

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

In the Matter of

STATE OPERATED SCHOOL DISTRICT,
CITY OF NEWARK,

Respondent,

-and-

NEWARK TEACHERS UNION LOCAL 481,
AFT, AFL-CIO,

Charging Party.

Docket No. CO-2014-098

SYNOPSIS

A Hearing Examiner (largely) grants a motion for summary judgment filed by a majority representative and (largely) denies a cross-motion for summary judgment filed by a public employer on a Complaint alleging three counts. The first count alleges that the employer unilaterally changed terms and conditions of employment by requiring teachers to complete newly promulgated forms as a condition for attending the annual convention of the New Jersey Education Association. The second count alleges that the public employer unlawfully refused to provide the names and addresses of unit employees receiving "ineffective" summative performance evaluations for the 2012-2013 school year. The third count alleges that the public employer revoked a majority representative official's access to its email system for purposes of communicating with unit employees and all non-unit employer administrators, except one.

The Hearing Examiner determined that N.J.S.A. 18A:31-2 governs the release of educators to attend the annual convention and the employer's imposition of returnable forms requiring numerous responses was unlawful. The Hearing Examiner relied upon East Hanover Tp. Bd. of Ed., P.E.R.C. No. 93-117, 19 NJPER 352 (¶24158 1993). The Hearing Examiner also determined that the public employer unlawfully refused to provide the requested names and addresses, specifically finding that disclosures required by the NJ Employer-Employee Relations Act are not subordinated to privacy provisions in other State statutes. Morris Cty. and Morris Council No. 6, NJCSA, IFPTE, AFL-CIO, P.E.R.C. No. 2003-22, 28 NJPER 421 (¶33154 2002), aff'd 371 N.J. Super. 246 (App. Div. 2004), certif. den. 182 N.J. 427 (2005). Finally, the Hearing Examiner determined that the public employer's revocation of the representative's email access to unit employees independently violated 5.4a(1) of the Act and that its revocation of access to non-unit administrators except one did not violate the Act.

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.

H.E. NO. 2016-7

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

In the Matter of

STATE OPERATED SCHOOL DISTRICT,
CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2014-098

NEWARK TEACHERS UNION LOCAL 481,
AFT, AFL-CIO,

Charging Party.

Appearances:

For the Respondent
Scarinci Hollenbeck
(Ramon E. Rivera, of counsel)

For the Charging Party
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
(Colin Lynch, of counsel)

**HEARING EXAMINER'S DECISION ON
MOTION FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY JUDGMENT**

On October 22, 2013, Newark Teachers Union Local 481, AFT, AFL-CIO (NTU) filed an unfair practice charge against the State Operated School District, City of Newark (District). The charge alleges three counts. In the first count, the charge alleges that in advance of the November 7 and 8, 2013 New Jersey Education Association (NJEA) annual convention [in Atlantic City], the District unilaterally changed terms and conditions of

employment by requiring teachers to complete new forms entitled, "Travel Authorization Request" and "Justification of Need;" and by demanding of employees driving their vehicles to the convention, ". . . proof of car insurance or mode of travel and estimate of cost to convention." The forms allegedly require information from teachers that they have not previously disclosed.

The second count alleges that on September 18, 2013, the NTU sought from the District the names and addresses of unit employees receiving an "ineffective" performance evaluation at the end of the 2012-2013 school year, pursuant to an Open Public Records Act (OPRA) request. The District denied the request. The NTU then demanded the list, ". . . pursuant to the District's duty to negotiate in good faith" and it again refused.

The third count alleges that on or about September 1, 2013, the District blocked NTU Director of Operations John Abeigon's e-mail access to District supervisors, including then-Superintendent Cami Anderson, and to unit employees. The District's conduct allegedly violates section 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).

On August 27, 2014, a Complaint and Notice of Hearing issued on allegations that the District violated 5.4a(1) and (5) of the Act. On September 17, 2014, the District filed an Answer, denying any unilateral changes in terms and conditions of employment; denying any refusal to negotiate in good faith; and denying "blocking" email access.

