
IN THE MATTER

OF

MARK CONNOLLY,
West Milford Board of Education
Passaic County

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BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No.: C15-96/C26-96
Consolidated

DECISION

PROCEDURAL HISTORY

This matter arises from two complaints filed by Leroy Gearl and Steven Brandt against Mark Connolly, a member of the West Milford Board of Education. Leroy Gearl filed his complaint on May 8, 1996. Mr. Brandt filed a complaint on August 15, 1996. The complaints alleged, in pertinent part, that Mr. Connolly violated various provisions of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., in connection with his wife's employment application with the West Milford school district.

When Mark Connolly received the complaint of Steven Brandt, he asked that the complaints be consolidated. The Commission consented to his request. Thus, the Commission accepted the answer to Mr. Gearl's complaint as the answer to the complaint of Mr. Brandt.

The Commission heard testimony from witnesses at its meeting on February 25, 1997. It tabled a decision on the case at the public meeting. At the April 8, 1997, special meeting of the Commission, the Commission concluded that there were no material issues of fact that needed resolution at an evidentiary hearing. The Commission then adopted a decision finding probable cause to credit some of the allegations in the complaint of Leroy Gearl. Specifically, the Commission found probable cause to credit the allegations in paragraphs one, four and five of the complaint, which state the following:

1) Mr. Connolly was a member of the Personnel Committee that consisted of three board members. Mr. Connolly should have removed himself from that Committee when his wife was being considered for a teaching position in the West Milford school district.

4) When the motion for the hiring of Mr. Connolly's wife failed, Mr. Connolly solicited the school board attorney for a legal opinion on how to bring the resolution back to the floor for a new vote.

5) After getting the legal opinion, Mr. Connolly then called the one school board member who would be able to bring it back to the floor for a vote. When this

member told Mr. Connolly he would not agree with this, Mr. Connolly proceeded to berate and make slanderous remarks to this board member.

The Commission did not find probable cause to credit the allegations in the complaint of Steven Brandt although his complaint was also based on Mrs. Connolly's application for employment. The wording of the complaint was such that the allegations were either not supported by the record, or if supported, could not sustain a finding of probable cause of an ethics violation. Accordingly, the Commission dismissed the allegations in his complaint as set forth in the Commission's probable cause letter of April 8, 1997.

The Commission invited Mr. Connolly to submit in writing his position as to why his actions do not constitute a violation of N.J.S.A. 18A:12-24(c) of the School Ethics Act. The Commission further directed that if Mr. Connolly is of the opinion that there are material facts in dispute, he shall set forth those facts and explain why they are material to the disposition of the case. It also invited Mr. Connolly to include his position on the appropriate sanction in the event that the Commission finds a violation. The Commission received his written statement on May 13, 1997.

Mr. Connolly's affidavit in answer to the complaint of Leroy Gearl set forth the following responses to the three allegations in which the Commission found probable cause:

1) Mark Connolly was a member of the Personnel Committee when the superintendent presented his wife's name to the committee for review on September 25, 1995. He states that the committee consisted of four rather than three members: Mr. Duffy; Mrs. Nobis; Mrs. Shoemaker and himself. At the Committee meeting in question, Mrs. Touw was present in Mrs. Shoemaker's place. He did not leave the room but sat quietly listening to the discussion. He answered only one question posed by Mrs. Touw. The Committee approved his wife 2-1, with Mrs. Touw voting against it and him abstaining.

4) After the board failed to appoint his wife, he asked then board counsel, J. Rothchild, whether the board could bring the motion back before the full board for another vote. Mr. Rothchild informed him that only someone who voted against the motion or who did not vote could bring the motion back for another vote.

5) Since Mr. Maglio was not present at the board meeting, Mr. Connolly asked him to consider bringing the motion back for another vote. Mr. Maglio informed him that he would not and began to scream at him for even asking such a thing since Mr. Connolly had not supported him for board president. The conversation then ended.

Last, Mr. Connolly states that Mr. Gearl filed the complaint out of revenge because he lost so badly in the April 1996 election to candidates whom Mr. Connolly supported. He believes that the fact that Mr. Gearl filed the complaint in May 1996, seven months after the events he alleges constitute violations of the Act, supports his theory. He urges the School Ethics Commission to find the complaint to be frivolous.

FACTS

The Commission finds the following material facts to be undisputed. Mrs. Connolly first became a substitute teacher in West Milford in special and regular education in August 1995. Soon after she became a substitute, she was called by Howard Heller, Director of Special Services, and asked to be a long-term substitute. She accepted the position and served as a long-term substitute in the resource center. On September 25, 1995, the Personnel Committee met to discuss, among other appointments, the appointment of Susan Connolly to be a resource room teacher. Mr. Connolly was a member of the Personnel Committee at that time and attended the meeting as such. When the Committee discussed his wife's appointment, Mr. Connolly recused himself from the discussion, but did not leave the room. He did not add to the discussion, except to answer a question that another member of the committee asked him.

