H.E. NO. 2017-6

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

In the Matter of

QUEEN CITY ACADEMY CHARTER
SCHOOL,

Respondent,

-and-

Docket No. CO-2016-200
CO-2017-007

QUEEN CITY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner determines that Respondent Queen City violated 5.4a(1) by the Director emailing staff in response to a communication to members only from the Association President wherein she directed him to report to her office and criticized his tone as combative and divisive. The Hearing Examiner concluded that the email was essentially coercive and not protected as a communication between equals. The Hearing Examiner also determined that Queen City violated 5.4a(1) when the Director invited the AAE, an organization opposed to the Association and NJEA, to present to staff during a mandatory professional development day. Additionally, the Board released a Strategic Plan at the end of the school year identifying unionization as a threat to the goals and objectives of the school. Also, the Director's decision to by-pass the Association president and vice-president as designated union representatives to accompany a PEOSHA inspector after telling the inspector there was no union contract or dues collected violated 5.4a(1). Finally, the Hearing Examiner concluded that Respondent violated 5.4a(3) and (1) by reprimanding the Association president for conduct at the AAE presentation. The totality of this conduct encouraged and supported an effort to decertify the Association. The Hearing Examiner recommended, therefore, that the decertification petition be dismissed.

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,
Schwartz, Simon, Edelstein and Celso, attorneys
(Andrew B. Brown, of counsel)
(Joshua I Savitz, of counsel and on the brief)

For the Charging Party,
Bergman and Barrett, attorneys
(Michael T. Barrett, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 28, 2016 and July 14, 2016, the Queen City Education Association (Charging Party or Association) filed separate unfair practice charges against the Queen City Academy Charter School (Respondent or Queen City). The Association alleges violations of the New Jersey Employer-Employee Relations

Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically 5.4a(1), (2), (3) and (7).[1/]

The charge under Docket No. CO-2016-200 (C-1)[2/] alleges generally that through a series of comments and written memoranda beginning in October 2015, Respondent through its Director sought to interfere with Charging Party and its relationship with its membership. This charge alleges acts of intimidation and humiliation, including (1) an email sent to the general membership by Director West in October 2015 berating the Association President as combative and hostile and his communications as divisive; (2) unwarranted discipline of the Association President; (3) denying members representation at legally appropriate times; (4) in January 2016 Director West allegedly made demeaning and threatening comments to an agent assisting the Association; and (5) in February 2016 the Assistant

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

2/ "C" refers to Commission exhibits received into evidence at the hearing. "CP" and "R" refer respectively to Charging Party's and Respondent's exhibits received into evidence at the hearing.

Director issued a written memorandum to the Association President chastising him for informing the Assistant Director of his (the Assistant Director's) misuse of preparation time.

The charge under Docket No. CO-2017-007 (C-3) generally alleges that since the certification of the Association, Director West has systematically attempted to intimidate and harass Association President Gary Corcoran and also Vice-President Jennifer Cherubini who was denied her 2016-2017 increment as well as a merit pay increase despite having satisfied the criteria for the increase. The Association further asserts that on March 24, 2016, Director West invited representatives from the Association of American Educators (AAE) to make a presentation during a captive audience staff meeting in an effort to mobilize efforts to decertify the Association. Also, on May 20, 2016, the Association contends that Director West issued a Strategic Plan for 2015-2020 listing unionization as a threat. It further alleges that on June 1, 2016, when a PEOSHA representative requested that a union representative be present for an inspection at Queen City, Director West told the representative that there was no ratified union contract or union dues being paid. Ultimately, a non-union representative was summoned for the inspection. Finally, the Association alleges that on or about June 15, 2016, non-Association guidance counselors actively

recruited members to join in a decertification petition at the behest of Director West.

On June 30, 2016, the Director of Unfair Practices issued a Complaint on the first charge but only on the 5.4a(1) and (3) alleged violations, declining to issue on the 5.4a(2) and (7). The Director determined as to these subsections that the facts as alleged did not meet the Commission's complaint issuance standards (C-1). Respondent filed its Answer (C-2) on July 11, 2016 generally denying the allegations that Director West sought to interfere with the Association's protected rights, and denying specifically that the Director's email in response to Corcoran's was inappropriate, that Corcoran was disciplined without just cause, that any members have been denied legally required representation, and that the Director made any demeaning or hostile comments to an Association representative. Respondent asserts various affirmative defenses.

On September 21, 2016, the Director issued a Complaint and an Order Consolidating Cases as to the second charge but only as to the 5.4a(1), (2) and (3) alleged violations, determining that as to the 5.4a(7) violation the facts alleged did not meet the Commission's complaint issuance standards (C-3). Respondent filed its Answer to the second charge on September 27, 2016 generally asserting that (1) its Strategic Plan citing unionization as a threat did not violate the Act, (2) denying the

allegations pertaining to the PEOSHA representative, (3) asserting its actions regarding Cherubini were for legitimate reasons due to excessive absenteeism, (4) denying that Director West encouraged the decertification efforts of unit members, and, (5) denying that the AAE presentation to employees was a captive audience meeting or that it was an effort to decertify the Association. It raises various affirmative defenses.

I take administrative notice that on July 5 and August 2, 2016, Kimberly LaRochelle (Petitioner) filed a representation petition and amended petition seeking to decertify the Association as the majority representative of a collective negotiations unit consisting of about thirty-seven (37) "regularly employed, non-supervisory certified and non-certified employees" employed by the Respondent. On September 27, 2016, the Director of Representation granted Charging Party's request to have the Complaints issued under Docket Nos. CO-2016-200 and CO-2017-007 block the further processing of the LaRochelle Rochelle petition pending litigation of its charges in this matter. Queen City Academy Charter School, D.R. No. 2017-5, 43 NJPER 164 (¶49 2016).

On September 27, 2016, I wrote Petitioner LaRochelle notifying her that the allegations in the Complaint before me, if proven, may constitute violations of the Act which could impact the processing of her petition and that she could, therefore,

request to intervene in this matter. To date, Petitioner has not requested to intervene.

At the pre-hearing conference, I granted Charging Party's request to sequester witnesses. Respondent raised no objection. I explained that each side was entitled to designate one resource person to be present to assist during the hearing. The designated resource person could also be a witness, but the designated resource person could not be changed during the hearing. Charging Party designated NJEA UniServ Representative Carol Feinstein as its resource person, while Respondent designated Queen City Director Danielle West. Both Feinstein and West were present on all hearing dates with the exception of a brief period during the testimony of Kimberly LaRochelle, when West was excused due to concerns raised by both sides regarding the confidentiality of individuals who signed the petition to decertify the Association as majority representative.[3/]

Hearings were held on November 15, 16 and 29, 2016.[4/] After a request for an extension of time to file, the parties submitted

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3/ During the second day of hearing, Director West left the hearing room briefly during the testimony of Respondent witness Teacher Kimberly LaRochelle in order to avoid learning the names of anyone who signed or supported the decertification petition. At the request of both sides, I agreed to seal that portion of LaRochelle's testimony which covered some cross examination (2T96-2T103) as well as redirect (2T103-2T106) and re-cross (2T107-2T110).

4/ Transcript references to hearing dates are "1T" through "3T" respectively.

post-hearing briefs by January 23, 2017. Based upon the record in this matter, I make the following:

FINDINGS OF FACT

Background

1. The Respondent Queen City and Charging Party Association are, respectively, a public employer and public employee representative within the meaning of the Act (1T11). The Association is a local affiliate of both the New Jersey Education Association (NJEA) and the National Education Association (1T210).

2. Danielle West is currently the Chief Academic Officer/Director of Queen City, a title she has held for the past four years (3T5). She held the title of assistant director for two years before becoming director (3T7). As director, West's responsibilities include policy management in conjunction with the Board of Trustees, daily operations including instruction and overall strategic planning (3T5). Since West's tenure as director, Carl Bampoe has been and is currently the assistant director (2T225). Bampoe's duties include hiring and evaluating staff, scheduling and preparing State reports (2T225).

3. Queen City has a staff of forty-two with five resource teachers who are funded by the federal Title 1 program (3T24-3T25). There are eighteen homerooms (3T24).

The Organization Drive and Certification of the Association

4. On June 26, 2015, a certification of representative based upon authorization cards[5/] was issued to the Queen City Education Association as the majority representative of all non-supervisory certificated and non-certificated employees employed by Queen City Charter School (CP-1). I take administrative notice that the Director of Representation certified the unit in a written decision after considering and then rejecting various objections raised by Queen City, including but not limited to, an objection based on multiple employees seeking to revoke their cards. She determined that the Association submitted a sufficient number of valid authorization cards to certify it as the majority representative. Queen City Charter School, D.R. No. 2015-11, 42 NJPER 82 (¶22 2015).

5. Among the employees who opposed the Association's organizing drive were Teachers Kimberly LaRochelle and Anibal Garcia as well as School Guidance Counselors Jasmine Chiles-Morrison and Tanya Asbury. They generally raised concerns over what they considered an organizing campaign that left them insufficient time to research and ask questions concerning the

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5/ On July 19, 2005, the Legislature amended the Act to authorize the Commission to certify a majority representative where a majority of employees sign authorization cards designating the petitioning organization as their negotiations representative. N.J.A.C. 1911-2.6(b). This procedure permits the choice of majority representative without an election.

Association's positions regarding the charter school movement as well as its dues structure (2T46-2T48, 2T158-2T159, 2T173-2T174).

6. LaRochelle has been employed by Queen City for ten years as a seventh and eighth grade science teacher (2T20). She also holds several stipended and/or hourly-paid positions - eighth grade advisor, morning detention monitor and PARCC Testing Coordinator - which positions have to be approved each year by Director West and the Board of Trustees (2T20, 2T54-2T55). In regards to the Association's organizing effort, LaRochelle was particularly upset over the card check process, because she had not done enough research and felt pressured by Organizer Gary Corcoran to sign an authorization card which she eventually signed even though she was against having the Association represent the staff (2T46-2T48).

LaRochelle describes her philosophy regarding the Association as follows:

> Q. Okay. And why didn't you want to be a part of it [the Association]?
>
> A. I am not antiunion. I grew up in a union household. My fiancé is in the Steelworkers Union but I'm also a Charter School [sic] teacher and I just don't believe the philosophy of the NJEA matches up with that of myself as a charter School teacher.
>
> Q. And what do you think it means to be a Charter School teacher?

> A. I feel that there are other things that are asked of me and I knew that when I agreed to take the job and I don't mind doing things that I'm asked to do and I'm there to help my kids be successful and I will do what I need to do within reason - I have a family of my own - to get them to be students to where they need to be. [2T49]

LaRochelle feels that her philosophy regarding the Association and NJEA is shared by others. Indeed, "based upon [her] observations, based upon [her] dealing with colleagues, based upon [her] reading memorandum, based upon [her] reading email back and forth between Ms. West and Mr. Corkrin [sic]" [2T87], LaRochelle thinks that West's philosophy is consistent with hers with respect to the NJEA and unionization (2T87).

Despite her concerns, LaRochelle became a member of the Association once it was certified (2T20).

7. Garcia shared and shares LaRochelle's views regarding the organizing process and the Association generally. He has been employed by Queen City for six years (2T114). He was initially a seventh and eighth grade English language arts teacher as well as a team leader for the department (2T114). However, recently in the 2016-2017 school year, Garcia has held the title of literacy coach which is a newly created position and which carries a salary of $74,000.00, over an eleven thousand dollar increase to his previous salary of $62,755.00 (2T113, 2T134-2T135). West offered him the position which was approved

by the Board of Trustees at the end of the 2015-2016 school year (2T134).

In addition to the salary increase, Garcia received a merit bonus for 2015-2016 of $2,033.33 which was the third highest bonus among the teaching staff and which was also approved by West and the Board (2T135). According to Garcia, his merit bonus was derived from his summative evaluation prepared by West and Assistant Director Carl Bampoe based on their observations of his performance (2T138). It is his understanding that the summative evaluation yielded a score on a bonus rubric chart with a monetary equivalent attached to the specific score (2T138). Garcia viewed himself as a strong performer, deserving of the bonus, since his student test scores ranked in the top five percent of charter schools for the last five years (2T162-2T163)

Like LaRochelle, Garcia was dissatisfied with the card check process by which the Association gained majority representative status, finding that it was too quick, leaving no time for debate and providing very little information upon which to make a judgment (2T128-2T129). In particular, Garcia wanted to know what the Association's stance was regarding charter schools and the charter school movement (2T130).

