
IN THE MATTER

OF

**BARRY LEVINE,
EGG HARBOR TOWNSHIP
BOARD OF EDUCATION,
ATLANTIC COUNTY**

:
: **Before the School**
: **Ethics Commission**
:
: **Docket No.: C31-97**
:
: **DECISION**
:
:

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 29, 1997 by Egg Harbor Township Board members Frank Santangelo and James Galvin. Therein, they allege that Egg Harbor Township Board member Barry Levine violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, they allege that he: 1) pressured them and other Board members to hire his wife as a principal; 2) signed, without board review, the superintendent's employment severance contract while seeking the position of superintendent himself; 3) harassed complainant Santangelo about not voting for him for Board President in 1997; and 4) persuaded board members to vote and voted to eliminate the position of maintenance supervisor when he had personal animosity against the holder of that position for an incident in 1986. Dr. Levine filed his answer on December 17, 1997, denying most of the allegations and denying that he violated the School Ethics Act.

The Commission notified the parties that it would discuss this matter at its February meeting, but it granted Dr. Levine an adjournment at his request. The Commission then advised the parties that it would discuss this matter at its March meeting. However on March 10, 1998, Mr. Santangelo filed an amendment to his complaint, adding allegations: 1) that Dr. Levine improperly voted on his wife's reimbursement for \$148.37 in March 1997; and 2) that he improperly continues to participate, negotiate and vote on matters of conflict including high school musical production stipends. The Commission received the amended complaint on March 10, 1998. By letter of March 19, 1998, Dr. Levine advised the Commission that he received the amended complaint on March 18, 1998 and asked for a postponement. He also advised that he was no longer a Board member. In order to allow Dr. Levine sufficient time to answer the amended complaint, the Commission once again adjourned discussion of the matter. The Commission rescheduled its discussion of the matter for the April 28, 1998 meeting. However, Dr. Levine never filed an answer to the amendment to the complaint.

At the April meeting, Dr. Levine appeared with Board member Howard Minnichbach. Mr. Santangelo and Mr. Galvin appeared with Superintendent Fred Nickles and Assistant Superintendent Joy Miller. At the conclusion of the April meeting, the

Commission tabled the matter. The Commission rendered a decision at its meeting of May 26, 1998 finding probable cause to credit the first allegation of the amended complaint only and dismissing all of the other allegations in the original and amended complaints. The Commission invited Dr. Levine to submit a written statement as to whether he should be found in violation of N.J.S.A. 18A:12-24(c) for voting in favor of his wife's reimbursement.

On June 22, 1998, the Commission received Barry Levine's response to the Commission's finding of probable cause. The Commission tabled the matter at its meeting of June 23, 1998 and rendered this decision at its meeting of July 30, 1998. The Commission now concludes that Barry Levine violated N.J.S.A. 18A:12-24(c) when he voted in favor of a bill list that included his wife's reimbursement and recommends that the Commissioner of Education impose a penalty of reprimand.

FACTS

For a full discussion of the facts related to all of the above charges, please refer to the Commission's probable cause determination dated May 29, 1998. The Commission finds the material facts regarding the vote for the reimbursement to be undisputed. At its March 25, 1997 meeting, the Egg Harbor Township Board of Education ("Board") voted on a list of bills that included a reimbursement to Dr. Levine's wife in the amount of \$148.37 for two separate expenses. Dr. Levine voted to approve the 15-page bill list. At its meeting of April 22, 1997, Dr. Levine voted to approve the minutes of the March 25, 1997 meeting at which he voted to approve the bill list. No one advised Dr. Levine that he should either abstain from voting on the bill list or ask the Board to vote on his wife's expense reimbursement separately so that he could abstain.

ANALYSIS

The Commission found probable cause to credit the allegation that Dr. Levine's conduct in voting for the bill list that included his wife's expense reimbursement violated N.J.S.A. 18A:12-24(c). In his response to the probable cause determination, Dr. Levine states, "I do not recall ever voting on the expenditure." He further states that "The only way I would admit to such a vote is if there is an audio tape of the meeting. As I understand it, the tape no longer exists. How strange!" He goes on to say that the board solicitor would always advise him on which bills to abstain on and he does not believe that he failed to so advise him on this occasion. He indicates that "without a tape, I deny having ever done so." He says that he never saw any documentation until June 2, 1998 when he requested it after the Commission's meeting. Last, he threatens the Commission with civil action and media coverage if action is taken against him.

The minutes of the Board's March 25, 1997 meeting show that Barry Levine voted to approve the month's bill list that included a bill to reimburse Mrs. Levine for expenses

she incurred in the amount of \$148.37. The minutes of the Board's April 22, 1997 meeting indicate that Barry Levine voted to approve the minutes of the March 25, 1997 meeting. The Commission finds this to be proof that Barry Levine voted in favor of his wife's reimbursement request. The Commission finds it of no consequence that Dr. Levine says that he did not receive the documentation of the vote until June 2, 1998 since he was able to view the minutes and respond to them prior to the Commission determining whether he violated the act. Based on the foregoing, there is no dispute as to the material facts Dr. Levine has no facts with which to dispute the vote in the minutes, only his assertion that he does not recall having voted. Since it is now over a year since the vote, it is not surprising that he does not recall. Clearly, that is the purpose of official minutes. "The minutes are intended to recite and disclose any official decision or action taken by a public body, and necessarily must contain sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination. *See Liebeskind v Mayor and Municipal Council of Bayonne*, 265 N.J. Super. 389, 401 (App. Div. 1993)(citing *South Jersey Publishing Co., Inc. v. New Jersey Expressway Authority*, 124 N.J. 478, 493 (1991)). Dr. Levine had a chance to correct the minutes while the March 25, 1997 meeting was still fresh in his mind. He instead voted to approve them at the April 22, 1997 meeting with his vote in tact. Thus, the Commission concludes that he voted in favor of his wife's reimbursement.

The Commission found probable cause to credit the allegation that such conduct violated N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The School Ethics Act is clear that a spouse is a member of one's immediate family. N.J.S.A. 18A:12-23. Here, Dr. Levine's wife was seeking reimbursement for expenses that she incurred. She clearly had a personal and financial involvement in the request such that the public might reasonably expect that Dr. Levine could not be objective in voting in favor of it. Even though the request was for reimbursement, there are occasions when such requests require some scrutiny by the Board. The Commission has always held that a board member who votes for an agenda item that benefits a family member would be in violation of N.J.S.A. 18A:12-24(c), even if it appears that there is no dispute that the family member was entitled to the benefits of the vote. *See In the Matter of Matilda Touw*, SEC Docket No. C16-96, decided November 26, 1996. Considering the foregoing, the Commission finds that Dr. Levine acted in his official capacity in matter in which his spouse had a personal involvement that might reasonably be expected to impair Dr. Levine's objectivity. Therefore, the Commission concludes that Dr. Levine violated N.J.S.A. 18A:12-24(c) by voting in favor of his wife's reimbursement.

DECISION

For the foregoing reasons, the Commission finds that Dr. Levine violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. Considering the nature of the violation, the Commission believes that the lowest penalty is appropriate and recommends that the Commissioner of Education impose a penalty of reprimand.

This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction 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, 100 Riverview Plaza, PO 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 -- C31-97

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 May 26, 1998, that there was probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission invited Dr. Levine to respond to the finding of probable cause, and the Commission considered his timely response; and

Whereas, the Commission now concludes that respondent violated the School Ethics Act and recommends that the Commissioner of Education impose a sanction of reprimand; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth its findings and conclusions; 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.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 30, 1998.

Lisa James-Beavers
Executive Director