

H.E. NO. 2018-1

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

In the Matter of

NORWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-324

NORWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Norwood Board of Education did not violate the New Jersey Employer-Employee Relations Act by transferring certain Association officials to other grade levels. Nor did the Board deny the Association access to certain personnel information. The Hearing Examiner concluded that the transfers were based upon sound and legitimate educational considerations and were not in response to the employees' exercise of protected conduct.

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  
Fogarty & Hara, attorneys  
(Stephen R. Fogarty, of counsel)

For the Charging Party  
Springstead & Maurice, attorneys  
(Alfred F. Maurice, of counsel)

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

On May 6, 2013 and April 28, 2015, the Norwood Education Association (Association) filed an unfair practice charge and amended charge with the New Jersey Public Employment Relations Commission (Commission). The initial charge alleges that on or about April 19, 2013, the Norwood Board of Education (Board), specifically, then-Superintendent Brian Gatens threatened to and subsequently transferred unit employees and Association officers Charmaine Della Bella, Susan Stigliano, Katherine Snyder and Vito

DeLaura because of their exercise of protected conduct;  
interfered with the filing and administration of grievances;  
blocked access to information needed to process grievances;  
refused to communicate with union officers regarding grievances  
and failed to negotiate in good faith with the Association over a  
new collective negotiations agreement. The Board's actions are  
alleged to have violated section 5.4a(1), (2), (3), (4) and (5)<sup>1/</sup>  
of the New Jersey Employer-Employee Relations Act, N.J.S.A.  
34:13A-1 et seq. (Act).

In its amended charge, the Association alleges that on  
unspecified dates, the Board again violated section 5.4a(1), (2),  
(3) and (4) of the Act by interfering with and restraining  
Association members in the exercise of protected conduct by  
threatening to reassign and then involuntarily transferring Della

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<sup>1/</sup> These provisions prohibit public employers, their  
representatives or agents from: "(1) Interfering with,  
restraining or coercing employees in the exercise of the  
rights guaranteed to them by this act. (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. (4)  
Discharging or otherwise discriminating against any employee  
because he has signed or filed an affidavit, petition or  
complaint or given any information or testimony under this  
act. (5) Refusing to negotiate in good faith with a  
majority representative of employees in an appropriate unit  
concerning terms and conditions of employment of employees  
in that unit, or refusing to process grievances presented by  
the majority representative."

Bella from ESL to third grade; and by the same allegations regarding the processing of grievances as alleged in the original charge. The Association further alleged that Gatens exhibited anti-union animus towards Association officers and required Della Bella to enter into a corrective action plan during the 2014-2015 school year.

The Association seeks an Order requiring the Superintendent to "cease and desist" from retaliating against Association officers and from adopting policies impacting their terms and conditions of employment; requiring the Board to reverse the transfers/reassignments of Association officers; and requiring the Board to negotiate in good faith.

#### PROCEDURAL HISTORY

In September, 2013, an exploratory conference was conducted regarding the original unfair practice charge. On September 1, 2015, the Director of Unfair Practices issued a Complaint and Notice of Hearing on only the 5.4a(1) and (3) allegations in the original and amended charges (C-1).<sup>2/</sup> The case was assigned to Hearing Examiner Patricia Taylor Todd for Hearing.

On September 15, 2015, the Board filed an Answer denying that any of its actions violated the Act. It argued that the Association failed to establish that the Board interfered with,

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<sup>2/</sup> "C" refers to Commission exhibits; "J" refers to joint exhibits; "CP" refers to Charging Party exhibits; and "R" refers to Respondent exhibits.

restrained or coerced or discriminated against its teaching staff in the exercise of their protected rights. The Board asserted that Gatens responded to and processed the Association grievances in accordance with contractual requirements and that Della Bella was transferred because her skills were needed at the third grade level.

Hearing Examiner Todd conducted the Hearing on April 5 and 6, June 6, September 22 and 23, and November 7, 2016.<sup>3/</sup> At the start of the Hearing, the Association withdrew paragraph 4 of the amended charge, specifically, the allegation that the Board violated the Act by requiring Della Bella to subscribe to a corrective action plan for 2014-2015.

The parties also proffered Stipulations of Fact (J-1). The Hearing Examiner granted the Board's motion to sequester witnesses. The Association retained its President, Theresa Sullivan, as its "resource person," and the Board retained its Business Administrator, Louise Napolitano, as its "resource person." Before imposing sequestration, Hearing Examiner Todd instructed all witnesses:

So your instructions are not to discuss your testimony, either before or after you testify, with anyone else. . . . If you have any questions you can direct them to your

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<sup>3/</sup> "T" represents the transcript, preceded by a "1," "2," "3," "4," "5," or "6," signifying the first, second, third, fourth, fifth or sixth day of Hearing, followed by the page number(s).

respective counsel. If they need to be addressed by me, I'll communicate with them.  
[1T21]

Sullivan was the first witness examined by the Association, followed by Susan Stigliano, the Association's former Grievance Co-Chair at relevant times; Vito DeLaura, Association Vice President at relevant times; and Charmaine Della Bella, Association Grievance Co-Chair at relevant times. Gina McCormack and Frances Orefice, Board Supervisors of Curriculum and Instruction at relevant times were examined first and second, respectively, in the Board's case, followed by Brian Gatens, former Board Superintendent during the relevant period. Napolitano did not testify.

At the completion of Sullivan's testimony and immediately before a lunch break on the first day of hearing, Hearing Examiner Todd instructed Sullivan: "Please remember not to discuss your testimony with any other witnesses" (1T135).

The hearing resumed after the break, beginning with Stigliano's testimony. On cross-examination by Board Counsel, Stigliano was asked whether she had discussed her testimony that day (April 5, 2016) with anyone. Stigliano replied: "Briefly, at lunchtime" (1T172). When asked who was present, she answered, Association Counsel, Sullivan, Della Bella, and DeLaura (1T172).

