

H.E. NO. 2013-011

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

In the Matter of

PATERSON STATE OPERATED SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2011-283

PATERSON EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,  
(Robert E. Murray, of counsel)

For the Charging Party,  
Bucceri and Pincus, attorneys  
(Sheldon Pincus, of counsel)

**HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION**

On January 24 and April 29, 2011, the Paterson Education Association (Charging Party or Association) filed an unfair practice charge and amended charge against the Paterson State Operated School District (Respondent or District) alleging that the District violated 5.4a(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup>

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<sup>1/</sup> 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 (continued...)"

Charging Party alleges specifically in Count 1 that Association Treasurer Wanda Koch was asked to leave a staff meeting and, subsequently, reprimanded by Principal Isabelle Grassi for behavior related to remarks Koch made at the meeting about contractual issues. The charge further alleges that Grassi then assigned Koch to a third period supervision duty, thus ensuring that she would be unable to attend meetings at which she was provided information vital to her ability to advise teachers about their rights under the parties' collective agreement. Charging Party asserts that Grassi's actions against Koch continued despite Grassi being on medical leave, specifically that Grassi countermanded orders given to Koch by Acting Principal Sherman.

In Count 11 of the charge, Charging Party contends that Grassi has interfered with Koch's rights as an Association officer by retaliating against staff (Eileen Opromollo and Angela Scillieri) who have relied on Koch's advice as a union official. Also, it is alleged that Grassi warned Security Guard Nat Jones

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1/ (...continued)  
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."

to not speak to Koch and others, because they are working against Grassi.

Finally, Charging Party contends that after Koch advised Grassi that several of the teachers' schedules were not in compliance with the parties' collective agreement, Grassi changed the schedules and announced at a staff meeting that if she had to comply with the collective agreement, everyone else would also have to do so. Grassi then threatened that teachers were going to lose their perks, including that they could no longer leave the building unless it was their lunch period and that food deliveries could no longer be made to the building. The latter was a well-established past practice.

As a remedy, Charging Party seeks a posting, cease and desist order, and the expungement of any reprimands issued to Koch, Opromollo and Scillieri.

On May 9, 2011, a Complaint and Notice of Hearing issued on all allegations in the charge under subsections 5.4a(1), (3) and (5) (C-1).<sup>2/</sup> At the pre-hearing conference, Charging Party withdrew the 5.4a(5) allegation.

On May 24, 2011, Respondent filed its Answer (C-2). Respondent admits that Grassi asked Koch to leave a professional staff meeting but asserts that Koch's behavior warranted Grassi's

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<sup>2/</sup> "C" refers to Commission exhibits received into evidence at the hearing. "CP" and "R" refer to charging party and respondent exhibits, respectively.

actions. Respondent generally denies that Grassi retaliated against Koch, Opromollo or Scillieri for their union activities and asserts that there were legitimate business reasons for any actions taken in regard to these individuals. Respondent denies the remarks allegedly made by Grassi to Security Guard Jones. Respondent further denies that Grassi retaliated against Koch during Grassi's medical leave by countermanding orders of the acting principal. Respondent admits that Grassi presented staff with new schedules and told them at a meeting to follow their schedules and to abide by the collective agreement, but denies the other statements attributed to her. Respondent raises various affirmative defenses including that past practice and the parties' collective negotiations agreement permit the actions taken by Grassi and that Koch's behavior provoked Grassi's response to that behavior.

A hearing was conducted on November 3, 17, and December 19, 2011 and February 1, March 20 and June 12, 2012. I granted the parties mutual request to sequester witnesses, allowing each side one resource person who was present throughout the hearing. Association Treasurer Wanda Koch and Director of Labor Relations Luis Rojas were resources persons for Charging Party and

Respondent, respectively (1T10-1T11).<sup>3/</sup> The parties examined witnesses and filed briefs by August 6, 2012.

### **FINDINGS OF FACT**

#### **Background**

1. The Paterson State Operated School District (District) and the Paterson Education Association (Association) are, respectively, public employer and public employee representative within the meaning of the Act (1T10). The District and Association are parties to successive collective negotiations agreements effective from July 1, 2004 through June 30, 2010 (CP-1). Under the parties' collective agreement, teachers are required to work 185 days per year comprised of 182 instructional days and three in-service staff-only days (CP-1; 2T50).

2. The Association represents all instructional certificated positions; education services certificated positions; athletic directors, school/community program coordinators and parent liaison staff; secretarial/clerical staff; registrars; telephone operators; and security officers (CP-1).

3. The Health and Related Professions Academy (HARP) was started by the District in 1995 as a program within Eastside High School and was eventually moved to its own building in 1999

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<sup>3/</sup> Transcript references for the hearing are "1T" through "6T" respectively, representing the various hearing dates.

(1T38, 1T41, 2T49). The new building is not a typical school structure in that it is built like a mall with no hallways. Going from room to room requires exiting into an open rotunda-like space. There are a row of doors to classrooms and offices off of this open area (1T94, 6T11-6T12). In 1999, HARP had approximately 200 students with 35 to 40 teaching staff (1T42).

4. Prior to 1999, HARP was headed by a lead person - Isabelle Grassi - who reported to the Eastside principal (1T40). In 1999, when HARP was relocated to its own building, Grassi remained in the title of lead person reporting to the Eastside principal (1T41). Then, in July 2010, Grassi was given the title of HARP's principal and, presumably, no longer reported to the Eastside principal (2T49).

5. Wanda Koch has been employed as a teacher in the District for 25 years. She is certified to teach grades K through 8 generally, and, specifically, holds a certification to teach mathematics in grades K through 12 (1T37, 1T45). From 1995 until 1999 when HARP was moved out of Eastside High School, Koch taught math and was assigned to HARP which, at that time, was a program within the high school (1T38, 1T40-1T41, 2T49). During those years, although Koch was assigned to teach at HARP, her supervisor was the head of the math department at Eastside (1T40). When HARP was moved to its current location, Koch was

assigned to teach in the new building (1T40). During the 2010-2011 school year, Koch taught math, specifically biometrics, and was also assigned to the ASA program, a senior review assessment program (1T44).

6. In addition to her teaching responsibilities, Koch is currently Association treasurer and has held that office since 2007 (1T45-1T46). Before that, she was an Association recording secretary and on the executive board (1T46). Although each building has its own Association building representatives elected by the building staff at the beginning of the school year, in her capacity as an Association officer, Koch also acts as a building representative and a delegate for staff in every building throughout the District, advocating for staff in regard to their terms and conditions of employment (1T46-1T48).

7. Koch described her relationship with Grassi up until July 2010 when Grassi became HARP principal as cordial and collegial (2T83). They resolved issues and grievances many times during this period (2T83).

Other witnesses described Koch's and Grassi's relationship over various periods of time before 2010 as contentious. For instance, Social Studies Teacher Eileen Opromollo testified for Charging Party that there were conversations in 2006 or 2007 wherein there was "huffing and puffing" during meetings by people generally leading her to conclude that Grassi had an issue with

Koch (4T74). This testimony was both vague and speculative. It has no probative value. Similarly, Secretary Lisa Brown testified for Respondent that her impression was that Koch and Grassi did not like each other, that the feeling was mutual, in part, because Grassi told Brown several times that she did not like Koch (5T52-5T53, 5T56). Since there is no time frame or context given to these alleged Grassi statements to Brown and Grassi did not testify, this testimony also has no probative value.

I credit Koch's testimony regarding her relationship with Grassi and find that Koch felt the relationship with Grassi to be good until Grassi became principal at HARP and, specifically, until the events of September 1 and 2, 2010. I also find that Koch and Grassi were both strong advocates for their respective positions and would advocate forcefully in meetings. Language Arts Teacher Joanne Lyons describes common planning meetings, wherein Grassi would respond critically to Koch when Koch brought up a topic such as teaching schedules (3T63). According to Lyons, Koch would speak her mind at these times and would answer Grassi in the same manner that she was spoken to, sometimes raising her voice (3T65-3T66, 3T75-3T76). Lyons did not consider Koch to be disrespectful at these times (3T65-3T66).



**September 1 and 2, 2010**

The September 1 and 2, 2010 HARP in-service staff meetings are pivotal to the charge before me as it relates to Koch's discipline as well as Grassi's alleged surveillance of Koch and others and Grassi's alleged threat at a February staff meeting to take away contractual perks. Koch and several witnesses testified as to what occurred during these meetings. Grassi did not testify to rebut the accounts of these witnesses. Accordingly, to the extent any testimony reflects badly on Grassi's statements or conduct at the meetings, I draw a negative inference from the failure of Respondent to call her to rebut this testimony. State v. Clawans, 38 N.J. 162, 170 (1962). The witnesses (Respondent's and Charging Party's) accounts of September 1 and 2 events, however, were similar and support Koch's version of what occurred. Accordingly, I credit Koch and, to the extent that other witness testimony varied in detail, the differences are not material, but I have also summarized other witness testimony, where necessary, to enhance the record.

8. In-service meetings at the beginning of a school year are held before the first day of school for students. It is an opportunity for school administrators to welcome new staff and welcome back returning staff, notify staff of any changes for the coming year, and provide teaching schedules as well as student

rosters (1T49). There may also be a message from the superintendent (1T49).

9. In 2010-2011, HARP in-service meetings were conducted on September 1 and 2, 2010. The whole staff of approximately 35 to 40 teachers attended these meetings. This was the first time Grassi was meeting with her staff in her new role as principal (1T43, 2T47). The meetings were held in Room 357 which consists of five rows of desks on one side of the room and lab tables on the other side. Staff were seated at either desks or lab tables, while Grassi was in the front of the room leading the meetings (2T58).

10. On September 1, Grassi began the meeting with an "ice-breaker" activity, asking staff to find specific items in their wallets. This was designed to get them talking (1T49-1T50). Grassi then gave out a newspaper article from The Record, written in August 2010 and entitled "Reforming Tenure: Is It the Answer?" (R-6). The article addressed tenure changes and what was happening in this regard throughout the State (R-6; 1T50, 2T52). It quoted both District Superintendent Dr. Donnie Evans, as well as District Employee Ms. Meltzer (1T50). Grassi engaged the staff in a discussion about the article (1T50).

11. The staff was then broken up into small groups for the purpose of discussing how best to help non-tenured teachers (1T51). Eventually, the small groups were reunited to exchange

the ideas they had discussed (1T51-1T52). Basically, it was a brain-storming session with everyone participating (1T52).

In response to one suggestion that teachers mentor teachers and that evaluations be conducted by committee consisting of administrators and teachers, Koch, who was sitting about three rows back but in front of Grassi, raised her hand and was recognized. Koch pointed out that this issue had to be treated carefully, because teacher-on-teacher evaluations were prohibited by the parties' collective negotiations agreement. Koch explained that teachers could not be evaluated by their peers (CP-1 at Articles 1 and 14:2-3.1; 1T52, 2T59-2T60, 2T62). Koch spoke for a minute or two and describes her voice as loud enough to be heard over the large-group discussion (1T57, 2T62). Grassi made no comment at this time, and the discussion among staff continued, including the topic of assisting non-tenured teachers to improve their skills (1T57, 2T62).

12. Later during the September 1 meeting, Grassi passed out teaching schedules and announced that the schedules were in compliance with the parties' collective agreement, and that there was to be no discussion about the schedules at that time (1T59). However, Koch looked at her schedule, determined that the length of her work day was too long and raised her hand. Grassi recognized Koch who informed her that her own schedule was, in fact, not in compliance with the collective agreement (1T60,

2T63). Grassi responded that Koch's schedule would be fixed before the end of the day. Grassi again stated there would be no more discussion on schedules and moved on to another topic (1T61, 2T63).

13. At some point during the meeting that day, Koch, in a cordial and conversational tone, also broached the subject of rumors pertaining to the faculty room being moved and the faculty bathroom being taken away (1T62-1T63, 2T64-2T65). Faculty facilities are covered by Article 16:1.3 and 1.7 of the collective agreement (CP-1; 1T62-1T63). According to Koch, Grassi confirmed that the rumors were true but requested no further discussion of the subject (1T62). Koch observed that Grassi's voice in responding to her was louder than before, but admits Grassi did not indicate in any way that Koch was out of order in raising the issue (1T62-1T63, 2T65).

Other staff, however, pursued the topic, and Grassi responded that staff would be using the restroom in another wing of the building. When some pointed out that the bathroom Grassi was moving them to had no lock and was filthy, Grassi said it would be cleaned or painted and a lock installed with keys distributed to staff (1T64). Koch describes Grassi's tone of voice in response to these staff inquiries as elevated, but not yelling, and that Grassi seemed to want to move on to other topics (2T66).

14. During the lunch break that day, three or four teachers approached Koch to discuss their schedules which they also believed were not in compliance with the collective agreement (1T66). In particular, they believed their schedules were not in compliance with recent arbitration awards, the John F. Kennedy award and supplemental award, issued on April 7 and November 17, 2009, respectively. The Kennedy awards addressed teacher schedules at the District's high schools (CP-2, CP-3; 1T66-1T67). The awards covered school years beginning in 2007-2008. Although the awards were issued a year earlier, the application of the awards continued to create confusion in the beginning of the 2010-2011 as to teacher schedules at all of the high schools (6T32-6T34). Many individual grievances were filed at all the high schools about the schedules. Director of Labor Relations Luis Rojas is still working with the Association to gather schedules for the years between 2007-2008 and 2010-2011 to ensure compliance with the awards and to determine appropriate remedies for individual teachers (6T33-6T34).

