
JAMES W. BELCHER

V.

**KALMAN N. KOLIS,
*MORRIS HILLS REGIONAL
BOARD OF EDUCATION,
MORRIS COUNTY***

:
: **BEFORE THE**
: **SCHOOL ETHICS COMMISSION**
:
: **Docket No.: C04-99**
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: **DECISION**
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PROCEDURAL HISTORY

The above-captioned matter arises from a complaint that was filed on June 9, 1999 by James Belcher. Therein, he alleged that Kalman Kolis, a member of the Morris Hills Regional Board of Education, violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. by serving on the Negotiations Committee for the Administrative Association contract when his wife is a teacher in the district supervised by administrators. Mr. Belcher is also a member of the Morris Hills Regional Board.

Mr. Kolis filed an answer to the complaint on July 23, 1999 admitting the allegations, but denying that he violated the School Ethics Act. He set forth that the Education Association and the Administrative Association are separate entities and that he abstained on all matters having to do with the teachers' collective bargaining agreement. He therefore states that there is no conflict of interest in negotiating the administrators' contract.

The School Ethics Commission advised the parties that it would discuss this case at its September 28, 1999 meeting. Mr. Belcher and Mr. Kolis appeared before the Commission. The Commission rendered a decision at the September 28, 1999 public meeting finding no probable cause and directing staff to prepare a decision for adoption at the next month's meeting. On October 15, 1999, the Governor signed Assembly Bill A2636 amending N.J.S.A. 18A:12-24(c) of the School Ethics Act, upon which the Commission's decision was based. The Commission thus deferred adopting this decision until it could be reconsidered in light of the amendment at its meeting of November 23, 1999. At its meeting of November 23, 1999, the Commission adopted this decision finding no probable cause, dismissing the complaint and finding that the complaint was not frivolous.

STATEMENT OF FACTS

The following facts are based on the pleadings, documents submitted, and the testimony before the Commission.

Mr. Kolis's wife is a tenured high school teacher in the Morris Hills Regional School District. She is a member of the Morris Hills Regional District Education Association, an affiliate of the New Jersey Education Association ("NJEA"). Mr. Kolis served on the Negotiations Committee for the purpose of negotiating a contract with the Administrative Association, an affiliate of the New Jersey Principals and Supervisors' Association (NJPSA), from June 1998 to the ratification of the contract in May 1999. He served with two other Board members. The contract is effective from July 1, 1999 to June 30, 2001. There are no provisions in the administrators' contract or the Education Association's contract that condition a benefit, schedule or salary on the provisions of the other.

As a high school teacher, Mr. Kolis's wife is supervised by the Director of Instructional Services and her building Principal, who are both members of the Administrative Association.

Mr. Belcher questioned Mr. Kolis's participation on the negotiating team, but was assured by the Board President that there was no conflict of interest.

ANALYSIS

Although Mr. Belcher did not cite a specific provision of the School Ethics Act that Mr. Kolis allegedly violated by his participation on the Negotiations Committee, the Commission finds N.J.S.A. 18A:12-24(c) to be applicable to the above facts. The recently amended provision sets forth:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds 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.

Mr. Kolis has indicated that he understands that he would be in violation of N.J.S.A. 18A:12-24(c) if he were to participate in negotiations on the teachers' contract, and therefore he has abstained from such participation. However, he does not believe that he is barred from negotiating contracts that have no affiliation with the Education Association or the NJEA. Mr. Belcher, on the other hand, believes that since Mr. Kolis's

wife is supervised by administrators, his participation in negotiations on the administrators' contract creates an appearance of impropriety.

The Commission, in Advisory Opinion A01-93 (October 26, 1993), set forth that a school official would be in violation of the Act if he were to participate in negotiations when his spouse is a member of the local bargaining unit with which the Board was negotiating. The Commission later addressed the issue of when a board member may be prohibited from participating in negotiations with a district bargaining unit other than the one in which his spouse belongs. The Commission determined in Advisory Opinion A16-96 (January 29, 1997) that a violation would exist if the contracts have terms that link to each other such that negotiations with the bargaining unit in which the family member does not belong can impact upon the one in which she does belong.

The complainant does not allege that the Education Association and Administrators' contracts have linking provisions and his witness from the Education Association stated that there were no linking provisions. In addition, the Commission viewed both contracts and did not see any linking provisions. Thus, the issue is whether the fact that administrators supervise Mr. Kolis's wife is enough to create a conflict of interest under the Act.

