

H.E. NO. 2008-9

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

EAST ORANGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2006-153

EAST ORANGE EDUCATION ASSOCIATION,

Charging Party.

EAST ORANGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TI-2006-004

CLARISSE SMITH-JARVIS,

Petitioner.

Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, LLP,
attorney's
(Nicholas Celso, of counsel)

For the Charging Party and Petitioner
Oxfeld Cohen, P.C., attorney's
(Gail Oxfeld Kanef, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On December 12 and 27, 2005 and April 6, 2006 respectively,
the East Orange Education Association (Charging Party or
Association) filed an unfair practice charge and amendments
against the East Orange Board of Education (Respondent or Board).

The amended charge alleges that the Board violated 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Association contends that Principal Amalia Trono engaged in a pattern of behavior exhibiting anti-union animus, interfered with internal union activities and negotiated terms and conditions of employment directly with unit members. Specifically, the Association alleges that Trono referred to its building representative, Clarisse Smith-Jarvis, as "Sour Juice" to undermine her authority, enlisted unit members to write letters to Association President Greadington requesting the removal of Smith-Jarvis as building representative, transferred Smith-Jarvis and others - Rodney Beaver, Dr. Susan Rich, Carla Hinds, and Terell (Anthony) Carr^{2/} - - out of Costley Middle School after they appeared before the Board in opposition to the non-renewal of a co-

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The Charge misnames Carr as Terell. The evidence supports that his first name is Anthony.

worker's employment contract, interfered with unit members' choice of union representative at disciplinary hearings, and negotiated with individual employees who participate in after-school clubs and programs regarding the rate of pay for such activities.

On November 29, 2005, Clarisse Smith-Jarvis (Petitioner or Smith-Jarvis) (TI-2006-004) petitioned for contested transfer determinations, alleging that the Board transferred her between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. A companion petition, TI-2006-005, filed by Rodney Beaver, was withdrawn before the hearing.

On April 28, 2006, an Order Consolidating Cases and a Complaint and Notice of Hearing issued (C-1).^{3/}

On May 8, 2006, the Board filed a motion for summary judgment on both the petition and paragraph 8 of the charge which alleged that the Board transferred Smith-Jarvis, Beaver and others because they spoke out in opposition to the non-renewal of a co-worker's employment contract. On June 29, 2006, the Public Employment Relations Commission (Commission) denied the Board's motion.

^{3/} "C" refers to Commission exhibits received into evidence at the hearing. "CP" refers to Charging Party's and Petitioner's exhibits. "R" refers to Respondent's exhibits. Transcript references to hearing dates are "1T" through "10T" respectively.

On March 27 and May 9, 2006, the Respondent Board filed its Answers to the contested transfer petition (C-2) and the unfair practice charge (C-3). The Board denies the allegations of the amended charge and that it transferred Smith-Jarvis for disciplinary reasons. It states specifically that Ms. Viquez was not a building representative at Costley Middle School for the 2005-2006 school year, that Smith-Jarvis and the other transferred teachers requested transfers, and that it had legitimate educational reasons for all transfers, namely, that Smith-Jarvis and the others were transferred because they were resisting the implementation of a new whole school reform model at Costley Middle School.

At the pre-hearing conference, I granted the parties' joint request to sequester witnesses. I allowed each party to have one resource person throughout the hearing. Amalia Trono and Jacqueline Greadington were respectively the resource persons for Respondent and Charging Party. Both were present during witness testimony throughout the hearing.

A hearing was held on September 13 and 14 and November 30, 2006, and March 8, 27, 28 and 29, May 14, June 11 and 18, 2007 at which the parties examined witnesses and presented exhibits. After I granted mutual requests for extensions to file, briefs and replies were filed by October 29, 2007. Based on the record, I make the following:

FINDINGS OF FACT**Background**

1. The East Orange Board of Education is a public employer, the East Orange Education Association is a public employee representative, and Clarisse Smith-Jarvis is a public employee within the meaning of the Act (1T10-1T11). The parties stipulate that Clarisse Jarvis-Smith was transferred between work sites within the meaning of N.J.S.A. 34:13A-25, namely from Costley Middle School to Garvin Elementary School (1T11).

2. East Orange is one of 31 districts in New Jersey designated as an Abbott District and, as such, must comply with regulations promulgated by the New Jersey Department of Education (NJDOE) to ensure that a thorough and efficient education is provided to students identified as economically disadvantaged (5T111).^{4/}

One of the requirements in an Abbott District is that a Whole School Reform (WSR) model is selected and approved by NJDOE to assure that the district meets core curriculum content standards (5T112).^{5/} NJDOE provides funding to the district to support the implementation of the WSR model (5T113). Failure to

^{4/} The Abbott Districts were created as a result of two New Jersey Supreme Court decisions - Abbott v. Burke, 119 N.J. 287 (1990) and Abbott v. Burke, 153 N.J. 480 (1998). See also, N.J.A.C. 6A:10A-1.1 et seq.

^{5/} N.J.A.C. 6A:10A-3.1(a)

achieve core curriculum content standards may result in the Commissioner of Education directing the restructuring of curriculum, the retraining or reassignment of staff, and/or the redirecting of budget expenditures, among other sanctions.^{6/}

3. In addition to the mandates of Abbott v. Burke and NJDOE regulations, schools and districts are subject to the federal No Child Left Behind (NCLB) Act which requires the State to create and maintain a system of intensive and sustained support for Title I schools designated as "in need of improvement" (R-9, R-11).^{7/} I take administrative notice of the following facts from the NJDOE News release dated June 4, 2007. I also rely on witness testimony and exhibits in the record for information regarding the NCLB Act (R-6, R-7, R-8, R-9; 3T7-3T9; 5T114; 6T50-6T51).

In 2002, NCLB was signed into law. Under NCLB, before the start of each school year, NJDOE must release the list of schools and districts designated as being "in need of improvement" as a result of not making adequate yearly progress (AYP) on State tests administered in the previous Spring. These tests include the 11th grade HSPA (High School Proficiency Assessment), the 8th grade GEPA (Grade Eight Proficiency Assessment) and the grade 3 through 7 NJASK (New Jersey Assessment of Skills and Knowledge).

^{6/} N.J.S.A. 18A:7F-6(b)

^{7/} The No Child Left Behind Act, 2001, PL. 107-110.

In order to meet AYP, a school or district's students must not only achieve proficiency in these tests, but also demonstrate a 95 percent participation rate in math and language arts for each of ten identified subgroups of the total student population.

Schools and districts that receive Title I funds and are designated as "in need of improvement" face federal sanctions for not meeting AYP. The sanctions become progressively more stringent as AYP is not met in succeeding years (5T114-5T115, 5T119; 6T50).

For instance, in the first year that a school or district has not met AYP, NJDOE issues an early warning designation, but no sanctions (5T114). In years two and three, a school which has not met annual AYP is designated as a school "in need of improvement" and is required to provide parent notification, intra-district school choice, and supplementary educational services, such as Kaplan, and must also get technical assistance from the district and State.

By the fourth year, if a school has not met AYP, a corrective action plan must be developed by the school administration. Among the requirements for Title I Schools in corrective action, the district is required to take at least one of the following corrective actions:

Provide professional development that is scientifically based and proven to increase student achievement.

Institute a new curriculum grounded in scientifically based research and provide professional development to support implementation of the curriculum.

Extend the length of the school day or school year.

Replace the school staff who are relevant to the school not making AYP.

Significantly decrease management authority at the school.

Restructure the internal organization of the school.

Appoint outside expert(s) to advise the school on relevant school improvement issues.
(R-9)

Also, in the 4th year, a Collaborative Assessment and Planning for Achievement (CAPA) review is conducted by a State-appointed team of consultants (5T115, 5T119; 6T50-6T51). CAPA is a five-day process during which the team of consultants comes into a district and reviews documentation, interviews teachers, parents and students, observes classes and develops a report with findings and recommendations to provide guidance in overcoming existing problems (3T8-3T9; 6T56-6T57). The observation and interview process generally takes place in the first three days of the review. The last two days are spent reaching a majority consensus among the team and writing the report (3T10).

In year five of not meeting AYP, a school restructuring plan must be developed in addition to providing parent notification,

public school choice, and supplemental educational services as well as getting technical assistance from the district and State. Among the restructuring requirements could be the changing of staff or the principal, providing additional professional development, changing of the WSR model, or, if warranted, closing the school. Finally, in year six of not meeting AYP, in addition to the previous sanctions, the restructuring plan developed the year before must be implemented (5T122-5T123).

Superintendent Wilson and the Implementation of America's Choice

4. Dr. Laval E. Steele Wilson is currently employed as school superintendent in the City of Poughkeepsie, New York (5T110). From February 2003 through June 2006, he was employed by the Board in East Orange as superintendent (5T110).

5. During Wilson's first year in East Orange, he met with representatives from NJDOE and decided to change the WSR models in five of the district's elementary schools to either America's Choice or Success-for-All models. This change was put into effect for 2003-2004 (5T120).

Two of the elementary schools, Washington and Warwick, chose the America's Choice model which is a research and standards-based model developed by the National Center for Research and Education (NCRE) (5T125; 6T55). The two schools were set up as national demonstration models (5T124-5T125).

6. Later in 2003-2004, Wilson again met with NJDOE representatives and discussed the failing performance of students in all 3 middle schools comprising the Hart complex (John L. Costley, Patrick F. Healey and Sojourner Truth). The students had performed poorly on the math and language arts 8th grade GEPA tests. In particular, in 2003-2004, Costley was in the 3rd year of sanctions under NCLB as a school "in need of improvement".

Wilson decided not to wait until the 3 schools were required to restructure in school year five (2005-2006) of not meeting AYP, but to change the WSR models in the 3 middle schools for 2004-2005, the 4th year of sanctions for not meeting AYP (6T92). In fact, in the fall of 2004, Wilson received notice from NJDOE confirming that the schools in his district had failed to make preliminary AYP and did not meet the 2004 accountability standards under NCLB Act (R-14).

7. Costley had been using a WSR model titled Talent Development that had been place for two years and was initially selected by the teaching staff (6T92). Wilson wanted to change from the Talent Development model to the America's Choice model for the 2004-2005 school year because America's Choice was being used successfully at Washington and Warwick Elementary Schools (R-6, R-14; 5T114, 5T121; 6T93; 8T5).

8. Unlike Talent Development, the America's Choice model was imposed by Wilson, not selected by the teaching staff (6T91).

Also, compared to the Talent Development model, America's Choice is a more structured model, requiring teachers to follow specific rituals and routines in the delivery of instruction and the organization of the classroom environment to meet certain design standards (6T95-6T96).

For instance, the classroom environment needs to be set up to demonstrate that students are meeting standards following a holistic scoring guide called a rubric which has to be shown on the bulletin board and up-dated regularly by the teacher (6T95). Artifacts and word-walls, evidence that the standards are being taught, must be on display (6T96). Two campaigns encourage reading: the 25-book campaign requires student's to read a minimum number of books during the year as well as the principal's-book-of-the-month campaign promotes reading to and discussion among students of a book selected by the principal (6T96). Finally, America's Choice requires collaboration among the teaching staff because one of its five design tasks is building a professional learning community (6T100).

9. Although Wilson did not expect to see major progress on the math and language arts 8th grade GEPA tests for several years, he did expect to see the components of the America's Choice model in place in all three middle schools, namely classroom rituals and routines such as an opening, work period and closing for each lesson and the cooperative grouping of

students for problem solving (5T127-5T128; 8T6). Wilson also expected to see classrooms organized to contain the word-walls, lesson plan objectives, reading and computer centers, a student library and the posting of both teacher-made and commercial charts (5T125-5T126, 5T128-5T129). Finally, Wilson expected that the teaching staff would incorporate other America's Choice elements into the instructional routine, including the two reading campaigns and daily student journal writing (5T125-5T126; 8T6-8T7).

10. Dr. Gloria Scott, assistant superintendent for curriculum and instruction, is responsible for the oversight of instructional programs in the district and assisted Wilson in the implementation of America's Choice at the Hart complex middle schools in 2004-2005 (6T49-6T50, 6T55, 6T72). Wilson also appointed Brenda Veale and Gloria Watson, the principals at Washington and Warwick Elementary Schools, where the America's Choice model was being successfully implemented, to act as mentors for the implementation of the new model at the three Hart complex middle schools (6T94, 6T101).

Scott worked as a team with Veale and Watson to negotiate a contract with the National Center for Research and Education (NCRE), a State-approved WSR provider for the America's Choice model, to identify in-service training, to meet with staff to discuss the model and to monitor the actual implementation

(6T56). NCRE assigned two America's Choice facilitators, Jackie Dennis and Dr. Loretta Pollhill, to work primarily with and train the principals, teacher-coaches and model teachers and, occasionally, to work with individual staff members identified as having problems implementing the America's Choice model (6T97-6T100). In 2004-2005, Dennis was in the Hart complex 2 or 3 times a week and was available to the principals on an as-needed basis (6T98; 7T46).

11. The America's Choice model required that each school have three teacher-coaches - a design, math and literacy coach - to meet with teaching staff on a weekly basis in the different content areas. Coaches work closely with the principal on a day-to-day basis and are supervised by the principal (5T55-5T56, 5T101). Coaches are not, however, supervisors, but are considered teaching staff without a classroom assignment (7T115). Coaches, work with classroom teachers, both in and out of classrooms and as a group, within their content areas, to train teachers how to properly implement the America's Choice model (5T52-5T53, 5T57, 5T101; 7T152). As coaches received training in the America's Choice model during 2004-2005, they were expected to bring it back to teaching staff (6T98-6T99).

12. The coaches together with the school principal as well as the technology coordinator comprise the School Leadership Team (SLT) which is responsible for making sure that the school is

meeting the mandates of the America's Choice model (6T17). The SLT at Costley met once a week on Wednesday mornings (6T136, 6T138).

The SLT is different than the School Leadership Council (SLC) which is a group also required by the America's Choice model. The SLC is made up of teachers selected by their peers, students, parents, the 3 coaches, the principal and support staff. It meets once a month after school (R-27; 6T138). Minutes are taken at each meeting and approved at the next meeting (R-27; 8T49).

13. In addition to the 3 coaches, America's Choice required that principals select model teachers in language arts and math to provide an example for other teachers on the proper implementation the model (1T102, 1T120; 6T94). Unlike coaches, model teachers have classroom assignments (5T100). The teaching staff learns through observation of their classrooms (1T102, 1T122).

14. As part of the implementation of America's Choice, Wilson provided a staff orientation in June 2004 (8T7). Wilson attended off-site training with the principals, assistant principals and some coaches during the summer of 2004 (8T10). For example, Trono attended a five-day training in August 2004 with her design and literacy coaches, Yvy Joseph and Natasha Alexander, respectively (6T94; 7T39-7T40, 7T51).

Model teachers and coaches were supposed to be trained by Dennis and Pollhill a week prior to the beginning of school, but their specialized training did not begin until later in September 2004 and was a 3-day off-site training (7T43-7T44). The next 3-day off-site training for model teachers and coaches was in December 2004 or January 2005 (7T45). Off-site training continued until April 2005 when the full training was completed for the coaches and model teachers (7T45).

15. In-service training for all teaching staff began a couple of days before school started in September 2004 and was conducted by Dennis. Dennis focused on the general requirements of the America's Choice model including the setting up of rituals to alert students what they would be doing for the day (6T95, 6T97; 7T41-7T42). Dennis and Pollhill conducted 6 to 7 additional half-day in-service training sessions for teaching staff during the 2004-2005 school year (7T52). Primarily, however, the staff training was the responsibility of the coaches (7T52). Training for staff continued throughout the 2004-2005 school year (5T126; 6T72; 8T8; 8T10).

16. The America's Choice model requires the administration of each school to be in classrooms two hours a day, although the model does not require a specific amount of time be spent in any one classroom. In other words, a principal could spend two hours

in one classroom or spend a few minutes in each classroom to meet the two-hour requirement (6T99; 7T57).

Additionally, during 2004-2005, the principal, coaches, mentors and personnel from central administration, including Wilson, conducted focus walks twice monthly, whereby they visited classrooms briefly to look for evidence that the America's Choice routines and rituals were being observed - e.g. the classroom is organized with the required artifacts, such as word walls and charts, students are arranged in cooperative learning groups and teachers are moving around the classroom working with individual students or with small student group-guided instruction (6T99). Teachers were sometimes given feedback both during the focus walks from checklists which the observers filled out, as well as during general staff meetings (7T128, 7T138).

17. Although Wilson attended some of the focus walks and noted his observations on a checklist, he felt that, as to individual teaching staff:

. . . the responsibility for the day-to-day monitoring of the classrooms was the principal's responsibility, the assistant principal's responsibility, the literacy coach's responsibility, the math coach's responsibility and the design coach's responsibility along with the two mentors during the first year and the America's Choice consultant. So I would not have an ongoing basis monitor the progress of the teachers. I would have - that would have been the responsibility of those other staff that I just enumerated who would have then

made progress recommendations to me.
(8T36-8T37)

Costley in 2004-2005

18. During 2004-2005 there were approximately 60 teaching staff at Costley including approximately 20 tenured teaching staff (R-16; 7T54). Costley Principal Roxolana Potter took a medical leave in 2004 and was replaced by her assistant principal, Amalia Trono, who was appointed acting principal for 2004-2005 (6T83, 6T85; 7T53). Trono had worked at Costley for 11 years - 3 years as a math lead teacher and then 8 years as an administrator (6T84; 7T38). Trono had never worked with the America's Choice model before the 2004-2005 school year (7T39).

19. Prior to the opening of school in 2004-2005, Trono and Potter together with the principals at the other Hart complex middle schools and the two mentors (Veale and Watson) interviewed and selected candidates for the design coach (Yvy Joseph), math coach (Nicholas Masia) and literacy coach (Natashia Alexander) positions at Costley (R-27; 6T94, 6T101). Masia, Joseph and Alexander applied for the positions and were teachers at Costley that Trono had worked with previously (7T49-7T50). Trono supported their successful candidacies for the coach positions (7T49-7T50). During the 2004-2005 year, Trono worked closely with Masia, Joseph and Alexander who met with teachers in their content areas every Wednesday (6T98-6T99).

Also prior to the opening of school that year, Trono selected 3 model teachers for language arts and 2 for math. In language arts, Monique Van Wells (8th grade), Ms. Rollins (7th grade) and Mrs. Powell (6th grade) were selected, and, in math, Deborah Balogh (8th grade) and Rodney Beaver (7th grade) were chosen by Trono (R-27).

20. As acting principal, Trono was responsible for observing and evaluating the Costley staff (7T53). She evaluated the approximately 20 tenured teaching staff twice during the year - November 30, 2004 and between March 30 and April 6, 2005 (CP-1, CP-2, CP-10; R-4, R-5, R-24, R-25; 7T53-7T54, 7T73-7T74). The purpose of the evaluations, according to Trono, was to allow the staff member to improve and grow in his/her teaching skills (7T105).

For instance, as part of her principal's training in the implementation of the America's Choice model, Trono was told not to be too harsh on the teachers by rating them "unsatisfactory" (U) or "needs improvement" (NI) until they bought into the model (7T62). Trono felt that whenever you implement change, it should be gradual to set a climate where the teaching staff could learn to accept the change without feeling that it was being forced on them (7T62). Trono's November 30, 2004 teaching staff evaluations, therefore, did not contain unsatisfactory ratings for the most part, because she did not want to alienate her

teaching staff (7T61). Trono, however, first noticed that some staff were not implementing the America's Choice model in September 2004 (7T58). She continued to notice the same staff not implementing the model in October and November (7T58).

21. In 2004-2005, Trono conducted various meetings on a regular basis. For instance, she conducted monthly after-school SLC meetings (6T138). The Costley SLC included, among others, teachers (Clarisse Smith-Jarvis, Rodney Beaver, Dr. Moira Weidenborner, and Deborah Balogh) as well as the 3 coaches (Masia, Joseph and Alexander), parents, students and support staff (R-27; 6T135, 6T137).

Trono also conducted weekly Wednesday-morning meetings with the SLT, which consisted of the 3 coaches (Masia, Joseph and Alexander) as well as occasionally the technology coordinator and dean of discipline. They discussed the implementation of America's Choice, what kind of coaching would benefit the teaching staff, and which individual teachers were having problems with the model (6T101, 6T135-6T136, 6T138). Trono also discussed "who is going to help those teachers to ensure that the things that need to be in place are in place" (6T101). Finally, Trono conducted after-school staff meetings several Mondays a month throughout the school year at which she discussed various issues related to the America's Choice implementation including her observations from the focus walks (7T131, 7T138-7T139).

22. In addition to these scheduled meetings, Trono met informally after school with other administrators and staff. On direct examination, Trono denied emphatically that she ever met informally for impromptu after-school meetings with administrators or teachers (6T138). On cross examination, however, Trono admitted that she habitually stayed at school until the last student was picked up, around 4:30 p.m., and that there were times that she sat down with teaching staff who also stayed after the 2:39 p.m. dismissal time for impromptu meetings (7T131).

School Climate at Costley in 2004-2005

23. In Trono's opinion, 2004-2005 was a difficult year both because it was the first year of implementing the America's Choice model and because there was a conflict among the staff that was part personal and part professional (6T101). As to the latter, at the end of June 2004, there developed a dispute between 8th grade language arts model teacher Monique Van Wells and a 6th grade language arts teacher, Sharonda Allen (6T112). The record is unclear as to what precipitated the conflict between Allen and Van Wells, but the conflict spilled over into the 2004-2005 school year (6T83). Several teachers took sides between the two women (6T81). Van Wells told Trono that some of the non-model teachers, including Dr. Susan Rich, Clarisse

Smith-Jarvis and Carla Hinds, took Allen's side in the dispute (6T82).

Carla Hinds related an after-school incident where she saw Allen coming down the hall giving materials to another teacher who was standing with Van Wells (9T50-9T51). Van Wells interrupted Allen, took the materials out of her hands and threw them on the floor. Hinds tried to get help for the two to get them past their conflict and does not recall any subsequent incidents between the two (9T51).

24. Dr. Scott confirmed that there was tension among the staff in 2004-2005 which she partially attributes to the fact that the America's Choice model was imposed on the staff, whereas the teachers were given a vote on the previous model. Also, there was particular concern among the teachers that the America's Choice model was much more structured (6T47, 6T62-6T63).

The April 2005 CAPA Review

25. In the spring of 2005, as a result of being in the 4th year of sanctions under NCLB and being schools "in need of improvement" and corrective action, a CAPA team was dispatched by NJDOE to conduct a review of the Hart complex middle schools

(R-9, R-11; 3T1, 3T55, 3T57, 3T66).^{8/} The review was conducted at Costley from April 25 to 29, 2005, roughly 7 months after the introduction of the new WSR model, America's Choice (3T14, 3T53-3T54).

26. The CAPA team was led by Dr. Seymour Weiss, a NJDOE consultant and retired NJDOE deputy assistant commissioner for controversial disputes (3T6-3T7). Weiss has conducted many CAPA reviews (5T55). Weiss' team was comprised of twelve individuals including Weiss, a retired assistant superintendent, two language arts and math specialists from the E.O. district (Pat Dembrowski and Lucille Caron), three individuals from NJDOE, a bilingual expert from the Union City School District, an Irvington parent, a pupil personnel specialist from the Elizabeth School District, a representative from the Essex County Superintendent's Office and an E.O. District liaison who did not actually participate in the review but facilitated the review process (R-9, R-11; 3T21-3T22).

27. The first three days of the CAPA review were spent by the team observing classrooms and conducting interviews with teachers, building leadership and administration, district administration, students, support staff and parents (R-9, R-11; 3T10). The last two days were spent writing the report. Team

^{8/} The record does not reflect what the team did at Healey or Truth or when it conducted its CAPA reviews at those schools.

members worked in their areas of expertise but each written area was discussed among the group and a consensus reached so that the final report reflected the majority consensus of the team (3T10, 3T30).

28. The CAPA team's activities at Costley included a document review; 78 classroom observations; general observations of arrival, dismissal, lunch period and student restrooms; 39 interviews with teachers; 20 interviews with building leadership and administrators; 13 interviews with district administrators; 21 interviews with students; 26 interviews with school and student support staff; and 6 interviews with parents (R-9, R-11).

In particular, teachers were interviewed, some individually and some by grade level (3T56). In calculating the number of teacher interviews, and presumably other interviews, conducted by the CAPA team, if 5 teachers were interviewed together, for example, the number of interviews reflected by the report would be 5 interviews (R-9, R-11; 3T57-3T58). Weiss did not recall if he interviewed any teacher individually at Costley (3T57). He does, however, recall that the team received a number of comments from teaching staff that they wanted more professional development in regard to the America's Choice model (3T59). Weiss' team met often with Trono during the CAPA review process (3T41).

29. The CAPA team review focused on and addressed three general areas encompassing nine different standards: (1) academic performance standards (curriculum, classroom evaluation/assessment, and instruction); (2) learning environment (school culture, student, family and community support, professional growth, development and evaluation); and (3) efficiency (leadership, school culture and resources, and planning) (R-9, R-11).

