

H.E. NO. 2014-13

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

In the Matter of

CENTRAL REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2012-345

CENTRAL BUS DRIVERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Board violated 5.4a(3) and (1), derivatively and independently. She determined, that the Transportation Coordinator and Business Administrator retaliated against the Association President/Bus Driver for exercising protected activities. Specifically, the Hearing Examiner found that two evaluations with "NI" ratings had nothing to do with her performance as an employee, but were substantially motivated by her representation of unit members. The evaluations threatened discipline if the protected conduct continued. Unlike Glover and Garlanger, the Hearing Examiner determined that none of the criticized conduct was insubordinate and lost the Act's protection.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Hiring Gannon & McKenna, attorneys
(Thomas Gannon, of counsel)

For the Charging Party,
Selikoff and Cohen, attorneys
(Keith Waldman, of counsel)

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

On June 20, 2012 and July 17, 2013, the Central Regional Bus Drivers Association (Charging Party or Association) filed an unfair practice charge and amended charge, respectively, alleging that the Central Regional Board of Education (Respondent or Board) violated 5.4a(1) and (3)^{1/} of the New Jersey Employer-

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this
(continued...)

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Specifically, the Association alleges that the Board retaliated against then Association President Kathleen McKelvey-Gleason for exercising protected activities. It is alleged that the Board disciplined her for insubordination, undesirable conduct and unsatisfactory performance, in particular by including criticisms of her role as Association President in both her 2011-2012 and 2012-2013 evaluations and an addendum attached to the 2011-2012 evaluation. Among its remedies, the Association requests removal of all discipline from her file that arises from her conduct as a union leader.

A Complaint and Notice of Hearing was issued on February 12, 2013 and amended by the charge filed on July 17, 2013 (C-1, C-2).^{2/} The Board filed an Answer dated March 6, 2013 and amended its Answer on September 24, 2013, generally denying that it retaliated against McKelvey-Gleason for her protected activities as Association President and asserting that it had a managerial prerogative to evaluate her (C-3; 1T7-1T8).^{3/}

1/ (...continued)
act."

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

3/ Transcript references for the September 24 and 26, 2013 hearing are "1T" and "2T", respectively.

At the pre-hearing conference conducted on June 19, 2013, I granted Charging Party's motion to sequester, allowing each party one resource person at the hearing. Charging Party chose to use McKelvey-Gleason as its resource person, while the Respondent chose Board Secretary/Business Administrator Kevin O'Shea as its designated representative at the hearing. Both McKelvey-Gleason and O'Shea were present for both hearing days.

A hearing was conducted on September 24 and 26, 2013. The parties examined witnesses and produced exhibits. After several extensions to file briefs were granted, briefs and replies were filed by February 26, 2014.

FINDINGS OF FACT

1. Central Regional Board of Education and Central Regional Bus Drivers Association are public employer and public employee representative, respectively, within the meaning of the Act. Kathleen McKelvey-Gleason is a public employee within the meaning of the same Act (1T9).

2. The Association and Board are parties to a collective negotiations agreement effective from July 1, 2009 through June 30, 2012 (J-1). The Association represents all bus drivers employed by the Board excluding the transportation coordinator, confidential employees, substitute drivers and contractor's drivers (Article 1 of J-1).

3. Article III, entitled "Grievance Procedure", defines grievance as "a complaint by employee(s) or representative(s) of employees that there has been a violation of this Agreement." (Article III, paragraph A of J-1). The purpose of the grievance procedure is "to secure, at the lowest possible level, equitable solutions to the grievances which may from time to time arise. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure." (Article III, paragraph B of J-1).

Article III outlines a four-step procedure. Level One is to file a grievance with the Transportation Coordinator in order "to resolve the matter informally." Level Two refers the matter to the Superintendent of Schools. Level Three is to the Board of Education if not resolved satisfactorily by the superintendent. Thereafter at Level Four, the matter can go to final and binding arbitration (Article III, paragraph C of J-1).

4. McKelvey-Gleason has been employed by the Board as a bus driver since 2001 (1T19). Bus drivers are employed on one-year contracts. McKelvey-Gleason has been renewed every year since 2001 (1T92).

Transportation Coordinator Barbara Sargeant manages bus operations for the district and is, therefore, McKelvey-Gleason's direct supervisor (2T8-2T9). Sargeant reports to Business Administrator/Board Secretary Kevin O'Shea (2T105).

5. Since approximately 2005 until 2013, McKelvey-Gleason was president of the Association (1T92). McKelvey-Gleason, together with the Association vice-president, has represented her members interests in enforcing the terms of the collective agreement, including, not limited to, enforcing the seniority provisions as to bus run assignments and representing drivers in disciplinary proceedings (1T21-1T23).

6. McKelvey-Gleason has also alerted Sargeant or O'Shea when there were other issues of concern such as the school call-out system not functioning or insufficient gas keys allocated to drivers (only 2 keys for 30 drivers to fill up their busses with gas) (1T24, 1T38). McKelvey-Gleason mostly raised Association business to Sargeant or O'Shea during her break times between runs, not when she was on runs (J-1, article 7B; 1T27). Drivers are not paid for break time between runs (1T27).

7. According to McKelvey-Gleason, sometimes Sargeant would respond in a hostile manner when issues were raised by McKelvey-Gleason, informing her that she (Sargeant) was in charge. O'Shea has accused McKelvey-Gleason of having a problem with authority when, as Association president, she raised issues to him of concern to her members (1T25).

The April 27, 2012 Incident

8. The bus yard is a couple of miles from the school campus. There are busses parked in the yard as well as two trailers. One trailer is for the driver's use, and the other serves as the transportation coordinator's office (1T101).

Sargeant has an open-door policy for the employees she supervises and claims the drivers know she is available 24/7 (2T45). She has no set practice for discussing union business and admits that McKelvey-Gleason or other union officers would just stop by her trailer to discuss issues (2T45-2T47).