On January 12, 2015, the NTU filed a motion for summary judgment, together with a brief, certification and documents. On January 13, 2015, the District filed a cross-motion for summary judgment, together with a brief, certification and documents. On March 4, 2015, the Commission referred the motions to me for a decision. N.J.A.C. 19:14-4.8.

Summary judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, there exists no genuine

^{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."

issue of material fact and the movant . . .
is entitled to its requested relief as a
matter of law. [N.J.A.C. 19:14-4.8(e)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), sets forth the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The fact-finder must ". . . consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the moving party." If that issue can be resolved in only one way, it is not a genuine issue of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary hearing. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

Applying these standards and relying upon the parties' submissions, I make the following:

FINDINGS OF FACT

1. The NTU is the majority representative of teachers, librarians, psychologists, counselors, clerks and others employed by the District. The parties' most recent memorandum of agreement extended their collective negotiations agreement from October 18, 2013 through June 30, 2015.

Section II of the memorandum, "Compensation and Benefits: NTU and [the District] believe teachers should be compensated based on their performance as well as their years of service," provides under "Contract Modifications: A. Base Salary and Performance:"

4. . . . There shall be movement on the steps and remuneration on the scale only by effective professional performance and valued experience.

- Only educators who receive effective or highly effective annual summative evaluation ratings will be entitled to move up one step on the salary scale.

- Educators who receive an ineffective annual summative evaluating rating will stay on their current salary step. These educators may request a Peer Validator. . . .

- The specific intent of the parties is to create a new compensation system where increments and raises are earned through effective performance. The parties agree to utilize peer validators . . . to consult with the Superintendent and make recommendations on disputes. . . .

2. N.J.S.A. 18A:29-14, "Withholding increment; causes; notice of appeal" authorizes a board of education to withhold increments. It also requires the board to provide written notice to the teacher and "reasons," from which the teacher may appeal to the Commissioner of Education.

N.J.S.A. 18A:31-2, "Attendance at Conventions of New Jersey Education Association;" provides that full-time teaching staff members and others, applying for permission [from their respective Board employers] to attend the annual NJEA convention, ". . . shall be granted such permission" for not more than two days in any one year and shall receive his or her whole salary for the days of "actual attendance upon the sessions of such convention," based upon the ". . . filing with the secretary of the board a certificate of such attendance signed by the executive secretary of the association."

N.J.S.A. 18A:6-120, "School improvement panel" establishes a panel of specified credentialed educators (including a "teacher . . . selected in consultation with the majority representative") and administrators to ". . . oversee the mentoring of teachers and conduct evaluations of teachers, including the annual summative evaluation." The statute provides in a pertinent part:

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public pursuant to P.L. 1963 C. 73 (C. 47:1A-1 et seq.) as amended and supplemented.

N.J.S.A. §47:1A-10, "Personnel, pension records not considered public information; exceptions" provides in a pertinent part:

Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) or any other law to the contrary, the personnel or pension

records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

. . . personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest;
. . .

3. In the 2012-2013 school year, the District remained open for classroom instruction during the NJEA convention. District teachers electing to attend the November, 2012 convention were obliged to submit a "NJEA Convention Authorization Request" form. The form was apparently amended to include in oversized bold type (that obscured spaces for entries of costs for lodging, transportation, meals, etc.), the phrase, "NOT APPLICABLE." District teachers seeking to attend the NJEA convention were not required to complete the blocked-out spaces on the form. As such, the form, properly completed, solicited the employee's name, signature, and assigned school. In November, 2012, as in all previous years, the District did not compensate teachers attending the annual NJEA convention for their mileage, lodging or travel expenses.

4. In October, 2013, the District issued a "Travel Authorization Request" form for unit employees to complete if

they elected to attend the November, 2013 NJEA convention. The form advises that the employee's ". . . itinerary, meals breakdown, registration regarding the purpose of the trip" must be "attached." It also includes fill-in spaces for these costs: meals, transportation, including "private automobile" mileage, lodging, registration, baggage and taxi/shuttle. It also solicits the employee's "union affiliation," specifically, "NTU," "NTA," "CASA," "Local 32," "Local 617," etc.

