

H.E. NO. 2015-3

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

In the Matter of

COUNTY OF SOMERSET,

Respondent,

-and-

Docket No. CO-2013-173

SOMERSET COUNTY DRIVERS AND
AIDES ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

For the Charging Party
Oxfeld Cohen, LLC, attorneys
(Sanford R. Oxfeld, of counsel)

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

On December 28, 2012, Somerset County Drivers and Aides Association (Association) filed an unfair practice charge against Somerset County (County). The charge alleges that on or about December 21, 2012, the County suspended Association President Robert Peterson for three days in retaliation for his advocacy on behalf of the Association. The County's action allegedly

violates 5.4a(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

On March 22, 2013, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 27, the County filed an Answer, admitting some facts and denying others. It denies violating the Act. On July 30, 2013 and April 14, 2014, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by July 9, 2014. A reply was filed on July 21, 2014.

Upon the record, I make the following:

FINDINGS OF FACT

1. The Association is the majority representative of a collective negotiations unit of more than 100 County employees in the nonsupervisory titles, mini-bus driver, motor coach operator, in-home service worker, transportation aide, home-delivered meal driver, dispatcher, administrative assistant and transportation assistant (1T81, 2T12);^{2/} Somerset Cty., D.R. No. 2014-14, 41

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. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

2/ "T" represents the transcript, preceded by a "1" or "2" signifying the first or second day of hearing, followed by the page number(s); "C" represents Commission exhibits; "CP" (continued...)

NJPER ____ (¶ ____ 2014), aff'd. P.E.R.C. No. 2014-88, 41 NJPER ____ (¶ ____ 2014).

Robert Peterson is Association President and chief negotiator. He also processes all grievances on behalf of the Association (1T30). He has been employed by the County since 2005, first as a motor coach driver and more recently as mini-bus driver (1T26). Before December, 2012, Peterson was never disciplined by the County (1T45). Jack Edmonds is Association Vice-President and has been employed by the County as a mini-bus driver for about six years (1T107).

2. Yvonne Manfra has been employed as County Transportation Director since 1992. She oversees the transportation division and has authority to hire and fire its employees (2T12, 2T13). She reports to the County Director of Public Works (2T13). Manfra's office is located at the rear of a vehicle maintenance facility; one side of the building is devoted to such maintenance, the other houses administrative offices (including Manfra's), a punch-in and punch-out time clock, bulletin board and a drivers' break room (2T13). Leona Carrube is employed as County para-transit manager and is Peterson's immediate supervisor (2T19, 2T24, 1T33).

2/ (...continued)
represents Charging Party exhibits; "R" represents Respondent exhibits; and "J" represents joint exhibits.

3. The administrative offices at the maintenance facility abut an "administrative" parking lot that normally accommodates about 20 cars, half of which are reserved for the division's ten administrative employees, including Manfra (J-2; 1T81, 2T15, 2T23). Windows in the administrative offices face the adjacent parking lot (J-2; 2T18). Looking through a window from the interior of one or more offices permits one to see two trailers across the parking lot, one used for administrative staff and the other used by a division of traffic safety (2T13). A set of double-glass doors permits ingress to and egress from the administrative offices and administrative parking lot (2T29).

The great majority of unit employees - the drivers - routinely park in an "upper lot," some distance away from the administrative lot and near the overnight parking area of County buses, cars and home-delivery meal trucks (2T14, 2T15). Some drivers park their own vehicles in a "Roadway" lot, also a distance from the administrative offices (2T14, 2T27).

4. In or around April, 2012, the County informed the Association of a forthcoming installation of solar panels that would disrupt parking in the administrative lot. Specifically, Manfra, Peterson and Edmonds were informed of the plan (2T36). The installation did not actually begin until September or October, 2012 (2T35-36).

5. On Thursday, December 6, 2012, Manfra arrived at her office at about 8:30 a.m. Parking her car in a reserved space in the administrative parking lot, she immediately observed open trenches (about 100' long and 3' to 4' deep) in the macadam, no fencing around the trenches and no posted notices warning of the danger. Heavy equipment and materials were also in the immediate area, including a backhoe, front-end loader, two dump trucks, gravel and a mound of dirt (2T15). The solar panel construction project appeared not to have an on-site manager (2T23).

Peterson also reported to work that day, around 8:30 a.m. (2T81). He did not park his own vehicle in the administrative lot for the day (2T39-40). He may have parked there briefly in order to walk into the building, punch-in his time card and collect his driver's manifest and keys before proceeding to park in the upper lot near his assigned mini-bus. He then commenced his shift (1T37, 1T78).

Manfra promptly directed transportation trainer (non-unit employee) John Adair and para-transit manager Leona Carrube to draft notices to be posted at the building advising employees that parking near the building is restricted to administrative staff only. Her reasoning was that administrative employees could promptly move their vehicles from the administrative lot during their shifts if excavating equipment or construction vehicles impinged on those parking spaces. Unit employee drivers

and aides "on the road" would be unavailable to respond quickly (2T34-36). Manfra asked them to post the notice ". . . on as many facilities as they could" (2T24).

The "notice," set forth on 8.5 x 11" County "Division of Transportation" letterhead is printed in red and black ink, the former color emboldening the large capital lettering of the word, "NOTICE." The document provides: "To all transportation employees; starting Thursday December 6th 2012; And until further notice; All employee (driver and aides) owned vehicles and county vehicles must be parked in upper lot or next door in the old Roadway lot, because of current construction . . . There will be no exceptions!!!!; If you have any questions please see a supervisor" (J-1).

Copies of the notice were posted at or around 9 a.m. that morning on both sides of the one of two glass doors providing access to the administrative offices from the parking lot (one door apparently remained locked); near the time-clock at which unit employees punch-in and punch-out; on the bulletin board near the time clock (with other notices) that drivers would walk past on the way to their break room; on the doors to the men's and women's bathrooms; on the double windows by the dispatch desk; and on a back door used frequently by drivers (2T25, 2T32-33, 2T82).

