
NELS WILLIAM LUTHMAN, JR.

v.

**RICHARD LONGO,
TOMS RIVER REGIONAL
BOARD OF EDUCATION
OCEAN COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

**Docket No. C17-08
PROBABLE CAUSE NOTICE**

This matter arises from a complaint filed on May 13, 2008 by Nels William Luthman, Jr., which was supplemented by letter dated May 31, 2008, along with additional documentation, alleging that Richard Longo, a member of the Toms River Regional Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was initially filed on behalf of the respondent on May 29, 2008 and supplemented by letter dated June 17, 2008. The matter was scheduled for a probable cause determination by the Commission on May 27, 2009, at which time the Commission voted to find no probable cause and dismiss the complaint.¹

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant asserts that on March 25, 2008, the respondent voted in favor of the budget, rather than recusing himself, despite his wife being a nurse for the District. According to the complainant, by voting in favor of the budget, the complainant not only approved the salary and benefits that his wife will receive, he also set the budget amounts for her department and her school. (Complaint at paragraph 1; May 31, 2008 supplemental letter) The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24(c). The complainant further reasons that the respondent violated *Advisory Opinion A30-05* (March 10, 2006) because, by voting on the budget, he was voting on the salaries and benefits of his wife's supervisors and administrators as well as the amount of money these supervisors will have in their budgets. The complainant submitted a copy of the Board's minutes from its March 25, 2008 meeting.

Respondent's counsel counters that *Advisory Opinion A30-05* advises that a board member should not vote on employment contracts for supervisors of the school district who are in the chain of command supervising their respective spouses; the respondent did not cast such a vote. While acknowledging that the respondent's wife is a nurse at High School North, counsel asserts that the respondent has recused himself from voting on any employment contract of any supervisor in the chain of command pertaining to his wife. As evidenced by the minutes submitted by the complainant, counsel asserts that the respondent merely approved the

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed on May 13, 2008, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

submission to the voters of the annual budget, as required by N.J.S.A. 18A:13-17, which is not prohibited by *A30-05*. Rather, counsel argues that respondent “voted on the general budge[t] to be forwarded to the voters for approval and in no way participated in any negotiations or contracts pertaining to those persons who would be supervising his wife.” (Answer; Monahan’s letter, June 17, 2008).

The Commission invited the parties to attend its meeting on May 27, 2009. Neither the complainant nor the respondent attended, although Michael Gilmore, Esq. appeared on behalf of the respondent and affirmed the respondent’s position, as set forth above.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Here, the Commission finds there is insufficient cause to credit the allegation that the respondent violated the Act.

There is no dispute that the respondent’s wife is a nurse in the district and that the respondent voted for the adoption of the District’s proposed budget on March 25, 2008. The record shows that a motion was made, seconded and carried that the Board adopt the 2008-09 school district budget and the resolution approving the ballot question: “Resolved, that there should be raised for General Funds \$111,634,746 for the ensuing School Year (2008-2009).” (Board Minutes, March 25, 2008 at page 28) The complainant asserts that the respondent’s conduct in voting on the 2008 budget violated N.J.S.A. 18A:12-24(c).² N.J.S.A. 18A:12-24(c) provides:

c. 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;

² To the extent that the complainant alleges that the respondent violated *Advisory Opinion A30-05*, the Commission notes that a complaint must allege a violation of the School Ethics Act, and specifically, some provision of the Act. N.J.S.A. 18A:12-29a; N.J.A.C. 6A:28-6.1. Accordingly, the analysis herein considers whether the respondent violated N.J.S.A. 18A:12-24(c), and notes that this was the provision of the Act applied in *A30-05*.

Counsel for the respondent contends that the respondent did not violate the Act, but merely approved the annual school budget for submission to the voters, in accordance with N.J.S.A. 18A:13-17. The Commission first notes that N.J.S.A. 18A:13-17 provides:

The regional board of education shall, at each annual school election, submit to the voters of the regional school district the amount of money fixed and determined in its budget to be voted upon for the use of the regional schools of the district for the ensuing school year and may submit thereat any other question authorized by this law to be submitted at such an election. The board may, in submitting to the voters the amount of money to be voted upon for the use of the regional schools of the district, identify the amount of money determined to be the constituent municipality's share. *** N.J.S.A. 18A:13-17.

The Commission initially notes, as a general matter, that local school districts adopt salary schedules for its teaching staff members, including school nurses, and its administrative staff. (N.J.S.A. 18A:29-4.1 through 4.3). The New Jersey Employer-Employee Relations Act requires a public employer, such as a local board of education, to negotiate with the majority representative of an appropriate bargaining unit of its employees concerning the terms and conditions of employment. Bd. of Education of Rockaway Twp., Morris County v. Rockaway Twp. Bd. Ed. Assn., 120 N.J. Super. 564, 569; N.J.S.A. 34:13A-5.3. Ordinarily, compensation is a negotiable term and condition of employment. Plainfield Assn. of School Administrators v. Bd. of Education of City of Plainfield, 187 N.J. Super. 11, 16 (App. Div. 1982). Furthermore, a board member whose spouse is a member of the local bargaining unit may not discuss or vote on that collective bargaining agreement. *Advisory Opinion A01-93* (October 26, 1993). The District's proposed budget is the amount that is determined as needed in order to meet its contractual, regulatory and statutory obligations.