Board Counsel objected that the sequestration order had been violated. Although Hearing Examiner Todd carefully reiterated

her order and the purpose of sequestration, the Board moved to strike Stigliano's testimony for violating the order (1T173-1T174). Hearing Examiner Todd reserved on the motion (1T175). Association Counsel represented that he neither witnessed nor observed any discussion or disclosure of testimony (1T175-1T176). Stigliano completed her testimony that day. DeLaura's testimony was completed on April 6, 2016, and Della Bella's testimony began on April 6 and was completed on June 6, 2016.

On May 17, 2016, the Board filed a formal motion dated May 9, 2016, seeking to bar Della Bella from communicating with Association Counsel due to the earlier violation of the sequestration order and in anticipation of her continuing cross-examination (C-3A). On May 13, 2016, Association Counsel filed a response, acknowledging that any communication of his with Della Bella would be limited to general trial strategy, settlement efforts or other non-testimonial conversations (C-4A). Association Counsel also noted that he had directed Della Bella not to read the hearing transcript of other witnesses or discuss her testimony.

On June 2, 2016, the Board filed a motion to exclude the testimony of all witnesses present during Stigliano's April 5, 2016 lunchtime discussion (presumably Sullivan, DeLaura and Della Bella, in addition to Stigliano) for violating the sequestration order (C-3B). On the same date, the Association filed a reply,

opposing the Board's motion to exclude the testimony of all of its witnesses (C-4B).

When the hearing resumed on June 6, 2016, Board Counsel commented on its motions. Regarding its motion in C-3A (regarding Della Bella communications with Association Counsel), the Board expressed satisfaction with the Association's response in C-4A and noted no further action was needed.

Board Counsel renewed on the record its motion in C-3B to exclude the testimony of Association witnesses because the sequestration order had been violated. The Association opposed the motion. Hearing Examiner Todd denied the motion, noting that she would consider all of the arguments regarding the sequestration order and the facts concerning the sequestration events in issuing her recommended decision in this case (3T5-3T17).

On December 28, 2016, the Director of Unfair Practices notified the parties that Hearing Examiner Todd was leaving the Commission. Consequently, pursuant to N.J.A.C. 19:14-6.4, the case was reassigned to me for the issuance of the decision.

Post-hearing briefs and reply briefs were filed by March 3, 2017.

Based upon the entire record, I make the following:

Findings of Fact

1. The parties prepared the following Stipulations of Fact (J-1):

The Charging Party, Norwood Education Association (the 'Association') and the Respondent, Norwood Board of Education (the 'Board') hereby stipulate the following facts without the necessity of formal proofs at a hearing on the above charge:

1. The Charging Party (Association) filed an Unfair Practice Charge against the Respondent on May 6, 2013 and an Amended Charge on April 28, 2015 (the 'Amended Charge'). The Public Employment Relations Commission ('PERC') issued a complaint on September 1, 2015 (C-1).

2. The Respondent (Board) filed a Position Statement in response to the Unfair Practice Charge on July 8, 2013, and an Answer to the Amended Charge on September 11, 2015 (C-2).

3. The Amended Charge and the Answer to the Amended Charge are appended to this Stipulation of Facts as Exhibits 1 and 2.

4. The Charging Party claimed that the Respondent violated provisions of N.J.S.A. 34:13A-5.4(a) 1, 2, 3 and 4 ('the Act').

5. The Respondent denies any such violations.

6. The Board and the Association were parties to a collective negotiations agreement (the 'CNA'), which was in effect from July 1, 2010 through June 30, 2013. A copy of the CNA is attached hereto as Exhibit 3 (J-12).

7. The Association filed a grievance on July 25, 2012 (Grievance No. 1). The Association submitted notice of intent to

file for arbitration on November 15, 2012 (J-2).

8. The Association filed a grievance on October 23, 2012 (Grievance No. 2). On December 11, 2012, the Association submitted notice of intent to file for arbitration (J-11).

9. The Association filed a grievance on November 20, 2012 (Grievance No. 3). This grievance was denied at Level II on December 17, 2012 and was not appealed (J-3).

10. The Association filed a grievance on November 20, 2012 (Grievance No. 4). This grievance was denied at Level III on January 17, 2013, and was not appealed (J-4).

11. The Association filed a grievance on December 18, 2012 (Grievance No. 5). On April 22, 2013, the Association submitted notice of intent to file for arbitration (J-5).

12. The Association filed a grievance on June 18, 2013 (Grievance No. 6). On October 30, 2013, the Association submitted notice of intent to file for arbitration (J-6).

13. The Association filed a grievance on June 18, 2013 (Grievance No. 7). On October 30, 2013, the Association submitted notice of intent to file for arbitration (J-7).

14. The Association filed a grievance on June 18, 2013 (Grievance No. 8). This grievance was denied at Level III on October 17, 2013, and was not appealed (J-8).

15. The Association filed a grievance on June 25, 2013 (Grievance No. 9). This grievance was denied at Level III on October 17, 2013, and was not appealed (J-9).

16. On January 30, 2013, the parties began negotiations for a successor collective negotiations agreement ('Successor Agreement') for the period from July 1, 2013 through June 30, 2016.

17. The parties declared impasse on or around April 2, 2013 and subsequently participated in voluntary mediation on September 25, 2013 and October 3, 2013. The parties were unable to settle the Successor Agreement through mediation.

18. The parties proceeded to fact-finding, and Thomas A. Hartigan (the 'Fact Finder') was appointed by PERC as the Fact-Finder to conduct a hearing, if necessary, and, thereafter, to issue a Fact-Finding Report and Recommendation.