30. As to school culture, Weiss learned that Costley had a safe environment but there was a division among the staff in their acceptance of the America's Choice model (3T30-3T31). Weiss did not find the division among the Costley staff so unusual because whenever a new WSR model or procedure is implemented, there are usually staff who may have difficulty with that change (3T32, 3T65, 3T69).

31. During the CAPA review process, a group of four Costley teachers, however, approached the CAPA team, anonymously and unsolicited, to discuss the school culture issue (3T31-3T32). According to Weiss, the four wanted anonymity because, they explained, they were perceived by certain staff members as being favorites of the administration and receiving special privileges because they were enthusiastic in their support of America's Choice (3T32).

The four teachers indicated that they were being subjected to harassment and intimidation including telephone calls to their homes (3T33). According to Weiss, the meeting with these teachers lasted approximately an hour, but on cross examination, Weiss could not recall the names of the individual teachers or how many were men or women (3T59-3T61). He destroyed whatever notes he took of the meeting (3T64). Other than Weiss, no one else from the CAPA team testified nor did any of the teachers who appeared before the CAPA team.

32. The CAPA team did not investigate the allegations by the 4 teachers. Based only on their allegations, the CAPA team concluded that the degree of the resistance was unusual and that this unusual resistance might compromise the successful implementation of the America's Choice model (3T35-3T37, 3T65, 3T69).

These conclusions were reflected in the draft and final CAPA reports (R-9, R-11) under a sub-heading entitled "School Culture" and states in pertinent part:

While the consensus is that the school is considered a safe environment for students and staff, reports of individual bullying and chronic misbehavior represent serious problems requiring attention.

However, the student body is not the only group that has experienced bullying. As with any innovation, the introduction of America's Choice has created divisions. A small group of staff has embraced the model enthusiastically. The majority of staff

members are anxious, but willing to implement it, and a small faction has strongly resisted the WSR model. In this circumstance, however, the resistance has reached such critical proportions as to result in actual intimidation of staff members and threaten to undermine the success of the program. (R-9 at p. 16; R-11 at p. 15)

The CAPA report did not specifically identify the resistors to the America's Choice model. No one other than Weiss testified as to the conversation with the 4 teachers. Therefore, I cannot conclude whether the CAPA team even knew who the "resistant" teachers or "harassers" were who were allegedly undermining the success of the program. Nevertheless, the CAPA team felt that the administration should take whatever steps were necessary to end the harassment and intimidation described by the 4 teachers and identified in the report (3T40; 8T19).

32. As one of six next steps on the issue of school culture, the report suggested that:

The underlying issue of division in the staff regarding the acceptance of the WSR model should be immediately addressed in order to ensure the integrity and success of the entire program. (R-9 at p. 15; R-11 at p. 19)

33. There followed in the report 3 specific recommendations to address the school culture issue: (1) develop a campaign and program to prevent bullying; (2) give students access to more extracurricular activities, social and academic clubs, intramural sports and multi-cultural activities; and (3) reconfigure the child study team offices to offer more privacy while providing

services (R-9 at pp. 19-20; R-11 at pp. 19-20). Neither the next steps nor the specific recommendations in Standard 4, School Culture, specifically suggested teacher transfers to address the staff division.

34. Another area of concern addressed by the CAPA team report was the issue of evaluation and assessment strategies to monitor and modify student instruction (R-9 at p. 9 and 10; R-11 at p. 9 and 10). As a recommendation in this area the Team suggested that administration "provide professional development for all staff on creating and scoring rubrics" (R-9 at p. 10; R-11 at p. 10).

35. Finally, under Standard 7, entitled "Efficiency (Quality of Leadership. . .)", the report found in pertinent part:

The school leadership is dedicated to implementing the WSR model, although the principal is serving in an acting capacity. One challenge facing the new school principal has been the orientation and incorporation of the new WSR model into the educational community. Resistant teachers have expressed little understanding and awareness of the Whole School Reform model elements. Staff are cognizant of students' GEPA scores, but the lack of a coherent unified cross-curricula approach to correcting and addressing skills is absent from weekly and monthly planning goals of teachers. (R-9 at p. 27; R-11 at p.26 and 27)

36. Following the preparation of the draft CAPA report (R-9)^{9/}, on May 23, 2005, Weiss met with Wilson, his administrative staff and Trono to discuss the report's findings, conclusions and recommendations (R-9, R-10; 3T43; 6T103-6T104, 6T169). Trono, Wilson and the others accepted the report with no major reservations or changes (3T44-3T48).

37. The recommendations of the report, according to Weiss, were intended to be implemented (3T48). If the recommendations were not followed, a school or district that continued to fail to meet AYP faced increasingly stiffer sanctions, including, but not limited to, the transfer of the entire staff and the closing of the school (3T49-3T50). In 2005-2006, Costley faced restructuring as a sanction (R-6). In Weiss' experience, it is often the principal that is transferred first when there is a restructuring (3T66).

Board Response to the CAPA Review

38. After the meeting with Weiss, a series of meetings took place between Wilson, Scott, Veale, Watson and Assistant Superintendent Dr. King to discuss the CAPA report and address what needed to be done (R-9; 6T61, 6T74-6T75, 6T79). All options for a school under corrective action were considered. Wilson, in particular, considered the option of replacing staff who were not

^{9/} The final summary report (R-11) with no substantive changes was forwarded to Wilson on October 21, 2005 (R-17).

relevant to making AYP in conjunction with the CAPA finding that some staff were not embracing the America's Choice model (8T35). A decision was made to replace staff at Costley and the other two middle schools (Truth and Healey) (6T62-6T63).

According to Scott, neither Wilson, she nor the others (Veale, Watson and King), who took part in this series of meetings, knew who the particular staff were that needed to be transferred since the CAPA report did not contain the names of any specific teachers (R-9, R-11). Wilson, therefore, summoned the 3 principals from Costley, Healey and Truth to get the names of staff to transfer (6T63-6T64, 6T77). In making the decision as to whom to transfer, although one of the measures in determining whether a school meets AYP is its student GEPA scores, Wilson did not look at the GEPA scores before he made the decision about specific teacher transfers (8T38-8T39).

39. Meanwhile, following the May 23, 2005 meeting with Weiss about the draft CAPA report, Trono met and shared the report with her coaches, as well as NCRE cluster leaders, Dennis and Pollhill (R-27; 6T107-6T108; 7T10-7T11, 7T113-7T114). They discussed what could be done to address the personnel who were not implementing the model (6T108).

Wilson had previously informed Trono in June 2004 that if any teacher had a problem implementing the America's Choice model and wanted a transfer, they could be transferred (6T108). In

particular, Trono, the coaches, Dennis and Pollhill discussed generally teachers who were not implementing the model and had previously, during the year, expressed an interest in transferring (6T10). At a subsequent meeting, in June 2005, with the coaches, Trono discussed specific names of teachers she wanted to transfer (7T115).

40. Also, in June 2005, Trono met with Wilson and the other 2 Hart complex principals to discuss the implementation of the America's Choice model for 2005-2006 (6T168-6T169). Trono had the task of preparing the staffing schedule for the Hart complex schools for the next year (6T168). During this June meeting, there was a discussion about personnel and the needs of the complex (6T168).

Wilson asked Trono and the other principals which teachers needed to be transferred because they were not implementing the America's Choice model (6T108). Wilson wrote down names on a white board he kept in his office. Trono gave him 7 names, while the principals at Healey and Truth gave Wilson the names of 2 and 3 teachers respectively (R-15, R-16). Wilson also asked each principal specifically why the teachers should be transferred (R-15; 6T170).

41. Of the 7 teachers Trono told Wilson she wanted transferred, Trono felt that all 7 were not implementing the America's Choice model. As far as Trono was concerned, all of

these teachers were properly trained in the implementation of America's Choice, but, in her opinion, did not want to implement the model (7T130).

Most of the teachers, Trono also told Wilson, previously expressed a desire to transfer out of Costley (R-15; 6T170-6T171; 7T129-7T172). The only two, according to Trono and Wilson's notes of his meeting with Trono, that expressed no desire to transfer were Sharonda Allen and Carla Hinds (R-15, R16). The other 5 teachers who had expressed a desire to transfer and, according to Trono, were not implementing the model, were Clarisse Smith-Jarvis, Rodney Beaver, Dr. Susan Rich, Deborah Waters and Dr. Haggerty (R-15).

Wilson had no first hand knowledge of anyone's desire to transfer (8T28). Wilson understood from Trono, however, that these 5 teachers wanted to leave and were not supportive of the America's Choice model - e.g. they did not want to implement the new model (R-15; 5T148-5T149).

According to Trono, Sharonda Allen's hearing that spring before the Board and the fact that the teachers she recommended for transfer attended the hearing in support of Allen and against Trono's recommendation of non-renewal, never came up in her meeting with Wilson as a reason to transfer Smith-Jarvis, Hinds, Beaver, Rich, Haggerty or Waters (6T171-6T172). Wilson also denies that his decision to transfer these teachers had anything

to do with their testimony at the Allen hearing (5T147). Dr. Scott confirmed that at no time during her discussions with Wilson about transferring staff from Costley did the topic of Sharonda Allen's hearing arise (6T65).

42. In addition to Trono's recommendations, Wilson testified generally that he relied on his assistant superintendent, the two mentors and the America's Choice representatives in making his final transfer decision (8T26-8T27). Assistant Superintendent Scott, however, testified that neither she nor Wilson knew who the specific teachers were who were "resisting" the America's Choice model until the principals of the Hart complex schools gave them their recommendations (6T74-6T75). Scott herself never observed any kind of intimidation related to the America's Choice implementation or resistance to the implementation of the model at Costley (6T76). According to Scott, this information about the resistance came exclusively from the CAPA team (6T76).

Scott was a credible witness. Her answers on both direct and cross examination were knowledgeable and responsive. As assistant superintendent, Scott does not report to Trono. Nor does she currently report to Wilson who is no longer employed by the East Orange Board. Her answers, therefore, were not colored by those professional relationships. I credit her testimony. Additionally, neither the mentors (Veale or Watson) nor the

America's Choice representatives (Dennis or Pollhill) testified. I find that Wilson relied primarily, if not exclusively, on Trono's recommendations in regard to the Costley staff transfers.

Wilson accepted all of Trono's transfer recommendations. Based upon her recommendations, Wilson then recommended and, in August 2005, the Board approved the transfers for the 2005-2006 school year. Dr. James Haggerty, however, left the district before his transfer was effectuated (8T31).

43. Subsequently, in a December 12, 2005 memorandum to Board President Hall in response to questions Hall posed to Wilson about the Costley transfers, Wilson explained the events leading up to and the reasons for the transfers as follows:

At the end of the 2004-2005 school year in June, I had conversations with each of the Middle School principals about the success of their schools in implementing the America's Choice program. In addition, discussions were also held with Dr. Gloria Scott, Ms. Brenda Veale, Mrs. Gloria Watson, and the America's Choice representatives. In order to have a successful second year in implementing the new middle school reform program, there was a general agreement that those teachers who did not desire to be a part of the reform effort should be transferred, and those staff members who the principals, the mentors, and central office felt were not going to be effective in implementing the model should also be transferred. Seven staff members from Costley, three from Truth, and two from Healy were identified as transfer candidates.

Let me review for you the Costley staff changes that were made to improve the [America's Choice] program. Ms. Allen had

come before the Board in a Donaldson Hearing. The Board recommended to me that Ms. Allen be given another chance. I met with her to review my decision to give her another assignment for the 2005-2006 school year, and she was transferred to Campus 9. Ms. Smith-Jarvis was not happy with the evaluation of her teaching performance by Ms. Trono. She desired to be transferred. Ms. Waters had previously received an increment withholding for poor performance and attendance. As a result of the teaching demands of the America's Choice program, she also desired to leave the school. Dr. Haggerty had received a statement from Ms. Trono concerning the fact that he was not turning in his lesson plans. He resigned and went to another District. Dr. Rich desired to leave the school and indicated to the school secretary and some Costley staff that Ms. Trono did not need to sign her transfer because Mrs. Potter was the principal and she would have Mrs. Potter sign her transfer. Ms. Hinds had been observed by Ms. Veale as not doing a good job of implementing the America's Choice model. A decision was reached to transfer Ms. Hinds to another school. Mr. Beaver was the model teacher for math. Ms. Trono had observed him a number of times seated at his desk when she observed his teaching. Based on the close monitoring by Ms. Trono, he also requested a transfer. (R-16 at p. 4)

44. The Costley teachers were notified of their transfers shortly before or on the day they reported back to school in September 2005 (1T42-1T43, 1T114; 3T104; 9T44). None were given an explanation for their transfers by Trono or anyone from the administration before or after the transfers (R-16; 1T42, 1T114; 3T104; 9T44).

In addition to the transfers of Costley staff for 2005-2006, there were 3 teachers transferred out of Truth Middle School, and 2 teachers were transferred out of Healey Middle School. The principals at these two schools had also identified the teachers that needed to be transferred to Wilson in the June 2005 meeting, although the specific reason for these transfer recommendations is not in evidence (R-15).

45. As a result of the Costley transfers, the Association grievance chair, Priscilla Burke, filed a grievance claiming that the transfers were for disciplinary reasons (5T154). Wilson denied the grievance asserting that all the teachers were transferred to improve the educational programs at Costley; that no teacher was transferred because he/she supported Sharonda Allen, as asserted by the Association; and refuting the Association's claim that he (Wilson) or a Board member referred to Costley teachers as "resistors" during an August 30, 2005 Board meeting (CP-7).

On cross examination, however, Wilson admitted that during that Board meeting, the term "resistors" was used by an America's Choice representative and, during the meeting, he and some Board members might have also used the term (8T32-8T33). Dr. Scott also testified that during the August 30 Board meeting, she heard Pollhill refer to the Costley teachers as resistors (6T70).

Neither Dr. Pollhill nor Dennis testified so it is unclear from the record where the term resistors originated. However, in the December 12, 2005 memorandum (R-16), Board President Hall asked Wilson to respond to the following:

If you will recall approximately 8 teachers were transferred from Costley last year. It is my understanding that these teachers were qualified teachers, but considered "resistors." I have since learned that the term "resistors" was used to refer to teachers who refused to be bullied by the principal. There is something going on at Costley that bears an investigation. (R-16)

Wilson responded:

The term resistors, as you may recall, was discussed during our spring workshop on the progress of the middle schools implementing the America's Choice Whole School Reform Model. Dr. Loretta Pollhill indicated that the first year reform efforts in implementing the America's Choice model, in general, was successful. She pointed out, however, that [there] were some teachers who were resistors in the various middle schools. Dr. Pollhill and her colleague Ms. Jackie Dennis, as well as members of my staff and I discussed this issue. We had to decide whether some of the staff in the various middle schools should be asked to continue to implement a reform model that they did not support, or bring in new staff who desired to implement the America's Choice Reform efforts. (R-16)

Although it appears that Wilson attributes the use of the term to Pollhill, there is no evidence of whether Pollhill knew who the specific teachers were who, she felt, were resisting the implementation of the model, since neither Wilson's response to

Hall nor his testimony support that either Wilson or Dennis or Pollhill knew specifically which Costley teachers were considered to be "resistors". It is also apparent that the term "resistor" was used as early as spring 2005.

46. Also, in his response to Hall (R-16), although Wilson did not directly address the issue raised by Hall regarding the alleged bullying by Trono or whether there was something "going on at Costley that bears an investigation", under a heading entitled "Summary Comments about Costley Principal Amalia Trono", Wilson wrote:

Let me indicate that I am aware that Ms. Amalia Trono, at times, is pointed in her interactions with members of her Costley staff. She does indeed need to become less aggressive in directing the instructional activities of the school. Assistant Superintendent Veale and Director of Secondary Education Nichols have both met with Ms. Trono and have offered suggestions to her about improvements that would be professionally helpful. They will both meet with her on a regular basis during the next few months to monitor her progress. Ms. Trono's manner of interacting with her staff will be incorporated into her annual evaluation. (R-16)

47. On March 27, 2006, Wilson, Scott and Assistant Commissioner Gordon MacInnes met to discuss the restructuring plans at Costley, Healey and Truth (R-18; 6T68). NJDOE retroactively approved the district's implementation of various strategies including, but not limited to, the appointment of 3 new principals - Trono was given a permanent appointment as

principal at Costley - the transfer of teaching staff, adding 6 new teachers, selecting America's Choice to replace Talent Development and encouraging parental involvement (R-18; 6T83).

48. In 2005-2006, besides the permanent appointment of Trono as principal at Costley, Natashia Alexander, who had been the literacy coach at Costley, was promoted to assistant principal at Healey. Yvy Joseph became Costley's assistant principal and acting literacy coach in place of Alexander. Balogh, who had been a model teacher in 2004-2005, became the design coach at Costley, and Masia remained as math coach (R-16; 5T85; 6T8).

As to the model teachers at Costley for 2005-2006, the 3 language arts model teachers were Lisa Durden (8th grade), Darrell Shoulars (7th grade), and Patricia Dent (6th grade). The math model teachers were Elisavet Kalargheros (8th grade) and Marianne Lahr (6th grade).

Sharonda Allen

49. In 2004-2005, Sharonda Allen was a second-year social studies and language arts teacher at Costley (6T112; 7T116). During that year, Trono determined that Allen had problems implementing the America's Choice model and was not contributing to a positive school climate because she had conflicts with some of the teachers (6T112). During 2004-2005, Trono was aware of a dispute between Allen and Monique Van Wells, who was a model

teacher, that had spilled over from the previous school year (7T82-7T83). Trono understood that there was a division among the teachers at Costley between the model teachers and coaches and others who supported Allen, such as Dr. Susan Rich, Carla Hinds and Smith-Jarvis (7T82).

50. In particular, in November 2004, Trono had a conference with Allen regarding Allen's response to a principal's book-of-the-month selection that involved the subject of witches (6T113). Trono was aware of Allen's comments at team content meetings questioning the validity of the America's Choice model. Trono pointed out to Allen that she could ask for a transfer if she continued to have problems implementing the America's Choice model (6T114). Trono memorialized this conference meeting in a follow-up memorandum to Allen (R-20).

51. On February 2, 2005, Trono conducted a classroom observation of Allen's class (R-21). The observation listed numerous ratings of "unsatisfactory" and "in need of improvement" as well as the following negative comments:

Ms. Allen was reading from the writer's workshop book the entire period that I observed her.

Ms. was not prepared in teaching her class. Materials to illustrate the lesson were not organized.

More training with the coach is required to roll out the model effectively.

The rituals and routines of America's Choice model should be in place everyday. (R-21)

Under professional improvement plan, Trono wrote in part:

When I came to the classroom at the beginning of the class, Ms. Allen was seated behind her desk. She was reading from the worksheet on student commentary. Then she stood up and put a sticky note on the board and explain [sic] the procedure for completing the note. She proceeded to read from the Writing Book for the entire period. The rituals and routines of the model were not implemented. She needs to be more prepared in class. The opening, work activity, and closing of the workshop model must be in place as she delivers her lesson. (R-21)

52. Sometime in the spring of 2005, Trono recommended to the Board Allen's non-renewal for 2005-2006. A Donaldson hearing to present Trono's recommendation to the Board was scheduled sometime in the spring of 2005 (5T146). The record does not reflect the exact date of the Donaldson hearing. Smith-Jarvis testified that the hearing was in late March 2005 (3T105, 3T128). The hearing was definitely before the meeting between Trono and Wilson in June 2005 to discuss the names of teachers to be transferred, because at the June 2005, Trono and Wilson discussed Allen's transfer to Campus 9. Since Trono had originally recommended her termination and it was only after the Donaldson hearing that a decision was made to transfer Allen instead, the June 2005 meeting with Wilson had to have taken place after the

Donaldson hearing. Therefore, the Allen hearing appears to have been sometime between late March and June 2005.

53. Association Grievance Chair Priscilla Burke came to the Donaldson hearing with Allen (6T118). It is standard procedure for the Association to support teachers like Allen who are recommended for non-renewal (2T51).

54. At Allen's Donaldson hearing, several teachers spoke on behalf of Allen, including Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Dr. James Haggerty and Deborah Waters (1T40-1T41, 1T113; 2T25, 2T31-2T32; 3T105; 4T27; 6T118-6T119; 7T122). Carla Hinds was not present but Smith-Jarvis read a statement on her behalf in support of Allen (8T48; 9T31). Stephen Laird, another teacher, was also present but did not speak (7T121). Laird, Hinds and Smith-Jarvis were all Association representatives (2T32). Also speaking on behalf of Allen was Anthony Carr who was a special education teaching assistant (6T160-6T161; 7T121). Trono and Wilson were present during these presentations in support of Allen (5T146-5T147, 6T118-6T119).

In addition to the above noted speakers, several Board members urged Wilson not to terminate Allen because she was a product of the East Orange school system and lived in the community (5T146). They suggested transferring Allen to a different school instead (5T146). At the conclusion of the hearing, Wilson decided, because of Allen's commitment to the

community and at the request of the Board members, not to terminate her but to transfer her to the 9th grade campus, known as Campus 9 (5T146-5T147).

55. Of the five teachers who spoke in support of Allen at the hearing, plus Hinds whose statement was read by Smith-Jarvis, all were transferred out of Costley on the recommendation of Trono and with the approval of Wilson for the 2005-2006 school year (R-15, R-16; 5T139-5T140, 5T148-5T149; 8T19-8T20, 8T28). Before the 2005-2006 school year, however, Haggerty left the district (R-16). Carr, the teaching assistant, was also transferred.

56. Wilson denied the Association's grievance regarding these transfers (CP-7). Specifically, he denied that the transfers were because any teacher supported Allen and that any Board member referred to these teachers as "resistors" at the August 30, 2005 meeting at which the transfers for the 2005-2006 school year were approved (CP-7). Wilson explained that the transfers were "to improve the educational programs at the affected schools" (CP-7).

57. Trono also denied that any of these teachers were recommended by her to be transferred because of their appearance at the Allen hearing (6T125-6T126, 6T134-6T135, 6T154-6T155, 6T159, 6T171-6T172). Trono asserts that there were only two reasons she recommended to Wilson that Smith-Jarvis, Beaver,

Hinds, Rich, Haggerty, and Waters be transferred: because they wanted a transfer and/or because they were not implementing the America's Choice model (R-15; 5T142-5T143; 6T170-6T171, 7T129-7T130; 8T27-8T28).

As to Carr, although Trono evaluated him at the end of April 2005, rating him below average in a couple of areas and writing a memo in May 2005 regarding his unacceptable weekly logs, she asserts that his transfer was done through the special education department as part of a regular personnel rotation and that she had nothing to do with it (R-25, R-26; 6T162, 6T164-6T166). Carr was not a name that she gave to Wilson at the June 2005 meeting (R-15). The seven individuals she recommended for transfer were all teachers. Carr did not testify. I cannot find as a fact that Carr was not transferred as part of a regular special education personnel rotation.

The Transferred Teachers

Rodney Beaver

58. Rodney Beaver was hired in 2000 as a language arts teacher and assigned to Costley (1T100).

59. In 2003-2004, Trono prepared Beavers yearly evaluation (R-5). She rated him satisfactory in all areas with the exception of attendance where he received an unsatisfactory rating with the comment that "[h]is attendance is problematic this year due to his wife's difficult child delivery. He is

encouraged to maintain a good record of attendance.”

Nevertheless, for the 2004-2005 school year, Beaver was assigned to teach 6th grade as a math and science teacher and chosen by Trono, together with Deborah Balogh, as a model math teacher under the America's Choice program (R-27; 1T100, 1T103, 7T73). Trono selected Beaver for this position, because she knew that he would be a very good model teacher (7T73).

60. On March 30 and 31, 2005, before Beaver received this annual performance evaluation (R-4) on April 6, 2005, Beaver met with Trono. At the first meeting, Trono discussed the appropriate way to refer students because, she felt, Beaver had improperly distributed a memo to the staff about a student's misbehavior, indicating that he was not happy working at Costley and wanted a transfer (6T121-6T122).

At the March 31 meeting, Beaver discussed with Trono his dissatisfaction with the professional atmosphere at Costley. Beaver explained that different and opposing teacher factions prevented the staff from working together in teams. Teamwork was required by the America's Choice model, and Beaver expressed, therefore, that the atmosphere at Costley was counterproductive to student achievement (1T107-1T108, 1T116-1T117). Beaver compared this situation to when he first arrived at Costley and the staff was like a family working together for the students (1T115). Beaver indicated to Trono that he was not happy and

would like to transfer (CP-3; R-22). Association representative Ms. Viquez was also at this second meeting on March 31 (1T105).

