

that by requesting the information he did not fail to support or protect Mrs. Miller in the performance of her duties in violation of N.J.S.A. 18A:12-24.1(i). After consideration of Mr. Fischer's response to its probable cause decision, the Commission found, at its meeting of February 3, 2004, that Mr. Fischer violated N.J.S.A. 18A:12-24.1(e) and (i), but that he did not violate N.J.S.A. 18A:12-24.1(d) and dismissed this charge against him. The Commission recommended a penalty of reprimand.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted, testimony and its investigation.

At all time relevant to this complaint, Mr. Fischer was a member of the Eatontown Board of Education. Complainant was at all times relevant to this complaint, an employee of the Eatontown Board of Education who worked in the business office.

On Thursday, June 26, 2003, Mr. Fischer had a conversation with the incoming superintendent who was scheduled to begin working on July 1, 2003. During that conversation, the incoming superintendent mentioned that she had met with the complainant regarding the 2003-04 budget. Mr. Fischer had some concerns as a result of his meeting with the incoming superintendent. Considering complainant to be the most senior full-time member of the financial staff, next to the business administrator, and the one whom board members frequently contacted for information, Mr. Fischer spoke to complainant on the morning of Friday, June 27, 2003 about the budget and the proposed cut of 11 unidentified teachers. Based on the conversation, Mr. Fischer asked her for 1) the payroll by person for the 2002-03 year; 2) the payroll by person for the 2003-04 budget; 3) a report of the preliminary close of the year showing the 2002-03 expense details compared to the revised 2003-04 budget and if the comparison could not be done in one report, then two separate reports. Complainant said she would send the information to his house and offered to include her phone number and cell phone number with the package so he could call her with questions.

Mr. Fischer did not receive a call from the complainant or any employees of the Board that day, although they all have his various phone numbers. He tried to call complainant at the board office from his cell phone as he drove home in his car. There was no answer; so he called the board secretary who gave him complainant's home phone number. He called the number and left a message.

Complainant returned his call at approximately 8:30 p.m. and told him that she did not send him the schedules that he requested. She told him that she did not want to get in the middle of this. When he asked what she meant, she did not give an exact answer, but said that she had spoken to the superintendent who told her to talk to the incoming superintendent who told her to speak to the board president. Mr. Fischer told her that a board member should not be refused information to which she replied that the information

he was requesting was not information that was approved for release to the public. Mr. Fischer then told complainant that he was advised by the board attorney that the Board president had denied his request for information. Further, he told her that the board attorney had told the Board president that she did not have that authority. Mr. Fischer told her to call the Board attorney. When she asked whether this could wait until Monday, he replied that he needed the information for a meeting on Sunday. When she said that giving him the information this weekend was not an option because the reports had not been completed, he said that another board member had told him that the complainant had stayed late to finish the financial close of the fiscal year. At this point, complainant became angry since she perceived him as accusing her of lying. Mr. Fischer said that it was unfair that another board member (referring to the board president) put her in this situation, but she should have had the courtesy to call him and tell him that she was not sending the information. He admits to also yelling at this point in response to her voice. Mr. Fischer told her he could not do anything to rectify the situation on the weekend. Complainant responded that she had not had time to call him during the day. After he responded that her comment was ridiculous, she hung up on him. Mr. Fischer called her back, but she did not answer.

Complainant called the superintendent upset about her conversation with Mr. Fischer. She also called the Board president who told complainant to meet her at her house since they live close to each other. The board president called another board member to come over as well. Complainant was very upset and explained what had happened. Complainant also documented what occurred.

The superintendent spoke to Mr. Fischer at approximately 11:00 p.m. and Mr. Fischer admitted that he may have raised his voice. The superintendent told him that he should be calling him or the Board president, not employees. He further told Mr. Fischer that he would be at the school on Saturday and that he could give him what he wanted at that time.

Ultimately, the superintendent provided Mr. Fischer with the all the information that he requested on Saturday morning. The meeting that he was to attend was a meeting of the Negotiations Committee to which the chairperson had invited him. However, because he was not a member of the committee, the Board President told him not to attend and that she would attend in his place. The Board President also changed the location of the meeting from Mr. Fischer's house to a District building.

