

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PINE HILL
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-286-31

PINE HILL EDUCATION
ASSOCIATION,

-----Charging Party.-----

BOROUGH OF PINE HILL
BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-77-10-44

PINE HILL EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Pine Hill Education Association filed an unfair practice charge against the Borough of Pine Hill Board of Education which, as amended, alleges that, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3), the Board determined not to renew a teacher's contract due to his having engaged in protected activities; and further alleges that in violation of N.J.S.A. 34:13A-5.4(a)(1), the Superintendent of Schools made statements which had the effect of interfering with or restraining the exercise of protected activities by the Association and its members. In a counter charge, the Board alleges that, in violation of N.J.S.A. 34:13A-5.4(b)(1) and (5), the Association, in filing an unfair practice charge failed to follow the contractual grievance procedure and attempted to coerce and restrain the Board in its lawful activities.

A full hearing was held before the Commission's Hearing Examiner, who issued a Recommended Report and Decision. After a careful review of the entire record made before the Hearing Examiner and the exceptions to the Recommended Report filed by the Association, the Commission adopts the recommended findings of fact and conclusions of law made by the Hearing Examiner substantially for

the reasons stated by him. The Hearing Examiner found and the Commission agrees, that on the basis of the credibility determination regarding conflicting testimony; the Board's presentation of legitimate business justification for the non-renewal; and the minimal level of the teacher's association activities, that the Association had not proven by a preponderance of the evidence that the Board's decision not to renew the teacher was due, even in part, to his protected activities. Accordingly, those charges against the Board are dismissed. However, the Hearing Examiner did find, and the Commission adopts this finding, that the Board violated N.J.S.A. 34:13A-5.4(a)(1) when, on two occasions, the Superintendent of Schools made statements which had the effect of interfering with or restraining the exercise of protected activities by the Association and its members. With regard to the Board's charges, the Hearing Examiner recommended, and the Commission also concludes, that they be dismissed since the Association's action, in filing an unfair practice charge instead of utilizing the contractual grievance procedure, did not, as a matter of law, constitute a violation of the Act, and the Board failed to present any evidence to support its other allegation against the Association.

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Docket No. CE-77-10-44

PINE HILL EDUCATION
ASSOCIATION,

Respondent.

Appearances:

For the Board of Education,
Ronald N. Manos, Esq.

For the Education Association,
Joel S. Selikoff, Esq.

DECISION AND ORDER

On April 28, 1976, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Pine Hill Education Association (the "Association") which alleges that the Borough of Pine Hill Board of Education (the "Board") engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

Specifically, the Association alleges that, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3),^{1/} the Board determined not to renew a teacher's contract due to his having engaged in protected activities. On June 29, 1976, the Association amended its charge to further allege that, in violation of N.J.S.A. 34:13A-5.4(a)(1), the Superintendent of Schools made statements which had the effect of interfering with or restraining the exercise of protected activities by the Association and its members. In a counter charge, the Board alleges that, in violation of N.J.S.A. 34:13A-5.4(b)(1) and (5),^{2/} the Association, in filing an unfair practice charge, failed to follow the contractual grievance procedure and also attempted to coerce and restrain Board employees.

The charges were processed pursuant to the Commission's Rules, and it appearing to the Director of Unfair Practices that the allegations of the charges, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing, and an Order Consolidating these matters, was issued on October 25, 1976. In accordance with the Complaint and Notice

^{1/} These subsections prohibit 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.

^{2/} These subsections prohibit employee organizations, 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) Violating any of the rules and regulations established by the commission.

of Hearing, hearings were held on April 1, 1977, May 5, 1977, October 3, 1977, December 15, 1977, June 6, 1978, June 7, 1978 and June 29, 1978, before Edmund G. Gerber, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. On November 27, 1978, and November 28, 1978, post hearing briefs were filed by the Board and the Association respectively. A reply brief was filed by the Association on December 13, 1978. On February 23, 1979, the Hearing Examiner issued his Recommended Report and Decision,^{3/} which included findings of fact, conclusions of law, and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. Timely exceptions, a brief in support thereof, and a Request for Oral Argument were filed by the Association on March 30, 1979. A Response to Charging Parties' Exceptions was filed by the Board on April 20, 1979.

The Commission denies the Association's Request for Oral Argument since this matter was thoroughly litigated with seven days of testimony, the submission into evidence of exhibits and interrogatories which resulted from voluntary discovery, and the filing of briefs, reply briefs, exceptions with brief, and a brief in reply to exceptions.

3/ H.E. No. 79-33, 5 NJPER 81 (¶10047 1979).

