

H.E. NO. 2016-13

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

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-2013-103
CO-2013-330

PERTH AMBOY FEDERATION OF
TEACHERS,

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Perth Amboy Board of Education violated the New Jersey Employer-Employee Relations Act by threatening and/or interfering with Federation Representative Pamela Campbell's exercise of conduct protected by the Act. The Hearing Examiner, however, also found that the Board/Collazo did not violate the Act by reassigning Campbell or Linda Arocho, President of the Secretarial group represented by the Federation. The Hearing Examiner also found that the charge did not procedurally allege and the complaint did not issue on allegations that the Board violated provisions in the parties' agreement.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair 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.

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PERTH AMBOY FEDERATION OF
TEACHERS,

Charging Party.

Appearances:

For the Respondent
Gutierrez & Lattiboudere, attorneys
(Derlys M. Gutierrez, of counsel)

For the Charging Party
Canellis & Adams, attorneys
(Brian M. Adams, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

Unfair practice charges were filed by the Perth Amboy Federation of Teachers (Federation) with the New Jersey Public Employment Relations Commission (Commission). In the charge docketed CO-2013-103, filed on October 19, 2012 and amended on February 28, 2013, the Federation alleges that the Perth Amboy Board of Education (Board) violated subsections 5.4a(1), (3), and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. (Act).^{1/} In its original charge the Federation made 72 separate statements/allegations and attached seven documents. Approximately 41 of the 72 statements were informational and did not specifically allege a violation of the Act. Approximately 18 statements alleged the Board violated the parties' collective agreement and/or unilaterally implemented new terms and conditions of employment. Approximately 13 statements alleged the Board, through the High School Principal, either discriminated against certain individuals because of their exercise of protected conduct and/or made certain remarks that interfered with certain employees' exercise of protected conduct. For example, that charge specifically alleged that High School Principal Dr. Nestor Callazo and/or Superintendent Dr. Janine Caffrey discriminated against unit members/federation representatives Pamela Campbell, Dr. Joyce Richardson, Linda Arocho, Linda Nagy, Hilton Vargas and Cecelia Crespo in retaliation for their exercise of conduct protected by the Act.

^{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. (7) Violating any of the rules and regulations established by the commission."

In its amended charge the Federation alleged that the Board violated the parties' contract by adopting a calendar requiring employees to attend more than three in-service days; that Collazo told Campbell he would violate the parties' collective agreement anytime he felt it necessary; that the Board unilaterally ended the practice of allowing employees to take 1/2 sick days; that the Board unilaterally changed the practice regarding identification badges; that Collazo denied Campbell access to the main High School building until he checked her in; and, that the Superintendent unilaterally denied employees the use of personal days on Martin Luther King's Day and Presidents Day.

The Federation seeks to prohibit the Board from retaliating against employees for exercising their protected rights; directing the Board to adhere to the provisions of the parties' agreement; directing the Board to engage in good faith negotiations with the Federation over implementation of alternative schedules and other allegations; directing that all employees transferred in retaliation for exercising protected rights be offered the opportunity to return to their positions; and, directing that all negative evaluations and/or letters of reprimand issued in retaliation for exercising protected rights be removed from employee personnel files. A Complaint and Notice

of Hearing was issued on the 5.4a(1) and (3) allegations on May 24, 2013 (C-1).^{2/}

In the charge docketed CO-2013-330, filed on May 21, 2013 and amended on the same date and again on May 31, 2013, the Federation alleges that the Board violated subsections 5.4a(1), (2), (3), (5), and (7) of the Act. It contends that Principal Collazo told unit members that they should not go to the Federation, that Principal Morgan refused to discuss safety concerns, that Principal Garcia refused to discuss the impact of conducting programs for failing students, that Principal Collazo required Ms. Campbell to check in with him when she was at the high school and questioned her about her union business, that Principal Collazo told Ms. Campbell not to conduct union business during the school day, that the Superintendent inquired whether an employee was aware of and in support of a grievance filed by the Federation, and that the Board led unit members to believe that compensation for additional work related to an advisory period had been negotiated by the parties. A Complaint and Notice of Hearing was issued on July 19, 2013.

An Order Consolidating CO-2013-103 and CO-2013-330 was issued on July 30, 2013. Hearings were held on October 29,

^{2/} "C" refers to Commission exhibits, "J" refers to Joint exhibits and "R" refers to Respondent exhibits received into evidence.