19. A fact-finding session was held on March 3, 2014, at which time the parties agreed to forego a full fact-finding hearing and to authorize the Fact-Finder to issue an expedited Recommendation based on the parties' submission of position papers as to each issue remaining in dispute.

20. The fact-finder issued his Recommendation on or about May 7, 2014, in which he addressed all of the issues in dispute, including the outstanding grievances and arbitrations.

21. On March 23, 2015, the Successor Agreement was approved by the Board. All grievances referenced above were resolved and/or withdrawn in connection with the settlement and prior to the filing of the Amended Charge.

22. On May 23, 2013, the former Superintendent of Schools, Brian Gatens ('Gatens'), assigned Charmaine Della Bella ('Della Bella') to the position of third grade classroom teacher for the 2013-2014 school year. Della Bella's third grade assignment continued for the 2014-2015 and

2015-2016 school years. Prior to Della Bella's assignment, she served as an English as a Second Language (ESL) teacher in the Norwood School District for approximately 20 years.

23. Gatens resigned at the end of the 2012-2013 school year.

24. The Board accepted Gatens's resignation on July 18, 2013, and Gatens ended his employment with the Board in December, 2013.

25. Following Gatens's resignation, the Board hired Herbert Ammerman to serve as Interim Superintendent of Schools ('Ammerman').

26. Ammerman issued an Evaluative Memorandum to Della Bella on May 5, 2014. In connection with the Evaluative Memorandum, Della Bella was issued a Corrective Action Plan (CAP) to be followed from May, 2014 to June, 2015.

27. At the time that Della Bella was transferred by Gatens, Della Bella served as chair of the Association's Grievance Committee, and was also a member of the Association's negotiations committee.

28. At the time Della Bella was issued the Evaluative Memorandum and CAP by Ammerman, she served as a member of the Association's negotiation committee.

29. Following notice of Della Bella's possible reassignment, Gatens advertised the District's ESL position.

30. The Board asserts that Della Bella's reassignment was not in violation of the Act but the exercise of its managerial prerogative to assign and evaluate staff in the best interests of the District.

2. The Board oversees one building housing its kindergarten through eighth grade classes. Brian Gatens was the Superintendent/Principal from July, 2011 until December, 2013. Frances Orefice was a guidance counselor in the district for the 2009-2010 and 2010-2011 school years. Gatens promoted her to Supervisor of Curriculum and Instruction for elementary grades K through 4, beginning with the 2011-2012 school year. Gina McCormack began her employment with the Board in July, 2011 as the Supervisor of Curriculum and Instruction for middle school grades 5 through 8. Beginning with the 2011-2012 school year and for the time periods relevant to this case, Gatens, McCormack and Orefice worked collaboratively as a team in making decisions regarding the hiring, termination and transfer of District professional staff, in addition to decisions on curriculum and instruction (4T8; 5T9-5T10).

3. Gatens credibly testified that during the 2011-2012 school year, the team identified a concern with the efficacy of language arts instruction in grades 3, 4 and 5 (5T16). Orefice credibly testified that in response, the team recommended and the Board supported establishing a "Readers and Writers Workshop" beginning in the 2012-2013 school year (4T76-4T77). By the middle of that year, the team realized it needed to make another change. It replaced the District's existing Basic Skills program with the "Leveled Literacy Intervention" program (LLI) because

the LLI program would work more cohesively with the Readers and Writers Workshop (4T78).

4. Katherine Snyder apparently was the Association's co-president beginning with the 2012-2013 school year and participated in negotiations in 2013 for a new collective agreement. Other than the position she held for the Association and her participation in negotiations, no evidence of acrimony was adduced between her and Gatens or between her and other Board representatives or Board members. Similarly, no evidence suggests any enmity between Snyder and anyone representing the Board in negotiations.

5. Vito DeLaura became the Association's vice president in the 2012-2013 school year and participated in the 2013 negotiations for a new agreement. He characterized negotiations as tenacious and stressful (2T9). Asked on direct examination what steps he took as a member of the Association's negotiations committee, DeLaura testified that his team met, discussed how to proceed and ". . . did some job actions" (2T9). Although the parties met several times during negotiations, they did not directly meet during mediation and fact finding (2T22-2T23). DeLaura did not testify that he was involved in processing grievances and did not testify of any angry exchanges between he and Gatens or between he and anyone representing the Board in negotiations.

6. Susan Stigliano is a former Association president and was grievance co-chair in the 2012-2013 and 2013-2014 school years. She was a member of the Association's negotiations committee for an unspecified number of years and the record is unclear whether she served on the committee for the collective negotiations that began in early 2013 (1T140). If Stigliano participated in negotiations in 2013, no evidence indicates any acrimonious exchanges between her and Gatens or her and any Board representative in those negotiations.

7. Charmaine Della Bella was the grievance co-chair with Stigliano beginning in the 2012-2013 school year (2T58). Della Bella began her employment with the Board as an ESL teacher in 1992. She has a Masters degree in education plus 60 credits towards ESL (2T41-2T42). As an ESL teacher, Della Bella prepared individualized educational plans for her students. She has received exemplary annual performance reviews and a Governor's award (2T43, 2T46, 2T48-2T49). She was a member of the Northern Valley ESL curriculum writing committee that wrote the curriculum used for the Norwood ESL program (2T54-2T55).

Della Bella also was a member of the Association's negotiations committee. She credibly testified that in negotiations, the parties ". . . could not agree," and consequently reached impasse. She noted that during negotiations the Board proposed that the Association drop all outstanding

grievances (2T106-2T107). Della Bella did not testify of any acrimonious exchanges or personal attacks between her and Gatens or between her and any Board representative in either the processing of grievances or in the negotiations process.

