
IN THE MATTER OF	:	Before the School
	:	Ethics Commission
	:	
JOHN GALISH, JOSEPH AMARA,	:	Docket No.: C01-97
and DELORES MAUGERI	:	
<i>BERGENFIELD BOARD OF EDUCATION</i>	:	
<i>BERGEN COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a claim brought by Diana Flagg against John Galish, Leonard Niebo and the Bergenfield Board of Education. Ms. Flagg alleges that John Galish, Leonard Niebo and the Bergenfield Board of Education violated the School Ethics Act, N.J.S.A. 18A:12-24(b) in the hiring of three individuals by the Bergenfield Board of Education. Ms. Flagg filed her complaint on January 10, 1997. The Bergenfield Board of Education and John Galish filed an answer on May 5, 1997 wherein violations of N.J.S.A. 18A:12-24(b) were denied. Leonard Niebo filed his answer on March 6, 1997 in which he responded that there were not any facts or allegations that he could either admit or deny.

The Bergenfield Board of Education and John Galish filed a motion for summary decision on March 17, 1997. The letter brief accompanying the motion raised claims that the hiring of family members, per se, does not constitute a violation of the School Ethics Act, that the School Ethics Commission does not have jurisdiction over the Bergenfield Board of Education policy regarding nepotism, that there are no allegations of violations of the School Ethics Act concerning John Galish, that the Bergenfield Board of Education is not a proper party to the complaint, and that the complaint was not timely filed. Mr. Leonard Niebo joined in that motion by letter notice on March 24, 1997 wherein he stated that none of the allegations set forth in the complaint pertained to him. Ms. Flagg responded to the motions on April 24, 1997 wherein she provided additional information concerning the allegations in her complaint filed January 10, 1997. At the May 27, 1997 Commission meeting, the Commission considered the motions for summary judgment. On June 9, 1997 the Commission notified the parties of its determination on the motion for summary judgment. The Commission dismissed the complaint against Leonard Niebo and all of the members of the Bergenfield Board of Education except Joseph Amara, and Dolores Maugeri, and the Commission rejected the argument that the complaint was untimely.

The Commission invited John Galish, Joseph Amara and Dolores Maugeri to attend the Commission's meeting on June 24, 1997 and present witnesses and testimony to aid in the Commission's investigation. All three parties appeared with counsel and Mr. Thomas Egan as a witness. Ms Flagg also appeared with her counsel. At the Commission meeting, Mr. Amara and

Ms. Flagg presented supplemental documentation for the Commission's consideration. The Commission tabled the matter at its public meeting on June 24, 1997, and issued this decision at its meeting of September 23, 1997.

FACTS

On the basis of the pleadings, testimony and documents submitted, the Commission finds the following facts to be undisputed.

1. Respondent Joseph Amara is a Trustee on the Bergenfield Board of Education and respondent Dolores Maugeri was the President of the Bergenfield Board of Education at the time of the alleged incidents. She is no longer a member of the board. Respondent John Galish is the superintendent of the Bergenfield School district. The complainant, Diana Flagg, is a Trustee on the Bergenfield Board of Education.

2. At its June 13, 1995 meeting, the Bergenfield Board of Education hired Christopher Amara, the son of Joseph Amara, as temporary summer help. The board minutes reflect that Joseph Amara abstained on the vote for the appointments of summer help.

3. At its January 16, 1996 meeting, the Bergenfield Board of Education appointed Ms. Tracy Egan, the daughter of Thomas Egan, School Business Administrator/Board Secretary to the list of substitute teachers for the 1995-96 school year and Ms. Egan worked for some days.

4. At its February 13, 1996 meeting, the Bergenfield Board of Education hired Ms. Lisa Powers, the daughter of Dolores Maugeri, as a physical education teacher. The board minutes reflect that Dolores Maugeri abstained from voting on the appointment of her daughter Lisa Powers as a physical education teacher.