November 4, November 18 and December 2, 2013. Both parties filed post-hearing briefs by October 6, 2014.^{3/}

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Board is a public employer and the Federation is an employee representative within the meaning of the Act (1T9).

2. The Board and Federation are parties to a collective negotiations Agreement effective from July 1, 2011 through June 30, 2014 (Exhibit J-1). That Agreement covers all full time certificated, secretarial, custodial and other non-supervisory staff employed by the Board. The agreement is comprised of six Sections each of which contain their own Articles.

Section II, Article II, Length of Work Year, provides:

Certificated staff shall be required, during each school year of this agreement, to work 181 pupil contact days and three (3) in service days (pursuant to practice) in accordance with a calendar adopted by the Board.

Section II, Article III, Paragraph B(b), concerning Preparation Periods, provides in pertinent part:

B. Preparation Periods

a). All teaching staff shall be entitled to a daily professional preparation period equal in duration to 45 minutes in length. Compensation for loss of a professional preparation period for team meetings, common

^{3/} The transcripts will be referred to as 1T, 2T, 3T and 4T, respectively.

planning, grade level meetings, other professional development activities, or class coverage purposes shall be at a negotiated rate, per period, for the duration of this Agreement.

b). Elementary Teachers shall be entitled to a minimum of five (5) forty-five (45) minute professional preparation periods per week for a total of 225 minutes. Professional preparation periods shall normally be scheduled on a daily basis in forty-five (45) minute blocks.

* * *

The parties may agree to alternative professional preparation scheduling for an entire school year or marking period subject to the following:

At the initiation of any discussions to explore alternative scheduling, the Federation shall designate a representative to attend all meetings. Prior to the implementation of any alternative preparation scheduling, the Federation must approve said changes. In all circumstances, at least seventy-five (75) percent of the affected staff must approve the changes. Such agreed-upon changes will not be subject to the compensation requirements set forth above.

Section II, Article III, Paragraph D concerning After School

Meetings provides in pertinent part:

The parties agree that unit members may be required to attend a maximum of 150 minutes per month for meetings/workshops or other professional development activities called by or sanctioned by administrative and supervisory staff with no less than 30 days notice to the staff and the Federation. Individuals may be excused from attendance upon written request to, and the approval by the superintendent. All such written requests shall include the reason for the

absence and a proposal for how the individual shall make up the missed activity.

Section II, Article IV, Assignments and Transfers provides:

A. All presently employed staff members shall know their specific assignments for the following year prior to June 15th. No assignment shall be arbitrarily changed by an administrator, but in the case of undue hardships and/or emergency situations and in cases where administratively necessary, the responsible administrator may reassign a staff member. If such situations should arise after June 15th, the staff member involved shall be notified, in writing, with reasons of any change in his/her assignment immediately.

B. All schedules for departmentalized teachers shall be available for teacher's information in the principal's office on July 15th or as soon thereafter as practicable. Each principal, in his/her sole discretion, determines the teacher's individual schedule and may make such changes in it as he/she deems necessary.

C. Whenever a member of the unit is involuntarily assigned to another position within the same school or is involuntarily transferred to a position in another school building the unit member shall receive written notice of the change fifteen (15) days prior to the effective date of the assignment on or before June 15 for the succeeding school year except in extenuating circumstances as determined by the Superintendent. The written notice shall also provide a statement of reasons for the change from the Building Principal, Department Director, Superintendent or other administrator.

Section IV, Article II, Paragraph A concerning secretarial duties provides:

A. Duties of Secretarial Employees:

Secretarial employees shall not be required to perform the functions of other certified staff or non-certified staff, although occasional assistance and/or involvement in an emergency situation may be necessary. Secretarial employees shall never be required to cover classes or to initiate assignments to other personnel.

Section V, Article 1, Paragraph A(7) provides for a rotating system for overtime.

THE AROCHO TRANSFER

3. Dr. Nestor Collazo (Collazo) became principal at Perth Amboy High School in July 2011 (1T66). Linda Arocho (Arocho) was the High School principal's secretary and office manager at that time and worked for Collazo. Arocho was also President of the secretarial group represented by the Federation (1T31, 2T24).

In the Fall of 2011, Arocho told the Federation's District Representative, Pamela Campbell, that she (Arocho) was having difficulty dealing with Collazo on a daily basis and Collazo told her (Campbell) that he was having difficulty working with Arocho (1T31, 1T55-1T56). Jeffrey Hudanish, (Hudanish) one of the High School Vice Principals at that time, described the relationship between Collazo and Arocho as "cold" (2T24).