Manfra testified that on December 6, paratransit manager Carrube spoke with driver and unit employee Debbie Kromenacher, who did not comply with the posted notice (2T37, 2T38, 2T39, 2T79). At an unspecified time on December 6, Kromenacher, a handicapped driver, parked her vehicle (bearing a handicapped placard) in a parking space in the administrative lot. Also at an unspecified time, Carrube spoke loudly to Kromenacher from her windowed office, shouting: "You can't park there!" (1T123). I infer that Kromenacher was standing near her vehicle in the administrative lot when Carrube spoke out or yelled to her from her office. Kromenacher asked Edmonds to accompany her to Carrube's office to discuss the matter (1T123).

Edmonds testified that his representation of Kromenacher before Carrube and Manfra could have occurred on December 6, 2012 or on December 7, "earlier in the day . . ." than 4:30 p.m. (1T146). Manfra was unequivocal that her intervention in the Kromenacher matter was in the afternoon on December 6th (2T36-38, 2T47, 2T79-80). Considering Edmonds' equivocal answer and Manfra's certainty, I find that Edmonds represented Kromenacher in the afternoon on December 6th. The facts do not show when Kromenacher parked her vehicle in the administrative lot on December 6th. I infer that she parked there before the notice was posted and that Carrube saw Kromenacher near her vehicle at the end of the unit employee's shift that afternoon.

Edmonds and Kromenacher walked to Carrube's office. He credibly testified about what happened there:

And the conversation got heated with Leona [Carrube] and myself about the parking. I mean Debbie is handicapped. Everyone knows that Debbie [is] handicapped; she has the placard. And at that point Yvonne [Manfra] heard us and called us in the office to straighten it out. [1T123]

Carrube's office is about 15 feet from Manfra's office, separated by one office (2T37). Manfra was working in her office when Carrube's and Edmonds' "heated conversation" occurred. Manfra heard, ". . . yelling going on" (2T38). She called them to her better sound-proofed office in the event that ". . . it needed to stay loud" (2T38). Specifically, Manfra heard that Edmonds was ". . . quite adamant that Debbie did not need to comply with parking in the upper lot; that she had difficulty walking and that it was not appropriate for her to have to park up there" (2T38). When Edmonds and Carrube arrived in Manfra's office, Manfra "straightened out" the matter by advising Kromenacher that she cannot park in the administrative parking lot (1T123; 2T38). The record does not reveal if Manfra articulated any reason for her decision. No facts suggest that the notice (J-1) was referenced in the dispute.

At an unspecified time on December 6th, Peterson, Edmonds and unit employee Jermaine Gaye were observed speaking together outside the office, not far from the glass-doored entrance (2T43-

44). Manfra saw Peterson "come in" on the afternoon of December 7th to speak with other Association members (2T46). No other details about her viewing were revealed. In the context in which the question was asked and answered, I find that Manfra was likely referring to Peterson's 4:30 p.m. appearance at her office that day with Edmonds. I find it also possible (though less likely) in the context of that questioning that she was referring to her December 6th citing of Peterson. In the absence of any corroborating evidence, I do not find that on December 7th, Peterson returned to the administrative office area before the end of his work shift.

On an unspecified date, unit employee and driver Walter Mays was given permission to park his vehicle in the administrative lot because it had been damaged while parked in the upper lot. Manfra revoked the permission during the construction project, telling him that the prohibition applied to him, too (2T39). Manfra conceded that several employees "...failed to comply" with the notice (2T36). Her testimony does not clarify whether those employees parked in the administrative lot before or after the notice was posted. She credibly testified that Carrube advised two mini-bus drivers, Priscilla Bernard and Doris Matterayo, that they were prohibited from parking in the administrative lot (2T39). Bernard was informed shortly before punching-in her time card on December 7, 2014 (2T80). Bernard removed her vehicle to

the upper lot (2T81). No facts indicate that either driver was disciplined for parking in the administrative lot.

8. On December 6, 2012 at 4:11 p.m., Edmonds called Peterson's cell phone from his cell phone. The phone record shows a conversation lasting 24 minutes (R-1B). Edmonds was asked on cross-examination (before R-1B was available) if he had any conversations with Peterson on December 6, after he had represented Kromenacher. This colloquy ensued:

A. I don't remember if I saw him that day or not, later on.

Q. So you don't recall if you saw him on December 6th?

A. Right. I don't remember.

Q. Okay. Did you have any conversation with Mr. Peterson on December 6th?

A. I'm getting days confused here.

Q. That's a Thursday. The day before you had that meeting in Yvonne's office with Mr. Peterson?

A. I don't recall. No. There's days I go without seeing Robert at all.

* * *

Q. Do you recall if you texted Mr. Peterson that day on December 6?

A. No, I don't. [1T126-127]

Peterson admitted receiving a phone call from Edmonds ("earlier" than his December 7 meeting with Manfra) regarding,

". . . something [that] had transpired with one of the drivers, Debbie Kromenacher, about her parking in the front. And to that extent I knew something was going on with the parking" (1T36).

I find that Edmonds' testimony is evasive or equivocal in the quoted portion (i.e., in responding to two questions about his talking with Peterson on December 6, Edmonds answered that he didn't see him). I infer from Peterson's testimony that he knew before his December 7th meeting with Manfra that drivers were prohibited from parking in the administrative lot. (For no other likely reason would Kromenacher be prohibited from parking in the administrative lot). In the absence of any rebuttal evidence from the Association, I infer that Peterson became aware of the prohibition in that cell phone conversation with Edmonds on December 6th, after the vice president unsuccessfully sought a waiver of the prohibition for Kromenacher.

Edmonds admitted that he saw the notice posted in several places but could not recall if he first saw it on December 6 or 7, 2012 (1T125; 1T134). He specifically recalled seeing it on ". . . different walls" (1T125). Considering that the notice was extensively posted at the administrative offices in the morning on December 6th and that Edmonds did not testify about any circumstance that would have prevented him from seeing the notice in the normal course of punching-out his time card that day, I infer that Edmonds saw the notice on December 6th. The inference

is strengthened by the coincidence of Edmonds' dispute with Carrube and Manfra that day over unit employee Kromenacher's parking in the administrative lot. Peterson testified that when he punched-out his time card in the afternoon on December 6th, he did not see the posted notice (J-1) (1T180). No facts explain why Edmonds was likely to have seen the notice posted and Peterson could not or did not.

