
IN THE MATTER OF	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
	:	
DIANA LOBOSCO	:	Docket No. C31-05
PASSAIC COUNTY EDUCATION	:	
SERVICES COMMISSION	:	
PASSAIC COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 21, 2005 by Howard Solomon alleging that Ms. Lobosco, President of the Passaic County Educational Services Commission Board of Directors (Board), violated N.J.S.A. 18A:12-24(b), (c) and (f) of the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*, when, at the June 24, 2004 Board meeting, she voted to award a Board contract to the Passaic County Technical Institute (Institute) where she is employed as Superintendent.

After the Commission granted an extension, for good cause, of time to file an answer, Ms. Lobosco filed an answer, through her attorney, Greg K. Vitali, Esq. In her answer, Ms. Lobosco denied that her vote on June 24, 2004 violated the Act.

The Commission invited the parties to attend its August 23, 2005 meeting to present witnesses and testimony, but did not require that they be present. The parties did not attend the meeting. At its August 23, 2005 meeting, the Commission voted to find probable cause to credit the allegations that Ms. Lobosco violated N.J.S.A. 18A:12-24(c) of the Act. The Commission also voted to find no probable cause to credit the allegations that Ms. Lobosco violated N.J.S.A. 18A:12-24(b) and (f).

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, advised Ms. Lobosco's attorney that it would decide the matter on the basis of written submissions. Mr. Vitali was invited to provide a written submission to the Commission by October 21, 2005, and set forth why the Commission should not find Ms. Lobosco in violation of N.J.S.A. 18A:12-24(c) of the Act. Mr. Vitali was also told that his written submission should include his position on an appropriate sanction for Ms. Lobosco should the Commission determine that the Act was violated. Mr. Vitali filed a timely response to the Commission's probable cause decision. In his response, Mr. Vitali argued that the approval of the contract resulted in a loss to the Institute and did not affect Ms. Lobosco's salary and compensation. He further argued that Ms. Lobosco's position as Superintendent of the Institute does not constitute an interest as defined by N.J.S.A. 18A:12-22. He further argued that N.J.S.A. 18A:12-24(h) applied and the Commission should dismiss the complaint. Mr. Vitali submitted that should the Commission fail to

dismiss the matter in its entirety, it should impose a penalty no greater than that of a reprimand.

FACTS

The Commission based its finding of probable cause on the following facts.

At all times relevant to the complaint Ms. Lobosco was President of the Board and Superintendent of the Institute.

Prior to the June 24, 2005 Board meeting, the Institute provided emergency computer services to the Board whenever the computer consulting company under contract with the Board failed to provide adequate services. At the June 24, 2005 Board meeting, the interim Superintendent recommended that the Board approve a contract with the Institute that would pay \$35 an hour for each technician. This amount is half of what the state contract rate is for computer technicians. Ms. Lobosco voted in the affirmative to approve the contract recommended by the Interim Superintendent. The contract was approved by a unanimous vote.

ANALYSIS

The Commission found probable cause that Ms. Lobosco violated N.J.S.A. 18A:12-24(c) when, as President of Board, she voted to award a Board contract to the Institute where she is employed as Superintendent. 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;

In its probable cause decision, the Commission determined that Ms. Lobosco does not have a direct financial involvement in the contract between the Institute and the Board. However, the Commission found that she does have an indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. In I/M/O Bruce White, C01-01 (July 24, 2001), the Commission found that a board member had an indirect financial involvement when he voted on the payment of tuition to the Mercer County Vocational School where he was employed as a Principal. In White, the Commission noted that the tuition payment was not earmarked for any particular purpose and that the funds go into the general fund. Based on that fact, the Commission reasoned that the board member had an indirect financial involvement. In its probable cause decision, the Commission reasoned that this complaint is similar to

White in that Ms. Lobosco voted to approve a contract between the Board of which she is President and the Institute where she is employed as Superintendent.

In his response to the Commission's probable cause determination, Mr. Vitali argued that it is undisputed that the approval of the contract resulted in the Institute operating at a loss and that Ms. Lobosco's salary and compensation was in no way affected by the approval of the contract. He further argued that since the contract was a mere extension of the goodwill that the Institute was already providing the Board in emergency situations, that Ms. Lobosco's objectivity or independence of judgment was not impaired when she participated in the vote on the contract. The Commission does not dispute that the contract resulted in an operating loss for the Institute. However, as the Commission noted in its probable cause decision, before the Institute entered into the contract, it was providing services to the Board at an even greater loss, and the contract cut those losses in half since the Institute receives some remuneration under the contract.

Mr. Vitali also argued that Ms. Lobosco is an employee of the Institute and owns no interest in the Institute as defined by N.J.S.A. 18A:12-23. The Commission agrees that Ms. Lobosco does not have an interest in the Institute. However, she is an employee of the Institute and, similar to all employees, she has an indirect interest in the financial integrity of the Institute. The contract Ms. Lobosco voted for brought additional funds to the Institute. The Commission noted in its probable cause decision that there is no information to show that the contract funds are earmarked for any particular purpose. There is also no information to show where the contract funds are dedicated. Similar to the White decision, Ms. Lobosco had an indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. Based on the foregoing, the Commission finds that Ms. Lobosco violated N.J.S.A. 18A:12-24(c) when, as Board President, she voted to award a Board contract to the Institute, where she is employed as Superintendent.

In his response to the Commission's probable cause determination, Mr. Vitali argued that N.J.S.A. 18A:12-24(h) applies to Ms. Lobosco's vote on the contract because no material or monetary gain accrued to Ms. Lobosco as a result of her participation in the vote on the contract. N.J.S.A. 18A:12-24(h) provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation, or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

If Ms. Lobosco was a member of any business, profession, occupation or group, then she could vote on the contract if no material or monetary gain accrues to her to a greater extent than any gain could reasonably be expected to accrue to any other member. However, Mr. Vitali fails to identify the business, profession, occupation or group of which Ms. Lobosco is a member. The Commission cannot find a business, profession,

occupation or group of which Ms. Lobosco is a member to make this section applicable. Therefore, N.J.S.A. 18A:12-24(h) does not apply.

DECISION

For the reasons discussed above, the Commission finds that Diana Lobosco violated N.J.S.A. 18A:12-24(c) of the Act. The Commission recommends that the Commissioner of Education impose a penalty of reprimand for the reasons provided by Mr. Vitali.

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, Ms. Lobosco 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 – C31-05

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

Whereas, at its meeting of October 25, 2005, the Commission found that Diana Lobosco violated N.J.S.A. 18A:12-24(c) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of November 22, 2005, 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 November 22, 2005.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C31-05