Apparently, sometime in July 2011, just after Collazo became High School Principal, Arocho posted negative comments about Collazo on her Facebook page. Collazo is Latino, and the first Latino Principal in the history of the High School (1T113).

Hudanish saw a copy of the Facebook posting and although Arocho did not use Collazo's name, Hudanish concluded it was obvious it referred to Collazo because the comment said in effect that a "white man stands no chance in this District" (2T25, 2T59). Collazo did not take any action against Arocho because of those comments but did inform Superintendent Caffrey about the incident (1T113-1T114).

Collazo informed Campbell of the incident and expressed that he did not think his lead secretary wanted to work with him (1T114). Campbell acknowledged she knew of the Facebook comments and that they were upsetting to Collazo (1T56).

4. From December 2011 until June 4, 2012, Arocho was on medical leave. When she returned from leave she was reassigned to the Special Education office on the second floor of the High School (1T32, 2T27). Arocho was a 12-month employee. When the school year ended in June 2012 and the ten-month Special Education office was closed for the summer, Arocho was moved to High School Vice Principal Nieve's office for a time, but eventually was assigned to the Director of Guidance office (1T34, 1T56-1T57, 2T34). Arocho's transfer did not result in any salary, hours or benefit changes (1T54-1T55). Campbell and Hudanish noted that the Assignment and Transfer provisions in J-1 Section II, Article IV were not followed regarding Arocho's transfer (1T33, 2T27).

5. On direct examination, Campbell concluded that Collazo transferred Arocho in retaliation for her criticism of him and possibly because of her position as head of the Federation's Secretarial group. But on cross-examination she admitted she had no evidence that Collazo retaliated against Arocho due to any union related role, and she (Campbell) acknowledged she assumed Arocho's Facebook comments led to her transfer (1T56, 1T57). Based upon Campbell's admissions on cross-examination, I cannot conclude Arocho was transferred due to any protected conduct.

6. Hudanish admitted he does not have a good working relationship with Collazo (2T50), and that Collazo was upset with him in June 2012 for allowing Arocho back into the main High School office to assist with purchase orders (2T28). In direct examination, Hudanish testified that Collazo did not want Arocho in the main High School office at least in part because of her role as a union activist and support for the rights of others (2T28-2T30). But on cross-examination when asked for examples of the union activism in which he claimed Arocho had participated in, Hudanish could not give any examples (2T62-2T65). When pressed on the matter Hudanish described the incident in June 2012 when Collazo became angry with him for temporarily allowing Arocho back in the main office as the reason he (Hudanish) concluded that the relationship between Arocho and Collazo was poor. Hudanish then said he was mistaken about previously

claiming Arocho was transferred due to union activism because he testified that he could not recall any specific time she stood up for her rights or the rights of others (2T65-2T66). Hudanish then noted he had only made an assumption that Collazo transferred Arocho because of her union activity and he then concluded Collazo transferred Arocho because of the Facebook incident (2T65-2T66).

In light of his cross-examination, I cannot credit Hudanish's testimony on direct examination that Arocho's transfer was at all related to union activity. His testimony, at best, demonstrates he was overreaching in suggesting Arocho's transfer was based on conduct protected by the Act.

7. Collazo did not hide his disdain for Arocho, but it was apparent that disdain was based upon the racial comments she posted about him on Facebook (1T113-1T115). Collazo testified that Superintendent Caffrey, not he, made the decision to reassign Arocho and that he had not suggested that Arocho be reassigned (1T113-1T114). Neither Arocho, nor Caffrey, testified at this hearing and the Federation did not present any evidence disputing Collazo's testimony. I, therefore, credit his testimony that he did not make the decision to reassign Arocho.

CAMPBELL'S REASSIGNMENT/BUILDING ACCESS

8. As the Federation's Lead District Representative, Campbell, by agreement, teaches only one class every morning and

then is allowed to conduct union activity the remainder of the day. The Federation reimburses the Board for four-fifths of Campbell's salary while she is serving as its district-wide representative. Campbell is certified in both psychology and social studies K to 12 (1T36). Since becoming the Federation's representative in 2009, Campbell taught one class of AP Psychology in 2009-2010, 2010-2011 and 2011-2012 (1T12-1T13). At the end of the 2011-1012 school year in June 2012, Campbell, consistent with the contractual requirements in J-1, Section II, Article IV, received notice that she would be teaching AP Psychology for the 2012-2013 school year (1T15). On September 1, 2012, however, Campbell received notice that she had been reassigned from teaching AP Psychology at the main High School building to teaching history at the High School's East Campus starting September 4, 2012 for the 2012-2013 school year (1T17). Frank Torres was assigned to teach AP Psychology at the main High School campus (1T16).

