

VENICE PARK CIVIC ASSOCIATION	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
JAMES HERZOG, MARTY SMALL	:	Docket No. C26-03
DANIEL GALLAGHER, CORNELL	:	
DAVIS, JOHN IMFELD, JR. and	:	
ROCHELLE SALWAY	:	
<i>ATLANTIC CITY BOARD OF</i>	:	
<i>EDUCATION</i>	:	
<i>ATLANTIC COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by the Venice Park Civic Association, represented by Sidney Trusty, alleging that six Atlantic City Board of Education members violated N.J.S.A. 18A:12-24(a) of the Act and the Code of Ethics for school board members set forth at N.J.S.A. 18A:12-24.1, by hiring an individual as a long-term substitute and then first-grade teacher who was not certified and had no prior teaching experience, at a higher salary than that given to other teachers, because he was a City councilman. Also, Complainant alleges that the above-named board members violated the Act and Code of Ethics when they voted on this individual’s appointment because they had conflicts with regard to this individual and should have recused themselves when the vote was taken by the Board. Complainant alleges these actions constitute a violation of N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24.1 (f) and (h) of the Code of Ethics for School Board Members within the School Ethics Act.

In their answer, Respondents deny that they violated any provision of the Act or Code of Ethics in that the teacher was properly certified as an Alternate Route teacher and possessed the required certificate from the Atlantic County Office of Education, and that the teacher was paid a salary in accordance with the salary guide at the appropriate step minus 10% because he came through the Alternate Route program. Additionally, they aver that they were not in violation when voting for the teacher since the Board properly invoked the Doctrine of Necessity to conduct the vote because a quorum of Board members were in conflict and thus, the Doctrine was invoked in order to conduct Board business. Additionally, the Board asserts that the teacher is certified and qualified to hold the position. Respondents also filed a counterclaim seeking that the Commission find this complaint to be frivolous and issue a penalty against the complainant.

The Commission invited the parties to attend its meeting on October 28, 2003, to present witnesses and testimony to aid in the Commission’s investigation. Respondent James Herzog, President of the Board; Frederick Nickles, Superintendent of the Atlantic City Schools; and Thomas Kirschling, Assistant Superintendent of Schools; appeared,.

represented by board attorney, Christopher A. Brown, Esq. No one from the complainant organization attended the meeting.

At its special public meeting on October 31, 2003, the Commission voted to find no violation and dismiss the complaint. The Commission adopted this decision at its meeting of November 25, 2003.

FACTS

The Commission found the following facts on the basis of the pleadings, documents submitted and testimony. Respondents are all board members in Atlantic City. On March 25, 2003, pursuant to the recommendation of the Superintendent of Schools, a City Councilman was appointed to serve as a long-term substitute teacher for the school district at the salary of a Level 1 teacher, discounted by 10% because he was hired through the Alternate Route Program as are all teachers who are hired via the Alternate Route. At this time, the board invoked the Doctrine of Necessity to conduct the vote because a majority of board members considered themselves to be in conflict with the School Ethics Act. Two of the board members were police officers employed by the City and it was decided that since they were employed by the City Council indirectly, there could be an appearance of a conflict so they were deemed conflicted, two members were employed by the City directly as its Demolition Officer and Social Service Aide and thus, were deemed conflicted, and two other members were on the Board as representatives from sending boards, from Ventnor and Brigantine, and, as such, they do not vote on employment issues in the Atlantic City elementary schools.

On August 12, 2003, acting on a recommendation from the Superintendent, the City Councilman was appointed to the position of first-grade teacher by the Atlantic City School Board. Again, the Doctrine of Necessity was invoked since a majority of Board members were deemed to be in conflict.¹ The City Councilman was certified to teach via the Alternate Route by the Atlantic County Office. He was paid a Step I salary in accordance with the salary guide for Alternate Route teachers in the District. He was also appointed to the position of wrestling coach for the District. The Board invoked the Doctrine of Necessity, pursuant to the advice of the board attorney, in order for all of its members to vote because a majority of board members had a conflict in this matter.

