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<b>IN THE MATTER</b>	:	<b>BEFORE THE</b>
	:	<b>SCHOOL ETHICS COMMISSION</b>
<b>OF</b>	:	
	:	<b>Docket No. C31-96</b>
<b>JAMES L. PALMISANO</b>	:	
<i>Brick Township Board of Education,</i>	:	<b>DECISION</b>
<i>Ocean County</i>	:	

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### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on October 7, 1996, by the Brick Township Board of Education (Board) against Board member James L. Palmisano. Mr. Palmisano was a Board member at the time the complaint was filed and the alleged violations occurred. Mr. Palmisano, however, no longer is a Board member, as he did not seek reelection when his term expired on 1997. According to the complaint, Mr. Palmisano was arrested by a Brielle township police officer as a result of an incident in a local parking lot. The arresting officer allegedly is a resident of Brick Township. Mr. Palmisano allegedly told the arresting officer that he should “watch out” for his children as Mr. Palmisano had “connections.” The Board alleges that these comments violated N.J.S.A. 18A:12-24(b) because Mr. Palmisano was attempting to use his position as a Board member to harass the police officer and to obtain favorable treatment. Mr. Palmisano filed his answer to the complaint on December 12, 1996. In his answer, Mr. Palmisano admits that he was arrested by the Brielle police officer, but denies the Board’s account of the incident. He further denies that he attempted to use his position as a Board member to secure any unwarranted privileges or advantages for himself.

By letter dated March 26, 1997, the School Ethics Commission (Commission) advised the Board and Mr. Palmisano that it would consider whether there was probable cause to credit the allegations in the complaint at its April 22, 1997, meeting. The letter further advised the Board and Mr. Palmisano that they could appear with counsel and any witnesses if they so chose. Mr. Palmisano and Richard J. Shaklee, Esq., special counsel for the Board on this matter, appeared before the Commission. Mr. Shaklee presented two affidavits from the two police officers involved.

By letter dated May 9, 1997 and received by the Commission on May 14, 1997, the Board asked that its complaint be withdrawn. Mr. Palmisano objected to this request by letter filed with the Commission on May 27, 1997. At its May 27, 1997 meeting, the Commission determined to deny the Board’s request to withdraw the complaint. By letter dated June 20, 1997, the Board explained in more detail the basis for its request to withdraw the complaint. The Board asked the Commission to refer the matter to the Office of Administrative Law for an evidentiary hearing should probable cause be found.

The issue now before the Commission is whether there is probable cause to credit the allegations in the complaint that Mr. Palmisano used his position as a school board member to secure favorable treatment from the police in dealing with his arrest.

## **FACTS**

On August 22, 1996, Mr. Palmisano was arrested by two members of the Brielle Police Department for disorderly conduct. The arrest resulted from an incident in a local parking lot. The police report indicated that Mr. Palmisano was creating a disturbance and became verbally abusive to the two officers who had responded to a call about the commotion in the parking lot. As a result of this conduct, Mr. Palmisano was arrested for disorderly conduct and taken to police headquarters. The August 22, 1997 police report states that Mr. Palmisano made comments to the officers that he was “connected.” According to a police report filed by Patrolman David E. Buckle after the incident, Mr. Palmisano asked Officer Buckle whether he had any children and told Officer Buckle to “watch out” because he had “connections.” Consequently, on August 30, 1996, Officer Buckle filed an incident report and issued a summons to Mr. Palmisano for harassment. Officer Buckle is a resident of Brick Township, although as discussed below, the issue of his residence did not come up with Mr. Palmisano that night. Since Officer Buckle resides in Brick, the board interprets Mr. Palmisano’s statements concerning his “connections” to mean that Mr. Palmisano would use his position as a school board member to get back at Officer Buckle if the matter was not resolved in a fashion satisfactory to Mr. Palmisano. Mr. Palmisano denies any such intent

On November 26, 1996, the Hon. Mark T. Apostolou, J.M.C., heard the disorderly conduct and harassment charges against Mr. Palmisano. Mr. Palmisano provided the Commission with a certified copy of the transcript of those proceedings. Pursuant to a plea agreement, Mr. Palmisano pled guilty to a violation of Borough Ordinance No. 3-17.3, Improper Noise or Disturbance. A trial was held regarding the harassment charge. During the trial, Officer Buckle testified that Mr. Palmisano never mentioned his position as a school board member to him, nor did he use or attempt to use his position as part of his threats to the Officer. Officer Buckle further testified that he never told Mr. Palmisano that he lived in Brick. After hearing all testimony, the Judge found that Mr. Palmisano’s comments did constitute a threat to a police officer and allowed the defense to submit a brief on the legal issues raised. In his findings of fact, the Judge specifically found “[t]hat this gentleman[Mr. Palmisano] never proffered his position or attempted to use his position as a Board of Education member against Officer Buckle.” (T93-13 to 15) The Judge further stated, “[s]o I find that it was made by a, just common person, against the officer with regards to this. Not attempting to use his position of authority, and I want to make that clear at this particular time.” (T93-18 to 21).