8. Stigliano and Della Bella knew of and/or participated in the Association's filing of five grievances between July 25, 2012 and December 18, 2012. They include exhibits J-2, J-11, J-3, J-4 and J-5 set forth in the Stipulation of Facts, paragraphs 7 thru 11. Stigliano and Della Bella also participated in the filing of four grievances in June, 2013, listed in paragraphs 12 through 15 of the Stipulation as exhibits J-6, J-7, J-8 and J-9. A grievance dated July 25, 2012, filed by Association co-president Theresa Sullivan, concerned the salary guide movement of Della Bella and other professional employees (J-2, 1T141). It was resolved informally by the parties in Della Bella's and the Association's favor during negotiations for a new collective agreement in the spring of 2015 (2T66-2T67; 5T49).

9. Four other grievances were filed in the fall of 2012. On October 23, 2012, Association co-presidents Snyder and Sullivan filed J-11, requesting a meeting with Gatens to discuss discipline that had been imposed on a teacher during the 2011-2012 school year regarding a social media policy violation. Gatens had denied their prior request for a meeting because the discipline had not been contemporaneously grieved and he thought

that the matter was closed. Although the Association filed for arbitration, the matter was withdrawn once the new collective agreement was resolved (2T67; 5T45-5T46).

10. On November 20, 2012, Della Bella and Stigliano filed grievances J-3 and J-4. J-3 alleged that Gatens was using or had imposed a progressive discipline "model" in disciplining a teacher, despite the absence of a progressive discipline provision in the parties' collective agreement (2T67-2T70). On December 17, 2012, Gatens issued a letter denying the grievance, citing several reasons (R-2). He testified that "progressive discipline" was a legal principle and not a "model." He acknowledged it was a topic for negotiations (5T49-5T54). Della Bella acknowledged that the Association did not advance J-3 to the next step (2T70).

The grievance in J-4 alleged that the Board had improperly eliminated the position, "Athletic Director" from the collective negotiations agreement. Della Bella testified that Gatens was performing the duties of that position (2T70-2T71). On December 17 and 20, 2012, Gatens wrote replies to the grievance, noting that the Association actually represented the title, "Athletic Coordinator," and denying the grievance for several reasons, including that the title had not been eliminated and the Board was not obligated to fill it (R-3; R-4). Gatens testified credibly that when he arrived in the district for the 2011-2012

school year, no one was performing the functions of the title (5T54-5T57). Della Bella admitted that the grievance was not pursued and that at the time of the hearing in this matter, the position was filled by a unit employee (2T71-2T72).

On December 18, 2012, the Association filed a grievance contesting that the Board was properly moving teachers on the salary guide, essentially repeating the allegation set forth in its July 25, 2012 grievance (J-5, J-2). Both grievances were resolved to the benefit of the employees when the new collective agreement was settled in the spring of 2015 (2T72-2T73; 5T57-5T58).

11. Della Bella and Stigliano filed four group grievances in June 2013, including three -- J-6, J-7 and J-8 -- filed on June 18th. In J-6, the Association alleged the same or similar allegation raised in J-2 and J-5, concerning salary guide movement. This grievance, like the other two, were resolved to the Association's benefit in the spring of 2015, when the new agreement was reached (2T78; 5T58).

In J-7, the Association alleged a contract violation contesting payment for lunchroom coverage. On September 12, 2013, Gatens issued a letter denying the grievance (R-22). Della Bella admitted that this grievance was also resolved in the Association's favor in the spring of 2015 (2T78-2T79).

In J-8, the Association contested an increase in teacher workload. According to Sullivan, the grievance was not pursued after Gatens left the Board's employ in December, 2013 (6T40-6T41).

In J-9, filed on June 25, 2013, the Association alleged that the Board failed to provide certificated staff "Rice"<sup>4/</sup> notices before discussing their future employment. Della Bella testified credibly that the Board usually issues Rice notices before the end of a school year in considering re-employment for the following year, noting that the Board had not issued Rice notices to employees who had been reassigned (2T79-2T80). Neither Sullivan nor Stigliano could identify any staff member discussed by the Board who had not been provided a Rice notice (1T89-1T90; 1T159-1T160). On September 12, 2013, Gatens issued a letter denying the grievance (R-5). The grievance was not pursued after Gatens quit the Board (6T40-6T41).

12. Gatens knew the particulars of all Association grievances filed during the 2012-2013 school year. McCormack and Orefice were generally aware that grievances were filed; Gatens made them specifically aware of only the workload grievance (J-8) filed on June 18, 2013 (4T36-4T37, 4T108-4T109, 4T126-4T127; 5T40-5T41, 5T62, 5T68). McCormack and Orefice did not know the

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<sup>4/</sup> Rice v. Union Cty. Reg. H.S. Bd. of Ed., 155 N.J. Super. 64 (1977).

details of grievances J-2 through J-7, and J-9 and J-11. I credit Gatens's testimony that neither the grievances filed before April, 2013 (J-2, J-3, J-4, J-5 and J-11) nor other union activity were considered in the team discussions regarding staffing for the 2013-2014 school year (5T63).

McCormack knew that Della Bella and Stigliano were grievance co-chairs for the Association (4T57, 4T66). She testified that all of her decisions about reassignments were ". . . made for educational reasons" and that Della Bella's and/or Stigliano's participation in union activity were not discussed among administrative team members (4T59, 4T67, finding no. 2). Orefice testified that she did not know that Della Bella and Stigliano were grievance co-chairs (4T117, 4T133). In the absence of any conflicting evidence, I credit their testimonies.

In rebuttal, Sullivan testified that she discussed the grievances with Gatens, McCormack and Orefice (6T6). She was not asked (nor did she specify) which grievances were discussed with McCormack and Orefice. I find that Sullivan's testimony does not supplant the testimonies of Gatens, McCormack and Orefice that they (McCormack and Orefice) were only aware of the specifics of J-8 and not the other grievances filed in the 2012-2013 school year.