Koch's advice to the teachers who approached her at the lunch break on September 1 was to first take their schedules to Grassi to be corrected (1T70).

15. Sometime on September 2, before the beginning of the second in-service meeting, Koch instructed Lecia Minor, who had been a building representative the year before at HARP, to

conduct elections for new building representatives (1T78-1T79). As a result, three delegates were elected for the 2010-2011 school year - Lecia Minor, Ronnie Denburg and Patty Spilitopoulos (1T79). It is unclear from the record whether the delegates were elected that day or later.

16. The September 2 meeting was again held in Room 357 with approximately the same number of staff (35 to 40) in attendance. Koch was sitting in about the same location as the day before, a few rows back in the middle of the room and in front of Grassi (2T70).

Grassi opened the meeting around 9:00 a.m. by explaining that she had met with department heads to discuss the ideas that were presented the day before, including evaluation by committee (1T72, 1T78, 2T70-2T71). About five minutes into the meeting, Koch raised her hand and was recognized by Grassi (1T72, 1T75-1T76, 2T71-2T72). Koch remained seated and reiterated her position that the subject had to be treated carefully, and that it was a slippery slope when considering peer-on-peer evaluation (1T72, 2T72). Koch describes her own tone of voice at this time as conversational, but states that Grassi cut her off mid-sentence, stating that they were not going to discuss the subject at that time (1T72-1T73, 2T72). According to Koch, Grassi's tone at this point was "forceful, but fine." (1T73)

17. Koch continued her testimony and described the incident as follows:

At that point, I still had the floor, as I had been cut off in mid-sentence. So, I turned to her and said:

"I think it is very important that we discuss it because it's against the Collective Bargaining Agreement. And, more importantly, it could lead to legal action."  
(1T73, 2T73)

Koch states that her own tone was still conversational but then:

Ms. Grassi shrieked at me and said:

"We're not going to discuss it. And if you don't like it, you can leave."

She was pointing to the door and saying: "If you don't like it you can leave."

I then said, and I'm sure my tone got louder because I felt attacked, but I in no way was screaming at her. And I was still seated in my seat at a desk, a school desk.

So, I turned and I said to her: "I thought this was a staff meeting where we were going to have discussion not that you were going to dictate to us."

And with that she pointed to the door and screamed: "Go to your room and sit there." (1T74)

Koch admits that she raised her voice at this time, but denies that she was yelling (2T76).

Koch concluded that Grassi was very angry at this point (1T74). Koch was, however, taken aback by Grassi's directive that she go to her room and was basically "flabbergasted." (1T74) Once Koch realized that Grassi was serious and recognizing that Grassi was her principal, Koch got up, walked around the desk and to the door of the room (1T74). Koch felt she was being demeaned and treated like a two-year old given a time-out (2T82). So when she walked by Grassi and was approximately eight to ten feet from her, Koch turned and said, in what Koch described as a loud and sarcastic voice with a disgusted expression, "Yes, mommy" (1T74, 2T79-2T81).

Grassi then instructed Koch to go to her room and prepare (1T75, 2T82). As Koch was leaving the room, she turned back to Grassi and with her hand on the door stated:

"I will go to my room" and "No, I will go and call your superior." (1T75)

Koch then left the meeting (1T75). She felt humiliated. Upon leaving the meeting, she broke down in tears in the hallway (1T78).

18. Charging Party called two teacher witnesses - Opromollo and Lyons - who testified about the September meeting events. Opromollo, however, was only present for the September 1 meeting, and her testimony corroborated Koch's as to that meeting (4T62, 4T64-4T65). English Teacher Joanne Lyons attended the meetings both days. Her testimony generally supports Koch, but her recall



was vague as to details of the discussions on either day (3T55-3T61). Lyons recalled that when Grassi told Koch to go to her room, Lyons was "dumbfounded", because she didn't feel there was cause for the directive (3T60). Lyons described Grassi's demeanor during the final exchange with Koch as matter of fact, but that Grassi's tone of voice as nasty and sharp (3T60). Lyons then described Koch as having no reaction after being instructed to go to her room, and that Koch just picked up her things and left. According to Lyons, when Koch got to the door of Room 357, Grassi said she would speak to Koch later, and Koch responded in an even tone that she was going to call Grassi's supervisor (3T61, 3T74). I do not credit Lyons' description of the Koch's demeanor or tone of voice during the September 2 encounter. Koch herself admitted that her voice was loud in response to Grassi, and that she was very upset upon being sent to her room. Koch's testimony supports that both she and Grassi were angry and agitated in their final encounter. Describing Koch as just picking up her things and leaving or her parting shot at Grassi as being in an even tone of voice is contradicted by Koch's own testimony.

19. Respondent also called two witnesses who attended the September in-service meetings. Science teacher Tatiana Mikhailovsky was seated a couple of rows behind Koch (5T63). Her memory was vague as to the specific conversation between Koch and

Grassi because she was not paying attention (5T64, 5T69). But Mikhailovsky recalled Grassi and Koch going back and forth verbally, and then Grassi telling Koch to leave and go to her room (5T64-5T65, 5T70). According to Mikhailovsky, both women were pretty loud during the exchange, but then this did not seem out of the ordinary to her, because staff meetings are usually pretty loud (5T71-5T72). Mikhailovsky didn't know why on this occasion the back and forth between Koch and Grassi escalated to the point that it did (5T65).

20. Art Teacher Katherine Benevento had the best recollection of any witness, other than Koch, as to the final Grassi/Koch exchange on September 2. Benevento was assigned to HARP in 2010-2011 but was employed by the District since 1999 (5T100-5T101).<sup>4/</sup> Benevento described herself as pro-union, but confirmed that she refused to cooperate with the Association when teacher schedules were being collected in regard to the Kennedy awards, because her schedule was in compliance with the collective agreement (1T142-1T143, 4T84, 5T103-5T104).

Benevento has a cordial and friendly relationship with Grassi.<sup>5/</sup> Also, Benevento and Koch had less than cordial or

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<sup>4/</sup> Benevento had been employed by the District sometime prior to 1999, but her position was eliminated in a RIF (reduction in force) and she was not tenured (5T101).

<sup>5/</sup> As of the date of this hearing, Grassi was about to take a medical leave, and she (Benevento) had been asked to be the  
(continued...)

friendly relationship.<sup>6/</sup> Secretary Lisa Brown confirmed that Benevento did not like Koch who, Brown stated, she referred to as a "troublemaker" who sticks her nose into places it did not belong (5T55-5T56).

Despite what appears to bias on Benevento's part in favor of Grassi and against Koch, I found that Benevento's testimony was not colored by these relationships, because her testimony comported, for the most part, with Koch's description of events. Additionally, even though Benevento's appointment to replace

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5/ (...continued)  
administrator in charge of HARP (5T99-5T101). Benevento and Grassi have also been referred to as "twin sisters", because they have a similar demeanor and personalities (5T115). Additionally, Benevento admitted to picking up a table at Grassi's house to bring to a thrift store and to meeting Grassi for breakfast to discuss work (5T115).

6/ Koch testified that Benevento was upset with her because she had criticized Benevento for releasing her students from a PSAT testing site before security had been lifted (2T94). Also, there was an incident in September 2011 wherein Koch became upset with Benevento's questioning her about how the Association was dealing with the issue of teacher schedules (5T121). Benevento felt Grassi was amenable to resolving issues and that the protocol was to go to the Administration first before filing a grievance (5T121). According to Benevento, Koch accused Benevento of trying to attack her and ran to her classroom crying. Benevento followed Koch to see if she was alright and to clarify any misunderstanding. When she got to the classroom, Koch told her to leave which Benevento did, because there were students present (5T121-5T122). Subsequent to this incident, Koch complained to Grassi about Benevento's behavior, and Grassi directed Benevento to stay away from Koch (5T123-5T124). Benevento protested but did not file a grievance against Koch because she mistakenly believed that she could not file against a fellow Association member and, also, because she felt she and Koch needed a cooling off period (5T124-5T125).

Grassi could be considered a reason for her to slant her testimony in favor of Grassi and against Koch, I did not find that Benevento colored her testimony to favor one side or the other. Her demeanor was forthright; her responses were direct.

21. As to the events of September 2, Benevento testified that Koch raised her hand during the discussion of peer review, asked to speak and then explained that peers are not allowed to evaluate peers under the parties' collective agreement (5T85, 5T107-5T108, 5T111).<sup>2/</sup> Benevento felt Koch was appropriately advocating the position of the Association on this issue (5T112). Benevento recalled Grassi allowing Koch to finish her statement, but then explaining what she (Grassi) meant by the District initiative and peer support with classroom walk-throughs. Grassi then thanked Koch and stated she wanted to move-on (5T85, 5T111).

Benevento corroborated Koch's testimony that Koch retorted to Grassi that she thought this was a staff meeting, that it was the appropriate time for such a discussion and wanted to continue to discuss peer review. Grassi, however, wanted to move on, and, according to Benevento, she and Koch became agitated with each other, both speaking in a loud voice (5T85-5T86, 5T112-5T113).

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<sup>2/</sup> Although Benevento admits that she does not recall whether this exchange occurred on the first or second day of the in-service meetings, her description of events matched Koch's testimony about events on September 2.

When Koch refused to respond to Grassi's request to be quiet and move on, Grassi told Koch to leave and go to her room (5T86).

Benevento testified that at this point, Koch and Grassi were screaming at each other. I find that both Grassi and Koch had raised voices. Whether their voices could be characterized as screaming is subjective to the listener. All witnesses agree that Grassi and Koch were upset. My observation of Koch's demeanor during her two days of testimony was that she was emotional and would cry easily. This supports that Koch, who felt Grassi was treating her like a child, raised her voice.

Benevento also corroborated Koch's testimony that she (Koch) advised Grassi, as she was leaving, that she was going to call Grassi's supervisor (5T86).

22. Based on all the witnesses' testimony, I find that on September 2, both Koch and Grassi had raised voices, became agitated with each other and were probably yelling at the end of their exchange. I also find that Koch ignored Grassi's directive to end the peer review discussion and move on. Koch wanted to press her point about peer review being a violation of the parties' collective agreement. Grassi sent Koch to her room in response to Koch's refusal to end the discussion. I also credit Koch's testimony that she said "yes, mommy" as she was leaving the meeting and advised Grassi she was going to call her supervisor. These parting statements were made in front of the

staff and loud enough to be heard by those in attendance at the meeting.

23. Benevento also testified to a conversation that took place between she and Koch after the meeting that day. Benevento went to Koch, because she appreciated Koch's role as an advocate for the union membership, having been at other schools where the union was not so supportive (5T87-5T88). However, on that day, Benevento told Koch that her responses to Grassi at the meeting set her up for a charge of insubordination, since Grassi was her (Koch's) supervisor (5T88).

According to Benevento, Koch responded, that she knew she was wrong, but Grassi pushes her buttons and gets her upset (5T88). Benevento's testimony regarding Koch's response is hearsay, but I draw a negative inference from the failure of Respondent to call Koch on rebuttal to refute this testimony. Accordingly, I credit Benevento's testimony about the conversation. In any event, whether Koch admitted to Benevento that her remarks were insubordinate or not, I find that Grassi determined that Koch's refusal to end the discussion on peer review and comply with her directive to move on was insubordinate.

24. Although Koch had indicated to Grassi upon leaving the September 2 meeting that she was going to contact Grassi's supervisor - Assistant Superintendent Eileen Shafer, Koch thought

better of calling Shafer because Koch was too upset (1T80). Koch decided instead to write Shafer a letter about the incident which she did between 9:00 a.m. when she left the meeting and 11:00 a.m. when she reported to her next meeting (1T80).

CP-4 is Koch's letter dated September 2, 2010 to Shafer describing the events of September 2 and states in pertinent part:

On the morning of September 2, 2010, Ms. Grassi, Principal HARP Academy, began her staff meeting by expressing her thought in regard to teacher evaluations. She stated that she had spoken with some Department Heads about evaluating teachers by committee. I was recognized and again pointed out that it was a violation of the collective bargaining agreement for teachers to evaluate teachers. Ms. Grassi immediately cut me off stating that the topic was not up for discussion. I stated that I felt this was very important as an evaluation of this sort was against contract and that it could lead to legal action.

At this point Ms. Grassi changed the entire tone of the meeting from a discussion to a personal attack. She screamed at me stating that she would not discuss the issue and, as she pointed to the door, told me that if I did not like it I could leave. I explained that I thought this was to be a staff meeting, with discussion, not just her dictating to us. She told me to leave and "Go to your room and sit there." I felt humiliated and demeaned as an adult and a professional being treated instead like a child. I left informing her that I would be contacting her supervisor. (CP-4)<sup>8/</sup>

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8/ Koch's letter does not recount that as she was leaving the  
(continued...)