## ANALYSIS

Initially, the Commission will address the Board's request to withdraw its complaint. In a letter dated May 9, 1997, the Board asked that it be permitted to withdraw this complaint. Mr. Palmisano opposed this request, arguing that there is no basis for the complaint and he wants it resolved on the merits to clear his name and so that the matter cannot be raised at a future date should Mr. Palmisano decide to run for public office. By letter dated June 20, 1997, in support of its request to withdraw the complaint, the Board stated that "“further expenditures of public funds in pursuit of the charges in the above would not be in the public interest.”" Given Mr. Palmisano's objection and the procedural posture of this case, the Commission will not allow the Board to withdraw its complaint. The Board did not seek to withdraw its complaint until after the answer had been filed and the Commission had completed its investigation. Indeed, the Board and Mr. Palmisano already had appeared before the Commission. Thus, the board should not have to expend any further public funds since, as discussed subsequently, the Commission has determined that there is no probable cause. Moreover, the Board's request came almost six months after Officer Buckle testified in municipal court that Mr. Palmisano's statements concerning "connections" to mean that he would use his position as a Board member to get back at Mr. Buckle. The municipal court judge hearing the case specifically found as fact that Mr. Palmisano never used or attempted to use his position as a school board member against Officer Buckle. Under these circumstances, the Commission finds that it is not appropriate to allow the Board to withdraw its complaint and will determine whether there is probable cause to credit the allegations in the complaint.

The Board alleges that Mr. Palmisano violated N.J.S.A. 18A:12-24(b) when he made comments concerning his "connections" to Officer Buckle. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

According to the Board, by saying that he had "connections," Mr. Palmisano meant his position as a school board member and that he could use that position to the detriment of Officer Buckle and his children since they resided in Brick Township if the incident for which Mr. Palmisano was arrested was not resolved in a manner favorable to Mr. Palmisano. Accordingly, the Board alleges that Mr. Palmisano used or attempted to use his position as a school board member to secure an unwarranted advantage or privilege for himself. None of the facts before the Commission supports this allegation and the Board was or should have been well aware of this even before Mr. Palmisano filed his answer.

Mr. Palmisano's alleged statements to Officer Buckle form the basis for the complaint. Therefore, the statements and their intent are the determinative factor as to whether there is probable cause to credit the allegations that Mr. Palmisano violated N.J.S.A. 18A:12-24(b). Although the Commission is not bound by the findings in the municipal court proceedings, the municipal court judge heard sworn testimony from the officers involved in the incident, as well as from Mr. Palmisano, and made findings of fact based on that testimony. The Commission finds those findings of fact to be persuasive. In his decision, Judge Apostolou specifically found that Mr. Palmisano never used or attempted to use his position as a school board member to harass Officer Buckle. Although Judge Apostolou made his findings in regard to harassment charges, those findings were made in response to a suggestion that the "connection" Mr. Palmisano referred to was Mr. Palmisano's membership on the board. The Commission finds the court's findings particularly persuasive since they are based on direct testimony of the officer against whom Mr. Palmisano allegedly attempted to use his position as a school board member. Officer Buckle testified the he did not advise Mr. Palmisano at any time while Mr. Palmisano was in custody that he resided in Brick Township. Officer Buckle further stated that he at no time understood Mr. Palmisano's comments concerning his alleged "connections" to mean his membership on the Board.

Thus, the Commission has before it a certified copy of a transcript with sworn testimony that directly contradicts the allegations in the complaint. The board did submit affidavits of Officer Buckle and Officer Luciano, the other officer involved in the August 22, 1996 incident. Those affidavits simply state that the facts set forth in the complaint concerning the August 22, 1996 incident are accurate. Neither officer in his affidavit states that he agrees with the conclusions that the Board draws from Mr. Palmisano's comments. Accordingly, the Commission concludes that there is no probable cause to credit the allegations that Mr. Palmisano violated the School Ethics Act as a result of the August 22, 1996 incident.

The Commission notes that while the Board filed its complaint before the municipal court hearing, the hearing was held on November 26, 1996. This was before Mr. Palmisano filed his answer on December 12, 1996. Thus, even before Mr. Palmisano filed his answer, the Board was or should have been aware of the outcome of the proceedings and testimony as discussed above. The Commission recognizes that the Board was not a party to the municipal court proceeding, however, the Board somehow found out about Mr. Palmisano's arrest and felt compelled to file a complaint. If the Board was concerned enough to file a complaint, it should have been concerned enough to monitor the proceedings that gave rise to the complaint. Sometime between the time the court held the hearing on November 26, 1996, and the time the Commission concluded its investigation in May 1997, the board should have been aware of the fact that Officer Buckle testified under oath that he did not interpret Mr. Palmisano's statements to refer to his Board membership. The Act is intended to instill public confidence and respect in the actions of schools officials. N.J.S.A. 18A:12-22. All school boards should be mindful that the public respect and confidence in school boards

can be undermined when an ethics complaint is brought as a means to address a problem that is not within the purview of the Act and that is best addressed among the board members or in some other forum.

## **DECISION**

For the foregoing reasons, the Commission finds that there is no probable cause to credit the allegations in the complaint that Mr. Palmisano violated N.J.S.A. 18A:12-24(b) and hereby dismisses the complaint against him. This decision constitutes final agency action and may be appealed directly to the Appellate Division of the Superior Court within 45 days in accordance with the Rules of the Court.

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Paul C. Garbarini, Chairperson

## **Resolution Adopting Decision --C31-96**

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

Whereas, the Commission concluded at its meeting of June 24, 1997, that there was no probable cause to credit the allegations in the complaint that respondent violated the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff finding no probable cause and dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was  
Duly adopted by the School Ethics  
Commission at its public meeting on  
June 24, 1997.

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Mary E. Torres, Acting Director

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