

IN THE MATTER	:	
	:	BEFORE THE SCHOOL
OF	:	ETHICS COMMISSION
	:	
FRANK PIZZICHILLO,	:	Docket No.: C17-02
<i>FAIRVIEW BOARD OF EDUCATION,</i>	:	
<i>BERGEN COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Radomir Glavan alleging that Respondent Frank Pizzichillo violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, Mr. Glavan alleged that Respondent Pizzichillo, as a member of the Fairview Board of Education (Board) revealed to him confidential information regarding a Board employee. He alleged that this conduct, along with other alleged conduct, violated N.J.S.A. 18A:12-24.1(a), (e), (g) and (i) of the Code of Ethics for School Board Members.

Mr. Pizzichillo filed a timely answer to the complaint, admitting to releasing documents to Mr. Glavan at his request and discussing the request with him. He denied having committed any violation of the School Ethics Act.

The Commission advised the parties that it would discuss this matter at its meeting of August 27, 2002 and invited them to attend and bring counsel and witnesses. Both parties appeared, Mr. Pizzichillo with counsel.

At its public meeting of August 27, 2002, the Commission found probable cause to credit the allegation that Mr. Pizzichillo revealed confidential employee records in violation of N.J.S.A. 18A:12-24.1(e) and (g) of the School Ethics Act. The Commission dismissed the remainder of the charges. The Commission found that the material facts regarding the conduct on which the Commission found probable cause were not in dispute and, therefore, the Commission determined that it would decide the matter on the basis of written submissions. Mr. Pizzichillo provided a timely written submission to the Commission pursuant to a requested extension setting forth why the Commission should not find him in violation of N.J.S.A. 18A:12-24.1(e) and (g) of the School Ethics Act in connection with providing the documents in question to Mr. Glavan and disagreeing with some of the undisputed facts.

FACTS

The Commission found the following facts to be undisputed. Frank Pizzichillo is a member of the Fairview Board of Education (Board). Radomir Glavan ran for a seat on the Fairview Board of Education in 2002, but was unsuccessful. Mr. Glavan has known Mr. Pizzichillo for many years due to his longstanding involvement with the Parent Teacher Association (PTA).

In or around December 2001, Mr. Pizzichillo and Mr. Glavan saw each other at a pizza restaurant.¹ At the pizza restaurant, Mr. Glavan was with his three sons. There, Mr. Pizzichillo provided Mr. Glavan with information provided to the Board concerning a school administrator's stipend. The information included correspondence from the school administrator's attorney to the Board and the school administrator's payroll records indicating all of the deductions coming out of the school administrator's paycheck each pay period between March and June 2000. Mr. Pizzichillo spoke to Mr. Glavan later that evening, but the nature of this conversation cannot be confirmed.

In his testimony and his written submission, Mr. Pizzichillo denies providing the documents at this time and says that he did not provide them to Mr. Glavan until later, after he received confirmation from the board secretary that they were public documents that could be disseminated. He also asserts that Mr. Glavan requested them. Although the Commission believes that Mr. Pizzichillo gave Mr. Glavan the documents at the restaurant without request as Mr. Glavan testified, the main issue is whether they were confidential documents that Mr. Pizzichillo should have disseminated. This is a legal issue.

The documents in question were submitted in connection with a discrepancy with a member of the administrative staff in the District. Although the administrator could have had the matter discussed in a closed session meeting of the Board, she waived the right to a private meeting and opted to have the matter discussed publicly. The discussion of the discrepancy was held at a special meeting on May 9, 2001. The administrator was asked to be there, but not given a chance to speak.

¹ The Commission set forth in its probable cause decision that the meeting took place in January 2002, which Mr. Pizzichillo disputed in his written submission. The Commission does not find this change to be material to its determination.

ANALYSIS

The Commission found probable cause to credit the allegation that Mr. Pizzichillo revealed employee documents to Mr. Glavan that were provided to the Board as part of the Board's dispute with an employee in violation of N.J.S.A. 18A:12-24.1(e) and (g).

N.J.S.A. 18A:12-24.1(e) of the Code of Ethics sets forth:

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 response to this allegation, Mr. Pizzichillo argues that the documents provided to the complainant were public documents because the employee requested that her personnel matter be discussed at a public meeting rather than in executive session. He cites to what appears to be the Open Public Meetings Act for the proposition that an employee can request that a Board discuss his or her employment in open session. However, the provision does not go on to set forth, as he asserts, that the employee therefore waives the right to maintain the privacy of the documents at issue. The Commission has not found authority for the proposition that, because the documents were given to the Board at a public meeting, all of the documents, including those with an employee's withholding information revealing the extent to which deductions were withdrawn from the employee's paycheck, her salary and her benefits, became public and could be distributed to anyone by any Board member. The Commission therefore concludes that the documents contain confidential information of an employee that was to remain with the Board. The Commission also concludes that the Board could be subject to adverse consequences if the employee were to find out that her payroll records were circulated to a member of the public that had no relationship to her dispute with the Board. The Commission therefore concludes that Mr. Pizzichillo failed to recognize that authority rests with the board of education and took private action that may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

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

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

As set forth above, the Commission has concluded that the documents that Mr. Pizzichillo provided to the complainant were confidential. Although Mr. Pizzichillo testified that he believed that the records were public, the specific personal information in the documents should have convinced him that they were not. If he was advised by the Board secretary that the documents were public, then he should have referred Mr. Glavan to the board secretary to let him or her provide the documents. For the foregoing reason, the Commission concludes that Mr. Pizzichillo failed to hold confidential a matter pertaining to the schools which, if disclosed, would needlessly injure an individual or the schools in violation of N.J.S.A. 18A:12-24.1(g).

DECISION

For the foregoing reasons, the Commission finds that Mr. Pizzichillo violated N.J.S.A. 18A:12-24.1(e) and (g) of the School Ethics Act. The Commission is persuaded that his penalty should be minimal since the Commission finds credible his stated belief that the documents were not confidential due to the discussion of the employee in a public meeting. Therefore, the Commission recommends a penalty of reprimand.

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

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter 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, any party 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
Chairperson

Resolution Adopting Decision – C17-02

Whereas, the School Ethics Commission has considered the pleadings, documents, testimony and written submission in this matter; and

Whereas, the Commission found probable cause to credit the allegations in the complaint; and invited respondent to provide a written submission setting forth why he should not be found in violation of the School Ethics Act; and

Whereas, the Commission reviewed and thoroughly considered respondent's submission;

Whereas the Commission concluded at its meeting of December 17, 2002, that respondent violated the Act and recommended a penalty of reprimand and directed staff to write a decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the within decision 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 School Ethics Commission adopted this decision at its public meeting on January 28, 2003.

Lisa James-Beavers
Executive Director