9. On December 7, 2012, Peterson parked his own vehicle in the administrative lot sometime between 8:30 a.m. and 8:45 a.m. and left it there for the duration of his shift (1T31; 1T65; 2T29; 2T40; 2T42). Manfra arrived that morning at about 7:15 a.m. (2T40). She saw from her office or the building that he parked his vehicle next to her car (2T41).

Peterson admitted that ". . . when [he] arrive[s] at work, the first thing [he] do[es] is punch-in" (1T78). I infer that on December 7th, Peterson walked into the administrative offices by opening one of the glass doors, establishing his close physical proximity to the notice posted on both sides of that door. After punching-in his time card (again demonstrating his close proximity to another copy of the notice), Peterson typically checks if any document has been lodged in his mail slot at the office (1T78). Peterson did not "recollect" that the notice was posted on a wall near the time clock (1T78; see finding no 5). Peterson did not visit the drivers' break room that morning

(1T79). I infer that Peterson collected his assigned vehicle manifest and mini-bus keys and walked from the administrative building to the upper lot by exiting through one of the glass doors. (A notice was posted on the back door, if he chose that exit). He then drove his mini-bus, performing his scheduled route (1T31).

Peterson testified that he did not see the posted notice (J-1) on December 7th (1T72). I do not credit Peterson's testimony that he did not see the notice on both December 6th and 7th. No facts rebut Manfra's testimony about when or where the notices were posted on the morning of December 6th. No facts indicate that any were removed or defaced, including those affixed to both sides of the glass door leading to and from the administrative parking lot and the building where all drivers punched their time cards and collected their manifests. Even if Peterson failed to observe any of the posted notices (J-1) on the afternoon of December 6th or the morning of December 7th, I find it highly unlikely that he failed to observe one or more of them on both occasions. My doubt is increased by Peterson's admission that he learned from Edmonds "something" about driver Kromenacher's "parking in the front," a circumstance that would likely forewarn him about and raise his awareness of the parking restriction not later than his arrival on the morning of December 7, 2012.

10. On December 7, before 7 a.m., Edmonds parked his own vehicle in the upper lot for the duration of his shift (1T109-110). That day, Edmonds drove a mini-bus, returning it to the upper lot at around 4:30 p.m. (1T111). He then drove his own vehicle to the administrative building in order to "punch-out" (1T111).

Later on December 7, and before Edmonds returned to punch-out his time card at the end of his shift, Manfra and he discussed whether another driver and unit employee, Priscilla Bernard, could park her own vehicle in the administrative lot and whether Carrube inappropriately admonished her for parking there. Manfra recalled that they spoke ". . . at the end of his 12:00 shift" (2T80-81). I infer that Manfra's use of the word "shift" in this context does not mean a work shift; I infer that Edmonds had completed a "run" and returned to the facility before commencing his afternoon "run." The cell phone record shows that on December 7th at 12:11 p.m., Edmonds called Peterson and they apparently spoke for seven minutes. Edmonds also sent text messages to Peterson at 1:27 p.m. and 1:46 p.m. that day (R-1B). I infer that one subject of that cell phone conversation (or text message(s)) was indirectly referenced by Peterson. He testified:

. . . being that certain conversation that went on concerning Ms. Carrube. I was under the impression that it was her who had touched my vehicle - being that earlier that day my vice president had went into - I had a conversation with her and Ms. Manfra about

one of the other drivers. I assumed that it was her (emphasis added). [1T32]

I have found that on December 7th, Peterson did not return to County premises, specifically the administrative offices, before the end of his shift as mini-bus driver. In the absence of any rebuttal, I infer that Peterson learned of Carrube's admonishment of Bernard about her illicit parking in the administrative lot in a phone call or text message(s) with Association vice president Edmonds early that afternoon.

At or around the time of Edmonds' discussion with Manfra over driver Bernard, "snow fencing" was placed around the trenches dug into the macadam near the administrative offices (2T29-30).

11. At about 4:30 p.m. on December 7, 2012, Peterson returned to the administrative parking lot after completing his shift (1T31; 1T67). He saw a sheet of paper on the windshield of his vehicle. Upon closer inspection, Peterson could not read the sheet because rain that day caused the ink to run and the paper to disintegrate. When Peterson tried to lift the sheet it ". . . kind of ripped apart" and was ". . . like mush." (1T31; 1T39). Peterson looked through the windshield of his unlocked vehicle and observed that some papers stowed in or above a visor were ". . . thrown on the floor" (1T32, 1T85). He opened the driver's door and immediately noticed that the driver's seat had been moved closer to the steering wheel (1T31-32). Peterson

assumed that paratransit manager Carrube had entered his vehicle and caused the disturbance (1T32).

Peterson decided to speak to Manfra about Carrube's (assumed) conduct (1T34). Association vice president Edmonds coincidentally arrived in his vehicle at the administrative lot in order to stop, enter the building and punch-out his time card (1T111). Peterson promptly directed Edmonds to accompany him to Manfra's office (1T34, 1T112).

12. They walked to Manfra's office doorway and observed the Director seated and facing her desktop computer (1T36). Peterson testified that he first became aware of the notice (J-1) on December 10, 2012 (1T63). I have found facts to the contrary (see finding no. 9). I infer that in walking to Manfra's office by opening the building entrance glass door closest to the administrative parking lot, Peterson again was physically close to the posted notice (J-1). Peterson tapped on the office door, calling Manfra's attention. He asked, "Can I speak with you for a minute?" She agreed, observing that Peterson held a "piece of paper" that she could not otherwise identify (2T50). He did not show her the paper (2T51). Peterson continued: "I'm requesting that you speak to your paratransit manager and ask her not to touch my personal property" (1T35; 1T112, 2T48). Manfra answered: "OK, but why are you pushing her buttons?" (1T39, 2T87).

