P.E.R.C. NO. 84-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LODI BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-65-59

LODI EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the Lodi Education Association filed against the Lodi Board of Education. The charge had alleged that the Board had interfered with the Association president's conduct of Association business and had transferred the president from a Title I teaching position to a classroom teaching position in a deliberate attempt to discourage her participation in Association business. The Commission holds that the Association did not prove these allegations by a preponderance of the evidence.

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In the Matter of

LODI BOARD OF EDUCATION,

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-and- Docket No. CO-83-65-59

LODI EDUCATION ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, William R. Nunno, Esq.

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On September 20, 1982, the Lodi Education Association ("Association") filed an unfair practice charge against the Lodi Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged, in count 6, that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), specifically subsections 5.4(a)(1) and (3),[1/] when it transferred Camille Coppa, the president of the Lodi Education Association ("Association"), from her position as a full-time Title I teacher, which the Board had abolished, to a position as a fifth grade teacher. The charge specifically

1/ These subsections 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; and (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."

alleged that the Board transferred Coppa to a regular classroom assignment, rather than a more flexible Compensatory Education position, because it desired to interfere with Coppa's ability to use the Association's contractually provided-for telephone and her contractually provided-for 30 minutes of release time to conduct Association business.2/

On January 7, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On January 21, 1982, the Board filed an Answer in which it denied that it made the transfer in order to discriminate against Coppa or interfere with her ability to carry on Association business.

On March 30, 1983, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded all parties an opportunity to present evidence, examine witnesses, and argue orally. Post-hearing briefs were filed by July 7, 1983.

On July 26, 1983, the Hearing Examiner issued his report. H.E. No. 84-8, 9 NJPER 511 (¶14209 1983) (copy attached). He recommended dismissal of the Complaint. In particular, he found that the Association failed to prove by a preponderance of the evidence that Coppa's transfer to a regular classroom assignment was illegally motivated or that it interfered with, coerced, or restrained Coppa in conducting Association business.

2/ In its original charge, the Association alleged six other counts. On January 13, 1983, the Association amended the charge to allege an eighth count. Only count 6 is before us today; all other counts have been settled, deferred, or abandoned. We note that the allegations regarding the thirty minute release time and the telephone were not deferred to binding arbitration because they were part of the overall allegation of a subsection 5.4(a)(3) violation.

He specifically found that Coppa substantially received the 30 minutes release time provided by contract.

On August 19, 1983, having received an extension of time, the Association filed Exceptions. The Association contends that the Hearing Examiner erred in: (1) not finding that the Board's sole motive in transferring Coppa was to interfere with her Association activities; (2) not finding any evidence of anti-union animus; (3) his analysis of previous Commission cases concerning transfers of union activists; (4) not finding that the Board substantially restricted Coppa's rights under the contract to discharge Association business and thus violated subsection 5.4(a)(1); and (5) finding that any alterations of release time arrangements were de minimis.

We have reviewed the record. Except to the extent specifically modified hereinafter, the Hearing Examiner's findings of fact are supported by substantial evidence (pp. 3-5).[3/] We adopt and incorporate them here.

At the outset of our analysis, we observe that the Association did not plead that the Board violated subsection 5.4(a)(5)[4/] by allegedly not complying fully with its contractual

3/ We correct the Hearing Examiner's finding of fact (no. 7) that Coppa's attorney only sent two letters to the Superintendent; in fact, three letters were sent.

4/ This subsection prohibits public employers, their representatives or agents from: "(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."

obligations to provide Coppa with 30 minutes release time per day or the use of a telephone for Association business. The Hearing Examiner did not consider whether such a violation occurred nor do we believe that this issue was fairly and fully litigated.[5/] Contrast In re Commercial Twp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), appeal pending App. Div. Docket No. A-1642-82T2. Thus, we limit our consideration to determining: (1) whether the Board violated subsection 5.4(a)(1) by directly and substantially interfering with Coppa's conduct of Association business; and (2) whether the Board violated subsection 5.4(a)(3) by transferring Coppa in a deliberate attempt to discourage her participation in Association business. We answer both questions in the negative.