Sullivan also testified about her conversation with Gatens on or about April 10, 2013 concerning the grievances that had been filed. She testified that Gatens said:

Don't you think it's a conflict of interest for Charmaine to be grievance chair and have an open grievance? [1T45]

Sullivan testified that she replied that there was no conflict because she (Sullivan) signed J-2 and Della Bella was not grievance co-chair when it was filed. Sullivan testified that Gatens replied:

I believe Mrs. Della Bella is trying to discredit me with all these frivolous grievances. [1T45]

Sullivan testified that she answered that that was not the case and that he (Gatens) had taken actions, ". . . stepping on the contract and practice" and she (Della Bella) was just doing her job (1T45). I credit Sullivan's testimony. She admitted that Gatens did not say or do anything at that meeting to suggest he was going to take any action regarding Della Bella's grievance processing (1T134). In the absence of evidence to the contrary, I infer that Sullivan did not contemporaneously inform Della Bella about Gatens's comments.

13. Having decided to implement the Readers and Writers Workshop program for the 2012-2013 school year, the team of Gatens, McCormack and Orefice determined that some staffing changes were needed in the lower grades. The decisions to

reassign certain teachers for the 2012-2013 school year began before it started. I credit McCormack's explanation and belief that Elaine Poliatti was transferred from fifth to fourth grade because she would be a better match for the younger children and the change would result in less stress upon her (4T20, 4T93). When Poliatti retired mid-year, basic skills teacher Jeannie Zanone was transferred to Poliatti's position (4T21-4T23, 4T94).

DeLaura was also transferred before the start of the 2012-2013 school year, moving from fourth grade to second grade (2T16). Poliatti took his fourth grade position. I credit Orefice's testimony that she recommended DeLaura's transfer believing there were other teachers (i.e., Poliatti) with stronger literacy skills for fourth grade (4T91).

14. Having made the decision in March, 2013 to implement the LLI program for the 2013-2014 school year, McCormack and Orefice considered who might be the best teacher to implement it and they recommended to Gatens that Della Bella be asked (5T19). Both McCormack and Orefice believed that Della Bella was one of the best teachers in the district; she was very strong in literacy and had the ability to differentiate instructions and focus her students on "content areas" (4T12, 4T31, 4T81). McCormack and Orefice asked Della Bella to consider taking the position. Della Bella eventually declined the offer (4T13-4T14,

4T81-4T83). The team then offered the LLI position to first grade teacher, Ann Alberte (4T15, 4T83).

15. By April, 2013, the team began focusing on how/with whom it wanted to staff the lower grades for 2013-2014. The team knew that an excellent, experienced teacher, Mary Tasman, was retiring from the third grade, leaving a "huge gap" to fill (4T32). In addition to the third grade vacancy, three teachers expressed interest in transferring to another grade.

Orefice acknowledged that DeLaura was neither very successful nor happy teaching second grade and he voluntarily requested a transfer to fifth grade, which Gatens/the team approved (2T15; 4T18-4T19, 4T92; 5T24). Teacher Allison Griffith requested a transfer from teaching third grade to kindergarten, which was approved, thereby creating two openings at third grade (4T29, 4T100). Mary Jean O'Donnell taught first grade and had previously expressed interest in teacher at a higher grade, prompting Orefice to recommend O'Donnell's transfer to fifth grade (4T27, 4T104-4T106).

16. McCormack credibly testified that in 2014 and earlier, third grade students were the earliest grade level students taking standardized State assessment examinations (4T44). She testified that retiring, long-tenured and "strong [third grade] teacher" Mary Tasman had embraced "balanced literacy" and was willing to integrate new teaching methods and the Board desired a

comparable teacher to replace her (4T32-4T33). Orefice echoed the same sentiment, testifying that whoever taught third grade should be able to help students become strong readers and to initiate them to connecting reading and writing (4T101-4T102).

For the same reasons that McCormack and Orefice asked Della Bella to head the implementation of the LLI program (i.e., her excellence in teaching, her ESL background, her deep understanding of literacy and how students acquire language and the need for a well-respected educator), Orefice recommended to Gatens that Della Bella be reassigned to the third grade (4T33, 4T101). McCormack agreed with that recommendation (4T33). I credit their testimonies that they recommended Della Bella's reassignment to third grade because of her excellence in teaching.

Gatens agreed with the recommendation to reassign Della Bella for the same reasons expressed by McCormack and Orefice (5T34). Asked on cross-examination about her ability to fill the third grade position without a "learning curve," Gatens testified:

Charmaine was clearly a building leader. She was very strong, instructionally. She worked for the curriculum center. She has a Master's degree. She was a mentor, when you look at the breadth of the entire staff, I would call Charmaine one of our best teachers. And my desire to help the third grade, the -- it was very clear that I had two options. I could have gone out of the district and hired a brand new third grade

teacher, which is a very tough learning curve as you talked about earlier. Or I could take somebody who I had seen perform, teach, I had seen her work hard. I had seen her attitude. Her intelligence. I seen how hard she works as a teacher and instead of hiring two brand new teachers, I hired a staff member I knew to one of those positions. [5T91-92]

I credit Gatens's testimony.

The team did not reassign Della Bella from ESL to third grade without considering the impact on the ESL program. Orefice credibly testified that the ESL students in Norwood are predominantly high achievers with supportive families. She testified that those students learn quickly and are "mainstreamed" with support in regular classrooms (4T102-4T103). On cross-examination, Orefice again explained that the district's ESL population was very bright and transitioned quickly, leading to her opinion that the third grade vacancy was a more critical role to fill than ESL (4T120). Orefice also credibly explained on cross-examination that Della Bella's skills are widely applicable to students, making her a "perfect fit" as a classroom teacher (4T120-4T121). In the absence of conflicting evidence, I credit Orefice's explanation for why it was sensible to reassign Della Bella.