The Commission has previously held that a board member should abstain from matters directly affecting his immediate family member's supervisor. *In the Matter of Gunning*, C15-93 (January 26, 1994), 1994 S.L.D. July 29. In *Gunning*, a board member violated the act when he voted on the superintendent's salary increase when his spouse was confidential secretary to the superintendent. The Commission believes that this situation differs from one in which a board member is participating in a matter involving not just the family member's supervisor, but the supervisor's entire bargaining unit. In such a case, as here, it would be very difficult to show that his spouse's employment could be negatively or positively affected by the board member's action such that a financial involvement exists that might reasonably be expected to impair his objectivity or independence of judgment or a personal involvement exists that is or creates some benefit to the board member or his spouse. Thus, the Commission finds no probable cause to credit the allegations that Mr. Kolis violated N.J.S.A. 18A:12-24(c) by negotiating the administrator's contract when his wife is a teacher in the district.

DECISION ON PROBABLE CAUSE

For the foregoing reasons, the Commission finds no probable cause to credit the allegations and dismisses the complaint against Kalman Kolis.

DECISION ON SANCTIONS

Respondent requests that the Commission impose sanctions on the complainant for filing a frivolous complaint pursuant to N.J.S.A. 18A:12-29e. This provision sets forth that the Commission can impose on a complainant a fine not to exceed \$500.00 if

prior to the hearing the Commission determines, by majority vote, that the complaint is frivolous. The standard for finding a complaint frivolous is set forth at N.J.S.A. 2A:15-59.1. It provides:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993). The two-prong test is one of objective reasonableness. Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990). However, courts that have interpreted the frivolous complaint statute clearly indicate that either “prong” of the statute may serve as the basis for the imposition of sanctions. Fargas v. Scott, 251 N.J. Super. 169, 190 (Law Div. 1991).

Respondent argues that the first prong is met because the Complainant admitted that the Board President told him that Mr. Kolis did not have a conflict of interest and, if he was still unconvinced, he could have asked the Board Attorney. Respondent further argues that if he wanted an opinion from outside of the district, he could have sought an advisory opinion from the Commission. The respondent argues that since there were other less adversarial and less costly means of determining the propriety of Mr. Kolis’ actions, it can only be inferred that the complaint was submitted in bad faith.

The Commission disagrees. The standard is not only that the complaint is filed in bad faith but that it is commenced solely for the purpose of harassment, delay or malicious injury. There is no information before the Commission to suggest that Mr. Belcher’s sole intent was to harass or injure Mr. Kolis. In addition, if Mr. Belcher was not satisfied with the responses from the Board President or the Board Attorney, he could not obtain an advisory opinion from the Commission. The Commission has previously advised in Advisory Opinion A18-96 (November 27, 1996) that the purpose of an advisory opinion is to guide the school official as to his own conduct, not to have the Commission prejudge the conduct of another. Also, the Commission provides advisory opinions as to prospective conduct, not conduct that already occurred. Mr. Kolis was already serving on the negotiating committee by the time that Mr. Belcher began to question his doing so. Thus, the first standard for a frivolous complaint is not met.

The second prong of the frivolous complaint statute is that the complainant knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. The Board President advised Mr. Belcher that Mr. Kolis's participation on the negotiating committee did not violate the School Ethics Act. Thus, Mr. Belcher did have reason to know that the conduct in question would not violate the Act. However, he believed that a board member should not be involved in the negotiations with the union to which his spouse's supervisors belong. The Commission finds that this was a good faith argument for an extension of existing law, not a frivolous complaint. Therefore, the second prong for a frivolous complaint is also not met.

The Commission's finding of no probable cause and no sanctions constitutes a final agency decision that can be appealed only to the New Jersey Superior Court - Appellate Division.

Robert W. Bender
Acting Chairperson

Resolution Adopting Decision – C04-99

Whereas, the School Ethics Commission has considered the pleadings, documents and testimony of the parties; and

Whereas, the Commission has reviewed all of the information and now concludes that there is no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby finds no probable cause to credit the allegation that Kalman Kolis violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and dismisses the allegations against him; and

Be It Further Resolved that the Commission finds that the complaint was not frivolous pursuant to N.J.S.A. 18A:12-29(e); and

Be It Further Resolved that the Commission adopts the enclosed decision referenced as its decision in this matter.

Robert W. Bender, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 23, 1999.

Lisa James-Beavers
Executive Director

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