We agree with the Hearing Examiner that the Association did not prove by a preponderance of the evidence that the Board directly and substantially interfered with Coppa's Association activities. We modify, however, his analysis of the release time issue.

The Superintendent testified without contradiction that Coppa's release time was actually 8:45 - 9:00 a.m. and 3:00 - 3:20 p.m. Monday through Thursday, and was 8:45 - 9:00 a.m. and 11:25 - 11:55 a.m. on Friday. The Hearing Examiner found that Coppa had a tutorial responsibility from 3:00 - 3:20 p.m. which prevented her from using this time for Association activities, but

5/ Any future questions concerning whether the Board is fully complying with its contractual obligations should be resolved through the parties' negotiated grievance procedure.

concluded that this loss of time was a de minimis deprivation. Coppa admitted, however, that she was told she could leave her class after the class ended at 3:00 p.m. There is no evidence that the Board ever required Coppa to stay in her classroom for tutoring after 3:00 p.m. Thus, the Association did not prove by a preponderance of the evidence that the Board deprived Coppa of the use of this time for Association business.6/

Moreover, we are not persuaded by a preponderance of the evidence that the Board directly or substantially interfered with Coppa's ability to use the Association's telephone. The Association asserted that the telephone was in a closet in another classroom and that it was not available to Coppa since another teacher might be tutoring students between 3:00 p.m. and 3:20 p.m. in that classroom. The Association, however, did not prove that Coppa was ever prevented from using the telephone

6/ We note that there is some question concerning whether Coppa received her full release time on Fridays. She definitely received release time from 8:45 to 9:00 a.m. The Superintendent testified that she also received release time from 11:25 - 11:55 a.m., but the Association asserts that Coppa had a right to use that time for preparation. On this record, we are not convinced by a preponderance of the evidence that the Board directly or substantially interfered with Coppa's conduct of Association activities by making that particular time on Friday morning available. We, however, leave any further question concerning a possible contractual violation to the parties' negotiated grievance procedure.
We also note that the Association asserts that Coppa did not receive release time from 8:45 to 9:00 a.m. during the first two months of the year because the Board did not provide professional coverage for her classroom during that time. Again, as with the afternoon block of time, Coppa was told she could use that time and we see no evidence that the Board or its agents nevertheless required her to remain in the classroom or denied her the opportunity to conduct her Association business.

between 3:00 p.m. and 3:20 p.m., that the classroom was regularly used during that time, that her use of the telephone was ever actually disrupted, or that the school officials knew of and refused to redress any problem. Accordingly, we dismiss those portions of the Complaint alleging an independent violation of subsection 5.4(a)(1).

We also agree with the Hearing Examiner that the Association failed to demonstrate by a preponderance of the evidence that Coppa's transfer was illegally motivated by a desire to discriminate against her or interfere with her Association activities. We incorporate his analysis (pp. 7-9) here. We specifically find that the Board's reasons (both budgetary and educational) for abolishing all Title I positions[7/] and for assigning Coppa to teach fifth grade in the Columbus School (where she had taught in her Title I position) were not pretextual.[8/]

7/ The Association argues that a reduced number of full-time Title I teachers could have provided adequate instruction and therefore elimination of all full-time Title I positions was not necessary. Once we find that a Board acts in good faith, however, we will not question the soundness of an educational decision. We further recognize that in some cases the failure to pursue a clearly more reasonable alternative may constitute a piece of evidence supporting an inference of bad faith and discrimination. This is not such a case.