9. On April 27, 2012, around 12:00 or 12:30 p.m., McKelvey-Gleason was between runs and, therefore, on her break time, when she stopped by Sargeant's trailer to speak to her concerning payment to another driver (Billy Cooley) for a bus run (1T106-1T107). A few days before, Sargeant had driven half a run, and Cooley had completed it (1T107). McKelvey-Gleason was concerned that Sargeant had not followed the seniority rotation provisions of the collective agreement in giving Cooley the assignment (1T109).

10. On April 27, McKelvey-Gleason opened the door to Sargeant's trailer, but did not enter and stood approximately ten feet away from Sargeant in the doorway (1T107-1T108). She noted that Sargeant was sitting at her desk with a man McKelvey-Gleason did not recognize (the man was, in actuality, Sargeant's

boyfriend, Raymond Marks) as well as Sargeant's secretary Alisha. They appeared to be having lunch (1T103, 1T107). According to Sargeant and Marks, one of the drivers was also in the trailer, but evidently McKelvey-Gleason did not see him. I credit her testimony based on her limited view and never having actually entered the trailer (1T124, 2T27).

11. A conversation lasting approximately five minutes ensued (1T108). McKelvey-Gleason and Sargeant recall the specifics of the conversation differently, although they agree generally about the length of the conversation and who was present during the exchange.

12. McKelvey-Gleason states that after remarking in a conversational tone on what appeared to be a pizza party, she asked Sargeant whether another driver and Association member, Billy Cooley, had been paid for his bus run (2T166). McKelvey-Gleason recalls Sargeant responding that she didn't know what McKelvey-Gleason was talking about (1T107).

McKelvey-Gleason felt that Sargeant was being disingenuous and really knew what she was talking about, since the Cooley-run had happened a few days prior to this conversation. Nevertheless, McKelvey-Gleason explained the basis for her inquiry, namely whether Cooley was paid for the half run (1T105, 1T108). If Cooley was paid, McKelvey-Gleason intended to go to Cooley and ask him how he came to be assigned to the run in order

to determine if the seniority rotation provisions of the collective agreement had been violated (1T108). However, since Sargeant denied knowing what she was talking about, McKelvey-Gleason did not pursue the issue, and no further conversation ensued (1T105, 1T108-1T109, 1T112).

12. Describing the April 27 discussion, Sargeant testified that McKelvey-Gleason poked her head in the trailer door and asked Sargeant what she was going to do about incidents that had occurred the day before (2T15-2T16, 2T19). Specifically, the previous day, April 26, McKelvey-Gleason was out on a personal or sick day, and Sargeant had a substitute driver covering her bus run. There were also four or five other drivers out that day, including a driver who called out sick in the afternoon. That driver drove the longest route. Sargeant had to maneuver the runs to get them all covered including taking part of a run herself and using a substitute driver for a run (substitute drivers are not part of the Association) (J-1; 2T24). According to Sargeant, McKelvey-Gleason asked her why Sargeant did not break up the runs for the contracted drivers (2T24). McKelvey-Gleason appeared to Sargeant to be upset and was speaking in a loud tone, like she always does when she feels strongly about something (2T26-2T27).

13. Whether Sargeant denied knowing what McKelvey-Gleason was questioning her about, or not, is immaterial. I find that

the subject of the brief conversation as understood by both women was about filling the bus runs, including using a substitute driver, and using the contractual rotational system properly. Sargeant admits that the issue of whether a non-unit member is doing bargaining unit work is a legitimate issue for the union to raise (2T69-2T70). Article IX, Paragraph A, sets forth that only in the absence of a volunteer or in case of emergency shall any non-unit member transport students (J-1).

14. As to McKelvey-Gleason's demeanor during the brief conversation on April 27, Sargeant testified as follows:

Q. . . . tell us what Kate said and did and how she said it.

A. She - her demeanor was that she was speaking very loudly, she was upset - I would, you know, say that, you know, she was upset about the fact of what was going on. She did not like the decisions that I made as the transportation coordinator. [S]He [sic] never actually entered the room.

My secretary at the time Alisha was sitting in the seat right next to the doorway and the bus driver was sitting next to me on one of my shelf systems, against the back wall.

While all this was going on, I looked at them to see the reaction that they were getting out of it and they were basically all staring at their feet and would not even look up or acknowledge that any of this was going on.

It is something that we all are kind of used to. When Kate has something that she

feels very strongly in, she becomes very loud. [2T26-2T27]^{4/}

15. Thereafter, when McKelvey-Gleason questioned O'Shea about the Cooley-run, he told her that Sargeant could transport students anyway she wanted (1T109). The Association never filed a grievance over this issue because the collective agreement is not clear on whether or not Sargeant can drive a run (1T110). However, even though McKelvey-Gleason still felt that by assigning Cooley to the run, Sargeant might have violated the seniority provisions of the collective agreement, the grievance committee determined not to pursue the issue (1T110-1T111). The committee does not pursue every concern regarding terms and conditions of employment by filing a grievance (1T115).

4/ Raymond Marks, Sargeant's boyfriend, testified about the April 27 conversation. Marks initially described McKelvey-Gleason as yelling, and that he observed looks of horror on the faces of the others present (the secretary and a driver), but he also testified that McKelvey-Gleason only stuck her head in the door of the trailer, never entering it, and that the conversation was very brief (1T128, 1T132). He later testified that the others in the trailer regarded McKelvey-Gleason's comments "as the norm" (1T129). His testimony was inconsistent, at odds with Sargeant's testimony, and, therefore not reliable. Also, he and Sargeant have been boyfriend/girlfriend for approximately six years and live together, sharing expenses (1T123, 1T133). Marks admitted having a pecuniary interest in Sargeant remaining in her job (1T133). Based on Marks' obvious bias and my observations of both he and McKelvey-Gleason, I do not credit his testimony concerning McKelvey-Gleason's demeanor during the April 27 incident or the reaction of the others present during the exchange.