Koch's letter goes on to explain that Grassi had verbally assaulted her in public before but that this was the first time she gave Koch a "time out". Koch described Grassi as "ill advised about District policy, school law and contractual obligations" and that, when Grassi is called on her errors, she gets angry (CP-4).<sup>2/</sup>

Koch then wrote that:

My colleagues have informed me that Ms. Grassi has expressed to them her hatred [sic] for me often screaming that I should mind my own business when I, acting as an Officer of the Association, am standing up for staff members rights, which is my obligation under the laws of the State of New Jersey. Ms. Grassi is my Principal, I report directly to her, therefore I respect her position. However, this last incident is a clear

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- 8/ (...continued)  
meeting, she turned to Grassi stating "Yes, Mommy". I credit Koch's testimony in this regard and infer that she purposely left this detail out of her recounting to Shafer because it did not reflect positively on Koch.
- 9/ As examples of Grassi's expression of anger, Koch testified that since 1995, in her interactions with Grassi, she (Grassi) will often yell, "it is just her way" (1T83). Koch recalled one incident in 2008 where Grassi yelled at her in the hallway because Koch had not covered her word wall (1T84). In another instance, Koch recalls Grassi yelling at her while apologizing for not getting back to Koch with her room assignment. Later that same day, Grassi confronted Koch to instruct her that Koch should have read the morning minutes to find out where she was supposed to teach. The latter discussion took place in front of a student. Also that day, Koch went into Grassi's office and told her not to confront her in the hall and in front of students (1T85-1T86). Koch felt that the hallway or public confrontations violated Article 4:7 regarding public criticism of the parties collective agreement (1T92).



violation of Article 4:7 of the Collective Bargaining Agreement. Ms. Grassi has once again criticized me publicly and I would like a public apology in the same forum. (CP-4)

In regard to Koch's writing that colleagues had told her that Grassi hates her, Koch testified that her Department Head Dr. Rust told Koch that Grassi hates her (1T87). Dr. Rust did not testify nor did anyone else corroborate Koch's testimony regarding Rust's statement. Accordingly, I do not credit this testimony as fact, because it is double hearsay.

Koch also testified that in 2010-2011, after Grassi came back from medical leave, both Minor and Scillieri told Koch that she had a target on her back as far as Grassi was concerned (1T87-1T88). Specifically, they told Koch that Grassi was going to use the new bullying statute against Koch who Grassi viewed as a bully (1T87-1T88). Minor did not testify and Scillieri, who did testify, did not corroborate Koch in regard to these conversations. This conversation is also double hearsay and not admissible.

Grassi's Secretary Lisa Brown, who testified for Respondent and described Grassi as a friend, confirmed that Grassi told her on several occasions that she did not like Koch but did not tell Brown why she felt that way (5T37-5T36, 5T52-5T53). It is unclear from this testimony when Grassi made these statements to

Brown. Brown's impression, however, was that Koch and Grassi mutually disliked each other (5T56).

25. On September 2, after writing CP-4 to Shafer, Koch stayed in her room until about 11:00 a.m., when she left to attend a math department meeting with staff from all the District's other academies which lasted for about one hour (1T76). According to Koch, the HARP staff who attended were "busting" Koch about the fact that she got a "time out" (1T76).

After the meeting, Koch went to lunch from 12:00 p.m. to 1:00 p.m., but did not return to the in-service meeting thereafter because she understood from Grassi's earlier directive that she was to stay in her room (1T77).

When Koch got home that night, she mailed CP-4 to Shafer with a copy to Grassi. She hand delivered the letter to Association President Peter Tirri the next week (1T82).

26. On September 7, the first day of school, Shafer was at HARP going from one classroom to another (1T94). Koch and she exchanged small talk about the commute, and Koch asked her whether she had received CP-4 (1T94-1T95). Shafer had not yet seen it, but Koch told her to read it and that they would discuss it later. Koch also told Shafer that there were issues in the

building which, she felt, could be resolved quickly without the filing of grievances such as the facilities issues (1T95).<sup>10/</sup>

27. On or about September 9, 2010, Shafer sent Koch an e-mail asking Koch to call her (1T96). When Koch contacted Shafer, Shafer explained she had read Koch's letter (CP-4) and wanted to know how Koch wanted her to handle the situation (1T96). Koch explained to Shafer, that she was very personally upset, and that she was concerned because, in her opinion, the staff was very fearful of Grassi and afraid to speak up because of Grassi's treatment of Koch. Also, according to Koch, the staff was afraid of losing their jobs due to RIFs that were taking place (1T96-1T97). Shafer agreed that she would arrange to meet with Koch and Grassi (1T97).

On September 16, 2010, Koch received a call after school from Shafer who said she and Grassi were waiting in Shafer's office for her (1T98). However, after Koch explained she knew nothing about the meeting, Shafer realized she had not notified Koch, and the meeting was rescheduled (1T98). There is no

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<sup>10/</sup> According to Koch, on September 7, 2010, Kathy Kellett, the former principal of HARP, poked her head into Koch's room (room 359/360) and stated to Koch, that the whole District was talking about "it" and advised Koch to write the superintendent. Koch explained that she had already written Shafer (1T93-1T94). Kellett did not testify nor did any other witness to corroborate Koch's testimony. The testimony is hearsay and, therefore, I do not find it as fact. However, whether or not Kellett made this statement to Koch is immaterial.

testimony as to what was discussed between Grassi and Shafer on September 16.

28. Between September 16 and September 28 - the date for the rescheduled meeting between the three women, grievances were filed (CP-5, CP-6; 1T98-1T99). Both grievances were settled to the satisfaction of the grievants. Neither was filed by Koch (CP-5, CP-6; 1T98-1T99).

For instance, Robert Marton consulted Koch about his schedule, and she advised him to first speak to Grassi about correcting it (1T99-1T100). Apparently it was not resolved, because Marton himself filed a grievance on September 24, 2010 (CP-5). Marton and Grassi subsequently settled the grievance to Marton's satisfaction (R-3).

Another grievance was filed on September 27, 2010 by Guidance Counselor Angela Scillieri and signed by Association Representative Lecia Minor, seeking an apology from Grassi over her (Grassi's) allegedly critical comment about Scillieri in front of a student (CP-6). Minor and Grassi eventually settled the grievance to Scillieri's satisfaction (R-4). Scillieri in particular felt that Grassi was very sincere and apologetic in resolving the grievance (3T104-3T105).

29. Also between September 16 and the September 28 meeting, Koch received a letter, dated September 16, from Grassi in her school mailbox which provided Grassi's version of the events of

the September in-service meetings (CP-7; 1T103-1T104). The letter was copied to Shafer and to Koch's personnel file (CP-7).

Koch read the letter and felt that it was full of distortions (1T104). In particular, as to the September 1 meeting, Grassi's letter described sidebar discussions between Koch and a colleague which she asserted affected the productivity of the meeting and required her (Grassi) to tell Koch a number of times to stop talking because some people needed silence to review the material they were given (CP-7). Koch admitted she was speaking to a new teacher but stated many people were carrying on conversations and, specifically, denied Grassi's allegation that Grassi had to continually tell Koch to stop her conversations (1T105).

As to the September 2 meeting itself, Grassi wrote that she started the meeting with a recap of the prior day and claimed that Koch became immediately aggressive and loud, describing Koch's behavior as "defiant, obstructive, obnoxious, and unprofessional." (CP-7) Koch's behavior, Grassi wrote, bordered on insubordination and caused her to ask Koch to "[g]o to your room and prepare for student's entering." (CP-7) Grassi stated that as Koch was leaving the meeting she "verbally and abusively" stated "I am going to take this to your superior." (CP-7)

In summation, Grassi wrote that she had observed Koch's behavior, namely that Koch has demonstrated the following:

- consistently trying to undermine meeting agendas by attempting to insert union business into the discussion. Ex.:

  - "that's against contract"

  - "you can't do that"

  - "if anyone does that, you're a fool"  
(referring to teachers)

- frequently refusing to wait to be called upon - consistently shouting out loudly, and rudely to give opinion and then looks around the room as if seeking support (which is usually not given)

- random staff members have verbalized the fact that they do not like to be in the teachers' room because of your loud and obnoxious behavior

- consistently attacks administrative initiatives and complaining we work in a dictatorship

- does not get involved, in a positive manner, with groups or committees

- forcefully tries to impose personal opinion on other staff members, especially new staff and those who are reluctant to speak out on their own behalf

- consistently tries to usurp management prerogatives by attempting to debate non negotiable issues (such as space allocation & facility usage) [CP-7]

Grassi concluded the letter by telling Koch that she was an excellent teacher who provided the students with the tools needed for success (CP-7). However, in Grassi's opinion, Koch's attitude and actions "clouded [her] as a person." (CP-7) Grassi

expected Koch to change the way she conducted herself in meetings, in the classroom or teacher's room, and how Koch spoke to her (CP-7).

Koch disagreed with Grassi's characterization of her behavior and, specifically, her behavior at the September 2 meeting although Koch admits that when Grassi told her to go to her room, she was very upset and that her voice was raised (1T105). Otherwise, Koch vehemently disagreed with Grassi's summation statements (1T106). The entire letter (CP-7), Koch concluded, was a distortion (1T107).

30. On September 28, 2010, Grassi, Shafer and Koch met after school (1T107). At the beginning of the meeting, Grassi handed Koch a sealed envelope which Koch did not open until afterwards (1T108).

According to Koch, the meeting itself was very informal. Shafer was cordial and asked both Grassi and Koch to state their cases (1T108). After hearing from both women, Shafer stated that they were both strong women, and that she believed they both had the best interest of the school in mind (1T108). According to Koch, Shafer told Grassi that as an educational leader in the building, she should not have lost her temper and screamed at Koch, and that she was wrong when she sent Koch to her room (1T109). Neither Shafer nor Grassi testified. Accordingly, Koch's testimony as to Shafer's statement that Grassi was "wrong"

is uncorroborated hearsay. No other residuum evidence supports this hearsay. It is not admissible.

Also, according to Koch, Grassi stated during the meeting that Koch was not an Association delegate in HARP, but Koch explained that as an officer of the Association, she is a delegate in every building (1T109).<sup>11/</sup> Koch then testified that Shafer asked Koch what she wanted from the meeting, and Koch told her she wanted the District to be aware of what happened and that if she filed a grievance, she would receive an apology (1T110). Grassi also expressed during the meeting that she was injured and deserved an apology personally and to the entire staff (1T110).

Shafer listened, took everything that was communicated under advisement and informed them she would get back to them (1T110).

31. After the September 28 meeting, Koch went to the Association office and spoke to Association President Tirri (1T111). Koch asked him whether it was worth filing a grievance for public criticism (1T111). Koch and Tirri decided to wait and see what Shafer did (1T111). Shafer, however, never did get back to Koch or Grassi after the September 28 meeting (1T112).

32. Thereafter, Koch opened the sealed envelope that Grassi had given her at the September 28 meeting (CP-8; 1T112). The letter (CP-8), dated September 27, was addressed to Shafer with a

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<sup>11/</sup> I credit this testimony because in a September 27 letter (CP-8), Grassi questioned Koch's status as a building representative at HARP.



copy to Koch and to Koch's personnel file and was a direct response to CP-4, Koch's September 2 letter to Shafer which was copied to Grassi. Grassi reiterated what she had written in her September 16 letter (CP-7) about the events of September 1 and 2. In particular, Grassi said that after the staff read the article, entitled "Reforming tenure: Is it the answer?", which she passed out, each group reported back. One of the groups suggested the possibility of team tenure evaluations and mentioned that mentor teachers should be part of the team. Grassi explained that she was about to point out that although this was a good idea, it was not feasible since teachers could not evaluate teachers under the parties' collective agreement, but Koch would not allow her or anyone else to speak (CP-8).

Then, Grassi wrote, she (Grassi) answered questions regarding the teachers' room, teachers' bathroom and access to a copy machine, all of which are available to the staff under the parties' agreement, namely "use of school facilities" and "equipment". According to Grassi, Koch, however, continued to question things which did not have anything to do with contractual terms, and that Grassi considered administrative decisions. At which point, Grassi wrote, she told Koch that there would be no more discussion as these were administrative decisions (CP-8).

Grassi continued, that as the staff was leaving for lunch, Koch advised a few staff that they should file a grievance because the teachers' room was too small (CP-8). Grassi said that she ignored Koch's comments but described Koch's statements as an attempt to enlist a response from her (Grassi), a tactic Koch often employed as a means of having a confrontation wherever she had a stage (main hallway, staff meetings and teachers' room) (CP-8). Indeed, Grassi wrote, Koch also made comments to students about staff members and the administration (CP-8).

As to the events of September 2, Grassi described, that she began the meeting with a recap of the previous day's discussions but Koch immediately "got on her soap box and was shouting about how teachers could not be part of the [evaluation] committee" (CP-8). According to Grassi, although Koch was asked to stop a number of times, she continued to disrupt the meeting. Grassi admitted raising her voice at this point to be heard over Koch's screaming (CP-8).

Grassi then described Koch's actions as "unwarranted, abrasive, disrespectful and very unprofessional" and requested an apology from Koch to the staff for disrupting the meeting and also to her personally for Koch's insubordination (CP-8). Grassi pointed out that union representatives were given time at the end of meetings to speak with staff and added "[f]or the record, Mrs. Koch is NOT the building representative" (CP-8). Finally, Grassi

wrote that she took offense to Koch's statements to Shafer (CP-4) which described her as ill-advised about District policy, school law and contractual obligations (CP-8).