Carrube earlier that day informed Manfra that she had placed the notice (J-1) on the (exterior) windshield of Peterson's vehicle (that was parked in the administrative lot directly in front of the double glass-doored entrance to the administrative offices) (2T29, 2T49). I infer that Manfra's response to Peterson reveals her knowledge of Peterson's illicit parking; her knowledge of Carrube's placement of the notice on his windshield; and her (mistaken) assumption that Peterson's "request" alluded to that placement. (Peterson was actually referring to - but did not mention - physical disturbances to the interior of his vehicle). I also infer that "pushing her buttons" alludes to disputes earlier that day and the previous day between Carrube and Edmonds over the parking restriction and that Peterson's parking in violation of the restriction on December 7th again provoked Carrube's intervention. Finally, I infer and posit to Manfra the assumption throughout this interaction with Peterson that he had seen and read the notice (it having been posted for the previous 32 hours or so) and was otherwise aware of the parking restriction (i.e., from communicating with Edmonds).

Peterson asked, "What do you mean, 'pushing her buttons'?" Manfra answered, "Why did you park your car in front of the office all day long?" Peterson replied: "Because this whole thing is a mess." By "mess," Peterson meant "the whole parking situation at transportation" (1T40). Manfra responded: "It's

not a mess; it's a safety issue" (1T40). Peterson answered, "If it's safe for [you], then it's safe for everyone else"^{3/} (1T40).

Peterson admitted in his testimony that Manfra, ". . . went into an explanation about she works in the office, and if the construction people needed to move the vehicles that she could move the vehicles" (1T40). Manfra explained to Peterson "two or three times" that administrative employees could move their vehicles during the day but drivers were unavailable because they were performing their transportation routes (1T68, 2T52). Peterson also admitted that he ". . . asked her again, if it's safe for you, you know, is it safe for us?"

I find that Peterson's and Manfra's substantive testimonies on this matter are consistent. Specifically, I find that Manfra repeatedly justified the parking restriction to Peterson and that Peterson repeatedly either expressed a misunderstanding of Manfra's stated reasoning for limiting the parking to administrative employees or refused to accede to her reasoning.

13. Manfra testified that during the meeting Peterson became increasingly "adamant" and raised his voice in contesting the parking restriction for drivers. She testified that his

^{3/} Peterson's testimony was, "And I proceeded to ask if it was safe for her, then it was safe for everyone else" (1T40). I infer that Peterson in fact asked Manfra, "Is it [i.e., parking in the administrative lot] safe for you?" Manfra answered, "yes" and Peterson replied, "Then it's safe for everyone else."

voice was not impaired in any way (2T52). Specifically, Peterson argued to Manfra that if "safety" was the concern, she needed to be concerned about all employees and that it was unfair to restrict drivers (2T50, 2T52). She testified that Peterson's tone of voice was ". . . belligerent. He was very direct and loud in making his argument that I was not thinking of the safety. It was discriminatory" (2T53, 2T83). Asked on direct examination how she viewed Peterson's conduct towards her during their discussion, Manfra testified: "It was absolutely insubordinate" (2T53). Manfra admitted that ". . . at some point I [raised my voice] when I said if I couldn't resolve the safety matter here I would take it uptown" (2T53). Specifically, Manfra thought that Director of Human Resources Beverly Hacker and/or Director of Public Works Paul McCall would have to be informed in order to ". . . protect everybody there" (2T55). Questioned on cross-examination if she had asked Peterson in the meeting if he was aware of where he should or should not be parking, Manfra answered, "I do not believe that came up, sir" (2T82). This colloquy also ensued on cross-examination:

Q. You claim he was directly insubordinate to you, don't you?

A. Yes, I do.

Q. You claim his major concern was that you were being unfair in where you were letting him and members of his Association park; isn't that true?

A. Yes.

Q. And you maintain that the way he spoke to you, that he yelled and did not show appropriate respect for your position; isn't that true?

A. That is correct. [2T90]

Peterson testified that he didn't raise his voice because he was suffering from "chronic laryngitis" (1T41). The Association produced a copy of a "patient plan" on a N.J. medical practice's letterhead signed by a medical doctor on December 1, 2012 diagnosing Peterson with "chronic laryngitis" and prescribing "vocal rest," a specified medication and a follow-up appointment (CP-1). On December 3, Peterson sent a text message to Manfra, advising of his medical condition and his doctor's instruction to ". . . take a few days off and rest my vocal cord" (CP-2). Peterson reported out sick on December 3 and 4, 2012 (1T43).

Peterson testified that late in their December 7 discussion and argument, Manfra's stated intention to take the matter "uptown" was a threat of termination or of charges that would be preferred against him (1T44). He testified that Manfra said that, ". . . she was going uptown and [that] I wasn't going to get away with this anymore" (1T43). Edmonds corroborated that statement (1T137). Later on December 7, Peterson wrote in a report of the event that Manfra said at the end of their meeting, ". . . [you] are not going to get away with this" (see finding no. 14). Manfra denied saying to Peterson that ". . . he was not

going to get away with this" (2T60). Considering other instances in which I have not credited Peterson's and Edmonds' testimonies, I do not find that Manfra said to Peterson, ". . . you're not going to get away with this." "Uptown" is a frequently-used colloquial reference to the County administration building located about three miles from the maintenance facility (2T54).

Association vice president Edmonds accompanied Peterson throughout the event in Manfra's office and said nothing (1T112; 1T114). He corroborated some of the verbal exchanges between Manfra and Peterson (1T112-114).^{4/} He testified that, ". . . at no time was there a discussion in which [Peterson] said it was unfair to drivers that they could not park where clerical employees parked" (1T116). On cross-examination however, Edmonds recalled that Peterson said to Manfra, ". . . if it's safe for you to park there, then it's safe for me" (1T141). I find that the latter corroborated statement is substantively similar to the disputed former statement. Edmonds testified that Manfra "yelled" and that Peterson spoke in a "low, raspy voice," owing to his laryngitis (1T116, 1T117, 1T141). In light of credible evidence of Peterson's laryngitis shortly before his discussion

^{4/} Edmonds testified that Manfra asked Peterson, "Why are you pushing my buttons?" and Peterson answered, "I'm not pushing your buttons" (1T115). Peterson and Manfra testified consistently and corroborated each other's testimony on their exchange (see finding no 12). I do not credit Edmonds' version.

with Manfra on December 7, 2012, I would presume that he could not yell. The presumption is undercut however, by his failure to rebut Director of Human Resources Hacker's written assumption in her December 13 memorandum to him that, ". . . everyone [i.e., Manfra and Peterson] spoke in a loud voice" (see finding no. 16). Specifically, Peterson contested several asserted facts about the meeting with Manfra on December 7 in his December 14 reply to Hacker, but the loudness of his voice was not among them (see finding no. 17). I find that Peterson spoke loudly but did not yell. I also find that Manfra lost her temper near the end of their argument, when she advised of her intention to refer the matter, "uptown."