The Board hired an inexperienced but highly qualified teacher to replace Della Bella as the ESL teacher (4T53, 4T103-104). Orefice testified without contradiction that the new ESL teacher, Mauro DeSantis, has been successful (4T104).

17. On April 25, 2013, Della Bella met with Gatens. She initially testified that he told her that she would be reassigned to third grade to replace a retiring teacher (2T92). On cross-examination, Della Bella admitted that Gatens more specifically told her that he was recommending her for third grade because she was a highly qualified and talented teacher who could replace a retiring veteran teacher (2T178-2T179). Association President Sullivan admitted that Della Bella told her that Gatens said that she was needed in third grade because she was a good teacher (1T67). Similarly, Stigliano admitted that Della Bella told her that Gatens said that her reassignment was "educationally sound" (1T154).

Despite the justification(s) provided to Della Bella for the reassignment, she did not want to teach third grade, and disagreed with Gatens's educational assessment for the transfer. She sharply criticized the Board's decision to replace her in ESL with DeSantis, and expressed her belief that she was reassigned because of her union activity, particularly for filing grievances (2T99-2T100, 2T166; 3T55, 3T113). On cross-examination, Della Bella acknowledged that she is an excellent teacher who can bring a skill set to many different types of children and that she would do the best she could in any situation (3T20, 3T22). When asked whether the educational skills she has acquired could be translated to the benefit of general education students, Della

Bella confirmed that they could and again acknowledged that she was a really good teacher (3T83). Della Bella volunteered to teach some sections of fifth and eighth grade in addition to her ESL class, rather than be reassigned to teach third grade (3T78-3T81).

Della Bella and Stigliano believe that they were reassigned in retaliation for their participation as grievance co-chairs (1T152, 1T196). Della Bella admitted no "direct correlation" between her reassignment and Gatens's request that all the grievances be dropped. She admitted that Gatens never told her that he would transfer her if she didn't withdraw the grievances (3T73).

18. After deciding to reassign Della Bella to third grade and to hire a new teacher for the other third grade vacancy, the team made at least two other reassignments. McCormack and Orefice credibly testified separately that Kathryn Snyder, who had taught fourth grade science, was a good and dedicated teacher teaching at too high a level for her students. They believed her ability was better-suited to middle school and she was reassigned to teach science at grades six and seven for 2013-2014 (4T24, 4T94-4T96).

Although Snyder did not volunteer for the reassignment, McCormack testified without contradiction that Snyder had previously expressed a desire to teach middle school students

(4T65, 4T118). Orefice credibly testified that Snyder was "thrilled" with the reassignment (4T96, 4T118). Snyder was not called as a witness; in the absence of Snyder's testimony, I find that she was reassigned for educational reasons and was content with the reassignment.

19. The decision to reassign Snyder necessitated the reassignment of Stigliano from teaching sixth and seventh grade science to teaching fourth grade science. Snyder and Stigliano simply switched assignments (5T30). Orefice conceded that Stigliano's reassignment was involuntary and that Stigliano was disappointed by it (4T117). McCormack testified credibly that Stigliano was a strong "quintessential science teacher" who could transfer her skills to another grade level (4T25-4T27). Gatens testified that Stigliano was a talented science teacher who had previously taught fourth grade students (5T30).

Stigliano did not dispute her excellence as a science teacher, but testified that she was uncomfortable moving from the sixth and seventh grades to teaching fourth grade science and disputed that her reassignment was an educationally-based determination (1T138, 1T153). She credibly testified of her belief that her reassignment was motivated by and in response to her duties as grievance co-chair for the Association (1T152, 1T196).

20. Association President Sullivan testified that the Board, specifically, Gatens, interfered with the processing of grievances by blocking Della Bella's access to information needed to process them. Sullivan and Della Bella testified that Gatens did not communicate with the Association regarding grievance processing, that is, he refused to meet regarding certain grievances (1T51-1T53; 2T61-2T62). They noted that the Association filed a grievance over the matter (J-11; 1T53; 2T61). Despite alleging that Gatens had refused some grievance meetings, Della Bella conceded that Gatens replied in writing to grievances and that the Association then advanced those grievances to the next step if it was dissatisfied with his response (2T62). In R-2, R-3, R-4 and R-5, Gatens responded to several Association grievances, noting at times that the Association had filed particular grievances at the wrong level.

21. Della Bella testified that her access to information in her personnel file was blocked (2T142-2T146). Della Bella conceded that Gatens responded to her request and said he would change his schedule to accommodate her (2T147; R-13).

Della Bella admitted meeting with Gatens regarding her access to personnel files, at which time he explained the procedure to be used to gain such access (3T27-2T28, 3T31). On December 17, 2012, Gatens wrote a letter to Della Bella, confirming their meeting and "the best practice for employee

access to personnel files" (R-25). Della Bella confirmed that Gatens told her that a mutually convenient and reasonable time would be arranged for her and all employees interested in reviewing their personnel files (3T31). Della Bella also acknowledged that Gatens responded favorably to her request for Board minutes (2T149-2T150; R-14).

#### ANALYSIS

This case primarily concerns the 5.4a(3) allegation that the Board reassigned Della Bella, Stigliano, Snyder and DeLaura because of their exercise of protected conduct. The case secondarily concerns the 5.4a(1) allegation regarding grievance processing and access to personnel records. Before considering the merits, I address several procedural matters, including the Board's motion to exclude testimony.

#### Sequestration and the Motion to Exclude Testimony

Commission hearing examiners have unspecified discretion to sequester witnesses during the course of a Hearing. N.J.A.C. 19:14-6.3. Sequestration is not unusual, particularly in discrimination cases, where witness credibility is often contested. The purpose of sequestration is

[T]o discover truth, detect and expose falsehood. This of course is accomplished by preventing testimony of one witness from being influenced by another -- that is, for the purpose of preventing witnesses from shaping their testimony to match that given by other witnesses within their hearing.