33. Koch refuted Grassi's recounting in CP-8, specifically that Koch would not allow others to speak during the in-service meeting, told staff to file grievances, spoke to students about staff and the administration, and most particularly Koch denied that Grassi began the meeting by stating she wanted to recap the previous day's discussion (1T113-1T115). Koch also stated that Grassi was screaming, not merely raising her voice, and that Grassi rarely gives the Association time at the end of a meeting to speak to staff (1T115). Finally, Koch states that Grassi should not take offense to her (Koch's) statements in the CP-4 letter that Grassi did not know District policy or the collective agreement, because, before becoming principal, Grassi was constantly seeking advice from Koch about the collective agreement and knew nothing about the Kennedy awards (1T116). Since becoming principal, Grassi no longer seeks Koch's advice (1T116).

34. On September 29, 2010, Science Teacher Edward Black consulted with Lecia Minor about his schedule (CP-9; 1T117). He filed a grievance with Minor's assistance (CP-9). The grievance related to the teaching schedule Grassi passed out on September

1, 2010 (1T117). The grievance was resolved at Level 1 by Grassi and Minor to Black's satisfaction (R-2; 2T35-2T36)

35. Grassi took a medical leave on October 21, 2010 (1T114).<sup>12/</sup> Mark Sherman became acting principal during Grassi's medical leave (1T125).

**In-School Suspension (ISS) Duty Issue**

36. Immediately prior to her medical leave, Grassi made some changes to the master schedule, including a change to Koch's assignments (CP-11). It is unclear from the record when exactly the changes were made or how many, if any, other changes to teacher assignments were made at that time. However, in an e-mail dated October 28, 2010, Koch referred to receiving notification of the new in-school suspension duty (ISS) on October 21, 2010, the first day of Grassi's medical leave (CP-13). Presumably, therefore, Grassi made the ISS assignment change sometime shortly before October 21.

Koch knew that having a third period ISS assignment meant she would miss grade-level, department-level and common-planning period meetings scheduled during third period (1T127). As Association representative, Koch was aware that decisions are

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<sup>12/</sup> Koch testified that she was told that on Grassi's last day before her medical leave, she left HARP very upset stating that everything would be changed when she came back (2T100-2T101). Security Guard Nate Jones denies telling Koch Grassi left crying on her last day before beginning her leave (4T55). No one else corroborated Koch's testimony which is double hearsay and inadmissible.

made at these meetings about schedules, duties and facilities which often impact contractual obligations (1T118). Koch also felt that the ISS assignment gave her too many duty periods under the parties' collective agreement (1T128-1T129). Koch had never previously been assigned this duty nor did Grassi discuss it with her before she (Grassi) went on leave (1T125-1T126).

38. Koch went to Sherman and explained the situation, asking if he could arrange to get her minutes of the meetings and any other pertinent information (1T128). He told her not to worry about it, that he would transmit any important information to her (1T128).

39. On October 24, 2010, Koch's third day of the ISS duty assignment, teachers reported for a grade-level meeting in Room 355 at the same time students were serving in-school suspension (1T129). Koch was asked to move the ISS duty to another room, but she declined to do so fearing that she would be written up if she moved to another location (1T130). Principal Sherman, however, asked her to move her ISS duty to Room 359, Koch's assigned room, in the future (1T130).

Room 359 is a large room with a divider and room 360 is on the other side of the divider (1T131). When Koch began serving ISS duty in room 359, she observed another teacher, Ms. Rowin on the phone (1T132). Koch was later told that Rowin was speaking to Grassi who was home on sick leave, informing Grassi that Koch

was not following her directive to serve the ISS duty in Room 355 (1T132). The next day Koch went to Sherman, told him she surmised that Rowin called Grassi and explained that she (Koch) was going to get into trouble, because she was not following Grassi's original directive (1T133). Sherman told her not to worry, that he was in charge of the building and Koch was to follow his directive (1T133).

40. On October 28, 2010, Koch emailed Grassi explaining that she had received Grassi's October 21 ISS assignment in her school mailbox and informed her (Grassi) that she had alerted Sherman that the assignment would cause her to miss meetings and that Sherman assured her he would forward pertinent information to her (CP-13). Koch then requested that Grassi provide all meeting minutes, because she (Koch) could not be held responsible for any mandates, directives or deadlines of which she had no knowledge (CP-13).

41. Then, on October 29, 2010, Koch received a letter (CP-11) in her school mailbox from Grassi dated October 27, 2010, the day before the CP-13 e-mail.<sup>13/</sup> It appears that CP-13 and CP-11 may have crossed each other in the mail. Grassi was still

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<sup>13/</sup> CP-11 was written on District letterhead (5T49). Brown did not recall typing the letter, but testified that she had e-mailed a letterhead template to all HARP staff and assumes that Grassi had the template on her computer. Grassi had taken her external hard drive with her when she went on medical leave (5T48-5T49).

on medical leave at this time (1T134). Basically, the letter (CP-11) informed Koch that she was to follow her (Grassi's) orders to serve third-period ISS duty in Room 355, that if no students were assigned to ISS for third period, Koch was to attend any grade-level, subject or common-planning meetings, and that Koch was expected to be aware of any discussions at these meetings (CP-11).

Koch was upset when she received CP-11 and went to Sherman who informed her he already had a copy, and that he had called Assistant Superintendent Shafer about Grassi's letter (1T140, 1T148). Sherman repeated that Koch was not to be upset, that Shafer told him he was in charge of the building and that she (Koch) was to follow his directives (1T141).

42. Nevertheless, Koch responded to Grassi by letter dated November 1, 2010 (CP-12). She addressed three issues raised by Grassi. First, she informed Grassi of Sherman's directive that she change rooms because of a conflict with grade-level meetings also scheduled in Room 355. Next, Koch explained that Sherman instructed staff to remain in the room for ISS duty periods whether students were present at the beginning of the period in case students were sent down in the middle of a period (1T130). Finally, Koch reminded Grassi that because she was assigned to third-period ISS duty, she could not attend meetings and was, thus, placed at a "great professional disadvantage" (CP-12).

Koch requested that all meeting minutes be forwarded to her, otherwise, she opined, she could not be responsible for missed information (CP-12). Koch also rebutted Grassi's suggestion that she missed a vital training session by explaining that she had not been notified of the session and was, therefore, unaware that she had missed it (CP-12).

Finally, Koch wrote in response to Grassi:

The District has entrusted the running of HARP Academy during your absence to an experienced administrator, one they thought highly enough of to call out of retirement. I would never do anything to undermine his authority or deliberately cause confusion for the students. I love teaching and I very much enjoy my time in the class room. I have never before in my 25 years with Paterson been made sick from my job. I feel that your treatment of me is creating a hostile work environment, bordering on harassment. I must point out that at this time I am feeling severely stressed. Instead of spending time creating innovative lessons I am using valuable time rebutting your hurtful and inaccurate letters. (CP-12)

### **Grassi's Medical Leave**

Several witnesses - Mark Sherman, Lisa Brown and Nate Jones among others, testified that during Grassi's medical leave which began on October 21, 2010 and continued until January 2011, she called, came to the school and, in general, tried to continue making decisions as principal (3T11).

43. Mark Sherman was assigned by Assistant Superintendent Shafer as acting principal at HARP when Grassi went out on



medical leave (3T11). Shafer informed Sherman that as Grassi's replacement, he was in charge of the school in her absence (3T20-3T21). When he took over as acting principal, Sherman observed that Grassi was doing a great job at HARP, because the staff was excellent, and everything was in place at the school. Sherman gave Grassi "high marks upon entering this school." (3T39)

Although Grassi tried interfering with some of his decisions while she was on medical leave, such as Koch's room assignment for ISS duty, he never observed Grassi acting like a bully with staff (3T23, 3T39). Moreover, when any interference occurred, he alerted Shafer who took care of it and assured him he was in charge (CP-12; 3T24, 3T35-3T36). Sherman also advised his staff of Shafer's directive that he was in charge, and that anything that had to do with HARP had to go through him, not Grassi (2T9, 3T27).

Sherman was, however, aware that Grassi called the school on occasion. Koch told Sherman about one such call to Language Arts Teacher Joe Valicenti, while she (Koch) was supervising a secured test in his room (3T35-3T36). Sherman telephoned Shafer about the call (3T36). He also corroborated Koch's testimony that Grassi was giving a substitute teacher, Nora Terminini, instructions as to her subbing assignment for Robert Marton

(3T37). Termini told him about it, and Sherman advised her that the subbing assignment was fine with him (3T38).

44. Lisa Brown has been employed by the District for 12 years as an administrative secretary assigned to various schools and has worked at HARP for the past three years as Grassi's secretary (5T21-5T23). Brown describes Grassi as a friend, not a close friend, although she admits Grassi bought gifts for her grandchild on two occasions (5T37-5T38).

When Grassi went out on sick leave in October 2010, Brown reported to Sherman (5T24). According to Brown, in the past, whenever Grassi was not at HARP for any period of time, such as on vacation, she would frequently call in to find out from Brown how the building was running and, generally, what was going on with staff (5T23). During Grassi's medical leave beginning on October 21, 2010, Brown recalls Grassi coming to HARP once or twice. On each occasion when Grassi came to HARP, she would wait in her car outside for the material to be brought to her (5T25-5T26).

In particular, Brown noted that Grassi once came to pick up an envelope with teacher schedules that Director of Labor Relations Rojas requested (5T26, 5T46). Sherman recalled Brown leaving the building to give the schedules to Grassi. On that occasion, he advised both Grassi and Brown that it was in everyone's best interests that Brown go through him, not Grassi,

for anything having to do with HARP (3T28). According to Sherman, when he spoke to Grassi thereafter, Grassi agreed that he was in charge of HARP and could make decisions in the school while she was on medical leave (3T29).

Brown also recalled Grassi coming to HARP when Brown needed her signature on a document that Grassi prepared prior to her sick leave (5T26, 5T46).

45. Generally, during her medical leave, Grassi called Brown at least once a day in the office to find out what the climate in the building was, to determine that everything was running smoothly and to have Brown check her emails for any urgent communications (5T27). Grassi's calls were not unusual because Brown recalls other administrators she worked for doing the same thing while they were on sick leave or vacation (5T27-5T28). Brown also confirmed that Grassi had contact with teaching staff during the workday, because Brown would transfer the calls to them (5T51-5T52).

Grassi even called Brown at home at night during this period (5T50). These calls upset Brown and on one occasion she complained to Koch who suggested that Brown did not have to take the phone calls relating to work at home, and that Brown should separate her work and home life (1T152, 5T39-5T40, 5T50-5T51). Brown was once admonished by Sherman not to talk to Grassi when

Brown called her about a missing laptop and instructed to speak to him first before calling Grassi (5T29).

46. During one of Grassi's daily phone calls in November 2010, Brown informed her that Koch had moved to another classroom from her regular classroom, Room 359 (1T150, 5T30). Brown did not know Koch had requested, and Sherman approved, her move to a different classroom because Koch's geometry class complained that Room 359, a room shared with a freshman class, was too noisy to concentrate (1T150-1T151). Upon learning from Brown of the room change, Grassi instructed Brown to tell Koch to move to Room 354, a math classroom with a smart board that Koch could use (5T30). When Brown approached Koch the next day with Grassi's directive, Koch berated Brown, telling her in a raised voice, that not only was she (Koch) not going to move, but that Grassi was not the administrator (5T31-5T32). Koch then cautioned Brown that she was in jeopardy of being written up for insubordination by Sherman and that, she (Koch), as union representative, would be unable to represent Brown (5T31). Brown understood Koch to mean that the Association could not represent Brown if Sherman disciplined her (5T43).

Brown called Grassi after this conversation very upset and letting her know what Koch had told her (5T32). Brown was so frustrated at this juncture that she was prepared to transfer (5T32). Brown contacted Shafer for clarification. Shafer

explained that Brown should not be taking instructions from Grassi, but was to report to Sherman for directions (5T31-5T32). Sherman also called Shafer about Grassi's interference and then called Koch to tell her to remain in the room where he had moved her (1T153).

47. Security Guard Nate Jones is employed by Patrol Security Company and is assigned as a security officer to HARP since 1999 (4T6). His shift is from 6:30 a.m. to 6:00 p.m. (4T6-4T7). Jones sits in the front of the building at a desk until the students are in their classrooms and then he patrols the halls of HARP (4T5). Jones has worked with Koch for years and has visited her home on several occasions for different events, particularly during the holidays (4T50-4T51).