61. Trono sent Beaver a memo dated April 1, 2005 (R-22) summarizing the two conferences on March 30 and 31, 2005. Trono reminded Beaver that he was advised to be discreet in distributing memos so as to safeguard student confidentiality (R-22). She then wrote:

You indicated that you are not happy working here and you wanted to transfer out of this school. Please ensure that your attitude towards your job assignment does [not] impact your teaching performance and in the manner you interact with your students and colleagues. I expect you to be professional at all times. (R-22)

62. On April 1, Beaver sent a rebuttal to R-22 and a clarification of the March 31 conference (CP-3). He wrote in pertinent part:

As per our conversation yesterday March 31, 2005, I told you in the presence of Ms. Viquez, my union representative, that although I am not happy here and I would like to transfer, I still provide tutoring for my students every lunch period. To further clarify that point, I do not have any problems with my students or with my colleagues. I told you that I am unhappy with the school climate. This has nothing to do with my classroom or how I interact with my peers. During the designated interaction periods, i.e. staff meetings and team meetings, I conduct myself with the highest level of professionalism. Also, as stated in our conversation yesterday, I'm here to provide the highest level of instruction to my students.

My mission as an educator is to influence and mold the lives of my students. My desire is for my students to meet and exceed the benchmarks stated in the New Jersey core curriculum content standards . . . My being unhappy with the climate in this school will not stop me from being a professional, from acting professionally, or for achieving my mission. (CP-3)

63. On April 6, 2005, Beaver received his evaluation for 2004-2005 covering the period of September 1, 2004 through March 30, 2005 (R-4). The evaluation indicated mostly satisfactory ratings (R-4). Under the heading "Professional/Personal Qualities", he received a "needs improvement" with the comment that he needed "to develop a more positive approach in dealing with problematic situations." Beaver was also rated "unsatisfactory" for attendance for using 5.5 personal illness days, even though this was not enough days to qualify for a disciplinary memo. Under Board policy, a memo is issued for more than 6 days absence (R-4; 7T69, 7T79). Nevertheless, Trono rated his overall performance satisfactory, recommended him for contract renewal with salary increment, and advised Beaver to address areas of improvement noted in his "Professional Improvement Plan" (R-4).

Trono wrote under Professional Improvement Plan:

Your rituals are well established. However, you need to adjust instructional strategies and activities to meet the needs of all your students at different levels of math performance. Ensure that all you students will achieve the standards through your

collaboration with your team members and the community and through careful planning and preparation. You need to improve your record of attendance for it has direct impact on student performance. A more positive outlook about your job assignment is recommended for it has an effect on the way you interact with your students and colleagues. (R-4)

According to Trono, during 2004-2005, although Beaver had his classroom environment in place, he was not consistently implementing the routine of the model (6T124). Trono explained, however, that although there is nothing in R-4 to indicated that Beaver was not properly implementing the America's Choice model, it is implied in her comment that he needed to adjust instructional strategies and activities to meet his students' needs (7T75).

64. Prior to this evaluation, according to Beaver, Trono had never criticized or discussed his teaching performance or his implementation of the America's Choice model (1T111, 1T138).^{10/} During 2004-2005, Trono was in Beaver's classroom for approximately five minutes at a time with other administrators on the focus walks and a couple of times for half a period for classroom observations, although he never received formal observation reports afterwards (1T136-1T137). Beaver's math

^{10/} Beaver testified generally that he and Trono may have had conversations during the year (1T138), but since he was a model teacher, I cannot find that these conversations were about his own teaching performance or, if they were, whether these "conversations" covered topics critical of his teaching performance and implementation of America's Choice.

coach, Masia, was on the focus walks with Trono and noticed nothing in particular about Beaver's classroom performance that stood out or needed particular attention (5T17-5T18).

Trono, however, testified she had discussions with Beaver about his performance outside of his written evaluation (R-4) during her focus walks (7T137). In particular, she testified:

I told [Beaver] that on several occasions when I do my visits, my focus walks, I would see him behind the desk, behind his desk all the time rather than be engaged with the kids during work activity. And he told me that he has diabetes and, you know, it's hard for him to move around the room, but I said, you can still do it even if you, you know, have that kind of problem. (7T137)

Other than this one focus-walk discussion, there is no evidence to support that Trono gave Beaver additional feedback on his implementation of America's Choice prior to his annual evaluation (R-4). Masia's testimony supports this conclusion.

Trono also testified that she had general discussions with the staff during staff meetings about problems that she observed during her focus walks (7T138-7T139). I credit that she spoke to the staff generally during the staff meetings about implementation of America's Choice but do not infer that she discussed individual teaching performances -- e.g. Beavers' performance -- during those meetings.

65. Sometime in April 2005, Beaver submitted a transfer request to Trono and then to Dr. King, requesting a transfer to

either Whitney Houston or Cicely Tyson Schools (1T103-1T105). Dr. King told Beaver that his transfer was denied because it would not have helped King to move a middle school teacher from one building to another and then have to fill another middle school position (1T110-1T111).

66. Beaver attended the Board meeting at which Sharonda Allen's employment was discussed (1T112). Trono was present when he spoke on Allen's behalf about her qualifications as a teacher and what he observed of Allen's performance (1T113).

67. In June 2005, Beaver was notified that his assignment for 2005-2006 was at Costley (1T109). However, Beaver was notified by Trono at a late August 2005 training session that he would not be coming back to Costley (1T114). On the first day of school in September 2005, Beaver was instructed by the personnel office to report to George Washington Carver School (1T112-1T114). He was not given a reason for his transfer by the administration, but he is satisfied with his current assignment and does not want to go back to Costley (1T114, 1T118).

Carla Hinds

68. Carla Hinds is currently assigned to the Glenwood Campus Alternative Middle School as a language arts teacher (9T26, 9T45). She was transferred to Glenwood in the fall of 2005 from Costley where she taught 7th grade language arts and had worked since 1996 (9T26-9T27, 9T34, 9T45). In 2004-2005,

Hinds was also an Association executive board member and building representative at Costley (9T29).

69. At the end of the 2003-2004 school year, Hinds applied for a position as a teacher on special assignment, but she was never notified whether her application was accepted or denied (9T46-9T47). Also that year, Hinds, Smith-Jarvis and Rich requested permission to attend a 4-day international education conference in Hawaii. They had been asked to be presenters at the conference (9T47-9T48). Although Trono signed off on the request, but the request was later denied by the Board (6T150-6T151; 9T48). Hinds never discussed these matters with Trono, did not blame Trono for not getting the position or for the denial of her request to attend the conference (9T46-9T49). I draw no inference of hostility from these actions. In 2003-2004, Trono was assistant principal at Costley. as to the application for the teacher-on-special-assignment position. There is no evidence what, if any, Trono's involvement was in the decision-making process. As to the conference, Trono approved the request to attend. It was the Board that denied the request.

70. During 2004-2005, Hinds, who had never previously worked with the America's Choice model, received her first training in the model on the first day of school (9T28). She then received training during the year at team meetings and with

the literacy coach, Natasha Alexander, on a weekly basis (9T28, 9T44-9T45).

71. Trono and other administrators, including Veale, came into her classroom on focus walks during the school year (9T34-9T36, 9T49). After the first focus walk in October 2004 Hinds received a checklist with a suggestion that she remember to label items such as student writing journals (9T36-9T37). Another focus-walk checklist indicated that she needed to up-date student work on the bulletin board (9T37-9T38). Hinds corrected these deficiencies after receiving the checklists (9T38).

Design Coach Yvy Joseph, who participated in the focus walks with Trono in 2004-2005, recalled that Hinds sat behind her desk for the 5 minutes the focus group was in her classroom and that Veale was particularly upset that Hinds didn't get up when she saw the central office personnel walk into the classroom (6T13-6T14, 6T45). Hinds testified, however, that she got no feed back from Veale about this or any other matter (9T49). Veale did not testify. Even if Veale and Joseph observed Hinds seated during class and felt that this was not appropriate for the America's Choice model, there is no evidence in the record that Hinds was advised of this performance issue.

Hinds also received verbal feedback from the focus walks, in particular from Alexander as well as the America's Choice facilitator and the Board's representative as to new things she

should do as part of her on-going training -- e.g. putting dates on her charts (9T38-9T39). Hinds thought these were good suggestions and incorporated them into her routine (9T39). She did not object to the America's Choice model nor did she complain to Trono about it (9T55).

72. At the end of March or beginning of April 2005, Trono conducted a classroom observation in Hinds' class (9T42). Shortly thereafter, on April 6, 2005, Hinds received her annual performance evaluation (R-24). Trono noted, specifically, that Hinds needed to ensure that her bulletin boards were updated regularly and that Hinds had been tardy 14 times.

Under the heading of "Commendations", Trono wrote in part that Hinds related well to her students. Under the heading of "Professional Improvement Plan", Trono wrote:

You need to ensure that the America's Choice model is effectively implemented in your class. Bulletin boards need to be regularly updated. Source books, student folders, and charts should always be monitored. Reporting to your class on time is necessary to ensure student safety. You need to make sure that the literacy needs of your students are met through your careful planning and differentiated instruction. (R-24)

Trono summarized that Hinds needed to address the concerns she raised or she would recommend adverse personnel action (R-24).

73. Trono admitted that R-24 is the first time she put in writing the deficiencies she observed in Hinds' teaching performance (7T128). R-24 does not reflect that Hinds had been

previously advised about her performance deficiencies (R-24; 7T129). According to Hinds, prior to her receipt of R-24, no administrator told her that she was not effectively implementing the America's Choice model, or more specifically, that the literacy needs of her students were not being met through planning and differentiated instruction nor had anyone spoken to her about tardiness - e.g. she received no disciplinary memos (9T40-9T42). I credit Hinds in this regard.

However, the evidence also supports, as Trono testified, that, during the year, Hinds received feedback from the focus walk personnel through checklists, in particular about labeling student journals and up-dating student work on the bulletin boards (7T128). Hinds agreed with the suggestions and addressed the specific concerns raised by the observers upon receipt of the checklist (9T38-9T39). There is no evidence that Hinds did not follow through on the checklist suggestions and correct these deficiencies.

74. Hinds met with Trono about R-24 and made it clear to Trono that she wanted her classroom to be successful and asserted that her students did very well that school year (9T54). Hinds also wrote a rebuttal to R-24 in particular addressing the issues of tardiness and her professionalism (9T43, 9T52). In regards to the tardiness issue, Hinds contended that, previously, staff was marked tardy if they came in after 8 a.m., but that recently they

were being marked tardy after 7:50 a.m. Hinds explained that she was not aware that there was a change in policy (9T53).

75. Hinds did not attend the Sharonda Allen hearing before the Board but sent a statement in support of Allen that was read by Smith-Jarvis who attributed the statement to Hinds (2T32; 9T31).

Subsequently, in July 2005, Hinds, who was also an Association building representative, attended a meeting at Allen's request with Allen and Dr. Wilson (9T32). Wilson reviewed Allen's past problems and explained what was expected of her in the future (9T32-9T33). Wilson informed Allen that if he had any problems with her in the next year he would fire her (9T32-9T33). When Allen inquired why Wilson wanted her fired, Wilson responded that if she (Allen) wanted to know why she would have to come without Hinds (9T33). Hinds explained that Allen had asked for union representation and that Allen had a right to be represented since she was not aware of why she was being called in to the meeting during the summer (9T33). Hinds then asked Wilson how open his door would be if Allen had concerns. Wilson responded that it was not his job to counsel teachers and his door was not open to Allen (9T33). Wilson did not refute that this meeting occurred or that the conversation as described by Hinds was not accurate.

This was not the first disciplinary meeting Hinds had attended with Allen. In the middle of the 2004-2005 school year, Hinds attended a disciplinary meeting with Trono and Allen (9T30-9T31). Also towards the end of the 2005, Hinds attended a disciplinary meeting between Beaver and Trono (9T30-9T31). The record does not reflect the specifics of either meeting.

76. Hinds first learned that she was being transferred when friends told her in August 2005 that she should call the school to check about her assignment (9T44). Hinds never made a request to transfer (9T27).^{11/}

Dr. Susan Rich

77. Dr. Susan Rich was hired by the Board in 1997 as an 8th grade language arts teacher (1T27). In 1999, she was assigned to Costley to teach 6th grade language arts under Principal Roxolana

^{11/} Masia testified that Hinds was a friend of his and that she told him several times during the 2004-2005 school year that she was unhappy and wanted a transfer (5T25). I credit Hinds. Hinds denied telling Masia that she wanted a transfer (9T27). Masia was an unreliable and hostile witness, having resigned from the Association as a union representative in 1999 after a dispute with the executive committee and Greadington. Masia felt he was unfairly treated by both the Association and Greadington. Also, he was recently the subject of a grievance filed by another unit member that he felt was not fairly handled by the Association or Greadington. (see generally, discussion below under heading Nicholas Masia - Shoulars and Van Wells). Also, Wilson and Trono confirmed that Hinds never requested a transfer (R-15; R-16). In any event, whether Hinds made those statements or not is immaterial because the question before me is whether her transfer was made primarily in retaliation for the exercise of protected activities.

Potter and Assistant Principal Trono (1T47). In 2004-2005, Rich taught 8th grade language arts at Costley (1T47).

78. In the fall of 2004, Dr. Wilson, the America's Choice facilitator (Dr. Pollhill) and Trono conducted a focus walk in her classroom (1T31-1T33). Pollhill and Wilson complimented Rich on her performance and remarked that her classroom looked in line with the America's Choice model (1T32). Rich was not informed by any of the observers that she needed to correct any performance problems (1T33-1T34).^{12/} Subsequently, other than the focus walks during that school year, Trono did not conduct any independent classroom observation or look at Rich's lesson plans (1T58, 1T95).

79. On November 30, 2004, Trono issued Rich's evaluation covering the period from September 1 to November 30, 2004 (CP-1). Rich received all satisfactory ratings. Under the heading of "Professional Improvement Plan", Trono wrote that Rich should continue to attend training for the effective implementation of

^{12/} Yvy Joseph recalled that on one occasion Rich didn't have certain charts on the wall, but she did not communicate that to anyone, because Trono was also on the focus walk. Joseph assumed that Trono would observe it (6T13, 6T35). Joseph also didn't know whether the language arts coach (Alexander) observed the chart situation or followed up with Rich (6T37-6T38). Alexander did not testify. I do not infer from this testimony that Joseph's observation regarding the charts was communicated to Rich and credit Rich's testimony that she was not told by those on the focus walks of any problems in implementing the America's Choice model.

the America's Choice model and continue to implement the rituals and routines of the model (CP-1).

80. On February 8, 2005, Trono issued Rich a memo for unsatisfactory attendance (R-3). The memo indicated that Rich had used 11 days, including personal days (R-3; 7T68). It is standard Board policy to issue a memo if a 10-month staff member is absent for more than 6 days (7T69). Between February 8 and April 6, 2005, when Rich was given her final annual evaluation (CP-2), Rich received no other attendance-related memos (7T72).

81. On April 6, 2005, Trono issued Rich's annual performance evaluation covering the period of September 1, 2004 through March 30, 2005 (CP-2). Rich received all satisfactory ratings with the exception of two areas where Trono indicated that she needed improvement. In the area of "Teaching Strategies or Techniques", Trono wrote that Rich needed to ensure that all the components of the America's Choice model were consistently addressed in her class (CP-2). Under the heading of "Professional/Personal Qualities", Trono recommended that Rich needed to maintain a professional manner in dealing with her colleagues (CP-2). Trono testified generally that Rich had some conflicts with other staff members in 2004-2005 but gave no specifics as to what those conflicts were (6T146).

In the evaluation, under the heading of "Attendance/Punctuality", Trono gave Rich an unsatisfactory rating for

attendance which included 9 days absence for illness and 4 personal leave days (CP-2). Personal leave days must be requested and approved in advance (7T66). Nevertheless, Trono counted these days towards the unsatisfactory rating (7T67). As to "Punctuality", Rich received a satisfactory rating for only 1 time tardy (CP-2). Although Trono testified on direct examination that Rich was always late to her post, I do not credit this testimony that is not supported by CP-1, CP-2 or any disciplinary memos (6T146).

Finally, Trono observed that Rich's teaching performance was generally satisfactory with the exception of her recent absences and suggested that Rich address areas of concern noted in her professional improvement plan or Trono would recommend adverse personnel action. Under the heading of "Professional Improvement Plan", Trono wrote:

You need to ensure that the America's Choice Model is effectively [sic]. More teacher engagement during the work activity is recommended. Your excessive absences have negative impact on student performance and consequently could impact students' performance on the GEPA. You also need to develop a more positive attitude towards your students achieving well on the GEPA, in spite of their low stanine scores. Maintaining your professionalism in dealing with all your colleagues will have a positive impact on school climate. (CP-2)

Trono felt that Rich had a different philosophy on student achievement than she did. According to Trono, Rich felt that

students with low stanine scores could not achieve benchmarks and pass the GEPA exams, whereas Trono felt that all students could potentially pass the tests and that this attitude should be communicated to the students. Trono testified that she reached this conclusion from discussions with Rich before the implementation of America's Choice (6T147-6T148).

However, Rich recalled that the only time she discussed student scores with Trono was when she (Rich) shared the final 2005 GEPA scores with her students, and she was admonished by Trono that she was not to share the scores with her students (1T79).

Trono formed her opinion of Rich's performance based, at least in part, on the 2005 GEPA results for Rich's 2 sections of students (R-1, R-2; 6T153). In section 845, 50% of Rich's language arts students were rated as proficient, while in section 844, 4 out of 17 or 24% of the students were rated proficient (R-1, R-2). Other teachers who were not recommended for transfer in 2005-2006 had student ratings the same or lower than Rich's students, including Van Wells (18% passing rate), Kalargheros (7.4% passing rate), McAllister (11.1% passing rate, Rollins (50% passing rate), and Walsh (22% passing rate) (CP-23).

82. Rich did not respond to CP-2 (CP-2), but, according to Rich, prior to receiving CP-2, Trono never discussed with her that she needed to improve in the area of implementing the

America's Choice model (1T39). Trono did not refute this testimony. Trono admitted, however, that she did not put Rich on a 90-day improvement plan that Trono would have done for a teacher who she considered incompetent (7T72).

83. In May or June 2005, Rich was notified by Trono that her assignment for 2005-2006 would be at Costley teaching language arts (1T39-1T40). However, the day before the opening of school in September 2005, Dr. King telephoned Rich and left a message with her husband that she was being transferred to Whitney Houston and assigned to teach 3rd grade (1T42). Whitney Houston also has the America's Choice whole school reform model (1T42). No one from the administration discussed with Rich the reason for her transfer from Costley (1T42).

84. According to Trono, she recommended Rich's transfer to Wilson for only two reasons, neither of which, she contended, was Rich's appearance before the Board in support of Sharonda Allen (6T155; 7T122). The first reason was because Rich had requested a transfer form from one of the Costley secretaries and complained to everyone in the morning that she was not happy at Costley (6T154). Rich denied requesting a transfer in either 2003-2004 or 2004-2005 (1T40). No secretary testified to support Trono's testimony about the transfer form nor was the form introduced into evidence. I credit Rich that she did not request a transfer.

The second reason Trono stated that she recommended Rich's transfer was that Rich had a problem implementing the America's Choice model (6T154). Trono testified that she noticed from the beginning of the school year that Rich and others were having problems implementing the new model, but, at least as to Rich, these problems were not reflected in Rich's November 30 evaluation (CP-1; 7T60-7T61).

Trono also testified that she asked the America's Choice facilitator, Jackie Dennis, to work with Rich and others who, Trono claimed, had problems implementing the model (7T48). But Rich testified that neither Trono or anyone else had discussed with her, prior to April 2005, when she received CP-2 that she needed to improve in the area of implementing the America's Choice model nor had she (Rich) gotten negative feedback from others in this regard (1T30-1T31, 1T33-1T34, 1T39). I credit Rich. I do not credit that Dennis worked with Rich, even if Trono asked her to do so. There is no documentary evidence to support Trono's claim, such as comments in either of Rich's evaluation (CP-1, CP-2) that Rich was given assistance by Dennis or anyone else in implementing America's Choice. Moreover, Dennis did not testify. I draw an adverse inference from the Board's failure to call Dennis to corroborate Trono's claim that she asked her to work with Rich. Cohen v. Community Medical Center, 386 N.J. Super. 387 (App. Div. 2006).

In any event, whether Trono did or did not do so is immaterial because Trono's asserted reason for recommending Rich's transfer was that she did not want to implement America's Choice and was resisting it. The fact that Trono may or may not have identified Rich as needing assistance to implement the model does not equate to "resisting" the model. The 2004-2005 school year was a pivotal year for the staff who were not fully trained nor were they expected to be, according to Wilson.

Clarisse Smith-Jarvis

85. Clarisse Smith-Jarvis was hired in 1998 and assigned to Costley as a math teacher working under Principal Roxolana Potter (3T72; 8T54). In 2004-2005, her initial teaching assignment was as an 8th grade math teacher (3T74). That year, as in previous years, Smith-Jarvis was also an Association building representative, responsible for representing unit members at disciplinary hearings and administering the parties' collective agreement (3T74-3T75).

86. During the America's Choice training which began two days before the start of the 2004-2005 school year, Trono addressed the staff about various issues related to the implementation of the new whole school reform model, including the weekly Wednesday team meetings with the coaches. Smith-Jarvis questioned Trono about how the teaching staff would be compensated for attendance at the Wednesday team meetings

and/or whether prep time would be given (3T77-3T78, 3T113; 7T86-7T88). In particular, Smith-Jarvis was concerned that the restructuring of the school day would add an extra 20 minutes and that the administration's proposal to compensate teachers at a prorated hourly rate appeared to violate the parties' collective agreement (3T78, 3T117-3T118). At this time, Smith-Jarvis received no response from Trono and did not pursue the issue (3T78, 3T118).

87. According to Smith-Jarvis, Trono was always defensive when she (Smith-Jarvis) raised issues at staff meetings related to the Association and the parties' collective agreement (3T80). Darrell Shoulars, a former Costley teacher, corroborated Smith-Jarvis' testimony in this regard. According to Shoulars, when Smith-Jarvis got up at staff meetings to voice a complaint as the Costley building representative, Trono appeared angry and would raise her voice, while Smith-Jarvis remained calm (4T66-4T68, 4T70, 4T129).

88. On September 30, 2004, Association President Greadington and Smith-Jarvis met with Trono to discuss Smith-Jarvis' role as a union representative when she (Smith-Jarvis) represented employees and the questions she [Smith-Jarvis] raised at the staff meeting about the effect of implementation of the America's Choice model on the extended school day (4T144, 4T187; 7T90, 7T92). Greadington explained to

Trono that, as an Association representative, Smith-Jarvis had a right and duty to raise these issues; that, in doing so, it was not a personal attack on Trono (4T146; 7T90-7T91; 8T41, 8T59-8T60).

The meeting lasted about 30 minutes and was cordial (4T146, 4T187-4T188). Greadington left the meeting feeling that Trono understood the different roles that Smith-Jarvis played as a teacher and a union representative (4T146).

89. The day before the opening of school in 2004-2005, teachers were given a half-day breakout session to train for the implementation of America's Choice which Smith-Jarvis attended. There was additional training throughout the school year (3T77, 3T111). For instance, there was training offered during break-out sessions at Monday staff meetings and during weekly math team meetings with Masia (3T112, 3T114-3T115).

Masia, however, never modeled a lesson for Smith-Jarvis (3T114-3T115, 3T133). Since Masia himself was just learning the new model in 2004-2005, he spent less time with individual teachers than he did in subsequent years (5T61, 5T64). Masia worked individually with only 8 or 9 math teachers in 2004-2005; Smith-Jarvis was not one of the teachers with whom he worked individually that year (5T61).

90. As to focus walks conducted by the administration to help teachers conform to the America's Choice model, Smith-Jarvis

recalls only 2 focus walks in her classroom in 2004-2005 (8T42-8T46). During one walk, Trono, Veale, and the 3 coaches (Masia, Alexander and Joseph) spent 10 minutes in her class. Veale spoke briefly with Smith-Jarvis but noted no deficiencies to her nor was Smith-Jarvis given a checklist about her performance after that visit (8T43-8T45).

During the second walk which occurred in February 2005, Trono conducted it with Veale and Joseph (8T46, 8T60). The group spent approximately 5 minutes in Smith-Jarvis' classroom and left without speaking to her (8T46, 8T48). After this walk, however, Smith-Jarvis received a checklist indicating a deficiency related to her failure to post the principal's book-of-the-week (8T46-8T47, 8T61). Smith-Jarvis later spoke to one of the coaches and explained that the book was posted on a column in her classroom because she lacked space on her bulletin board (8T47, 8T64). No one came back to her classroom to verify the accuracy of Smith-Jarvis' explanation (8T47, 8T68-8T69).

91. Trono conducted an observation of Smith-Jarvis' classroom for the first time on November 15, 2004, a copy of which was given to Smith-Jarvis on November 16 (CP-10; 3T80-3T81). The observation was critical of the lesson presentation in several areas, and although no "unsatisfactory" rating was indicated, there were areas where Trono felt Smith-Jarvis needed improvement (CP-10).

For instance, in the section entitled Professional Improvement Plan, Trono wrote in part:

Proper terminologies as to the types of polygons drawn were not addressed during the lesson. More planning and careful organization of the lesson are needed.
(CP-10)

Under the section entitled "Commendations", however, Trono noted that "[c]lassroom management is well established" (CP-10). Trono also noted under the heading of "Classroom Management" that the students were working and seemed to be on task (CP-10).