State of N.J. v. Jasclevich, 158 N.J. Super.  
488, 492 (App. Div. 1978).

Witnesses who violate sequestration orders may have their testimony stricken, and/or the trier of fact may consider their testimony unreliable and lacking credibility. Either way, a violation of a sequestration order can adversely effect both parties by prejudicing the party who had the initial burden and/or the party presenting a defense.

Hearing Examiner Todd properly instructed the witnesses not to discuss their testimony -- either before or after they testified -- with any other witness. Stigliano testified that she ate lunch with Sullivan, Della Bella, DeLaura and Association Counsel. Her admission that she discussed her testimony during the lunch recess violated the sequestration order.

In its initial motion to exclude testimony (C-3A), the Board primarily sought to strike Stigliano's testimony but concentrated its legal argument on seeking to bar Della Bella from communicating with Association Counsel because she had not yet completed her testimony. In its second motion to exclude testimony (C-3B), the Board sought to strike all testimony of all the Association witnesses -- Stigliano, Sullivan, Della Bella and DeLaura -- based upon Stigliano's admission. The Board argued that it was unduly prejudiced by "the Association's lunchtime communications." It claimed that Association witnesses had the ability to review and collaborate over their testimony, following

Sullivan's cross-examination and labeled their conduct, "unlawful collusion."

Stigliano essentially admitted that she violated the sequestration order, conduct that may appropriately be sanctioned. Under the circumstances of this case, however, I do not grant either of Board Counsel's motions.

The only transcript evidence on this contested issue shows that on April 5, 2016, Stigliano briefly discussed her testimony at lunch in the presence of Sullivan, Della Bella, DeLaura and Association Counsel. No evidence indicates precisely what Stigliano said or discussed and to or with whom. For example, the record does not indicate if Stigliano discussed what she might or intended to testify or whether other witnesses at the table suggested what she should say and how to answer questions. The Board did not pursue the opportunity to adduce testimony, including admissions, regarding specific remarks by or to Stigliano.

Although it is imperative for a trier of fact to protect, to the extent possible, both the independence and veracity of witness testimony, I have insufficient evidence on this record to find that Sullivan, Della Bella or DeLaura materially violated Hearing Examiner Todd's sequestration order. Accordingly, I deny the Board's second motion (C-3B).

Stigliano was forthcoming about her violation of the sequestration order. In the absence of specific facts or an identification of specific topics reviewed among witnesses at the lunch break, I find that Stigliano's mere "discussion" of her testimony does not warrant its exclusion. I also deny the Board's first motion (C-3A).

#### The Legal Standards

In Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the New Jersey Supreme Court established the standard for determining whether a public employer's action violates 5.4a(3) of the Act. Under Bridgewater no violation will be found 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 an illegal motive has been proven and if the employer has not presented any evidence of a motive not illegal under our Act, or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a

personnel action. In those 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. This affirmative defense, however, need not be considered unless the Charging Party has proved, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the hearing examiner and Commission to resolve.

The decision on whether a Charging Party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner. UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

The 5.4a(1) standard was established by the Commission in New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); and repeated in New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 2 550, 551 note 1 (¶10285 1979) and provides:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate

and substantial business justification. [5  
NJPER at 551, note 1]

In Commercial Tp. Bd. Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission held that where an employer's conduct deliberately attempts to restrain employee participation in protected activity, it independently violates section 5.4(a)(1) of the Act. It further reiterated that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent a(1) violation. The tendency to interfere is sufficient. UMDNJ-Rutgers Medical School; Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Turnpike Auth., P.E.R.C. No. 2017-51, 43 NJPER 354 (¶101 2017).

To prove an a(3) violation, the Association in this case has the burden to prove that the effected employees engaged in protected conduct; that the Board - Gatens - was aware of that conduct, and that the Board - Gatens - was hostile to it. Contrary to the Association's apparent argument, the Board is not obligated to prove that the transfers of the four teachers were not motivated by union animus. The initial burden is the Association's; if it proves that protected conduct was a motivating factor for the transfers, the Board's burden would then be to prove that it would have taken the same action for legitimate educational reasons.

Among several arguments raised to support its case, the Association contends that Gatens's remarks to Sullivan -- that Della Bella had filed "frivolous grievances," in an effort to discredit him and that it was a conflict of interest for Della Bella to file grievances while her own grievance was pending -- demonstrates Gatens's animus toward Della Bella for filing grievances (finding no. 12). I disagree. Gatens's remarks to Sullivan about Della Bella are appropriately examined under our case law separating permissible and impermissible employer criticism of union conduct.

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

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. However, the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer (citations omitted).

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. [7 NJPER at 503]

The Commission elaborated:

The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity. [7 NJPER at 504]

Sullivan's testimony of Gatens's April 10, 2013 remarks reveals only an actual or rhetorical proposition about Della Bella's activities as an Association representative and a tentative, hypothesized explanation for and characterization of grievances she filed. These comments fall within the lawful parameters of employer speech set forth in Black Horse Pike. Stated another way, Gatens has as much right to express his belief about Della Bella's "conflicts" and to characterize her grievances as she has to criticize Gatens for her transfer and the transfers of other unit employees. Sullivan also conceded that Gatens did not say that he intended to take any action against Della Bella.

#### The Merits

In addition to its argument about Gatens's remarks to Sullivan, the Association contends that transferring Snyder, DeLaura, Stigliano and Della Bella was not educationally sound or motivated; that several grievances were resolved in negotiations in the Association's favor; that McCormack and Orefice often did not review employee files before making their transfer recommendations;

and, that, presumably, Gatens was ignorant of staff qualifications. The Association also argued that because I did not see and hear hear the witnesses testify, I am unable to render credibility determinations in this case.