On the basis of (1) credibility determinations regarding conflicting testimony; (2) the Board's presentation of a legitimate justification for the non-renewal; (3) the minimum level of the teacher's Association activities; and (4) other evidence, such as his evaluations and the timing of events; the Hearing Examiner concluded that the Association had not proven by a preponderance of the evidence that the Board determined not to renew a teacher due to his protected activities. Accordingly, the Hearing Examiner recommended that these charges against the Board be dismissed. However, the Hearing Examiner did find that the Board violated N.J.S.A. 34:13A-5.4(a)(1) when on two occasions, the Superintendent of Schools made statements which had the effect of interfering with or restraining the exercise of protected activities by the Association and its members. With regard to the Board's charges, the Hearing Examiner recommended that they be dismissed since the Association's action in filing an unfair practice charge instead of utilizing the contractual grievance procedure did not, as a matter of law, constitute a violation of the Act, and the Board failed to present any evidence to support its other allegations against the Association.

The Commission, after a careful review of the record, adopts the Hearing Examiner's findings of fact and conclusions of law substantially for the reasons stated in his Recommended Report and Decision.

In its first exception,^{4/} the Association challenges the Hearing Examiner's determination to credit Principal Ivory's testimony concerning the nature of the November 20, 1975, meeting with Barnes, the discharged teacher. The Commission initially notes that it is for the trier of fact to weigh contradictory testimony. Absent the most compelling evidence to the contrary, the Commission will not substitute its secondhand reading of a transcript for the Hearing Examiner's judgment based upon observations of demeanor and the like.^{5/}

The characterization of this meeting is crucial to a determination of this complaint. The question is whether it involved a proper discussion of Barnes' problem interacting with other teachers, or an improper effort to investigate Barnes' involvement in the possible filing of a grievance by the Association. As the Hearing Examiner found, Barnes had a history of problems interacting with other teachers and there had developed a pattern of conduct for Ivory, on both a professional and personal basis, to discuss with Barnes any complaints by other teachers against him. Ivory testified that, as a result of a discussion with two teachers, he became aware of friction developing between

^{4/} The Association, rather than filing numerated exceptions to specific findings of fact or conclusions of law, presents a generalized challenge to the Hearing Examiner's Report. The Commission, in addressing these exceptions, has divided this challenge into its component parts.

^{5/} In re Hudson County Board of Chosen Freeholders, P.E.R.C. No. 79-48, 4 NJPER 87 (14041, 1978) and In re City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (14096 1978).

Barnes and some of the other teachers who believed that, as a result of what had occurred at a recent Association meeting, Barnes would participate in the possible filing of an Association grievance which they did not support.^{6/}

Based on these background facts, it is not unreasonable for the Hearing Examiner to conclude that, although the meeting did take place within the context of a rumored Association grievance, Ivory did not meet with Barnes for the purpose of discouraging his participation in the potential grievance, but rather to alert him to the social tension that was developing between himself and certain members of the Association due to his conduct at the Association meeting. It is evident from the testimony that Ivory had developed a special concern for Barnes' interpersonal relationships with the other teachers. It was this concern for Barnes' individual interests, as opposed to his concerted interests in protected activity, which motivated Ivory to call the November 20, 1975 meeting.

Next the Association takes exception to the Hearing Examiner's finding that the incident of March 1975 did not relate to protected activity. In adopting the Hearing Examiner's finding, it suffices to say that this incident involved the perception by some Association members, including the then President of the Association, that Barnes' conduct was causing

^{6/} As the Association notes in its exceptions, there was conflicting testimony as to whether Ivory or the two teachers first mentioned Barnes during their discussion. The Commission considers this question to be immaterial.

dissension between the teachers at the two schools.

Next the Association contends that the justification for Barnes' non-renewal was pretextual. The Association attempts to characterize each interpersonal problem as minor in nature. Apart from the incident involving those teachers who perceived Barnes as causing a split between the two schools, there was uncontroverted testimony that Barnes had problems dealing with nine teachers. These problems necessitated numerous conferences with Ivory. Admittedly, none of these incidents alone constituted a major problem; yet the very number of such events over a short two year period has a cumulative effect leading to the conclusion that the Board had legitimate educational and administrative justification for Barnes' non-renewal. Added to this fact were several minor incidents involving students.