Smith-Jarvis signed the observation and wrote on the evaluation that she needed someone to model the exact format of the lesson required (CP-10). After this request to Trono, Smith-Jarvis never received the modeling of the lesson that she requested (3T82).

92. On November 30, 2004, Trono gave Smith-Jarvis her evaluation for the period from September 1 to November 30, 2004 (CP-11). The evaluation incorporated by reference "observations, conferences, meetings and discussions" on 12 different days in the 3-month period but, in reality, the only date which reflected an actual classroom observation was November 15 (CP-11). The listed dates also incorporated the Monday staff meetings.

Trono's evaluation gave Smith-Jarvis ratings of satisfactory in all areas except 2 where Trono noted Smith-Jarvis needed improvement, namely Trono felt Smith-Jarvis needed more clarity

in teaching math concepts and better organization and planning to meet the needs of her students (CP-11). Trono also gave Smith-Jarvis a "needs improvement" rating for 4 days absence which included 2 days for personal illness, 1 for family illness and 1 for personal leave. Trono also marked Smith-Jarvis unsatisfactory for 6 times she was tardy (CP-11).

Under the area entitled "Professional Improvement Plan", Trono wrote:

You need to ensure that your students are well prepared for the GEPA. You need to address the high rate of failures in your classes. You also need to improve your record of attendance and punctuality. More training is recommended so that math concepts are taught accurately and clearly. (CP-11)

93. On December 1, 2004 Smith-Jarvis responded to CP-11 and wrote in pertinent part as follows:

I have been an educator at John L. Costley for six years and previous evaluatory ratings for instructional techniques have been **satisfactory**. You are rating nine years of expertise in teaching middle school math and my **commitment** to the students of East Orange on a **twenty-minute** observation?

I want to direct your attention to data that you provided on student's performance, this current school year. The observed group of students performed on stanine one on the past year's Terra Nova and recently outscored a group of students who averaged stanine two and above on a recent district-wide 8th grade mathematics assessment (difference in stanine levels equate to between 1-2 years of growth). Clearly, I am confused on **what needs are not being meet** [sic].

I fail to grasp how such a **negative** statement could be made after one observation of a class that you stated was under good classroom management and students were engaged in the lesson.

If you are talking about the structure of the lesson and its compatibility with the whole school reform model, I would like to refer back to the post conference for the observation that you based your evaluation on.

I requested that I be shown exactly how you wanted my instructional techniques to mirror the America's Choice model. As of the date of the above-mentioned evaluation, November 30th, I have not received the requested assistance (demonstration lesson) in order to be in compliance with the district whole school reform model's lesson concept.

It does not seem logical that I be **negatively** evaluated on a task/standard for which, I sought and was not given the instructional assistance for by the instructional leader.

We are bound by the board approved whole school reform model America's Choice, which focuses on being taught by performance standards. When the district adopted the reform model, it was my understanding that all middle school personnel would be in compliance with its tenets. What if we graded/rated our students on just one observation with no remediation, support, or follow-up would we be following our own model? (CP-12)

As of January 2005, Smith-Jarvis had still not received the extra training she had requested.

94. On January 12, 2005, there was a meeting between Smith-Jarvis, Trono, and two other teachers, Dr. James Haggerty and Mrs. Kalargheros, to review scoring rubrics for student

responses on open-ended questions as well as to discuss a plan of action for the remaining month until the GEPA test (CP-13; 3T90-3T91). Smith-Jarvis asked Trono during the meeting what she (Trono) was looking for in regard to student responses to achieve a perfect score (3T91). Trono responded to Smith-Jarvis that she did not need to provide her with a scoring rubric because she (Smith-Jarvis) was an experienced teacher (3T92). According to Smith-Jarvis, after the meeting, Smith-Jarvis and Trono continued their discussion. Smith-Jarvis pointed out that if Trono did not like the way she conducted herself in the classroom or at the meeting and they could not work together professionally, then, maybe Smith-Jarvis needed to transfer from Costley (3T92). Trono agreed.

The two exchanged memorandum summarizing the meeting (CP-13 and CP-14). Trono emphasized that Smith-Jarvis seemed to have a problem with her and had made personally offensive remarks which she (Trono) considered to be insubordinate and would not be tolerated (CP-13). Trono indicated that until Smith-Jarvis transferred she expected her to behave professionally and to carry out her duties as a teacher (CP-13).

Smith-Jarvis responded in pertinent part:

I do not have a professional problem with your administration. On numerous occasions I have requested demonstrations on as to what it is that is expected from me under this new whole school reform model. This does not constitute insubordination, it is a plea for

assistance from you, the instructional leader.

Prior to September 2005 [sic], when I was called into your office to represent members of my bargaining unit, our rapport and my evaluations were both satisfactory.

My request for a transfer from John L. Costley has no personal overtones it is strictly based on professional judgment. I stated that, "if you are so thoroughly dissatisfied with my job performance then maybe I should transfer." Your response was, "Maybe you should." I then requested the form from the secretary and submitted it. (CP-14)

95. On January 12, 2005, Smith-Jarvis submitted the transfer request to Trono who signed it and her secretary forwarded it to Dr. King (CP-16; 3T95). The transfer form listed schools and grades in order of preference, namely her 1st choice of Whitney Houston Middle School (math 5-8 and reading) and Healey Middle School (math 5-8 and reading) as her 2nd choice.^{13/} In her January 14, 2005 memorandum to Assistant Superintendent King requesting the transfer, Smith-Jarvis wrote in pertinent part:

I feel that I am being negatively targeted by administration because I serve as the EOE representative at John L. Costley Middle School and have represented colleagues before the current acting administrator/principal.

^{13/} In Smith-Jarvis' certification in support of her contested transfer petition under Docket No. TI-2006-004, Smith-Jarvis certified that "On August 30, 2005 I was transferred to the Garvin Elementary School. I did not request this transfer." I do not find that this statement contradicts Smith-Jarvis' testimony. She did not request a transfer to Garvin in January 2005 but to two other named schools.

Prior to this school year I have received satisfactory performance evaluations from Ms. Trono in relation to my teaching strategies, planning and preparation, knowledge of content, classroom management, development of student attitude, school/community relations and professional/personal qualities (minus submission of lesson plans in a timely manner). (CP-15)

Smith-Jarvis received no verbal or written communication from Dr. King's office about the transfer request (3T95). The next communication about her assignment for 2005-2006 was in early June 2005, when she received notification that she was to be assigned to Costley to teach grades 6 through 8 math (3T96).

96. In February 2005, Trono reassigned Smith-Jarvis from 8th grade math to 6th grade math. On March 30, 2005, Trono sent Math Supervisor Carole Grayson to Smith-Jarvis' classroom to conduct an observation (CP-18; 7T102). Grayson noted one area of "needs improvement", specifically commenting that Smith-Jarvis needed "to incorporate America's Choice model into instruction, move work period to middle of period and work on closing" (CP-18). All other areas were noted by Grayson to be satisfactory.

Under the section entitled "Professional Improvement Plan", Grayson suggested that Smith-Jarvis view "video tapes of America's Choice Lesson to improve format of lessons to include work period and closing" (CP-18). Under "Summary Comments", Grayson wrote "[a] well taught - interesting lesson which kept student[s] engaged" (CP-18).

When Smith-Jarvis received CP-18, it was the first time that she learned that there were video tapes available to review (3T101). After Grayson's comment, however, Trono never gave Smith-Jarvis the training tapes or discussed them with her or advised her about where she could access the tapes. According to Trono, the tapes were available on-line to the staff for review (7T103-7T104, 7T143-7T144, 7T147).

97. On April 6, 2005, Trono gave Smith-Jarvis a copy of her evaluation for the period of September 1, 2004 through March 30, 2005 (CP-17). As in the first evaluation (CP-11), Trono noted mostly satisfactory ratings, but rated Smith-Jarvis as "needs improvement" and "unsatisfactory" in several areas (CP-17). Trono included the following comment:

You need to ensure that your behavior and actions are always appropriate and contribute to the positive climate of the school (Refer to memos dated 1/12/05 and 3/23/05). (CP-17)

The memos, referenced by Trono, included the January 12 meeting memo about the scoring rubrics (CP-13) that led to Smith-Jarvis submitting a transfer request (CP-15) and a March 23, 2005 disciplinary memo (R-23) from Trono to Smith-Jarvis detailing an incident Trono termed "unprofessional and inappropriate" behavior regarding a school-picture-taking incident. As to the March 23 incident, according to Trono, Smith-Jarvis yelled at Trono in front of the school photographer who was taking pictures of 8th grade teachers. Because Trono had reassigned Smith-Jarvis

to teach 6th grade as of February 2005, there was a question as to whether Smith-Jarvis was eligible to have her picture taken with the 8th grade teachers (R-23).

Under "Professional Improvement Plan", Trono wrote:

At the beginning of the school year, I observed that there were some problems and concerns about your attitude towards the implementation of the America's Choice Model. At the first training, you were being negative and difficult. You also challenged the competence of the math coach. You were always late for content area trainings. I have also observed that your tone and demeanor during staff meetings had always been unpleasant. You have not been open to suggestions for improvement and tended to be defensive and unprofessional during team meetings. You were reassigned to a different grade level prior to the GEPA due to the following reasons:

Excessive absences and tardiness

Obvious lack of preparation in delivering instruction as documented on the classroom log visits

High rate of students performing below average based on your grade distribution report

Expressed opinion in early September that your students will not pass the GEPA because of their stanine scores

You need to ensure that the America's Choice Model is effectively and consistently implemented in all your classes. Your rituals are well established. However, you need to improve the classroom routines (opening, work activity, and closing). Updating your bulletin boards to display student work that is meeting or working towards the standards and posting responses to the Principal's Book of the Month, is a requirement of the model.

I have noted that you have not maintained your board on a regular basis. You have a high rate of students performing below average for the first and second marking cycles. Therefore, you need to carefully plan and organize your lessons to ensure that you are providing differentiated instruction to all your students at various levels of performance. Your continued tardiness inspite [sic] a discussion pertaining to this problem is still problematic. Reporting to your assigned duty post on time is essential and necessary to ensure safety of all our students. You also need to improve your record of attendance as it directly impacts student performance. I also expect you to always maintain a professional attitude in dealing with me and all of your colleagues. (CP-17)

Under "Summary Comments", Trono wrote:

Although I have observed lately that you are making progress in your preparation and delivery of instruction, you need to be consistent in your efforts. You need to address areas of concern indicated on your Professional Improvement Plan, otherwise, adverse personnel action will be recommended in the future. (CP-17)

98. Although Trono noted in this evaluation (CP-17) that absenteeism was a problem for Smith-Jarvis, she never issued a disciplinary memo to Smith-Jarvis during 2004-2005 as she had with Susan Rich (R-3; 1T71; 7T130, 7T132). Also, although Trono noted that Smith-Jarvis needed to implement the America's Choice model consistently, Trono admitted that she never sent the America's Choice trainers to work with or model a lesson for Smith-Jarvis despite Smith-Jarvis' requests in this regard (7T148). Nor did

Trono herself model a lesson for Smith-Jarvis as she requested despite the fact that Trono was a math teacher (7T148).

Moreover, Trono testified generally that she sent the math coach (Masia) and math supervisor (Grayson) to work with Smith-Jarvis, but admitted that she never observed anyone actually training Smith-Jarvis nor did Trono indicate in any memo to Smith-Jarvis that she provided the training Smith-Jarvis requested (7T48-7T49, 7T94-7T95, 7T130). Masia testified that he never worked individually with Smith-Jarvis in 2004-2005 despite the fact that he worked with 8 or 9 other teachers individually that year (5T61-5T62). The only evidence on the record in regard to Grayson was that she was sent to observe Smith-Jarvis' classroom at the end of March 2005 (CP-18) just before Trono did her final annual evaluation of Smith-Jarvis. Grayson did not testify to corroborate Trono's testimony that she was sent to or actually worked with Smith-Jarvis prior to the March 30 observation. On the other hand, Smith-Jarvis credibly testified that she never received the training she requested from Trono.

I find that despite repeated entreaties throughout 2004-2005, Trono never addressed Smith-Jarvis' requests for training in the America's Choice model - e.g. to have a lesson modeled for her - or provided her with the scoring rubrics Smith-Jarvis previously requested in January or any other teaching aides, such as video

tapes that Grayson recommended be provided to Smith-Jarvis after observing her class in March 2005.

99. In late March 2005, Smith-Jarvis attended and spoke at the Board meeting during which Trono's non-renewal recommendation regarding Sharonda Allen was discussed (3T105, 3T128). The Board members as well as Trono and Dr. King were present during Smith-Jarvis' 30-minute presentation (3T129). Smith-Jarvis spoke on behalf of Allen, arguing that her non-renewal would be a disservice to the students because Allen was an asset to Costley and the community (3T105).

100. Despite having received notification in the spring that her assignment for 2005-2006 was at Costley, Smith-Jarvis had not received her invitation letter for the coming school year by the last week of August 2005 so she telephoned Costley and spoke to Trono (3T103). Trono informed Smith-Jarvis that the Board had acted on teacher transfers and that Smith-Jarvis was to report to the personnel office, not Costley, on September 1, 2005 (3T104). After reporting to personnel, Smith-Jarvis was told to report to Garvin Elementary School for the 2005-2006 school year (3T104). No one from the administration previously discussed the transfer to Garvin (3T104).

At Garvin, Smith-Jarvis teaches the Success-for-All whole school reform model (3T102-3T103). Because she had questions about how to implement this model when she was first assigned to

Garvin, Smith-Jarvis requested that the whole school reform facilitator model a lesson for her (3T103). The record does not reflect whether a lesson has been modeled for Smith-Jarvis.

Darrell Shoulars and Monique Van Wells

101. In 2004-2005, Darrell Shoulars was a first year language arts teacher at Costley (4T7). During the 2005-2006 school year, he was appointed by Trono as a 7th grade model teacher and, as such, was on the School Leadership Council (SLC) (R-13; 4T8). He was asked by Trono to be a recorder of the SLC minutes that year (4T55).

102. Shoulars voluntarily resigned and left the East Orange school district as of June 30, 2006 to take a job with the Orange Board of Education as a 7th and 8th grade reading teacher (4T38-4T39).

103. Monique Van Wells was hired in August 2003 as a 7th grade language arts teacher and 8th grade science teacher at Costley (2T63). In 2004-2005, Van Wells was a model teacher for 8th grade language arts at Costley (2T64). As a model teacher she was also on the SLC (2T57). Van Wells was terminated effective June 2006. The record does not reflect the circumstances of her termination or whether she is currently employed (2T64). However, Van Wells is currently a member of the Orange Board of Education, but played no role in either soliciting Shoulars to apply for a position in Orange or in getting him his position there (4T39).

* * *

Shoulars and Van Wells both testified as to various after-school impromptu meetings which took place in 2004-2005 between Shoulars, Van Wells, Trono, Coaches Masia and Joseph as well as then model teacher Deborah Balogh in Trono's office. I have set forth their accounts below. Respondent's witnesses (Trono, Balogh, Masia and Joseph) refute this testimony claiming that generally no impromptu after-school meetings took place in Trono's office between Trono, the coaches, Shoulars and Van Wells and denying specifically two particular incidents: (1) an April 2005 discussion in Trono's office regarding Shoulars and Van Wells writing letters to Greadington about Smith-Jarvis (CP-19) and (2) a conversation the day after the Sharonda Allen hearing before the Board concerning teachers who testified at the Board meeting in support of Allen. Respondent's witnesses also deny hearing Trono refer to Smith-Jarvis as "Sour Juice". For reasons set forth below, I credit Shoulars' and Van Wells' testimony.

* * *

104. According to Shoulars, during 2004-2005, he together with Van Wells, Masia, Joseph and Balogh was considered part of Trono's "clique" (4T12-4T13, 4T56-4T58). Association President Greadington also knew of Shoulars as being in Trono's clique (4T181). According to Shoulars and Van Wells, throughout the year, the clique would meet informally in Trono's office, mostly

after school, although Van Wells would occasionally be summoned during the school day to come to Trono's office (2T68-2T71, 2T97).^{14/}

During the meetings, discussions took place regarding various topics, including general concerns with regard to the implementation of the America's Choice model, personnel matters, such as teachers Trono did not like, and comments about Smith-Jarvis, who Trono did not like as a union representative and wanted removed (2T71-2T72, 2T79; 4T12, 4T16-4T18, 4T56).

Both Shoulars and Van Wells heard Trono many times refer to Smith-Jarvis as "Sour Juice" (2T82, 2T131; 4T16-4T17). In particular, Van Wells testified that Trono often spoke negatively about Smith-Jarvis, who she referred to as "Sour Juice", remarking that Smith-Jarvis held her (Trono) strictly to the collective agreement and that Smith-Jarvis didn't know what she was doing as a building representative (2T79-2T80, 2T82). Van Wells stated that Joseph, Shoulars, Masia and Balogh were present at various times when these remarks were made (2T81-2T82).

^{14/} In her testimony, Van Wells occasionally referred to these impromptu meetings in Trono's office as School Leadership Team meetings. She was not, however, on the SLT which consisted of Trono, the 3 coaches and a couple of others. As a model teacher, she may have been on the School Leadership Council which met once a month (6T135, 6T137). This misnomer does not impact the credibility of her testimony in regard to her description of the impromptu meetings in Trono's office which is corroborated by Shoulars' testimony.

Shoulars and Van Wells were troubled by Trono's comments about Smith-Jarvis, but for different reasons said nothing to Smith-Jarvis, the Association or the CAPA team (2T117-2T118, 2T128-2T130, 2T139; 4T59-4T60). Van Wells said nothing about her concerns regarding Trono because she did not have tenure and was, presumably, afraid for her job (2T117-2T118). Shoulars said nothing because he was in Trono's clique, and he did not want problems later with Trono if he said something she didn't like. In particular, he didn't want to be an outcast the following year, harassed or terminated (4T20, 4T60, 4T77, 4T80, 4T130).

Shoulars was also afraid that if he said something to the CAPA team, Trono would find out (4T130). Indeed, later that year, according to Shoulars, in June 2005, Trono told Shoulars that several teachers, including Smith-Jarvis, Beaver, Hinds, Rich, Waters, and Allen, had complained to the CAPA team about the school climate, terming it depressing, and that they felt they were being harassed by Trono (4T34-4T35, 4T37). Shoulars testified that Trono was upset and told him that these statements to the CAPA team were a "bunch of lies" and that it was not their (the teachers) place to inform the CAPA team of anything but academic matters (4T34-4T35). Trono did not deny that this conversation took place or that she made these statements. However, as to whether the CAPA actually told Trono that these teachers in particular - e.g. identifying them by name -

complained about her, Shoulars' testimony is uncorroborated hearsay.

105. Shoulars and Van Wells described one particular impromptu meeting in Trono's office in April 2005. Trono, Masia and Joseph were also present (2T76-2T77, 2T128; 4T16, 4T59, 4T72-4T73). According to Shoulars and Van Wells, Trono expressed her dissatisfaction with Smith-Jarvis as both a teacher and union representative and wanted her removed as a union representative (2T76-2T77; 4T17-4T18).

Masia suggested that to get Smith-Jarvis removed as a union representative someone would have to write a letter to Greadington (4T18, 4T72). Masia explained that he had been in a similar situation where staff members at Costley wrote letters about him and that was how he got removed from his position as an Association representative (4T18, 4T74). According to Shoulars, Trono said that she remembered that particular incident and that, therefore, she needed someone to write a letter about Smith-Jarvis being removed (4T19, 4T74, 4T78). Trono did not want the letter copied to her because she was not supposed to be involved in this issue as principal, but she wanted to see the letter before it went out (4T19).

Trono then asked Shoulars and Van Wells to write a letters to Greadington indicating that dissatisfaction with Smith-Jarvis as a union representative at Costley (4T19-4T20, 4T74). Shoulars

agreed to write the letter because he felt threatened by the tone of Trono's voice and because Trono said that if he did not write the letter there could be problems for him later (4T20, 4T77, 4T80). Shoulars testified that Trono said this in front of he, and Masia. The others had left by that time (4T81). Shoulars was afraid that if he did not agree to write the letter, he would be terminated at the end of his first year of teaching even though his evaluations up until this point were superb (4T20, 4T79-4T80).

106. Van Wells corroborated Shoulars testimony in regard to the April 2005 meeting in Trono's office (2T76-2T77, 2T79, 2T127-2T128). Specifically, Van Wells testified that at this particular meeting, Trono asked her (Van Wells) whether she was going to write a letter to Greadington about Smith-Jarvis causing chaos and suggested that she (Van Wells) also put in the letter something about the 'resistors' (2T76-2T77, 2T128). Van Wells also confirmed that Trono told her not to put her (Trono's) name anywhere in the letter, because, as a principal, she could get in trouble (2T76). Van Wells told Trono she would not write the letter (2T77, 2T128). According to Van Wells, Trono basically ignored her for the rest of the 2004-2005 school year (2T77).^{15/}

^{15/} Trono testified that at the end of May 2005, she met with Van Wells because Van Wells was coming in late every day (at 9:00 a.m. instead of 7:50 a.m.). Van Wells explained that she had spoken to Dr. King and advised him about coming in at 9:00 a.m. due to a family matter. Nevertheless, Trono admonished Van Wells, telling her that she needed to be in

(continued...)

107. According to Van Wells, this was not the first time Trono had asked her to write a letter. Trono first mentioned writing a letter in November or December 2004 (2T128). At that time, Van Wells was in a meeting with Trono, Joseph and Masia when Trono mentioned that she was sick of teachers supporting Sharonda Allen and that she wanted the teachers, who she referred to as resistors, out of her building (2T118-2T119). Trono briefly mentioned writing a letter at that time about Smith-Jarvis (2T121).

Then, in February 2005, Masia came to Van Wells' classroom and told her that Trono wanted to know whether or not she was going to write the letter about Smith-Jarvis to Greadington (2T120-2T121). Van Wells did not answer him. He asked her if she would come to Trono's office later that day (2T124).

Van Wells did not go to Trono's office that day and, thereafter, avoided going to see Trono by herself because she (Trono) might ask her about the letter (2T124). The question of the letter was not raised again until the April 2005 meeting described by Van Wells and Shoulars (2T126-2T127). After the April meeting, Van Wells never prepared a letter about

15/ (...continued)
school by the earlier start time (7T19). This testimony lends credence to Van Wells' impression that she was no longer considered part of Trono's clique and was ignored after refusing to write the letter to Greadington.

Smith-Jarvis and, according to Van Wells, Trono ignored her for the rest of the school year (2T77, 2T128; 9T64).

108. About a week after the April 2005 meeting, according to Shoulars, Masia asked him if he had written the letter (4T21). Shoulars told Masia that he was not finished writing the letter but was working on it (4T21).

Shoulars had several after-school meetings over the next few weeks with Trono in her office about the contents of the letter that, he described, was a work in progress (4T133-4T134). Trono instructed Shoulars to copy the letter to several people, including, Dr. Wilson, Dr. King, Van Wells, Dr. Scott, Ms. Gregg and Priscilla Burke (CP-19; 4T83). Trono also instructed Shoulars not to write the letter on school letterhead, although he could use his home address and phone number (4T85-4T86). Shoulars followed her instructions but decided to add his school e-mail address to the letter, although Trono had not told him to do so (4T86).

109. On May 27, 2005, Shoulars went home and composed the final letter in one sitting on his computer (CP-19; 4T81-4T82, 4T132, 4T135). The next day he brought the letter (CP-19) to Trono for her review and approval, as per her instructions (CP-19; 4T22, 4T82, 4T135). Trono approved the letter without change and instructed Shoulars to mail it (4T22, 4T135).

110. CP-19 is the May 27, 2005 letter Shoulars sent to Greadington. Shoulars wrote:

As a caring and concerned English Language Arts Educator for the John L. Costley Middle School and a colleague of Mrs. Smith Jarvis, I am disheartened that Mrs. Smith Jarvis doesn't exemplify the professionalism and respect that comes with the responsibilities of being an EOE Building Union Representative.

Mrs. Smith Jarvis has caused controversy within our school on several occasions. I can recall particular incidents during most staff meetings where Mrs. Smith Jarvis interrupted our meetings with irrelevant topics and disrespected Ms. Trono (our acting principal) by challenging her on many issues to which Mrs. Smith Jarvis may disagree with due to personal issues. Our staff must sit through her many debates that have proven to be insufficient and time consuming.

Secondly, Mrs. Smith Jarvis has caused several teachers in our school to become defiant against our Administrator. In addition, there have been several incidents where Mrs. Smith Jarvis has been disrespectful to staff members at our school, for no apparent reason. She refuses to speak to several staff members who have no idea what is wrong. As an EOE Building Representative, how can one go to her with legitimate concerns when she is unapproachable and hostile? Also, I can recall one incident where Mrs. Smith Jarvis called one of our colleagues, a fellow math teacher incompetent in front of other colleagues. Again I ask is this appropriate behavior for an EOE Building Union Representative?