9. Campbell believed she was reassigned by Collazo in retaliation for her activities on behalf of the Federation (1T30). She explained that she thought she had a good working relationship with Collazo when he began at the High School in July 2011, but that by the end of September 2011 that relationship began to change when Campbell questioned Collazo's changes in the lesson plan policy and scheduling for the senior

class meeting (1T22, 1T54). Campbell said Collazo threatened her with insubordination for questioning his policy decisions and that by repeatedly questioning him she was being insubordinate (1T53-1T54).

10. Campbell requested a reason for her reassignment and said she was told it was due to enrollment (1T15). But she testified that a Board attorney told her she was "a thorn in Collazo's side and needed to be removed from the building" (1T20). She also testified that whenever she, in her role as Federation representative, questioned any of Collazo's decisions he became resentful and, according to Campbell, Collazo thought she was out to get him (1T21). Campbell acknowledged, however, that since the High School included both the main building and the East Campus building she was not "transferred" out of the High School (1T37). The Federation did not grieve Campbell's reassignment for 2012 (1T51). Campbell was reassigned to teach psychology in the East Campus High School building for the 2013-2014 school year (1T64-1T65). Campbell was not provided the notice required in J-1, Section II, Article IV(c) for involuntary reassignment (1T60, 1T62).

Collazo denied that Campbell's reassignment to history was based upon her union activity. He denied she was reassigned because she was the Federation's representative and denied saying he needed to get her out of the building (1T104-1T105, 4T9). He

testified that he moved Campbell to avoid having another teacher teach six periods in order to cover the history class at East Campus (1T105).

11. Collazo explained that due to the Board's archaic student information system he was unaware until late summer 2012 that he needed to fill some extra teaching assignments (1T73). The normal Board teaching load is five periods, thus teachers assigned to a sixth period receive extra compensation. In order to lower its expenses the Board attempts to reduce sixth period assignments (1T70-1T71).

Because Campbell teaches only one period and was certified in two subjects, Collazo testified it was easier to move Campbell to East Campus rather than assign a sixth period to another teacher. He also noted that Campbell could adjust easier because she only had the one class (1T71, 1T84-1T85, 1T107-1T108, 4T5-4T7).

12. Vice Principal Hudanish testified at first, however, that Collazo reassigned Campbell, at least in part, because of disputes he (Collazo) had with her in her capacity as Federation representative. Hudanish said Collazo wanted Campbell out of the building (2T9, 2T14-2T15).

But Hudanish also testified that Campbell's reassignment was a good practical decision that saved the Board several thousand dollars (2T11, 2T40). Hudanish acknowledged that he and Collazo

did not have a good working relationship (2T50), and that Collazo never said he wanted to get back at Campbell. Hudanish said that was simply his own observation of the situation (2T48-2T49). Collazo testified that Hudanish actually told him (Collazo) it was a good idea to reassign Campbell (4T41). Given Hudanish's acknowledgment to a poor relationship with Collazo, and my earlier inability to credit his (Hudanish's) testimony concerning Arocho, I cannot credit Hudanish's characterizations that Collazo reassigned Campbell because of her union activity.

13. In addition to her reassignment, Campbell alleged that Collazo retaliated against her by interfering with her access to the main High School building in performing her role as Federation representative. Prior to April 2012 it was Campbell's practice -- when acting in her role as Federation representative -- to go to any Board building where she was not assigned, sign into the visitor's log and tell an administrator she was in the building (1T23-1T24). Sometime in April 2012 she signed into the main High School building and notified Hudanish she was there. Apparently, Collazo appeared and instructed Campbell that upon entering that building in the future she was to report only to him. Although Campbell acknowledged that notifying Collazo of her presence in the building did not violate J-1 (1T47), she testified that since then Collazo continually questions her while she is engaged in Federation business, asking her who she was

there to meet. She said Collazo has had his secretary page her to report back to the office, he has checked in on her visits, and he has accused her of interrupting the educational learning process (1T23-1T26). However, she has never been disciplined for interrupting the learning process (1T48-1T49).

14. Campbell explained that even after telling Collazo she was there on Federation business he has asked her who she came to see. When Campbell told him he was not permitted to request that information he has accused her of insubordination. Campbell noted that Collazo did not seem to be able to distinguish between her role as a Federation representative, and her role as a teacher (1T58-1T59).