5. In or around the same time, the District also required prospective NJEA convention attendees to complete a newly-promulgated "Justification of Travel" form. The form solicits [verbatim]:

1. Relationship of attendance at this event to the critical instructional and operational needs of the district . . . ;
2. Explanation as to how the person or persons attending will share what was learned with others in the school district;
3. Documentation that the knowledge and information to be gained at this conference cannot be obtained through more cost effective means; and
4. Explanation as to how the request is consistent with best practices in professional development.

6. The District threatened to charge NJEA convention attendees with personal days off if they failed to submit "proper paper work."

7. On November 5, 2013, the District converted the NJEA convention dates (November 7 and 8) to "professional days," obviating the need for students to attend classes. The District unilaterally added two instructional days to the end of the 2013-2014 school year to compensate for "lost" instruction. The District also accepted as "permission" requests (to attend the NJEA convention), forms that it accepted in previous years (see finding no. 3).

8. On September 6, 2013, the District Director of Labor/Employee Relations Laurette Asante issued to NTU representatives a list of teachers who received "merit/performance bonuses" for their performance in the 2012-2013 school year. Such recipients enjoyed "highly effective" performance evaluations. On an unspecified date, the District provided NTU a list of teachers who received "partially effective" performance evaluations in the 2012-2013 school year. The District did not provide notice to unit teachers whose summative performance evaluations were "ineffective" and whose increments were withheld; and did not advise them of their right to appeal those determinations.

9. On September 18, 2013, the NTU filed a "Newark Public Schools Open Public Records Act Request Form" with the District seeking the names and addresses of unit teachers who received performance evaluations graded "ineffective" at the end of the

2012-2013 school year. On September 25, the District replied, refused to provide the requested information.

On October 1, 2013, Counsel for NTU wrote a letter to Counsel for the District, reiterating NTU's request for the names and addresses of individuals, "at issue" because it is ". . . critical to NTU's ability to fulfill its representational obligations to its members." Counsel wrote that the District has a ". . . duty to provide information under the PERC statute, N.J.S.A. 34:13A-1, et seq."

On October 8, Counsel for the District wrote a reply to NTU Counsel, advising that the requested names and addresses are "confidential," citing the TEACHNJ Act, N.J.S.A. 18A:6-120d. Counsel also wrote that an employee's right to confidentiality cannot be waived by the majority representative, offering to provide the requested information of any employee ". . . who consents in writing to such disclosure or who is represented by the NTU in a specific matter in which the evaluation rating is relevant."

On October 15, Counsel for NTU wrote a reply, arguing that the requested information is "relevant," inasmuch as "ineffective" performance evaluations are tantamount to a "disciplinary action" because it causes an employee to lose a salary increment. The NTU would ". . . more thoroughly advise [such employees] of their rights . . . and [enable them] to

pursue remedies to which they may be entitled." The reply also disputed that N.J.S.A. 18A:6-120d bars disclosure.

10. John Abeigon is Director of Organization for the NTU. In that capacity, he has "frequently communicated" with District supervisors, including the State-appointed Superintendent, Assistant Superintendent and School Business Administrator.

On February 19, 2013 Abeigon issued an email to District Principal Samuel Garrison, with copies to Superintendent Anderson, Director Asante and others, requesting of him:

Please direct us to the policy or evaluation tool you are using to justify this action [i.e., that two parents and a teacher will be evaluating instructional staff]. No teacher has been authorized by this Union or the [District] to evaluate any colleague. Also, parents are not authorized or qualified to evaluate. . . . Please cease such activity until we receive clarity from the [District].

On September 5, 2013 at 4:40 P.M. Abeigon issued an email to "members," critical of a District ". . .plan to address student absenteeism," following the District's "mistake of laying off attendance counselors." Abeigon wrote that the plan was "disingenuous" and "hypocritical." The email was also critical of the District's "dilapidated" and "sick" physical plant.