16. Sargeant immediately sent O'Shea an email after the April 27th incident (2T56).

The 2011-2012 Evaluation and O'Shea Addendum

17. The evaluations prepared by Sargeant for the bus drivers consist of three ratings in all categories: EF (effective), NI (needs improvement) and NA (not applicable). There are 20 categories entitled "General Job Performance Skills", 5 categories entitled "Interpersonal Skills" and 12 categories entitled "Personal Qualities" (CP-1, CP-2).

18. In 2011-2012, McKelvey-Gleason received EF ratings in all categories and sub-categories except one. Under "Personal Qualities", sub-category 4, the narrative states: Embraces a positive attitude toward driving profession, school district, students, parents, and staff (CP-1). McKelvey-Gleason received an "NI" rating here.

Sargeant's commentary in the evaluation states:

Kate is a good bus driver for Central, she does her pretrip inspections and is aware of any issues with the bus she drives. She is concerned for the safety of her students and enforces the bus rules. She does extra work when she is available. Kate is Association president for the drivers and has to deal with issues with the driver[s], she needs to advise them to deal with the transportation office with their issues [CP-1].

19. Sargeant testified that the "NI" rating reflected not only the April 27th incident but a pattern of behavior that she

describes as rude, nasty, intimidating and harassing and as making her look bad in front of her bosses and co-workers (2T39-2T40, 2T47-2T48). Sargeant admits, however, that McKelvey-Gleason's behavior did not interfere with her (Sargeant's) ability to manage the district bus operations as transportation coordinator (2T48).

As to incidents where Sargeant felt that McKelvey-Gleason was rude, made nasty comments or was yelling, she describes a meeting the previous year in the superintendent's office to discuss a grievance that had been filed by the Association. McKelvey-Gleason was at the meeting with Grievance Chair Paul Salonis to represent an employee (2T61-2T62). Also, Sargeant states that McKelvey-Gleason was rude to her at a negotiations session four years earlier (2T31, 2T33).

In regard to McKelvey-Gleason's yelling, Sargeant describes her yelling over the radio one day that there was no staff monitoring departing busses at the high school and someone was needed to ensure the safe departure of students and busses (2T44). McKelvey-Gleason admits that she communicated over the radio about this issue on several occasions (2T169). Sargeant and McKelvey-Gleason both understood that not only was the lack of monitoring a health and safety issue for the students but was a potential concern from the drivers who could get into an accident triggering possible discipline (2T74, 2T76-2T77, 2T172).

Finally, as another example of McKelvey-Gleason's inappropriate behavior, Sargeant testified generally that other drivers told her that McKelvey-Gleason intimidated them (2T98). I discount this testimony as double hearsay. None of the drivers testified. Additionally, Sargeant admits that there is nothing in McKelvey-Gleason's personnel file reflecting that she intimidated co-workers (2T91).

20. Although Sargeant admits that, as a general rule, it is not appropriate for her as a manager to comment in an evaluation on McKelvey-Gleason's role as union president, she did so in both McKelvey-Gleason's 2009-2010 and 2010-2011 evaluations (CP-3; 2T63).

In the 2009-2010 evaluation, after giving her the highest rating in all categories, Sargeant praised McKelvey-Gleason's performance as a bus driver and then wrote:

Kate gets along with a majority of her coworkers. Being Associate [sic] President sometimes makes that hard for her, because drivers don't always agree with her decisions. Her attitude with her boss is not always the best and she can get a little abrupt with her supervisor, most disputes are over union business. But there are times when her comments about her supervisor are out of line [CP-3 at Tab 09-10].

Then in the 2010-2011 evaluation, McKelvey-Gleason was again given the highest rating in all categories, but Sargeant wrote:

Kate has been a driver with central for 9 years, she is always willing to take extra

work and break up runs. Her paperwork is handed in on a daily basis and mechanical issues are dealt with the mechanics when the bus she is driving needs work. Her bus is clean and seatbelts are up. She is friendly with her students but uses bus rules to keep her students on the right track. Kate is association president of the drivers [CP-3 at Tab 10-11].

21. In addition to the evaluation form prepared by Sargeant, attached to McKelvey-Gleason's 2011-2012 evaluation is an addendum dated May 21, 2012 signed by O'Shea who writes as follows:

I am writing this letter as an addition to Kate's evaluation because I have observed behavior over the past 2 years that appears to be getting worse over time despite several verbal warnings. The most recent of said verbal warnings was on May 4th.

Kate is the president of the Central Regional Bus Drivers Association. As such, she has additional responsibilities to ensure that the union contract is properly enforced and to provide guidance and/or protection to her colleagues when they have issues with respect to employment. In this respect, Kate is an effective union representative when issues arise.

However, a growing concern has been that Kate is using her authority as a union leader to go beyond its scope. She has on several occasions treated her immediate supervisor Barbara Sargeant with disrespect. This behavior has gotten worse as time has gone by. Kate believes that she can say anything she wants to Barbara, including yelling at her, accusing Barbara of taking long breaks/lunches and/or general neglect of duties, accusing Barbara of violating the union contract, and in general, questioning

Barbara's decision making on a weekly basis - even on the most mundane of issues. I have observed Kate make all of these accusations at one time or another in the last 2 years at various meetings.

In response, I have repeatedly asked Kate going back to the 2010-2011 school year if she has union concerns, and she is not getting satisfactory answers from Barbara, to please schedule a liaison meeting with me of the Superintendent. Kate has generally not followed this directive, and continues to usurp Barbara's authority. This is in violation of the grievance procedure that is in the CRBDA agreement with the district.

Barbara Sargeant is the Supervisor of Transportation, which includes oversight of Kate's position. Barbara does not have to gain Kate's permission to make decisions regarding how buses are managed and how the students are transported each day. Kate's authority as the union leader is very limited with respect to how Barbara manages the department.