15. Prior to October 11, 2013, neither Collazo nor any other administrator has limited where Campbell could meet with a unit member. Campbell testified, however, that on that day Collazo limited her to the teacher's lounge and cafeteria (1T63-1T64).

16. Collazo acknowledged that from the time he began working for the Board in July 2011 until April 2012, Campbell was allowed into the building. He considered her part of the faculty and he did not need to know she was there or what she was doing. But he testified that in 2012 Superintendent Caffrey directed him not to allow Campbell into his building to conduct Federation business during working hours (1T88, 4T10). Based upon that

directive Collazo acknowledged that he directed Campbell to report to him anytime she came to the main High School building, inquired why she was there, and if on Federation business he limited where she was going (1T92-1T93, 4T10). But Collazo denied asking Campbell for specifics or preventing her from speaking to teachers regarding Federation business (1T93, 1T109). Collazo noted that the practice has since changed and Campbell can now conduct Federation business with the faculty during their lunch or prep periods (4T12).

17. Since Collazo did not dispute Campbell's testimony that her access to the main High School building as a Federation representative was changed in April 2012 and October 2013, I credit her explanation of how her access was limited and that Collazo questioned her regarding details of Federation business.

OTHER ALLEGATIONS

18. In November 2012, Collazo, Hudanish and Campbell were meeting to discuss a contractual provision regarding secretaries and whether they should be assigning certificated staff to class coverage. Human Resources Manager Marshall was on speaker phone. Campbell apparently indicated that such assignments violated the parties' contract. Campbell testified that Collazo reacted saying he would break the contract anytime he saw fit (1T28-1T29). Hudanish corroborated Campbell testifying that Collazo told Campbell he would break the contract (2T17). Marshall did

not recall whether such a statement was made (1T133), and Collazo testified he did not recall saying that (1T86). Collazo then explained he remembered the issue differently, that he only expected the secretaries to tell the teachers that the principal or vice-principal was assigning them to cover a class. In that context he did not believe it could violate the contract (1T87).

19. Although I accept Collazo's explanation, I believe it likely that a discussion was held regarding whether the contract was being broken, and given Campbell's testimony was corroborated and Collazo did not completely recall what was said - - or not said - - I credit Campbell's explanation of the event.

20. Hudanish also testified that Collazo made a similar comment at a meeting with other building administrators at a later date. He claimed Collazo said he would violate the collective negotiations agreement whenever he saw fit (2T23). Collazo again said he did not recall ever saying that (1T88). High School Vice Principal Sylvia Leon attends the administrator meetings with Collazo and Hudanish and she testified she has never heard Collazo make such a remark (3T87), and she said she never heard him make such a remark at a PSA (Principal and Supervisors Association) meeting (3T93). Vice Principal Esperanza Anastasio testified having attended the administrators meetings with Collazo and Hudanish and meetings with Collazo and faculty at the STEM (East Campus) Academy and never heard Collazo

say he would break the teachers' contract at either meeting (3T9-3T10).

21. Federation unit members Maria Diaz, Dolores Rodriguez, Joyce Shop, and Ramon Ortiz who attended various meetings with Collazo never heard him say he would break the Federation's contract (3T18, 3T32, 3T39, 3T53). Based upon all of the above testimony there is insufficient basis to conclude that Collazo made a "break the contract" remark at any administrator meetings or meetings between Collazo and faculty.

22. During the 2011-2012 school year Collazo began exploring with the Federation alternative scheduling at the High School which would add a ninth period to the day (1T96-1T97). Sometime between March and May 2012 the Board distributed voting surveys to the teachers about schedule changes. By emails from Campbell to Hudanish (Exhibit R-2) and Collazo (Exhibit R-3) on May 2 and 3, 2012, respectively, Campbell asked that the survey be closed until next year. Collazo then spoke with Federation President Donna Chiera about appointing Federation designees to discuss schedule changes and in May 2012 she (Chiera) appointed two people to represent the Federation (2T101). According to the Board, at least 75% of the faculty approved changing the schedule to a nine-period day which apparently resulted in a loss of 15 minutes of preparation time. The Federation is alleging that the

Board violated Section II, Article III of J-1 and the Act by reducing the preparation period.