ANALYSIS

The Commission found probable cause to credit the allegation that Mr. Fischer violated N.J.S.A. 18A:12-24.1(d), (e) and (i) when he called complainant at home and became angry when she said that she did not send him reports that he had requested. The Commission now finds that Mr. Fischer violated Code of Ethics subsections N.J.S.A. 18A:12-24.1(e) and (i).

N.J.S.A. 18A:12-24.1(d) provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

In his response to the Commission's probable cause decision, Mr. Fischer argues that he called Mrs. Miller as a result of her invitation. Mr. Fischer also notes that when he was unsuccessful in contacting Mrs. Miller, she returned his call. He also noted that it was customary practice for board members to call the complainant for information. The Commission accepts Mr. Fischer's account and finds that there is insufficient information to demonstrate that he administered the schools in violation of N.J.S.A. 18A:12-24.1(d) and dismisses that charge.

The Commission also found probable cause that Mr. Fischer violated section (e) of the Code of Ethics when he called her at home and got into an argument with her when she said she did not send him the reports that he requested. It provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

In his response to the Commission's probable cause decision, Mr. Fischer admits to raising his voice, but argues that he did so in response to Mrs. Miller's yelling, and was not acting out of anger. The Commission now finds that regardless of whether Mr. Fischer raised his voice first, his conduct constituted taking private action that may compromise the Board when he requested that Mrs. Miller return to the office to obtain the information after he was made aware that she had not sent him the reports. If Mr. Fischer was dissatisfied with her responses, he should have ended the call and contacted the superintendent. He never should have resulted to even raising his voice to an employee of the Board. Therefore, the Commission finds probable cause to credit the allegation that Mr. Fischer violated section (e) of the Code of Ethics.

The Commission found probable cause to credit the allegation that Mr. Fischer violated N.J.S.A. 18A:12-24.1(i), which sets forth, "I will support and protect school personnel in proper performance of their duties." In his response to the Commission's probable cause decision, Mr. Fischer argues that when Mrs. Miller informed him that she was told not to provide him with the information, he tried to "ascertain who gave her the instructions", but "never asked her to do anything improper." The Commission finds that, given Mr. Fischer's awareness that Mrs. Miller was properly performing her job, but was told not to provide him with the reports, his continued insistence that she provide the reports and his further request that she return to work to provide them were not supportive of personnel in the proper performance of their duties. Therefore, the Commission finds that Mr. Fischer violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics.

DECISION ON VIOLATION

For the foregoing reasons, the School Ethics Commission finds that Mr. Fischer violated Code of Ethics subsections N.J.S.A. 18A:12-24.1(e) and (i) of the School Ethics Act. The Commission finds that Mr. Fischer simply went too far in his pursuit of information. The Commission does not believe that such a situation is likely to recur and hopes that the superintendent put an end to the policy of allowing board members to contact employees directly for information. Therefore, the Commission believes that the appropriate penalty for the above-stated action is a reprimand and recommends such penalty to the Commissioner of Education.

This decision, having been adopted by the Commission, shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, 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, the respondent may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, 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, Chairman

Resolution Adopting Decision – C30-03

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

Whereas, the Commission found probable cause to credit the allegation that Charles Fischer violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members; and

Whereas, the Commission now finds that respondent violated N.J.S.A. 18A:12-24.1(e) and (i) of the Code of Ethics and dismisses the charge against him under N.J.S.A. 18A:12-24.1(d); and

Whereas, the Commission believes that the penalty of a reprimand is the appropriate sanction;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding Charles Fischer in violation of N.J.S.A. 18A:12-24.1(e) and (i) of the School Ethics Act and recommending that the Commissioner of Education impose a penalty of reprimand.

Paul C. Garbarini, Chairman

I hereby certify that the School
Ethics Commission adopted this decision
at its public meeting on February 24, 2004.

Lisa James-Beavers
Executive Director