48. Jones reported regularly to Koch on happenings at HARP including Grassi's comings and goings during her medical leave. For instance, he observed Grassi at HARP one Saturday in November while Grassi was on medical leave (2T97). Jones and his wife were in downtown Paterson shopping and passed by HARP in their car (4T22). The gate to the building was closed, but Jones observed Grassi's car, a Chrysler, parked on Washington Street in front of HARP and saw through the security gate that Grassi was inside the building at the counter in the main entrance which was

lit up (4T22, 4T24, 4T37-4T38). Jones observed her while he was driving by, but he did not stop his car (4T32-4T33).<sup>14/</sup>

On that Monday, Jones reported what he saw to Sherman, because Grassi, he felt, was not authorized to be in the building (3T25, 3T47-3T48, 4T38-4T42). However, Jones specifically denies telling anyone else, including Koch (4T42). Koch testified that he told her about the visit (2T97). I credit Koch in this regard that he told her about it (2T97, 4T42). It seemed to have been his habit to keep Koch informed.<sup>15/</sup>

Additionally, Jones observed Grassi on several other occasions coming to HARP while she was on medical leave (4T26-4T27). Twice he saw Scillieri coming out to Grassi's car, and once he observed Brown leave the building to deliver a package to Grassi (4T27).

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<sup>14/</sup> According to Jones, the next day, Sunday, Grassi called Jones crying and upset stating that someone called Assistant Superintendent Shafer to inform her that Grassi had been in the building the day before (4T25-4T26). Jones replied "well, weren't you?" (4T26). According to Jones, Grassi did not respond and just said good-bye and hung up (4T26). This testimony about the Grassi conversation is uncorroborated hearsay.

<sup>15/</sup> For instance, Jones told Koch that Rojas' office had called Brown trying to secure teacher schedules for 2007 forward, because he knew the Association had a grievance filed over the schedules (2T96). Also, when Brown told Jones about the letter from Grassi to Koch about her ISS duty (CP-11), Jones informed Koch that she should expect a letter in her school mailbox (2T99, 4T55-4T56). In another instance, Jones told Koch toward the end of November 2010 about someone from central office inquiring about possible misspending of money at HARP (2T101-2T102).

49. Finally, Jones recalled receiving a call from Grassi concerning Koch's room change (4T20). Jones told her he overheard Sherman ordering the switch (4T20, 4T44-4T45, 4T48). Jones asked Grassi how she knew about the switch, and she told him Ms. Rowin told her (4T21). Jones then informed Grassi that Sherman was the principal, but Grassi retorted that she was the principal (4T21). Grassi's responses to Jones are uncorroborated hearsay, but I find that Jones told Grassi that he overheard Sherman ordering the switch, and that he told her Sherman was the principal. I also find that Grassi said she was the principal, because other witnesses testified that Grassi inserted herself into HARP decision-making during her medical leave.

**November 1, 2010 Jones/Koch/Grassi Interactions**

50. Both Jones and Koch testified to a conversation they had in the back of Koch's classroom on or about November 1, 2010.

Specifically, on or about November 1, 2010, Koch was speaking to Jones in the back of her classroom, when they both observed Benevento looking at them through the glass in the classroom door. Benevento never entered the room (1T145, 4T9). Shortly thereafter, Jones received a telephone call from his wife who told him Grassi called their home and wanted him to call her (1T145, 2T95, 4T10). When Jones returned Grassi's call, according to Jones, Grassi warned him to be careful who he associated with, namely Koch, Minor, Angela Scillieri and

Opromollo (1T146, 4T11). According to Jones, when he asked Grassi "why", she never gave him an answer, just told him to be careful who he spoke to (4T12). Koch testified that Jones told her, Grassi told him, to be careful of these individuals because they were against Grassi (1T146). Grassi did not testify.

Jones' testimony about Grassi's alleged statements is hearsay, but I credit that testimony and draw a negative inference from the failure of Respondent to call Grassi. State v. Clawans, 38 N.J. 162, 170 (1962). Koch's testimony, however, relating that Jones told her he heard Grassi respond to his question as to why she was cautioning him about these individuals, is double hearsay. Accordingly, I do not credit the testimony in regard to the November 1 conversation.

Specifically, I credit Jones' testimony that Grassi gave him no explanation for cautioning him against speaking to Koch and the others. He was the participant in the conversation, not Koch, who testified that Jones told her Grassi told her the reason for the warning to stay away from these individuals was because they were against Grassi.

51. In addition to the November 1 Grassi conversation, Jones testified to a conversation with Grassi on November 3, 2010. On that day, Koch's husband came to HARP to pick her up (4T13). Jones went out to greet him and invited him into the school to meet Paul Fontanello a teacher with whom Jones had been



discussing wine a few days before (4T13). Jones had told Fontanella that Mr. Koch had a wine cellar which Jones knew about, because he had visited the Koch home on several occasions (4T14). Mr. Koch came in and met Fontanella after which he and his wife left the building (4T15).

Jones testified that later that same day, Grassi called Jones asking why Mr. Koch was in the building, because he had no permission to be there (4T15). Jones explained that he had invited him into the building (4T15). Thereafter, there was no further discussion between Grassi and Jones about it (4T15). This testimony about the Grassi conversation is also uncorroborated hearsay, but I credit the testimony and draw a negative inference from the failure to call Grassi to refute this testimony. However, the testimony has little or no probative value, since all it establishes is that Jones was friendly with the Koch's. Grassi's call only evidences an interest in whether or not a visitor to the school was authorized. There were no negative repercussions from the incident.

#### **Koch Transfer Request**

52. In November 2010, Koch told Sherman that she was going to ask for a transfer (3T30). When Shafer called Sherman to ask about the transfer request, Sherman told her that Koch was an excellent teacher that he would hate to lose. He also related that Koch felt she was being pressured as a result of the ISS

duty issue (3T30). Sherman knew that both Koch had been upset by the situation, namely the change in room for the ISS duty, as well as the incident regarding Koch's request to change rooms for her sixth period class which Grassi opposed (3T30-3T32). Koch had explained to Sherman that she felt Grassi was harassing her (3T34).

53. On or about, November 29, 2010, Shafer called Koch to discuss the transfer request. Shafer had heard from various individuals, not just Sherman, that Koch wanted a transfer from HARP. Shafer wanted to speak to Koch directly as to whether or not she wanted a transfer (2T12). Koch explained that she had asked for a transfer on September 2, but no longer wanted the transfer, because with everything that had occurred in the interim with Grassi, a transfer would send the wrong message to staff, namely that Grassi could run Koch out of HARP (2T12).

#### **Grassi Return from Medical Leave**

54. Grassi returned from medical leave in January 2011 (2T12). On January 25, 2011, Grassi and Koch had two separate discussions.

55. Koch has a morning duty supervising the front door, writing out tardy slips and giving out Ids (2T13). This early morning assignment was an accommodation previously given to Koch by Grassi so that Koch could leave early for Association meetings

in the afternoon (2T20-2T21). Basically, Grassi's accommodation gave Koch flex time (2T21).

56. On January 25, 2011, the weather was inclement (2T13). Koch had suggested to Grassi in the past that when the weather was bad, students should be given some leeway and not be marked late, especially when the buses do not run (2T13). That day, Koch went to speak to Grassi about the issue and was told that Koch would no longer have that duty, because she was going to have an SAT prep class (2T13).

Later that day, Grassi called Koch into her office to inform her that she (Grassi) was assigning Computer Technician Chong to handle all ISS supervision (2T14). Koch explained to Grassi that she felt Chong's assignment would violate the parties' collective agreement as well as the Kennedy Awards, because he would have supervision all day when a teacher was supposed to have five 41-minute periods, a lunch period, one supervision period and prep time (2T14-2T15). Grassi stated that she would speak to Chong (2T15).

57. At a staff common-planning meeting on February 7, 2011, Grassi announced that, although she thought that her teacher schedules were in compliance with the parties' collective agreement and Kennedy Awards, after speaking to Koch, Grassi had learned that they were not in compliance and, therefore, she

handed out new schedules to the teachers to go into effect February 9, 2011 (R-7; 2T16).<sup>16/</sup>

Upon review of Grassi's schedules that were supposedly in compliance with the Kennedy Awards, Koch realized that Grassi had merely taken double-period teaching blocks and split them into two single periods with a minute-passing time between them (2T16). However, neither the students nor the teacher left the room during the minute-passing time (2T16). This change, in Koch's opinion, still violated the parties' collective agreement (2T16).

58. On February 9, 2011, Grassi had another staff meeting (2T17). There were many questions about the schedules which were not as workable in real life as on paper (2T17). Koch testified that Grassi then informed the staff that the schedules would remain in effect, and that if she had to follow the collective agreement, then so did the teachers and, in that event, they would lose all of their perks, such as leaving the building during prep periods and deliveries of food or coffee to the building (2T17). According to Koch, although the collective agreement only permits teachers to leave the building on their 40-minute duty-free lunch period, the practice has been to allow

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<sup>16/</sup> This was not the first time schedules had been changed during that school year. Koch's schedule had been changed many times during that year, including one particular time when mold was discovered in the building (2T104).

teachers to go to the coffee shop during the day for coffee or have coffee delivered, because of HARP's location in the middle of downtown Paterson (2T17).

No witness corroborated Koch's testimony regarding Grassi's alleged statement that if she had to follow the parties' collective agreement, then so did the teachers who would lose all their perks. Director of Labor Relations Luis Rojas denies that Grassi ever related this alleged statement to her staff to him, even though Grassi did discuss the issue of food delivery with him (6T28). However, I draw a negative inference from Respondent's failure to call Grassi to testify as to her own statements at the meeting. Moreover, shortly thereafter, Grassi changed the policy on food delivery (see below) which supports that the statements attributed to her by Koch were made. Accordingly, I credit Koch's testimony as to the February 9 meeting.

**Food Delivery Issue**

59. Rojas was hired by the District in January 2006 as director of human resources and, since April 2010, has held the title of director of labor relations (6T5-6T7). In both positions, he was responsible for personnel issues, including managing the collective agreements for eight different associations and working with administrators and staff

interpreting contract language, handling grievances, arbitrations and PERC hearings (6T7-6T8).

In regard to grievances, he is designated by the superintendent to render decisions at level two. Level three is arbitration (6T8). In this regard, he deals mainly with Association President Peter Tirri and Association Vice-President Gene Harvell (6T8-6T9).

Rojas has monthly level-two meetings with Harvell and an NJEA field representative to review all active grievances to try to settle them (6T9-6T10). If settlement is not possible, the Association decides whether to pursue arbitration (6T10). Rojas also has weekly meetings with Harvell.

60. On March 2, 2011, Rojas received a letter from Association President Tirri advising the District that he filed a group grievance to preserve rights under the parties' collective agreement (R-9). The grievance claimed that HARP staff were prohibited from having food delivered to the school (R-9).

Rojas investigated (6T13). He recalled having a discussion with Grassi sometime in the middle of February (R-9; 6T13, 6T29). Grassi was concerned about people walking through HARP delivering food (6T14). Grassi asked Rojas what she could do to better secure the building (6T14).

Rojas told Grassi to implement a process directing all deliveries be made to the main office, and that the orders should

be placed before school, during prep, lunch or free periods (6T14). Teacher's should be directed to pick up any deliveries in the main office (6T14). Grassi concluded this process would address not only the security issue but would address the wasted time trying to track down staff who were not waiting for the delivery (6T14).

Shortly thereafter, Grassi implemented the changes suggested by Rojas. Rojas then received a call from Tirri about what he perceived was a directive prohibiting all food deliveries (6T15). Rojas explained that food could be delivered at HARP, but staff was going to have to go to the main office to pick it up (6T15). Rojas thought that Tirri understood the rationale behind the policy, but Tirri told Rojas that he would have to file a grievance anyway to preserve his members' rights (R-9; 6T15-6T16).

61. After receiving the formal group grievance (R-9) and investigating, Rojas responded to Tirri on March 7, 2011 denying the grievance for the same reasons that he had explained to Tirri verbally (R-1; 6T17). Rojas concluded, contrary to Koch's belief, that Grassi did not prohibit staff from having food delivered to the school for staff lunches, but merely informed staff that they could only order and accept food deliveries during lunch periods, before the start of school or during their prep periods, and that deliveries could only be accepted in the

main office (R-1). The practice before allowed delivery people to wonder the building which created a security issue (2T29-2T30).

62. Subsequently, at the monthly level-two meeting, Tirri came in and asked Rojas about R-1 and wanted to confirm that the rationale Rojas gave was really what was going on (6T18). Rojas told Tirri that he assumed so because that was what Rojas had been told (6T18). He also assured Tirri that he had instructed Grassi to either give all staff Rojas' response, namely that food could be delivered to the main office for pick-up by the staff, or that she should post it in the teacher's lounge so that staff would understand the process for food delivery (6T19). Tirri seemed okay with Rojas' explanations (6T19, 6T22, 6T24).

63. The Association did not appeal Rojas' denial of the grievance (2T28). When Rojas' denial (R-1) was issued, Koch had the delegates put a copy in the teachers' mailboxes and posted (2T32). Teachers currently order food and have it delivered to the main office (2T32). Koch admits that the collective negotiations agreement only permits teachers to leave the building during their lunch periods, so the Association did not file a grievance over Grassi's statement at the February staff meeting about leaving the building at other times (2T33-2T34). In any event, there is no evidence in the record that Grassi



issued any directive in regard to her statement at the meeting about staff leaving the building.

**Eileen Opromollo**

Charging Party asserts that Grassi retaliated against Eileen Opromollo because of her association with Koch. The following facts were presented in support of this allegation.

64. After the afternoon session of the September 2 in-service meeting<sup>17/</sup>, Opromollo approached Grassi, because there were problems with her schedule (4T66). Opromollo recalls Grassi stating, that there were problems with the schedules generally, and that they would not be discussed at that time (4T66). Opromollo knew that other teachers also had schedule problems caused by compliance with the Kennedy awards (4T92).