ANALYSIS

Notwithstanding its lengthy charges with multiple allegations, the Federation, in its post-hearing brief noted that this case came down to two categories: retaliation claims against Campbell, and the alleged contractual violation of Section II, Article III of J-1 regarding the loss of preparation time. It is important to remember that in both its original and amended charges in CO-2013-103, the Federation alleged only violations of 5.4a(1) and (3) and (7) of the Act. The "break the contract" allegations regarding Collazo and certain allegations regarding his comments to Campbell will be considered under 5.4a(1) standards, and the retaliation allegations regarding Campbell (and Arocho) will be considered under the 5.4a(3) standards.

The 5.4a(1) standard was established by the Commission in New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978), and repeated in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550, 551 note 1 (¶10285 1979), and provides:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act,

provided the actions taken lack a legitimate and substantial business justification. [5 NJPER at 551, note 1]

In Commercial Tp. Bd. Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission held that where an employer's conduct deliberately attempts to restrain employee participation in protected activity, it independently violates subsection 5.4a(1) of the Act. It further reiterated that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent 5.4a(1) violation. The tendency to interfere is sufficient. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

The allegations considered under the above 5.4a(1) standard include: 1) remarks by Collazo allegedly threatening Campbell with insubordination for questioning his policy decisions; 2) whether Collazo interfered with Campbell's access to the main High School building to conduct Federation business; and, 3) alleged remarks by Collazo that he would "break the contract" made to Campbell in November 2012, and at a subsequent administrator's meeting. The Board (that is Collazo) denied making any "break the contract" remarks, and the Board denied that Collazo threatened or interfered with Campbell's exercise of protected rights.

In considering the instant allegations and the 5.4a(1) standard it is important to remember that intent to threaten or intimidate or interfere is not a requirement of the 5.4a(1) standard. This part of the case is not about whether Collazo actually intended to intimidate or interfere with Campbell, but whether his actions had the "tendency" to interfere.

Campbell testified that Collazo threatened to find her insubordinate for questioning his lesson plan policy and the scheduling for the senior class meeting. Collazo did not directly deny making that remark, thus I credit Campbell's testimony on that point. Such a remark has the tendency to interfere with protected conduct -- Campbell's right to question or disagree with actions affecting teachers she represented -- and, therefore, violates 5.4a(1) of the Act.

That particular violation is an example of a bigger problem; the failure of an administrator to recognize the distinction between a subordinate's role as a union representative and the subordinate's role as an employee. An administrator cannot threaten an employee for repeatedly questioning, strongly disagreeing, or even arguing with the administrator over issues affecting people the employee represents when that employee is serving in her role as a union representative. Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

Although one can understand Collazo's frustration with Campbell's

questioning his directive on how lesson plans and the senior class meeting should be handled, and even recognizing his right to criticize Campbell's view on those matters, he did not have the right to threaten her with insubordination for challenging his policies.

The Commission in Black Horse Pike, Supra, explained:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer (citations omitted).

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. [7 NJPER at 503]

The Commission expanded on the employer's limitation emphasizing:

The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity. [7 NJPER at 504]

Campbell also alleged that Collazo interfered with her access to the main High School building while attempting to perform her role as the Federation's representative, and he threatened her with insubordination for refusing to tell him who she came to see in that building. Collazo did not dispute Campbell's access testimony. In fact, he acknowledged that at least for a time he limited her access to the building when she was attempting to engage in Federation business, but he denied asking for specifics. I found, however, that at least, at times, he asked Campbell with whom she intended to meet.

Access to an employer's premises to represent employees is protected conduct and cannot be unreasonably restricted. Atlantic County, H.E. No. 97-22, 23 NJPER 206,208 (¶28100 1997); Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451, 457 (¶14196 1983).

Here, the Board (because of Superintendent Caffrey's directive to Collazo) violated 5.4a(1) of the Act by unreasonably restricting Campbell's access to the building to conduct Federation business and questioning her on who she intended to meet with while in her role as the Federation representative. While the parties apparently have now resolved the access issue by allowing Campbell to conduct Federation business with employees during their lunch and/or prep periods, Collazo's restrictions prior thereto violated the Act.

Campbell further alleged that at a meeting in November 2012 with Collazo and Hudanish, Collazo made a "break the contract" remark. Collazo denied the remark, but I credited Campbell and Hudanish that the remark was made. That remark violated 5.4a(1) of the Act. Once again, Collazo might have felt frustration over the discussion regarding the secretaries' role in communicating assignments to teachers, but that frustration did not entitle him to threaten a violation of the parties' collective negotiations agreement. Such a remark has the tendency to interfere with the Federation's right to protect its contract.