At the initial information session conducted by the Association before certification, Garcia recalls someone suggesting that one of their colleagues was sent by West to spy

on the meeting and report back to her (2T132-2T13). The attendees were whispering amongst themselves trying to determine "Who is the rat?" (2T132). Garcia then testified on cross examination:

> Q. Did anyone leave once somebody asked [who was the rat?]?
>
> A. No. The only person that would have left was me because of the comment that was made but I did not leave. [2T153]

I find that this testimony is an admission by Garcia that he was at the meeting to spy on the attendees and report back to West as the "rat". In any event, it is apparent that from the beginning even before certification, Garcia was against the Association and that opinion carried through afterwards.

Nevertheless, despite his reservations concerning the union's philosophy regarding charter schools, after certification, Garcia became a member of the Association and never thereafter pursued answers from any union official about these concerns (2T148-2T149).

8. Jasmine Chiles-Morrison has been employed by Queen City as a school guidance counselor for the past four years (2T172). Tanya Asbury is the other counselor, although for the 2016-2017 school years she has been on leave and temporarily replaced by Dasia Hinton (2T172). During the Association's organizing drive there was some confusion as to whether Morrison and Asbury were

included in the unit that the Association petitioned to represent (2T173). When Morrison went to Corcoran for clarification, she was assured that she would be contacted, but she never received any information and did not get a chance to sign an authorization card (2T173). It was only after certification that she learned that school guidance counselors were included in the Association's unit (2T173).

As a result, Morrison was upset, because she felt left out of the process (2T174). She was also upset when she learned the amount of the dues, since she never got a chance to weigh in on whether she wanted to be represented by the Association (2T175). Because of these concerns, shortly after the Association was certified, Morrison and Asbury researched alternative options to the Association and NJEA, finding one that was much cheaper, namely the Association of American Educators (AAE) (2T174, 2T186, 2T190). [see discussion below under sub-heading "March 24, 2016 American Association of Educators Presentation"]

9. Gary Corcoran is in his twelfth year teaching fifth and sixth grade social studies at Queen City (1T26). Corcoran was one of the original organizers of the Association and has been its president since certification as majority representative as well as being on its executive board (CP-1; 1T26-1T27).

10. Jennifer Cherubini was involved with Corcoran in the Association's organization drive (1T167). Once the Association

was certified, Cherubini held two union offices - first as secretary and then as vice-president (1T162).

Gary Corcoran

11. As Association President, Corcoran attends the regular Board of Trustees meetings and has spoken out about Association and individual member's concerns (1T81). Specifically, Corcoran has spoken out about the lack of movement on collective negotiations as well as West's performance as director (1T81).

12. Corcoran generally describes his relationship with West as trying, stressful and tense (1T27). For instance, at one particular meeting, Corcoran criticized how West was running the school (1T82). The next day West came unannounced to observe his class (1T82-1T83). Corcoran was tired that day because the Board meeting the night before had run late (1T82). At the end of the observation, West told him she would be coming to his class every day (1T83). West had never previously expressed concerns about his teaching techniques, lesson plans or presentation (1T83). In Corcoran's opinion, West's actions were in retaliation for speaking out at the Board meeting about West (1T83). Nevertheless, West did not observe him every day thereafter but came to observe him more than she had the year before (1T83). West testified but did not refute Corcoran's accounting.

Accordingly, I credit his depiction of the Board meeting and its aftermath.[6/]

13. As another example of his poor relationship with West, Corcoran cites an October 23, 2015 written reprimand he received from West regarding an incident involving a student who left her belongings on the floor next to her locker (R-2). When West pointed this out to Corcoran, he challenged her in the presence of the students asking West whether he should give the student detention and questioning whether it was the student's fault or his (R-2). West noted in her reprimand his sarcastic tone and that she had several previous conversations admonishing Corcoran for his inappropriate interactions with the administration and his colleagues, in particular another recent incident on October 13 in the presence of the NJEA representative during which he was told by her that his behavior in the workplace was unacceptable (R-2).

6/ This incident was not pled in either charge. Corcoran's testimony provides no specifics as when the Board meeting comments or classroom observations took place so I cannot determine whether, even if a violation of the Act occurred, the incident was within the Act's six-month statute of limitations such that a remedy could be appropriately ordered. Therefore, I find that this testimony only supports that Corcoran and West had a contentious relationship based, at least in part, on his union activities as Association President.

Jennifer Cherubini

14. Cherubini was employed by Queen City for fourteen years in a tenured teaching position. She resigned at the end of the 2015-2016 school year for reasons discussed under sub-heading "Cherubini Merit Bonus Pay" (1T161). For the 2016-2017 school year, Jennifer Cherubini has been employed by the Plainfield Board of Education as a fourth grade language art and social studies teacher (1T160).

15. Cherubini describes her union activities during 2015-2016 as minimal. She was on the Association's negotiations team. However, with the exception of one incident, she had no discussions or meetings with either Director West or Assistant Director Bampoe in her capacity as Association vice-president or to represent an Association member (1T165-1T166). The one instance that Cherubini recalled was when a staff member reached out to her regarding attendance at the New Jersey Education Association (NJEA) convention. The staff member explained that a statute required that teachers be given two days to attend, while staff was told that they could only attend one day (1T163). Cherubini brought this to Bampoe's attention, and the staff was allowed to attend the convention for two days (1T163-1T164).

16. Like Corcoran, Cherubini's relationship with West was not good in 2015-2016 which Cherubini attributes to her activities on behalf of the Association (1T167). As an example,

although she does not recall the exact circumstances or when exactly the meeting took place, Cherubini recalls that during a meeting regarding something in Cherubini's personnel file, West called her a cancer in the building (1T166-1T167, 1T201). Bampoe was also present (1T201). West recalled meeting with Cherubini sometime in the 2013-2014 school year - her first year as Director - regarding Cherubini's personnel file, but denies making the statement attributed to her, namely calling Cherubini a cancer in the building (3T45-3T46). Bampoe also denies ever hearing West make this statement about Cherubini (2T245).

Cherubini's testimony regarding the alleged statement calling Cherubini a cancer in the building was too vague to support a finding of fact. There was no time or context to Cherubini's testimony. However, whether or not the statement was made is immaterial, since it appeared to have nothing to do with Cherubini's union activities but related to her professional performance.[7/]

7/ Cherubini also testified that another time, West told her that she (West) was aware that Cherubini actively brought the union to Queen City (1T167). Cherubini does not recall when this comment was made (1T167). Without any context for the conversation in Cherubini's testimony I give it little weight to establish that Cherubini was treated differently after she became involved in the union. Cherubini was not even able to state with certainty that the statement was made in 2015-2016 or while she was association vice-president (1T167-1T168).

17. Cherubini also cites a January 11, 2016 written reprimand given to her by West based on a January 8, 2016 incident as an example of her deteriorating relationship with West once she became involved in the union. The reprimand, Cherubini maintained, bordered on harassment and created a hostile work environment (CP-9; 1T168-1T169). West accused her of ignoring her (West's) directive to conduct a parent conference in the main office as opposed to Cherubini's classroom due to a faculty meeting at the end of the school day (CP-9).

Cherubini wrote a rebuttal challenging West's directive regarding where to conduct the conference (CP-9; 1T168-1T169). Another teacher, Ms. Rizzo, submitted a written statement regarding the incident explaining, that there appeared to be a misunderstanding about where the conference was to be conducted and acknowledging that when told where to conduct the conference, West told her and Cherubini that it made more sense to conduct the conference in the main office due to all the commotion in the hallways at the end of the day with students leaving school. Rizzo confirmed that Cherubini agreed to hold the conference in the main office and went to her classroom to retrieve her materials (CP-9).

18. NJEA Field Representative, Carol Feinstein attended a meeting with Cherubini, West and Bampoe on January 12, 2016 to discuss the reprimand (CP-9; 1T210, 1T212). At the meeting,

Feinstein queried West as to whether there was a policy prohibiting teachers from meeting with parents in their classrooms, a question Feinstein considered normal when representing a member (1T213-1T214). According to Feinstein, West became upset with the question, denied acting in a hostile manner and called Feinstein "darling" which Feinstein found to be disrespectful, since she is old enough to be West's grandmother (1T213). Feinstein then left the meeting (1T213).

The next day Feinstein received an email from West recounting their meeting and describing Feinstein's question about policy as a "rabbit hole" that West was not going down (CP-12; 1T214). Specifically, in CP-12, West explained that the meeting concerned a disciplinary matter presumably involving Cherubini and wrote in pertinent part that:

> While you [Feinstein] are permitted to ask questions, I am under no obligation to answer them. Furthermore, I will not engage in your organizing tactics to make and create a hostile situation. The letter clearly stated that your membership was reprimanded due to insubordination and not because they violated a policy. Therefore, your reference to asking me about a policy was a "rabbit hole" that I was not going to engage in going down with you.
>
> Based on what I clearly perceived was your attempt to create a combative environment I used a very basic and colloquial term more specifically I said "I am not getting hostile darling". In fact my use of the term "darling" was meant to diffuse the situation and allow for the meeting to continue without incident. However, you instantly became

> irate and volatile. You rose from the table and instantly put your finger in my face and stated "have some respect I am old enough to be your grandmother". [CP-12]

West further wrote that although Feinstein might be old enough to be her grandmother, the two were equals when sitting at the table to discuss an NJEA member (CP-12). Bampoe who was present during the meeting read the West recounting and agreed that it accurately reflected what took place (2T243).

In any event, since Feinstein did not believe that West's version was accurate particularly when West defended her use of the term "darling" or when she described the policy question as a "rabbit hole", she never responded (1T214, 3T48).

Carol Feinstein

19. Feinstein has been assigned for the last four years specifically to represent Union County which includes Plainfield where Queen City is located (1T211, 1T213). As a field representative, Feinstein negotiates collective agreements, handles grievances and arbitrations and conducts workshops (1T210).

20. From her dealings with Queen City, Corcoran and Cherubini, Feinstein concluded that Queen City did not want the union and was, therefore, hostile (1T217). For instance, Cherubini entered a lottery at the NJEA convention and won a free Read Across America program sponsored by the NJEA for her school

(1T220). The program was run by retired educators who dress in Cat in the Hat costumes and come to the school to distribute free books to the students (1T220). In this instance, the administration would not allow the presentation since the school had their own Read Across America program (1T220).

21. Feinstein also took part in negotiations which she described as tortuous and difficult. Feinstein admits, however, that since it was a first collective negotiations agreement, the parties were starting from scratch which meant that difficult negotiations could be anticipated (1T218). The Association made proposals that were rejected. For instance, the Board refused to entertain Association meetings after school on school premises unless the Association paid a rental fee and insisted that union business not be conducted during the school day (1T218, 1T221). However, Feinstein admits that there were proposals on both sides that the parties refused to accept (1T221).

Corcoran/West Email Exchange

22. At the beginning of the 2015-2016 school year and even before the school year began, a few Association members had approached Corcoran with concerns about working extended hours beyond the contractual time frame. In particular, they were upset with being mandated to come in early as well as being asked to perform duties beyond the scope of the contractual requirements (1T34, 1T92). Corcoran characterized these concerns

in his testimony as an on-going problem with administrators casually disregarding employees' contractual work hours. Corcoran had addressed this problem with the Trustees and Director West (1T35-1T36).

23. Corcoran and, I infer, all teaching staff signed an individual employment contract setting forth terms and conditions of employment for the 2015-2016 school year (CP-2). Under the section entitled "Responsibilities" it states in pertinent part:

> It is expressly understood that teacher reporting time is not later than 7:45 a.m. on any given school day, that the school day commences at 8:00 a.m.; that staff dismissal is at 4:00 p.m., Monday through Friday, unless staff is required to stay later by the Academic director; and that the employee may not leave building except during the lunch hour or unless they have the express permission of the Academic Director or his/her designee in his/her absence.
>
> Duties and responsibilities include, but are not limited to the following: attendance at all staff/faculty meetings (which occur after 4:00 routine staff dismissal time). . . [CP-2]

In addition to the individual employment contract which addresses hours of work under the subsection entitled "Responsibilities", the QCCA staff handbook (CP-3 at page 36) states in pertinent part under the section entitled "Staff Tardiness":

> In order to provide an instruction that is efficient and effective, it is imperative that staff members be at their assigned

> duties prior to the start of the school day, THE CURRENT AGREEMENT STATES THAT All STAFF MUST BE SIGNED IN AND READY TO BEGIN THE WORK DAY AT 7:45 a.m. Failure to comply with this policy makes it impossible to begin the day in a smooth manner. All staff is expected to adhere to the policy as it is written. Teacher hours are from 7:45 a.m. to 4:00 p.m. daily, with the exception of scheduled School Faculty Meetings. [CP-3]

The handbook also has a section entitled "Grievance (Policy #3340)". The grievance procedure has two levels with the final level being the decision of the Board (CP-3; 3T77). There is no provision for appeal to an arbitrator (CP-3).[8/] Corcoran admits he knew about the handbook, but denies familiarity with the handbook's grievance procedure (1T96).