Before the full board voted on the appointment, Mr. Connolly made several board members aware that his wife's appointment was going to be considered at the meeting on September 26, 1995. He did not suggest to them how they should vote. Before the meeting, Mr. Connolly asked Mr. Gearl how he was going to vote on his wife's appointment. Mr. Connolly attended the executive session of the board at which his wife's appointment was discussed on September 26, 1995. He did not participate in the discussion. When the matter came before the full board, Mr. Connolly abstained from voting on his wife's appointment.

After the motion to appoint his wife failed, Mr. Connolly consulted the board attorney as to how the agenda item could be brought back before the board for a re-vote. The board attorney informed him that only a person who had voted against the motion or had not voted could ask to have the matter returned to the agenda. Mr. Maglio was the only board member who had not attended the September 26, 1995, meeting. Mr. Connolly called Mr. Maglio to determine whether he would consider bringing his wife's appointment back to the board for a re-vote. Mr. Maglio refused to do so. At the October 10, 1995, meeting, Mrs. Connolly spoke to the board and charged it with not basing its vote on her qualifications, but on Mr. Connolly's membership on the board. Mr. Connolly also spoke to the board regarding the board's failing to appoint his wife. He also mentioned that the board had hired or promoted other board members' relatives while they were in office.

After Mrs. Connolly failed to get the position as resource center teacher, she continued serving as a long-term substitute. The board never brought back the motion to hire her as a teacher for a re-vote. In April 1996, Mrs. Connolly applied for another resource center position that had opened. She received an interview, but was not recommended because her experience was not in high school, but in middle school. In July 1996, she applied to be a part-time resource center teacher in the middle school. The board appointed her to this position with all members in favor, except Mrs. Touw who voted against it, and Mr. Connolly who abstained.

ANALYSIS

As set forth above, the Commission found probable cause to credit the allegations in paragraphs one, four and five that respondent violated the School Ethics Act. The Commission dismissed the remaining paragraphs for lack of probable cause. The issue is thus whether respondent violated the Act when he remained in the Personnel Committee meeting when his wife was being discussed, when he asked the attorney how to bring the motion to hire his wife back to the floor or when he called Mr. Maglio to ask him to consider bringing the motion back for a re-vote.

Mr. Connolly defends his actions in his written statement in response to the finding of probable cause. Therein, Mr. Connolly states that he has attended Personnel Committee meetings when other board members' relatives were discussed hired and promoted. However, at no time did board counsel advise these board members that they should leave the room. Thus, he thought refraining from discussion was sufficient. He adds that he would have left the room if he was aware that by remaining he may be in violation of the School Ethics Act. Regarding paragraph four, he adds that he did inquire for legal advice as to how to bring the vote on his wife back to the floor. He adds that he would expect that the board attorney would have advised him that it was a violation for him to do so. He states that this all began because of an attack on his wife. He feels that he should have the same right as any member of the general public to ask for advice. Last, regarding paragraph five, he denies berating or slandering Mr. Maglio or anyone else. However, he admits to calling the fellow board member and asking him to consider bringing the resolution back to the table.

N.J.S.A. 18A:12-24(c) of the School Ethics Act 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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The initial question, therefore, is whether Mr. Connolly's continued attendance at the meeting of the Personnel Committee was "acting in his official capacity" in a matter in which he and his spouse had a financial and personal involvement. Mr. Connolly does not argue that he and his spouse have a direct financial and personal involvement in her getting a full time job with the board that might reasonably be expected to impair his objectivity. He correctly abstained on the vote, which shows that he acknowledges the involvement. The Commission finds that Mr. Connolly did not have to resign from the Personnel Committee altogether because his wife was being considered for an appointment with the board. However, by remaining in the room when she was being discussed, he was acting in his official capacity in a matter in which he had a financial and personal involvement. The committees of the board meet in private and thus, are not subject to public scrutiny. Thus, when the Personnel Committee makes its recommendation to appoint Susan Connolly and the minutes show Mr. Connolly as having been present for the entire meeting, the public may view the recommendation with suspicion and mistrust. His mere presence may be viewed as a hindrance to a critical review of the candidate's credentials by the

committee. It may create a chilling effect on the committee's speech by virtue of the fact that any board member who dares to speak against the candidate's qualifications is viewed as personally attacking Mr. Connolly. Indeed, that appears to be exactly what happened in this instance. Mr. Connolly took offense at Mrs. Touw's question regarding how long she had been serving as a substitute and it began a bitter dispute between the two that clearly continues to this day.

The Commission does not find the fact that counsel never advised respondent that he could not sit in the Personnel Committee's discussion of his wife to prevent the Commission from finding a violation. The Commission only considers the effect of inadequate or nonexistent legal advice in determining penalty. Furthermore, there is no evidence that he sought such advice regarding sitting in on the personnel committee. For the foregoing reasons, the Commission concludes that respondent violated N.J.S.A. 18A:12-24(c) when he continued to sit in on the personnel committee meeting when it was discussing his wife's appointment.