The Association, in its next exception, challenges the Hearing Examiner's reasoning in finding that, although the statements of the Superintendent, on December 9, 1975 and June 22, 1976, were tainted by anti-union animus, the non-renewal of Barnes was not motivated by such animus. As the Hearing Examiner noted, a distinction has to be made between generalized feelings of animus and such specific motivation towards a particular individual. Although Superintendent Sorce's unlawful statements of December 9, 1975, were made in the context of a discussion over Ivory's meeting with Barnes concerning what happened at the Association meeting, it is apparent from the whole tenor of the

testimony by witnesses for both parties that Sorce's statements were directed not towards Barnes specifically, but rather towards the general problem of what he perceived as Association interference with his operation of the school district. Further, as the Hearing Examiner found, the statements of Sorce on June 22, 1976 were also general in nature, ambiguous as to whether they referred specifically to Barnes' non-renewal, and were made after relations between the Association and the Board had begun to deteriorate. While these statements do constitute sufficient evidence of anti-union animus to support the finding of an independent (a)(1) violation, they do not meet the burden of proof that the specific conduct in not renewing Barnes was motivated by that animus.

Although the Association takes exception, the Hearing Examiner did find substantial evidence to counteract anti-union animus toward Barnes. Aside from Barnes' problem dealing with other teachers, his Association activities were relatively slight and, therefore, no inference can be drawn that Sorce's generalized feeling of anti-union animus was also directed specifically to Barnes as an Association activist. With regard to the Association meeting of November 19, 1975, it was Jogielski, the Association's chief negotiator, who was the moving force behind the possibility of filing a grievance with Barnes summarizing, at the end of the meeting, the alternatives open to the Association. This evidence further negates any inference that the Board discriminated against

Barnes as the key figure in this incident. Finally, there is the fact that Barnes received a good evaluation from Ivory even after his Association activities and received a bad evaluation and non-renewal only after teacher Frazier filed a complaint with Ivory about Barnes.

Taking all of this countervailing evidence into account, the Commission concludes that the Association has not proved, by a preponderance of the evidence, that the Board was motivated by anti-union animus in not renewing Barnes. Accordingly, the Commission rejects the Association's exceptions and dismisses the charge relating to the Board's non-renewal of Barnes.

The Board takes exception to the Hearing Examiner's finding that the statements of the Superintendent of Schools constituted an independent violation of N.J.S.A. 34:13A-5.4(a)(1). The Board contends that the Superintendent's statements were directed towards the Board's legitimate interest in preventing a deterioration of the school district and the educational process.

Our standard in determining whether action constitutes an independent (a)(1) violation follows:

"The Commission in determining whether N.J.S.A. 34:13A-5.4(a)(1) has been violated applies the following general rule: 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 to coerce a reasonable employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial "business" justification. If an employer, pursuant to the above standard, does establish such justification, no unfair practice will be found under Section 5.4(a)(1) unless the charging party proves anti-union motivation for the employer's actions. In determining

initially whether particular actions tend to interfere with, restrain or coerce a reasonable employee in the exercise of rights protected under the Act we will consider the totality of evidence proffered during the course of a hearing and the competing interests of the public employer and the employee organization and/or affected individuals." 7/

The Commission must strike a proper balance between the employees' statutory rights and the Board's right and obligation to properly maintain the school district. On balance, the Commission concludes that the statements made by the Superintendent tended to have a chilling effect on the exercise of protected rights, especially the right to present grievances. There are numerous other methods that the Board and the Superintendent can utilize to prevent the deterioration of the school district and the education process which do not have the effect of interfering with or restraining the exercise of protected activities.

Accordingly, the Commission rejects the Board's exception and adopts the Hearing Examiner's finding that the Board violated the Act when, on two occasions, the Superintendent made statements which were anti-union.

Finally, no exceptions having been filed by the Board, the Commission adopts the Hearing Examiner's recommendation that the charges against the Association be dismissed since the Association's action, in filing an unfair practice charge instead of utilizing the contractual grievance procedure, did not, as a matter of law, constitute a violation of the Act, and the Board failed to present any evidence to support its other allegations against

7/ In re N.J. College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1979).

the Association.

ORDER

For the foregoing reasons and based upon the entire record herein, it is hereby ORDERED that the Borough of Pine Hill Board of Education and its agents including its Superintendent of Schools, Anthony Sorce:

A. Cease and desist from:

1. Making speeches or other statements which have the effect of interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act.

B. Take the following affirmative action:

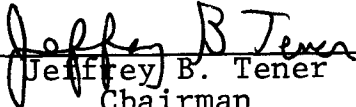
1. Post at all schools in the Borough of Pine Hill School District and the offices of the Board of Education, in conspicuous places, copies of the attached notice marked as "Appendix A". Copies of such notice, on forms to be provided by the Commission, shall be posted by the Board immediately upon receipt thereof, after being signed by the Board's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by any other material.

2. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this order what steps the Board has taken to comply herewith.

C. It is further ORDERED that the section of the complaint, which alleges that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (3) when it failed to renew the teaching contract of Joseph Barnes, be dismissed in its entirety.

D. It is further ORDERED that the section of the complaint, which alleges that the Association violated N.J.S.A. 34:13A-5.4(b)(1) and (5) be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
May 22, 1979
ISSUED: May 23, 1979

NOTICE TO ALL 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 NOT make speeches or other statements which have the effect of interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act.

BOROUGH OF PINE HILL BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

BOROUGH OF PINE HILL BOARD OF EDUCATION,

Respondent/Charging Party,

-and-

Docket Nos. CO-76-286-31 and
CE-77-10-44

PINE HILL EDUCATION ASSOCIATION,

Charging Party/Respondent.

SYNOPSIS

A Hearing Examiner recommends to the Commission that they dismiss a complaint alleging that the contract of Joseph Barnes was not renewed by the Borough of Pine Hill Board of Education (Board) in the fall of 1976 because of his activities on behalf of the Borough of Pine Hill Education Association (Association). The Hearing Examiner did find that the Superintendent of Schools violated the Public Employer-Employee Relations Act on two occasions: once in a meeting with Association representatives when he stated that he will interfere with Association activities when they conflict with the running of the schools and, again, when he gave a speech to the faculty he intimated that Barnes might have been non-renewed in an attempt to stop a split in the faculty, but the Hearing Examiner found that Barnes' participation in the Association was minimal and he had interpersonal relation problems as a teacher. Accordingly, the Hearing Examiner found the Association failed to prove their case by a preponderance of the evidence.

The Hearing Examiner also recommended that charges brought by the Borough of Pine Hill Board of Education be dismissed. The Board had alleged that the Association threatened and attempted to coerce Board witnesses into retracting statements made against Barnes, but no evidence was introduced at the hearing to support this charge.

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.

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

In the Matter of

BOROUGH OF PINE HILL BOARD OF EDUCATION,

Respondent/~~Charging Party~~,

-and-

Docket Nos. COCO-76-286-31 and
CE-77-10-44

PINE HILL EDUCATION ASSOCIATION,

~~Charging Party~~/Respondent.

Appearances:

For the Respondent, Ronald N. Manos, Esq.

For the Charging Party, Joel S. Selikoff, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Pine Hill Education Association (Association) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) on April 28, 1976, claiming that Joseph Barnes, a teacher in the employ of the Board of Education of the Borough of Pine Hill (Board) was interfered with in the exercise of the rights guaranteed under the Public Employer-Employee Relations Act (Act) by being accused of promoting "factionalism" within the school system by School Superintendent Anthony Sorce and that the Board declined to renew Barnes' contract because Barnes engaged in protected activities. On June 29, 1976, the Association amended its charge claiming that on June 22nd Sorce gave a speech which interfered with, restrained or coerced Association members. On October 12, 1976, the Board filed a counter charge with the Commission claiming that the Association committed an unfair practice when it filed a charge with the Commission rather than following the grievance procedure as stated in the contract between the parties and that the Association attempted to coerce and force faculty

members into retracting and repudiating their statement concerning Joseph Barnes. ^{1/}

The Director of Unfair Practices determined that these allegations if true might constitute an unfair practice and accordingly issued a Complaint and Notice of Hearing and an order consolidating these matters on October 15, 1976. Hearings were held in Trenton, New Jersey, before the undersigned on April 1, 1977, May 5, 1977, October 3, 1977, December 15, 1977, June 6, 1978, June 7, 1978, ^{2/} and June 29, 1978.

Both parties were given ample opportunity to present evidence, examine and cross-examine witnesses, argue orally and present briefs. Both parties submitted briefs which were received by December 1, 1978. ^{3/}

^{1/} It was specifically alleged that the Board of Education violated N.J.S.A. 34:13A-5.4(a)(1) and (3) which state that employers, their representatives or agents are prohibited 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, and the Association violated §5.4(b)(1) and (5) which provide that employee organizations, their representatives or agents are prohibited from: (1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, and (5) violating any of the rules and regulations established by the commission.

^{2/} The transcript of these hearing dates are identified in chronological order as Volumes I through VI, Volume I being the transcript of April 1, 1977.