In analyzing whether a board member is prohibited from acting pursuant to N.J.S.A. 18A:12-24(c), Commission previously stated that the objective standard is whether the public could reasonably perceive that the board member's objectivity or independence of judgment may be impaired because he, his business organization or a member of his immediate family has some direct or indirect interest in the matter. I/M/O Galish, et al., Bergenfield Board of Education, Bergen County, C01-97 (September 3, 1997). The Commission therein stated, "The test is not whether such involvement would affect his judgment, but whether it would reasonably appear to an outsider that the board member's judgment could be altered. Even an appearance of impropriety must be avoided." (Id. at page 4)³

In this connection, the Commission previously declined to find probable cause that a Board member violated N.J.S.A. 18A:12-24(c) when she, a chiropractor and a member of the

³ At the time this case was decided, N.J.S.A. 18A:12-24(c) read: "No school 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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." Nevertheless, the Commission finds its reasoning in 1997 to be applicable to this matter.

Board's negotiation's committee, participated in discussions regarding the parameters and the vote to approve the health insurance carrier for the district. I/M/O Hayes, Spring Lake Heights Board of Education, Monmouth County, C02-98 (May 26, 1998). The Commission found that:

[T]he patient is responsible for the payment of Dr. Hayes' fees, not the insurance company. Therefore, if Dr. Hayes treats certain staff members, one could argue that she should avoid discussing and voting on issues involving those particular staff members. But she does not have to avoid discussing the contract, inclusive of all health benefits, that covers all staff members. Dr. Hayes will be paid by her patient whether he or she has health insurance or not. The information before the Commission indicates that Dr. Hayes' chiropractic practice could not reasonably be expected to impair her objectivity in negotiating the contract. Furthermore, the Commission does not have any information before it to indicate that the outcome of negotiations could have a potential adverse impact on Dr. Hayes' practice. Therefore, the Commission does not find that Dr. Hayes had a personal or financial involvement that might reasonably be expected to impair her objectivity in negotiating the contract.⁴ (Id. at page 5)

In Hayes, the Commission further found that the information before it did not provide a reasonable basis to expect that Dr. Hayes could not objectively vote on a health insurance carrier for the staff. (Ibid.)

The Commission similarly finds in this matter that there are no specific facts on the record before it to suggest that the respondent's objectivity might reasonably be impaired when he cast a vote at a public meeting to approve the general budget for submission to the voters. Absent any specific allegations that the proposed budget could have particularly impacted respondent's wife's employment (*e.g.*, his spouse was not a member of the local bargaining unit such that her salary terms and conditions were determined outside of the contract; his spouse was eligible to receive remuneration that was not included in her contractual salary or benefits; or his spouse could have been impacted by a proposed decrease in nursing staff), the Commission finds that although the respondent did have "a direct or indirect financial involvement" in the budget that was proposed, this involvement was simply too attenuated to find that it "*might reasonably be expected to impair his objectivity or independence of judgment.*" For these reasons, the Commission similarly finds insufficient cause on this record to credit a claim that the respondent has a personal involvement that is or creates some benefit to him or his wife.⁵

⁴ At the time this case was decided, N.J.S.A. 18A:12-24(c) read as noted above in footnote 3.

⁵ The Commission specifically notes that where a budget is defeated by the voters and the Board is called upon to reformulate its budget, which may include transfers of staff and reductions in force, and where there is a reasonable likelihood of impacting the employment of a Board member's spouse, that Board member may not be present for any such discussions or determinations. These facts, however, are not before the Commission in this matter.

Additionally, the Commission finds that the situation herein is distinguishable from the facts presented in *Advisory Opinion A30-05*. In that advisory opinion, the Commission advised that two board members who had spouses employed in the 11-building district would violate N.J.S.A. 18A:12-24(c) if they were to participate in evaluations, personnel actions and decisions regarding compensation not only for their direct supervisors but others in the chain of command for their spouses. The Commission's advisory was based upon its finding in School Ethics Commission v. Gunning, C15-93, (September 22, 1994) that a board member violated N.J.S.A. 18A:12-24(c), when he voted on the Superintendent's raise when his spouse was employed as a confidential secretary to the Superintendent. In Gunning, the Commission noted that it would be difficult for the board member to be completely objective in acting on the Superintendent's raise since he knew that his spouse worked for the Superintendent. The Commission reasoned that if the Superintendent were displeased with the board member's vote, the employment of the board member's spouse could be negatively impacted and the spouse may be treated poorly on the job or may not be recommended for a raise in the succeeding year. Thus, in *A30-05*, the Commission reasoned it would be difficult for the board members to be completely objective in acting on any employment issues regarding their spouses' supervisors as the public could reasonably expect that the board member's involvement in employment issues could positively or negatively impact the employment of the board member's spouse.

Noting that this record is devoid of any information to suggest that the proposed budget could have particularly impacted the employment of respondent's supervisors, the Commission finds that casting a public vote to submit a general budget to the voters for approval, under the circumstances herein, is *not* tantamount to taking part in closed session discussions and voting upon matters that directly affect the employment of the supervisors of one's spouse. The Commission therefore finds no cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c).

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated the Act and the Commission dismisses the complaint. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C17-08

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

Whereas, at its meeting of May 27, 2009, the Commission found no probable cause to credit the allegations that the respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed, and 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 2009.

Joanne Boyle, Executive Director
School Ethics Commission