24. On October 13, 2015, Corcoran sent an email to all Association members using the school email system advising them as follows:

> Good Afternoon Members,
>
> The administration needs to respect the time of all teachers and staff at our school. Our contracted time is 4PM. (Contracted Time-

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8/ While the handbook has an extensive table of contents with over fifty listed items, there is no listing for the grievance procedure which is contained in the handbook under the Heading "Procedures" and is on page 30 between sub-headings "Fundraising" and "Inclement Weather". I find that if an employee was unfamiliar with the grievance procedure or was aware that one existed, it would be necessary to examine each page to find it. This omission was either an oversight or intentional obfuscation. There is no evidence in the record before me to support either conclusion, so I draw no inference therefrom.

> 7:45AM-4PM) This has been a ongoing [sic] issue, with administration casually disregarding our members valuable time, we have addressed this with the Board of Trustees and Ms. West but she continually shows a lack of respect towards the staff with meetings running past our contracted time.
>
> The Association does not want to seem petty but the administrators do not seem to have a problem of pointing out to staff when they are three or four minutes late or leaving a couple of minutes early.
>
> Members should feel free to leave when our contracted time is violated by Ms. West or any other administrator.
>
> Thank You, Gary
>
> President of Queen City Education Association-Mr.Gary Corcoran [CP-4; R-1][9/]

Corcoran did not intend this email for the administration or non-members and was not aware that the email chain teachers@queencity.edu also included West, other administrators as well as instructional personnel and some of the business

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9/ Two exhibits were introduced containing the emails exchanged between West and Corcoran on October 13, 2015, namely CP-4 and R-1. During voir dire of CP-4, Corcoran explained that he had cut and pasted the emails between him and West, so CP-4 contained no internet addresses (1T42). Respondent then introduced R-1 which contained Corcoran's email to members and West's response which were printed from the internet and contained the IP addresses. R-1 does not contain Corcoran's reply to West's email however, but Corcoran testified that CP-4 accurately reflected his email response to her. Accordingly, both exhibits were admitted into evidence.

office (1T35, 3T7).[10/] If he had known West would receive his email, it might have changed what he wrote in it (1T90).

25. Nevertheless, West received Corcoran's email through the email address teachers@queencity.edu which is an address that has been used for as long as West has worked at the school, at least six years (R-1; CP-4; 3T7). She uses it frequently to communicate with teaching staff so as to avoid using the intercom system and often receives responses from members of the group (3T8).

Despite receiving the email, West admits that the initial Corcoran email was addressed to Association members, not to her, and was sent in his capacity as Association president with respect to a concern raised by some members regarding contractual work hours (3T72-3T73). She interpreted Corcoran's initial email as a complaint about staff meetings running over time (3T9). Corcoran never filed a grievance over this issue, so West was surprised to learn of this issue for the first time in Corcoran's email to Association members (3T10).

26. West emailed Corcoran in response that same day copying the teaching staff and Assistant Director Bampoe. If Corcoran had addressed an email only to her, she would not have used the group email because she considered that unprofessional (3T16).

10/ This email address has been in existence for years and is often used by West to communicate to staff (3T7-3T8)

Nevertheless, West emailed Corcoran with copies to the staff and Bampoe:

> Mr. Corcoran,
>
> Please stop by the office during your prep and see me. This is not the tone or tenor of our QCACS. We are all here to serve scholars and ensure that we increase scholar achievement.
>
> The mass email is divisive in the tone. To organize for reasons that will continue to uplift your professional teaching network is one thing. However, to organize to cause a spirit of unprofessionalism [sic] is something completely different. You have been continually combative and hostile. That type of behavior will not be tolerated from anyone at QCACS. We continually strive to make sure that all are treated with respect. Administration would never walk out of a meeting with you.
>
> To the rest of the QCACS staff I urge you to continue to be professionals that will move QCACS forward. Furthermore, I urge you to hold both your colleagues and administration to the same high standards.
>
> Thank you for rising above and helping us to meet the challenge of moving QCACS.
>
> Ms. West [CP-4; R-1]

27. In explaining this email response, West testified that in her opinion, Corcoran's email was an inappropriate venue to raise the work hours issue, especially when none of the staff had come to her to complain (3T12). Moreover, West considers that in educating students, the primary responsibility of educators is to

be prepared to educate them which might mean staying in a meeting (3T13). In any event, West denies that it is common for meetings to run over (3T13). Also, the individual employment contracts specify in pertinent part as to teacher responsibilities that:

> It is expressly understood that teacher reporting time is not later than 7:45 a.m. on any given school day, that the school day commences at 8:00 a.m.; that staff dismissal is at 4:00 p.m., Monday through Friday, unless staff is required to stay later by the Academic director; and that the employee may not leave building except during the lunch hour or unless they have the express permission of the Academic Director or his/her designee in his/her absence.
>
> Duties and responsibilities include, but are not limited to the following: attendance at all staff/faculty meetings (which occur after the 4:00 routine staff dismissal time). . . [CP-2]

West also resented Corcoran's suggestion that her actions were disrespectful to staff, so, in her response, when she asked the staff to "rise above and be professional", West was addressing the entire Association membership not just Corcoran (3T12, 3T76-3T77).

Nevertheless, West admits that rather than sending her reply email to the entire staff, she could have asked Corcoran to come to her office for a discussion about the concerns expressed in his email to membership. However, she did not (3T80).

28. When Corcoran received West's email, he was very concerned because he felt that West was chastising him in public

in an effort to intimidate him (1T37-1T38). He responded to West's email copying the teaching staff, Bampoe and School Business Administrator Charlene Jones (CP-4; R-1). He wrote the following:

> Ms. West,
>
> Your response and tactics towards the Association is troubling. First off the mass email was to members of the association not to the administration. We have had mass emails before about Association concerns and this has not been an issue.
>
> You also sent out a mass email of your own twice today instructing me to attend a meeting with you, with the entire staff seeing this. This is disappointing because your content and tone would leave a reasonable person to assume that I will be facing some sort of disciplinary action. If you are trying to intimidate and discipline me in front of school this goes against established policies already put in place for the teachers/staff and it is unprofessional. You public chastisement is unwarranted as well as dishonorable. If you are trying to intimidate the President of the Association (and its members) and the NJEA this will not work, my email was sent as the President of the Association not as personal concern. The email is professional in tone.
>
> I will not address the content of your mass note right now only to say I stand by the previous email sent out to the members of the association. [CP-4]

In addition to his email response, Corcoran stopped by West's office as instructed (1T40). He questioned West as to why she sent the email to him and the staff and wanted to know why

she was trying to intimidate him in front of his members (1T40). West explained that she sees all emails that are sent to the teachers and questioned his professionalism (1T40). Although Corcoran received no formal written reprimand, he felt as if the West's email was the equivalent of one (1T40). However, he never filed a grievance (1T90).

29. Respondent witnesses LaRochelle and Garcia understood the concerns raised by Corcoran's email to pertain to faculty meetings which might conclude after the contractual hours of work and also that Corcoran was advising members to feel free to leave when West or others violated these work hours (2T43-2T44, 2T123, 2T154). However, they did not agree with Corcoran's email to West, namely that West showed a lack of respect toward staff and agreed with West's email response characterizing Corcoran's email as improper and divisive (R-1; 2T37-2T39, 2T126).

LaRochelle buttressed her conclusions regarding Corcoran's divisiveness and combative style by recounting a conversation she had with Cherubini which Corcoran interrupted and was dismissive of LaRochelle's questioning Cherubini (2T41).

Garcia also disagreed with Corcoran's advice to members to feel free to leave if meetings ran past 4:00 p.m. (the contractual time), because it was his understanding that faculty are required to remain for specific meetings if the administration deems it necessary (2T123-2T124). Nevertheless,

Garcia admits that if some members were unhappy, they would appropriately express their concerns to Corcoran as Association president and that Corcoran was within his rights to communicate with them through email (2T156).

Neither LaRochelle nor Garcia were offended by West's reply email to Corcoran nor did they find it to be anti-union (2T38-2T39, 2T126). I give little weight to LaRochelle's and Garcia's testimony charactering these email exchanges. They are both biased witnesses because they were against the Association's organizing drive and subsequent representation as majority representative, and both had received monetary incentives - stipended and hourly-paid positions and raises approved by West - which predispose them to favor West.

February 19, 2016 Bampoe Reprimand of Corcoran

30. On February 19, 2016, Assistant Director Bampoe called a meeting of all fifth and sixth grade teachers during their prep period, regarding data that was needed to start an after-school PARCC program (2T232). This program involved students, some of whom were already identified as needing extra instructional help based on their test scores and some who were not as yet identified as needing extra assistance (2T232-2T234, 2T246). Bampoe wanted to discuss the potential students that could benefit from the PARCC Academy and complete a letter to go to their parents (CP-6). Corcoran was one of the teachers who

attended the meeting during his prep period as was Robin Nehila (1T58, 1T145).

31. Corcoran objected to the meeting and made it clear to Bampoe that the meeting was an inappropriate use of his prep period. Corcoran also insisted that he should be compensated fifty dollars if he had to be at the meeting like the teachers who were paid to administer the after-school program (1T58, 1T60, 1T95-1T96, 1T109, 2T234, 2T247). The teachers attending the meeting, however, were not being paid, and Bampoe told Corcoran that he needed to stay for the meeting because he (Bampoe) needed information about Corcoran's students to build the program, such as their grades, their performances and basically what kinds of assistance they would need (2T235). Bampoe also disagreed with Corcoran that the meeting was an improper use of his prep period stating that a teacher's prep period is appropriately used "to bring teachers together to learn from one another and collaborate to bring improvements in lesson quality, instructional effectiveness, or student achievement (CP-6)."

32. According to Bampoe, Corcoran told him that he was not part of the after-school program and just left the meeting (2T235). Corcoran admits that he refused to fill out the paper work and left the meeting, but testified that Bampoe said he could either fill out the paperwork or he could leave. Corcoran decided to leave the meeting and work with his students (CP-6;

1T59). These two versions are essentially the same and have no material differences. Therefore, I credit both Bampoe and Corcoran regarding the meeting. Everyone else stayed and finished the work, including Nehila who testified that as a social studies teacher, Corcoran would have no in-put as to which of his students would be in the program which was based solely on English Language Arts (ELA) and math scores (1T145, 1T149, 2T236). Corcoran, she opines, was there to fill out forms (1T145).

33. Despite Nehila's assessment and conclusions, Bampoe reprimanded Corcoran following this incident, because he felt that part of Corcoran's duties included sharing information to help his students (CP-6). Corcoran signed the reprimand under protest and added a rebuttal basically disagreeing with Bampoe's conclusion that he was insubordinate, and that the meeting was a proper use of his prep time (CP-6). Additionally, Corcoran wrote that teachers in other grades were just given paperwork to fill out without losing prep time, and that he was given no notice prior to the loss of his prep period (CP-6). Finally, Corcoran asserted that he was given no warning from Bampoe that he would be written up for insubordination if he chose to leave the meeting without filling out the paperwork. Corcoran considered Bampoe's instruction to either fill out the paperwork or leave as an option. If Bampoe had made it clear he would face discipline,

Corcoran wrote that he would have stayed (CP-6). Corcoran never filed a grievance over the reprimand (1T96).

March 24, 2016 American Association of Educators Presentation

34. On March 24, 2016, a representative from the Association of American Educators (AAE), Ms. Middleton, came to speak to the staff during a professional development day (PDD) which is a day that no students are present, and teachers and school guidance counselors are required to attend (1T64-1T65, 1T98, 2T103). West prepared the agenda for the PDD and invited the AAE to present (R-10; 1T69, 2T141, 2T227, 2T251). Both West and Bampoe were present at the beginning of the AAE presentation. West then introduced Middleton and left shortly thereafter (2T26, 2T115, 2T227, 2T251).

There was some dispute as to whether the attendees were required to stay for the AAE presentation. Bampoe testified that employees did not have to stay and were free to leave, but added that West never verbally communicated that to the attendees after introducing Middleton and before she left (2T226). Although attendance for the professional development was mandatory, LaRochelle did not feel that she was required to stay for the AAE presentation because she did not consider it professional development, even though no one specifically told her that it was

not (2T26, 2T69-2T70).[11/] However, she did stay (2T25). LaRochelle admits that it is not typical that teachers can come and go on a professional development day - e.g. attend some things and not others (2T69).

Garcia also attended the PDD and stayed for the AAE presentation (2T115, 2T140). Garcia recalls West announcing before the AAE presentation that the days activities had concluded, so he felt free to leave but decided to stay (2T115, 2T140). His testimony regarding his conclusion that he was free to leave before the AAE presentation was confusing and contradictory. For instance, Garcia also testified on cross-examination that he did not know what the AAE presentation was going to be about before it started and had no idea how any attendee would know that the presentation was not part of the PDD and would know, therefore, that they could leave (2T166-2T167).