^{3/} It is noted that after the prehearing conference in this matter in November of 1976 the parties entered into an agreement for voluntary discovery. The parties completed discovery some five months later in May of 1977. Further, between hearings number four and five -- December 1977 and June 1978 respectively -- the Board had elections for a new solicitor and it was not known for some time whether or not Mr. Manos would continue to represent the Board. Finally, during the time that briefs were due in this matter Mr. Selikoff was counsel for an education association whose officers were in custody while members of the association were engaging in a strike. Since all his energies were devoted to representing said clients, he requested and was granted an extension of time in which to file a brief in this matter.

Joseph Barnes was a teacher in the Pine Hill School District for the 1974-1975 and 1975-1976 school years. At the end of his second year he was notified by the Board that he would not be renewed for the following year. The Association brought this action claiming that Barnes was coerced in his activities on behalf of the Association and that Barnes' non-renewal was motivated by an intent to discourage Association activity.

Barnes' ability as a teacher was never seriously in question and until April of 1976, he received favorable evaluations.

In Barnes' first year he was on a friendly basis with the school principal, Charles Ivory, and, on occasion, they would see each other socially.

But Barnes had troubles with his fellow teachers in both of his years at the school. Barnes was one of two sixth grade teachers in the John Glenn School and during the two years he taught at the school there were two different teachers who taught the other sixth grade class. Both teachers complained to the administration about Barnes' overbearing, caustic personality. There was a third sixth grade or cooperating teacher who was only in the school for one month who will also be discussed below.

Margaret Joseph was Barnes' cooperating teacher in 1974-1975. Joseph testified that Barnes was constantly teasing her and at times was overbearing. Many times Barnes had her in tears. She discussed her problem with Ivory and on several occasions Ivory sat down with both of them to try to work out their problems. ^{4/} In November or December of 1974 Joseph had a confrontation with Barnes and thereafter the two of them worked well.

In September of 1975 Barnes worked with Ms. St. Maur. St. Maur taught for about one month and then resigned. Her resignation was unrelated to her relationship with Barnes. But when she left the school district the Superintendent of the School District, Sorce, talked with her and she mentioned that she felt that she did not get enough support from Barnes. ^{5/}

Cynthia Frazier replaced St. Maur for the 1975-1976 year. Frazier testified that she had a different teaching philosophy from Barnes' and she felt that Barnes did not like her. She claimed that he ridiculed her and made snide remarks

^{4/} Vol. IV, pp. 5 to 12.

^{5/} Sorce did receive a letter from St. Maur that she never had a problem with Barnes but apparently this letter was sent to Sorce after Barnes received a statement of reason as to his non-renewal.

about her in front of other students and teachers. ^{6/} Frazier first mentioned her difficulties with Barnes to Ivory in March of 1976 after Barnes lectured her in the teachers lunch room on her lack of control in her classroom. Ivory told Frazier that he would speak to Barnes especially since it was interfering with her teaching. Ivory met with Barnes and told him his behavior had been uncalled for and Ivory followed up on this situation several times.

There was also testimony that Barnes had problems with the following teachers: Carol Adelson in the spring of 1974, ^{7/} Ms. Aldrich, ^{8/} Irene Donahue, Rich Williams, Nancy Moore and Daphne Sestzinger. ^{9/}, ^{10/}

The Board claims that it was because of Barnes' inability to work with his fellow teachers and his overbearing attitude that he was non-renewed. School Superintendent Anthony Sorce said he wanted to let Barnes go at the end of his first year but Ivory, who gave Barnes his good evaluations, convinced him to recommend the renewal of Barnes' contract. Ivory testified that since Joseph first complained to him about Barnes he would talk to Barnes about his personality problem in dealing with other teachers and they had an agreement whereby if a problem came to Ivory's attention, he would call Barnes in and discuss the problem with him. It was not until Frazier complained about Barnes in March of 1976 that he felt he would have to recommend that Barnes not be renewed.

The Association's position is that Barnes' non-renewal was motivated at least in part by Barnes' aggressiveness on behalf of the Association.

Barnes became a member of the Association as soon as he joined the school district and was an active member in the Association although he was not an officer. For the two years Barnes was a teacher he served on the B.A.T.H. Committee, an informal committee made up of members of the Board of Education, teachers, and members of the Home and School (the equivalent of the P.T.A.). In 1975 he was appointed by the Association as a member-at-large, which automatically made him a member of the executive committee. He ran for the office of building representative for 1975-1976 but was defeated.

^{6/} Vol. V, pp. 105-115 and 122-126.

^{7/} Vol. IV, pp. 161, 162.

^{8/} Barnes teased her (Vol. IV, pp. 164, 184, 185).

^{9/} Vol. VI, pp. 16 to 28.