65. Opromollo spoke to Koch the next week about her schedule which contained, in Opromollo's opinion, mistakes (4T68). She trusted Koch's knowledge of the parties' collective agreement (4T68).

Opromollo then went back to Grassi who acknowledged that there were errors in the schedule and told Opromollo she would get back to her and see what she could do (4T69). Grassi also suggested that Opromollo speak to the other history teachers to see if some classes could be switched with them, because at that

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<sup>17/</sup> Opromollo was not present in the morning for the Grassi/Koch confrontation.

point, Grassi felt that if she were to change Opromollo's schedule it would put another teacher out of compliance with the parties' collective agreement (4T69).

By the end of that week (presumably the middle of September), one of the two extra classes that Opromollo complained about was removed from her schedule (4T70). At the beginning of the next week, Grassi adjusted Opromollo's schedule further adding a supervision at the YMCA which was about half a mile from HARP (4T71). Opromollo's schedule was updated again in January (4T92-4T93).

66. Opromollo has lower back issues which Grassi knew about when she assigned her to the YMCA supervision (4T72). Opromollo, therefore, got a doctor's note and submitted it to Grassi, but she remained with the assignment for the rest of the year (4T73).

67. About a week after Opromollo submitted the doctor's note, she sprained her ankle and was told by her doctor to use either crutches or a cane (4T74). The next week, when Opromollo went back to the YMCA for supervision duty, she stumbled with her cane on the stairs and slightly injured her back (4T75-4T76). She went to Grassi's office the following day to complete an incident report and met with Grassi and Union Delegate Lecia Minor (4T76). Grassi officially informed Opromollo that she had to continue the YMCA supervision (4T76).

68. Opromollo felt that Grassi was picking on her by insisting that she still report to the YMCA while her ankle injury was healing, when, in her opinion, a substitute teacher could have covered the supervision (4T76-4T77). Opromollo hypothesized that her interactions with Koch about the teaching schedule and discussions she and Grassi had about Koch influenced Grassi's decision about her YMCA assignment (4T77). As to the latter, Opromollo testified as follows, when asked to describe the discussions with Grassi about Koch that she was relying on to form her opinion:

A. Well, when I first started working there [HARP], I recall conversations where Ms. Koch's name was brought up. And it was brought up in a negative way. She was - I don't - I'm not putting words in anyone's mouth. I - I'm only saying this to sum up my impression of the conversations, she was mostly referred to as a bully type of person.

Q. Can you give me a time frame in terms of when you had these discussions?

A. That was when I first started. That was 2006, 2007. There were often, you know, reactions in - in meetings where like, you know, the huffing and puffing, where she would start to speak. So generally I knew that Ms. Grassi had an issue with Ms. Koch.

Q. Who was doing the huffing and puffing?

A. I can't say, that it was Grassi, but I guess just people in the meeting. (4T78)

I draw no inference from this testimony as to the Grassi/Koch relationship. Nor do I find that these conversations

support that Grassi was "picking on" Opromollo based on this testimony. The testimony about the discussions between Grassi and Opromollo over a period of time many years ago is hearsay, vague and confusing. It also has no probative value.

Additionally, Koch testified that until the September 2, 2010 incident, her relationship with Grassi was cordial and collegial, so any conversations dating to 2006 and 2007 would not support Opromollo's hypothesis about Grassi's motives in any event.

69. Despite Opromollo's feeling that she was being picked on, Grassi made a physical accommodation regarding the YMCA assignment by giving Opromollo parking tickets for the garage across the street from the YMCA and instructing her to drive directly to the YMCA without first punching in at HARP (4T94-4T95). When the Association officially requested a medical accommodation on behalf of Opromollo to Director of Labor Relations Rojas, he determined that the accommodations made by Grassi were sufficient (4T95).

70. The week after Grassi went on medical leave in October 2010, Secretary Lisa Brown pulled Opromollo aside and told her that Grassi knew that she was not using her cane (4T80). Opromollo retorted that she did not care and walked away (4T80).

71. In mid-October (before Grassi's medical leave), six staff members, including Opromollo, were written up by Grassi because they were late in reporting to their assigned classroom

during PSAT testing (CP-10; 1T121, 4T81). Specifically, the reprimand asserted that they were not in their assigned testing room at 12:45 p.m. which, it was alleged, created a safety issue (CP-10; 4T81).

The Association filed a grievance on behalf of staff at all the District's high schools, seeking to have the letters removed because Grassi had passed out six different schedules that day, and the staff was confused (1T119-1T120). The Association had filed a grievance the year before and attempted to negotiate over schedules for testing days (1T119). In mid-October, Opromollo and three other teachers wrote a rebuttal to Grassi's written reprimand (CP-10). Opromollo disputed the reprimand because the testing schedule had been changed several times and the students were with another teacher, not alone, when Opromollo reported to the room at 12:52 p.m. Opromollo reminded Grassi that her ankle injury caused her travel time to increase (CP-10). The PSAT grievance was eventually settled on July 7, 2011.

**Angela Scillieri**

The charge asserts that Grassi also retaliated against Guidance Counselor Angela Scillieri because of Scillieri's relationship to Koch by moving her office without notice and while she was in a meeting. The following facts were presented in support of this allegation.

72. Angela Scillieri has been a guidance counselor at HARP Academy for the past seven years. She has been employed by the District for twenty years (3T78). Scillieri recalls that things were chaotic at the beginning of the 2010-2011 school year. Schedules were incorrect, and the students were short tempered. She recalls Grassi yelling at everyone over everything (3T85).

73. On or about September 22, 2010, a student came up to Scillieri and told her that his schedule was not changed because, Grassi told him, Scillieri was not doing her job (3T79). When Scillieri heard this, she was infuriated because it was the first time anyone accused her of not doing her job (3T79).

Scillieri asked Koch if she could grieve Grassi's statement to the student. Scillieri had never before filed a grievance, but she went to Koch because Koch knows the parties' collective agreement and is the union representative (3T80). Koch advised Scillieri that Grassi could not criticize her to a student (3T83). Scillieri then went to Lecia Minor, another union representative, to get the forms to file the grievance (3T84). On September 27, 2010, Scillieri and Minor filed the grievance (CP-6).

Afterwards, Grassi called Scillieri into her office and asked her why she filed the grievance (3T86). Scillieri explained that she worked very hard, and that Grassi's criticism about her to the student was not warranted (3T86). Grassi asked

if they could settle the grievance, and Scillieri responded that she needed Grassi to apologize and to tell the student the truth (3T87). As a result, Grassi called the student to the office and said that she (Grassi) was mistaken, and that she did not mean that Scillieri was not doing her job (3T87, 3T103-3T104). Scillieri felt that Grassi was being very sincere and apologetic in resolving the grievance (3T104-3T105). The matter was settled to Scillieri's satisfaction (R-4; 3T87-3T88).

74. About two weeks after the grievance incident, Scillieri was at a guidance department meeting and came back to find that her office had been moved (3T91). Although she had been told during the summer that her office might be moved and she herself had requested and wanted the move to the bigger office, Scillieri had not been told before the department meeting that her office was going to be moved (3T92, 3T105-3T106, 3T108). In fact, when Scillieri came to HARP in August 2010, she learned that the office she eventually moved into was vacant (3T94). So Scillieri asked Grassi at the beginning of the 2010-2011 school year if she could move into the office, Grassi informed her she (Scillieri) could not be moved then, because all of the technical and telephone technicians were occupied with the reconfiguration of Eastside High School (3T92).

When Scillieri asked Grassi why she was finally moved that particular day, Grassi told her that she was able to get

Scillieri's telephones moved (3T93). Scillieri admits, that work orders to move phone and fax lines do not specify a particular time or date when they will be filled and that, in this instance, the work order could have come in while she was attending the department meeting (3T107, 3T109).

Acting Principal Sherman was given the space that Scillieri was moved out of and remained there throughout the time he was assigned to HARP (3T95).

**Captain James Smith**

75. Captain James Smith is Executive Director of School Security for the District and has held that position since September 1, 2002 (5T6). His responsibilities include providing security for the HARP Academy, managing staff and conducting internal investigations regarding school employees (5T6).

76. On January 16, 2012, an anonymous letter was sent to Superintendent Donnie Evans with copies to various other individuals including the Board of Education President Willa Mae Taylor, Assistant Superintendent Shafer, Director of Human Resources Dr. Laurie Newell and Association President Peter Tirri (R-8). The letter made several accusations against HARP Academy Teacher Gisela Rosa and Principal Grassi, basically alleging favoritism and improper conduct (R-8).

Dr. Evans ordered Smith to investigate the allegations (5T8). Based on his investigation, Smith found no improper



conduct by Rosa, Grassi or Secretary Lisa Brown (5T13-5T14). He determined that the allegations in the letter were unfounded (5T11).

77. Respondent objected to R-8 in evidence (5T14-5T15). I admitted the letter explaining that at the conclusion of the hearing I would determine its probative value. Based on the testimony, there is little or no probative value to this testimony.

#### **ANALYSIS**

Charging Party asserts that Principal Grassi retaliated against Union Officer Koch by reprimanding her for comments at an in-service staff meeting and, thereafter, interfering with the protected rights of Koch and other union members associated with Koch (Teachers Opromollo and Scillieri), by monitoring Koch's conduct and assignments while Grassi was on medical leave, by assigning Opromollo to YMCA supervision duty despite an existing back condition and by moving Scillieri's office without notice. Additionally, it asserts that Grassi threatened staff with the removal of "perks", because Koch insisted that she follow the collective negotiations agreement.

As to the Koch reprimand, and any surveillance of Koch during Grassi's medical leave as well as the assignment of ISS duty, I do not find that Grassi's actions in these instances violate 5.4a(3) and derivatively a(1) of the Act. However, I do

find that certain comments in letters to Koch's personnel file (CP-7 and CP-8) critical about her conduct as a union representative independently violated 5.4a(1). As to Scillieri and Opromollo, I find that neither the YMCA supervision assignment nor the office move were decisions made by Grassi in retaliation for their protected activity. However, I do find that Grassi's statement at a February staff meeting pertaining to the removal of "perks" independently violated 5.4a(1) of the Act. However, I do not find that any changes in policy pertaining to food delivery or leaving the building during prep periods violated 5.4a(3).

The legal standards set forth in Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984) determine whether an employer's actions violate N.J.S.A. 5.4a(3) of the Act. There, the Court determined that if the Charging Party proves by a preponderance of evidence on the record that protected conduct was a substantial or motivating factor in the adverse action, a violation will be found. Such a violation can be proven by direct evidence or by circumstantial evidence establishing that the employee was engaged in protected activity, the employer knew of this activity and was hostile toward the exercise of protected rights. Id. at 246. If an illegal motive has been proven and if the employer has not presented any evidence of a motive not illegal under the Act, or if the

employer's explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis.

Sometimes, the record demonstrates dual motives, lawful and unlawful, contributed to a personnel action. In such case, an employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. *Id.* at 242. This affirmative defense does not have to be considered, however, unless the Charging Party has proven, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action.

**The September 2 In-Service Meeting and Koch Reprimand**

I agree with Charging Party that Koch's initial comments during the group discussion at the in-service staff meetings on both September 1 and 2 about the peer-on-peer evaluations were solicited by Principal Grassi and constituted protected speech. The cases cited by Charging Party in this regard are generally apposite. *Somers Point*, P.E.R.C. No. 2003-40, 28 NJPER 586 (¶33182 2002). Koch was representing the viewpoint of the Association when she questioned the efficacy of peer-on-peer review as violating the parties' collective agreement. Grassi initiated the discussion of this, among other, topics on September 1.

It is unclear from the record whether Grassi wanted to continue the group discussion begun the previous day on September 2 or whether she was merely recapping the previous days discussions, but it is undisputed that Grassi, whether a recap or not, mentioned the topic again at the second meeting. Koch was recognized by Grassi and repeated her statements of the previous day regarding peer-on-peer review. However, it was not the content of Koch's statements that precipitated the confrontation and subsequent discipline. It was Koch's refusal to move off the topic and permit Grassi to continue her meeting that led to the confrontation and eventual discipline of Koch for that conduct. Koch's conduct crossed the line and her speech and conduct became unprotected when Koch challenged Grassi's authority by refusing to allow her to move on and then, thereafter, mocked her verbally in front of staff in a disrespectful manner, retorting "yes, mommy" as she was departing and telling her she (Koch) would call Grassi's superior.

The Act provides that:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. N.J.S.A. 34:13A-5.3.

The right of majority representatives to speak on behalf of employees, however, is not unfettered. In Black Horse Pike

Regional Board of Education, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission determined that the Board violated 5.4a(1) and (3) when it placed in the personnel file of a teaching staff member two letters critical of the teacher's comments while the teacher was serving as an Association representative in a meeting with the principal about another teacher's resignation from her job. The Commission found that,

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be initiated to halt or remedy the other's actions. Id. at 503.

