

L.D. NO. 89-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLMDEL TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CO-L-88-343

HOLMDEL TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Public Employer

Reussille, Mausner, Carotenuto, Bruno & Barger, Esqs.  
(Martin M. Barger, of counsel)

For the Charging Party

Klausner, Hunter & Oxfeld, Esquires  
(Stephen B. Hunter, of counsel)

LAP DECISION

On June 27, 1988, the Holmdel Township Education Association ("Association") filed an unfair practice charge alleging that the Holmdel Township Board of Education ("Board") violated subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The Association alleged that the Board unlawfully reprimanded local Association President George DeLage by writing two letters of reprimand containing thinly veiled threats to discipline him. The Association asserts that the letters were

retaliation for DeLage's conduct in representing Association member Jane Marchetta on two occasions: in the high school office on May 12, and at a disciplinary meeting with the building principal and vice-principal on May 20, 1988.

On June 30, 1988, the Board filed an Answer generally denying that it committed an unfair practice.

On July 26, 1988, a Commission Staff Agent conducted an exploratory conference. The parties later agreed to submit this matter to the Commission's litigation alternative program. On August 26, 1988, I scheduled a hearing for September 14, 1988. I conducted the hearing as a "fact finding" proceeding. Witnesses were sworn in and I participated in examination. This decision is not for publication and the parties are not bound by my findings, conclusions or recommendations. I make no specific finding of liability under the Act. The purpose of this proceeding was to obtain a decision from an impartial hearer in order to avoid the time and expense of a formal hearing.

#### FINDINGS

The first in a series of unfortunate events occurred on May 10, 1988. Marchetta made an unflattering comment about assistant principal Frederick Lucas to Rose Poukish, Lucas' secretary. Marchetta suggested that Poukish was doing Lucas' work. Poukish thought that Marchetta also said that Superintendent Brennan was "cracking down" on Lucas.

Marchetta's comments upset Poukish. When Poukish told Lucas what Marchetta had said, Lucas replied that he would look into the matter.

Sometime after first period the same day, Lucas saw Marchetta and asked that she meet him during eighth period. In the midafternoon, Marchetta found a memo from Lucas in her mailbox. The memo explained the reason for meeting was to "discuss what [he perceived] to be unprofessional conduct and comments made...in the main office." The memo [CP-1] was copied to Dr. White and Mrs. Evans, Marchetta's supervisor.

Marchetta showed this memo to a teacher, who suggested Marchetta attend the meeting with a union representative. The memo upset Marchetta. She later interrupted a discussion between Lucas and Elaine Brash and told Lucas that she disagreed with the memo. She refused to meet with Lucas without a union representative.

Marchetta had shown the memo to Douglas Sanecki, her former building representative and the Association's grievance chairperson. He suggested they meet Lucas together. Marchetta and Sanecki met with Principal White and Lucas on May 12, 1988. Lucas explained his feelings about Marchetta's conduct on May 10 and asked her for an explanation. Marchetta, following Sanecki's advice, remained silent.

That afternoon Marchetta, Sanecki and Pat Dricoll met with Association President George DeLage to discuss Marchetta's

situation. Lucas had indicated that an apology from Marchetta would resolve the matter. Marchetta decided that she would not apologize. She decided instead to file a grievance.

Later that day DeLage met Lucas in the office. DeLage, apparently in a dramatic tone of voice, asked Lucas if he "had a minute." Lucas said either that he "only" had a minute or that he "always" had a minute for DeLage. DeLage told Lucas that the Association's position was that he should apologize to Marchetta. He also told Lucas that if he tried to meet with an Association member without an Association representative present, he would file an unfair practice charge.

On May 13 the Association filed a grievance (CP-4). On May 19, Lucas wrote Sanecki with the Board's response that the grievance was premature (CP-5).

On May 20, Marchetta coincidentally met Principal White in the main office. White told her that he wanted to see her during fourth period to give her a written reprimand. He later confirmed this with a memo (CP-2).

Marchetta showed CP-2 to Sanecki. She met with DeLage and Sanecki before her scheduled meeting with White. They advised her to remain silent during the meeting. Sanecki and DeLage accompanied Marchetta to the meeting. As they walked into White's office, Lucas, who had been waiting nearby, followed them in. DeLage asked Lucas what he was doing there. Lucas posed the same question to DeLage. DeLage said he wanted to leave to

discuss Lucas' presence with Sanecki and Marchetta. White refused, insisting that it was his meeting. Lucas, DeLage and Marchetta started to leave. This angered White. He got up, grabbed Marchetta's arm (or wrist -- it wasn't clear from the testimony) and tried to put the written reprimand in Marchetta's hand. DeLage then said "take your hands off this woman" and stepped up to White, bumping him into the wall -- an unavoidable consequence given the small size of the room.