I have spoken to Kate on more than one occasion, the last being May 4th, whereby I have stated that Kate does not have to like Barbara, but she must respect her and her authority. As such, this behavior is totally unacceptable and cannot be overlooked any further. Nowhere in employment, neither public or private, can an employee be allowed to treat their immediate supervisor in such a way.

I expect Kate to finish this year strong and return next school year with a different attitude and respect for her boss. She should consider this a major issue with her employment status with the District going forward. Failure to heed this recommendation could result in discipline, reprimand, suspension, or termination in the future [CP-1].

22. O'Shea wrote the addendum because of the April 27 incident in Sargeant's trailer which, he describes, as "the last straw" (2T154). When Sargeant contacted him after the incident very upset, she told him that when McKelvey-Gleason interrupted her lunch, she (Sargeant) was embarrassed in front of her boyfriend and her colleagues and went home crying after McKelvey-Gleason yelled at her (2T129, 2T152). O'Shea felt that McKelvey-Gleason should not have confronted Sargeant at lunch and in front of her guests. He also concluded that since the April 27 incident involved the issue of substitute drivers who are not part of the Association's bargaining unit, that McKelvey-Gleason's actions that day did not involve union-related matters (2T130).

Sargeant wanted to discipline McKelvey-Gleason as a result of the April 27 incident, but O'Shea and the Superintendent refused to issue a discipline. O'Shea wrote the addendum instead (2T153). However, despite the critical comments and "NI" rating in the 2011-2012 evaluation, there was no corrective action plan instituted as a result of this evaluation (1T39).

23. O'Shea's office is a couple of miles from the transportation yard where the driver and Sargeant's trailers are located (2T141). Accordingly, he was not privy to any conversations that occurred on a day-to-day basis between the drivers and Sargeant or between McKelvey-Gleason and Sargeant

(2T141). He never personally observed McKelvey-Gleason being disrespectful or bullying other drivers (2T139).

O'Shea admits that the areas of disagreement between Sargeant and McKelvey-Gleason for the most part arose out of McKelvey-Gleason's role as Association president and concerned terms and conditions of employment (2T142-2T143). Indeed, O'Shea's contact with McKelvey-Gleason was during meetings, eighty percent of which were union-related meetings and the other twenty percent were at regular monthly bus driver meetings (2T150). O'Shea testified that the way McKelvey-Gleason comported herself in these union-related meetings and the disrespect he felt she showed Sargeant at these meetings - e.g. calling Sargeant a liar - were a substantial motivating factor for writing the addendum to CP-1 (2T150-2T151).

Elaborating on this point, on direct examination, O'Shea testified:

Q. You were aware at the time CP-1 was drafted that Ms. Gleason was the union president?

A. Yes

Q. Did that fact cause you to emphasize the negative aspect of her behavior?

A. Yeah, I mean if anything I wanted to ensure that I wrote the addendum in a way that clearly delineated her role as the union leader versus her behavior and her respect towards her supervisor. And I - I recognize there's a fine line with that and that's way [sic] we're here, essentially.

But I was certainly cognizant that she was the union leader, yes.

Q. If she had not been the union president at that time, would she have still received that evaluation? Assuming her actions were the same, but if you took off the -

A. Well, I think - I think had she not been the union leader what most likely would have occurred is on certain incidents like April 27th, 2012, and other incidents that occurred prior, that we simply verbally communicated with Kate about addressing - I think we would have probably disciplined because a driver in and of themselves would have not -

Q. You would consider that insubordination?

A. (Continuing) you know, it would have been considered an insubordination yeah [2T137-2T138].

Then on cross examination, O'Shea testified:

Q. . . .Well sir, isn't it the case that if she hadn't been the union president this 80 percent of the meetings that related to union concerns where you felt she was disrespectful would not have occurred?

A. Difficult to answer, but I suppose, yes [2T156].

24. Other than the April 27 incident, McKelvey-Gleason has never been verbally counseled, written up, suspended or disciplined in anyway (CP-3; 1T30).^{5/} She has never been told

5/ O'Shea's addendum to the 2011-2012 evaluation generally (continued...)

that she did not have a positive attitude towards students, parents or staff as described in the narrative of the category for which she received an "NI" (1T31). In McKelvey-Gleason's opinion, the 2011-2012 evaluation was based solely on her performance as Association president (1T31).

As to the specifics of O'Shea's addendum comments, McKelvey-Gleason admits that she does not direct her membership to go directly to the Superintendent or Board on every issue, because some things are frivolous and she needs to weed them out (1T33). If a formal grievance needs to be filed, she takes it through the grievance steps, but handles some matters informally. She might even go directly to members of the Board who are her friends, although Sargeant told her not to do so (1T35).

Nevertheless, Sargeant has criticized her for having drivers go to her [McKelvey-Gleason] first to raise issues of concern and not go directly to Sargeant (2T92). Indeed, Sargeant asked the drivers not to go through McKelvey-Gleason, but to come to her (Sargeant) (2T94). Sargeant explained: "[I]f it [the issue] has nothing to do with me doing anything wrong or violating the union contract, sure. You should come to me. I'm the boss of the

5/ (...continued)
references that he spoke to McKelvey-Gleason on more than one occasion, informing her that she must respect Sargeant's authority even if she did not like her (CP-1). This could be characterized as verbal counseling, although there is nothing in McKelvey-Gleason's personnel file reflecting that she was given any counseling (CP-3).

department (2T93)." For instance, Sargeant testified that if there was a faulty bus, procedures require that it be reported to her first, but admits that McKelvey-Gleason was never cited for by-passing safety regulations and procedures (2T99, 2T101-2T102).