14. Later on December 7, Peterson wrote a memorandum to Director of Human Resources Bev Hacker and sent it to her the next day (1T44; J-3). It was received on December 10, 2012 (1T47). His memorandum "charges" Manfra with ". . . violating the Somerset County Workplace Violence Policy." He wrote that the policy provides that ". . . workplace violence is defined as any behavior that brings about a reasonable fear or intimidation" (J-3). Writing that he didn't [then] know what "uptown" meant, Peterson "...interpret[ed] it as an open-ended threat and didn't take it lightly" (J-3). The memo also provides that after he said for the second time that "...if it's safe for you to park there then so it is for me," Manfra turned ". . .red in the face

and said to me and I quote, "if you keep pressing my buttons then I am going uptown on you." (J-3). Peterson did not testify that Manfra threatened him about ". . .pushing [her] buttons" (emphasis added). Edmonds corroborated that he heard Manfra ask, "why are you pushing my buttons?" (1T115). In the absence of specific testimony from Peterson that Manfra warned him about "pushing her [i.e. Manfra's] buttons" I do not find that specific alleged threat as a fact.

His memorandum recounts his argument with Manfra, repeating their dialogue. His writing essentially corroborates facts set forth in finding nos. 12 and 13. He also wrote another paragraph expressing concern about her statement, ". . . such as going uptown on me and then saying as I am walking out the door that I am not going to get away with this" (J-3). He wrote of his belief that, ". . . as the union representative and Ms. Manfra being the division head we should be able to disagree without threatening one another" (J-3). He wrote that, ". . . upper management should not issue idle threats or open-ended threats" (J-3).

15. On Monday, December 10, 2012, Manfra called Hacker and informed her about ". . . what we were trying to do and who we had dealt with to try to maintain safety" (2T66). She told Hacker about Carrube's placement of the notice on Peterson's vehicle; that Peterson and Edmonds expressed dissatisfaction with

the parking restriction; that they confronted her about the matter on Friday, December 7; that their discussion became heated; and that she said to Peterson that the issue would go "uptown" (2T71-72). She also directed transportation trainer Adair to email the notice to Hacker (2T67). Manfra told Hacker that she reminded another driver - Walter Mays - that he needed to park away from the building (2T70).

On cross-examination, Manfra first testified that she told Hacker that some drivers, including Peterson, disregarded the notice and parked near the building (2T70). Asked soon after if she told Hacker that Peterson and other drivers "deliberately disobeyed" her directive and confronted her in her office about the directive, Manfra demurred, testifying: "I do not recollect that conversation" (2T74-75). I infer that Manfra distinguished "disregarded" from "deliberately disobeyed," agreeing only that she spoke the former term in her conversation with Hacker. Asked if she told Hacker that Peterson's actions were insubordinate and that he should be disciplined, Manfra testified: "Yes, I did at some point during the course of this week. The event occurred on a Friday. During the course of the week, I spoke not only with Bev Hacker but Paul McCall and Scott Rogers, who is Deputy County Counsel" (2T75-76).

16. On December 13, 2012, Hacker issued a one-page memorandum to Peterson on County letterhead referencing Peterson's December 7 memorandum to her and "dismissing" his "complaint" (J-4). Hacker also wrote that she "verified" six enumerated "facts," including these:

3. Ms. Manfra issued a notice to all Transportation employees on Wednesday, December 5th. This notice instructed all drivers and aides to park their personal vehicles away from the office building.
4. Some drivers and aides, yourself included, disregarded Ms. Manfra's notice and parked by the office building.
5. Ms. Manfra personally reminded one driver of the need to park elsewhere. Others, including you found that a notice had been placed on their vehicle.
6. You and other drivers went to Ms. Manfra to express dissatisfaction with having to park away from the office building. You and Jack Edmonds confronted Ms. Manfra in her office at 4:30 pm on December 7th about this issue. The discussion became heated and Ms. Manfra stated that this issue would 'go uptown.' [J-4]

Hacker wrote that, ". . . knowing all of the parties in the December 7th discussion, I can only conclude that everyone spoke in a loud voice." She wrote that Manfra, ". . . directed all drivers and aides to park in lots away from the office building in an attempt to mitigate the potential for damage to personal vehicles. You and other drivers deliberately disobeyed this

directive, then confronted Ms. Manfra in her office." Hacker wrote:

You and other drivers have acted deliberately to undermine Ms. Manfra's authority with respect to workplace safety, which is insubordinate and subject to discipline.
[J-4]

She wrote that, "[t]his matter will be referred to [Director of Public Works] Paul McCall for further review." Hacker did not speak or communicate with Peterson or Edmonds before issuing her December 13 memorandum (1T47, 2T96, 2T98).

17. On December 14, 2012, Peterson wrote a memorandum to Hacker, ". . . respon[ding] to [her] inter-office memo dated 12/13/12" (J-6). Peterson wrote of his amazement that the Human Resource Director, in possession of only one version of facts, would be "an advocate for management." Peterson wrote extensively about "inaccuracies" that he inferred were set forth in Manfra's version of events (explained to Hacker and appearing in her December 13 memorandum).

Peterson contested that he deliberately "undermined or disregarded" Manfra's notice, writing that he did not see the notice on December 6th. He conceded knowing that the notice was posted on December 6th, based upon an incident that day concerning a driver whom Carrube admonished for parking in the administrative lot. He wrote that he did not meet with Manfra in order to contest the parking restriction. He also wrote:

Finally to address your allegation of insubordination; in order for a person to be insubordinate there has to be a clear violation of a directive. As I have pointed out in this letter the directive was not communicated clearly. That is why Ms. Manfra didn't charge me with insubordination because she knows the directive was not clear. That's why she threatened to go "uptown" rather than to discipline. If the directive was clear and knowing Ms. Manfra she would have jumped at the opportunity to discipline me. [J-6]

Peterson concluded his memorandum by writing of his intention to seek "legal counsel to determine if your actions are discriminat[ory]."