On June 2, 1988, Superintendent Brennan wrote two letters to DeLage. The first stated:

This is a formal reprimand for your behavior in Holmdel High School on May 12, and 20, 1988.

On the afternoon of the 12th you entered the high school office and, by the manner in which you requested a meeting with Mr. Lucas, and by the manner in which you subsequently ended the meeting, spoke in a threatening tone and disrupted the normal flow of school business.

On the morning of the 20th, you interrupted the normal operation of the school, interfered with the exercise of managerial responsibilities, and encouraged insubordination to the authority of the principal. This you did by threatening to cancel a meeting which the principal had convened with a staff member and her union representative. Further, when the principal directed the teacher to stay, you physically ushered her out of the conference. What's more, you physically pushed the principal in a manner which could be described as perpetrating an assault.

What you did goes far beyond the rights and responsibilities as president of the H.T.E.A., which do not include unbridled authority to contradict the directives of an administrator or to use physical force to advance your arguments. On the contrary, mechanisms for

redress of grievances are clearly delineated in the negotiated agreement.

As an employee of this district you are subject to the terms and conditions of Board policy, administrative regulation and the negotiated agreement. Further instances of the kind of behavior noted above will be dealt with as acts of insubordination to my authority as superintendent. I would also remind you of the possibility of police action or civil suit in matters of physical attack.

Should you have any questions, require further information, or wish to discuss this matter further, please do not hesitate to contact me.

Brennan's second letter to DeLage states:

Considering the occurrences at the High School in May 12, and 20, 1988, I find it necessary to invoke Articles 4B and D of the negotiated agreement. Please contact me at your earliest convenience to set up a meeting so that we can discuss how this will be accomplished. In the meantime, I have instructed all district administrators to meet with you in your capacity as union president only in cases of obvious emergency or when you call ahead of schedule a mutually convenient appointment.

I would further advise you that should your presence at any such meeting be in addition to or instead of the past practice of meeting with the association building rep, then I will be balancing your extraordinary attendance by attending the meeting myself. My purpose in attending will be to see firsthand that your behavior remains within the bounds of Chapter 123 of Public Laws of 1974, Board policy, administrative regulations and the terms and conditions of our negotiated agreement.

Please let me hear from you soon on this matter.

To these facts I add only that the parties have generally had a good working relationship. I believe their agreement to resolve this extraordinary dispute in the LAP forum is based on that relationship. I understand that the parties intend to use this decision as a basis for settling the matter.

#### RECOMMENDATION

Marchetta inadvertantly began this sequence of events with her remarks about Lucas to Poukish. Though neither Marchetta nor Lucas was willing to later apologize, I think the best way to resolve this part of the matter is to destroy the reprimand that Principal White was unable to present to Marchetta, and to schedule a meeting between Lucas and Marchetta.

Though no one condones it, I think that the bumping and grabbing are best forgotten. I am convinced that Principal White's only intention in clasping her arm was to present Marchetta with the reprimand so she would not be subject to further charges of insubordination. I am also convinced that DeLage did not intend to push White against the wall.

That brings me to the question of how to deal with DeLage's conduct. DeLage is an effective Association advocate. He is respected both by his Association members and the Board and its administrators. Though I do not intend to scrutinize his conduct under a Weingarten microscope here, I should make a few general comments about the rights of union representatives at

disciplinary meetings. First, due to the nature of the May 12 meeting, Marchetta did not have a statutory right to the presence of a union representative because White intended only to present her with the reprimand. Second, the meeting was White's not DeLage's to conduct. Hudson County (Youth House), P.E.R.C. No. 88-100, 14 NJPER 327 (¶19120 1988); Morris, Developing Labor Law at 149-156, (2d. Ed. 1983).

I therefore cannot recommend that DeLage's conduct go unnoticed. I suggest that Dr. Brennan prepare written warning to DeLage to replace the reprimand, CP-6, and CP-7, which should be discarded. The warning should emphasize that it is inappropriate to disrupt a meeting scheduled for the purpose of advising an employee of a disciplinary decision already made.

I will retain jurisdiction.

Richard C. Gwin, Commission Designee

DATED: November 14, 1988  
Trenton, New Jersey