^{10/} Barnes was also involved in an incident with a student, K. A., during play rehearsal in the spring of 1975. Barnes was dissatisfied with the way she had walked across the stage, and he imitated her in a demeaning way. K.A. became hysterical. Carol Adelson, a teacher who worked on the play along with Barnes, said that too much discipline was used at the time although it was only a minor incident.

There were two incidents, one in March of 1975, and the other in November of 1975 which Barnes was involved in that the Association claims were the reasons for Barnes' non-renewal.

The Association Executive Committee at this time was composed of 12 teachers, ten from the Bean School and two from the Glenn School. Prior to the Association election in March 1975 Barnes testified that he tried to get the teachers at the Glenn School more involved in the Association and to get them to run for various positions within the Association.

Ivory called Barnes into his office around this time and told him that he heard a rumor that Barnes was trying to split the schools and wanted to talk to him about it. (Clarke, the current president of the Association, testified that the then president of the Association, Cynthia Gilford, called School Superintendent Sorce to say that Barnes was trying to split the schools and Sorce should do something about it.) The next morning Barnes, along with two other teachers, told Ivory that it was not his intent to split the schools, rather, he wanted to promote good natured competition. Sorce also met with Barnes about this incident. Sorce said he was getting "bad vibes" and wondered if he was unhappy within the district. Sorce also said that he had heard Barnes was trying to split the schools by putting one up against the other. ^{11/} Sorce told Barnes that what transpired at their meeting was just between the two of them, and at the time Barnes believed Sorce.

Sorce testified that he believed Barnes when he said it was not his intention to split the schools and he didn't see anything wrong with Barnes trying to motivate the teachers at Glenn. Sorce became very concerned, however, when several teachers said they felt the district was being split up because of Barnes' comments. ^{12/}

The other incident concerned a proposal of the B.A.T.H. committee that the school put on a play in the evening. At the November 19, 1975, Association meeting the B.A.T.H. proposal was discussed. Most of the teachers were against it although some said they would do it. The chief negotiator of the Association, Jagielski, brought up the possibility of filing a grievance if the administration

^{11/} Vol. I, pp. 51-54.

^{12/} Vol. VI.

decided to put the play on. At the end of the meeting Barnes summarized the alternative courses of action open to the Association -- either go directly to the administration and explain that they were against the proposal or wait until the administration took action and then file a grievance. The Association voted to wait and see what the administration did.

Ivory testified that two teachers, Barbara Jones Huffman and Kristel Renzi, came to him the following morning and told him that they were concerned that a grievance might be filed and they mentioned Barnes' name. ^{13/}

Ivory called in Barnes and asked him about the meeting. Ivory claimed he did this in accordance with their agreement to apprise Barnes of problems he had in interacting with other teachers. Barnes became so upset he cried for he could not understand why people were always blaming him for something or twisting what he said. Ivory testified he told Barnes that it was none of his business what happened at the Association meeting but he wanted Barnes to know what people said about him. Barnes went to Ivory's house that night. Ivory claimed he told Barnes that his problem with other teachers could lead to his non-renewal. Barnes claimed that Ivory took it as a personal affront that Barnes would support a grievance. Barnes became upset and this meeting ended his friendly relationship with Ivory.

The Association President Clarke invited Sorce to a meeting of the Association Executive Committee on December 9, 1975, and they discussed Barnes being called in by Ivory to discuss what happened at the Association meeting. ^{14/} Clarke told Sorce that what Ivory did was wrong and unlawful, and she read N.J.S.A. 34:13A-5.3 to him. ^{15/} Barnes, Clarke, and Jagielski, all testified that after a heated discussion Sorce said he would interfere with Association matters no matter what the law said. Sorce was banging his fists and yelling. Sorce testified that he said he would interfere only if the matter concerned the actual workings of the district. He would not interfere in Association business per se.

On April 8, 1976, Barnes received an evaluation from Ivory which stated ~~Ivory recommended that~~ he would not be renewed for the following year and on

^{13/} Huffman testified that she did speak to Ivory but did not mention the filing of a grievance nor did she mention Barnes' name. Ivory asked if a grievance would be filed and she said it was a possibility.

^{14/} Vol. I, p. 147; Vol. III, p. 14; Vol. VI, p. 212.

^{15/} Vol. I, p. 42; Vol. III, pp. 14, 15.

April 30 the Board followed Ivory's recommendations and sent Barnes a letter stating that he would not be renewed for the following year.

On April 28 the Association filed its original charge in this matter claiming that the Board's decision not to renew Barnes was motivated by anti-union animus and that Sorce interfered with Barnes by accusing him of promoting factionalism due to his activities at the December 9 meeting.

