
**RONALD L. DAVISON &
RICHARD M. SCHWARTZ,**

V.

**GARY VITTA,
WEST ESSEX REGIONAL
BOARD OF EDUCATION,
MORRIS COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No.: C14-97

DECISION

PROCEDURAL HISTORY

The above-captioned matter arises from a complaint filed with the School Ethics Commission on or about May 22, 1997. Complainants Ronald Davison and Richard Schwartz, members of the West Essex Board of Education, also on that date filed a petition and motion for emergent relief before the Commissioner of Education. The complainants sought to enjoin the superintendent and seven other members of the West Essex Regional Board of Education from taking any action with regard to the employment of two staff members, renewal of whose contracts was expected to be on the agenda at a May 27, 1997 Board meeting. The injunction was sought on the grounds that the superintendent and the members of the Board would be in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. if they were to take any action on the employees. The complainants alleged that the respondents' judgment would be impaired by the fact that one of the staff members had filed a lawsuit against the superintendent and the Board alleging sexual harassment, religious discrimination and hostile work environment. The other staff member settled his matter and resigned prior to the vote, but supported the staff member's allegations. The complainants sought to enjoin any action pending the outcome of a complaint that was concurrently filed with the School Ethics Commission.

On May 23, 1997, the Assistant Commissioner of Education denied the motion for emergent relief on the grounds that the criteria for emergent relief had not been met and dismissed the appeal without prejudice to any claims that may subsequently arise from the action or inaction of the superintendent or Board with regard to the issues raised by the petitioners.

The complainants filed an amended complaint with the School Ethics Commission on June 19, 1997, alleging that Gary Vitta violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when he recommended that the Board not reappoint the administrator who had filed a discrimination complaint against him and the administrator who supported her. Specifically, complainants allege that such action violated N.J.S.A. 18A:12-24(c).

Dr. Vitta filed a Motion to Dismiss in lieu of answer stating that the Commission could not act on the complaint pursuant to N.J.S.A. 18A:12-32, which provides:

The Commission shall not process any complaint, issue a final ruling or issue any advisory opinion on a matter actually pending in any court of law or administrative agency of this State.

Dr. Vitta argued that the staff member in question had filed a lawsuit in Superior Court challenging the Board's nonrenewal and that Superior Court was the appropriate forum to hear her grievances.

Complainants opposed the motion stating that the matter before the Commission presented separate issues from those that were before the Superior Court. The complainants argued that the issue before the Superior Court was whether the staff members were wrongfully terminated. However, the issue before the Commission was whether the recommendation and vote on the nonrenewal of the employees was in violation of the School Ethics Act in light of the employees' filing of the Superior Court complaint.

At its September 24, 1997 meeting, the School Ethics Commission decided to stay all proceedings pending the outcome of the Superior Court complaint pursuant to N.J.S.A. 18A:12-32.

On October 15, 1997, the complainants informed the Commission that they were dismissing the ethics complaint against all respondents except Gary Vitta. The complainants then filed a motion for reconsideration of the Commission's decision to stay the proceedings on the basis that when they dismissed the complaint against all respondents except Dr. Vitta, they narrowed the issues. Therefore, they argued, the case should be able to proceed because the Commission is not required to decide whether the plaintiffs' allegations of wrongdoing by defendant Vitta are true or false.

At its November 25, 1997 meeting, the Commission denied the request for reconsideration on the grounds that there were likely to be factual issues before the Superior Court that will also require resolution before the Commission if the Commission did not stay its proceeding. The Commission noted that the School Ethics Act does not allow any deviation from its prohibition against processing any complaint on a matter actually pending in any court of law of this State as set forth in N.J.S.A. 18A:12-32, and in a close case, it is best to err on the side of caution and stay the proceedings to avoid the determination of contradictory findings of fact. The Commission asked that the parties advise the Commission when the underlying Superior Court case had been resolved.

Dr. Vitta had also moved for reconsideration of the Commission's decision not to dismiss based on N.J.S.A. 18A:12-32. However, the Commission found that the cited provision requires only that the Commission hold a matter in abeyance when the matter is

pending in another forum. It does not require dismissing the complaint without prejudice, which may require the complainant to re-file.

On July 16, 1999, the complainants advised the Commission that the employee's case against the superintendent and the Board was settled in June 1999 for a monetary sum with no admission of liability. The complainants then asked for the scheduling of a hearing before the Commission.