McKelvey-Gleason admits yelling at Sargeant about union issues (1T37). For instance, she admits that on one occasion she accused Sargeant of taking long lunch breaks. A driver was going to the hospital, and there was no one in the office to answer the phone so that the driver could call out to deal with her emergency. McKelvey-Gleason raised this issue with Sargeant not because she was concerned with her long lunch break, but because she was concerned with the inability of her drivers to communicate in the event of an emergency (1T37). However, McKelvey-Gleason denies accusing Sargeant of a general neglect of duty, and only admits telling her that there needs to be coverage to answer the radio in the event of problems drivers encounter on the road (1T38).

McKelvey-Gleason also admits accusing Sargeant of violating the union contract many times and telling her to read the contract (1T39).

25. McKelvey-Gleason never filed a response to the 2011-2012 evaluation and addendum (CP-1), because she was fearful of losing her job (1T90). She spoke to her NJEA representative

and to her lawyer (1T90). The unfair practice charge was then filed (C-1).

26. After receiving the 2011-2012 evaluation (CP-1), McKelvey-Gleason finished out her two-year term which ended in May 2013 (1T72). But for the remainder of her term -- the 2012-2013 school year, she remained quiet in regards to raising and pursuing Association issues, letting the grievance committee (Carrie Stein and Paul Salonis) pursue grievances (1T74, 1T80).

Sargeant confirms that McKelvey-Gleason only filed one grievance with McKelvey-Gleason's signature in 2011 and none in 2012 or 2013 signed by her, although McKelvey-Gleason was involved in November 2012 in negotiating a post-Sandy side-bar agreement with the district to extend bus services to Seaside Heights (2T48-2T49, 2T53-2T54). O'Shea confirmed that there was one Association grievance filed in 2013 regarding outsourcing of a route, but he is not sure who filed it. There was also a grievance regarding health benefits, but the record is unclear as to who filed it (1T133, 2T155-2T156). I credit McKelvey-Gleason that after receiving the 2011-2012 evaluation, she cut back on her overt activities on behalf of the Association.

In 2013, according to McKelvey-Gleason, she chose not to run for Association president again, because of the 2011-2012 evaluation, that criticized her activities as Association President and threatened her continued employment as a bus

driver. Specifically, McKelvey-Gleason reached this conclusion from O'Shea's addendum comments, that if she did not heed his recommendation to address "a growing concern. . . that Kate is using her authority as a union leader to go beyond its scope" by treating "her immediate supervisor Barbara Sargeant with disrespect", she would be subject to discipline, such as a "reprimand, suspension or termination in the future." (CP-1, O'Shea addendum to evaluation; 1T20, 1T72).

Although no longer an Association officer, McKelvey-Gleason is presently the chair of the negotiations committee, because that position pre-dated the end of her presidency, and once you are on the negotiations team you stay there until negotiations are completed for a successor agreement (2T168).

AESOP Incident May 2013

27. In May 2013, after McKelvey-Gleason stepped down as Association president but had not yet handed over the reins to the new president and was finishing her term, there was an incident which triggered a written reprimand (2T97, 2T164).

28. AESOP is the district's computerized call-out system used by drivers (1T12, 2T34). Drivers can call out for a sick day from 10:00 p.m. until 5:00 a.m.. Other times, Sargeant or someone is available by phone, but no message can be left on an answering machine during that time (2T37).

29. On Thursday, May 16, 2013, McKelvey-Gleason's husband was admitted to the hospital during the night, and when she tried to notify the district through AESOP, the computers were down. McKelvey-Gleason left a voice mail (2T34-2T35). The next day when McKelvey-Gleason was out because of her husband's hospitalization, Sargeant issued a verbal or written warning^{6/} to McKelvey-Gleason for leaving a voice mail message and not speaking to someone personally (2T36). That warning went into the Department of Transportation (DOT) file kept by Sargeant in her office (2T78).

30. When McKelvey-Gleason returned to work on Monday, May 20, 2013, she saw Sargeant arriving at work and yelled at her across the bus yard suggesting that Sargeant fix the AESOP system because she (McKelvey-Gleason) had spent two hours on three different computers trying to get into the system to alert Sargeant that she would not be in on May 17 (2T35, 2T40). Sargeant states that another driver was walking out of the driver's trailer when McKelvey-Gleason was yelling and turned around and went back into the trailer (2T35).^{7/}

^{6/} It is not clear from the testimony because Sargeant describes the discipline as a verbal warning in the form of a letter (2T36).

^{7/} I draw no inference from Sargeant's testimony describing the reaction of the bus driver. Whether the driver was negatively effected by the "yelling" or was just returning to the trailer to retrieve something he forgot is unclear.
(continued...)

31. When McKelvey-Gleason met with Sargeant and O'Shea to discuss her reprimand, she explained that the system was down and her husband was in the hospital all night. She was with him and could not use a landline or her cell phone in the hospital or(2T127). McKelvey-Gleason states that she discussed her own problem with the AESOP system and also three other drivers who called out that day (2T161). Basically, McKelvey-Gleason wanted to know what Sargeant was going to do about fixing the AESOP system which occasionally shuts down (2T161).

2012-2013 Evaluation

32. At the end of the 2012-2013 school year, McKelvey-Gleason received her annual evaluation (CP-2). This time there was no addendum attached, but once again, she was rated effective in all categories but sub-category 4 under "Personal Qualities", namely "[e]mbraces a positive attitude toward driving profession, school district, students, parents, and staff." [CP-2] There, she again received an "NI" rating.

33. Sargeant wrote in CP-2:

Kate has been with Central for a number of years as a bus driver, she does her pre-trips on the vehicle assigned. Her paperwork is handed in on a daily basis. She works well with her students on the bus and take [sic] care of any discipline problems on a one to one basis. As per idling policy, she needs to make sure bus is turned off at school

7/ (...continued)
The driver did not testify.

pickup/dropoff. Kate is concerned about her students safety and helps out with extra runs when they fit into her [commentary ends here]

34. O'Shea collaborated with Sargeant in writing this evaluation but did not add an addendum as he had in 2011-2012, because he felt McKelvey-Gleason had improved (2T135).