18. Also on December 14, 2012, Manfra wrote a letter to Peterson, charging him with ". . . insubordinate conduct given your actions in deliberately violating the No Parking Notice and confronting me and challenging my authority as Transportation Director in a very loud, abusive and challenging manner" (J-5). She testified how Peterson was insubordinate:

He parked in front of the building all day and then challenged my authority to restrict that parking at that site to try to keep everybody safe and in my view it was insubordination. [2T56]

Manfra conceded that, ". . . once I draft a memo on insubordination, it leaves my office. It goes to Paul McCall and to County Counsel. I'm not allowed to issue that memo until they have both reviewed and approved of the action I am

proposing . . ." (2T67-68). The charges were based upon eleven enumerated facts set forth in the letter.

The first seven "facts" concern Peterson's being subject to and "choosing to disregard" the "no parking" notice issued on December 6, 2012. The summarized "facts" are 1) the notice was posted on December 6 to advise drivers and aides not to park in front of the office building; 2) [Peterson is] a driver; 3) On December 6, [Peterson] knew of the notice because ". . . [he] was overheard by office staff that day complaining that I couldn't enforce [it] because it treated drivers and aides differently than office employees;" 4) on December 7, [Peterson] "disregarded" the notice by parking [his] vehicle directly in front of the entrance door to the building; 5) [Peterson's] vehicle remained in that spot all day; 6) in the late morning on December 7, the notice was placed on the windshield of [Peterson's] vehicle; and 7) sometime on December 7, the notice was removed.

The four other enumerated facts concern Peterson's conduct in the December 7 meeting with Manfra. The summarized "facts" are: 8) [Peterson] ". . . screamed at me in a very loud and abusive manner" that I had "no right" to enforce the notice because it treated drivers differently than office staff; 9) [Peterson] also screamed at me because I did not have control over my office staff and "they" had no right to touch

[Peterson's] vehicle; 10) I explained that the notice applied to drivers because they could not move their vehicles when they are ". . . out on the road"; and 11) [Peterson] was not satisfied with my explanation and remarked that, ". . . I had no right to enforce the notice because it was 'unfair.'"

The letter also advised of a hearing date. The last page of the exhibit provides signature lines intended as "acknowledgment(s) of receipt of service" (J-5).

19. On December 17, 2012, Peterson refused to sign or "acknowledge" the charges in the presence of Manfra and driver's aide and unit employee Frank Miller (1T153; 2T68). Peterson had earlier told Miller that he had been "written up" and needed a witness (1T155). The Association typically provides such witnesses to "write-ups," i.e., the delivering of disciplinary notices to employees (1T158).

Miller testified that Manfra remarked: "I'm doing what I was instructed to do and this is not good for the department" (1T153). The statement was not responsive to anything Peterson said (1T154). Miller signed the document (J-5) on a signature line designated for an "Association representative." Manfra did not deny or rebut any of Miller's testimony. I credit it.

20. On December 21, 2012, Manfra wrote a letter to Peterson, confirming that in a "pre-suspension hearing" on December 19, Peterson, accompanied by named representatives, said

that upon advice of Counsel, he will not address the charges set forth in the December 14 notice (J-7). The letter advised of Peterson's suspension for three days, from January 8-10, 2013. He served the suspension on those dates (1T71).

ANALYSIS

The issue in this matter is whether Peterson was suspended for three days in retaliation for engaging in protected conduct. The standard for evaluating a 5.4a(3) charge is well established. Under In re Bridgewater Tp., 95 N.J. 235 (1984), the charging party must prove, by a preponderance of the evidence, 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 that 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 another motive or if its explanation has been 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, 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 evidence on the entire record, that the adverse action would have taken place absent the protected

conduct. This affirmative defense however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

The parties have analyzed this case as a dual motive case (Association brief at 20; County briefs at 33-34; 9-10). In such cases, the charging party must prove that an invalid reason motivated the adverse action; if it sustains that burden, the respondent or employer must prove, as an affirmative defense, that it would have taken the adverse action in the absence of the invalid reason. In other words, this analysis determines what the employer's conduct would have been if the improper motivation had not been present. Holo-Krome Co. V. NLRB, 954 F.2d 108, 139 LRRM 2353 (2nd Cir. 1992).

The County has not actually conceded that this case is a dual or "mixed" motive case because it contends in part that Peterson's conduct in the meeting with Manfra was "insubordinate" in that he ". . . challenged her authority in an abusive and disrespectful manner" (brief at 34). In a "pretext" case, the employer claims that the discipline was based solely on legitimate grounds which the charging party views as a pretext for anti-union animus. I am also obliged to determine if Peterson's actions in the December 7th meeting with Manfra were "insubordinate" or "protected" under the Act.

In two decisions issued together, the Commission, “. . . located the line between a union representative’s protected representational activity and an employee’s unprotected workplace misconduct.” State of New Jersey (Dept. of Human Services), P.E.R.C. No. 2001-52, 27 NJPER 177, 178 (¶32057 2001); State of New Jersey (Treasury Dept.), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001); see also, City of Garfield, P.E.R.C. No. 2013-88, 40 NJPER 54 (¶20 2013), app. pend. (App. Div. Dkt. No. A5842-12T3).

One principle is that in grievance discussions, management officials and union representatives meet as equals and exchange views freely and frankly. State of New Jersey (Dept. of Human Services), 27 NJPER at 178, citing Crown Central Petroleum Corp. v. NLRB, 430 F.2d 724, 74 LRRM 2855 (5th Cir. 1970); NLRB v. Southwestern Bell Telephone Co., 694 F.2d 974, 112 LRRM 2526 (5th Cir. 1982); American Telephone & Telegraph Co. v. NLRB, 521 F.2d 1169, 89 LRRM 3140 (2nd Cir. 1975); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (¶10058 1979); City of Asbury Park, P.E.R.C. No. 80-24, 5 NJPER 389 (¶10199 1979).