The Commission then wrote:

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

In Middletown Tp. Bd. of Ed. and Middletown Tp. Ed. Ass'n, P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), aff'd 23 NJPER 53 (¶28036 App. Div. 1996), certif. den and notice of app. disp., 149 N.J. 35 (1997), a teacher/association grievance chair was

reprimanded for, among other remarks, referring to a school administrator as a "lying scuzzball" during a public board meeting. The Commission determined that the employee's remarks were protected speech since the teacher was speaking as a union representative during the meeting. Similarly, in Atlantic Cty. Judiciary and Derek Hall, P.E.R.C. No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd 21 NJPER 321 (¶26206 App. Div. 1994), the Commission found an employee's criticism during a staff meeting of a proposed evaluation plan was protected speech because the employee was a union representative and was advocating the union's collective concerns.

Not all speech or conduct by an employee representative acting on behalf of the union is speech entitled to the Act's protection. The courts have drawn a line between giving leeway for adversarial and/or impulsive behavior in the context of a negotiation or grievance meeting and conduct which indefensibly threatens workplace discipline, order, and respect. See generally, Crown Central, 74 LRRM at 2860 and NLRB v. Thor Power Tool Co., 351 F. 2d 584, 60 LRRM 2237 (7<sup>th</sup> Cir. 1965); Felix Industries Inc. v. NLRB No. 12, 164 LRRM 1137 (2000); Atlantic Steel Co., 245 NLRB No. 107, 102 LRRM 1247, 1249 (1979). See also, Hamilton Twp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (1979) (employee offensive speech and conduct lawful in context of grievance meeting); City of Asbury Park, P.E.R.C. No. 80-24, 5

NJPER 389 (1979) (employee may not be disciplined for engaging in protected activity - e.g. shouting match between union president and city manager discussing employee complaints - but employee may not utilize union position to undermine employer's supervisory or managerial authority).

In companion cases, State of New Jersey, Dept. of Treasury (Glover), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001) and State of New Jersey, Dept. of Human Services (Garlanger), P.E.R.C. No. 2001-52, 27 NJPER 167 (¶32057 2001), the Commission examined what is protected conduct/speech of an employee representative versus conduct amounting to insubordination and not protected by the Act. When acting as agents of the majority representative in negotiating contracts or pressing grievances, union representatives are equals to their management counterparts and are given wide latitude of speech and conduct as advocates and adversaries. Representational conduct loses its statutory protection when it threatens workplace discipline, order and respect. Glover at 173.

Specifically, in Glover, when determining the line between what is protected conduct or insubordination, the Commission considered several factors, including whether the employee was acting in the role of shop steward or union representative at the time of the activity in question, the time and place of the speech - e.g. work hours and "on the shop floor" or closed-door

meeting, whether other employees were present, whether the actions were threatening, and whether the employee's actions were provoked by the employer's actions. Glover's remarks were made during work time and on the work floor in front of co-workers. His conduct was determined to have exceeded the bounds of protected speech when Glover interfered with the supervisor's attempts to interview another employee by turning that interview into an adversarial confrontation, and because his actions were threatening - e.g. Calling the supervisor a witch and racist, getting within inches of her face, threatening to take care of her later, shouting and disrupting generally the supervisor's attempt to interact with an employee causing the work force to stop working and watch the standoff.

Accordingly, if Koch were sent to her room and reprimanded for expressing her opinion during the meeting about peer-on-peer evaluations and the collective agreement, any disciplinary or adverse personnel action flowing from these remarks would violate the Act. Koch, however, was not reprimanded for those statements, but rather for her speech/conduct, gleaned essentially from her own testimony since Grassi did not testify, that she refused to end a discussion terminated by Principal Grassi at an in-service meeting attended by the entire staff. Thus, Koch was disciplined for her challenge to Grassi's authority, in particular by asserting after



being told to move off the topic that she (Koch) thought they were having a discussion not being dictated to and also by the manner in which Koch left the meeting - e.g. stating "yes, mommy" to Grassi in an admittedly loud, sarcastic and disgusted tone of voice and informing her she would call Grassi's superior. This conduct was unprotected. Grassi had a legitimate right to reprimand Koch for insubordination.

Koch essentially turned the meeting into an adversarial confrontation. This was not a labor management negotiation, grievance meeting or investigatory interview. It was a staff meeting. Although Koch had a right individually and as a union representative to voice her opinion on a subject introduced by her principal, this was not Koch's meeting to control. Koch was given the choice to end the discussion or leave. Koch chose not to end the discussion and, therefore, the consequence of being removed from the meeting room was foreseeable.

In Garlanger, the initial heated discussion between Garlanger, a union representative, and his supervisor concerning her disregard of Weingarten principles was protected speech.<sup>18/</sup> However, Garlanger's subsequent conduct in leaving his work area

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<sup>18/</sup> Employees have a right to demand union representation at an investigatory interview that he or she feels could result in discipline. The representative's role, however, is limited and non-adversarial. For instance, the employer has no duty to bargain with the representative and controls the time, place and manner of the interview. NLRB v. Weingarten Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

and physically intimidating his supervisor after an investigatory meeting was terminated, was not. In considering whether Garlanger's conduct was protected, the Commission considered factors enumerated in Atlantic Steel, (1) the place of the discussion; (2) the subject of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was provoked by an unfair labor practice. Id. at 179. Like Garlanger, Koch's speech was initially protected. But Koch's conduct in front of the staff at a meeting run by the principal became unprotected and was the impetus for Koch's discipline.

Also, unlike Middletown, where the union representative/teacher made intemperate remarks about a school administrator in a public board meeting, the in-service meeting was conducted by Grassi in her role as principal/supervisor for her staff as employees. This was not a public forum. To the extent that Koch was instructed to move on, she was not dealing as an equal with Grassi, free to speak her own mind. Moreover, Koch's retort to Grassi when she was asked to move on from the topic - that Koch thought they were having a discussion not that they were being dictated to - was a direct challenge to Grassi. It is understandable then that Grassi, who was appearing for the first time as principal in front of her staff, and with Koch's direct challenge lost her temper and reacted in a less than

temperate way. Koch was the master of her own fate in this regard.

Moreover, although, unlike Garlanger, Koch's conduct was not physically threatening to Grassi, Koch's statement in front of the staff, as she was leaving the meeting, namely "yes, mommy", was demeaning to Grassi, even if this was Koch's belief, and Koch's assertion that she was going to contact Grassi's superior was a threat to Grassi's authority. Such a threat coupled with the "yes mommy" as well as her refusal to move on to another topic appeared to Grassi to be insubordinate and resulted thereafter in the letter to Koch's personnel file. The actions of Grassi were not, therefore, in response to Koch's statements regarding possible violations of the parties' collective agreement if peer-on-peer evaluations were implemented, but to Koch's conduct thereafter. Grassi's actions in this regard did not violate our Act.

Also, portions of Grassi's letters (CP-7 and CP-8) to Assistant Superintendent Shafer describing her version of the September 2 incident did not interfere with Koch's protected rights. Grassi and Koch both put into writing their versions of the events. Grassi, in particular, took offense at Koch's letter, describing Grassi as ill-informed about the collective agreement and school policy. She disagreed.

However, Grassi's other comments in both letters objected to Koch's conduct as a union representative which was unrelated to her insubordinate behavior at the September 2 meeting. For instance, Grassi observed in the letters that Koch tries to undermine meeting agenda's with union business, forcefully tries to impose personal opinion on other staff, usurps management prerogatives by attempting to debate non-negotiable issues such as space allocation and facility usage, suggests that staff file grievances about these issues, attacks administrative initiatives and "complain[s] we work in a dictatorship". When Grassi commented in the same letter that Koch was an excellent teacher, it was apparent that Grassi was not criticizing Koch's performance as an employee in these instances.

An employer independently violates subsection 5.4a(1), if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-134 (1976). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp. Accordingly, under Black Horse Pike, Grassi's placement of these

comments in Koch's personnel file had a tendency to interfere with Koch's statutory right to represent the staff and independently violated 5.4a(1).

Based on the foregoing, I do not find that the District violated the Act when Principal Grassi reprimanded Koch for her conduct at the September 2 in-service meeting, but find that comments in letters (CP-7 and CP-8) placed in Koch's personnel file criticizing Koch's conduct as a union representative independently violated 5.4a(1) of the Act.

**The ISS Duty Assignment and Surveillance of Koch**

Next, the Charging Party asserts that after September 2 and, in particular, during her medical leave, Grassi illegally targeted Koch by spying on her activities, assigning her ISS duty, and improperly interfering with Acting Principal Shafer's directives to Koch regarding room assignments. Before September 2 and during the years when Grassi led HARP but not as principal, she and Koch had a cordial relationship and union matters were handled strongly by both women, but most were amicably resolved. Grassi even accommodated Koch's union activities by giving her an assignment at the end of the day which permitted Koch to leave early if necessary.

The evidence, however, supports that, after the September 2 confrontation, the friendly and cordial relationship between the two women deteriorated. Thereafter, it is apparent that Grassi

and Koch mutually disliked each other. However, the mutual dislike was more personal than based on any anti-union animus. It was a by-product of two strong-willed and controlling women who were marking their territory as it related to the running of HARP Academy. Specifically, evidence was introduced suggesting that both before and after September 2, Grassi handled grievances amicably, resolving them and, in one instance, apologizing to the teacher (Scillieri) who she had, allegedly, wronged. This does not support animus to union activity.

Charging Party asserts that animus is demonstrated by a phone call Grassi made during her medical leave to Security Guard Jones. I credited Jones' testimony that Grassi called him to warn him to be careful about associating with Koch, Opromollo, Scillieri and Minor. However, according to Jones, when he questioned her as to why he should not associate with them, Grassi gave him no explanation. This testimony has little probative value. I have no context from which to draw any conclusions as to what Grassi would have meant by this call. For instance, Grassi could have concluded that Koch and the others were out to get her for a variety of reasons, such as challenging her authority to run the school. Grassi also might have determined that Jones himself was over-stepping his security job duties by speaking to staff behind her back about activities at HARP. No rationale for the call is clear from Jones' testimony.

Drawing any inferences from the telephone call would be conjecture and does not, therefore, support hostility to union activity.

It is also apparent, that during her medical leave, Grassi had difficulty relinquishing oversight of HARP to Acting Principal Sherman. For instance, it was not just Koch that was being monitored by Grassi during her medical leave. Grassi was giving a substitute teacher, Nora Terminini, instructions as to her subbing assignment. Grassi's actions appeared to grow out of a misguided desire to control all aspects of decision-making at HARP, even while she was on leave.

Whenever Grassi attempted to insert herself into the affairs at HARP during this period, she was told by both Sherman and Assistant Superintendent Shafer that she lacked the authority to do so. In one instance, when Shafer observed Secretary Brown giving Grassi copies of teachers schedules which had been requested by Director of Labor Relations Rojas, Shafer cautioned Brown to go through him in the future.

Indeed, Secretary Brown testified credibly that it was Grassi's habit whenever she was away from HARP for any period of time, not just during her most recent medical leave, to call in on a daily basis to find out what was going on. During one such daily call, Brown, volunteered to Grassi that Koch's geometry classroom had been changed. Brown was unaware that Shafer had

approved the move. Nothing about this exchange suggests that Grassi was targeting Koch for her union activities. Indeed, Grassi's suggestion that Koch move her geometry class to Room 354, not the one Sherman directed her to move to, had a rationale, namely that Room 354 had a smart board which, I infer, would be useful for a math class. Grassi's interference was consistent with her past attempts to run HARP whether on leave or not. It was not unusual that Grassi kept herself informed of activities at the school throughout her medical leave or even that she tried to interfere in the daily running of HARP as seemed to be her custom when away from her duties for any period of time.

In any event, each attempt by Grassi to direct activities of Koch or others, while on medical leave, was thwarted by Shafer. Koch rebuffed all such attempts and reported promptly to Shafer who back her up. No discipline flowed from Koch's refusal to follow Grassi's directives during this period.

Just as Grassi apparently kept tabs of Koch's activities and the happenings at HARP, Koch also kept herself informed of Grassi's comings and goings. Security Guard Nate Jones regularly alerted Koch anytime he saw Grassi during her medical leave at HARP and apparently his observance and communication of Grassi's activities to Koch began before the medical leave. For instance, he advised Koch to check her mailbox at school because there



would be an envelope in the box from Grassi about the ISS duty assignment. Jones learned of the assignment and letter from Secretary Brown and promptly passed the information on to Koch.

Grassi's motive in assigning Koch to ISS duty as one of the last administrative decisions before Grassi began her medical leave is a mystery. The decision was made and communicated to Koch on October 21 almost two months after the September 2 incident. In the past, Grassi had accommodated Koch by giving her an assignment at the end of the day amounting to flex time and, thus, permitting Koch to perform Association business at that time. Koch never grieved the ISS duty assignment. Accommodation was made by Sherman to get Koch whatever information she needed from any meetings conducted during the third period and missed by Koch. I cannot find that the ISS Duty assignment was in retaliation for protected activity.

Citing various cases, Charging Party correctly asserts that surveillance of protected activity has a tendency to interfere with rights guaranteed by the Act, an independent 5.4a(1) violation. The evidence here, however, did not support that Grassi's surveillance of Koch or any others during her medical leave was connected to the exercise of protected activity.