8/ Although the Board posted a Compensatory Education position in October 1982, apparently after it was already filled, it was not proved that this position was available in June 1982 so as to permit Coppa to be considered for that position at the time of her transfer. Moreover, there was no showing that the filling of that position prior to posting was in any way related to Coppa's transfer, or was done in retaliation for the exercise of her protected rights. We further note that although Coppa could not reach the Superintendent by phone on June 29, 1982, she had informed him of her preferences in a meeting the day before. We do not believe that (continued)

We further observe that our conclusion above concerning the subsection 5.4 (a)(1) issue undercuts the Association's contention that the Board reassigned Coppa to a classroom precisely because it wished to disrupt her Association business. Had there been stronger evidence of actual interference with Coppa's Association activities, there might have been a stronger basis for detecting an illegal motive. Because we are not convinced that Coppa's Association activity was a substantial or motivating factor in her reassignment, we dismiss those portions of the Complaint alleging an independent violation of subsection 5.4(a)(3) and a derivative violation of subsection 5.4(a)(1).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of this decision. Commissioners Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
October 19, 1983
ISSUED: October 20, 1983

8/ (continued)
Coppa's inability to reach the Superintendent on June 29, 1982 demonstrates that the Superintendent acted in bad faith. Finally, we do not believe that the Hearing Examiner erred in relying upon In re West Paterson Bd. of Ed., P.E.R.C. No. 83-22, 8 NJPER 545 (¶13250 1982); In re Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); and In re Bd. of Ed. of the Vocational School in Essex County, P.E.R.C. No. 82-32, 7 NJPER 585 (1981). We caution, however, that each case alleging an illegally motivated personnel action will turn largely on its own fact pattern.

H.E. No. 84-8

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

In the Matter of

LODI BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-83-65-59

LODI EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations when its Superintendent transferred the Association President, Camille M. Coppa, from the Title I program to the fifth grade in the Columbus School, following the restructuring of the Title I program to eliminate full-time teachers. It was true that Coppa had filed numerous grievances on behalf of the Association from 1974 through 1982 but the Hearing Examiner was not persuaded that her exercise of protected activities was a "substantial" or a "motivating" factor in the Superintendent's decision to transfer her to the Columbus school. The Hearing Examiner followed Commission and Court precedent in reaching his decision, namely, East Orange Public Library v. Taliferro, 180 N.J. Super. 155 (1980).

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. No. 84-8

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

In the Matter of

LODI BOARD OF EDUCATION,

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LODI EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Lodi Board of Education
William R. Nunno, Esq.

For the Lodi Education Association
Klausner & Hunter, Esqs.
(Stephen B. Hunter, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 20, 1982, and amended on January 13, 1983, by the Lodi Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Lodi Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"). The original Unfair Practice Charge contained Counts I through VII and the amended Unfair Practice Charge is denominated as Count VIII. Counts I, III, IV and V alleged violations of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.[1/] These four Counts were deferred to arbitration by agreement of

1/ These Subsections 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.

"(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."

the parties. Counts II and VIII were amicably settled prior to the due date for post-hearing briefs, infra. Count VII was not pursued by the Charging Party and is deemed abandoned. This leaves Count VI alone for disposition herein, which alleges a violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act.[2/] Count VI may be summarized as follows: Camille Coppa, the President of the Association since 1974, was a Title I teacher for 15 years and in June 1982 she was informed by the Superintendent that she would no longer be employed as a Title I teacher because of the restructuring of the Title I program for budgetary reasons, and that, notwithstanding her request on June 29, 1982 to be assigned to a compensatory education position, Coppa was belatedly assigned to teach the fifth grade at the Columbus School in August 1982, contrary to the notification requirements in the collective negotiations agreement between the parties, and that the said involuntary transfer or assignment rendered difficult the discharge by Coppa of her duties as President of the Association and discriminated against Coppa's exercise of the rights guaranteed by the Act.

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 7, 1983. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 30, 1983 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the Charging Party filed a post-hearing brief by July 7, 1983. The Respondent failed to file a post-hearing brief by the due date of July 18, 1983.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the Charging Party's post-hearing brief, the

2/ Additionally, this Subsection prohibits public employers, their representatives or agents from:

"(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."

matter is appropriately before the Commission by its designated Hearing Examiner for determination. Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Lodi Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Lodi Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The current collective negotiations agreement between the parties is effective during the term July 1, 1981 through June 30, 1983 (J-1). Article V, "Association Rights, Privileges and Responsibilities," provides that the Board agrees that the Association may install a telephone at its own expense for the use of the Association's President, and that the Association President shall be released for 30 minutes per day to conduct Association business (J-1, p. 14).