Based on Bampoe's, LaRochelle's and Garcia's testimony, I cannot find as a fact that the attendees understood that staying for the AAE presentation was optional. West did not testify as to any aspect of the AAE presentation. Clearly, the attendees were not told verbally that they were free to leave nor is there

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11/ LaRochelle explained that there have been other presentations on PDDs, namely health insurance companies, where she felt that she could leave the meeting (2T105-2T106). However, she admits that those presentations did not contrast their offerings with that of the NJEA like the AAE presentation did which was unique in that regard (2T28).

any testimony that this option was communicated on the agenda. Even if LaRochelle or Garcia concluded on their own that they could leave, they chose to stay as, I infer, did the rest of the attendees.

35. There was also conflicting testimony regarding whether the two school guidance counselors - Morrison and Asbury - attended the AAE presentation. LaRochelle testified that Morrison was present (2T96, 2T98). Morrison testified that she did not attend the March 24, 2016 AAE presentation, because she was on a "trip" that day (2T176, 2T188). However, when pressed on direct as to what kind of trip she responded "I'm not really sure. It could possibly be with - we ran a girls' mentoring program. So, we'd like frequent trips." (2T176). Morrison claims that Asbury would also have been with her because "we did those things together" (2T174). This testimony is vague. Morrison further asserts that she only found out about the AAE presentation when she returned to school (2T177, 2T189). She denies ever discussing bringing the AAE to Queen City to make a presentation (2T190-2T191). Asbury did not testify.

Accordingly, I cannot credit Morrison's assertion that she did not attend, that she only learned about the AAE presentation when she returned to school or that she never discussed with anyone bringing the AAE to Queen City to speak to staff about its benefits as an alternative to the Association. Since Morrison

and Asbury's attendance would ordinarily have been required on a PDD, it is likely that even if they were on a school trip, they saw the agenda which listed the AAE presentation. Also, I infer that since their attendance would ordinarily have been mandatory, West approved their absence. In any event, it is immaterial whether or not Morrison and/or Asbury attended, since there is no dispute that the presentation was made or that Morrison and/or Asbury researched the AAE and determined it was a preferable alternative to the Association and communicated this to their colleagues (2T187-2T188).

36. The AAE speaker passed out a folder to those present (R-3; 1T69). There is a disagreement among the witnesses as to what documents were in the folder distributed by Middleton.

Corcoran testified that a document entitled "Leveling the Playing Field 2.0, Abridged Guide for Charter School Employees about Unionization" was included in the folder (CP-7; 1T70, 1T108). The document states in pertinent part:

> As a charter school employee, it is imperative that you arm yourself with as much information as possible to truly understand the depths of unionization, limits it can place on your ability to communicate and perform - not only with students, but with charter school administrators.
>
> **********
>
> Ultimately, unionization efforts challenge the foundation of flexibility, innovation, and accountability inherent in charter schools.

****

> Why Many Charter School Leaders Do Not Want to Have a Union?
> The choice of joining a union belongs to the employees. But school leaders may see a union as an obstacle to the charter's mission, to progressive change - based on traditional public school system experiences - and administrators may well be concerned that a union would interfere with the successful and harmonious operation in various ways. For example:
>
> Union contracts often reduce flexibility.
> Union contracts can restrict direct communication with employees.
> An "us versus them" atmosphere can develop.
> Union relationships require much time, energy, and extra costs - all better spent educating children. An over-emphasis on seniority may hurt merit-based systems and limit motivation opportunities.
> Risk of labor strife may increase, and with it a loss of community confidence. [CP-7]

Both Garcia and LaRochelle testified that CP-7 was not in the packet handed out by the AAE presenter (2T28, 2T116). As expressed earlier, both of these witnesses were biased as to Corcoran due to their opposition to the Association and would likely slant their testimony in this regard. However, Nehila who was called as a witness by both Charging Party and Respondent testified when shown CP-7 that she recalled seeing the document but could not recall whether it was in the packet or shown to her by Charging Party's attorney. In any event, whether this document was in the packet that day cannot be resolved by this

conflicting testimony. There is no dispute that it was a document prepared by AAE and contained sentiments attributable to it, and that it was available on the AAE internet site for anyone interested to read.

37. There is no dispute, however, as to other documents contained in CP-7 and handed out by Middleton during her presentation or that those documents support that the AAE presented itself as an alternative to the Association which is affiliated with both the NJEA and NEA (R-3; 1T154-1T155, 2T66, 2T70, 2T76). For instance, one of the two-sided sheets included in the handout was a chart entitled "Association Benefits, a Comparison of Professional Benefits and Services" (R-3; 1T150). The chart has three columns: (1) benefits feature, (2) AAE and (3) NEA (R-3).[12/]

In one feature comparison, the columns juxtapose the cost of membership, namely $198.00 per year for the AAE and between $500.00 and $1000.00 for the NEA (R-3). In another, there is a comparison between member survey, namely that the AAE surveys all members in an annual survey on issues that affect the profession versus the NEA that it states does not survey all members but has union leadership decide what positions to take (R-3). Basically,

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12/ The Association is a local affiliate of the New Jersey Education Association (NJEA) which is an affiliate of the NEA or National Education Association (1T152-1T153).

the packet of documents touted the benefits of joining the AAE and not the NEA and by extension the Association (1T154-1T155).

LaRochelle also understood the presentation as promoting the benefits of the AAE over the NEA (2T73).[13/] Garcia acknowledges that one could reasonably conclude that the AAE was making a presentation to sell its product and using comparisons with the NJEA to enhance the possibility of the sale (2T143).

38. At some point during the presentation, Corcoran asked Middleton whether the AAE can negotiate a contract for their members (1T71). Although Middleton answered questions from other attendees, she did not respond to Corcoran's question, so he asked it several more times (1T71-1T72, 1T98). Garcia told Corcoran that "we listened to your union stuff, let this woman talk" (1T72). In Garcia's opinion, Corcoran had already had a chance to present his side at the information session conducted by the Association before certification (2T118, 2T150). Corcoran and Garcia then got into a "heated" exchange at which point a colleague, Antonio Berticia, asked Garcia not to engage Corcoran (2T119). Assistant Director Bampoe who was in an adjacent room

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13/ The packet also contained an article about the U.S. Supreme Court decision in Friedrichs vs. CTA (2T74). The article described the mission of the litigation "to strike down Abood versus Detroit Board of Education, a 1977 case that sanctioned agency shop rules that permit unions to dock a teacher's pay regardless of whether they want to be a member of a union or be represented in Union activities." [R-3; 2T75]

and heard the raised voices then interceded and admonished both men for what he considered bad behavior (2T229). Garcia and Corcoran were asked to leave the presentation (1T72, 2T119, 2T229). Corcoran spoke briefly to West that day about the incident explaining his concerns about the presentation and about Garcia's behavior (1T73).

Garcia received a letter of reprimand and accepted his discipline, because he felt that as someone in a leadership position he should have acted more maturely and showed more respect to Corcoran (2T120). On the last day of school, he and Corcoran discussed the incident and both expressed regret for what happened (2T120-2T121).

Shortly after spring break, Corcoran also received a written reprimand regarding this incident (1T73). In Corcoran's reprimand, West wrote that he rudely interrupted Middleton who was an invited school guest by loudly stating "that she was not welcome, and bombarded her with questions in a very hostile manner" (R-10). According to Bampoe, although he and West were not present, they got this description from "talking" with and, presumably, interviewing those who were present at the presentation (2T249-2T250). Corcoran never filed a grievance over this reprimand (1T100).

2015-2020 Strategic Plan

39. In late 2014 or early 2015, the New Jersey Charter School Association (NJSCA) was retained by Queen City Board of Trustees to facilitate its strategic planning. Richard Pressler acted as facilitator on behalf of NJCSA (1T76-1T77, 1T107, 2T33, 2T195-2T198). For the past six years, Richard Pressler has been employed by the NJSCA as director of school services providing statewide governance training, strategic planning, renewal services, business office assistance and services related to educational programing (2T194-2T195).

40. In preparing a strategic plan, NJCSA uses a standard corporate model in which schools assess their own environment or current situation, revise or reaffirm their missions and visions and then establish goals and objectives to help them fulfill identified missions (2T196).

41. CP-8 is the 2015-2020 strategic plan prepared as a result of committee meetings facilitated by Pressler which was adopted by the Board of Trustees in December of 2015. The strategic planning committee consisted of what Pressler described as stakeholders consisting of administrators, board members, teachers, community members not affiliated with the school and parents. Specifically included in the group, but not limited to,

were the following: current Teachers LaRochelle and Nehila[14/] (both Association members), two former teachers, Administrators West and Bampoe, School Business Administrator Charlene Jones, Board of Trustees President Brian Kramer as well as three other trustees, three parents, three community members, and School Guidance Counselor Asbury (CP-8; 2T198). Pressler was also listed on the committee (CP-8). Committee members were volunteers and met monthly over the summer of 2015 (2T32-2T33, 2T77).

42. The strategic planning process began with a SWOT analysis, an acronym for Strengths, Weaknesses, Opportunities and Threats (2T199). Basically, the committee brainstormed and identified different elements within each category (2T199). For instance, strengths and weaknesses were identified as those items over which the school has some internal control, while opportunities and threats are understood to be those external items over which the school has no control and could inhibit its ability to fulfill its mission or its operation (2T199-2T200). Everyone on the committee could make comments regarding the contents of the plan and had veto power to remove items from the final draft (1T139, 2T34, 2T79). Only the highest priorities for

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14/ Nehila has been employed by Queen City for five years as a third, five/six and seven/eight teachers (1T133-1T134). She served as Association treasurer when it was first certified, but due to family and job demands resigned her union office (1T139-1T140).

the committee emerged and became part of the strategic plan (2T211).

43. Under the SWOT analysis, the section entitled "Threats" lists the following:

* Traditional public school district
* Charter expansion-competition
* Losing faculty to higher paying jobs
* Lack of facilities funding
* State funding formula and policies - lack of consistency
* State mandated testing results are not timely
* Unionization [CP-8 at page 7]

According to LaRochelle, no one on the committee exercised veto power to remove the category of unionization as an external threat. Everybody on the committee accepted it as part of the strategic plan (2T79-2T80). LaRochelle herself viewed the NJEA unionizing the school as an external threat (2T108-2T109). During the circulation of the drafts, Pressler also does not recall anyone objecting to the inclusion of "unionization" as a threat (2T205). I infer that since the categories were the product of committee brainstorming, someone or several members added unionization as a threat which was included in the final document comprising the strategic plan (2T201, 2T312).

44. The strategic planning process took months during which several drafts were circulated among committee members and reviewed at public meetings (2T203-2T204). The strategic plan (CP-8) was available for anyone who wanted to read it, including

non-tenured teachers who, LaRochelle agrees, could reasonably conclude that it is a blue print for what the committee and, particularly, the administration and trustees aspire to achieve for Queen City over the next five years (2T82-2T85).

45. Pressler also admits that the Strategic Plan (CP-8), is a blueprint for where Queen City would like to move toward over the next five years (2T214-2T215). The following language is written in pertinent part in the Introduction to the Strategic Plan:

> The Strategic Plan for the Queen City Academy Charter School establishes the school's concrete goals and objectives over the next five years, in accordance with the mission and vision of its founders.
>
> * * *
>
> Good strategic plans are put to use - administrators review them regularly to ensure that priorities are aligned. [CP-8 at page 1]

When asked on cross whether a non-tenured teacher reading the Introduction and then the "Threats" section would conclude that membership in the union is inconsistent with the goals and objectives of the charter school, Pressler disagreed and said that they would likely read the Introduction and then go to the section under Strategic Goals and Objectives which he testified was the most crucial section (2T216, 2T218). That section states in pertinent part:

> * They [goals] must address our most significant weaknesses, strengths, opportunities or threats. [CP-8 at page 8]

On re-cross, however, Pressler admits that the word "address" could mean get rid of, eliminate or try not to have (2T220). Moreover, he acknowledges that although the term "Threat" as defined by the plan means something external to the school, in this case the union is already in the school and that all employees have a right to unionize (2T221). His testimony was confusing in this regard, but I find that the Strategic Plan as drafted by the committee and adopted by the Board of Trustees viewed the presence of the Association as a threat to Queen City's mission.

46. Finally, according to Pressler, the NJCSA has no official position on unionization, but it views the NJEA as being opposed to the development of charter schools, especially in the policy positions that it has taken which are viewed by the NJCSA as a threat to the growth of the charter school sector (2T206, 2T212-2T213). Specifically, the NJEA supports two bills which the NJCSA views as contrary to the interests of charter schools, namely the Moratorium Bill prohibiting any new charter school development and the Referendum Bill which called for a community vote for approval of any charter school (2T206-2T207). The latter Bill would have left the development of any new charter

school to what the NJCSA viewed as a political campaign not reflecting the needs of the children (2T209).