ANALYSIS

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(a) and the Code of Ethics set forth at N.J.S.A. 18A:12-24.1 (f) and (h). Complainant has the burden

¹ One Board member who was a police officer for Atlantic City resigned prior to the second vote which appointed the City Councilman to the position of elementary school teacher, however, he was replaced by another board member who was also a police officer for the City therefore, had the same conflict. Therefore, there was no decrease in the number of board members in conflict when the second vote was taken.

of proving factually that a violation of the Code of Ethics has occurred pursuant to N.J.S.A. 18A:12-29(b).

N.J.S.A. 18A:12-24(a) states:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

Respondents did not violate subsection (a) in that the board members voted on a staff appointment upon recommendation from the Superintendent. This Commission has recognized in the past that it is not a substantial conflict for a board member to be employed by a City Council, as long as he does not vote on matters that cause him to choose between his employer and his duties in the public interest as a board member. In other words, the two positions are not inherently in conflict. Brian Villa v. Edwin Gutierrez, New Brunswick Bd. Of Ed., Middlesex County, Dkt. No. C13-99, January 31, 2000. Thus, the Commission finds no probable cause that Respondents are in violation of subsection (a).

N.J.S.A. 18A:12-24.1(f) states:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The information in the record shows that the City councilman was recommended by the Superintendent after having been determined to be qualified for the position. Further, the District routinely hires teachers via the Alternate Route Program. Thus, the Commission finds no evidence that Respondents surrendered their independent judgment to any special interest or partisan political group. Further, there is no evidence that any of the board members used the schools for personal gain or the gain of friends and therefore, finds no violation of subsection (f).

N.J.S.A. 18A:12-24.1(h) states:

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

Last, the Commission did not find a violation of subsection (h) of the Code of Ethics based on the facts presented. The Superintendent testified that he was directly involved in the recommendation and hiring of the City councilman to the positions he obtained. He further testified that the Board often hires teachers through the Alternate Route Program and has had positive results with these teachers. He also said that this individual was qualified to coach wrestling and he was impressed with that experience

since the District intended to enhance its wrestling program. The Commission is, thus, without sufficient evidence to make a finding that Respondents violated this subsection.

In summary, the Commission finds no probable cause to credit the allegations that the Respondents violated N.J.S.A. 18A:12-24(a) and finds no violation of the Code of Ethics based on the facts in evidence.

DECISION

Accordingly, the Commission finds no probable cause that Respondents' actions violated N.J.S.A. 18A:12-24(a) of the Act or subsections (f) or (h) of the Code of Ethics in the School Ethics Act and the complaint is dismissed. The Commission did not find this case to meet the standards set forth for the filing of a frivolous complaint, pursuant to N.J.S.A. 18A:12-29 and N.J.S.A. 2A:15-59.1, and dismisses the counterclaim.

The Commission is concerned, however, that this Board did not follow its *Resolution on Invoking the Doctrine of Necessity*, adopted February 25, 2003, when it employed the Doctrine in this matter. The Commission issued a resolution that the Board attorney had in his possession, stating that when it is necessary for a Board to invoke the Doctrine of Necessity, the Board should state publicly that it is doing so, and pass a public resolution setting forth the reason that such action is necessary and the specific nature of the conflicts of interest, in order to identify the conflict of each individual board member. The Commission cautions the Board that it considers public disclosure of conflicts of interest to be paramount when it is necessary to invoke the Doctrine. Thus, the Board must post its adopted resolution where it posts public notices for 30 days and provide the Commission with a copy. Although the minutes noted that the Doctrine was invoked, the steps specified in the Commission's Resolution were not taken. The Board is reminded to take such steps in the future in order to avoid an appearance of impropriety and the risk of ethics charges being filed against it in the future.

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 – C26-03

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

Whereas, the Commission finds no probable cause that Respondents violated N.J.S.A. 18A:12-24 (a) and finds no violation of N.J.S.A. 18A:12-24.1(f) or (h) of the Code of Ethics within the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; 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 November 25, 2003.

Lisa James-Beavers
Executive Director

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