Specifically, as to Grassi's attempts to interfere with Koch's room assignments during her medical leave, the evidence supports that Grassi's control of the school during her medical

leave was regularly rebuffed by the administration, specifically Sherman, and was not out of character, or rather the norm, for Grassi during any absence from HARP. Since Grassi just assumed the position of principal months before her medical leave, it is logical that her attempt to run the school even while on leave would be stronger than at previous times. Grassi's observance of Koch, therefore, was in the context of supervisor to employee, not to Koch's role as a union representative.

Accordingly, I do not find that Grassi's activities during her medical leave regarding the surveillance of Koch or others and the assignment of ISS duty to Koch violated the Act.

#### **The February 7 and 9, 2011 Staff Meetings**

Shortly after Grassi's return from medical leave, she conducted two staff meetings - February 7 and 9, 2011. Her statements on February 9 crossed the line from personal dislike of Koch to interfering with the exercise of rights protected by the Act, an independent 5.4a(1) violation.

Specifically, on February 7, at a staff common-planning meeting, Grassi announced that although she felt that her teaching schedules were in compliance with the parties' collective agreement and the Kennedy Awards, after speaking to Koch, she learned they were not in compliance and she handed out new schedules to go into effect on February 9. Subsequently, on February 9, at another staff meeting, several questions were

raised about the new schedules which, the staff felt, were not as workable in reality as on paper. Grassi responded that the schedules would remain in effect and then opined that if she had to follow the collective agreement, so did the teachers, namely that they would lose perks such as leaving the building during prep period and having no deliveries of food or coffee to the building.

This statement linking compliance with the collective agreement and the losing of perks amounted to a threat and had a tendency to interfere with protected rights. Whether, as Koch agreed, the collective agreement only permits teachers to leave the building during lunch, whether the District had a legitimate security reason to limit the delivery of food and drink to the office, and whether Grassi actually never prohibited the delivery of food altogether is irrelevant. The fact that she would issue this statement at the same time she was referencing the collective agreement operates as a threat to staff that there would be unpleasant consequences if exercising their right to enforce the parties collective agreement. And a threat specifically to Koch, who Grassi indicated to staff two days before was behind the necessity to change schedules by insisting on compliance with the parties' collective agreement.

As to the prohibition against leaving the building except during prep periods, Koch admits that the collective agreement

only permits staff to leave the building during lunch. Thus, ending the past practice granting the more generous benefit and returning to the benefit level set by the contract would not ordinarily be a violation of the Act. See generally, Kittatinny Reg. Bd. of Ed., P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd NJPER supp. 2d 60 (¶42 App. Div. 1979). However, taking such an action for retaliatory reasons is prohibited. See generally, Hunterdon Cty. and CWA, 116 N.J. 322 (1989) (Court affirmed Commission's determination that anti-union animus motivated the County's decision to unilaterally terminate a safety incentive bonus program in order to punish CWA for filing charge that County unilaterally implemented the program without first negotiating); West Paterson Bd. of Ed., P.E.R.C. No. 2010-2, 35 NJPER 273 (¶87 2009) (superintendent's actions violated the Act when he refused to grant discretionary time off and other perks per past practice in retaliation after Association rejected his proposal about working in-service days that they were contractually entitled to as time off); Township of Little Falls, I.R. No. 2006-9, 31 NJPER 333 (¶134 2005, recon. den. P.E.R.C. No. 2006-41, 31 NJPER 394 (¶155 2005) (collective agreement gave Mayor sole discretion to change police work schedule, but discretion restrained where exercised for retaliatory reasons);

Chester Borough, I.R. No. 2002-8, 28 NJPER 162 (¶33058 2002), aff'd P.E.R.C. No. 2002-59, 28 NJPER 220 (¶33076 2002) (Borough restrained from changing work schedule in retaliation for police officer's grievance).

In this instance, other than the threat to do so at the staff meeting, there was no evidence introduced that Grassi actually followed through on her threat. Accordingly, I do not find that her actions violated 5.4a(3), because there was no actual adverse personnel action.

Similarly, there is no evidence to support that Grassi acted to prevent any food deliveries to HARP. Director of Labor Relations Rojas confirmed that Grassi consulted him about her security concerns about deliverymen wandering the building sometime in February after the meeting. His advice was to have all deliveries made to the office and notification to the staff to pick up deliveries there. Even if this was a change in the practice and even if the timing suggests that Grassi's comments at the meeting were tangentially related to her security concerns, the security concerns were legitimate and support that Grassi and Rojas would have ordered the change in procedure in any event. Accordingly, I do not find a violation of 5.4a(3) regarding the change in food-delivery policy. Bridgewater.

Based on the foregoing, I find that the statements by Grassi to the staff on February 9 linking enforcement of the collective

agreement and the loss of perks to independently violate 5.4a(1) of the Act.

**Eileen Opromollo**

Charging Party asserts that Grassi retaliated against Eileen Opromollo because of her association with Koch by assigning her supervision duty at the YMCA. This argument, however, is not supported by a preponderance of the evidence on the record.

The facts demonstrate that teaching schedules were an on-going problem at all of the District's high schools as a result of the Kennedy Award. The 2010-2011 school year was no exception, and Grassi as well as the other principals were struggling to comply. As a result the schedules were adjusted several times that year. Opromollo herself went to Grassi after the September 2 in-service meeting because of problems with her schedule. Grassi did not want to address Opromollo's specific issue at that time, but Opromollo acknowledges that she was among many teachers with scheduling issues.

Opromollo later spoke to Koch about the schedule issue. Thereafter, Opromollo went back to Grassi who acknowledge there were errors and told Opromollo she would see what could be done and get back to her. Eventually, a couple of weeks later (mid-September) Opromollo's schedule was rearranged by removing some classes and adding the YMCA supervision. The YMCA assignment was a regular school assignment and, apparently, not

newly created to punish Opromollo. Although Opromollo claims that Grassi knew she had a lower back issue when the new assignment was made, there is no indication that the assignment would have aggravated that condition.

Additionally, when Opromollo subsequently sprained her ankle, Grassi made a physical accommodation by giving Opromollo parking tickets for the garage across the street from the YMCA and instructing her to drive directly to the YMCA without first punching in at HARP, an accommodation determined to be sufficient when reviewed by the Administration. Although Opromollo hypothesized that she was being picked-on by Grassi because of her association with Koch and the discussion she had with Koch about her teaching schedule, her testimony did not support that her hypothesis was reasonable.<sup>19/</sup>

For instance, Opromollo concluded that based on discussions she had years before with Grassi about Koch and the fact that Opromollo consulted with Koch about her teaching schedule. The testimony about the discussion years before was confusing and

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<sup>19/</sup> Charging Party asserts that I draw an inference of hostility to protected activity from Brown telling Opromollo that Grassi who was on medical leave knew that Opromollo was not using a cane. Opromollo was evidently not using a cane at this point and did not care that Grassi knew. Having claimed several physical obstacles to her YMCA assignment which required accommodation by Grassi, it is understandable that Grassi would be interested in the legitimacy of Opromollo's complaints. Even on medical leave, Grassi demonstrated a propensity for interfering in and controlling things at HARP.

vague and of little, if any, probative value. Most importantly, there is no evidence that Grassi even knew that Opromollo consulted Koch about her schedule. Even if Grassi knew, her response to Opromollo's concerns was appropriate, she adjusted the schedule.

I also find no hostility from the reprimand of Opromollo and five other staff members in October 2010 for being late in reporting to their assigned classrooms during PSAT testing. Opromollo was not singled out in this instance. She admits she was late but asserts that she and the others were confused that day because schedules had been changed several times. A grievance was filed on behalf of the staff and was settled in July 2011 by the Association. It is unclear from the record what, if any, involvement Koch had with this matter. Moreover, Opromollo's assignment to the YMCA supervision occurred before the grievance was filed. The timing, therefore, mitigates against an inference of hostility to the grievance filing.

Based on the foregoing, I do not find that the District violated 5.4a(3) and derivatively (1) of the Act when Grassi assigned Opromollo to the YMCA supervision.

**Angela Scillieri**

Charging Party asserts that Grassi also retaliated against Angela Scillieri because of her association with Koch. Specifically, it is alleged that about two weeks after Scillieri



filed a grievance, her office was moved without notice while she was at a department meeting. I do not find that the evidence supports that the move was precipitated in retaliation for the grievance or Scillieri's association with Koch.

First, the grievance was settled amicably by Grassi. Although Scillieri consulted Koch about Grassi's actions in criticizing her (Scillieri) to a student, the grievance was not filed by Koch, but was initiated by Scillieri and another union representative, Lecia Minor in late September 2010. Koch's involvement was limited to advising Scillieri as to her rights under the collective agreement, and no evidence supports that Grassi had any knowledge of Koch's advice.

Additionally, when Grassi considered Scillieri's grievance, she promptly settled it to Scillieri's satisfaction by calling the student into the office and stating in front of the student and Scillieri that she (Grassi) was mistaken in saying that Scillieri was not doing her job. Scillieri felt Grassi was very sincere and apologetic in resolving the dispute. Nothing from this incident supports that Grassi was hostile to the grievance filing or to Scillieri's association with Koch.

Moreover, the office move that took place in mid-October 2010, two weeks after the grievance incident, does not establish hostility to protected activity. Indeed, there appears to be no connection to the earlier grievance despite the timing.

Scillieri had requested to move to a bigger office and was told during the summer before the 2010-2011 school year that she might be moved. When she reported back to school for the year, Grassi told her that the move could not be made then because the technical and telephone technicians were occupied at other schools.

The move was made while Scillieri was at her department meeting because, as explained by Grassi, the technicians were available to install the telephone and fax connections in the new office. Scillieri admitted that the work order to move the lines could have come in while she was attending the meeting. The necessity to orchestrate the move, I infer, was driven, at least in part, by the necessity of installing Acting Principal Sherman in the office vacated by Scillieri while Grassi was on medical leave.

Based on the foregoing, I do not find that the District violated 5.4a(3) and derivatively (1) of the Act pertaining to Grassi's treatment of Scillieri.

#### **CONCLUSIONS OF LAW**

The District independently violated 5.4a(1) first when Principal Grassi included criticisms of Koch's conduct as a union representative in two letters (CP-7 and CP-8) placed in Koch's personnel file and then when, during a February 9 staff meeting, Principal Grassi in response to questions about new teaching

schedules linked Union Representative Koch's insistence on adherence to the collective negotiations agreement with the loss of perks, such as leaving HARP Academy during prep periods and food deliveries.

I recommend that the Commission dismiss the remaining allegations of the Complaint alleging that (a) the activities of Principal Grassi during her medical leave regarding surveillance of Koch and the assignment of ISS duty violated 5.4a(3) and derivatively (1); (b) the change in procedure regarding food delivery and the statement of intention to prohibit staff from leaving school during prep periods violated 5.4a(1), (3) or (5); (c) Principal Grassi's assignment of YMCA duty to Eileen Opromollo violated 5.4a(3) and derivatively (1); and (d) the move of Angela Scillieri's office without notice while she was at a department meeting violated 5.4a(3) and derivatively (1).

**RECOMMENDED ORDER**

I recommend that the Commission ORDER that:

A. Respondent District cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly when, in two letters (CP-7 and CP-8) placed in Koch's personnel file, Principal Grassi included criticisms of Koch's conduct as a union representative unrelated to her insubordinate conduct at the September 2 in-service meeting and

when, during a February 9 staff meeting, Principal Grassi in response to questions about new teaching schedules linked Union Representative Koch's insistence on adherence to the collective negotiations agreement with the loss of perks, such as leaving HARP Academy during prep periods and food deliveries.

B. That the District take the following affirmative action:

1. Cease and desist from including criticisms of Koch's conduct as a union representative unrelated to her insubordinate conduct at the September 2 in-service meeting in two letters (CP-7 and CP-8) placed in Koch's personnel file and redact all criticisms unrelated to Koch's conduct at the September 2 meeting.

2. Cease and desist from threatening to take away perks if the Association or its representatives insist on enforcing the terms of the parties' collective negotiations.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that

such notices are not altered, defaced or covered by other materials.

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

C. That the remaining allegations in the Complaint be dismissed.



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Wendy L. Young  
Hearing Examiner

DATED: January 22, 2013  
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 February 5, 2013.**



# NOTICE TO EMPLOYEES



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

**We hereby notify our employees that:**

**WE WILL** cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly when, in two letters (CP-7 and CP-8) placed in Koch's personnel file, Principal Grassi included criticisms of Koch's conduct as a union representative unrelated to her insubordinate conduct at the September 2 in-service meeting and when, during a February 9 staff meeting, Principal Grassi in response to questions about new teaching schedules linked Union Representative Koch's insistence on adherence to the collective negotiations agreement with the loss of perks, such as leaving HARP Academy during prep periods and food deliveries.

**WE WILL** cease and desist from including criticisms of Koch's conduct as a union representative unrelated to her insubordinate conduct at the September 2 in-service meeting in two letters (CP-7 and CP-8) placed in Koch's personnel file and redact all criticisms unrelated to Koch's conduct at the September 2 meeting.

**WE WILL** cease and desist from threatening to take away perks if the Association or its representatives insist on enforcing the terms of the parties' collective negotiations.

Docket No. CO-2011-283

Paterson State Operated School District  
(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