I find that despite Pressler's assertion that the NJCSA has no official position on unionization, his testimony demonstrates that the NJCSA views the NEA/NJEA and the Association as an impediment to the charter school movement generally and specifically to the objectives as set forth in the Queen City strategic plan.

PEOSHA Inspection

47. On May 5, 2016, Compliance and Safety Health Officer Scarlette Gaudin, a PEOSHA (Public Employees Occupational Safety and Health Act) inspector, arrived at Queen City for an unannounced inspection (3T24, 3T58). Gaudin was introduced to West and explained that there was a complaint about indoor air quality that prompted the inspection, and that the inspection consisted of an opening conference, a walk-around and a brief closing conference (1T120).

48. Prior to the walk-around as per custom, Gaudin asked West that a designated union representative be present for the opening conference and to stay for the inspection itself (CP-5; 1T120). The request for union representation is not required by statute or regulation but is required under PEOSHA guidelines (1T124).

According to Gaudin, in response to her request for a union representative, West replied "that there is no ratified contract or paid dues so there was no union designated rep" (CP-5; 1T121). West only admits that she told Gaudin that there was no ratified contract and no paid dues (CP-5; 3T18, 3T59).[15/] West explains that she told Gaudin this because there was State PARCC testing being conducted that day and she wanted clarification from Gaudin as to what staff member would be acceptable to accompany Gaudin (3T19).[16/]

49. In any event, when there is no designated union representative, it is Gaudin's custom to ask for an employee representative (CP-5). West selected Kimberly LaRochelle, the PARCC coordinator who was in the main office shredding papers from the make-up PARCC tests that had taken place earlier in the day and who already had a substitute coverage for her classroom

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15/ On June 1, 2016, at the behest of Corcoran who asked Gaudin to email him what she told West that day in regard to the school having no union representatives or an active union, Gaudin responded by email (CP-5) confirming what she testified in this regard, namely that West told her there was no ratified contract for a union and no paid dues. Although Gaudin did not mention in her email that West also told her on May 5 there was "no union designated rep", I credit her testimony in this regard (1T121, 1T126). She was forthright and had no trouble recalling the details of the inspection meeting. Moreover, Gaudin was not a biased witness, favoring neither the Association nor the administration.

16/ PARCC make-up testing was also being conducted on May 6, 2016 as well as on May 5, 2016 (R-11; 3T86).

(2t21, 2T57-2T58, 3T20-3T21). In fact, LaRochelle had already given the substitute work planned for her students (3T21-3T22). West told LaRochelle "[y]ou're going to be the faculty representative for this [PE]OSHA meeting" (2T23).

West also selected School Maintenance Man Marvett Tiller who would not need classroom coverage and had key access to all areas of the school for the inspection (3T26). Both Tiller and LaRochelle were Association members (2T23, 2T60, 3T20). Not having been summoned for the inspection, Corcoran only learned about the inspection later in the day from Cherubini (1T52-1T53, 1T84).

50. As to West's not calling either Corcoran or Cherubini to accompany Gaudin, West testified on direct examination that Corcoran and Cherubini were not available because it was PARCC testing time, and they were instructing students (3T19-3T20). Then on cross examination, she testified that Corcoran and Cherubini were engaged in PARCC make-up testing as well as instructional operations, and she did not have the coverage to relieve them (3T59-3T61). However, in a certification submitted by West in support of the Board's opposition to the Associations request to have its unfair practice charge block the processing of the petition to decertify the Association filed by LaRochelle, West wrote in pertinent part:

> I deny Corcoran's allegation number 14. Contrary to this incredibly misleading

> allegation, when the PEOSHA agent arrived at our school and requested that an Association representative accompany her for the inspection, the only reason that I did not call Mr. Corcoran or Ms. Cherubini was that they were both busy proctoring or preparing their students for the State-mandated PARCC exam. Had they been free or engaged in an activity of less importance to our students, one or both of them would have been permitted to attend. [CP-13 at paragraph 12]

West admits that this answer could have been expressed more precisely, in particular as it related to "an activity of less importance". She considers instruction vitally important to the students (3T65).

I do not find West's testimony regarding what Corcoran or Cherubini were doing when the PEOSHA representative arrived at the school to be material, although her explanations as to their activities shifted. It is apparent that they were in their classroom with their students engaged in either instruction or PARCC preparation and not administering make-up PARCC tests which were over for the day. In any event, LaRochelle confirmed that neither Corcoran nor Cherubini were involved in the make-up testing and were in their classrooms when Gaudin arrived (2T58-2T59).

Nevertheless, LaRochelle admits that since she was just shredding paper, she knows of no reason why she could not have gone to either Corcoran's or Cherubini's room to relieve them of their classroom duties so the would have been available to

accompany Gaudin (2T59-2T60). Furthermore, LaRochelle admits that although she is an Association member, she is not, nor ever has been, a union officer or represented the Association in any capacity before the inspection (2T60-2T61).

In any event, West concluded that both Corcoran and Cherubini were occupied. Whether that conclusion was reasonable in light of the activity LaRochelle was engaged in, namely shredding paper, is not pertinent to what Charging Party sees as inconsistencies in her testimony nor does it make her testimony less credible in this regard. What is material to the charge, is West's statements to the inspector as to the status of the union at the school and her decision not to have LaRochelle or someone else cover their classrooms, so that Corcoran or Cherubini could act as the designated union representative as Gaudin originally requested.

For instance, West admits that if Gaudin had insisted that she be accompanied by Corcoran or Cherubini, she would have allowed it but then either she or assistant Director Bampoe would have had to step in to cover their classrooms (3T23-3T24). However, by way of explanation, West posits that last minute coverage for either Corcoran or Cherubini creates an operational problem because with a small staff of 42 and 5 resource teachers who because of federal Title 1 funding cannot be used for coverage, there are limited resources (3T25). West further

explains that it is difficult in a school the size of Queen City to find substitutes and in any given year they will use perhaps five or six substitutes (3T25). On May 5, substitutes were already assigned, one to LaRochelle (3T26).

51. The inspection took the majority of the day (3T27). Eventually Gaudin issued a report which found no serious violations (1T123).

52. The Association never filed a grievance over how West handled the inspection (3T29).

Cherubini Merit Bonus

53. For the first time in the 2015-2016 school year, merit bonuses in addition to salary increments were available to staff at Queen City (3T38, 3T43). The merit bonus was explained to the staff as being based on the Charlotte Danielson teacher evaluation model (1T176). The Danielson model has four domains with a score given for each domain. Domain 1 is planning and preparation based on classroom observation, Domain 2 is classroom environment also based on observation, and Domain 3 is instruction based on classroom observation. According to Cherubini, Domain 4 is not so much based on classroom observation but on a teacher's activities at the school such as attendance, tardiness, committees etc. (1T177). The summative evaluation sheet provided at the hearing marked as CP-10 does not provide an explanation for what Domain 4 covers, so I credit Cherubini's

testimony in this regard, since no other witness, including West who testified on the merit bonus issue, rebutted her testimony or explained more thoroughly the basis for Domain 4 scoring. The results of the scoring in each domain is recorded on a summative evaluation signature sheet for each teacher (CP-10).

54. In June 2016, Cherubini was given her summative evaluation sheet (CP-10) together with a bonus rubric giving a breakdown of what monetary bonus is attached to the summative score. CP-11 was stapled to CP-10 when it was given to Cherubini. Her summative evaluation score was 2.86 which was considered an effective rating - the four ratings were ineffective, partially effective, effective and highly effective (CP-10). According to the bonus rubric (CP-11), a score of 2.86 translated to a $900.00 bonus.

55. Cherubini concluded that since the merit bonus in her opinion was based strictly on the score she received in her summative evaluation, which she surmised already included attendance, she would be receiving the amount indicated on the rubric (1T179-1T180). However, the summative evaluation sheet prepared by West recommended her continued employment, but that her bonus and increment be withheld due to excessive absenteeism (CP-10).[17/] Cherubini had 8.5 days absence that year with five

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17/ Cherubini received a letter from Business Administrator Jones regarding a statement of reasons for her increment (continued...)

days due to the flu for which she submitted a doctor's note (1T182). She had never been told by West or anyone else that her entitlement to her bonus would be negatively affected by her absenteeism (1T183).

56. West recommended and the Board approved the withholding of Cherubini's salary increment and merit bonus pay for 2015-2016, because for seven consecutive years, Cherubini received corrective action plans based on poor attendance (R-4 through R-8; 3T33). Specifically, in the 2009-2010 school year, former Director Rashawn Adams issued Cherubini a corrective action plan for attendance (R-4), in 2010-2011 and 2012-2013, former Director Teresa Raline issued Cherubini corrective action plans for poor attendance (R-5, R-6) and in 2014-2015 West issued her two notices related to a correction plan for attendance issues (R-7, R-8). West considered all of these correction action plans in recommending that Cherubini's salary increment and merit bonus by withheld (3T34-3T37).

57. According to West, good attendance is very important to school operations, particularly to a small school with limited access to substitute teacher coverage. No other employees had as many corrective action plans as Cherubini (3T37-3T38). In fact, Cherubini was warned of possible disciplinary action in all of

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17/ (...continued)
withholding, namely a longstanding unsatisfactory attendance record and failure to improve her attendance record (R-9).

her corrective action plans (3T38). Also, West discussed it with her and sat in with discussions that other directors had with Cherubini about her problem attendance record (3T39).

58. There is an attendance policy in the staff handbook which has been in effect since at least 2010 (CP-3; 3T42). The handbook states in pertinent part:

> A prerequisite for the efficient performance of a staff member's assigned duties is regular and punctual attendance. Excessive absenteeism of staff creates discontinuity in the instructional process and reduces the amount of time students can spend learning. Therefore, absenteeism is closely monitored and carefully reported.
>
> * * *
>
> Excessive absences or patterns of absences, regardless of the type of absence, with exception of off-site professional development can result in the loss of increment and/or other disciplinary action. [CP-3 at page 36]

59. Because the policy does not specify exactly what constitutes other disciplinary action, West concluded that it allows the Board flexibility (3T41). When West made the recommendation to the Board that the handbook attendance policy gave it flexibility to withhold not only Cherubini's salary increment but also her merit bonus there was rigorous debate among the Board members and West (3T42-3T43). In the end, all concluded that there was discretion under the attendance policy to support taking the action West recommended, namely withholding

the increment and merit bonus (3T43). In particular, since this was the first year for merit bonuses, West and the Board did not want to set the precedent for awarding a merit bonus to someone with an established record of attendance problems (3T44).

On cross examination, West was asked if there was any other policy other than the staff handbook which applies to withholding a merit bonus (3T48). West testified that the Strauss Esmay policy upon which the staff handbook is based also applies and speaks to attendance increment withholdings and other salary adjustments (3T49). However, in West's answers to interrogatories regarding the criteria for determining performance bonuses, she responded:

> Bonuses are determined based on the faculty member's overall score in their summative evaluation. [CP-13 at page 22]

By way of explaining the inconsistency in her testimony and her interrogatory answer, West testified that her answer was incomplete, because the summative evaluation is not the only criteria (3T52-3T54). West admits that Cherubini received a summative evaluation score of 2.86 which computes to $900.00 on the bonus rubric, but she did not receive her 2015-2016 merit bonus (CP-10, CP-11; 3T54-3T57). West also concedes that Cherubini was the Association vice-president at that time (3T57).

60. Since taking this action, West and the Board created a new policy in line with Strauss Esmay that awards merit bonuses

not just based on a numerical score tied to the rubric but also including attendance caps for unprofessionalism (3T45).

61. Upon receiving the summative evaluation, Cherubini confronted Business Administrator Charlene Jones asking for any policies regarding the awarding of the merit bonus (1T185). Cherubini was aware of the Board policy regarding increment withholding (1T182). Jones got back to her and told her there was no policy (1T182).

62. Next, Cherubini appealed the decision regarding her merit bonus to the Board hoping that they would overturn the administration's decision, but they did not (1T185). Cherubini did not appeal the decision to withhold her increment to the Board and does not challenge that decision (1T205, 1T207-1T208).

63. Cherubini feels, nevertheless, that West's decision to deny her merit bonus was linked to her position as Association vice-president since she was the only member of the staff whose bonus was withheld for absenteeism even though she knows others were absent (1T185). However, Cherubini admits that she is not aware whether other staff had the same attendance issues as she did, namely five corrective action plans in seven years (1T200). She is also aware that the Board's attendance policy covers expectations including regular and punctual attendance and that excessive absenteeism regardless of the types of absences creates discontinuity in instruction and reduces student learning time.

Seven and above absences is considered unsatisfactory and requires a corrective action plan (CP-3; 1T190-1T193).

