
April 5, 2017

RESOLUTION OF THE WAYNE TOWNSHIP BOARD OF EDUCATION

COUNTY OF PASSAIC

STATE OF NEW JERSEY

INVOKING THE DOCTRINE OF NECESSITY

WHEREAS, the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.* was enacted by the New Jersey State Legislature to ensure and preserve public confidence in school board members and school administrators, and to provide specific ethical standards to guide their conduct; and

WHEREAS, questions arose regarding how a board should invoke the Doctrine of Necessity when a quorum of a board of education has conflicts of interest on a matter required to be voted upon; and

WHEREAS, the School Ethics Commission ("Commission") provided guidance in Public Advisory Opinion A03-98 (April 1, 1998); and

WHEREAS, the opinion set forth that, when it is necessary for a board to invoke the Doctrine of Necessity, the board should state publicly that it is doing so, the reason that such action is necessary, and the specific nature of the conflicts of interest; and

WHEREAS, the School Ethics Commission, by resolution dated February 25, 2003, clarified and required a board of education invoking the Doctrine of Necessity to adopt a resolution setting forth that they are invoking the Doctrine, the reason for doing so, and the specific nature of the conflicts of interest; and

WHEREAS, the School Ethics Commission further directed boards of education that invoke the Doctrine to read the resolution at a regularly scheduled public meeting, post it where it posts public notices for thirty (30) days, and provide the Commission with a copy; and

WHEREAS, the Wayne Township Board of Education ("Board") needs to negotiate and enter a successor contract for the Wayne Education Association ("WEA"); and

WHEREAS, the Board Attorney, Isabel Machado, Esq., has reviewed the advisory decisions of the Commission and determined board member conflicts could potentially prohibit six (6) of the nine (9) members of the Board from discussing and voting on said agreement; and

WHEREAS, the Board Attorney requested an advisory opinion from the School Ethics Commission on February 15, 2017 concerning the potential conflicts; and

WHEREAS, the School Ethics Commission has advised that an advisory opinion in the matter would not be rendered before April 25, 2017; and

WHEREAS, there are potentially six (6) Board members, namely President Donald Pavlak, Vice President Mitchell Badiner, Michael Bubba, Suzanne Pudup, Stacey Scher, and Christian Smith, with conflicts; and

WHEREAS, Board President, Donald Pavlak, has a spouse who is a member of the WEA; and

WHEREAS, Board Vice President, Mitchell Badiner, holds an administrative position as Director of Instruction for the Bergen County Special Services School District (“BCSS”); and

WHEREAS, Board Vice President, Mitchell Badiner, and Board Members Michael Bubba, Suzanna Pudup and Stacey Scher received an endorsement from Community for Academic Excellence, a political action group for the WEA for the November 2016 election;

WHEREAS, Board Member Stacey Scher is employed by the Passaic Board of Education and is an NJEA member; and

WHEREAS, Board Member Suzanne Pudup is a recent retiree of the WEA, has family members who are employed by another district and are NJEA members; and

WHEREAS, Board Member Christian V. Smith has an in-law who is a NJEA member in another district; and

WHEREAS, the inability of the above six (6) Board members to participate in this process results in the lack of a quorum; and

WHEREAS, to negotiate with the WEA and consider proposals, the Board must have 5 non-conflicted members; and

WHEREAS, in order to enter into a final agreement with the WEA, the Board must have a quorum; and

WHEREAS, the Board desires to invoke the Doctrine of Necessity, in accordance with the procedures established by the Commission, to negotiate and consider proposals to the final agreement with the WEA.

NOW, THEREFORE, BE IT RESOLVED, by the Wayne Township Board of Education, County of Passaic, State of New Jersey, as follows:

1. That the six (6) Board members, as noted above, are in conflict by nature of their endorsements, employment, and relatives' employment and the Board therefore invokes the Doctrine of Necessity to negotiate and consider proposals to the final agreement with the WEA.

2. That this resolution shall be read at the public meeting of April 5, 2017 and shall be posted where the Board posts public notices for thirty (30) days.

3. That a copy of this resolution shall be forwarded to the School Ethics Commission by the Board Attorney.

The following members of the Wayne Board of Education were present: Eileen Albanese, Mitch Badiner, Michael Bubba, Cathy Kazan, Donald Pavlak, Jr., Suzanne Pudup, Stacey Scher and Christian Smith.

Absent: Gail Okun

MOTION: M. BUBBA
SECOND: E. ALBANESE
VOTE: 8-0-0