On June 22 at the final faculty meeting of the year Sorce addressed the entire faculty. He indicated that there were problems that year that had divided the staff, the teachers and the administration. He also made references back to the meeting of December 9. Sorce stated that an unfair practice charge was filed because he tried to stop a split in the schools and that "If you are unwilling to reverse the deterioration in this district, then you should leave."

Barnes, Clarke and Association member Karen Vitola testified that there was a fear within the Association that if matters were discussed it would get back to the administration. Clarke also said there was a general fear the administration would reprimand teachers for making statements at Association meetings. She also said this fear had existed since the 1973-1974 year.

Jagielski said the relationship between the Association and the Board had deteriorated over the last couple of years, but the precipitating factor was the filing of the unfair labor practice. Carney testified that 14-16 members (out of 46) resigned from the Association at the end of the 1975-1976 school year. Frazier, who no longer teaches in the district but is a member of her local education association, claimed that a lot of people dropped out of the Association because they were upset by the leadership and didn't feel they were being properly represented. ^{16/} ~~many~~ leaders. ^{17/}

Joseph felt that Barnes' fear or belief that he had been terminated because of his Association activities was not realistic, for the administration had never interfered and she didn't think it would do so.

In the summer of 1976, 13 out of the 14 members of the Association Executive Committee were involuntarily transferred to another grade level; no one else was involuntarily transferred. Sorce said there was a need for the transfers, and the Board had a right to do it. ^{17/} A written grievance concerning the transfers

^{16/} Vol. V, p. 130.

^{17/} Vol. III, p. 100.

was filed on September 3, 1976. The grievance was settled at the Board level and additional language concerning transfers was put into the next contract.^{18/}

ANALYSIS

The incident of March 1975 when Barnes was first accused of splitting the schools has to be discounted. The president of the Association complained to Sorce about Barnes and her complaints as expressed to Sorce had nothing to do with protected activities. Under the circumstances there was nothing improper in Sorce's trying to ascertain for himself what was happening.

The second incident, where Ivory questioned Barnes about discussing a grievance at an Association meeting, raises serious questions. However Ivory's version of what happened at the meeting is at odds with Barnes' and since Barnes and Ivory had an agreement whereby Ivory would let Barnes know when he heard complaints about him, if Ivory's version of the meeting was accurate then there would be nothing unlawful about the meeting.

Further, I find that, in general, Ivory was a credible witness. To this end his evaluations of Barnes bolsters his testimony for Ivory gave Barnes a positive evaluation on March 10, 1976, well after all Barnes' Association activity took place. This is in accord with Ivory's contention that he decided not to recommend that Barnes' contract be renewed only after Frazier complained to him about Barnes, which was about two weeks after the March 10 evaluation. After that, on April 8, two weeks after Barnes' run in with Frazier, Ivory wrote up the evaluation wherein he recommended that Barnes not be renewed because of Barnes' "inability to develop positive interpersonal relationships." I find the Association did not prove Barnes' version of the conversation with Ivory by a preponderance of the evidence.

Sorce was accused of 1) acting discriminatorily against Barnes in an attempt to discourage Association activity and 2) coercing and interfering with the Association and its members on December 9, 1975, and again on June 22, 1976. The collective testimony of the Association witnesses concerning the December 9 meeting was consistent and persuasive, particularly in light of the slight difference between the Association witnesses' and Sorce's version of what was said. Accordingly, I find that Sorce did say that he would interfere with Association activities. This statement constitutes an independent §5.4(a)(1) violation for it tended to interfere with the exercise of protected rights. Admittedly Sorce was invited to attend this

^{18/} Vol. III, pp. 141, 142.

meeting, he was responding to Association questions and the meeting was heated. Nevertheless, such a statement is, on its face, a threat to interfere with protected rights and would tend to restrain the exercise of said rights.

The other statement, the speech of June 22, was made two months after the Board had taken action against Barnes. Sorce stated in his speech that the staff had been divided and an unfair practice charge had been filed because he tried to stop a split in the schools. If teachers were unwilling to reverse the deterioration in the district then they should leave. This statement is ambiguous as it relates to what actions Sorce took to "stop a split in the schools." Does it refer to Sorce accusing Barnes of factionalism or Sorce recommending to the Board that Barnes be non-renewed because he engaged in protected activities? Although there is no overt threat or promise of future action in Sorce's statement, there is an anti-Association feeling to the speech. Specifically there is a shift in the meaning of "splitting the schools." Instead of the Glenn School versus the Bean School, the term signifies the aggressive militant element against the pro-administration conservative element of the Association. The speeches'