5. At its March 12, 1996 meeting, the Bergenfield Board of Education hired Ms. Lisa Powers, the daughter of Dolores Maugeri, as a short-term substitute physical education teacher from February 21, 1996 to February 29, 1996. Dolores Maugeri admits and the board minutes reflect that she voted on the appointment of her daughter as a short-term substitute teacher. The motion passed unanimously.

6. At its June 11, 1996 meeting, the Bergenfield Board of Education hired Christopher Amara, the son of Joseph Amara, as temporary summer help. The board minutes reflect that Joseph Amara voted for the appointment of his son as temporary summer help. The motion passed unanimously. Joseph Amara denies voting on the appointment of his son and claims that he abstained and that the board minutes are inaccurate. At the June 24, 1997 School Ethics Commission meeting, Joseph Amara presented the Commission with a certified affidavit from Jean Rohrbeck, a trustee on the Bergenfield Board of Education wherein she certifies that there have been instances where the board minutes do not accurately reflect what occurs at board meetings. She further certifies that at the June 11, 1997 Bergenfield Board of Education meeting

she took personal notes and upon review of those notes she certifies that Joseph Amara separated from the Board motion approving recommendations of the Superintendent, that portion of the motion dealing with the approval of temporary summer help. Upon separation of the motion, she further certifies, that Joseph Amara abstained from the appointment of temporary summer help.

7. At its July 9, 1996 meeting, the Bergenfield Board of Education appointed Ms. Tracy Egan as a substitute teacher.

8. At its September 10, 1996 meeting, the Bergenfield Board of Education hired Ms. Tracy Egan as a Basic Skills/English teacher. Mr. Egan did not participate in the selection process which involved his daughter.

9. In August 1996 an employment contract for Ms. Tracy Egan to serve as a teacher for the 1996-97 school year was executed. This contract was executed pursuant to a resolution adopted by the board at its July 9, 1996 meeting which authorized the Superintendent to make employment offers to certified personnel during the months of July and August with the concurrence of the personnel committee.

ANALYSIS

As the Commission noted previously, it is not a violation of the School Ethics Act for a board member to have relatives, or even immediate family members, work in the same school district. Kinnelon Borough Board of Education, C03-94. It is only a violation for the board member to actively further the hiring of such an individual by exerting influence over the selection process. For example, if a board member may uses his official position to secure unwarranted privileges or advantages for himself or a member of his immediate family as the complainant alleges, it is a violation of N.J.S.A. 18A:12-24(b). Or, if a board member acts on the employment where he has a direct or indirect financial or personal involvement that might reasonably be expected to prejudice his independence of judgment, it is a violation of N.J.S.A. 18A:12-24(c).

Complainant sets forth that respondents' actions in the hiring of Christopher Amara, Tracy Egan and Lisa Powers violated N.J.S.A. 18A:12-24(b) of the School Ethics Act. That section provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

In review of that section, the Commission considers whether or not the employment that was secured was, in fact, unwarranted. The facts as set forth, provide no indication that either Christopher Amara, Tracy Egan or Lisa Powers were unqualified for the position. There are also no facts to indicate that either of the three would not have acquired the position if it were not for their respective relatives' position on the board or in the school district. There are also no facts to

indicate that Superintendent John Galish misused his official position in any way to secure the employment of these three individuals.

Christopher Amara was one of a total of 14 students who were hired as summer custodians during the summers of 1995 and 1996. These positions were posted in the usual manner and all those who applied were hired. There are no facts to indicate that his father, Mr. Amara, applied any pressure or used his position to secure his employment. In regards to the hiring of Tracy Egan, while the routine preliminary screening procedure was not followed due to the Superintendent's vacation schedule, there are no facts to suggest that any of the respondents applied any pressure or misused their position to secure her a position. Furthermore, the Assistant Superintendent received positive comments from principals that had used Ms. Egan as a substitute. Lisa Powers was qualified for the position for which she was hired as she had worked as a physical education teacher in another district and there are no facts to show that her mother, Mrs. Maugeri, applied any pressure or used her position to secure her hiring. Based on the foregoing, the employment by the board of Christopher Amara, Tracy Egan and Lisa Powers was not unwarranted and the Commission cannot find that John Galish, Joseph Amara or Dolores Maugeri misused their positions in such a way as to violate subsection (b).