ANALYSIS

Charging Party alleges Transportation Coordinator Barbara Sargeant and Business Administrator/Board Secretary Kevin O'Shea retaliated against Bus Driver Kathleen McKelvey-Gleason by issuing two evaluations, one in 2011-2012 with an addendum by O'Shea and another in 2012-2013, both critical of her activities as Association President and threatening discipline for those activities. These actions, it contends, violated 5.4a(3) and, independently and derivatively 5.4a(1). I agree.

N.J.S.A. 34:13A-5.3 guarantees to all public employees the right to engage in union activities, including the right to form or join a union, negotiate collectively and make their concerns known to their employer. It further provides that a majority representative of public employees shall be entitled to act for and represent the interest of public employees.

Section 5.4a(3) prohibits an employer from retaliating against an employee or majority representative for exercising these rights. Under Bridgewater Tp., 95 N.J. 235 (1984), no violation will be found, however, unless the charging party has

proved by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected the conduct. Id. at 242.

Here, McKelvey-Gleason was unquestionably engaged in protective activities, generally, as Association president in negotiations, raising issues concerning working conditions and in negotiations. She was also engaged in protected activity, specifically, on April 27, 2011 when she approached Sargeant about a bus run. The employer was aware of these activities.

Additionally, since the employer did not proffer any reason for its adverse personnel action (the negative evaluations) other than McKelvey-Gleason's behavior as Association president, direct evidence of hostility is unnecessary; hostility to protected activity can be inferred. For example, Sargeant believed that McKelvey-Gleason's rude and inappropriate behavior toward her during a grievance meeting in the superintendent's office the previous year and during negotiations sessions four years earlier demonstrate her rude and inappropriate behavior toward her as McKelvey-Gleason's supervisor. This behavior was relied on by Sargeant to support the negative rating in the two evaluations at issue in this hearing.

Also, Business Administrator Kevin O'Shea admits that the April 27 exchange was the "last straw" and triggered his negative comments in McKelvey-Gleason's 2011-2012 evaluation criticizing her conduct toward Sargeant. O'Shea admits that his addendum to the 2011-2012 evaluation was substantially motivated by the way McKelvey-Gleason comported herself generally in union-related meetings, not to her conduct as an employee bus driver which he never observed. These examples are unquestionably unrelated to McKelvey-Gleason's performance as a bus driver and are directly related to her performance as Association president, activities protected by the Act.

Respondent argues, nevertheless, that it was McKelvey-Gleason's disrespectful behavior toward her supervisor, not her activities as union president, that prompted Sargeant's "needs improvement" evaluative rating and O'Shea's addendum threatening to discipline McKelvey-Gleason if her conduct continued. Respondent is correct that the right of majority representatives to speak on behalf of employees is not unfettered; some conduct or speech can lose its statutory protection. However, the evidence in this record overwhelming demonstrates that the behavior O'Shea and Sargeant found objectionable occurred within the context of McKelvey-Gleason's representation of her members, both formally in labor-management meetings and informally in pursuing concerns about working conditions. In neither setting, does the evidence in this record support that McKelvey-Gleason's conduct or speech rose to the level of insubordination that lost its statutory protection.

In Black Horse Pike Regional Board of Education, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission defined what is protected speech and conduct under our Act. There, the Commission determined that the employer 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 explained:

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 continued:

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.

See also, Middletown Tp. Board of Education, P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), aff'd 23 NJPER 53 (¶28036 App. Div. 1996), certif. den. 149 N.J. 35 (1997) (employer violated Act when it disciplined a teacher who called the superintendent a "lying scuzzball" at a public board meeting)

In City of Asbury Park, P.E.R.C. No. 80-24, 5 NJPER 389 (¶10199 1979), the Commission determined that an employee may not be disciplined for engaging in protected activity, namely a shouting match between union president and city manager about

employee complaints, but the union representative may not utilize his/her union position to undermine the employer's supervisory or managerial authority.

More recently, in companion cases, the Commission located the line between what is protected conduct of an employee serving as a union representative and what is conduct amounting to insubordination, thus, not protected. In State of New Jersey, Dept. of Treasury (Glover), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001), the Commission noted that consideration must be given to whether the employee is acting in the role of a shop steward or union representative, as well as the time and place of the speech. The latter includes whether the speech or conduct is on work time and on the shop floor or a closed-door meeting, whether other employees are present, whether the actions were threatening, and whether the employee's actions were provoked by the employer's actions.

In Glover, the Commission found that the employee/shop steward's actions and remarks, made during work time and on the work floor in front of several co-workers, went beyond protected speech when he interfered with the supervisor's attempts to interview another employee, and his actions were threatening to the supervisor. This conduct was antithetical to maintaining discipline, order and respect in the work place.

Similarly, in State of New Jersey, Dept. of Human Services (Garlinger), P.E.R.C. No. 2001-52, 27 NJPER 177 (¶32057 2001), the Commission also determined that an employee/shop steward's comments to a supervisor went beyond protected speech when he followed the supervisor down the hall during work hours and in front of co-workers and clients, shouting at her and threatening her. This conduct, the Commission determined, lost its statutory protection and constituted insubordination and misconduct.

Unlike Glover and Garlinger, none of the examples cited by Sargeant and O'Shea regarding McKelvey-Gleason's behavior lost the statutory protection of the Act or rose to the level of insubordination warranting discipline or the threat of discipline. The April 27 incident which O'Shea considered the "last straw" because it left Sargeant in tears, occurred during Sargeant's lunch hour when McKelvey-Gleason was between bus runs and not, therefore, on work time. The concern raised by McKelvey-Gleason was definitely union-related, namely the use of substitute drivers and the rotational assignment of bus runs. Although McKelvey-Gleason's voice may have been raised, Sargeant did not find this out of the norm for her, especially when McKelvey-Gleason is concerned about a union-related matter. The only witnesses to the conversation were Sargeant's boyfriend, her assistant and, possibly, one bus driver who were sharing a pizza lunch in Sargeant's private trailer. I did not find that any of

these individuals, with the exception of Sargeant's boyfriend whose testimony I did not credit, was unduly upset or concerned with what was an exchange of a few minutes. There was no disruption to the work place nor did McKelvey-Gleason challenge Sargeant's supervisory authority.