The Petition to Decertify the Association

64. School Counselor Morrison approached LaRochelle and asked her to sign the cover letter and a petition to decertify the Association as the majority representative (2T44-2T45, 2T96, 2T98-2T99). LaRochelle had spoken previously with Nehila, Morrison, Berticia and Garcia about decertifying the union (2T45). These discussions actually began during the Association's organizing campaign (2T45).

65. Having received the petition and information which was sent to her house, LaRochelle sent an email to staff letting them know that she had documentation from "the lawyers" regarding a petition to decertify the union in her room for them to review the information in a folder and sign the petition if they agreed with the decertification effort (2T41-2T42, 2T101).

West denied ever discussing the petition with any employee or asking the school counselors - Morrison and Asbury - to recruit support for the petition to decertify the Association (3T46). She also denies knowledge of the school counselors discussing the petition with staff during school hours (3T46). I infer, however, based on LaRochelle's testimony that she notified staff via email that the petition was in her room for their review and signature, that West, who testified that she regularly

received emails sent to staff, was aware of the decertification effort and that staff were discussing it during school hours (3T7-3T8). This testimony supports that not only was West aware of the decertification effort, but she did not stop these activities which were occurring during school hours. I cannot, therefore, conclude from this testimony that LaRochelle, Morrison or Asbury were recruiting support at West's explicit direction, but I find that West's actions - the email exchange at the beginning of the school year with Corcoran, her invitation of the AAE to present at the professional development day and West's participation in the 2015-2020 Strategic Plan identifying unionization as a threat - implicitly signaled approval and support of their decertification efforts.

Specifically, Morrison denies ever discussing decertification with West, although she admits discussing the possibility of decertifying the Association with staff and telling them about the AAE as an alternative to the Association (2T186-2T187). Nehila also confirms that sometime during the spring of 2016 and during school hours, she went to School Guidance Counselor Asbury to discuss a student (1T134-1T136). At that time, Asbury handed her a petition for decertification and asked if she would like to sign it (1T135). No one pressured Nehila to sign the petition (1T137). Although Nehila was aware that union business was not supposed to be conducted during

school hours, she did not complain to West about it nor did West discuss the petition with her (1T136-1T137).

66. LaRochelle's was the first name on the petition, but she was not aware of anyone else who signed since she did not look at the petition and Morrison collected the petition, presumably to mail it to the Commission for filing (2T99-2T102). Some individuals, however, told LaRochelle they signed it - e.g. Morrison (2T100).

67. After the petition was filed, there were several emails between Corcoran and LaRochelle (1T148). Basically, Corcoran who copied the Association membership referred to LaRochelle as being the sole petitioner who was responsible for contract negotiations being halted (2T42). LaRochelle objected because she filed on behalf of a group of individuals and asked him to stop using her name in reference to the petition, because others had signed it. LaRochelle admits, however, that her name was the only one on the petition (1T148, 2T42). Although Nehila knew that the petition was signed only by LaRochelle, Nehila asked Corcoran to stop suggesting that it was LaRochelle solely who filed, and he did (1T148, 1T155-1T156).

68. Both Garcia and LaRochelle deny that West ever encouraged LaRochelle to file the petition or that LaRochelle spoke to West about it (2T51, 2T130). LaRochelle also denies that the AAE presentation had any effect on her decision to

support the decertification of the Association as the majority representative (2T51). Her sole interest in having a vote to decertify the Association, she insists, is because she does not feel "that the NJEA has my back as a Charter School teacher" (2T53).

ANALYSIS

Charging Party alleges that since the Association's certification as majority representative on June 26, 2015, Director West has demonstrated anti-union animus though a series of retaliatory actions aimed specifically at the Association President Corcoran and then Association Vice-President Cherubini and, generally, at the Association. Additionally, Charging Party contends that Director West's actions directly or indirectly encouraged staff to file a petition seeking to decertify the Association. Her actions, it contends, independently violated 5.4a(1) as well as 5.4a(3) and derivatively a(1) of the Act.

For the reasons set forth below, I find that some of the allegations regarding West's and the Administration's conduct - e.g. the October email exchange between West and Corcoran, the AAE presentation on a PDD and Corcoran's reprimand therefrom, the 2015-2020 Strategic Plan and the PEOSHA inspection incident - interfered with protected rights and constituted retaliation against Corcoran for exercising those rights in violation of 5.4a(1) and (3) of the Act. Moreover, even without direct proof

that West or other administrators conspired with petitioner to file the decertification petition, I find that there is an immediate cause and effect between the unfair practices and the filing of the petition which taints the decertification process and prevents the conduct of a free and fair election to decertify the Association. It is apparent that West's and the Board's conduct after the Association was certified had a cumulative effect which demonstrated support for and tacit approval of the decertification effort.

However, I also dismiss allegations pertaining to a February reprimand given to Corcoran and one given to Cherubini at the end of the 2015-2016 school year as well as the allegation regarding the failure to award Cherubini a merit bonus for 2015-2016. Furthermore, there is no evidence - testimonial or documentary - presented in this hearing regarding several allegations in the Complaint, namely that West showed the film "Waiting for Superman" at the beginning of 2015-2016;[18/] that employees were denied representation in November 2015 during meetings with

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18/ I agree with Respondent that CP-14 which is West's certification given in support of the Board's opposition to Charging Party's request that its unfair practice charges block the processing of the decertification petition was introduced for the sole purpose of cross examining West about disputed facts pertaining to the PEOSHA inspection. There was no testimony at the hearing about the film and, therefore, no opportunity for Respondent to examine West about this allegation, confront Charging Party's witnesses or call rebuttal witnesses to address this issue.

management; and that in February 2016 an employee refused to answer a phone in Cherubini's classroom for fear of being punished by West for associating with Cherubini. Accordingly, these allegations are dismissed.

N.J.S.A. 34:5.3 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. Bridgewater Tp., 95 N.J. 235 (1984). Under Bridgewater, the New Jersey Supreme Court determined that no violation will be found, however, unless the charging party has proven 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 conduct. Id. at 242.

An employer independently violates 5.4a(1) if its actions tend to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to establish this violation. The tendency to interfere is sufficient. Mine Hill Tp.

The Corcoran/West Email Exchange

In October 2015, because several members had expressed concerns to Corcoran as Association president about faculty meetings running past 4:00 p.m., the contractual end of the work day, he used the school's email system to communicate to the membership addressing this issue. Unbeknownst to Corcoran, the

email, teachers@queencity.edu was received by West, Bampoe and others.[19/] West responded to the email copying all staff by directing Corcoran to see her in her office during his prep period. West then admonished him that his email was not the tone or tenor expected of Queen City staff. This juxtaposition of directing Corcoran to stop by her office immediately followed by chastising him for the tone of his email, calling him hostile, combative and divisive as well as informing him that his behavior would not be tolerated sent a message to the membership that Corcoran was being punished for his communication as Association president.

In Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission wrote in pertinent part:

> A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. Id. at 503.

19/ Respondent asserts that even though Corcoran addressed his email to members, his email essentially invited West to respond. There is, however, no evidence that Corcoran was aware that his communication would be received by West or that he intended his email for the administration or non-members. Corcoran testified credibly that if he had known West would receive the email, he would have changed what he wrote in it.

Basically, the employee and employer are treated as equals when dealing with labor-management issues.

Here, the question is whether West's comments in response to Corcoran's communication to Association members crossed the line. I believe that by ordering him to her office she conflated his role as Association president with that of his role as employee. In the former context, they are equals free to speak their minds on union related matters. Borough of Carteret, P.E.R.C. No. 2016-28, 42 NJPER 231 (¶66 2015) (Unit members comments at public meeting, even disrespectful comments to Mayor, protected conduct). In the latter instance, she is his supervisor able to reprimand him as her subordinate for his professional activities.

West's response was not merely a matter of stating disagreement with his position on the work-hours issue. If that had been the case, West admitted that she could have asked Corcoran to meet with her privately to discuss the matter. Instead she chose to publically exercise her authority as his supervisor by directing him to her office and linking that request to criticism of what she viewed as Corcoran's divisive and hostile tone. Her comments had a tendency to discourage members from discussing areas of concern with the Association. See generally, Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994) (Acting principal's comments to faculty about morning protest violated 5.4a(1) because lacked legitimate

concern that teachers report on time and were critical of Association leaders as being manipulative. Commission determined no violation if comments made to Association representatives in a session where Association and Board were meeting as equals); West New York Bd. of Ed., H.E. No. 2011-9, 38 NJPER 1 (¶1 2011) (At faculty meeting, supervisor gratuitously addressed teacher concerns previously discussed with Association suggesting that the matter was not a union issue. Her comments had a tendency to discourage her audience of subordinates from going to Association about it).

Respondent contends that West's email response was protected speech because it only criticized the tone and tenor of Corcoran's communication which, it asserts, is not a protected subject matter. This attempt to bifurcate the wording of Corcoran's email from the subject matter is a fallacious argument. I agree with Charging Party's contention that Corcoran's email to members was similar to his speaking at an Association meeting and West overhearing his comments. West took umbrage with Corcoran's characterization of her keeping staff at meetings beyond the contractual end of the school day as disrespectful to staff. It was Corcoran's right, however, to address this subject matter which affected the employees' terms and conditions of employment and to characterize what he saw as management's mistreatment of his members. Whether he was correct

in his advice to members to leave meetings if they ran late is immaterial. His communication was protected.

Respondent cites several cases in support of its contention that West's email did not interfere with protected rights. These cases are inapposite. For instance, in East Windsor Reg. Bd. of Ed., H.E. No. 2006-4, 31 NJPER 369 (¶147 2005), a Hearing Examiner determined that an Association president was not engaged in a protected activity when she approached a Board member about the concerns of a teachers' committee who were interviewing superintendent candidates. The Board had invited teachers as stake holders, not the Association, to participate in the selection process. Therefore, the Association president who was on the committee was not acting in her capacity representing the members about union concerns when she approached the Board member and the Board member's email critical of the Association president in her capacity as a teacher stakeholder on the committee did not interfere with protected rights in violation of 5.4a(1).

Unlike East Windsor, Corcoran was acting in his official capacity as Association president when he emailed the members about their concerns in regard to the work-hour issue. West's email response critical of Corcoran and coercive by suggesting he come to her office did interfere with representational rights.

Similarly distinguishable is Somerset Hills Bd. of Ed., D.U.P. No. 2014-4, 40 NJPER 223 (¶85 2013). There, the director determined that a principal's admonishment of staff at a staff meeting for not volunteering to march at graduation was protected speech because it represented her opinion about teachers' performance on work-related matters. West's criticism of Corcoran as Association president based on advice to his membership and linked to potential discipline was not merely a matter of her opinion on teacher performance but was specifically aimed at Corcoran and the Association.

Finally, Respondent cites Borough of Atlantic Highlands, D.U.P. No. 2008-6, 34 NJPER 102 (¶44 2008). That case is also distinguishable from the matter before me. In Atlantic Highlands, the Director determined that angry remarks made by Borough representatives to PBA counsel about negotiations proposals were protected because not made to unit employees. West's critical comments were made to the entire staff.

It does not matter that West considered Corcoran's email an inappropriate venue to raise the work hours issue. Her rationale and motives - that none of the staff had come to her to complain, that faculty meetings do not commonly run past 4:00 p.m., or that it is necessary sometimes for emergency reasons to require staff attendance beyond 4:00 p.m. - are not necessary to prove a violation under 5.4a(1). Although West is entitled to exhort her

staff to act professionally, her email criticisms of Corcoran had a threatening tone with disciplinary undertones referencing his protected conduct, namely addressing member concerns with management.[20/] It is the threat of discipline linked to protected rights that has a tendency to interfere with Corcoran's representational rights as Association president that violates the Act. See generally, Care One at Madison Avenue, LLC et al. v. National Labor Relations Board, 832 F.3d 351, 207 L.R.R.M. 3006 (August 12, 2016) (Care One violated Section 8 a(1) by responding to peaceful workplace controversy over unionization by reiterating its anti-harassment policy in way that could reasonably be understood as extending that policy to protected rights).[21/]

Based on the foregoing, I find that West's email response to Corcoran on October 13, 2015 violated 5.4a(1) of the Act.

20/ LaRochelle and Garcia testified that Corcoran's email was inappropriate and that West's email was appropriate. Their testimony is not persuasive. They were biased witnesses. First, they were opposed to the Association from the outset and by extension Corcoran as Association president. LaRochelle did not personally like Corcoran who she considered dismissive of her concerns. Moreover, both LaRochelle and Garcia had received favorable professional treatment from West who approved their stipended positions as well as a new title and significant raise for Garcia at the end of the 2015-2016 school year.