On September 19, 2013, a one-paragraph, large-print document, apparently authored by Abeigon, was emailed to Director Asante. The text is critical of a named District "administrator," who received a "no confidence" vote and who

assertedly "reassigned 10% of her staff" in retaliation for that action. Abeigon wrote that the District refuses to "discipline" or "undo the harm she inflicts on her staff."

On September 20, 2013, Abeigon authored an email to Superintendent Anderson, complaining that class sizes were ". . . substantially above code limits;" that classrooms were missing "vital supplies;" and that teachers had not received proper training on the "Common Core" curriculum. Writing that the training deadlines established by the "TEACHNJ" statute had passed, Abeigon ". . . call[ed] for a moratorium on all staff evaluations pending correction of these issues."

On October 7, 2013, Abeigon issued an email to Director Asante and other non-unit administrators, including Superintendent Anderson, regarding a "peer oversight committee." Abeigon wrote [sarcastically]: "Never let anyone say the [District] doesn't do the LEAST they can do . . . way to demonstrate respect for in-depth respectful dialogue. 2 ½ hours? Wow, almost as much time as they gave us to review 'Race to the Top' . . . You would think that they would learn from that experience - Nope!!"

Sometime in September, 2013, the District blocked Abeigon's email communications to all District employees except District Director of Labor/Employee Relations Laurette Asante. Asante is a District representative for ". . .any issues on grievances

related to the collective bargaining agreement and/or the memorandum of agreement." The "block" interferes with Abeigon's efforts to resolve disputes, process grievances and investigate matters regarding contract administration on behalf of NTU unit employees. NTU membership continues to receive emailed "updates" directly from NTU executive committee members, including the NTU President.

On September 24, 2013, NTU Counsel wrote a letter to District Counsel, contesting the District's "block" of Abeigon's "email correspondence."

ANALYSIS

In East Hanover Tp. Bd. of Ed., P.E.R.C. No. 93-117, 19 NJPER 352 (¶24158 1993), the Commission adopted a Hearing Examiner's recommendation (H.E. No. 93-21, 19 NJPER 502 (¶24232 1993) that the Board violated section 5.4a(5) and (1) of the Act by imposing restrictions on its secretaries' right under N.J.S.A. 18A:31-2 to attend the annual NJEA convention with pay. The restrictions included requesting approval to attend the convention, filing a professional day report and charging a professional day for attending. The Hearing Examiner based his determination on the "unconditional imperative phrasing of the [statute]" and on the "unilateral imposition" of the restrictions. Id., 19 NJPER at 503, 504.

I find that the District's requirement that 2013 convention attendees complete the "Travel Authorization Request" and "Justification of Travel" forms is an unlawful restriction on unit employees' statutory and "unconditional" right to attend the NJEA convention. Requirements to provide documents specifying itinerary, registration, costs of meals, transportation, baggage, etc.; union affiliation and several "explanations" justifying attendance at the convention all violate N.J.S.A. 18A:31-2. All of these conditions of attendance were implicitly waived by the District only two days before the 2013 convention, likely not in time to avoid their discouraging effect. The unilateral imposition of these "mandatory" forms changed terms and conditions of employment, violating section 5.4a(5) and derivatively a(1) of the Act.

* * *

In Morris Cty. and Morris Council No. 6, NJCSA, IFPTE, AFL-CIO, P.E.R.C. No. 2003-22, 28 NJPER 421 (¶33154 2002), aff'd 371 N.J. Super. 246 (App. Div. 2004), certif. den. 182 N.J. 427 (2005), the Commission found that the public employer violated 5.4a(5) and (1) of the Act by refusing to provide the majority representative a list of names and home addresses of all employees in that representative's collective negotiations unit. It acknowledged federal sector precedent under the National Labor Relations Act that ". . . the employer must provide non-

confidential information requested by the majority representative so that it can carry out its representational duties." 28 NJPER at 422. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); State of New Jersey (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp. 2d 198 (¶177 App. Div. 1988); Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988), aff'd NJPER Supp. 2d 208 (¶183 App. Div. 1989).