Sargeant was upset by the April 27 encounter that interrupted her lunch, but her emotional response seemed an overreaction to the brief, non-threatening encounter, particularly since Sargeant herself testified that she has an "open-door policy" for the bus drivers and McKelvey-Gleason's behavior was within the norm for her. Recently, in Borough of Carteret, H.E. No.2014-12 _____ NJPER _____, (¶ 2014), I found that the Borough violated the Act when it disciplined a police officer/union representative for calling the Mayor a "liar" and telling him to "shut up" at a council meeting. There, I wrote:

. . . labor relations is sometimes a contentious and emotional business that prompts feelings to run deep. It can hardly be expected that advocates will always be respectful or even civil to one another. Reasonable latitude must be accorded to labor and management advocates to express their opinions, including criticism of one another or impulsive behavior. Id. at ____.

McKelvey-Gleason should not be held to a higher standard because of the sensitivities of her supervisor.

Respondent also cites the AESOP incident to demonstrate what it considered to be McKelvey-Gleason's pattern of unacceptable

behavior. In May 2013, McKelvey-Gleason's husband had been admitted to the hospital in the middle of the night, but when she tried to notify Sargeant that she would be out the next day, the AESOP computerized callout system was not functioning, so she left a voice mail. Sargeant disciplined her for leaving a voice mail and not speaking to someone personally, which was proper protocol.

Upon returning to work a couple of days later, McKelvey-Gleason saw Sargeant across the bus yard and yelled for her to fix the AESOP system, because the night her husband was hospitalized, she spent two hours on three different computers trying to alert Sargeant to the situation. This incident clearly involved a union-related as well as personal matter. The yelling was arguably provoked by frustration over her husband's hospitalization and the failure of the computerized system. According to Sargeant, while McKelvey-Gleason was yelling, she observed one other driver in the bus yard who turned and went back into the bus driver's trailer upon hearing the yelling. I drew no inferences between McKelvey-Gleason's yelling and the reason that the driver returned to the bus trailer.

This incident does not support a conclusion that anything McKelvey-Gleason did lost statutory protection of the Act. It took place in the bus yard, but there was only one bus driver present. There was no threat issued. Whether McKelvey-Gleason's

alleged failure to follow protocol in calling out warranted discipline is not material here. More to the point, the incident occurred well after the 2011-2012 evaluation and was clearly not a part of the pattern of behavior relied on by O'Shea and Sargeant in that evaluation.

It is also unclear from the record whether the AESOP incident occurred before or after the 2012-2013 evaluation was issued, since that evaluation (CP-2) is undated. In any event, O'Shea testified that in his opinion McKelvey-Gleason's behavior improved in 2012-2013, so it is illogical that the AESOP incident supports Respondent's argument that McKelvey-Gleason's pattern of behavior justified the criticism leveled at her in either evaluation and, in particular, the "NI" rating for 2012-2013.

Additionally, by May 2013, McKelvey-Gleason was finishing her two-year term as president and had determined not to seek another term, a decision she made after receiving the 2011-2012 evaluation threatening to discipline her for her activities as Association president. Her decision to "lay low" in regard to her union activities probably prompted O'Shea's observation that her behavior had improved in 2012-2013.

The other example cited by Respondent to support its theory that McKelvey-Gleason was insubordinate to warrant the negative evaluations was her yelling over the radio. McKelvey-Gleason admitted to yelling over the bus radio regarding union-related

issues. For instance, McKelvey-Gleason admits yelling over the radio when there were no monitors at the high school during dismissal. She was concerned about student safety and the possibility of bus drivers getting into an accident for which they could be disciplined, both legitimate concerns to be raised by a majority representative. In another instance, McKelvey-Gleason recalled yelling over the radio when a driver had to go to the hospital, and there was no one in the office to answer the telephone to call out for the emergency. McKelvey-Gleason told Sargeant that there needed to be coverage to answer the radio in the event of emergencies.

Arguably, both cited examples of yelling over the radio were justified by emergent circumstances. It is also unclear who was privy to the radio communication - e.g. was this a communication solely between McKelvey-Gleason and Sargeant or was it generally broadcast? In any event, communicating such important information to management in a timely manner, whether in a loud or normal tone of voice, seems harmless, if not irrelevant.

Respondent also contends that McKelvey-Gleason has been criticized in the past by Sargeant, for telling the bus drivers to come to her first to raise issues of concern whether or not addressed in the collective agreement, not to go directly to Sargeant. This directive, Respondent asserts, violates the

parties' grievance procedure and is as part of McKelvey-Gleason's objectionable pattern of behavior. I disagree.

A union representative may raise issues not only covered by the collective agreement but, also, generally about working conditions impacting unit members. See generally, No. Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451, 454 (¶4205 1978) (Commission found that complaints, arguments, objections or other similar activities relating to enforcing a collective negotiations agreement or existing working conditions of employees, constitute protected activities under the Act).

Also, not all issues of concern need be addressed by the filing of a formal grievance or in closed door management/labor meetings. It promotes the purposes of the Act to encourage majority representatives and employers to resolve their differences informally, if possible. Such a sentiment is codified in the parties' collective agreement.