~~anti-Association feeling, combined with the ambiguities as to whether or not Sorce discharged Barnes~~ because of his Association activities creates an overall chilling effect that would tend to interfere with the exercise of protected rights and I find that Sorce did violate §5.4(a)(1) both on December 9, 1975, and June 22, 1976. ^{19/}

Both of these statements are evidentiary of anti-union animus, ~~as was the mass transfer of Association members in the summer of 1976~~ (although the ~~weight to be given to the June 22nd speech is troublesome in light of its ambiguity~~). But the existence of anti-union animus does not automatically prove the non-renewal was motivated by said animus. Neptune Water Meter Co. v. N.L.R.B., 551 F.2d 568, 94 LRRM 2413 (CA4, 1977). The testimony of animus must be weighed against all the other evidence in this case.

What is revealing in this regard is the testimony of Jagielski.

Jagielski has been the chief negotiator for the Association for seven years and has served as president and building representative in the Association.

^{19/} For a fuller discussion of §5.4(a)(1) violations, see In re Salem County Board of Vocational Education, H.E. No. 79-29, 4 NJPER ____ (11, 1979). It should be noted that to find a violation of §5.4(a)(1) anti-union animus need not be shown.

It was Jagielski not Barnes who suggested the possibility of filing the grievance concerning the production of a play in the evening at the Association meeting of November 22nd. But Jagielski testified that Sorce has never spoken to him or interfered in any way with his participation in the Association. Also, Jagielski testified that the relationship between the Association and the Board started to deteriorate only after the instant action was brought.

Also countervailing the evidence of animus is the relatively slight Association activities of Barnes, his significant interpersonal problems, his good evaluation received after his Association activity and the timing of the notification of non-renewal.

On balance, the evidence that supports the Board's position that Barnes was non-renewed because of his personality problem is legitimate and substantial and was corroborated by the timing of events. To prevail the Association has to prove their case by a preponderance of the evidence and the evidence of Sorce's animus is not sufficient here to meet this burden.

Accordingly, I find that the Association has not proved by a preponderance of the evidence that one of the motivating factors in the non-renewal of Joseph Barnes was an intent to discourage the exercise of protected activity²⁰ and will recommend to the Commission that although they find the Board violated §5.4(a)(1), they dismiss the portion of the Complaint that alleges the Board violated §5.4(a)(3).

The Board Charges

The Board claimed that the Association and Barnes, by their failure to utilize the grievance procedure set forth in the 1975-1976 agreement between the parties, pursuant to §5.3 of the Act, violated §5.4(b)(5) of the Act. The Commission has previously held in In re New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84 (114040, 1978) that the language of 5.3 expressly refers to statutes other than the Public Employer-Employee Relations Act and filing a charge with the Commission rather than filing a grievance pursuant to a contract is not violative of the Act.

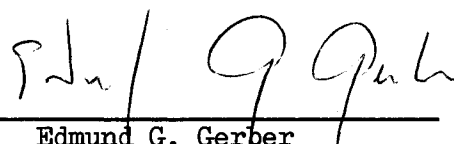
^{20/} See Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), rev'd on other grounds, 162 N.J. Super. 1 (App. Div. 1978), pet. certif. granted N.J. ___ (1978). See also North Warren Regional Board of Education, 4 NJPER ___ (114040, 1978).

The Board's other allegation was the Association attempted to coerce and force faculty members into retracting and repudiating their statements concerning Barnes. No evidence was introduced to support this charge, except that Joseph testified that the Association contacted her and asked if she would speak to their attorney. In no sense does such activity constitute coercion and I will recommend that the complaints relating to the Board's charges be dismissed in their entirety.

For the reasons set forth above, it is hereby recommended to the Commission that they issue the following Order.

RECOMMENDED ORDER

1. That Anthony Sorce, Superintendent of Schools, cease and desist from making speeches or other statements which tend to interfere with, restrain, or coerce employees of the Borough of Pine Hill School District in regard to the exercise of their rights guaranteed to them by this Act.
2. Take the following affirmative actions:
 - a.) Post the attached notice.
3. Dismiss those allegations which claim that the Board violated §5.4(a)(3) when it failed to renew Joseph Barnes and dismiss those allegations of the Board claiming the Association violated §5.4(b)(1) and (5) in their entirety.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
February 23, 1979

NOTICE TO ALL 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 NOT cause speeches, or statements to be made which interfere with, restraint, or force employees in the Borough of Pine Hill School District in the exercise of their rights guaranteed to them by this Act.~~

BOROUGH OF PINE HILL BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____ (Title)

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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, Trenton, New Jersey 086 Telephone (609) 292-6780