In summation, I would like to know what's the proper procedure that is utilized to remove and/or unseat an EOE Building Union Representative from their position. It is my considered opinion, as well as others (who are willing to come forward) that Mrs. Smith

Jarvis should be removed immediately from her position as EOEBA Building Union Representative for the John L. Costley Middle School. She does not exemplify the professionalism that comes with such a trustworthy and honorary position. As a teacher and a former student within the East Orange School District, I truly believe that we are indeed rising above 'A Standard of Excellence' therefore we need responsible, polite, capable, competent, and professional Union Representatives that respect and care for the needs of their fellow colleagues, not individuals who seek to undermine, close their eyes to, become disloyal and disrespectful to their fellow colleagues and administrators.

I thank you for your time, consideration and prompt attention with regards to the above-mentioned matter. (CP-19)

Shoulars copied Wilson, King, Veale, Scott, the Association Grievance Chair (Burke) and Association Vice-President (Osborne) as well as Association Board Members (CP-19). Shoulars mailed the letters to Greadington and the copies to others by interoffice mail in sealed envelopes on May 31, 2005 (4T30, 4T90-4T92).

Interoffice mail is how mail is distributed throughout the district. There is an interoffice mail in-box tray in Costley's main office where Shoulars put the sealed envelopes to Greadington and the others (4T90-4T92). Shoulars had received interoffice mail a few times during the year and was not aware of any problem with delivery of interoffice mail (4T92-4T93).

111. According to Shoulars, with the exception of the first sentence in the letter to Greadington which he characterizes as true, everything else in the letter accurately reflected what

Trono told him to write, but was either false or reflected Trono's opinion, not his (4T87, 4T120-4T128, 4T136). On cross examination, Shoulars was asked a series of questions concerning the truth or falseness of the various statements contained in his letter (4T88-4T89). His answers to these questions were equivocal -e.g. Shoulars testified that everything in the letter was false and true. I found, however, that the questions were designed to confuse the witness and resulted in answers which demonstrated, not lack of credibility, but confusion.

Moreover, on redirect examination, Shoulars reviewed CP-19 line-by-line and clarified his previous testimony. For instance, Shoulars explained that although he heard Smith-Jarvis raise topics at staff meetings, the opinion that she interrupted the meetings and/or disrespected Trono were Trono's suggestions (4T127). Also, Shoulars confirmed that he never observed Smith-Jarvis be disrespectful to Trono or any teacher, refuse to speak to staff, or cause teachers to become defiant against Trono (4T123-4T124). Shoulars explained that he never heard Smith-Jarvis call a math teacher incompetent. Trono gave him the specific example about the math teacher (4T126).

112. Greadington did not receive CP-19 from interoffice mail after Shoulars mailed it (4T166). Neither she nor the Association has an interoffice mailbox in any Board facility (4T166). There is no explanation in the record for why Greadington never received

the letter after Shoulars put it in the Costley interoffice mail tray. I infer that since the Association has no official interoffice mail box to receive interoffice mail, the letter was either misplaced or lost, especially if there was no return address on the envelope. In any event, Greadington first saw the letter on October 12, 2005 when she was given a copy by Monique Van Wells. Greadington date stamped it as received (4T166-4T168).^{16/}

In the 13 years Greadington has been the Association president, she had never received a formal written complaint about one of the building representatives like CP-19 (4T189-4T190). She has on occasion received verbal complaints about various building representatives and has on occasion conducted investigations based on the tenor of a particular situation, the experience of the representative at issue, who the complainant was and what the executive board decided to do (4T190-4T191). According to

^{16/} Respondent suggests that the fact that Greadington did not receive the letter and that the Association has no interoffice mail receptacle at Costley suggests that Shoulars testimony about the letter is not credible. This argument, however, does not account for the fact that the letter was put into the interoffice mail receptacle and presumably then sorted for delivery to the individual addressees noted on the envelop. Assuming that it was not possible to deliver the letter to Greadington who had no delivery slot at Costley, the letter could have been set aside and, with no return address, lost. In any event, the possibilities are too numerous and speculative to accept that Greadington's failure to receive the letter suggests that Shoulars never sent the letter and that his testimony generally is not credible.

Greadington, Shoulars belonged to the Association but had never come to her prior to May 2005 to complain about Smith-Jarvis as a union representative (4T167, 4T173). Building representatives are elected by the building so if the building staff demanded another election, then one would be conducted (4T191).

113. Greadington did nothing about the letter initially for several reasons: (a) Smith-Jarvis was no longer the building representative at Costley having been transferred for the 2005-2006 school year (4T171); (b) Greadington knew Smith-Jarvis as a conscientious advocate for the Association and did not believe what Shoulars had written about her (4T175); and (c) Greadington knew that there were two factions at Costley, one of whom would do whatever Trono wanted them to do and the other faction wanted to abide by the parties' collective agreement. Greadington knew that Shoulars was in the first group as a member of Trono's clique (4T177, 4T181).

114. Eventually, in December 2005 Greadington forwarded the letter (CP-19) to Smith-Jarvis and filed the charge in this matter (C-1; 3T107; 4T93, 4T171). This was the first time Smith-Jarvis became aware of the letter. Smith-Jarvis was concerned because, although she knew Shoulars as a colleague at Costley, Smith-Jarvis never had any personal dealings with him nor did she have any contact or dealings with Shoulars about union business during 2004-2005 (3T106).

115. Also, in December 2005, according to Shoulars, he was confronted by Trono who said 'Did I ask you to write a letter about Ms. Smith-Jarvis?' (4T23). Shoulars told her that she did (4T23). Trono then asked Shoulars if he had told anyone that she asked him to write a letter about Smith-Jarvis. When Shoulars told her that he had, according to Shoulars, Trono stormed off in anger and never raised the issue of the letter with him again (4T24).

116. On January 11, 2006, Smith-Jarvis wrote a response to Shoulars' letter from the previous May 2005 (CP-19):

It has come to my attention that you were dissatisfied with my tenure as Association Representative at Costley. I have never been approached by nor represented you in any manner during your first year as a teacher at Costley, so I find your displeasure with my performance disturbing.

It may be a moot issue, since I am no longer assigned to Costley, but I feel that as a professional any issue surrounding my duties of representing the staff at Costley - for three years - prior to your assignment needs to be addressed.

The role of an Association Representative is to protect the rights of association members and to guard liberties granted under the contractual agreement between the association and board of education.

My role has never been to side with frivolous desires nor wishes of administration. Costley staff entrusted me with representing their rights against unfair labor practices that are contrary to their contractual agreement, a job that I did successfully represented them, and further evidenced with re-election to a second two-year term.

Teachers often seek the services of the association representative when they are uncomfortable with approaching administration because of fear of retribution. The representative is on the frontline with the understanding that there might be repercussions for involvement with conflicts with administration, but we are duty-bound to pursue issues and situations that are in violation with contractual agreements.

I'm further troubled that you did share your discontent while I was at Costley. We could have had an enlightening dialogue on 'Association Representative - Who do I Serve?' As you gain tenure in the district, I hope you learn to respect the job a dedicated association representative renders to members of the East Orange Education Association.
(CP-20)

117. On January 28, 2006, Shoulars received CP-20 by interoffice mail and composed a response during his free time at the end of that day (4T93-4T94). In his letter, Shoulars wrote the following:

I hope that you accept my sincere apology for writing the attached letter but I had no other choice but to do so, the circumstances surrounding me writing it, left me no other choice.

On or about April, 2005, Ms. Trono, Ms. Joseph, Mr. Masia, Ms. Van Wells and myself were in her office discussing the teaching assignments for the upcoming year. Ms. Trono began telling us that she has to get the 'resistors' out of the building and Dr. Wilson would help her. She would make it seem as if all of you were not doing the America's Choice model and that would ensure yours and the other teachers' transfers.

Ms. Joseph agreed that she would also say to Jackie Dennis, that all of you were not doing the model and that would further guarantee your transfer. I felt very uncomfortable with what the three of them were saying and I could see the look on Ms. Van Wells' face that she too felt that this was terribly wrong.

Ms. Trono went on to confide in us that Ms. Potter would not be coming back to the school because she was going to be the new principal of John L. Costley. Dr. Wilson had promised her the position and Dr. Wilson would use the excuse that Mrs. Potter does not know the America's Choice Model so she could not come back, but because Mrs. Potter did not know as of yet and we could not tell anyone.

Ms. Van Wells and I looked at each other and began to feel very uncomfortable, this meeting was to be about our teaching assignments but it was turning into something totally different.

Ms. Trono then whispered that we should write a letter about you, Ms. Smith Jarvis to get you removed from you[r] position as a union representative. That we should get other teachers to sign it and give it to Ms. Greadington. She mentioned that you would then be removed from your position, but that we could not tell anyone because principals are not supposed to be apart of it and that she could get in trouble.

Mr. Masia agreed that he wanted you all out of the building and he would agree with Ms. Joseph on telling Jackie Dennis about 'resisting the model' and then you all would be out of the building. Mr. Masia said that it was a good idea to write a letter about you because a letter was also written about him to have him removed as a union representative. He stated that in order for you to be removed, we would have to do what Ms. Trono said.

I could not believe it when Ms. Trono turned to Ms. Van Wells and told her to write the letter but let her see it before it goes to Ms. Greadington. Ms. Van Wells told Ms. Trono that 'she would not write the letter' and she 'felt that this was going too far.' Ms. Van Wells continued to tell her that 'to first lie and say they are not doing the 'model' is entirely unfair and to then demand a letter to be written to remove a union representative was unethical.' Ms. Van Wells turned and walked out of Ms. Trono's office.

The moment Ms. Van Wells left, Ms. Trono and Ms. Joseph said that they 'would take care of Ms. Van Wells next year' and that 'she would be sorry for not writing it, who was she to not do what they asked.' Ms. Smith Jarvis, I hope you could understand the immense pressure I was under, standing there alone with Ms. Trono, Ms. Joseph and Mr. Masia berating Ms. Van Wells.

Ms. Trono then turned to me and asked me if I would write the letter. Ms. Joseph also asked me. Mrs. Smith Jarvis, as it went through my mind, I knew that it was wrong but what could I do. I knew that they were planning to go after Ms. Van Wells. I am a new teacher, so I had no choice but to write it. Yes it was not moral to do so. Yes it was not something that I would do at all but I felt so much pressure. I just started at the school, I did not want to be fired. So I broke under the pressure, knowing that Ms. Trono was going to be the new principal and Ms. Joseph was going to be the new assistant principal. We are both aware that if you do not do what Ms. Trono asks of you, she becomes very vindictive and relentless in her pursuit to harass you until you either resign or she decides to terminate you.

Mrs. Smith Jarvis I apologize for what I did. I realize that it was wrong but I was pressured into writing it. I did not want to lose my job or have memos in my file.

Please know that I do respect a union representatives position, but please understand the circumstances that surrounded my writing that letter. Again please accept my most humble sincere apology. (CP-21)

Shoulars denies that anyone from the Association or otherwise pressured him to write CP-21 (4T102). He also denies that he wrote CP-21 because he was fearful that with Smith-Jarvis being mad at him, his mother's position at Costley would be jeopardized (4T105). I credit his testimony. There is no evidence that anyone pressured Shoulars to write this letter nor does the fact that his mother was hired in January 2006 to work at Costley as a community outreach coordinator suggest that Shoulars would feel it necessary to protect her employment by appeasing Smith-Jarvis who was, in any event, no longer at Costley (4T110-4T111). The connection, if any, between the two events is too tenuous to give any weight.

118. Shoulars did not speak personally with Smith-Jarvis about his apology, but he mailed the letter to her (4T95). For some reason, Smith-Jarvis did not receive Shoulars' letter of apology (3T108). Shoulars, however, mentioned the letter (CP-21) to Greadington in early April 2006 in conjunction with what he felt was harassment by Trono concerning a teaching assignment (he had been reassigned from teaching English in which he was highly qualified to teaching math, a subject in which he is not highly qualified) and the use of his cell phone (4T49-4T50, 4T96-4T97,

4T130-4T131). He had resigned from the SLC in late March 2006 because of the alleged harassment (4T43). After speaking to Greadington, Shoulars filed a grievance that was subsequently denied by Dr. King (4T51-4T53).

119. Van Wells and Shoulars also testified about an incident they observed in Trono's office the day after the Sharonda Allen hearing. Shoulars had been in Trono's office the day of the hearing and observed Trono writing a speech concerning what she was going to say at the hearing and reading it (4T25-4T26). Van Wells did not attend the Allen hearing but on the afternoon following the hearing, Van Wells was waiting for Shoulars who was going home with her. Van Wells was standing in the open doorway of Trono's office about 3 feet from Trono's desk (2T83, 2T85, 2T142-2T144, 2T145-2T146). Van Wells recalled that Shoulars was standing to the left of Trono, while Joseph was behind Trono's desk, Trono was seated at her desk, and Masia was leaning back against a closet door (2T146).

Shoulars also testified that he, Trono, Masia, Joseph and Balogh attended this meeting in Trono's office (4T26-4T27). Van Wells did not testify that Balogh was present, but she also did not testify that Balogh was not at the meeting. Van Wells, however, testified in reference to this particular meeting that model teachers had to stay late (2T84). Since Balogh was a model teacher, I infer that she could have attended the meeting in

Trono's office and do not discredit Shoulars' testimony that Balogh was also present.

120. Both Shoulars and Van Wells testified that Trono took out a red book that she always carried with her. The book contained a list of individuals who spoke on behalf of Allen before the Board (2T85, 2T145; 4T27-4T28). Trono discussed the teachers who attended the hearing in support of Allen and read the list that included the names of seven teachers, Dr. James Haggerty, Dr. Susan Rich, Carla Hinds, Deborah Waters, Stephen Laird, Clarisse Smith-Jarvis and Rodney Beaver and a special education teaching assistant Anthony Carr^{17/} (4T15, 4T27-4T28, 4T35).

Van Wells and Shoulars both testified that they heard Trono state that she didn't like what they (the Allen supporters) had to say and she was going to get the resisters transferred out of Costley (2T85). Shoulars recalled Trono stating that she would get the Allen supporters transferred by labeling them resisters to the America's Choice model and communicating this to Dr. Wilson (4T28-4T29). Van Wells remembered that Trono specifically noted that Beaver and Rich got up and spoke at the Board meeting. As to Rich, Trono remarked that Rich had a doctorate and spoke well of Allen, but it was too bad that she couldn't teach as well (2T86).

^{17/} There was some confusion about Carr's first name, but the record supports that the correct name is Anthony Carr (6T160-6T161).

Van Wells heard Trono remark that Dr. Haggerty was at the meeting but did not get an opportunity to speak (2T86). Van Wells also recalled Trono remarking that Laird, who Trono referred to as Emeril, because he cooked at a school Christmas party, was present at the Board meeting but did not get a chance to speak (2T87-2T87). Finally, Van Wells heard Trono say that Smith-Jarvis spoke well of Allen, but it was too bad she couldn't teach that way (2T87).

* * *

Respondent's witnesses - Trono, Masia, Balogh and Joseph - generally deny that these impromptu meetings described by Shoulars and Van Wells took place. In particular, they specifically deny the April 2005 meeting, the red-book incident in Trono's office after the Allen hearing, and that Trono ever referred to Smith-Jarvis as "Sour Juice". I do not credit their testimony which I have set forth below together with my reasons for not crediting their denials that events occurred as described by Shoulars and Van Wells.

* * *

Amalia Trono - Shoulars and Van Wells

121. On direct examination, Trono denied having any impromptu after-school meetings with administrators or teachers (6T138). On cross examination, Trono, however, retracted her original testimony and admitted that she stayed after school until

the last student left around 4:30 p.m. or until staff meetings concluded and that there were times that she sat down in her office and had conversations with teaching staff (7T131-7T132). Trono then testified, however, that she never met with Shoulars and Van Wells together (7T132).

I found Trono's testimony as to the meetings described by Shoulars and Van Wells self-serving and equivocal. Her absolute denial of any meetings was not plausible given her position as principal. It would be expected that teachers and other administrators would approach her both during and after school to discuss professional concerns. Trono's subsequent explanation on cross that she had some after-school meetings with some teachers, but not with Shoulars and Van Wells together was not believable.

Trono never specifically denied that Shoulars and Van Wells were part of her "clique". Certainly as a model teacher, selected by Trono as such, I infer that Trono and she would have interacted during the year. Shoulars and Van Wells are no longer employed by the Board. I could discern no plausible reason for Shoulars or Van Wells to be untruthful about the meetings they described. Shoulars' testimony was forthright and detailed. Similarly, Van Wells' testimony included details - Van Wells remembered Trono referring to Laird as Emeril, a name she gave him because of his cooking at a Christmas party - that lent credence to her description of the conversations in Trono's office.

122. Trono also denied ever referring to Smith-Jarvis as "Sour Juice" (6T138-6T139). Van Wells and Shoulars testified that they heard her use this phrase numerous times in their presence (2T82, 2T131; 4T16-4T17). Masia testified that he never heard Trono refer to Smith-Jarvis as "Sour Juice" but admitted that he used that phrase (5T44). I credit Van Wells and Shoulars in this regard. Masia was not a credible witness for many reasons.

Nicholas Masia - Shoulars and Van Wells

123. In 2004-2005, Nicholas Masia was assigned as a math coach, a position he applied for and got, at least in part, on Trono's recommendation (5T54-5T55). The coach has no classroom teaching assignment and is, therefore, a desirable assignment (5T52).

As a math coach, Masia testified that in 2004-2005, he had very little interaction with Shoulars or Van Wells who were language arts teachers, while he was the math coach (5T26-5T27). In particular, Masia testified that he only had casual conversations with Shoulars who had been a student at Washington School when Masia was a teacher there, although not Shoulars' teacher (5T26). This claim was not credible in light of the knowledge which Shoulars had about Masia's past history with the Association as demonstrated by Shoulars' testimony about the April conversation in Trono's office.

In particular, Masia testified that in 1999 he was an Association representative. He quit after appearing before Greadington and the Association executive committee to address a charge by an anonymous phone caller who accused him and another union representative (Ms. Lahr) of being too close to the administration and not representing unit members (5T73-5T74). Masia was offended by the charge, by the fact that only he, not Lahr, was called before the executive committee to answer the charge and by the executive committee's bringing up an incident from 2 years before when Masia and 24 teachers signed a petition critical of the Association's handling of negotiations (5T75-5T76). Masia felt that the Association was harassing him because he signed that petition (5T76).

If Masia had little contact with Shoulars and, as he claimed, never met with him in Trono's office, how is it that Shoulars knew about Masia's history with the Association which dated back to 1999, years before Shoulars was hired (4T18, 4T74)? In Shoulars' letter of apology (CP-21) to Smith-Jarvis describing the April 2005 meeting in Trono's office, Shoulars described Masia telling him that it was a good idea to write the letter about Smith-Jarvis because a letter was written about him to have him removed as a union representative.

Also, if Masia had little contact with Van Wells and Shoulars as he claimed, how is it that both knew about the phrase "Sour

Juice" in reference to Smith-Jarvis. Masia admitted that he used that phrase in reference to Smith-Jarvis (5T44). Why would he utter such a phrase to or in front of "casual" acquaintances?

124. Masia also demonstrated hostility to the Association growing out of a recent experience. He was highly critical of the Association's handling of a grievance filed against him in 2005-2006 (5T77-5T80). In that situation, a teacher, Irene Nowicki filed a grievance asserting that Masia did not properly mentor her (5T77). Masia attended a grievance meeting with Nowicki and Dr. King during which it was established that Masia was not, in fact, Nowicki's mentor (5T78-5T79). Masia then wrote a memo about the incident and distributed it to the staff because he felt that the Association had not fairly represented him, and Greadington had never apologized to him for not attending the grievance meeting (5T79-5T80).

125. Masia's past and current hostility toward the Association together with his close professional relationship with Trono who sat a few feet away during his testimony colored his testimony and led me to discredit his testimony regarding the meetings in Trono's office and his denial that Trono called Smith-Jarvis "Sour Juice".

Deborah Balogh - Shoulars and Van Wells

126. Balogh was a model teacher in 2004-2005, appointed by Trono to that position (5T85). In 2005-2006, Balogh was assigned the position of design coach at Trono's recommendation to replace Yvy Joseph who was promoted from the design-coach position to the position of Trono's assistant principal (5T100-5T101; 6T8).

In regard to the impromptu meetings described by Shoulars and Van Wells, Balogh testified as follows:

Q. So there was never a gathering of just the coaches and the model teachers and the administration?

A. No formal meetings. We may have talked informally where all of us were present.

Q. And would those - I'm sorry if you didn't finish your answer. I didn't want to cut you off.

A. I was just going to say no formal meetings took place, no.

Q. And those discussions that you had with the coaches, the model teachers and the administration, would those be after school?

A. Yes.

Q. In Ms. Trono's office?

A. No.

Q. Did you ever attend after-school meetings in Ms. Trono's office?

A. No. (5T107)

Balogh's testimony corroborates Van Wells and Shoulars that impromptu meetings or "informal" talks took place among Shoulars, Van Wells, the model teachers, coaches, and administration in 2004-2005.

127. Balogh, however, denies that any "meetings" took place after school. I do not credit her testimony. Like Masia, Balogh testified with Trono sitting a few feet away. Trono is her supervisor and evaluator. Trono was responsible for Balogh's past assignment as a model teacher and her current position as design coach, a desirable position that carries no classroom assignment.

Also, like Masia, Balogh demonstrated a bias against the Association. This hostility was demonstrated by her testimony regarding several conversations that she had with Van Wells, Shoulars and another teacher, Lisa Durden - conversations that support that Balogh felt that the Association was not fairly representing her.

Specifically, Balogh testified that she had developed a relationship with Shoulars in 2004-2005 because, as a first year teacher, he was trying hard to implement the America's Choice model and, as a model teacher, she took him under her wing (5T86). Balogh testified that the model teachers (Van Wells was also model teacher in 2004-2005) worked closely together and Shoulars was close to the model teachers (5T86). Sometime mid-year or toward

the end of the year^{18/}, Balogh testified that she, Shoulars, Van Sells and Durden were in Balogh's room discussing their feelings that the Association was not fairly representing them due to their support of the America's Choice model (5T90).

During this conversation, Balogh testified that Shoulars expressed his desire to write a letter about Smith-Jarvis to get her removed, because she had gone to the administration to complain about Shoulars' before-school drumming class. According to Balogh, Shoulars was upset because he could no longer practice with the student drummers in the morning. He also complained to Balogh that Smith-Jarvis didn't speak to him when she passed him in the hall (5T87). Masia also testified generally that he recalled that Shoulars told him in January 2005 that he wanted to write a letter about Smith-Jarvis complaining about Shoulars' morning drumming class (5T33, 5T37-5T38).

Balogh testified that she told Shoulars at the time that she would support him and sign the letter to remove Smith-Jarvis as an Association building representative but she changed her mind when Shoulars showed her CP-19 - the May 27, 2005 letter from Shoulars to Greadington complaining about Smith-Jarvis (5T95-5T96). According to Balogh, she changed her mind because her conscience

^{18/} Balogh was uncertain about the timing of the several conversations she had about Shoulars writing a letter about Smith-Jarvis (5T88-5T89).

was bothering her, Smith-Jarvis had been a friend, and she just didn't want to get involved (5T96).

Durden did not testify. Both Shoular and Van Wells refute Balogh's and Masia's testimony concerning the drumming complaints (9T61-9T62, 10T9). Shoulars explained that in 2004-2005, he taught drumming to ten 6th and 7th grade students at 7 a.m. (10T6-10T7). School began at 8 a.m. (10T6). Sometimes he taught in the basement or hallway outside the gym, and sometimes in his classroom on the second floor across from Smith-Jarvis' classroom and around the corner from Van Wells' classroom (9T61; 10T7-10T8). According to Shoulars and Van Wells, Smith-Jarvis never complained to either of them about the drumming (10T9). Shoulars credibly testified that he was not aware of either Smith-Jarvis or any teachers complaining about the noise from his drumming class nor did Trono forbid him from meeting before school in his classroom with his drumming students (10T10-10T11).

128. I credit both Van Wells and Shoulars that there was no discussion with either Balogh or Masia about complaints that Smith-Jarvis raised about Shoulars' early morning drumming class. Also, Balogh's and Masia's testimony suggesting that the idea to write a letter to Greadington complaining about Smith-Jarvis came from Shoulars' because he was upset with Smith-Jarvis' complaint about his drumming class is not supported by CP-19 that contains no mention of drumming. Even the timing of these so-called

discussions about drumming that, according to Masia occurred in mid-January and, according to Balogh, probably occurred mid-year, makes no sense, since CP-19 was written at the end of May 2005. Why would Shoulars wait until May to write a letter he allegedly discussed with Masia and Balogh in January 2005? There is no plausible explanation.