The attorney for Dr. Vitta responded that the pending School Ethics Commission complaint should be dismissed on the grounds that the settlement made the complaint moot. In addition, he stated that Dr. Vitta was no longer superintendent in West Essex. However, the complainants argued that the Superior Court had not resolved the issue before the Commission and that the Commission still had jurisdiction since Dr. Vitta was the West Essex Superintendent when the complaint was filed.

The School Ethics Commission advised the parties that it would discuss this case at its September 28, 1999 meeting. At this meeting, the Commission determined that there was no probable cause to credit the allegations that Gary Vitta violated the School Ethics Act.

On October 15, 1999, prior to the issuance of the decision, the Governor signed P.L.1999, c. 256, which amended N.J.S.A. 18A:12-24(c) of the School Ethics Act. The Commission placed the adoption of the decision on its agenda for its October meeting so that it could incorporate the new wording of the statute in question into its decision. However, the Commission had only a quorum of five members present and one recused himself from the case. Therefore, the Commission placed the adoption of the decision on the November 23, 1999 agenda and at that meeting the Commission adopted this decision.

STATEMENT OF FACTS

The following undisputed facts that are material to the case are based on the pleadings, documents submitted, and the testimony before the Commission.

The complainants Ronald L. Davison and Richard M. Schwartz are elected members of the West Essex Regional School District Board of Education. They are also attorneys at law of the State of New Jersey, but they filed the complaint in their capacity as board members. Respondent Gary Vitta, at all times relevant to this complaint, was Superintendent of Schools of the West Essex Regional School District. He served in that capacity pursuant to a contract with the West Essex Regional School District, the term of which expired June 30, 1998. The Board consists of nine members and the Superintendent, who is a non-elected and non-voting member.

By letter dated January 23, 1997, a vice principal, through her attorney, sent to the Board a letter informing it that since the inception of her employment by the Board on July 1, 1996, she had been subjected to a pattern and practice of discrimination on the basis of her gender and religion. The letter set forth specific acts that were alleged to be in violation of the Law Against Discrimination, N.J.S.A. 10:5-12(a) and (e), and Title VII of the Federal Civil Rights Law of 1964. She claimed in the letter that she complained to two Board members, but they took no action to investigate or end the conduct.

After the Board received the letter, it extended an offer of settlement to the vice-principal that would have required her resignation in exchange for a monetary sum. She rejected the offer. The Board then hired an investigator to investigate her allegations. The investigator did not find her claims to be meritorious in a report dated April 11, 1997. Later, the investigator acknowledged that he might have failed to include corroborating testimony.

On May 8, 1997, the vice-principal filed in the Superior Court of New Jersey – Law Division, Essex County, a complaint and demand for jury trial. The complaint named as defendants the West Essex Regional School District, the Board, the present and one former member of the Board (individually and in their capacity as Board members) and Dr. Vitta, individually and in his official capacity as the Superintendent of Schools. The complaint alleged two counts in addition to those for gender and religious discrimination – reprisal for opposing discrimination based on gender and reprisal for opposing discrimination based on religion. The complaint asked for compensatory and punitive damages along with declaratory and injunctive relief.

Prior to the date the lawsuit was filed, the complainants inquired as to whether Dr. Vitta could fairly evaluate the two administrators in light of the vice-principal's allegations against him. The complainants urged the Board to seek an opinion from the Board's counsel as to whether Dr. Vitta would be legally permitted to evaluate the administrators and make a recommendation to the Board as to whether an offer of re-employment should be extended to them. The board attorney issued an opinion in April 1997 that did not address any potential violation of the School Ethics Act that could result from the evaluation and recommendation. The complainants suggested the hiring of an acting superintendent or the involvement of the county superintendent or the Commissioner of Education's office to appoint an independent education professional to perform the evaluation. The Board did not accept the suggestions.

Dr. Vitta sought advice from the county superintendent, however. She advised him that the statute required the superintendent to make recommendations regarding reappointments. She told him that it was his duty and responsibility to evaluate and make the recommendation accordingly. She further advised that anyone who was aggrieved by the superintendent's decision would have recourse available through other legal remedies.

At a public meeting of the Board on May 12, 1997, the Board was expected to discuss the two administrators. Members of the public, students and faculty members

attended the meeting and voiced their support for the administrators. The complainants again raised the issue that the Superintendent and the Board should be prohibited from taking action that would result in the nonrenewal of the administrators' contracts pursuant to N.J.S.A. 18A:12-24(c) of the School Ethics Act.