In a finding of particular relevance to this case, the Commission also determined that disclosure of employee home addresses did not violate the Open Public Records Act, specifically including N.J.S.A. 47:1A-10 (incorporated by reference in N.J.S.A. 18A:6-120). The Commission wrote:

[D]isclosures required by the Employer-Employee Relations Act are not subordinated to the privacy provisions of other statutes. To the contrary, the provisions of the New Jersey statutes and executive orders dealing with personnel records permit disclosure when otherwise provided by law. . . .Our Act is a law providing otherwise for the limited purpose of disclosure to a majority representative. It may be that an employee's home address is not a 'public record' disclosable to any member of the public upon demand. Nevertheless, an address may still be disclosed on a limited basis for a proper purpose pursuant to a specific statute, as is the case here.

[28 NJPER at 425]

The Appellate Division agreed, writing: "At issue is not disclosure to the public at large, but rather disclosure to a

bargaining representative that needs the addresses to accomplish the union's statutory mandate to represent its members." 371 N.J. Super. at 253.

In this case, the NTU requested the names and addresses of unit teachers receiving "ineffective" summative performance evaluations for the purpose of apprising them of rights and remedies (for the withholding of an increment), pursuant to the terms of the memorandum of agreement and N.J.S.A. 18A:29-14. The desirability of direct communication and the resulting need for those names and addresses establishes that the information sought is useful to the NTU in carrying out its representational duties and contract administration. No facts suggest that disclosure will result in any harm to unit employees. The intrusion upon employee privacy is minimal; the teachers will receive mail that apprises them of rights to appeal their summative evaluations and increment withholdings that they may elect to ignore.

I find that the names and addresses requested by the NTU are presumptively relevant and necessary to the organization's discharge of its statutory duty to represent all unit employees. The District's refusal to provide that information violates section 5.4a(5) and (1) of the Act.

* * *

N.J.S.A. 34:13A-5.4a(1) makes it an unfair practice for a public employer to interfere with, restrain or coerce employees

in the exercise of the rights guaranteed to them by the Act. An employer violates this provision independently of any other violation if its action tends to interfere with an employee's protected rights and lacks a legitimate and substantial business justification. Lakehurst Bd of Ed., P.E.R.C No. 2004-74, 30 NJPER 186,187 (¶69 2004); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-72, 5 NJPER 550 (¶10285 1979). The charging party need not prove an illegal motive. This provision will also be violated derivatively when an employer violates another unfair practice provision. Lakehurst Bd. of Ed.

Uncontested facts show that in September, 2013, the District, without notice or explanation to NTU at the time, unilaterally "blocked" NTU officer Abeigon's email communications to all unit employees (while permitting other NTU officials to continue their email communications, unabated) and all non-unit administrators, except Asante. The District claims that its action, ". . . was based on several offensive and threatening emails that Mr. Abeigon forwarded to various District employees" (para.6, Asante certification).

Commission cases demonstrate that the Act confers a statutory right of communication between a majority

representative and its unit members.^{2/} Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976); State of New Jersey (Dept of Transp.), P.E.R.C. No. 90-114, 16 NJPER 387 (¶21158 1990); City of Newark, H.E. No. 2001-3, 26 NJPER 407 (¶31160 2000) (City unlawfully removed informational postings of majority representative and prohibited similar postings).

Neither the employer nor the majority representative may interfere with each other's choice of representative(s) for negotiations and contract administration, including grievance processing. Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980); Willingboro Bd of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991) (proposal not mandatorily negotiable to the extent it would circumscribe employer's right to designate representative to negotiate overtime compensation). Section 5.4b(2) of the Act prohibits an employee organization from interfering with, restraining or coercing a public employer's selection of its representative for negotiations or grievance adjustments.