In considering this case, the Commission also examined N.J.S.A. 18A:12-24(c) which it considered pertinent. That section 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 objective standard under 24(c) is whether the public could reasonably perceive that the board member's objectivity or independence of judgment may be impaired because the board member, his business organization or an immediate family member has some direct or indirect interest in the matter. The test is not whether such an 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 improper behavior must be avoided.

The Act defines immediate family as "the spouse or dependent child of a school official residing in the same house hold." N.J.S.A. 18A:12-23. Christopher Amara is the dependent son of Trustee Joseph Amara and as such falls within the definition of immediate family. Subsection (c) prohibits a school official from voting on matters in which his immediate family member has a financial or personal involvement. The board minutes for the June 11, 1996 meeting, reflect that Joseph Amara voted on the employment of his son as temporary summer help. However, the Commission is persuaded by the affidavit of Trustee Jean Rohrbeck wherein she states that there are instances when the board minutes do not accurately reflect what occurs at board meetings. In this instance the board minutes inaccurately reflect the fact that Trustee Amara requested the separation of that portion of the motion dealing with the approval of temporary summer help,

from the Board motion on the Superintendent's recommendations. Ms. Rohrbeck further states that, upon separation, Trustee Amara abstained on the vote for temporary summer help.

The Commission also takes note of the fact that at the June 13, 1995 board meeting, the appointment of temporary summer help was separated from the other personnel recommendations of the Superintendent and Trustee Amara abstained on the vote for temporary summer help. It is reasonable to conclude that Trustee Amara acted consistently on both occasions regarding the appointment of temporary summer help. Therefore the Commission concludes that Trustee Amara took no action in furtherance of the hiring of his son and thus did not violate N.J.S.A. 18A:12-24(c). The Commission is of the opinion that Trustee Amara should move to have the incorrect minutes of the June 11, 1996 meeting amended to accurately reflect what occurred.

The facts are not clear as to whether or not Mrs. Maugeri's daughter is emancipated and thus not considered an "immediate family member" as defined in N.J.S.A. 18A:12-23. However, the Commission has previously set forth that not only is a school official prohibited from voting on matters in which her immediate family member has a financial or personal involvement, but a school official cannot act in her official capacity in any matter in which she has a direct or indirect financial or personal involvement. In the Matter of Salvatore Buono, C16-94. At the March 12, 1996 board meeting, Mrs. Maugeri voted on the appointment of her daughter as a short-term substitute teacher.

The facts as set forth indicate that no action was taken on the part of Superintendent John Galish that would constitute a violation of N.J.S.A. 18A:12-24(c). His recommendations of Christopher Amara, Tracy Egan and Lisa Powers did not involve any direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that either John Galish or Joseph Amara violated N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c). Therefore, it dismisses the charges against both respondents.

The decision dismissing the complaint is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

The Commission finds probable cause to credit the allegations in the complaint that Mrs. Maugeri violated N.J.S.A. 18A:12-24(c) when she voted for the appointment of her daughter as a short-term substitute physical education teacher at the March 12, 1996 board meeting. Mrs. Maugeri shall file her response as to why her actions do not violate the above provision by October 13, 1997. If Mrs. Maugeri is of the opinion that there are material facts in dispute, she shall set forth each material fact she believes to be in dispute and the reason why she believes each is material and in dispute. Mrs. Maugeri's response also shall include her position on an appropriate sanction should the Commission conclude that her actions violated the Act.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C01-97

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

Whereas, the Commission has found no probable cause to credit the allegations that John Galish and Joseph Amara violated the School Ethics Act, N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c) and therefore dismisses the charges against them; and

Whereas, the Commission has found probable cause to credit the allegations that Dolores Maueri has violated the School Ethics Act, N.J.S.A. 18A:12-24(c) and has requested a response from her; and

Whereas the Commission has reviewed the proposed decision of its staff; 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 September 23, 1997

Mary E. Torres
Acting Executive Director