4. Camille M. Coppa has been a classroom teacher for many years in the District and, for 15 years prior to the 1982-83 school year, Coppa was a teacher in the Title I program. Coppa has been the President of the Association since 1974 and has filed many grievances: seven from 1974-81; four in 1981-82; and 10 in 1982-83.

5. On June 28, 1982 Coppa attended a meeting in the Superintendent's office where Josephine Facella, the Title I coordinator, was also present. The Superintendent told Coppa that the Title I program was being "cut" and that she would not be employed as a Title I teacher for the 1982-83 school year. When asked for her choice of assignment, Coppa requested the Compensatory Education Program. The Superintendent told her that there were no positions available in that program.[3/] Coppa next requested an assignment to the Middle School. Nothing was resolved regarding Coppa's requested assignments at this meeting.

6. On June 29, 1982 Coppa sent a letter to the Superintendent reiterating

3/ Notwithstanding that the Superintendent said that there were no positions in the Compensatory Education Program for 1982-83, a job vacancy was posted for the program on October 7, 1982 (CP-7), for which Coppa applied on October 18th (CP-8). She was not successful because the position had been filled prior to the posting.

that her choice for assignment in 1982-83 was in the Title I program and that her second choice for assignment was in the Middle School "...providing that it will afford me the opportunity to discharge my duties as President of the ...Association..." (CP-1). On the same date the Superintendent sent Coppa a memo advising her that she was assigned to the Columbus School and that the Principal, Philip Patire, would give her scheduling details at a later date (CP-2).

7. On August 6, 1982 Counsel for the Charging Party sent a letter to the Superintendent complaining about Coppa's involuntary transfer to the Columbus School in other than a Title I position (CP-4). Counsel also complained to the Superintendent that Coppa had not received notice of her class or subject assignment in accordance with the collective negotiations agreement. When no response was received a second letter was sent on August 18, 1982 (CP-6).

8. On August 23, 1982 Patire called Coppa and offered her a position in the fourth, fifth or sixth grades. Coppa told Patire that she would not take any grade that necessitated the "bumping" of another teacher. Patire said that he would call her after speaking with the Superintendent. The following day, August 24th, Coppa called Patire and left a message on his tape that she would take the fourth or fifth grade. Patire never called her again prior to the opening of school, and on September 7, 1982 Patire informed Coppa that she had been assigned to the fifth grade. See R-1.

9. In the 1981-82 school year Coppa was a Title I teacher at the Columbus School where she was able to use the Association telephone and had 30 uninterrupted minutes per day, which commenced at 2:30 p.m., to conduct Association business as provided for in Article V of J-1, supra. Coppa could also leave the building when necessary.

10. In the 1982-83 school year where Coppa teaches the fifth grade at the Columbus School the matter of released time for Association business has changed as follows: the Principal has scheduled her released time from 8:45 a.m. to

9:00 a.m. and 3:05 p.m. to 3:20 p.m. on Mondays through Thursdays, and from 11:25 a.m. to 11:55 a.m. on Fridays.

11. By practice teachers are to be available for tutorial from 3:05 p.m. to 3:20 p.m. Coppa testified without contradiction that this tutorial responsibility between 3:05 p.m. to 3:20 p.m. interferes with the conduct of Association business during that portion or her released time. There has been no interference in the 15 minutes of released time in the morning since another teacher has been assigned to "cover" her classroom.