In addition to the "break the contract" remark Collazo made to Campbell in 2012, Hudanish said he (Collazo) made a similar remark at an administrators' meeting. I found, however, that the weight of the evidence did not support such a finding. Consequently, I recommend that allegation be dismissed.

The 5.4a(3) standard was established by the Commission and the Court in Bridgewater Tp. v. Bridgewater Public Works Assn, 95 N.J. 235 (1984). Under Bridgewater no violation will be found unless the Charging Party has proven, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence 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 an illegal motive has been proven and if the employer has not presented 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, however, need not be considered unless the Charging Party has proved, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the hearing examiner and Commission to resolve.

The decision on whether a Charging Party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner.

Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

The allegations considered under the above standard include the reassignments affecting both Arocho and Campbell, and whether Collazo restricted Campbell's access to the main High School building in retaliation for her exercise of protected conduct. The Board denied that those reassignments (and access) were in reaction to Arocho's and Campbell's exercise of protected conduct and it raised certain defenses.

The Board argued that there was no evidence that Arocho engaged in any protected conduct that led to or was the reason for her reassignment to a different office at the High School. Since evidence shows Arocho was the President of the secretarial group represented by the Federation I cannot find she was not engaged in protected conduct. Nevertheless, since Campbell acknowledged that she had no evidence that Arocho was reassigned due to the exercise of protected conduct I find insufficient evidence to support the allegation she was reassigned in violation of the Act.

Campbell's reassignment was more complicated and had a greater impact on Federation business than Arocho's reassignment. Citing to Bridgewater, the Board argued that Campbell's reassignment was motivated by the need for a history teacher at the High School East Campus location and that her reassignment was the most practical and least complicated reassignment because she taught only one class a day as compared to other teachers who taught several classes throughout the day.

Although there was clearly tension between Campbell and Collazo as evidenced by Collazo's threat to find Campbell insubordinate for challenging his policies, the Federation's case against the Board on the 5.4a(3) claim regarding Campbell seems to have mostly rested on Hudanish's testimony regarding her reassignment. Having not credited Hudanish's testimony to support the 5.4a(3) discrimination claim, however, I find there was insufficient basis to conclude that hostility (by Collazo) toward Campbell's exercise of protected conduct was the reason for her reassignment.

Nevertheless, even assuming the Federation proved that Campbell's reassignment was motivated by hostility, the Board has proved by a preponderance of the evidence under the Bridgewater dichotomy that it would have made the reassignment for a legitimate business reason. The evidence shows that by reassigning Campbell the Board was able to avoid another teacher teaching six periods which would have required the Board to pay the teacher extra for teaching the sixth period. The Federation did not dispute those facts.

Consequently, whether the Federation met its obligation under Bridgewater to prove hostility by Collazo towards Campbell's union activity or not, I find the Board demonstrated it would have reassigned Campbell even absent her protected conduct.

Although I found the Board violated 5.4a(1) of the Act by denying Campbell reasonable access to the main High School, that same conduct did not also violate 5.4a(3) of the Act. From the evidence presented it does not appear that Superintendent Caffrey's directive to Collazo to restrict Campbell's access was motivated by hostility toward her (Campbell's) exercise of protected conduct. Rather, it appears that Caffrey was attempting to prevent Campbell from conducting Federation business with employees while they were in the classroom or otherwise on work time which the Board has the right to restrict. The mistake Caffrey/Collazo made was that -- at least for a time -- Campbell was unreasonably restricted from meeting with her unit members. That situation was properly addressed by the 5.4a(1) finding and appears to have been subsequently resolved by the parties.

Finally, the Federation in the presentation of its case and in its brief argued that the Board violated J-1, Section II, Article IV by failing to give Campbell the proper notice regarding her late reassignment, and primarily by reducing the length of the daily preparation period when the ninth period was added presumably in contravention of J-1, Section II, Article III. Although some evidence was produced regarding those allegations, contrary to the Federation's perspective, this case is not procedurally or legally about those alleged contract violations.