Balogh also testified that Van Wells, who took part in the alleged discussions with Balogh, Durden and Shoulars, discussed writing a letter complaining about Smith-Jarvis (5T90). According to Balogh, Van Wells showed her a letter that was addressed to Greadington. In the letter, Balogh related, that Van Wells wrote about Association representation and other people, including Smith-Jarvis, that she had personal problems with at Costley (5T93). Balogh testified that she advised Van Wells not to send the letter because "[Van Wells] mentioned several names in the letter. Her topic was initially supposed to be about our union rep, Clarisse Smith-Jarvis, but she mentioned several other people in her letter which is why I told her I didn't think it was appropriate to send" (5T94). I do not credit that Van Wells wrote a letter about Smith-Jarvis. Van Wells denies that she wrote such a letter (9T64). The letter was not produced.

Balogh was generally not a credible witness because of her obvious loyalty to Trono, her apparent hostility toward the Association for not "fairly representing her" and the

implausibility of much of her testimony as discussed above. For these reasons, I also do not credit her testimony that she never heard Trono refer to Smith-Jarvis as "Sour Juice" (5T98).

129. Finally, Balogh testified as to private discussions she had in 2004-2005 with Smith-Jarvis, Beaver and Rich concerning their desires to transfer out of Costley. These discussions were not shared by her with anyone in the administration, including Trono (5T105-5T106).

As to Smith-Jarvis, Balogh recalled that she was very unhappy with aspects of the America's Choice program and the Costley administration (5T98-5T99). Balogh testified that Smith-Jarvis no longer wanted to teach math at Costley under Trono and Masia (5T99). According to Balogh, Smith-Jarvis didn't like Trono's style and she expressed a desire to switch subject areas by getting a master's in reading (5T99). I credit this testimony because Smith-Jarvis corroborated that she was unhappy and upset on many levels with Trono dating back to her meeting in September 2005 to discuss her role as Association representative and continuing when her many requests for professional assistance from Trono went unheeded. Smith-Jarvis confirmed in a memo to Trono on January 13, 2005 that she would transfer if Trono was dissatisfied with her performance (CP-14). Also, Smith-Jarvis submitted a transfer request to Trono and Dr. King, growing out of the January incident between she and Trono and Smith-Jarvis' feeling that she

was being targeted by the administration because of her role as Association representative (CP-15, CP-16).

As to Beaver, Balogh and he were both model teachers (5T97). Balogh testified that Beaver complained to her that she (Balogh) was being shown favoritism over him and that Beaver was unhappy with the America's Choice program, although Balogh does not recall why Beaver was "unhappy" (5T97). In August 2005, Beaver allegedly told Balogh that he was being transferred and when Balogh expressed that she thought he wanted a transfer, according to Balogh, Beaver responded that he did want a transfer but he thought he had resolved some issues (5T98).

I credit that Beaver told Balogh that he wanted a transfer but do not credit that the reason he wanted the transfer was because he was unhappy with the America's Choice program. Beaver credibly testified that he requested a transfer in April 2005 after meeting with Trono and telling her that he was unhappy with the atmosphere in the building that was affecting the ability of the teachers to perform their jobs (CP-3; 1T103-1T104, 1T107-1T108). Beaver felt the different teacher factions was impacting their ability to work in teams and was much worse in 2004-2005 than it had been in previous years (1T107-1T108).

As to Dr. Rich, Balogh testified that Rich also told her that she did not like the current administration and was unhappy with the America's Choice program (5T99). Rich testified that at a

meeting with Dr. King in the spring of 2004 to discuss middle school teachers who did not hold a certification in the subject area that they were teaching mandated by the State, she asked King if she could come to see him to discuss a transfer to an elementary level school (1T73). Rich had just completed her doctoral studies and was not interested in going back to school (1T73). King told Rich that he did not want anyone coming to see him, because he was not transferring anyone (1T73). Rich also testified that during 2004-2005, she spoke to Trono and other staff members about transferring to another grade level at Costley (1T72). Based on Rich's testimony, I credit that she discussed the issue of transfer with Balogh but do not credit that she told Balogh the reason that she wanted a transfer was that she was unhappy with the America's Choice program or the current administration.

Yvy Joseph - Shoulars and Van Wells

130. Joseph has been employed by the Board for 9 years (6T8). As of September 2005, she holds the position of Trono's assistant principal at Costley (6T9).

Joseph was reluctant on cross examination to acknowledge that Trono was primarily responsible for appointing her as her assistant principal.

Q. And in order to get that position as assistant principal, you had to be approved by Ms. Trono, correct?

A. No, I was interviewed by different central office personnel, including Ms. Trono, and that's how I got the position.

Q. But in order to get that job, ultimately Ms. Trono had to want you in that position because you'd be working closely with her, correct?

A. I suppose they talked amongst each other yes (6T32-6T33).

I infer, however, that Trono played a key role in Joseph's promotion to assistant principal in 2005-2006, just as Trono played a key role in the selection of Joseph as design coach for the 2004-2005 school year, a desirable position that carried no classroom assignment.

131. As to whether there were any impromptu after-school meetings in 2004-2005, Joseph testified that in 2004-2005, Shoulars and Van Wells came to her for advice because of her position as design coach. Shoulars, in particular, was doing his best to follow the mandates of the America's Choice model (6T15-6T16). Joseph testified, however, on direct examination that there were no impromptu after-school meetings as described by Shoulars and Van Wells. She "would call them more . . . informal conversations" (6T18-6T19).

On cross examination, Joseph clarified that the informal conversations did not take place in Trono's office and were only between the coaches (6T38-6T39). Joseph specifically denied that the April 2005 meeting in Trono's office to discuss the letter to

Greadington ever took place. She denied hearing Trono refer to staff members who did not effectively implement the America's Choice model as resistors and denied that during the April 2005 meeting she (Joseph) stated she would tell the America' Choice facilitator, Dennis, about getting teachers who were resisting the model out of the building (6T21-6T22).

I do not credit Joseph's testimony. She was evasive in many of her responses - splitting hairs about whether there were after-school meetings or "informal conversations". Because she owes her current and immediate past positions to Trono's recommendations, Joseph was motivated to support Trono's version of events. Trono, who is Joseph's direct supervisor and evaluator, sat a few feet away during her testimony.

Joseph' testimony was also inconsistent. For instance, on direct examination Joseph was asked whether there were any incidents involving Shoulars in 2004-2005 with her directly or at the school (6T15-6T16). Joseph answered "no" (6T16). However, in later testimony when asked about when she became aware that Shoulars wanted to write a letter to Greadington about Smith-Jarvis, Joseph described an alleged incident where Shoulars came to her office and spoke to Joseph and Alexander about writing a letter to Greadington complaining about Smith-Jarvis who, according to Joseph, he felt was incompetent (6T23-6T24). Joseph testified that she told Shoulars that she would not sign such a

letter because as a coach she had to be very careful about her relationship with teachers who tended to view coaches as administrators and because she (Joseph) had no problem with Smith-Jarvis (6T24). Alexander did not testify to corroborate this conversation.

Joseph's testimony is at odds with her original statement that nothing happened with Shoulars in 2004-2005 involving her. Shoulars's denied that he personally had any problems with Smith-Jarvis and only wrote the letter (CP-19) at the suggestion of Trono after the April 2005 meeting. In other words, his testimony does not support Joseph's statement that he came to her about writing a letter to complain about Smith-Jarvis. Like Balogh's testimony in this regard, Joseph's testimony is self-serving and appears contrived. I credit Shoulars and Van Wells concerning the reason for writing CP-19, and do not credit Joseph's testimony that the April 2005 meeting never took place and that Shoulars came to her about writing a letter concerning Smith-Jarvis.

132. Joseph also denied hearing Trono use the phrase "Sour Juice", but testified that she heard Masia and others use the phrase in her presence and in the presence of the other coach, Ms. Alexander (6T39). Joseph testified that Trono was never present when she heard Masia and others use this phrase (6T40). Alexander did not testify.

I do not credit Joseph that she never heard Trono call Smith-Jarvis, "Sour Juice", or that the phrase was not uttered in Trono's presence. I credit Van Wells and Shoulars who, unlike Joseph, have no motive to color their testimony about this fact. At the very least, if Masia and others were freely using the phrase, as Joseph testified, and were working closely with Trono, it is unlikely that the phrase was never used in Trono's presence and/or repeated by Trono herself.

* * *

Based on the above-credibility determinations as to Trono's, Masia's, Balogh's and Joseph's testimonies, I find that: (a) during 2004-2005, Trono met informally in her office with Shoulars and Van Wells who were part of her clique along with Masia, Joseph and Balogh; (b) Trono frequently used the phrase "Sour Juice" in referring to Smith-Jarvis in front of her clique members; (c) in April 2005, at a meeting in her office attended also by Masia and Joseph, Trono solicited Shoulars and Van Wells to write letters to Greadington complaining about Smith-Jarvis in order to have her removed as Costley building representative and the meeting as described by Van Wells and Shoulars occurred; and (d) at a meeting in her office the day after the Sharonda Allen hearing, Trono took out a red book containing, among other items, a list of names of those who appeared on behalf of Allen at the Board meeting, read the names, including Smith-Jarvis, Rich, Beaver, Hinds, Waters,

Haggerty, and Carr, and indicated that she would get them transferred out of Costley by labeling them as resistors to the implementation of the America's Choice model because they supported Allen before the Board. Also attending this meeting was Shoulars, Masia, Joseph and Balogh, while Van Wells observed from the doorway of Trono's office.

Trono, Association Complaints and King's January 31, 2006 Response

133. In 2005-2006 issues arose between Trono and the Association which led to the filing of grievances that were eventually resolved by Dr. King - one involved the choice of an Association representative for teachers (Van Wells and Irene Nowicki) at investigatory meetings (CP-4) and the other issue involved the renaming of certain after-school clubs to avoid paying negotiated stipends/ club advisor pay (CP-5). Both grievances were resolved at Level 3 of the parties' grievance procedure by Assistant Superintendent Dr. King (CP-4, CP-6).

On January 30, 2006, King conducted a Level 3 grievance meeting with Association President Greadington and Trono to discuss that various Association complaints against Trono and resolve the issues presented in the grievances (CP-5). On January 31, 2006, he responded in writing (CP-4, CP-5, CP-6).

134. As to the club advisor pay issue, King recognized but did not resolve, differences between Trono's and Greadington's accounts as to whether Trono attempted to influence teachers to

accept an hourly rate of pay for acting as advisors to after-school clubs or whether it was made clear to Trono by Greadington and Smith-Jarvis that the only rate of pay for the advisors was the negotiated stipend amounts in the parties' collective agreement (CP-6).

According to Trono, the idea of after-school clubs arose at the end of the 2004-2005 from the CAPA report recommendations that more after-school activities should be offered (7T25, 7T34). At the last SLC meeting of the year in June 2005, the topic of these extra-curricular activities came up (7T25; R-19). According to Trono, Smith-Jarvis was concerned that teachers be paid the contractual rate for the club activities, but expressed the idea that teachers could volunteer (7T25). Trono testified that the minutes of this meeting support her testimony (R-19).

Smith-Jarvis confirmed that she attended the June 2005 SLC meeting but denied that she brought up the concept of volunteer work in lieu of the contractual rate of pay (8T52). Smith-Jarvis testified that R-19 minutes don't accurately reflect what she said and that, unlike other minutes, she never had the opportunity to review these minutes for accuracy and approval, because she had been transferred out of Costley and was not present for the first SLC meeting in the fall of 2005 (8T51-8T52). Smith-Jarvis also pointed out that the R-19 minutes, unlike previous minutes, were not signed at the end by Moira Weidenborner who was responsible

for taking, typing and distributing the minutes of all SLC meetings (R-19; 8T49).

Like Dr. King, I cannot resolve the discrepancy in Smith-Jarvis' and Trono's version of events. It is not material. In September 2005 Trono sent out permission slips with students concerning participation in various clubs (7T35). According to Trono, teachers came up with the clubs that they wanted to sponsor (7T34). In October 2005, there was a TALC (Teachers Administrators Liaison Committee) meeting to discuss how to compensate teachers who were sponsoring the clubs (7T29). Greadington attended (4T146-4T148; 7T29).

The Association position was that the club advisor's rate of pay was set by the parties' collective negotiations agreement (4T149). Before the meeting began, Greadington explained the Association's position to Trono and showed her the expired collective negotiations agreement (the new collective agreement was being printed) (4T150, 4T184). Trono listened respectfully and indicated that she understood Greadington's position, so Greadington thought the issue was resolved (4T150-4T151, 4T183, 4T185; 7T29).

However, after the TALC meeting, Greadington got a telephone call from the Costley building representatives explaining that there was something being circulated asking teachers to accept an hourly rate of pay for participation in after-school club

activities (4T151-4T153). I do not know what was being circulated because no document was introduced into evidence nor did any witness testify concerning the contents of any circulated document. It is possible that what was being circulated were the permission slips for club participation. Those slips are also not in the record. I therefore make no factual findings as to what Trono may or may not have circulated and draw no inferences in this regard.

In considering the grievance, however, King settled the dispute and determined that anyone acting as a club advisor must be paid at the negotiated club advisor rate, not an hourly rate as proposed by Trono (CP-6).

135. King also resolved a peripheral issue related to the club-advisor-pay grievance regarding what the Association called threatening statements made by Trono to parents concerning the Association's interfering with the findings of the CAPA team (CP-5). Trono denied making these statements but told King she recalled discussing with Stephen Laird (a Costley building representative) a conversation she had with Greadington concerning the after-school clubs. King determined that Trono should not have discussed her conversation with Greadington to Laird. King wrote in pertinent part:

It is my opinion and belief that Stephen Laird may have talked with other Costley teachers about his discussion with Amalia Trono, thereby causing those teachers to contact

Jacqueline Greadington about the matter. The human element involved in repeating what one has "heard" probably resulted in teachers believing that Amalia Trono had accused the EOEA of some wrongdoing when she (Amalia Trono) expressed the opinion (to Stephen Laird) that she was concerned about what was going to happen to the students if they did not have certain club activities (CP-5).

136. As to the grievance alleging that Trono was either preventing members from selecting union representatives at disciplinary interviews or herself selecting union representatives for the member, the issue arose from incidents involving a newly hired teacher, Irene Nowicki, and another involving Van Wells.

137. In 2005-2006, the Association had two building representatives at Costley - Marianne Lahr and Steven Laird (9T25). Greadington had heard from members who called her that there was a problem with representation at Costley (4T154). It appeared that Trono was deciding who should represent teachers when they were called in for meetings with Trono. Lahr, who was a longtime representative and being called in by Trono, was perceived by some members as being more of an agent of Trono's than of the members (4T15). Greadington, therefore, asked Mary Louise Viquez, who is currently retired, but who, at the time, was a longtime employee (43 ½ years as a librarian) at Costley and an Association executive board member, to act as a union representative when it did not interfere with her duties (4T154-4T155; 9T21). Greadington instructed those unit members

that she knew were having on-going issues regarding representation to first ask Viquez to represent them if she was available (4T154-4T155).

In particular, the grievance (CP-4) concerned an October 6, 2005 meeting scheduled by Trono with Nowicki. Trono invited Lahr to attend the meeting as a witness (9T19). According to Trono, Lahr was the only representative available and she wanted to make sure that Nowicki was represented (7T17). There is no evidence that Nowicki requested that Lahr or any other Association representative accompany her to the meeting with Trono.

Nevertheless, according to Viquez, she was available to represent Nowicki. Viquez was having lunch, when she heard that Nowicki had a possible problem involving DYFS (Division of Youth and Family Services). Viquez knew from experience and what union representatives and executive board members are told, that where there is a possible DYFS situation, the teacher is advised to get a lawyer through the NJEA uniserv office (9T18-9T19).

Viquez learned from Lahr that during her (Viquez') lunch period, Lahr was called out of her class by Trono to attend the meeting with Nowicki (9T19-9T20). Lahr told Viquez that she (Lahr) took notes but did not advise Nowicki to get a lawyer (9T19). Upon hearing this, Viquez called Greadington because she was concerned that Lahr, a supposed experienced representative,

should have known to advise Nowicki to get a lawyer (4T155-4T157; 9T19).

After this incident, Greadington met at least once with Trono to discuss Weingarten rights and explained that it was not Trono's responsibility to determine if a member should have representation or who that representative should be (4T157). Trono told Greadington that she called a union representative to meetings because she wanted a witness at the meeting, especially, if she (Trono) felt, that the meeting could lead to discipline of the employee (7T107). Greadington explained to Trono that whoever the representative was, it was not Trono's place to decide nor was the union representative a witness for Trono, but was a witness for the member (4T158).

Greadington did not feel after her discussion with Trono that the issue was resolved so she filed a grievance (CP-4; 4T158-4T159).

In resolving this grievance, King determined:

Amalia Trono erred when she invited Marianne Lahr to attend the meeting for the purpose of representing Irene Nowicki. No administrator should ever have any involvement in determining whether or not or who attends a meeting to represent any teacher. Such involvement is unwise, unwarranted, unnecessary and is inconsistent with the language of Public Employment Relations Act.

Amalia Trono should not have and will not at any time in the future involve herself in the process of determining whether or not a teacher representative attends a meeting with

her and a teacher nor should she have nor will she have any involvement in determining who attends any such meeting for the purpose of representing a teacher.

The meeting of October 6, 2005 resulted in a memorandum (dated October 7, 2005) being sent to Irene Nowicki. That memorandum will be removed from the personnel files of Irene Nowicki. Amalia Trono may, of course, conduct another meeting with Irene Nowicki concerning the same matter and issue an appropriate memorandum about that meeting. (CP-4)

138. As to the Van Wells issue, in October 2005, Trono called Van Wells into her office to discuss her role as advisor in collecting money for student pictures (7T20; 9T57). When Van Wells arrived in Trono's office Joseph and Lahr were present (7T20; 9T57). Van Wells inquired as to why Lahr was present and was told by Trono that she (Trono) invited Lahr there as a witness (7T20; 9T58). Van Wells was not comfortable with Lahr's presence, because she felt that Lahr was not there to represent her, but she did not object (7T21; 9T58). However, when Trono asked Van Wells for all picture receipts, Van Wells explained that she did not collect the picture money - the photographer did. Van Wells stated that she did not want Lahr representing her and left the meeting (7T21; 9T58-9T59).

In considering the Association's complaint regarding this incident, King determined that Trono erred when she involved herself in the process of inviting Lahr to attend the meeting and, thus, determining who should attend the meeting for the purpose of

representing Van Wells. King admonished Trono not to involve herself in the future in determining whether or not a teacher has a representative or in selecting who that representative should be (CP-5).

Van Wells testified that for the remainder of the year when she and Trono had disciplinary meetings, Van Wells asked Viquez to accompany her to the meetings (9T63). Viquez attended the meetings with Van Wells (9T63).

139. Finally, in his January 31, 2006 response to the Association concerning Trono, the grievances, and various other Association complaints, King concluded:

I have listened carefully and intently to the statements, claims and responses of the parties. I have offered advice, guidance and suggestions about how these matters should have been handled and how they should now be resolved. I realize that there are still some areas where the statements of Jacqueline Greadington and the statements of Amalia Trono are in conflict. Despite this circumstance, I am convinced that Amalia Trono's actions, if improper or incorrect, will not be repeated. I am also convinced that Amalia Trono has a better, more thorough and more complete understanding of what she should or should not have done in certain situations and what she should or should not do in the future.

It is my hope and expectation that if and when issues arise in the future, there will be no confusion about the course of action that should be taken. The terms and conditions contained in the existing agreement between the EOBOE and the EOEA bind us all and we are all expected to govern our actions, behavior and decisions by the language of that agreement. (CP-5)

ANALYSIS**CO-2006-153****The 2005-2006 Transfers**

The first issue in the charge is whether the East Orange Board of Education, through its agent, Principal Amalia Trono, retaliated against Clarisse Smith-Jarvis for her Association activities by transferring her from John L. Costley Middle School for the 2005-2006 school year. It is further alleged that Trono retaliated against others who, together with Smith-Jarvis, appeared before the Board in support of a teacher (Sharonda Allen) by also transferring them from Costley for the 2005-2006 school year.

In re Tp. of Bridgewater, 95 N.J. 235 (1984), articulates the standards for determining whether personnel actions are motivated by discrimination against the exercise of protected activities in violation of subsections 5.4a(1) and (3) of the Act. A charging party must prove, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse personnel action. This may be done by direct or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense need not be considered, however, unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the Commission to resolve.

Here, Smith-Jarvis and the other teachers who were transferred (Rodney Beaver, Dr. Susan Rich, Carla Hinds, Deborah Waters and Dr. James Haggerty) were engaged in protected activity, and the Board and its agent, Trono, were aware of their conduct. In particular, Hinds was an Association executive Board member, represented Allen in a mid-year disciplinary hearing before Trono and sent a statement in support of Allen for Smith-Jarvis to read on Hinds' behalf at the Board meeting in the spring.

Also, Smith-Jarvis, as building representative, spoke at staff meetings about issues affecting the membership. For instance, during the first staff meeting/training session at the beginning of the 2004-2005 school year, Acting Principal Amalia Trono addressed the staff concerning the implementation of a new whole school reform model, America's Choice. Smith-Jarvis raised various concerns, including how teachers would be compensated for time spent at Wednesday team meetings. Smith-Jarvis was concerned, in particular, that the school day would be restructured adding 20 minutes and that the administration's proposal to compensate teachers at a prorated hourly rate appeared to violate the parties' collective agreement. Clearly, Smith-Jarvis was engaged in protected conduct and Trono was aware of Smith-Jarvis' protected activity.

Additionally, sometime in the spring of 2005, Smith-Jarvis together with teachers Rodney Beaver, Susan Rich, Deborah Waters and James Haggerty as well as special education teaching assistant Anthony Carr spoke at a Board meeting in support of teacher Sharonda Allen. Smith-Jarvis also read a statement from teacher Carla Hinds, who could not attend, supporting Allen. Trono had recommended that the Board terminate Allen. Trono was present for these presentations before the Board. After listening to Trono and the Allen supporters, the Board and Superintendent Wilson

determined not to terminate Allen as Trono had recommended, but to transfer her to another school.

The activity at the Board meeting was organized by the Association and individual unit members in support of a teacher whose employment was being challenged by Trono. This activity is protected by our Act. In North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205 1978), aff'd NJPER Supp. 2d 63 (¶45 App. Div. 1979), the Commission considered whether a key punch operator was engaged in protected activity when she complained to her supervisor about a change in her hours of work. The Commission rejected this determination and wrote at footnote 16 that:

. . . individual employee conduct, whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective negotiations agreement or existing working conditions of employees in a recognized or certified unit, constitute protected activities under our Act. Id. at 454.

See also, City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987) (Act protects collective action through litigation to enforce statutory pension rights).

Next I consider whether the Board or its agent, Trono, was hostile to the exercise of these protected activities. As to Smith-Jarvis, I found both direct and circumstantial evidence of hostility. Trono demonstrated from the beginning of 2004-2005

that she was hostile to Smith-Jarvis in her role as Association representative. At the first staff meeting described above, Trono reacted in a defensive and non-responsive manner to questions raised by Smith-Jarvis concerning teacher compensation for a possible extended work day. Darrell Shoulars, a former employee of the Board, confirmed that Trono appeared angry with Smith-Jarvis when she raised such issues about the parties' collective agreement both at that staff meeting and at other times throughout the year.

Indeed, because of concerns about Trono's attitude towards Smith-Jarvis arising from the staff meeting, Association President Greadington met with Trono and Smith-Jarvis in September 2004 specifically to discuss Smith-Jarvis' role as an Association representative. Greadington explained to Trono that the concerns raised by Smith-Jarvis on behalf of the membership were not personal attacks on Trono, but were required by her role as building representative and, therefore, appropriate. According to Greadington, Trono appeared to understand what she attempted to convey.

Trono, however, demonstrated throughout the year a lack of understanding as to Smith-Jarvis' function as an Association representative. Indeed, Trono's final performance evaluation of Smith-Jarvis at the end of March 2005 reflected her inability to separate the role of Association representative and employee. In

that evaluation, as part of a professional improvement plan, Trono commented about Smith-Jarvis' actions at that early-in-the-year meeting where she raised concerns about members' terms and conditions of employment:

At the beginning of the school year, I observed that there were some problems and concerns about your attitude towards the implementation of the America's Choice Model. At the first training, you were being negative and difficult. (CP-17)

These concerns in regard to the implementation of the new whole school reform model were raised by Smith-Jarvis in her capacity as Association representative. Although Trono appeared to understand Greadington's explanation, she clearly did not and, moreover, harbored animosity toward what she considered Smith-Jarvis' "negative and difficult" attitude - hostility that she maintained throughout 2004-2005.