The second principle is that while leeway is provided for adversarial and impulsive behavior in grievance meetings, such representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order and respect.

State of New Jersey (Dept. of Human Services), 27 NJPER 178; Compare Crown Central, 74 LRRM at 2860 and NLRB v. Thor Power Tool Co., 351 F.2d 586, 60 LRRM 2237 (7th Cir. 1965); Felix Industries, Inc. v. NLRB, 331 NLRB No. 12, 164 LRRM 1137 (2000); Atlantic Steel Co., 245 NLRB No. 107, 102 LRRM 1247, 1249 (1979).

Peterson's motive for speaking with Manfra at 4:30 p.m. on December 7, 2012, was to complain about his immediate supervisor because (he believed) she had ". . . touched his personal property." This reason was merely "personal griping" and did not amount to protected activity under our Act. See State of New Jersey (Office of the Public Defender), P.E.R.C. No. 2006-11, 31 NJPER 276, 279 (¶109 2005).

The meeting among Manfra and the two Association representatives was conducted in the relative privacy of her office at the end of the workday. Even if the office door remained open throughout the meeting, no facts suggest that any other employees were nearby or that anyone outside the office heard any heated exchange between Manfra and Peterson.

Their discussion turned to a broader, unit-wide concern when Manfra, in replying to Peterson, remarked that the "parking situation" was a "safety issue" and not "a mess," as the Association President charged. I infer that their discussion implicitly referenced disputes over the parking restriction from the previous day and earlier on December 7th. They disputed with

an escalating intensity Manfra's justification for the parking restriction for unit drivers and transportation aides. Manfra maintained that administrative employees (working within a short walking distance to the parking lot) could easily move their cars if the need arose but drivers and aides - away and on the road - could not. Peterson argued that if "safety" was the concern, it should apply to all employees.

Safety concerns are mandatorily negotiable. West Deptford Tp. Bd. of Ed., P.E.R.C. No. 99-68, 25 NJPER 99, 101 (¶30043 1999); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981). Parking for employees also is a mandatorily negotiable term and condition of employment. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 28-29 (App. Div. 1977). Disputes over changes in the availability of parking facilities are legally arbitrable. Sussex Cty. Community Col., P.E.R.C. No. 2000-76, 26 NJPER 180 (¶31073 2000).

It is my view that Manfra became agitated by Peterson's patent resistance to the logic of the restriction with his repeatedly stated and seemingly obtuse deduction - ". . . if it's safe for you, then it's safe for everyone else." Manfra regarded the "safety" concern relatively and Peterson regarded it absolutely.

Peterson's opposing or differing view should not be confused with insubordination or more specifically, conduct that

“. . . indefensibly threatens workplace discipline, order and respect.” State of New Jersey (Treasury Dept.), 27 NJPER 173; City of Garfield. The Commission has explained:

To determine whether conduct is indefensible in the context of the dispute involved, it is necessary to balance the employees' heavily protected right to representation in negotiations and grievance discussions against the employer's right to maintain workplace discipline. Southwestern Bell; AT&T. The NLRB considers several factors: (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. Atlantic Steel Co.; Felix Industries.

Two of our cases illustrate the wide latitude granted employees when negotiating contracts or pressing grievances. In Hamilton Tp. Bd. of Ed., an employee was threatened with discipline as a result of his angry conduct at a grievance meeting. The employee struck the table and moved around the small room, shouting in what some believed was an intimidating fashion. We nevertheless found that his conduct was protected. Relying on Crown Central, we accepted the principle that 'wide latitude in terms of offensive speech and conduct must be allowed in the context of grievance proceedings to insure the efficacy of this process.' 5 NJPER at 116.

Similarly, in Asbury Park, we held that a union president's angry confrontation with the city manager was protected. The president ran into the manager one evening and tried to arrange a meeting to discuss complaints. The encounter became a shouting match. In holding that the city unlawfully suspended the employee for insubordination, we emphasized that the employee's behavior, while loud, was not violent or threatening. While the manager could direct the president

to contact him during work hours, he could not punish the employee for what was initially protected activity and for the same conduct as the manager himself engaged in.
[footnote omitted]

To summarize, when acting as agents of the majority representative in negotiating contracts or pressing grievances, union representatives meet as equals with their management counter-parts. They enjoy a wide latitude of speech and conduct as advocates and adversaries before their activity will be considered so indefensible as to lose the Act's protection.
[Treasury Dept. at 27 NJPER 173-174]

Applying the Atlantic Steel factors to this case, I find that Peterson's conduct was protected under the Act. The disputed meeting took place in Manfra's office at the end of the workday and did not disrupt the County transportation department. Nor did any other County employee (apart from Edmonds) hear the quarrel. Manfra actually directed the discussion to the mandatorily negotiable subjects of safety and parking. The meeting quickly evolved into a dispute over the propriety or fairness of a newly-imposed work rule prohibiting the majority of unit employees from parking their personal vehicles in a lot (with a limited number of spaces) to which they previously had access. Peterson's advocacy on behalf of the Association is protected by the Act.

I have found that Association President Peterson raised his voice and loudly contested Transportation Director Manfra's

reason(s) for the restriction. No facts indicate that Peterson's conduct became violent or threatening.

Manfra characterized Peterson's conduct as "belligerent" and "absolutely insubordinate." I disagree that the facts lend credence to those descriptions. Manfra cited the former term to depict Peterson's tone of voice and mentioned the latter term in connection with his "challenge [to her] authority" (see finding no. 18). In the meeting, Peterson did not belittle Manfra, nor refuse to comply with a directive or refuse to comply, pending an appeal to any of Manfra's superiors. Manfra admitted saying to Peterson near the end of the meeting that if she ". . . couldn't resolve the safety matter here, [she] would take it 'uptown.'" I infer that the only possible "resolutions" Manfra could have sought in the meeting were Peterson's concurrence that the restriction was appropriate; his polite, even-tempered disagreement or his silence. As Association President, Peterson was not obligated to concur, be polite or keep quiet. Peterson's conduct in the meeting falls within the "wide latitude" of lawful behavior accorded union representatives in Hamilton Tp. Bd. of Ed. and Asbury Park.

