure unwarranted privileges for others. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Johnson violated N.J.S.A. 18A:12-24(b) in conjunction with the hiring and retention of Mr. Nunez despite his criminal record.

Illegally Sold Pick-up Truck to Employee Who Would be a Witness against Complainant

Mr. Valdes alleges that Mr. Johnson used his position to secure unwarranted privileges for an employee who was a witness to one of the charges in support of his suspension. Mr. Johnson wanted to dispose of a 1991 Dodge pick-up truck that the Board owned. There is no evidence that the sale of the pick-up truck was ever discussed at a board meeting; however, Mr. Johnson submitted a memorandum informing the Board of the proposed sale and advertised the public sale. He did not provide a minimum bid in the advertising documents. The employee who supported a charge against Mr. Valdes submitted a check to purchase the 1991 Dodge pick-up truck from the District for \$500.00. The employee was the only bidder and therefore he purchased the truck for \$500.00. Mr. Valdes believed that the sale was a quid pro quo for the employee's testimony against him.

The Commission's role is not to determine whether the Board obtained the full value of the pick-up truck. The Commission must only determine whether probable cause exists to credit the allegations that Mr. Johnson used his position to secure unwarranted privileges for this employee by selling the pick-up truck to him. As long as property of the Board is not sold privately, the Board is entitled to auction property that it no longer needs and accept the best bid. The Commission notes that the sale was not a private sale and was advertised in accordance with the bidding rules. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Johnson violated N.J.S.A. 18A:12-24(b) in connection with the sale of the vehicle.

Respondent Used His Position to Secure Unwarranted Privileges for John Knudsen

The following allegations that Mr. Johnson hired Mr. Knudsen as Director of Buildings and Grounds although he did not have the qualifications for the job, that Mr. Johnson refused to investigate Mrs. Valdes' complaints of Mr. Knudsen stalking her and that Mr. Johnson did not discipline him for carrying a gun all fall under the allegation that Mr. Johnson used his position to secure unwarranted privileges for Mr. Knudsen. Each of these will be discussed in turn.

Mr. Johnson has denied the complainant's allegations that he hired Mr. Knudsen because he and Mr. Knudsen were good friends. He states that they are acquaintances through other friends, which presumably includes the mayor since Mr. Johnson was seen on the fishing trip with the mayor and Mr. Knudsen. Mr. Johnson insists that there were only two applicants for the position of Director of Buildings and Grounds, Mr. Knudsen and one other, although Mr. Valdes states that not only did he apply for it but he was being groomed for the position. He stated that Mr. Johnson knew that he attended a course at New York University for construction management. The Commission does not have sufficient information from which to determine the truth between these conflicting positions. Although it strains credulity that Mr. Valdes would not apply for a position that he wanted so badly, there is no record of his application. Therefore, the information shows so few applicants that it would be difficult to conclude that Mr. Johnson used his position to secure unwarranted employment for Mr. Knudsen. Thus, the

Commission finds no probable cause to credit the allegations that Mr. Johnson violated N.J.S.A. 18A:12-24(b) in connection with the hiring of Mr. Knudsen.

Regarding the allegations of stalking, Mr. Johnson said that he spoke to the principal at the school in question and he was not able to verify or refute the allegations of Mrs. Valdes. While Mr. Johnson could have spoken to more employees at the school to investigate Mrs. Valdes' allegations of stalking, his investigation is consistent with his pattern of a lax style of management. Again, the Act does not prohibit negligence, only using your position to secure unwarranted privileges for others. Therefore, the Commission cannot find probable cause to credit the allegations that Mr. Johnson used his position to secure unwarranted privileges for Mr. Knudsen by not doing a more thorough investigation.

Finally, Mr. Valdes alleges that Mr. Johnson's failure to discipline Mr. Knudsen for carrying a gun on school grounds was using his position to secure unwarranted privileges for Mr. Knudsen. Mr. Johnson indicated that when he found out that Mr. Knudsen was carrying a gun on school grounds, his response was to ask him not to do so anymore. Although Mr. Valdes informed Mr. Johnson that Mr. Knudsen was carrying a gun on the day that Mr. Knudsen testified to that effect on September 17, 2001, it was not until Mr. Knudsen returned to work after his leave in January 2002 that Mr. Johnson took action. After Mr. Knudsen's return, Mr. Johnson feels that he handled the matter appropriately in asking him to cease carrying the weapon. The Commission cannot find on the basis of the facts presented that he used his position to secure unwarranted privileges for others although he could have acted on the information sooner. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Johnson violated N.J.S.A. 18A:12-24(b) in connection with Mr. Knudsen's carrying a gun on school grounds.

DECISION

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations that Carl Johnson violated the School Ethics Act and dismisses the complaints against him. However, it refers the matter of the criminal history background checks of non-certificated employees that were hired before 2000 to the Office of Criminal History Review in the Department of Education for any investigation it deems appropriate in light of the above information.

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

Mark Finkelstein

Acting Chairperson

Resolution Adopting Decision -- C03-02

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

Whereas, the Commission has found no probable cause to credit the allegations that Carl Johnson has violated the School Ethics Act; 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.

Mark Finkelstein, Acting Chairperson

I hereby certify that above resolution and decision were duly adopted by the School Ethics Commission at its public meeting on August 27, 2002.*

Lisa James-Beavers
Executive Director

*Commissioner Paul Garbarini abstained from this decision.