Based largely on credibility determinations, I found additional direct evidence of Trono's hostility. In this regard, I credited the testimony of Darrell Shoulars and Monique Van Wells, former teachers (Van Wells was a model English teacher in 2004-2005) employed by the Board, and discredited the testimony of Principal Trono, Math Coach Nicholas Masia, former Design Coach/current Assistant Principal Yvy Joseph and former Model Teacher/current Design Coach Balogh. Shoulars and Van Wells credibly testified that, during 2004-2005, they together with

Masia, Joseph and Balogh, comprised Principal Trono's inner circle or clique. This group met informally both during and after school. It was during those meetings that Shoulars and Van Wells often heard Trono refer to Smith-Jarvis as "Sour Juice", particularly when criticizing her role as union representative. Masia and others also often referred to Smith-Jarvis as "Sour Juice".

At a meeting in Trono's office in April 2005, attended by Shoulars, Van Wells, Masia, Joseph and Trono, Trono suggested to both Van Wells and Shoulars that they write letters to Association President complaining about Smith-Jarvis as building representative to get her removed. Van Wells refused to write the letter about Smith-Jarvis and left the meeting. After she left, Trono and Joseph indicated in front of Shoulars that Van Wells would be sorry for refusing to write the letter and that they would get her the next year.

Shoulars, however, agreed to do it because, as a non-tenured teacher, he was fearful that his job could be in jeopardy if he refused and/or he would be harassed the next year. Trono suggested to Shoulars that he show it to her for approval before posting it. After delaying for almost two months, by the end of May 2005, he finally wrote the letter and brought it to Trono who reviewed and approved it. Shoulars then posted the letter to Greadington with copies to others by placing it in the interoffice

mail box at Costley. Greadington did not receive a copy of the letter until Van Wells showed her a copy the next fall, because the Association had no interoffice mail receptacle. Greadington eventually showed the letter to Smith-Jarvis in December 2005. Smith-Jarvis wrote a rebuttal to Shoulars, because she had never had any dealings with him in her role of Association representative as claimed by Shoulars and was indignant that he had complained about her. When Shoulars received Smith-Jarvis' letter in January 2006, he immediately wrote her an apology, explaining what had occurred in Trono's office during the April 2005 meeting.

In addition to the direct evidence of Trono's hostility to Smith-Jarvis' activities as Association representative, I draw an inference of hostility from Trono's inexplicable failure to provide training in the America's Choice model to Smith-Jarvis who asked her on numerous occasions throughout the year for assistance. Trono was aware that the model was new to the school and that teachers would need time to adjust and encouragement to "buy into" the program, yet from the beginning of the year, Trono ignored Smith-Jarvis' requests for assistance - requests growing out of Trono's criticism of her performance.

Charging Party also asserts that the November 15, 2004 classroom observation (CP-10) Trono conducted of Smith-Jarvis' class was additional scrutiny prompted by Trono's hostility toward

Smith-Jarvis' protected activity. It contends that others who were subsequently transferred had only one or two evaluations for the entire school year. Certainly, the November observation, coming six weeks after the Greadington meeting, and juxtaposed with Trono's testimony that she wanted to persuade teachers to voluntarily buy into the America's Choice model, so was not critical of their performance in the beginning of the year, is suspicious and supports an inference of hostility when taken together with Trono's inexplicable failure to provide assistance that Smith-Jarvis requested immediately after receiving this November observation.

Based on the foregoing direct and circumstantial evidence, I find that Trono was hostile to Smith-Jarvis' exercise of protected conduct. I also find based in large part on credibility determinations, additional direct and circumstantial evidence of Trono's hostility toward Smith-Jarvis and the other teachers who appeared before the Board at the meeting to consider Trono's recommendation to terminate teacher, Sharonda Allen. Specifically, in another incident credibly described by both Van Wells and Shoulars, the day after the Board meeting regarding Sharonda Allen's employment, Trono opened a red book in which she had noted the names of those appearing before the Board to support Allen. Trono read the names and indicated that she didn't like what they (the Allen supporters) had to say and that she would get

them transferred out of Costley by labeling them resistors to the America's Choice model and communicating this to Wilson.

Subsequently, in June 2005 Trono recommended Wilson transfer the teachers, who had supported Allen, although I credit that she did not tell Wilson that their support of Allen was the reason for her recommendations. The purported basis for her recommendations were that these particular teachers were resisting the America's Choice model. On her recommendation, at the August 2005 Board meeting, Wilson recommended the transfers to the Board who then approved the transfers of Smith-Jarvis, Beaver, Rich, Hinds, Waters and Haggerty as well as Allen for 2005-2006.

First, the Board suggests that not everyone who was at the Allen hearing in support of Allen was transferred - e.g. Stephen Laird - and that this supports its theory that the transfers were not the product of Trono's hostility to protected activity. However, although Laird did attend the Board meeting, he did not speak on her behalf or have a statement read in her support as did the others. This argument is not persuasive.

Next, Charging Party suggests that I draw an inference of hostility from the timing of events, namely, Trono's recommendation to Wilson in June 2005 weeks after the Allen Board meeting in the spring of 2005. The Board disagrees and contends that Charging Party's reliance on Warren Hills Reg. Bd. of Ed., P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd 32 NJPER 8

(¶2 App. Div. 2005), certif. den. 186 N.J. 609 (2006), to support its timing argument is misplaced. There, it contends, unlike here, the decision to subcontract employees who were engaged in an organizing effort occurred immediately after the superintendent learned of their activities. The Board points out that the Costley transfers did not occur immediately after the Sharonda Allen hearing in the spring of 2005 but not until August 2005 when the Board approved the transfers. The Board's argument is inapposite.

Timing is an important factor in assessing the motivation for adverse actions and putting them into context. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). Although Wilson and the Board had the final authority to approve the transfers, neither Wilson nor the Board had independent knowledge of the teachers who, Trono identified in June 2005 as needing to be transferred because they were resisting the implementation of the America's Choice model. I rejected Wilson's general claim that the Costley transfer decisions were a collaborative effort among he, Dr. Scott, the mentors (Veale and Watson), the America's Choice representatives (Dennis and Pollhill) and Dr. King as well as Trono who all allegedly gave him in-put into the individuals that he eventually approved for transfer.

Assistant Superintendent Gloria Scott, a credible and reliable witness, confirmed that Wilson requested the names of

teaching staff from Trono and the other two principals of schools in the Hart complex, because neither she nor Wilson knew who the purported "resistors" were. I draw an adverse inference from the Board's failure to call King, Veale, Watson, Dennis or Pollhill to corroborate Wilson's claim that the decision-making effort was collaborative among these individuals. Cohen v. Community Medical Center, 386 N.J. Super. 387 (App. Div. 2006).

Wilson, subsequently, transferred all individuals recommended by Trono in June 2005.^{19/} There is no evidence that he or the Board conducted any independent investigation as to Trono's recommendations before or after June 2005. Whether Trono is viewed as an agent representing the Board, or as a person making effective recommendations to Wilson and the Board, the Board, as employer, is responsible for the decisions it makes based on Trono's retaliatory motives. See generally, Mt. Olive Tp. Bd. Of

^{19/} As to the special education teaching assistant, Anthony Carr, who was also transferred for the 2005-2006 school year and had appeared at the Allen hearing, Trono testified that his transfer was effectuated by the special education department as part of a regular rotation, not by her. Carr did not testify. Although Trono did evaluate Carr's performance in 2004-2005 and found it lacking, the evidence is not sufficient to refute Trono's claim that his transfer was through the special education department in conjunction with a regular rotation of personnel or to support that Trono was the decision-maker or effectively recommended his transfer to Wilson - e.g. Carr's name was not discussed between Wilson and Trono at the June meeting about the 2005-2006 teacher staffing decisions nor is his name reflected in the notes (R-15) taken by Wilson at that meeting.

Ed., P.E.R.C. No. 90-66, 16 NJPER 128 (¶21050 1990) (Board violated Act by accepting transfer recommendation of superintendent motivated by union animus); contrast, Shore Reg. Bd. of Ed., P.E.R.C. No. 2008-1, 33 NJPER 201 (¶71 2007) (no violation where Board proved it would have taken independent management team's recommendation even absent superintendent's hostility to union president's protected activity).

Therefore, the timing of the transfer decisions were not months after the Allen hearing in August 2005 when the Board officially approved Wilson's recommendation, as claimed by Respondent. Rather Trono indicated the day after the Allen hearing that she intended to have the Allen supporters transferred by labeling them resistors to the America's Choice model and communicating this to Wilson. Wilson told Trono at the beginning of 2004-2005 that any teacher who did not want to implement the new model could be transferred. Thus, Trono knew that labeling the Allen supporters as resistant would resonate with Wilson. Weeks later, in June 2005, Trono had the perfect opportunity to rid herself of the Allen supporters, when she and the other two principals met with Wilson, by providing him their names. The timing here is suspicious and supports an inference of hostility. See generally, Warren Hills Reg. Bd. of Ed.; Mt. Olive.

I note, however, that Wilson himself evidenced hostility toward protected activity during a July 2005 meeting with Allen

and Hinds, who attended the meeting at Allen's request as her Association representative. The meeting was called by Wilson after the Board hearing to discuss Allen's employment situation for the coming year. Wilson told Allen what was expected of her in the 2005-2006 and informed her that if he had any problems with her in 2005-2006 he would terminate her. When Allen asked Wilson to explain this comment, Wilson told Allen that if she wanted a further explanation, she had to come without Hinds. Since Hinds was present at Allen's request as her Association representative, I infer that Wilson was hostile to this protected conduct.

The Board also contends timing does not support an inference of hostility because Trono's staff evaluations, dated March 30, 2005, before the Allen hearing, could not have been crafted, as Charging Party contends, to support her later contention that the teachers who were transferred were resisting the model. I reject this argument. First, even if I accept that the timing of events suggests that Trono did not, or could not have, crafted the evaluations to support, what Trono later claimed and told Wilson, that the teachers at issue were resisting the America's Choice model, the teacher evaluations did not in fact support Trono's transfer recommendations for the reasons she stated. They were overly broad and not proof that any of the teachers was unwilling to implement the model properly or successfully. Therefore,

whether or not, the timing of the evaluations supports that they were "crafted" is immaterial.

However, the Allen hearing was not the first or only trigger for Trono's hostility to protected conduct. The evidence supports that Trono was hostile to Smith-Jarvis' activities as Association representative from the beginning of the school year, and this hostility influenced her subsequent actions in regard to Smith-Jarvis including not modeling a lesson for her and not providing her scoring rubrics or training tapes, the necessary tools to succeed. Smith-Jarvis' evaluations, therefore, could have been crafted to support Trono's transfer recommendation.

Additionally, Van Wells established that Trono was aware from at least November 2004 that certain teachers, including Smith-Jarvis, Rich and Hinds, were supportive of Allen in her on-going disputes with Van Wells. Trono labeled them as resistors that she (Trono) wanted out of her building. It appears that Trono targeted these individuals well before the Allen hearing and could have "crafted" their evaluations to reflect her hostility to their activities. Also, Hinds was an Association representative who had appeared with Allen at a mid-year disciplinary meeting with Trono. Trono therefore was aware of her support of Allen and of her status as an Association representative.

Having found that hostility to the exercise of protected activity was a substantial or motivating factor in the transfers,

I must consider whether the Board offered a motive not illegal under our Act for the personnel actions. Trono contends that she recommended the transfers to Wilson because the teachers each expressed during the year the desire to transfer and because they were resisting the implementation of or did not want to implement the America's Choice model. I reject her explanation as pretextual. The record does not support that these teachers were resisting the implementation of the model or that, even if they had requested a transfer or expressed a desire to do so, that request motivated Trono's recommendation to Wilson.

John L. Costley together with Patrick Healey and Sojourner Truth make up the three middle schools in the Hart complex. In 2004-2005, all three schools had been identified as in the 4th year of sanctions under the federal No Child Left Behind Act and as schools "in need of improvement". As such, two things were triggered by this condition: Wilson changed the whole school reform model in all three schools for 2004-2005 and in April 2005 a State CAPA team was dispatched for a 5-day assessment review to identify problems and make recommendations for improvement.

America's Choice was the new model introduced at Costley and the other middle schools. Wilson recognized that 2004-2005 was an introductory year and did not expect the program to be fully operational although he did anticipate the certain classroom routines and rituals would be in place. Training for

administrators began during the summer and for staff the day before school started. Neither Trono nor the teachers at issue in the matter before me had previous experience with America's Choice.

Training continued throughout the year and was not completed until the spring of 2005. Teachers were trained primarily by coaches in their content areas at weekly meetings. If an individual teacher was having problems, Trono asserted, she would send in one of the America's Choice facilitators, supervisors or coaches to work with the teacher. The evidence, however, supports that Trono never provided additional assistance to the transferred teachers who, she contended, she identified from the beginning of the year as resisting the implementation of America's Choice model. Nor did the math or literacy coaches (Masia or Alexander) identify these teachers as having difficulties with the model.

Specifically, as to Smith-Jarvis, despite Trono's comment in Smith-Jarvis' November evaluation that she recommended more training for her to assist in the teaching of math concepts, and despite numerous requests by Smith-Jarvis throughout 2004-2005 for assistance in implementing the model, Trono never provided additional training to Smith-Jarvis by modeling a lesson herself (Trono was a math teacher before becoming an administrator), asking America's Choice Facilitator Dennis to work with her (Trono asked Dennis to work with other teachers Trono identified as

needing assistance) or requested that Masia, the math coach, do so.^{20/}

Indeed, Masia met frequently with Trono to discuss teachers who were having difficulties implementing the America's Choice model. He worked with 8 or 9 teachers individually in 2004-2005, but not with Smith-Jarvis. Either because he did not identify her to Trono as a teacher needing special assistance and/or Trono never identified Smith-Jarvis as in need of special assistance to Masia. This refutes Trono's claim that, from the beginning of the year, it was apparent to her that Smith-Jarvis was not properly implementing the America's Choice model. In either case, it does not support Trono's claim that Smith-Jarvis was "resisting" the model.

Additionally, when Smith-Jarvis requested a scoring rubric at a meeting with Trono to discuss student scoring for the GEPA test, Trono told her she was an experienced teacher and didn't need it. This response was at best misinformed and at worst more evidence of hostility toward Smith-Jarvis considering the CAPA team's

^{20/} The Board contends that Rich, Hinds and Beaver never asked for assistance, suggesting that, therefore, they must have been adequately trained and were resisting the model, as Trono asserted, by not properly implementing it. This argument is not persuasive because each testified that until they received their final yearly evaluations in April 2005 they had no idea that they needed to seek assistance. Moreover, I concluded that neither Trono nor their evaluations indicated that they were unwilling to implement the model.

recommendation that Costley provide professional development in creating and scoring rubrics.

Also, at the end of 2004-2005, a couple of days before Trono completed Smith-Jarvis' annual evaluation, she sent a supervisor (Grayson) to observe Smith-Jarvis' class. Grayson noted that the lesson she observed was well taught and suggested that Smith-Jarvis view America's Choice training tapes. Despite this suggestion, Trono never provided Smith-Jarvis the training tapes, discussed them with her or advised her where she could access such tapes.

Trono's actions in regard to Smith-Jarvis not only do not support that Smith-Jarvis was "resisting" the model, but support that Trono was setting her up for failure by not providing Smith-Jarvis with requested training and criticizing her without giving her the tools to improve alleged performance deficits. Finally, I note that in Smith-Jarvis' final evaluation, Trono wrote that her performance was improving. Despite this comment, Trono recommended her transfer to Wilson in June 2005.

Smith-Jarvis did submit a mid-year transfer request to one of two schools (not Garvin, the school to which she was eventually transferred for 2005-2006). Her request grew out of frustration with Trono whom she perceived as targeting her because of her union activity - a suspicion she communicated to Assistant Superintendent King when submitting her request. Smith-Jarvis

never received a response from King, but her request was presumably rejected because she was notified in the spring that her assignment for 2005-2006 was to Costley. Therefore, Trono's contention that she recommended Smith-Jarvis' transfer, because she wanted it, is disingenuous.

Moreover, the Board's assertion that Smith-Jarvis was transferred in part because she wanted a transfer is not persuasive. Certainly, if her transfer request grew out of Trono's harassment for her union activities, the fact that the Board eventually granted the transfer request does not absolve it from the illegality of Trono's actions and its own complicity in acting on Trono's retaliatory motives. Based on the foregoing, Trono's reasons for recommending Smith-Jarvis' transfer were pretextual.

As to Susan Rich, prior to her appearance at the Allen hearing, she received two evaluations from Trono, one in November 2004 and the other April 2005. At least as to the November evaluation, there is no indication, as Trono later asserted, that Rich was "resisting" the America's Choice model. The evaluation reflected all satisfactory ratings.

As to Rich's November evaluation, Trono explained that she did not want to criticize any teacher in this first evaluation period because America's Choice was a new model, and she wanted to give her staff the opportunity to buy into it. Of course, Trono's

expressed desire not to be too critical in order to get teachers to voluntarily buy into the model did not appear to apply to Smith-Jarvis. Nevertheless, this was Trono's explanation for Rich's November evaluation that does not reflect Trono's professed concern that Rich was not properly implementing the new model, or support Trono's later claim that Rich was "resisting" the America's Choice model and, thus, needed to be transferred.

On the contrary, in 2004-2005, Rich received only one comment in the fall from Trono and the administrators conducting focus walks through classrooms. The comment reflected that Rich was doing a fine job and the environment in her classroom was in line with the America's Choice model. At least as of November, Rich was not "resisting" the model.

As of Rich's April 2005 evaluation, Trono had never discussed that she needed to improve her implementation of the America's Choice model. That evaluation was for the most part satisfactory, and only indicated generally that Rich needed to ensure that all of the components of the model were consistently addressed in class. This comment also does not support that Rich was "resisting" - did not want to implement - the model, as Trono suggested to Wilson when she recommended her transfer.

As to the other areas of criticism noted in the April evaluation, these too do not support Trono's transfer recommendation. For instance, although Trono noted that Rich's

absenteeism was a problem, rating her unsatisfactory in this category, since Rich's record of absences was not a reason proffered by Trono or considered by Wilson in the transfer decision, this fact is not material. Similarly, Trono criticized Rich for her attitude towards her students' ability to perform on the GEPA test. This criticism, even if true (although the record is devoid of evidence supporting Trono's opinion), does not support Trono's transfer recommendation, because the test scores of Rich's students were as good as, if not higher than, other teachers at Costley who were not recommended for transfer by Trono. Additionally, Wilson testified that he did not rely on the GEPA scores in making any transfer decisions.

One comment in Rich's April evaluation is pertinent. Trono wrote that Rich should maintain her professionalism in dealing with her colleagues to have a positive impact on school climate. Trono was aware from Van Wells early in the year that there was a rift between Van Wells and Allen and that Rich, Smith-Jarvis, and Hinds were taking Allen's side in the dispute. Trono told Van Wells that these supporters of Allen were "resistors" and encouraged Van Wells as early as November 2004 to write a letter complaining about them. I infer from Trono's comment in Rich's April evaluation that she intended to send a message to Rich regarding this rift among the teachers some of whom were supporting Allen in contravention to Trono, namely that Rich

should adjust her attitude to improve the school climate. Trono's comment also emphasizes that her reaction after the Allen hearing (reading names from her red book and stating she would ensure that the resistors were transferred) was a continuation of her attitude that the Allen supporters were resistors to her. However, it does not support that the Allen supporters and, in particular, Rich were resistors to the America's Choice model.^{21/}

It is significant that the literacy coach for 2004-2005 at Costley, Natasha Alexander, did not testify to support Trono's conclusion that Rich was resisting the model. Rich, as an English teacher, worked with Alexander on a weekly basis in content meetings. Alexander, as her literacy coach, was responsible for training Rich and the other Costley English teachers in the proper implementation of the America's Choice model. As a coach, Alexander worked closely with Trono to advise and discuss with her concerns related to the implementation of America's Choice. If Rich was "resisting" the model, it would be expected that Alexander would have observed this and confirmed Trono's testimony

^{21/} Trono denied using the term resistors. I did not credit her testimony or the testimony of the Board's other witnesses in this regard. The evidence, however, also established that the term was used by the America's Choice facilitators (Dennis and Pollhill) as well as Wilson and the Board at various times and for various reasons during the 2004-2005 school year. Whether, or if, others used the term is immaterial. The issue here is whether her reason for labeling these teachers in this manner was pretextual, thus, motivated by union animus and illegal under our Act.

at the hearing. I draw an adverse inference from the Board's failure to call her as a witness. Cohen v. Community Medical Center, 386 N.J. Super. 387 (App. Div. 2006). Also, unlike the Board's other witnesses, Joseph, Masia and Balogh whose credibility I questioned because of their relationship to Trono as their current supervisor and evaluator, Alexander is currently an assistant principal at another school, Healey, and no longer reports to Trono.

Finally, contrary to Trono's hearsay testimony that Rich requested a transfer form from a secretary, there is no evidence that Rich requested a transfer from Costley in 2004-2005. Rich spoke to staff and Trono about being reassigned to a different grade level within Costley, not transferred out of Costley. Also, the year before, at a meeting in spring 2004 with Dr. King and middle school teachers who did not hold certifications in the subject area they were teaching, Rich asked King if she could meet with him to discuss transferring to an elementary school, but King refused to meet with her telling her that he would not transfer anyone. This transfer request in 2003-2004, the year before Trono became principal, is immaterial. Even if the facts supported that Rich requested a transfer in 2004-2005, that fact alone would be immaterial, if Trono's true reason for recommending her transfer - retaliation for supporting Allen before the Board - was illegal.

Based on the foregoing, I find that Trono's proffered reasons for recommending Rich's transfer to Wilson were pretextual.

As to Carla Hinds, like Rich, Hinds is an English teacher. She received only one evaluation for 2004-2005 in April 2005. Previously, Hinds had received a couple of checklists with suggestions from the administrators who conducted focus walks through her classroom. One such list advised her to label her student writing journals and another advised her to update student work on her bulletin board. Hinds was also occasionally given verbal feedback, from Alexander and others, as to new things she should try as part of her on-going training in America's Choice, such as putting dates on her charts. Hinds incorporated all suggestions into her routine and never complained to Trono about it.

Trono visited her classroom alone once during the year shortly before she received her April evaluation when, like Rich, Hinds learned for the first time that Trono did not feel that she was effectively implementing the America's Choice model. Trono admitted that this was the first time she put into writing the deficiencies she had observed during the year. Basically, Trono gave Hinds satisfactory ratings and encouraged her to continue to enforce the America's Choice rituals and routines and ensure that all components of the model are consistently implemented. Trono also commended Hinds' rapport with her students. Trono rated her

unsatisfactory for 14 times tardy, although she had never issued Hinds any disciplinary memos in 2004-2005 in this regard and Hinds testified that she had only recently become aware of a policy change requiring teachers to be at their assigned posts 10 minutes earlier than was previously required. Nevertheless, when Hinds met with Trono to discuss this evaluation she assured her that she wanted her classroom to be successful.

Nothing in this evaluation or any other evidence supports Trono's conclusion, communicated in June 2005 to Wilson, that Hinds was "resisting" the implementation of the America's Choice model. Again, I draw an adverse inference from the Board's failure to call Literacy Coach Alexander as a witness to corroborate Trono's testimony that Hinds did not want to implement the America's Choice model. Finally, there is no evidence in the record that Hinds requested a transfer as Trono implied to Wilson. The first time she learned that she was being transferred was in August 2005. Based on the foregoing, I find that Trono's reasons for recommending Hinds' transfer were pretextual and driven by her animosity to Hinds' protected activity generally on behalf of the Association and specifically on behalf of Allen.

Rodney Beaver was selected by Trono as a model math teacher for 2004-2005. By the end of 2004-2005, however, she recommended to Wilson that he be transferred because, as she asserted, he was resisting the America's Choice model and he wanted a transfer. A

review of the evidence supports that these reasons as to Beaver were also pretextual.

During 2004-2005, Beaver concluded that he was dissatisfied with the professional atmosphere - e.g. school climate - at Costley. He met with Trono at the end of March before receiving his annual evaluation and discussed his dissatisfaction with what he termed opposing factions of teachers that were preventing the staff from working together as teams as required by the America's Choice model and was, thus, counterproductive to student achievement. Beaver requested a transfer from Costley to either Whitney Houston or Cicely Tyson Schools and met with King to discuss it. King denied the request telling Beaver it would do him no good to transfer Beaver, a middle school teacher, from one building to another and then have to fill another middle school position.

On April 6, 2005 Beaver received his annual performance evaluation. He was rated satisfactory in all categories but two. Under the heading of "Professional/Personal Qualities", Trono rated him a "needs improvement" in the general area of "other" commenting that Beaver needed to develop a more positive approach to dealing with problematic situations. Trono also commented Beaver needed a more positive outlook about his job assignment, presumably related to his complaint to her about the Costley school climate. Additionally, Trono rated Beaver unsatisfactory

under the heading of attendance for 5.5 days of absence for illness, despite not previously issuing him disciplinary memos and despite Board policy of issuing unsatisfactory attendance memos for 6 or more days absence. Trono rated Beaver's overall performance satisfactory and recommended his contract renewal with salary increment.