The writings produced by Hacker and Manfra after the December 7th meeting do little more than again characterize Peterson's behavior in that meeting. He is alleged to have variously "confronted" Manfra; "acted deliberately to undermine

her authority;" "challenged [her] authority in a very loud, abusive and challenging manner;" "screamed at her in a very loud and abusive manner;" "screamed . . . that [she] had no right to enforce the notice because it treated drivers differently than office staff; and that he ". . . screamed at [her] because I did not have control over my office staff." Manfra did not testify about the last "fact" and I do not credit her writing independently of her testimony. Even if I credit her testimony, I find that Peterson's alleged behavior (without embellishment) as described in the writings is also within the "wide latitude" of behavior union representatives are provided in grievance meetings that are not disruptive of the workplace.

Under all of the circumstances, I find that the Association has demonstrated that anti-union animus was a motivating or substantial reason for the December 14, 2012 issuance of disciplinary charges against Peterson. I also find that the County's charge against Peterson for his behavior in the December 7th meeting was not for legitimate reasons and was instead for reasons of anti-union animus.

I must next consider whether Peterson's December 7, 2012 violation of the parking restriction would have resulted in a (three-day) suspension, as generally set forth in Manfra's December 14, 2012 letter. In a mixed motive case, the employer must demonstrate that on the day the adverse action occurred, it

would have been taken irrespective of the employee's protected conduct and not that it could have been taken for legitimate reasons. NLRB v. AT&T Manufacturing Co., 738 F.2d 148, 151, 116 LRRM 3107 (6th Cir. 1984); Presbyterian/St. Luke's Med. Ctr. v. NLRB, 723 F.2d 1468, 115 LRRM 2306 (10th Cir. 1983); Boston Mutual Life Ins. Co. v. NLRB, 692 F.2d 169, 111 LRRM 2983 (1st Cir. 1982). I find that the County did not meet its burden.

Peterson was the only unit employee disciplined for "disregarding" the notice, despite Manfra's admissions that after the notice was posted, other unit drivers also parked in the administrative lot. They were admonished and ordered (in person) to remove their vehicles. They acceded without penalty. Peterson was not provided the same opportunity. I also find that the three-day suspension imposed on Peterson (who had not been disciplined in the entirety of his six years with the County) without any proffered lawful justification is harsh and connotes a motive beyond addressing a first-time workplace infraction.

Other circumstantial evidence also undermines the County's business justification. Manfra's only possible articulated concern on December 7th about Peterson's violation of the parking restriction lay in her question to him, "Why did you park your car in front of the office all day long?" The question was in the context of confirming the reason why para-transit manager Carrube's "buttons" had been "pushed." Manfra admitted that the

subject of where Peterson should or should not park "didn't come up" in their meeting.

One week later however, Manfra's disciplinary notice letter to Peterson emphasized (by the number of enumerated "facts") his violation of the restriction. In that interim, the question of Peterson's discipline was reviewed and approved by Manfra's superiors, the Directors of Human Resources (Bev Hacker) and of Public Works (Paul McCall) and by deputy County Counsel, none of whom testified in this matter.

In that interim, Hacker wrote to Peterson, advising that he and other drivers "deliberately disobeyed [the] directive [to park elsewhere]." By contrast, Manfra's December 14, 2012 disciplinary notice letter to Peterson (written one day after Hacker's memo to Peterson) provides only this reason how Peterson "knew" of the notice: "He was overheard by office staff [on December 6] complaining that I couldn't enforce [it] because it treated drivers aides differently than office employees" (see finding no. 18).^{5/} Manfra testified only that on December 6th, Peterson was seen speaking with other unit employees outside of the administrative offices. On cross-examination, Manfra

5/ That (I have found that) Peterson knew of the notice on December 6th or 7th cannot be substituted for the County's proffered reason(s) for its knowledge at the time it disciplined him. Of course, Peterson, as a County employee, may not elect to disobey a workplace rule merely because he is an official of the majority representative.

essentially disputed telling Hacker about Peterson's reported state of mind and that of other drivers (see finding no. 15). Manfra's admission causes me to suspect similar hyperbole in Hacker's conclusion that, "[Peterson] and other drivers acted deliberately to undermine Ms. Manfra's authority with respect to workplace safety, which is insubordinate and subject to discipline."

It is my view that once a threshold of "deliberate disobedience," "insubordination" and "discipline" was crossed by Manfra's superior(s), it became difficult for Manfra to consider alternatives. That notion (or something similar) lends meaning to Manfra's unprovoked and spontaneous utterance on December 17, 2012 (while presenting her disciplinary notice letter to Peterson) that she ". . . [was] doing what I was instructed to do and this is not good for the department" (see finding no. 19). I draw such a negative inference from the County's failure to call as a witness even one of Manfra's superiors who reviewed and assessed Peterson's conduct and "approved" the three-day suspension. See International Automated Machines, Inc., 285 NLRB No. 139, 129 LRRM 1265, 1266 (1987) (When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge).

For all of these reasons I find that the County did not prove that it would have suspended Peterson for three days, even in the absence of protected conduct. I find that the County violated 5.4a(3) and (1) of the Act when it suspended Association President Robert Peterson from January 8-10, 2013.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the County 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 suspending from employment Association President Robert Peterson in retaliation for his union activity.

2. Discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of rights guaranteed to them by the Act, particularly by suspending Association President Robert Peterson in retaliation for his union activity.

B. Take the following affirmative action:

1. Promptly make Robert Peterson whole for the loss of pay and benefits during the period of his suspension, January 8-10, 2013.

2. Rescind and delete the three-day suspension from Robert Peterson's employment record.

3. Post in all places where notices to employee 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 County notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

/s/Jonathan Roth
Jonathan Roth
Hearing Examiner

DATED: August 14, 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 August 25, 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 cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by suspending from employment Association President Robert Peterson in retaliation for his union activity.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of rights guaranteed to them by the Act, particularly by suspending Association President Robert Peterson in retaliation for his union activity.

WE WILL promptly make Robert Peterson whole for the loss of pay and benefits during the period of his suspension, January 8-10, 2013.

WE WILL rescind and delete the three-day suspension from Robert Peterson's employment record.

Docket No. CO-2012-173

County of Somerset
(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