21/ Commission can be guided by federal precedent since the Act's unfair practice provisions parallel their counterparts in the National Labor Relations Act. Lullo v. International Assn. Of Firefighters, 55 N.J. 409 (1970). In particular, Section 8(a)(1) mirrors 5.4a(1) of our Act.

The AAE Presentation

The last agenda item on the March 24, 2016 professional development day (PDD) was a presentation by the American Association of Educators (AAE). Director West prepared the agenda and approved the presentation by the AAE representative, Ms. Middleton, who was invited to apeak. Teaching staff were required to attend the PDD. Although Respondent maintains that teachers were free to leave before the last agenda item (the AAE presentation), there is no evidence that Director West or Assistant Director Bampoe communicated that either verbally or in writing to the staff. Nor is there any evidence that any attendee left before the AAE presentation. Accordingly, the presentation was for all intents and purposes a captive audience meeting to promote the AAE as an organizational alternative to the Association. Care One.

The administration's actions, in this instance, do not implicate employer free speech rights during an organizing campaign and the right to comment on union efforts. Black Horse Pike. Absent a threat or promise of benefit, such speech is protected. See Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986) (Letters from college administrator to faculty urging vote against union did not constitute unlawful interference). Here, there was no campaign, since the Association was the certified majority representative.

The AAE presenter and the documents that were handed out to staff support that the organization was promoted as an alternative to the Association, not as an added benefit as Respondent asserts. Basically, one document touted the benefits of joining the AAE as opposed to the NEA an affiliate of the Association. Any on-line research of the AAE philosophy demonstrated that it considered unionization as antithetical to the charter school movement. Essentially, by allowing this presentation at the end of a mandatory PDD, West and the administration were tacitly promoting the benefits of the AAE, dissatisfaction with the Association, and, thereby, encouraging staff to reject the Association as the majority representative in favor of the AAE.

Next, during the presentation which Assistant Director Bampoe testified took place after the mandatory professional development activities had concluded for the day and employees were free to leave, a heated discussion took place between Corcoran and Garcia. As Association president, Corcoran questioned Middleton as to whether the AAE could negotiate on behalf of the employees. Middleton refused to answer his questions despite answering questions from others. Corcoran continued his questioning to no avail.

It is Garcia who instigated the exchange with Corcoran that led to them both being reprimanded. Garcia apparently concluded

that since Corcoran addressed staff the year before during an informational session before the Association was certified, Middleton should be afforded the same opportunity. Apparently, Garcia concluded that the AAE presentation was the equivalent of the Association's informational session during its organizational drive. That conclusion is supported by the literature which was distributed to staff that day.

Since the presentation was not, by Bampoe's own testimony, part of the work day - official activities had concluded, Corcoran's statements during Middleton's presentation were protected conduct. Moreover, his questioning was not insubordinate and, therefore, unprotected. See N.J. Transit Bus Operation, Inc., P.E.R.C. No. 86-31, 11 NJPER 586 (¶16205 1985); Atlantic Cty. Util. Auth., P.E.R.C. No. 94-97, 20 NJPER 195 (¶25091 1994). Nor were his questions derogatory and disruptive such that they lost the Act's protection. Atlantic Cty. Judiciary and Derek Hall, P.E.R.C. No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd App. Div. Dkt. No. A-3290-92T1 (10/28/94). Corcoran was acting as an Association representative defending the Association's majority representative status against what was clearly a challenge to that status. Therefore, West's reprimand of Corcoran for "bombarding Middleton with questions" (R-10) was in retaliation for that conduct. The fact that Garcia was also reprimanded is immaterial. The allegation before me is that

Corcoran was reprimanded in retaliation for speaking out at the presentation. Moreover, although Garcia was "reprimanded" for his behavior at the presentation, the reprimand was not an impediment to his career advancement, since West recommended him for a new position shortly thereafter which was approved by the Board and resulted in an $11,000 salary increase for 2016-2017.

Based on the foregoing, I find that the AAE presentation arranged and approved by West independently violated 5.4a(1) and the reprimand of Corcoran for his conduct during the presentation violated 5.4a(3) and derivatively a(1) of the Act.

The 2015-2020 Strategic Plan

During the spring and summer of 2015, a volunteer group of administrators, trustees, teachers, parents and community members created a five-year strategic plan for Queen City which was distributed and/or made available to staff - tenured and non-tenured for review. The committee was facilitated by a representative (Pressler) from the New Jersey Charter School Association (NJCSA). Like the AAE, the NJCSA shares a philosophical view opposed to the NJEA that it considered a threat to the growth of the charter school movement.

The strategic plan contained a section entitled "Threats" which among other items lists "unionization". The committee approved the inclusion of this item. All non-tenured and tenured staff had access to this plan which, as LaRochelle who was on the

committee testified, was a blueprint for what the administration and trustees aspired to achieve for Queen City over the next five years. Among those aspirations as defined by the plan is addressing "threats" which, Pressler admitted, means get rid of, eliminate or try not to have, namely the threat posed by unionization generally and by extension the Association.[22/] It is not a stretch, therefore, for any employee reading this plan to conclude that support for the Association might not be good for professional growth. Moreover, timing of the plan's release in May 2016 shortly before the Association's protection from challenge under its certification bar was ending in June 2016 was particularly damaging to the Association's existence and encouraging to the decertification effort which culminated in the filing of a petition in July 2016

Based on the foregoing, I find that the 2010-2020 Strategic Plan identifying unionization as a threat interfered with the Association's right to represent its members and violated 5.4a(1).

The PEOSHA Inspection

On May 5, 2016, a PEOSHA inspector, Gaudin, arrived at Queen City for an unannounced inspection based on a complaint about

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22/ Respondent contends that the plan defined the unionization threat as external. However, since Queen City was already unionized, characterizing unionization as an external threat is inaccurate and does not diminish the plan's clear negative message as it related to the Association.

indoor air quality. Gaudin requested that West have a designated union representative accompany her on the inspection. West's response was that there was no ratified union contract and no paid dues and therefore no designated union representative. It is apparent that West did not understand or chose not to accept that the Association was the majority representative whether there was a collective negotiations agreement in place - the parties were in the midst of difficult negotiations for a first agreement - or whether the parties had negotiated agency shop dues.[23/] West's explanation that she only told Gaudin this to determine what staff member would be acceptable to accompany the inspection is weak. A designated union representative is not a difficult concept to understand. Although Gaudin accepted someone other than Association officers Corcoran and Cherubini, that acceptance does not excuse West's determination not to include them.

In any event, West then proceeded to ask LaRochelle who was in the main office shredding PARCC examination papers as well as Maintenance Man Tiller to accompany Gaudin and West on the inspection. West never contacted either Corcoran or Cherubini

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23/ Respndent's argument that West's statements to Gaudin were technically accurate is immaterial. The issue is whether in making these statements, West intended to interfere with representational rights by depriving Corcoran and/or Cherubini of their right to represent their members as designated union representatives.

regarding the inspection. She proffered several explanations, including that they were conducting PARCC testing, preparing for PARCC testing and/or instructing their classes. I rejected West's explanation regarding PARCC testing, since the testing was completed for the day when Gaudin arrived. West provided no plausible reason why LaRochelle who was shredding paper could not have covered either Corcoran or Cherubini while they performed inspection duties which was their right as designated union representatives. The fact that they were in class instructing students is not sufficient by way of explanation since West, Bampoe and LaRochelle,[24/] all highly qualified professionals, could have taken over that duty for a few hours.

LaRochelle had never acted in a representational capacity for the Association. Indeed, LaRochelle's views opposing the Association as majority representative were well established and known by West. I infer, therefore, that West was more comfortable with LaRochelle's participation than either Corcoran or Cherubini.

I find that West's decision to exclude Corcoran and Cherubini from the inspection process interfered with their rights as designated union representatives and violated 5.4a(1).

24/ I do not minimize the difficulty in procuring a substitute last minute, but determine that West could have found acceptable coverage without unduly compromising the education of the students.

February 19, 2016 Corcoran Reprimand

On February 19, 2016, Bampoe called a meeting of all fifth and sixth grade teachers during their preparation period to gather data needed to start an after-school PARCC program for students already identified and to be identified as needing extra instructional assistance. Corcoran attended the meeting although he expressed objection that the meeting was misuse of a preparation period and that he (Corcoran) should be compensated fifty dollars an hour like the teachers who were actually running the after-school program. Bampoe disagreed with Corcoran who left the meeting without filling out the paperwork. Corcoran received a written reprimand for insubordination which he rebutted.

I do not find that the reprimand was directly or tangentially related to Corcoran's union activities. His union office does not shield him from the expectations of a supervisor who is entitled to direct his professional activities. The fact that Corcoran disagreed that Bampoe's meeting was a misuse of his preparation period did not give Corcoran the right to refuse to do the assigned work. As Respondent contends, disagreement with management over an issue such as a work assignment can be grieved. The parties have a grievance procedure outlined in the handbook of which Corcoran was aware.

Based on the foregoing, I dismiss the allegation that the February 19, 2016 reprimand violated 5.4a(3) and (1).

Cherubini January Reprimand

For the same reasons, I dismiss the allegation that West's January 11, 2016 reprimand of Cherubini regarding a parent teacher conference was related to protected conduct. Specifically, West directed Cherubini to conduct an end-of-the-day parent conference in the main office not her classroom. West explained to Cherubini that there was a faculty meeting immediately after school and because it was the end of the school day there was a lot of commotion in the hallways.

Based on West's and Cherubini's account of the January 11, 2016 reprimand as well as Teacher Rizzo's statement of the event, I cannot find that West's behavior was prompted by Cherubini's union status as Cherubini speculates (1T172-1T173). Cherubini admits that when West refused to allow her to go back to her classroom for the parent conference, she challenged West by asking for more clarification (1T169). Whether West's decision as to where the conference should be held was wise or whether Cherubini's objection was reasonable, it was ultimately West's decision as director to make, not Cherubini's.

Accordingly, based on the foregoing I dismiss the allegation that the January 11, 2016 reprimand violated 5.4a(3) and (1).

Cherubini's Merit Bonus

Cherubini asserts that she was denied her 2015-2016 merit bonus in retaliation for her protected activity. Merit bonuses were given out for the first time in the 2015-2016 school year. Cherubini's increment was also withheld in 2015-2016 based on poor attendance which West documented and which dated back several years as documented by other directors. Cherubini is not challenging the decision to withhold her increment as a violation of the Act. Nevertheless, Cherubini maintains that the merit bonus as explained to staff was based purely on a numeric score derived from summative evaluations (observations by West and Bampoe) which Cherubini maintained already included attendance. Her score was 2.86 which on the rubric chart attached to the summative evaluation equated to $900.00.

At the hearing, West testified that good attendance is very important to small school operations because of the limited access to substitute coverage, that no other employee had as many corrective action plans related to attendance as Cherubini and that the staff handbook attendance policy gave she and the Board, in her opinion, the flexibility to withhold not only Cherubini's salary increment but also her merit bonus. Moreover, West testified that since 2015-2016 was the first year for merit bonuses, she and the Board did not want to create a precedent whereby an employee with such poor attendance was rewarded. The

Board and West have now created a new policy that awards merit bonuses based not just on a numeric score but also based on attendance caps for unprofessional behavior.

In discovery, West provided an answer to an interrogatory regarding the criteria for determining performance bonuses that bonuses "are determined based on the faculty member's overall score in their summative evaluation". [CP-13 at page 22] There is no mention of the reasons proffered at the hearing in this answer. West admitted that her answer to the interrogatory omitted these explanations and that her answer was, therefore, incomplete but insists that the summative evaluation was not the only criteria used in the decision regarding Chereubini's bonus.

The question before me is whether West's and the Board's actions denying Cherubini's bonus are tied to retaliation for her union activities as Association vice-president, and/or that their explanations for denying the merit bonus were pretextual. There is no doubt that West was not generally supportive of the Association's efforts in 2015-2016 and that she and Corcoran clashed during the year. However, Cherubini's testimony did not support a conclusion that she herself had hostile interaction based on her union activities.

For instance, Cherubini described her union activities during 2015-2016 as minimal. She was on the Association's negotiations team, but Cherubini testified that with the

exception of one incident, she had no discussions or meetings with either West or Bampoe in her capacity as Association vice-president or to represent a member. The one incident regarding whether the members were entitled to two days to attend the NJEA convention was resolved amicably by Cherubini and Bampoe.

There was one contentious incident when NJEA Field Representative Carol Feinstein represented Cherubini at a meeting with West to discuss the January 2016 reprimand regarding the parent-teacher conference. Feinstein and West got into a contentious exchange which resulted in Feinstein leaving the meeting and West writing a summary the next day criticizing Feinstein. Feinstein and West were equals dealing with each other at the meeting to discuss Cherubini's reprimand. Black Horse Pike. However, it is possible that West attributed what she considered Feinstein's inappropriate behavior to Cherubini.