There is nothing in this evaluation or the evidence to support that Beaver was "resisting" the implementation of the America's Choice model, even though Trono testified that he was not consistently implementing the routine of the America's Choice model. Trono had not spoken to Beaver about any performance deficiencies related to the implementation of America's Choice prior to the issuance of this evaluation. As an example of her claim that Beaver was not consistently implementing the model, Trono testified that on one focus walk, she observed Beaver sitting behind his desk when he should have been walking around the room. She mentioned it to Beaver who explained that he had diabetes, a condition that made it difficult for him to move around. At that time, Trono told Beaver that he could still move around even if he had "that kind of problem." Perhaps, by the time Trono wrote Beaver's evaluation, she had reconsidered her response to Beaver and decided not to include it. In any event, Trono admitted that nothing in her evaluation alerted Beaver to her criticism related to his desk-sitting. The evidence does not

support that Beaver was a resistor to the model and needed to be transferred.

Based on the foregoing, I find that Trono's reasons for recommending Beaver's transfer were pretextual. Even if Beaver had requested a transfer earlier in the year, that request was denied. In any event, as stated earlier, the transfer request is a red herring. Trono's motivation is key. Beaver's transfer was not triggered by his complaint to Trono that he was unhappy with the school climate and the division among the staff. That transfer request was denied. In any event, Trono's articulated reasons for recommending Beaver's transfer as well as the others was because they did not want to implement the America's Choice model and/ or they wanted a transfer. There were no other articulated reasons - e.g. a division among the staff - and Wilson accepted her recommendations. If, on the other hand, Trono's effective recommendations grew primarily out of hostility to Beaver's and the others' appearance in support of Allen, the transfers are, then, an adverse personnel action illegal under our Act.

As to Haggerty and Waters, Trono also recommended their transfer to Wilson. Waters and Haggerty did not testify, but they also had attended the Board meeting in support of Allen. Wilson indicated in a memo to Board President Hall regarding what led to

the Costley transfers^{22/} that (1) Haggerty was told by Trono that he was not turning in lesson plans, and, therefore, he resigned and went to another school; and (2) Waters received an increment withholding for poor performance and attendance and, as a result of the teaching demands of America's Choice, wanted to leave Costley.

As to Haggerty, since Trono recommended to Wilson that he be transferred before he resigned and went to another school (after all why would she have recommended his transfer if he had already resigned), Wilson's explanation is not responsive to Hall's query. It also does not comport with Trono's testimony that she recommended the teacher transfers because they expressed a desire to transfer and/or were resisting the implementation of the model. Certainly, not turning in lesson plans, even if true, does not translate into resisting the America's Choice model as suggested by Trono was a reason she recommended his transfer.

In regard to Waters, Shoulars credibly testified that Trono read her name the day after the Allen hearing as one of the teachers who appeared in support of Allen and who, as a result,

22/ An inference of illegal motivation is sometimes warranted if shifting reasons for personnel actions are offered. Bor. Of Tinton Falls, P.E.R.C. No. 89-108, 15 NJPER 270 (¶20117 1989). Here, Wilson's explanation to Hall as to what led to the transfers at Costley were not consistent with Trono's testimony that all transfers were recommended based on the teacher's resistance to implementing the America's Choice model and that the teacher wanted a transfer from Costley and is further evidence that the Board acted illegally.

Trono wanted to transfer out of Costley. The Board presented no evidence to rebut this testimony that Waters also appeared at the Allen hearing or to support that she indeed was resisting the America's Choice model or wanted a transfer. Wilson's explanation to Hall that Waters was transferred because of a previous salary increment withholding for poor performance and attendance - the record does not establish when her increment was withheld - does not translate into a refusal to implement the America's Choice model in 2004-2005 or support that she wanted a transfer.

Based on the record as a whole, I find that Haggerty and Waters were also transferred because they appeared before the Board to support Sharonda Allen in opposition to Trono's termination recommendation, not because they were resisting the model or wanted a transfer.

The Board contends that the transfers at issue would have been made regardless of Trono's recommendations - that they were necessitated by the CAPA review team's recommendation that identified a division among the staff that was harmful to the success of the program. However, CAPA Team Leader Weiss did not find the division among the Costley staff so unusual because whenever a new WSR model or procedure is implemented, there are usually staff who may have difficulty with that change. Also, the CAPA report does not require staff transfers. That action is one of many possible actions the Board could take, including, among

others, providing more professional development, restructuring the internal organization of the school and significantly decreasing management authority at the school. Dr. Weiss, who headed the CAPA review team, confirmed that when there is a division among the staff, often it is the principal who is transferred. Also, the report does not identify any particular staff that needed to be transferred, if that option was selected. The staff was identified later by Trono to Wilson.

Resistance to the America's Choice model in and of itself was not a problem. Weiss and Dr. Scott expected some resistance to the new model and described this as normal where new programs are instituted. It was the degree of that resistance that was at issue. It was Trono who assigned a high degree of resistance to Smith-Jarvis, Beaver, Rich, Hinds, Haggerty, and Waters and conveyed this opinion to Wilson who then acted on Trono's recommendations. There is no evidence to support Trono's conclusions in this regard.

Specifically, the CAPA report noted that most teachers accepted the new model, some were mildly resistant and others strongly resisted it. The team reached this conclusion based solely on a meeting requested by several teachers who requested anonymity. The team did no independent investigation of the allegations raised by this small group. Weiss could not remember who the teachers were, whether they were male or female but

clearly, the information conveyed to Weiss and his team could have come from any one of Trono's clique, such as Joseph, Masia, or others, at the urging of Trono who, after the Allen hearing, had expressed her intention to accomplish the transfers by this means - e.g. persuading the CAPA team and Wilson that Smith-Jarvis and the others were resisting the model. Indeed, Weiss confirmed that the individuals who approached his group requested anonymity because they were perceived by certain staff members as being favorites of the administration (Trono) and receiving special privileges. In any event, the CAPA report did not identify which particular staff should be transferred, if transfers were to be effectuated, that was Trono's doing.

The Board cites several cases where employers demonstrated that adverse personnel actions were based on individual qualifications, performance or conduct to support that its actions were not a violation. These cases are distinguishable. In Middletown Tp. Bd. of Ed., P.E.R.C. No. 86-142, 12 NJPER 521 (¶17194 1986), the Commission determined that the Board legally transferred teachers who were set in their ways, uncooperative and resistant to changes implemented by the principal to improve student achievement. Here there is no evidence that the transferred teachers were resistant to the America's Choice model, uncooperative or set in their ways except to the extent that Trono labeled them as such. I rejected her conclusions as pretextual.

Also inapposite are two more cases cited by Respondent. In Wood-Ridge Bd. of Ed., H.E. 2004-1, 29 NJPER 312 (¶97 2003), a Hearing Examiner determined that a Board had legitimate performance-related reasons for non-renewing a custodian's contract. And, in Middletown Tp. Bd. of Ed. (LaBette), H.E. 2005-1, 30 NJPER 361 (¶118 2004), a Hearing Examiner dismissed a charge finding that a mechanic was terminated not primarily because of his protected activity but because of attendance violations and improperly using a truck for a personal errand. The legitimate performance-related reasons for the adverse personnel actions taken in these cases are not present here.

Based on the foregoing, I conclude that, but for their appearance before the Board in support of Allen and also Smith-Jarvis' activities as a union representative, Trono would not have recommended the transfers of Smith-Jarvis, Beaver, Rich, Hinds, Haggerty and Waters. Trono was hostile to these activities, and her reasons for recommending the transfers are rejected as pretextual. Trono's hostility was the motivating factor in the teacher transfers and was, thus, illegal and is imputed to Wilson and the Board who acted solely on her recommendations. I recommend that Commission find that the Board violated 5.4a(1) and (3) of the Act.

The Letter Complaints and Sour Juice Comments

Charging Party contends that the Board, through its agent Trono, independently violated 5.4a(1) when Trono solicited unit members Van Wells and Shoulars to write letters of complaint to Association President Greadington to get Smith-Jarvis removed as Association representative. Also, it asserts, the Board violated a(1) when Trono denigrated Smith-Jarvis' Association activities in front of unit members by frequently calling her "Sour Juice".

An employer independently violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp.

The evidence supports both that Trono solicited Shoulars and Van Wells and intimidated them through implied threats to write letters complaining about Smith-Jarvis to get her removed as Costley building representative and that Trono frequently referred to Smith-Jarvis as "Sour Juice" in the contest of discussing Smith-Jarvis role as Costley building representative. The "Sour Juice" comments were made in front of unit members - e.g.

Shoulars, Van Wells, Masia, Joseph, and Balogh. The Board presented no legitimate or substantial business justification for Trono's actions, relying on findings that Trono did not solicit the letter writing or that the statements ("Sour Juice") were not made.

A public employer is within its rights to comment about activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, including the effective delivery of governmental services, just as the majority representative has the right to criticize those actions of the employer it believes are inconsistent with that goal. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

The Commission has held that free speech, however, neither justifies nor protects abusive speech or conduct in the labor relations arena. For instance, an employee is not insulated from adverse action by his or her employer for impermissible conduct simply because the employee is a union representative. See generally, N.J. Dept. of Educ., P.E.R.C. No. 85-85, 11 NJPER 130 (¶16058 1985) (employer's reprimand of union steward for insulting and intimidating behavior not violation); Atlantic Cty. Judiciary, P.E.R.C. No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd 21 NJPER 321 (¶26206 App. Div. 1994) (employee transfer appropriate where due to offensive and disrespectful speech).

The phrase "Sour Juice" is a derogatory and inappropriate way for Trono, as principal and an agent of the Board, to refer to Smith-Jarvis, the Association representative, in front of unit members, a captive audience and her subordinates. The use of the term "Sour Juice" amounted to name-calling. As their supervisor, Trono sent the message to her subordinates that it was alright to ridicule Smith-Jarvis, their Association representative, and was an attempt to weaken the support for the Association through its chosen representative, Smith-Jarvis and interfere with its activities. That message served no legitimate purpose and was a reflection of Trono's hostility to Smith-Jarvis' status as an Association representative. Trono's actions were inconsistent with good labor relations and had a tendency to interfere with employee's statutory rights to select a representative of their own choosing, a right inherent to the Act. Atlantic County, P.E.R.C. No. 98-8, 23 NJPER 466 (¶28217 1997) (County's absolute ban on access to terminated union president violated Act).

Also, encouraging, soliciting or threatening Shoulars and Van Wells to complain about Smith-Jarvis as the Association's chosen representative to get her removed serves no legitimate purpose and interferes with fundamental principals of exclusive representation protected by section 5.3 of the Act.

Based on the foregoing, I recommend that the Commission find that the Board through its agent Trono violated 5.4a(1) of the Act.

Selection of Representatives at Disciplinary Meetings

The Association contends that the Board independently violated 5.4a(1) of the Act when Trono interfered with employee rights by selecting which union representative would attend meetings between her and employees. Specifically, it contends that (1) Trono summoned Marianne Lahr to represent Irene Nowicki at a meeting with Trono about a student incident which Trono felt could lead to Nowicki's discipline; and (2) Trono summoned Lahr to act as witness at a meeting with Van Wells which Trono called to discuss receipts for student pictures and might lead to discipline.

Under N.L.R.B. v. Weingarten, Inc., 420 U.S. 251 (1975)^{23/}, an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline. To establish a violation of an employee's Weingarten rights, Charging Party must demonstrate that: (1) an employee was directed to and did attend an interview/conference conducted by supervisory or managerial employees; (2) the interview/conference was, in fact, investigatory; (3) the employee reasonably believed that adverse consequences/discipline might result from this investigatory

23/ Weingarten was adopted by the New Jersey Supreme Court in UMDNJ and CIR, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996).

interview; (4) before or during the interview, the employee requested the presence of a union representative at the interview; (5) the employer denied the employee's request for a union representative; (6) the employer did not then offer the employee the choice to either stop the interview or continue the interview without a union representative; and (7) the employer continued the interview.

Here, neither Nowicki nor Van Wells asked for a representative before or during the Trono meeting and, in the case of Van Wells, once she objected to Lahr's presence, the meeting ended. Trono admits that she summoned Lahr, an Association building representative, to the meetings as her witness. The Association filed a grievance over this issue and the grievance was sustained. There is no evidence thereafter that Trono forced Van Wells, Nowicki or any other unit member to accept Lahr as their representative. Indeed, subsequently Van Wells requested and appeared with union representative Mary Louise Viquez at meetings with Trono. If Viquez was not available, the meetings were cancelled.

The facts support, however, that Trono, by calling a particular union representative to an investigatory meeting which she felt might lead to discipline, as her own witness, not the employees, co-opted the employee's Weingarten right. This action violated fundamental principals of exclusive representation protected by the Act. 5.3 specifies that "representatives. . .

selected by public employees . . . shall be the exclusive representatives for collective negotiations concerning terms and conditions of employment."^{24/}

Trono misconstrued what she had been told by Greadington - that employees were entitled to representation at investigatory meetings that might lead to discipline. The right to representation in this context runs to the individual employee, not the employer, and it is also the exclusive right of the majority representative to determine who its representatives shall be.

Based on the foregoing, I recommend that the Board violated 5.4a(1) of the Act.

After-School Pay Issue

The Association contends that in 2005-2006 an issue arose about advisor pay for after-school clubs. Particularly, it asserts, Trono polled teachers about their willingness to accept an hourly rate of pay in contravention of the parties collective agreement that sets out the stipends for after-school clubs.

^{24/} In defense of Trono's actions, the Board mistakenly argues that Viquez was not a Costley building representative in 2005-2006 but, rather, a member of the Association's executive board. Greadington, however, testified that, in addition to her role on the executive board, she had asked Viquez to act as a building representative when she was available because of member complaints about Lahr. In any event, the choice of representative is the Association's, not the Board's.

Greadington informed Trono that the negotiated stipends controlled the amount of teacher pay for this activity.

An employer violates 5.4a(1) and (5) if it refuses to negotiate with a majority representative concerning mandatorily negotiable terms and conditions of employment. It also violates those provisions if it negotiates directly with individual employees rather than with their majority representative over employment conditions and enters into agreements with them setting employment conditions. Hillsborough Bd. of Ed., P.E.R.C. No. 2005-54, 31 NJPER 99 (¶43 2005). Such actions have been found to strike at the heart of the Act's cornerstone: the exclusivity principle. Troy v. Rutgers, 168 N.J. 354 (2001); Lullo v. IAFF, 55 N.J. 409 (1970).

If, as alleged here, Trono had polled the teachers to determine who would accept a rate of pay different from the parties' collective agreement for participation in after-school clubs, then her actions would constitute a violation of the Act. See, Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984) (employer's solicitation of employee suggestions for attendance incentive program violated exclusivity principle); contrast, Rumson-Fair Haven Reg. H.S. Bd. of Ed., P.E.R.C. No. 87-46, 12 NJPER 831 (¶17319 1986) (No violation where principal surveyed teachers to determine scheduling preference and established graduation advisory committee to review changes in graduation-day practices).

Greadington received a telephone call from a Costley building representative that something was being circulated among the teachers about accepting an hourly rate of pay for such an activity but no witness testified as to what was being circulated nor was any document produced. I made, therefore, no factual findings in this regard and drew no inferences from Greadington's testimony.

Eventually, a grievance was filed and Dr. King determined that the rate of pay was set by the parties' collective negotiations agreement, not an hourly rate of pay as originally proposed by Trono.

Based on the foregoing, I recommend that the 5.4a(1) and (5) allegation as to direct dealing and after-school club pay be dismissed.

The Contested Transfer Petition - TI-2006-4

N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The petitioner has the burden of proving its allegations by a preponderance of the evidence. Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶29056 1998). A transfer is predominantly disciplinary when it is punitive and/or is not made for educational or staffing reasons. West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96, 98 (¶32037 2001). Accordingly, in exercising its jurisdiction under N.J.S.A. 34:13A-27, the Commission considers such factors as

whether the transfer was intended to accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident that prompted the transfer.

In my analysis of the unfair practice charge consolidated with this petition, I concluded that Clarisse Smith-Jarvis' transfer was orchestrated by her principal, Amalia Trono, who was motivated by hostility toward Smith-Jarvis' activities as Association building representative and for her appearance at a Board hearing in support of teacher Sharonda Allen and in opposition to Trono's recommendation that Allen be terminated. The facts established that the purported educational rationale for transferring Smith-Jarvis - that she was resistant to the implementation of the new whole school reform model, America's Choice - was pretextual.

The Board, however, contends that Smith-Jarvis was transferred at her own request - e.g. she submitted a transfer request mid-year that for staffing reasons was ultimately approved in August 2005. The mid-year transfer request, however, was prompted by Smith-Jarvis' opinion that Trono was retaliating against her for her union activities and that Trono's alleged dissatisfaction with her performance grew out of those activities. I concluded that this mid-year transfer request was denied, because Smith-Jarvis never received a response to the request, and

in the spring was notified that she would be returning to Costley for 2005-2006. Thus, the Board was not acting on the mid-year transfer request, but was acting on Superintendent Wilson's transfer recommendation that was based solely on Trono's recommendation during their meeting in June 2005.

Next the Board asserts that Smith-Jarvis was neither reprimanded nor disciplined for her activity as a union representative or for her appearance before the Board or for allegedly resisting the implementation of the America's Choice model. Thus, it argues, her transfer was not punitive. It cites several cases that I have reviewed and determine are distinguishable.

First, in Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 2005-64, 31 NJPER 116 (¶49 2005), aff'd 32 NJPER 201 (¶87 App. Div. 2006), the superintendent transferred a physical education teacher because he did not get along with the entire physical education staff. The Commission determined that the transfer was, therefore, not predominantly disciplinary, but effectuated to ensure that the teacher could perform well without the staff conflicts that interfered with her ability to perform. Here, Smith-Jarvis's conflicts were not with staff, but with Trono. The conflict grew out of her Association activities. The transfer was not effectuated to ensure that her performance would improve, but to satisfy Trono's need to get rid of a building representative she

disliked because of, what Trono viewed as, Smith-Jarvis' strict adherence to the parties' collective agreement.

In Edison Tp. Bd. of Ed., H.E. No. 2006-7, 32 NJPER 189 (¶83 2006), also cited by Respondent, I recommended the dismissal of a petition where I determined that the Board established that the transfer of a reading specialist met its educational and staffing objective of filling the position in the Title 1 school with an experienced reading specialist who could provide consistent instruction to younger students in greater need of basic skills assistance. In addition, I rejected the Association's timing argument that criticisms of the newly appointed principal from 4 years before motivated the principal's decision to transfer the reading specialist. I found that there was no contemporaneous discipline or recent misconduct triggering the transfer decision. This case is also distinguishable.

Here, no legitimate educational rationale supported the decision to transfer Smith-Jarvis. The reason for her transfer grew primarily out of the principal's union animus, not out of the State CAPA report that neither mandated teacher transfers nor recommended specific teachers for transfer. Trono engineered Smith-Jarvis' transfer because she supported Sharonda Allen and because of her activities as Association representative, not because Smith-Jarvis was resisting the America's Choice model. Next, unlike Edison, timing is a factor here. Smith-Jarvis appeared before the Board to support Sharonda Allen within weeks

of Trono's effective recommendation to Wilson in June 2005 that Smith-Jarvis and the other Allen supports be transferred.

Finally, the Board cites East Orange Bd. of Ed., P.E.R.C. No. 2002-49, 28 NJPER 153 (¶33053 2002), to support that Smith-Jarvis' transfer was not disciplinary. There the Commission determined that the transfer of several middle school teachers because of high failure rates in their classes was not disciplinary. The Assistant Superintendent believed that a change in schools, a different environment, and an opportunity to work with different administrators and students would result in improved teacher performance. This rationale was accepted as a credible educational, not punitive, reason for the transfers. That credible educational purpose is not present in the matter before me. Superintendent Wilson testified that he did not rely on GEPA test scores in determining teacher transfers. Additionally, teachers with greater student failure rates than Smith-Jarvis' students were not recommended for transfer.

The matter before me is more akin to West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001). In that decision, the Commission determined that the transfer of a supervisor of technology was disciplinary because it was motivated by a desire to end his complaints about computer disrepairs and to preempt any documentary revelation of the problem outside the district to the media. The intent, the Commission found, was to punish the employee and was, therefore, predominantly disciplinary

within the meaning of N.J.S.A. 34:13A-27. See also, North Bergen Tp. Bd. of Ed., P.E.R.C. No. 2002-12, 27 NJPER 370 (¶32135 2001), aff'd 28 NJPER 406 (¶33146 App. Div. 2002) (transfer of switch board operator after filing grievance and receiving first critical memo in 31-year employment predominantly disciplinary and not for Board's articulated interest in hiring bilingual employee); West New York Bd. of Ed., P.E.R.C. No. 91-94, 17 NJPER 248 (¶22113 1991) (teacher transfer disciplinary where effectuated shortly after posting signs protesting layoffs). Here, the recommendation to transfer Smith-Jarvis was motivated by Trono's desire to have her removed as Association building representative and to punish her for her appearance before the Board in support of another teacher whom Trono recommended for non-renewal. The timing of the transfer recommendation shortly after Smith-Jarvis' appearance before the Board, together with the Board's failure to articulate a non-pretextual educational rationale for its actions, supports that Smith-Jarvis' transfer was predominantly disciplinary.

Based on the foregoing, I recommend that Clarisse Smith-Jarvis be immediately transferred back to John L. Costley School.

CONCLUSIONS OF LAW

The Board violated 5.4a(3) and(1) of the Act by transferring Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Carla Hinds, James Haggerty, and Deborah Waters because they appeared at a

Board meeting to support another teacher, Sharonda Allen, and, in the case of Smith-Jarvis, because of her activities as Association building representative.

The Board violated 5.4a(1) when Principal Amalia Trono repeatedly referred to Smith-Jarvis as "Sour Juice" in front of Association members in reference to her activities as Association building representative; when Trono solicited and/or threatened teachers Darrell Shoulars and Monique Van Wells to write letters to Association President Greadington complaining about Smith-Jarvis to have her removed as Association building representative; and when Principal Amalia Trono summoned a particular Association representative, Marianne Lahr, to act as her witness at disciplinary meetings with unit members Irene Nowicki and Monique Van Wells.

I recommend that the Commission dismiss the portion of the Complaint alleging that the Board violated 5.4a(1) and (5) by Principal Amalia Trono dealing directly with unit members regarding the rate of pay for participation in after-school clubs.

The Board violated N.J.S.A. 34:13A-25 when it transferred Clarisse Smith-Jarvis from John L. Costley School for disciplinary reasons.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. Respondent Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty from John L. Costley School for appearing at a Board meeting in support of teacher Sharonda Allen; by Principal Amalia Trono repeatedly referring to Smith-Jarvis as "Sour Juice" in front of Association members in reference to her activities as Association building representative; by Trono soliciting and/or threatening teachers Darrell Shoulars and Monique Van Wells to write letters to Association President Greadington complaining about Smith-Jarvis to have her removed as Association building representative; and by Principal Trono summoning a particular Association representative, Marianne Lahr, to act as her witness at disciplinary meetings with Irene Nowicki and Monique Van Wells.

2. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty from John L. Costley School because they appeared before the Board in support of Sharonda

Allen and, in the case of Smith-Jarvis, because of her activities as Association building representative.

3. Transferring Clarisse Smith-Jarvis from John L. Costley School for disciplinary reasons.

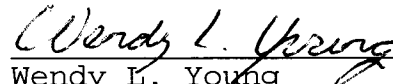
B. That the Board take the following affirmative action:

1. Immediately transfer Clarisse Smith-Jarvis to John L. Costley School.

2. Offer Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty the option to transfer immediately to John L. Costley School with the same responsibilities as they had immediately prior to the transfer or to remain in their current assignments.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.


Wendy L. Young
Hearing Examiner

DATED: April 22, 2008
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by May 2, 2008.



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty from John L. Costley School for appearing at a Board meeting in support of teacher Sharonda Allen; by Principal Amalia Trono repeatedly referring to Smith-Jarvis as "Sour Juice" in front of Association members in reference to her activities as Association building representative; by Trono soliciting and/or threatening teachers Darrell Shoulars and Monique Van Wells to write letters to Association President Greadington complaining about Smith-Jarvis to have her removed as Association building representative; and by Principal Trono summoning a particular Association representative, Marianne Lahr, to act as her witness at disciplinary meetings with Irene Nowicki and Monique Van Wells.

WE WILL cease and desist from discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Clarisse Smith-Jarvis, Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty from John L. Costley School because they appeared before the Board in support of Sharonda Allen and, in the case of Smith-Jarvis, because of her activities as Association building representative.

WE WILL cease and desist from transferring Clarisse Smith-Jarvis from John L. Costley School for disciplinary reasons.

WE WILL immediately transfer Clarisse Smith-Jarvis to John L. Costley School.

WE WILL offer Rodney Beaver, Susan Rich, Carla Hinds, Deborah Waters and James Haggerty the option to transfer immediately to John L. Costley School with the same responsibilities as they had immediately prior to the transfer or to remain in their current assignments.

Docket No.	CO-2006-153 & TI-2006-4	East Orange Board of Education (Public Employer)
Date:		By:

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372