THE ISSUE

Did the Respondent violate Subsections(a)(1) and (3) of the Act by transferring Camille M. Coppa from the Title I program to the fifth grade in the Columbus School for the 1982-83 school year in retaliation for Coppa's exercise of protected activities and for the purpose of interfering with her duties as President of the Association?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections(a)(1) And (3) Of The Act When It Transferred Camille M. Coppa From The Title I Program To The Fifth Grade In The Columbus School Since The Decision To Transfer Was Not In Retaliation For The Exercise of Protected Activities

Camille M. Coppa has been the President of the Association since 1974 and has been the President of the Association since 1974 and has filed numerous grievances since that date. Coppa learned that the Title I program was being "cut," and that she would not be employed as a Title I teacher for the 1982-83 school year, at a meeting in the Superintendent's office on June 28, 1982. Coppa first sought assignment to the Compensatory Education Program, and when told that that was not available, she next requested assignment to the Middle School. The decision of the Superintendent, made the following day, June 29th, was to assign her to the Columbus School. Coppa stated in a memo to the Superintendent on June 29, 1982 that her second choice for assignment was the Middle School, providing that it would afford her the opportunity to discharge her duties as President of the

Association (CP-1). The ultimate decision of the Principal of the Columbus School was to assign her to the fifth grade and she has been so assigned during the 1982-83 school year.

The collective negotiations agreement provides in Article V that the Association may install a telephone at its own expense for use by the Association President, and that the President shall be released for 30 minutes per day to conduct Association business. In the 1981-82 school year, when Coppa was Title I teacher, she was able to use the Association telephone and had 30 uninterrupted minutes per day to conduct Association business, commencing at 2:30 p.m. Coppa could also leave the building when necessary. In the 1982-83 school year the Principal of the Columbus School scheduled Coppa for release for Association business from 8:45 a.m. to 9:00 a.m. and from 3:05 p.m. to 3:20 p.m. on Mondays through Thursdays and from 11:25 a.m. to 11:55 a.m. on Fridays. Coppa testified without contradiction that a tutorial responsibility between 3:05 p.m. and 3:20 p.m. interfered with the conduct of Association business during that portion of her released time. There has been no interference in the 15 minutes of released time in the morning since another teacher has been assigned to "cover" her classroom.

Based on the foregoing facts, the Charging Party contends that the Respondent has violated the Act by its assignment of Coppa to the fifth grade in the Columbus School during the 1982-83 school year, and by altering the times during the day when Coppa can conduct Association business in her capacity as President. The Hearing Examiner is not persuaded that the Charging Party has proven by a preponderance of the evidence that the Respondent has violated the Act by its conduct herein.

For the Charging Party to prevail, in what appears clearly to be a case of "dual motive," the Charging Party must meet the "causation" test enunciated by the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169

(1980), which has recently been adopted by the United States Supreme Court in NLRB v. Transportation Management Corp., _____ U.S. _____, 113 LRRM 2857 (June 15, 1983).[4/] In Wright Line the NLRB adopted the analysis of the United States Supreme Court in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977), which involves the following requisites in assessing employer motivation: (1) the General Counsel (Charging Party) must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision to discipline (here transfer); and (2) once this is established, the employer has the burden of demonstrating that the same disciplinary action (transfer) would have taken place even in the absence of protected activity.

Based upon the Wright Line - Mt. Healthy analysis, supra, the Hearing Examiner finds and concludes that the Charging Party has failed to demonstrate that the Respondent violated Subsection(a)(3), and derivatively Subsection(a)(1), of the Act. Leaving aside the question of whether or not the Respondent has met its burden of demonstrating that the transfer of Coppa would have taken place even in the absence of her protected activities, namely, the filing of grievances and the conduct of Association business as President, the Hearing Examiner concludes that the Charging Party has failed to make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the Board's decision to transfer Coppa to the fifth grade in the Columbus School.