Applying these principles, I find that the District violated section 5.4a(1) of the Act by blocking NTU representative

^{2/} The District has acknowledged that NTU representatives have access to the District's email system for the purpose of communicating with unit employees. The circumstances of this case concern only the revocation of that access to NTU representative Abeigon. Cf., Purple Communs., Inc., 2014 NLRB LEXIS 952, 201 LRRM 1929 (2014).

Abeigon's email access to unit employees for the purpose of communicating about terms and conditions of employment, contract administration and grievance processing. The District's asserted business justification for the block -- that Abeigon had issued "offensive" and "threatening" emails -- are not borne out by the facts, specifically, by the content of any of the printed emails the District submitted. None of the proffered emails issued by Abeigon harassed or otherwise interfered with unit employees' rights under section 5.3 of the Act.

I also find that the District did not violate the Act by blocking Abeigon's email access to all District representatives, except Director Asante. The District is entitled to designate its representative(s) for contract administration and adjustments in terms and conditions of employment. The District designated only Asante for that purpose; it is not obligated to include others.

RECOMMENDATION

I grant the NTU's motion for summary judgment on allegations that the District violated section 5.4a(5) and derivatively a(1) of the Act by unilaterally imposing conditions on unit employee attendance at the 2013 New Jersey Education Association annual convention; by refusing to provide names and addresses of unit employees receiving 2013 "ineffective" summative performance evaluations; and that it independently violated section 5.4a(1)

of the Act by revoking NTU representative John Abeigon's email access to unit employees.

I deny the portion of the NTU's motion alleging that the District violated the Act by revoking Abeigon's email access to non-unit District administrators, except Director of Labor/Employee Relations Laurette Asante.

I deny the District's cross-motion for summary judgment except that I grant that portion seeking dismissal of the allegation that it violated the Act by revoking Abeigon's email access to all District non-unit administrators, except Director Asante.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the State Operated School District, City of Newark, 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 imposing conditions or restrictions upon unit employees' attendance at the annual convention of the New Jersey Education Association, governed by N.J.S.A. 18A:31-2; and by refusing to provide the NTU names and addresses of unit employees receiving "ineffective" summative performance evaluations in 2013; and by blocking NTU representative Abeigon's email access to unit employees commencing September, 2013.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment in that unit, particularly by imposing conditions or restrictions upon unit employees' attendance at the annual convention of the New Jersey Education Association, governed by N.J.S.A. 18A:31-2; and by refusing to provide the NTU names and addresses of unit employees receiving "ineffective" summative performance evaluations in 2013.

B. Respondent, State Operated School District, City of Newark, take the following affirmative action:

1. Provide forthwith to Newark Teachers Union, Local 481, AFT, AFL-CIO, a list of names and addresses of all unit employees receiving "ineffective" summative performance evaluations in the 2012-2013 school year.

2. Provide forthwith to NTU representative John Abeigon email access to all unit employees for the purpose of communicating about terms and conditions of employment, including contract administration and grievance processing.

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 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.

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

/s/Jonathan Roth
Hearing Examiner

DATED: October 20, 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 October 30, 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 imposing conditions or restrictions upon unit employees' attendance at the annual convention of the New Jersey Education Association, governed by N.J.S.A. 18A:31-2; and by refusing to provide the NTU names and addresses of unit employees receiving "ineffective" summative performance evaluations in 2013; and by blocking NTU representative Abeigon's email access to unit employees commencing September, 2013.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment in that unit, particularly by imposing conditions or restrictions upon unit employees' attendance at the annual convention of the New Jersey Education Association, governed by N.J.S.A. 18A:31-2; and by refusing to provide the NTU names and addresses of unit employees receiving "ineffective" summative performance evaluations in 2013.

WE WILL provide forthwith to Newark Teachers Union, Local 481, AFT, AFL-CIO, a list of names and addresses of all unit employees receiving "ineffective" summative performance evaluations in the 2012-2013 school year.

WE WILL provide forthwith to NTU representative John Abeigon email access to all unit employees for the purpose of communicating about terms and conditions of employment, including contract administration and grievance processing.

Docket No. _____

(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