Next, there is no evidence on the record that any driver was prevented from raising any concerns directly to Sargeant. The fact that McKelvey-Gleason, as Association president, requested the bus drivers to act through the Association reinforces the exclusivity principle, a right protected by the Act. N.J.S.A. 34:13A-5.3. Therefore, none of McKelvey-Gleason's instructions to her membership to act through her loses the protection of the Act. Nor is it insubordinate, as suggested by Respondent, for

McKelvey-Gleason to ignore the Board's offer to schedule a liaison meeting with O'Shea to discuss union issues, or to raise her concerns between bus runs, in the bus yard or even at times over the radio.^{8/} Respondent's assertions that this conduct or any of the conduct complained of disrupted the work place, generally, or the operations of the transportation department, specifically, is contradicted by Sargeant herself who testified that McKelvey-Gleason's behavior did not interfere with her ability to manage the district as transportation coordinator.

Finally, Respondent disputes McKelvey-Gleason's assertion that the evaluations curtailed her ability to negotiate or press union-related matters. However, the record supports that McKelvey-Gleason substantially curtailed these activities after receiving the 2011-2012 evaluation with O'Shea's addendum threatening to discipline her for this conduct. She filed only one grievance in 2011 and none in 2012 or 2013. Although she remained involved in negotiating a post-Sandy side-bar agreement to extend bus service to a neighboring community and remained on the negotiating committee for the successor collective agreement, these activities do not support Respondent's argument that McKelvey-Gleason was never prevented from exercising her rights as Association president by the threat of discipline. Nor does

^{8/} Radio transmissions may not always permissible. However, under the emergent circumstances of the facts in this record, the transmissions were not insubordinate conduct.

it dispute McKelvey-Gleason's claim that she took a back seat on many of her previous endeavors on behalf of the Association, because of the employer's actions. I credited McKelvey-Gleason's testimony in this regard.

Respondent further argues that there is no objective evidence that McKelvey-Gleason decided not to run for another term as president because of the threatened discipline in the evaluation. No action, it contends, was taken to discipline her. The record demonstrates, however, that McKelvey-Gleason had an exemplary record as a bus driver. Neither Sargeant nor O'Shea raised any concerns about her conduct as an employee. Rather, they used her employee evaluation to criticize her activities as union representative. Specifically, O'Shea warned in the addendum to the 2011-2012 evaluation that if McKelvey-Gleason did not heed his recommendation to address concerns about her using her authority as Association president to treat her supervisor with disrespect, she would be subject to discipline up to and including termination. The threat of possible termination for continuing to act as Association president in vigorously representing her membership supports McKelvey-Gleason's testimony, that this threat prompted her to decision not to continue as Association president. No other "objective" evidence is necessary.

Based on the foregoing, I find that Respondent violated 5.4a(3) and derivatively (1) of the Act.

Charging Party also contends that Respondent's actions independently violated 5.4a(1). An employer independently violates a(1) if its actions tend to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to establish a violation under this section. 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).

Here, the business justification for the threatened discipline and negative evaluations related solely to the exercise of protected activity as Association president. McKelvey-Gleason was an exemplary employee as evidenced by the commentary of Sargeant to the 2011-2012 evaluation. Charging Party accurately cites several Commission cases (cites omitted) holding that an employer must leave an employee's job status out of a dispute over union matters that have nothing to do with the employee's job performance.

Having determined that McKelvey-Gleason's conduct remained protected, I find also that the Employer independently violated 5.4a(1) by issuing the negative 2011-2012 and 2012-2013

evaluations and threatening to discipline her for the exercise of protected activity as Association president.

CONCLUSIONS

I recommend that the Commission find that the Central Regional Board of Education violated 5.4a(3) and, derivatively and independently, 5.4a(1), when Transportation Coordinator Barbara Sargeant and Business Administrator Kevin O'Shea issued evaluations in 2011-2012 and 2012-2013 to Bus Driver/Association President Kathleen McKelvey-Gleason giving her ratings of "NI" in one category, and criticizing her and threatening discipline for her union activities.

RECOMMENDATIONS

I recommend that the Commission **ORDER**:

A. That the Central Regional Board of Education cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by issuing to Association President McKelvey-Gleason evaluations in 2011-2012 and 2012-2013 critical of her conduct as Association president and threatening discipline for her activities on behalf of the Association.

2. Discriminating in regard to the hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed

to them by this Act, particularly by issuing to Association President McKelvey-Gleason evaluations in 2011-2012 and 2012-2013 critical of her conduct as Association president and threatening discipline for her activities on behalf of the Association.

B. That the Board take the following affirmative action:

1. Immediately rescind the addendum to the 2011-2012 evaluation prepared by Business Administrator Kevin O'Shea, change the "NI" rating in that evaluation under "Personal Qualities", number 4, to "EF" and redact from Transportation Coordinator Barbara Sargeant's commentary any reference to McKelvey-Gleason's status as Association President.

2. Immediately change the "NI" rating in McKelvey-Gleason's 2012-2013 evaluation under "Personal Qualities", number 4, to "EF".

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Within twenty (20) days of receipt of this decision, the Board notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

/s/ Wendy L. Young
Wendy L. Young
Hearing Examiner

DATED: May 30, 2014
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 June 10, 2014.



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 NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by issuing to Association President McKelvey-Gleason evaluations in 2011-2012 and 2012-2013 critical of her conduct as Association president and threatening discipline for her activities on behalf of the Association.

WE WILL NOT discriminate in regard to the hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, particularly by issuing to Association President McKelvey-Gleason evaluations in 2011-2012 and 2012-2013 critical of her conduct as Association president and threatening discipline for her activities on behalf of the Association.

WE WILL immediately rescind the addendum to the 2011-2012 evaluation prepared by Business Administrator Kevin O'Shea, change the "NI" rating in that evaluation under "Personal Qualities", number 4, to "EF" and redact from Transportation Coordinator Barbara Sargeant's commentary any reference to McKelvey-Gleason's status as Association President.

WE WILL immediately change the "NI" rating in McKelvey-Gleason's 2012-2013 evaluation under "Personal Qualities", number 4, to "EF".

Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

Within twenty (20) days of receipt of this decision, the Board notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

Docket No. CO-2012-345

Central Regional Board of Education
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372