On May 14, 1997, Dr. Vitta sent the administrators separate letters serving as official notice of nonrenewal of employment for the 1997-1998 school year.

At the public meeting of the Board on May 27, 1997, Superintendent Vitta read a statement to the public referencing his "impeccable" reputation in education and the vice-principal's vicious and malicious attacks on his character and integrity. He set forth the reasons for his inability or refusal to recommend her for reemployment for the 1997-1998 year and said that his recommendation was in the best interest of the district. The vice-principal was not renewed for the 1997-1998 school year. The other administrator settled with the Board prior to the May 27, 1997 Board meeting.

ANALYSIS

Complainants allege that Gary Vitta violated N.J.S.A. 18A:12-24(c) of the Act when he evaluated the administrators, when he sent the notice of nonrenewal letters to the administrators, when he made the public statement about the vice-principal and when he refused to recommend the renewal of the administrators' contracts for the 1997-1998 school year.

N.J.S.A. 18A:12-24(c) provides:

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.

The first issue is whether Dr. Vitta acted in his official capacity in a matter in which he had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity. The Commission finds that the matter in question had financial implications for the administrators, but did not constitute a financial involvement to Dr. Vitta. A financial involvement is one that will result in a financial benefit to the school official. The official conduct of Dr. Vitta could not result in a financial benefit to him. The complainants' allegations are that Dr. Vitta's actions were retaliatory. This type of involvement is personal in nature, not financial.

The second issue is whether Dr. Vitta acted in his official capacity in a matter in which he had a personal involvement that created a benefit to him. The Commission addressed a similar case under N.J.S.A. 18A:12-24(c), before subsection c was amended, in I/M/O Barbara Rone, C03-97 (October 28, 1997), penalty approved, Commissioner (January 21, 1998). There the Commission held that a board member violated the Act when she voted in favor of a resolution to hire special counsel to, among other things, review the conduct of the superintendent and report to the board whether any disciplinary action should be taken against him, after she had filed a complaint against him that was successful in municipal court, but overturned on appeal. In Rone, the Commission stated that it was a violation of N.J.S.A. 18A:12-24(c) for the board member to act in her official capacity in a matter that involved proceedings that could be construed as furthering her complaint against the superintendent. However, crucial to the Commission's determination was the fact that the respondent had an alternative course of action. She could have abstained on the matter. Id. at p. 4.

In the present case, the Commission finds that Dr. Vitta had a personal involvement in the matter of the renewal of the administrators' employment contracts. However, the Commission is unable to determine a course of action that Dr. Vitta could have taken as an alternative to not recommending their renewal as per his statutory obligation. In addition, there is insufficient information to demonstrate that Dr. Vitta acted in a biased manner when he determined not to recommend renewal of the employees' contracts. Under N.J.S.A. 18A:27-4.1 et seq., the affirmative recommendation of the superintendent is required in order for a board to offer a new contract to a non-tenured staff member. Specifically, N.J.S.A. 18A:27-4.1(b) provides:

A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L. 1975, c.132 (C.18A:27-3.2) and to an informal appearance before the board....

The complainants suggest alternative actions that Dr. Vitta could have taken if he had a conflict of interest. However, the Commission does not find any of them to be viable. Indeed, the county superintendent whom Dr. Vitta consulted did not recommend any alternative action based on her understanding of the law in this area. The statutes regarding renewal of nontenured employees do not provide for any delegation of the superintendent's duty to give notice of nonrenewal or provide a written offer of a

contract, to an employee whose contract is up for renewal. If a failure to renew was arbitrary or retaliatory, then the superintendent's action should be challenged under N.J.S.A. 18A:27-1 et seq. and N.J.S.A. 18A:6-9 et seq. The Commission concludes that since Dr. Vitta was performing his statutory duty, his personal involvement alone does not rise to the level of a violation of the School Ethics Act.

Based on the foregoing, the Commission finds no probable cause to credit the allegations that Dr. Vitta violated N.J.S.A. 18A:12-24(c) of the School Ethics Act although he had a personal involvement when he served notices of nonrenewal and announced that he was not renewing the contract of the administrators. The Commission finds that he had no choice but to fulfill his responsibility under the Act. The lawsuit that the administrators filed and the settlement that resulted show that the administrators had recourse in another forum.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Gary Vitta violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and dismisses the complaint against him.

The Commission's finding of no probable cause 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 – C14-97

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 Gary Vitta 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 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

[c1497/h:lisa/decisions]