

CARTERET EDUCATION ASSOCIATION,	:	BEFORE THE SCHOOL
V.	:	ETHICS COMMISSION
SUZANNE LOUTFY and LOUIS MANGIERI,	:	Docket No.: C07-02
CARTERET BOARD OF EDUCATION,	:	DECISION
MIDDLESEX COUNTY	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by the Carteret Education Association (CEA) alleging that respondents Suzanne Loutfy and Louis Mangieri violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when, as members of the Carteret Board of Education (Board), they inspected the personnel file of a teacher when no matter involving that teacher was pending. The CEA alleges that the respondents used their official positions to secure unwarranted privileges for themselves in violation of N.J.S.A. 18A:12-24(b).

The attorney for the respondents replied in lieu of answer to the complaint that the complaint was not specific enough for the respondents to provide a meaningful answer. The Commission agreed and asked the complainant’s attorney to provide the name of the employee whose file was reviewed and the date upon which the conduct occurred. The complainant’s attorney eventually provided the information and respondents were given 20 days from the date of receipt of the information to file their answers.

Respondent Suzanne Loutfy filed her answer to the complaint stating that she reviewed the personnel file in question as a member of the CEA Negotiations Committee. She stated that the Board was advised that the teacher whose personnel file was in question was going to have his salary discussed as a subject for negotiations because there was no guide put in place when he was approved for his position. Mr. Mangieri similarly answered that, as Chairperson of the CEA Negotiations Committee, he needed information regarding the teacher’s salary history and qualifications since his salary was going to be a subject of negotiations. Both therefore admitted viewing the personnel file of the teaching staff member, but denied having violated any provision of the School Ethics Act. They asked that the complainant be sanctioned for filing a frivolous complaint.

By letter of August 15, 2002, Commission staff forwarded the responses to the complainant’s attorney and advised that the need for appearances before the Commission could be avoided if it would provide answers to two questions: “1) what privilege did the respondents secure by reviewing the personnel file; and 2) what legal authority prohibits a board member from reviewing an employee’s personnel file?” The Commission did not receive a response to

the questions by September 6, 2002, the deadline that it had set for receipt of the answers. Therefore, it advised the parties that it would discuss this complaint at its meeting on September 24, 2002. The parties were advised of their right to attend and present witnesses and testimony to aid in the Commission's investigation. Neither party appeared before the Commission. At its public meeting, the Commission found no probable cause to credit the allegations in the complaint against Ms. Loutfy and Mr. Mangieri and dismissed the complaint against them. The Commission did not find the complaint to be frivolous. The Commission adopted this decision at its meeting of December 17, 2002.

## **FACTS**

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

At all times relevant to this complaint, respondents Suzanne Loutfy and Louis Mangieri, were members of the Carteret Board of Education. They were also members of the CEA Negotiations Committee with Mr. Mangieri serving as Chairperson and Ms. Loutfy serving as Spokesperson. On Tuesday, December 18, 2001, Ms. Loutfy and Ms. Mangieri went to the Superintendent's office and requested to review the personnel file of a teaching staff member. The Superintendent took them to Assistant Superintendent's office where the file was located and directed the secretary to allow them to see the file. They acknowledged receipt of the file by signing their names. There is a discrepancy as to how long they reviewed the file.

On December 12, 2001, the Superintendent had recommended the renewed appointment of the teaching staff member whose file was reviewed. The recommendation included a salary increase retroactive to September 1, 2001. Respondent Loutfy raised numerous concerns about the salary increase to the Superintendent. Respondent was advised that the Board would be negotiating this position and the salary as part of negotiations and that this particular teaching staff member was not currently on the guide.

## **ANALYSIS**

The CEA has complained that the above conduct constitutes a violation of N.J.S.A. 18A:12-24(b). N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use his or her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family, or others.

The CEA set forth in its complaint that there was no matter pending before the Board regarding the teaching staff member whose file was reviewed. However, the Board discussed this particular teaching staff member just six days before the file was reviewed. The minutes of the Board meeting on December 12, 2001 note that the position and salary of the teaching staff

member would become a subject for negotiations. Both respondents were members of the negotiations committee. Therefore, there was a matter pending before the Board regarding the teaching staff member. Further, the complainant has not provided any board policy that prohibits a board member from reviewing the personnel file of a member of the teaching staff. The complainant's attorney provided an applicable law and never responded to the question of what unwarranted privilege or advantage the respondents are alleged to have obtained for themselves or for others by reviewing the teaching staff member's personnel file. The Commission has not been able to discern any privilege or advantage based on the information before it. Therefore, the Commission has insufficient information upon which to base a finding of probable cause that the respondents used their position to secure unwarranted privileges or advantages for themselves or for others.

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Suzanne Loutfy or Louis Mangieri violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and dismisses the complaint against them.

## **REQUEST FOR SANCTIONS**

The respondents have asked that the Commission find the complaints to be frivolous pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint was frivolous, the Commission must find on the basis of the pleadings, its investigation 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 determined that the Board needs to establish procedures for determining who can view an employee's personnel file and under what circumstances. Such procedures may have either prevented the incident from occurring or discouraged the filing of the complaint. The law neither clearly allows review of personnel files nor clearly prohibits it under these circumstances. Therefore, the Commission does not find the complaint to have been filed in bad faith and does not find that the complaint was without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Thus, the Commission does not find the complaint to be frivolous and declines to impose sanctions.

This decision 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 -- C07-02**

Whereas, the School Ethics Commission has considered the pleadings, documents and the results of its investigation; and

Whereas, the Commission has found no probable cause to credit the allegation that Suzanne Loutfy or Louis Mangieri used their position as board members to secure an unwarranted privilege, advantage or employment for themselves or others in violation of N.J.S.A. 18A:12-24(b) and dismissed the complaint against them; and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on December 17, 2002.

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Lisa James-Beavers  
Executive Director