It is true that since Coppa became President of the Association in 1974 she has filed a number of grievances against the Board, including ten in and around October 1982. There was no evidence, however, or any indication of anti-union animus toward Coppa by representatives of the Board, including the Superintendent, as a result of grievance and Association activity by Coppa. There was no testimony as

4/ The Appellate Division adopted the Wright Line analysis in "dual motive" cases in East Orange Public Library v. Taliaferro, 180 N.J. Super. 155 (1981), which the Commission has followed in such cases as Madison Board of Education, P.E.R.C. No. 82-46, 7 NJPER 669 (1981) and Bergen County - Bergen Pines County Hospital, P.E.R.C. No. 82-117, 8 NJPER 360 (1982).

to statements made by the Superintendent or the Principal of the Columbus School regarding Coppa's activities. The Hearing Examiner is asked to infer solely from the filing of grievances that the Board and the Superintendent were illegally motivated in the decision to transfer Coppa from Title I, which was being restructured due to budgetary reasons, to the fifth grade in the Columbus School.

The Hearing Examiner notes that the exercise of protected activities by an Association President and the proof of animus was of considerably greater magnitude in West Paterson Board of Education, P.E.R.C. No. 83-22, 8 NJPER 545 (1982), affm'g. H.E. No. 82-65, 8 NJPER 451 (1982) than in the case at bar. Nevertheless, the instant Hearing Examiner concluded in West Paterson that the exercise of protected activities was not a "substantial" or a "motivating" factor in the decision of the superintendent to transfer the association president from one school to another and that the proof of animus was deficient. The Hearing Examiner then went on to assume arguendo that even if the Charging Party had proved that the association president activities were a "substantial" or a "motivating" factor in the Board's decision to transfer, the Board had established a legitimate business justification for its action and demonstrated that the transfer would have taken place even in the absence of the President's exercise of protected activities.

In the instant case the decision of the Superintendent to transfer Coppa arose not from an educational decison that Coppa would be better in one school and grade than another, but because the Title I program was being restructured to eliminate full-time teachers. Thus, Coppa was without a position in the Title I program and had to be placed somewhere. There was no evidence adduced that the Board had other than a legitimate educational reason for placing Coppa in the fifth grade in the Columbus School for the 1982-83 school year. Coppa herself offered to take the fourth and fifth grades in the Columbus School as of August 24, 1982. The Hearing Examiner can make no finding other than that the Principal of the Columbus School acceded to one of Coppa's suggestions when he informed Coppa on September 7,

1982 that she had been assigned to the fifth grade.

The Hearing Examiner also cites, in support of his decision herein, the Commission decisions in Laurel Springs Board of Education, P.E.R.C. No. 78-4, 3 NJPER 228 (1977) and Board of Education of the Vocational Schools in Essex County, P.E.R.C. No. 82-32, 7 NJPER 585 (1981).

Further, the Charging Party argues that the Board has violated the Act by the way in which Article V of the collective negotiations agreement has been applied by the Principal of the Columbus School during the 1982-83 school year. As noted above, the time during the day when Coppa can conduct Association business has been altered in the current year (see Findings of Fact Nos. 15 & 16, supra). The Principal of the Columbus School would appear to have good reason for his scheduling of released time, which has not materially interfered with the conduct of Association business by Coppa. Coppa has released time each day from 8:45 a.m. to 9:00 a.m., the only problem being the 3:05 p.m. to 3:20 p.m. released time and the alleged tutorial interference Mondays through Thursdays, which the Hearing Examiner concludes is de minimis. Coppa is receiving the 30 minutes per day under the agreement. The Hearing Examiner can draw no conclusion vis-a-vis a violation of the Act from the fact that Coppa's released time for union business has been altered from that of the prior school year. The arguments of the Charging Party to the contrary are rejected.

Accordingly, the Hearing Examiner will recommend dismissal of the allegations that the Respondent violated Subsections (a)(1) and (3) of the Act by its conduct with respect to the transfer of Coppa to the fifth grade in the Columbus School for the 1982-83 school year and her schedule for released time for Association business at that school.

* * *

Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) by

its transfer of Camille M. Coppa from the Title I program to the fifth grade in the Columbus School for the 1982-83 school year.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: July 26, 1983
Trenton, New Jersey