The Commission agrees with the respondent that it should not find him in violation of the Act for asking the board attorney how to bring the motion to appoint his wife back to the floor. If respondent had taken no further action, the Commission would not be able to find that he violated the Act on the facts of this case. However, Mr. Connolly acted on that advice and contacted the one board member who did not cast a vote for the purpose of soliciting him to bring the motion back to the floor. Although Mr. Connolly denies soliciting a vote for his wife, he did attempt to have Mr. Maglio bring the motion up for a re-vote. The only reasonable explanation for his doing so is that he hoped that the outcome of the motion would be different on a re-vote. The Commission concludes that he contacted Mr. Maglio as a fellow board member when he called him at home to get him to take the action in support of his wife. By doing so, he fully involved himself in the process of his wife's hiring and took on the role of advocate instead of impartial and neutral observer that the Act requires. It does not matter that he did not succeed in his efforts to have the motion brought back to the floor. The Commission concludes that by his call to Mr. Maglio, he acted in his official capacity in a matter in which he and his spouse had a financial and personal involvement that might reasonably be expected to impair his objectivity in violation of subsection (c).

DECISION

For the foregoing reasons, the School Ethics Commission finds that respondent Mark Connolly violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when he sat in on the Personnel Committee's discussion of his wife's appointment. He violated it again when he called Mr. Maglio and asked him to consider bringing his wife's appointment up for a re-vote after the motion had failed. He should have accepted the defeat of the resolution and taken no further action. Instead, he became fully involved in actions to get his wife hired in the position. This was clearly acting in his official capacity in a matter in which he and his spouse had a personal and financial involvement that might reasonably be expected to impair his objectivity or independence of judgment in violation of subsection c.

Regarding penalty, Mr. Connolly has set forth several factors that he would like for the Commission to consider. First, he states that he was not trying to influence the hiring of his wife,

but simply responding to personal attack. Second, he states that if he had received adequate legal advice, he would have refrained from the actions upon which the Commission has found probable cause. Third, he compares his case to In the Matter of Matilda Touw, C16-96, in which the Commission reprimanded a board member for voting on her son's reappointment as assistant head custodian. He concedes that her case is not the same, but submits that he never voted for or solicited votes for Susan Connolly.

In response to Mr. Connolly's suggested mitigating factors, the Commission first notes that its investigation did not reveal that he or his wife was personally attacked by any board member. Rather, he viewed questions about his wife's qualifications as a personal attack, which provides a reason that he should not have been present during the discussion. In any event, even a personal attack would not justify his interference in the outcome of his wife's employment application. Regarding the second mitigating factor, the Commission has accepted a lack of legal advice as a factor to mitigate a penalty. However, here, Mr. Connolly did not seek any advice, except how to get the matter back on the agenda. The Commission cannot find that lack of legal advice, when it was not requested, mitigates a penalty in the same way that incorrect legal advice may. Last, Mr. Connolly suggests that he should receive the same penalty as Mrs. Touw because he never solicited votes for Susan Connolly. The Commission has found that Mr. Connolly involved himself in the board's consideration of his wife's hiring in a way that created more public distrust than Mrs. Touw's single vote during a public meeting. The Commission has already found that Mr. Connolly's call to Mr. Maglio was an attempt to solicit a vote for his wife, albeit after the motion had already failed. He committed two violations of the act and his actions were not in view of the public. For this reason, his actions are subject to a greater penalty than the letter of reprimand Mrs. Touw received.

Considering the foregoing, the Commission recommends that the Commissioner of Education impose a penalty of censure for Mr. Connolly's two violations of N.J.S.A. 18A:12-24(c) of the School Ethics Act. The Commission believes that such a penalty adequately disciplines Mr. Connolly for the two violations and considers the defenses raised by Mr. Connolly. Last, such a penalty indicates that this is a serious violation of which the public should be aware.

Upon adoption of this decision by a formal resolution of the School Ethics Commission, the matter shall be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, 100 Riverview Plaza, CN 500, Trenton, NJ 08625-0500, 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 -- C15-96/C26-96

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

Whereas, the Commission concluded at its meeting of April 8, 1997, that there was probable cause to credit the allegations in the complaint that respondent violated the School Ethics Act; and

Whereas, the Commission placed the reasons for its decision in a letter to the parties dated April 8, 1997, and invited Mr. Connolly to prepare a written statement in response setting forth why the Commission should not find him in violation of the School Ethics Act; and

Whereas, the Commission has concluded that Mr. Connolly violated N.J.S.A. 18A:12-24(c) of the School Ethics Act for the reasons stated in a proposed decision; and

Whereas, the Commission has reviewed the proposed decision of its staff finding Mr. Connolly in violation and recommending that the Commissioner of Education impose a penalty of censure; 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 May 27, 1997.

Lisa James-Beavers
Executive Director