In the filing of a charge, a charging party has the responsibility to procedurally indicate on the face of the charge the specific subsections of the Act it claims the Respondent has violated. In this case the Federation specifically alleged on both its original and amended charges that the Board violated 5.4a(1), (3) and (7) of the Act. The case was processed by the Commission and on May 24, 2013, the Director of Unfair Practices issued a Complaint on the 5.4a(1) and (3) allegations in the charges. The 5.4a(7) allegation was dismissed (Exhibit C-1). As discussed above, the 5.4a(1) allegations concerned statements or acts by Collazo that interfered with Campbell's and/or the Federation's protected rights, and the 5.4a(3) allegations concerned Arocho's and Campbell's reassignments. There was no section of the Act alleged regarding contract violations. The Commission has held that allegations not pled in the charge will not be considered. State of New Jersey, P.E.R.C. No. 85-77, 11 NJPER 74, 79 (¶16036 1985).

Had the Federation noted in its charges a subsection of 5.4a to cover the Board's alleged contract violations it most likely would have selected 5.4a(5) of the Act. That subsection provides:

(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.

and is primarily intended to cover allegations of an employer's unilateral change in existing terms and conditions of employment. But even assuming the Federation included 5.4a(5) on its charges and the Complaint included a 5.4a(5) charge, the 5.4a(5) allegation -- and allegations of contract violations -- would be dismissed.

The Commission has long held that mere breach of contract allegations are not complaintable as 5.4a(5) allegations. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 422 (¶15191 1984). While there are exceptions to Human Services including when it appears that an employer is simply abrogating some or all provisions of a collective agreement, here the Board offered defenses to its conduct including -- with regard to the prep time issue -- a contractual defense. Based upon the evidence presented on these issues it appears that the alleged contract violations in this case are mere breach of contract issues which are more appropriately resolved through the parties grievance procedure. Consequently, noting no Complaint issued on an 5.4a(5) allegation and the alleged contract violations appear to be mere breach of contract issues, I have no choice but to recommend dismissal of the alleged contract violations alleged in the text of the charges and in the Federation's brief.

To the extent the Federation made other allegations in its charges, some of which were addressed by the Board in its brief, I

find there was insufficient evidence that the Board violated the Act with respect to any of those allegations.

Accordingly, based upon the above findings and analysis, I make the following:

CONCLUSIONS OF LAW

1. The Board violated 5.4a(1) of the Act when High School Principal Nestor Collazo:

a. Threatened Federation Representative Pamela Campbell with insubordination for questioning his policies and for refusing to answer his questions concerning Federation business, and

b. Denied and/or interfered with Campbell's reasonable access to the main High School building to discuss Federation business with unit members, and

c. Interfered with the Federation's support of its contract by threatening to break the contract regarding certain secretarial functions.

2. The Board did not violate 5.4a(3) of the Act by reassigning Arocho or Campbell to other work locations.

3. The Board did not violate the Act regarding alleged contract violations.

RECOMMENDATIONS

I recommend that the Commission ORDER:

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by:

a. Threatening Federation representative Pamela Campbell with insubordination for questioning the policies of High School Principal Nestor Collazo or for refusing to answer Collazo's questions concerning Federation business, and

b. Denying or interfering with Campbell's reasonable access to the main High School building to discuss Federation business with unit members, and

c. Principal Collazo threatening to break the Federation's contract regarding certain secretarial functions.

B. That the Respondent take the following affirmative action:

1. Direct Principal Nestor Collazo to:

a. Cease threatening Federation Representative Pamela Campbell for disagreeing with or questioning his policies or for refusing to reveal Federation business,

b. Cease interfering with Campbell's reasonable access to the main High School building to conduct Federation business, and

c. Cease threatening to break the Federation's contract.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A. Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and 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.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

C. That all other 5.4a(1) allegations, the 5.4a(3) allegations, allegations of contract violations, and all other allegations be dismissed.

/s/ Daisy Barreto
Daisy Barreto
Hearing Examiner

DATED: December 21, 2015
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 December 31, 2015.



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 the rights guaranteed to them by the Act, particularly by:

Threatening Federation Representative Pamela Campbell with insubordination for questioning the policies of High School Principal Nestor Collazo or for refusing to answer Collazo's questions concerning Federation business, and

Denying or interfering with Campbell's reasonable access to the main high school building to discuss Federation business with unit members, and

Principal Collazo threatening to break the Federation's contract regarding certain secretarial functions.

WE WILL take the following affirmative action:

Direct Principal Nestor Collazo to cease threatening Federation Representative Pamela Campbell for disagreeing with or questioning his policies or for refusing to reveal Federation business,

WE WILL cease and desist from interfering with Campbell's reasonable access to the main High School building to conduct Federation business, and

WE WILL cease and desist from threatening to break the Federation's contract.

Docket No. CO-2013-103
CO-2013-337

Perth Amboy 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