However, even if Charging Party demonstrated that West's hostility to the Association and to Feinstein are attributable to Cherubini, Respondent would not have violated the Act if it proved, by a preponderance of the evidence on the entire record, that it would have denied the merit bonus even absent the protected conduct. Bridgewater at 242. Here, West explained the rationale, namely that she and the Board did not want to set a precedent by giving a merit bonus to someone with Cherubini's

demonstrably poor attendance record. Cherubini does not deny her attendance problems, but argues that the denial was based primarily on her union activities. Whether it was fair that West and the Board apparently applied an unarticulated policy which included attendance in their decision regarding Cherubini's merit bonus, Charging Party has not established by a preponderance of evidence on the record that the decision was primarily based on hostility to protected conduct.

Based on the foregoing, I dismiss the allegation that the denial of Cherubini's merit bonus violated 5.4a(3) and (1).

The Decertification Petition

Charging Party alleges that the actions of West and the Board during the 2015-2016 school year facilitated and encouraged the two guidance counselors, Morrison and Asbury, to actively recruit members to join in a decertification petition at the behest of Director West. It urges that the petition, therefore, be dismissed.

The facts establish that West and the administration interfered with the Association's right to represent its membership by (1) West publically chastising Association President Corcoran as divisive and hostile and directing him to report to her office in response to his communication to members; (2) in March 2016, West approving and inviting the AAE, an organization in competition with the NEA and NJEA, both parent

organizations of the Association, to speak to staff during a professional development day and then disciplining Corcoran for questioning the AAE representative; (3) the administration publishing a five-year strategic plan available to all tenured and non-tenured staff which listed unionization as a threat; and (4) West responding to a request by a PEOSHA inspector for a designated union representative to accompany her by stating that there was no ratified contract, no union dues and no designated union representative.

Although West and Morrison denied that West spoke to Morrison and Asbury about or encouraged them in their efforts to decertify the Association (West denies speaking to any employee about it), West's and the administration's actions over the course of the year provided tacit approval of and assistance to the core group - Morrison, Asbury, LaRochelle and Garcia - in these efforts. Indeed, LaRochelle who filed the petition to decertify the Association believes based upon her dealings with colleagues and reading West's email at the beginning of the year to Corcoran and other memoranda, that West shares her views on unionization and philosophical opposition to the Association and the NJEA which organizations she views as being antithetical to the charter school movement.

It stretches credulity to believe that West was not aware of the decertification efforts. LaRochelle emailed her colleagues

that the petition was in her classroom if they wanted to review and sign it. The staff email, as West testified, is copied to her. According to Respondent and Charging Party's witness Ms. Nehila, Asbury kept the petition at her desk and recruited signatures during office hours. It is apparent that West turned a blind eye to these activities on school premises during school hours, while during negotiations, the administration was denying the Association's request to conduct meetings after school on school premises without a rental fee.

Additionally, Morrison and Asbury researched an alternative to the Association shortly after it was certified. Their research produced the AAE as a viable alternative to the Association, the same organization which West added to the agenda for the March 2016 professional development day. Evidently, they either shared this information with West or she coincidentally found the AAE through her own independent research. In either event, it is apparent that the forces opposed to the Association were in sync with West and the administration. The question remains whether the conduct of West and the administration, which I have determined interfered with the Association's protected rights, so tainted the atmosphere in the school as to prevent the conduct of a free and fair election on the decertification petition.

In Glassboro Housing Authority, P.E.R.C. No. 90-16, 15 NJPER 524 (¶20216 1989), the Commission considered whether the unfair practices committed by the employer, namely sham contracting, refusal to negotiate in good faith before setting a salary for a unit position, and the misrepresentation of the union's position to the employee whose salary was unilaterally set by inaccurately blaming the union for the salary snafu, should cause the decertification petition to be dismissed. The petition was filed by the employee who mistakenly blamed the union for his salary problems.

In considering an appropriate remedy, the Commission stated that "we must balance the Act's command to permit decertification proceeding elections with its command to remedy unfair practices." In determining that under the circumstances the petition should be dismissed, the Commission opined:

> . . . the unfair practices tainted the decertification petition. We accept the Hearing Examiner's finding that the Authority did not conspire with the employees or expressly encourage this petition. But there is an immediate cause and effect between the unfair practices and the filing and showing of interest. Id. at 526.

Here, unlike Glassboro, Petitioner LaRochelle and her supporters - Morrison, Asbury and Garcia among others - had sincerely held beliefs from before the Association was certified,

that the Association and NJEA held philosophies which were inconsistent with the charter school movement. They opposed having the Association as the majority representative, and their views did not change in 2015-2016. Therefore, in all likelihood they would have attempted the decertification effort with or without West's and the administration's approval and encouragement. The real issue is the effect that West's and the administration's unlawful conduct had on uncommitted staff, particularly non-tenured teachers. There is no doubt that the Association was viewed by West and the administration as a threat to be addressed, a view which was shared with staff in the Strategic Plan.

The AAE presentation further reinforced for staff the administration's view that the NEA and by extension the Association and NJEA compared unfavorably with the AAE. The presentation was essentially an information session such as that given by the Association in its organizational drive. In defending the Association, Corcoran was challenged by Garcia, a decertification supporter and arguably a West protégé (2T156). The incident demonstrated to staff that opposition to the Association was permissible, encouraged and supported.

In Enterprise Leasing Company of Florida, doing business as Alamo Rent-A-Car v. NLRB, 831 F.3d 534, 206 L.R.R.M. 3717 (August 5, 2016), the Court considered whether Enterprise violated 8a(1)

by encouraging an employee to circulate a petition to decertify the union as the employee's bargaining representative. Citing SFO Good-Nite Inn, 700 F.3d 1, 8, the Court determined that a decertification petition is presumptively tainted where it was instigated or propelled by an employer. Nevertheless, the Court further explained that an employer also violates this section by actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing or filing of an employee petition seeking to decertify a majority representative.

Here, I determined that the petition was not instigated by the employer because petitioner and her core group of supporters were against the Association from the outset. However, by permitting them to solicit support during school hours and on school premises, by sending a not so subtle message through the Strategic Plan, and by arranging for the AAE presentation (an essentially captive audience meeting) during which Corcoran was prevented from questioning or challenging the AAE presenter, West and the administration encouraged, promoted and provided assistance to the decertification effort. It is probable that their actions swayed staff, especially the non-tenured staff, because employees could easily conclude based on West's and the administration's conduct that union support could endanger or impair their professional careers. Therefore, "a secret ballot election conducted . . . at this time would likely not result in

an accurate gauge of employee representational desires." International Academy of Trenton Charter School, D.R. No. 2017-2, 43 NJPER 152, 161 (¶46 2016), aff'd P.E.R.C. No. 2017-24, 43 NJPER 175 (¶54 2016), appeal pending.

Therefore, I recommend that the decertification petition be dismissed. I further recommend that in the event petitioner and supporters remain displeased with the Association's representation, a new petition may be filed pursuant to N.J.A.C. 19:11-2.8 during the open period for school districts in the 2017-2018 school year or anytime thereafter if permitted under our rules.

CONCLUSIONS OF LAW

Respondent Queen City Academy Charter School violated 5.4a(3) and derivatively a(1) by reprimanding Association President Gary Corcoran for conduct during a March 24, 2016 professional development day presentation by the American Association of Educators (AAE).

Respondent Queen City Academy Charter School independently violated 5.4a(1) by the following actions: (1) on October 13, 2015, Director West responded critically to an email sent to members by Association President Gary Corcoran regarding union business and characterizing Corcoran as hostile and divisive and directing him to come to her office; (2) West invited the AAE, an organization which is an alternative to the Association and

opposed to the NJEA, to present to staff during a mandatory professional development day; (3) the Board of Trustees released the 2015-2020 Strategic Plan designating unionization as a threat to the objectives and goals of Queen City; (4) during a June 2016 PEOSHA inspection, Director West decided to exclude Corcoran and Cherubini as designated union representatives to accompany the inspector and (5) by these actions, Director West and the Board of Trustees tacitly approved and encouraged employees to support the effort to decertify the Association as majority representative.

Respondent Queen City Academy Charter School did not violate 5.4a(3) and derivatively or independently a(1) by the following: (1) Reprimanding Corcoran in February 2016 for leaving a meeting conducted by Assistant Director Bampoe to gather data for an after-school PARCC program; (2) Reprimanding Cherubini in January 2016 for conduct related to a directive from West regarding a parent teacher conference; (3) West's exchange with NJEA representative Feinstein during and after a meeting to discuss the January Cherubini reprimand; and (4) Denying Cherubini a merit bonus in 2015-2016 for attendance related issues.[25/]

25/ No evidence was presented at the hearing regarding several allegations in the Complaint pertaining to the showing of the movie "Waiting for Superman", to employees being denied representation in November 2015 during meetings with management, and to a February 2016 incident between an employee and Cherubini and a telephone call to Cherubini's room. Accordingly, these allegations are dismissed.

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Queen City Academy Charter School cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by (1) on October 13, 2015, Director West responding critically to an email sent to members by Association President Gary Corcoran regarding union business and characterizing Corcoran as hostile and divisive and directing him to come to her office; (2) West inviting the AAE, an organization which is an alternative to the Association and opposed to the NJEA, to present to staff during a mandatory professional development day; (3) the administration and trustees releasing the 2015-2020 Strategic Plan designating unionization as a threat to the objectives and goals of Queen City; (4) during a June 2016 PEOSHA inspection, Director West's deciding to exclude Corcoran and Cherubini as designated union representatives to accompany the inspector; and (5) by these actions, Director West and the Board of Trustees tacitly approving and encouraging employees to support the effort to decertify the Association as majority representative.

2. Discriminating in regard to hire or the tenure of employment or any term or condition of employment to

discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by reprimanding Association President Gary Corcoran for conduct during a March 24, 2016 professional development day presentation by the American Association of Educators (AAE).

B. That the representation petition and amended petition seeking to decertify the Association as the majority representative filed on July 5 and August 2, 2016 (RD-2017-001) which have been blocked by the Complaint issued under Docket Nos. CO-2016-200 and CO-2017-007 be dismissed. Queen City Academy Charter School, D.R. No 2017-5, 43 NJPER 164 (¶49 2016). That in the event petitioner and supporters remain displeased with the Association's representation, a new petition may be filed pursuant to N.J.A.C. 19:11-2.8 during the open period for school districts in the 2017-2018 school year or thereafter if permitted under our rules.

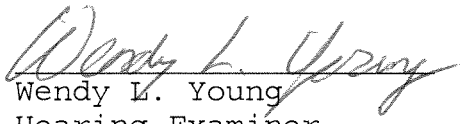
C. That the Queen City Academy Charter School take the following action:

1. Remove the Corcoran reprimand regarding his conduct at the March 24, 2016 professional development day AAE presentation.

2. 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 ar not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Wendy L. Young
Hearing Examiner

DATED: March 1, 2017
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 March 13, 2017.

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 its employees in the exercise of the rights guaranteed to them by the Act, particularly by (1) on October 13, 2015, Director West responding critically to an email sent to members by Association President Gary Corcoran regarding union business and characterizing Corcoran as hostile and divisive and directing him to come to her office; (2) West inviting the AAE, an organization which is an alternative to the Association and opposed to the NJEA, to present to staff during a mandatory professional development day; (3) the administration and trustees releasing the 2015-2020 Strategic Plan designating unionization as a threat to the objectives and goals of Queen City;(4) during a June 2016 PEOSHA inspection, Director West's deciding to exclude Corcoran and Cherubini as designated union representatives to accompany the inspector; and (5) by these actions, Director West and the Board of Trustees tacitly approving and encouraging employees to support the effort to decertify the Association as majority representative.

WE WILL CEASE AND DESIST FROM Discriminating in regard to hire or the tenure of employment or any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by reprimanding Association President Gary Corcoran for conduct during a March 24, 2016 professional development day presentation by the American Association of Educators (AAE).

That the representation petition and amended petition seeking to decertify the Association as the majority representative filed on July 5 and August 2, 2016 (RD-2017-001) which have been blocked by the Complaint issued under Docket Nos. CO-2016-200 and CO-2017-007 be dismissed. Queen City Academy Charter School, D.R. No 2017-5, 43 NJPER 164 (¶49 2016). That in the event petitioner and supporters remain displeased with the Association's representation, a new petition may be filed pursuant to N.J.A.C. 19:11-2.8 during the open period for school districts in the 2017-2018 school year or thereafter if permitted under our rules.

WE WILL Remove the Corcoran reprimand regarding his conduct at the March 24, 2016 professional development day AAE presentation.

WE WILL 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.

WE WILL Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

Docket No. CO-2016-200, CO-2017-007 Queen City Academy Charter School
(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

APPENDIX "A"