Having considered the testimony of Association and Board witnesses and all relevant documents and arguments, I find that the Association proved that Snyder, DeLaura, Stigliano and Della Bella all engaged in protected conduct and that Gatens, McCormack and Orefice knew of it. I also find that the Association did not prove that the transfer recommendations/decisions were made because of employer hostility to that conduct.

Although one could infer or find that Gatens was frustrated by the many filed grievances, the record shows that even if the transfers of Snyder and DeLaura (to fifth grade classes) were involuntary, they were to the liking of those employees, and that the evidence amply shows that Stigliano and Della Bella were transferred for legitimate and logistical reasons, enabled by their excellence in teaching.

In its post-hearing reply brief, the Association contends that since I did not hear and see the witnesses testify, I am unable to make reasonable credibility determinations. I note preliminarily that N.J.A.C. 19:14-6.4 provides in a relevant part:

If the hearing examiner becomes unavailable, the Director of Unfair Practices or the Commission may designate another hearing examiner for the purpose of further hearing or

issuance of a report and recommended decision on the record as made, or both (emphasis added). The parties shall be notified of that designation.

This regulation authorizes me, as "another hearing examiner" to issue this "report and recommended decision," implicitly contemplating that "the record as made" presents credibility issues. I concede my inability to make "sweaty palm" credibility determinations in this case but this case does not require them. Instead, credibility in this matter hinges largely upon the transcribed and detailed witness testimony within each witnesses's range of personal knowledge that is illustratively consistent (or inconsistent, as the case may be) with other testimony(ies) and documents.

The question is why were the teachers (particularly Stigliano and Della Bella) transferred? Was it because of their exercise of protected conduct as Sullivan, Stigliano and Della Bella claim or was it due to the educational needs of the district and Stigliano's and Della Bella's excellent teaching ability, as Gatens, McCormack and Orefice claim? Having carefully considered all testimonies, I neither find nor suggest that Sullivan, Stigliano or Della Bella were not credible in their belief that the transfers resulted from retaliation for union activity. My decision is unlikely to change their minds.

Rather, my credibility determinations favoring Gatens, McCormack and Orefice are based upon their detailed explanations

for needing to change teacher assignments, particularly in the lower grades, and their undisputed testimony (corroborated by Della Bella and Stigliano) about the excellent teaching ability that Della Bella and Stigliano brought to their classrooms. Those credibility determinations are reinforced by the finding -- which the Association did not effectively dispute -- that Gatens had not discussed with McCormack and Orefice the grievances filed in 2012 (J-2 thru J-5 and J-11), and that they (McCormack and Orefice) recommended the transfers in the spring of 2013 without knowing the extent of Della Bella's and Stigliano's union activity.

Similarly, the record does not support the Association's contention that Snyder and DeLaura were transferred because of their participation in union activity. McCormack and Orefice clearly and credibly explained why Snyder was better suited to teach middle school science and that she (though not volunteering to be transferred) was "thrilled" with the reassignment. Although Snyder did not testify in this case, no other testimony or document(s) contradicted McCormack and Orefice. Consequently, I credit their testimonies and find that Snyder was transferred because her skills were better suited for middle school and she was not opposed to the transfer.

The record also shows that DeLaura's transfer from second grade to fifth grade had nothing to do with his union activity. DeLaura asked for the transfer and Gatens and his team approved his

request. DeLaura's prior transfer to second grade starting in September, 2012 falls outside of the six-month statute of limitations set forth in the Act. N.J.S.A. 34:13A-5.4c. The record omits any persuasive evidence that that transfer violated the Act.

Stigliano was transferred to teach fourth grade science when Snyder was transferred to teach middle school science. Having established a legitimate educational reason for transferring Snyder, McCormack and Gatens credibly and logically explained they transferred Stigliano to Snyder's fourth grade science position because of her (Stigliano's) excellence in teaching science and because of her ability to adjust to another grade level. Stigliano did not dispute that ability. Thus, I find that the Board's explanation for Stigliano's transfer is credible and rooted in a legitimate educational justification.

It seems that the heart of the Association's case concerns Della Bella's transfer. In order to concur with the Association's alleged reason for her transfer -- her grievance filing -- I would have to give little or no credence to the demonstrated, arisen need for the Board to fill a third grade teacher vacancy created by Tasman's retirement, together with the implementation of both the LLI program and the Readers and Writers Workshop that demanded a talented, experienced teacher to replace Tasman. The evidence shows that Della Bella was perhaps the best and most experienced

teacher in the district who had the ability to change grade levels while maintaining excellent teaching skills. Della Bella agreed with that assessment of her ability. I am persuaded by the confluence of all of these facts that Della Bella's teaching ability motivated the Board's transfer of her.

The Association raises several reasons supporting its argument. It suggests that the Board could have hired two new teachers to teach third grade. It could have, but they would have likely been relatively inexperienced with fewer or less developed skills to effectively implement the LLI and Workshop programs. The Association argues that Della Bella was a more qualified ESL teacher than DeSantis, and moving her to teach third grade would have been detrimental to the ESL program. But the Board never claimed that DeSantis was a more qualified or more experienced ESL teacher than Della Bella. Clearly, he was not. But that was not why Della Bella was transferred. The Board established that the ESL students were motivated to succeed; that DeSantis was a qualified ESL instructor who could maintain the program; and that there was a greater need for Della Bella's skills at third grade.

All of the teacher transfers or reassignments in this case were based on legitimate educational considerations. Accordingly, I recommend the 5.4a(3) allegation be dismissed.

The Association has not proved that it or Della Bella was denied access to information for grievance processing; that Gatens

failed to respond to grievances; or that Della Bella was denied access to her personnel records. In fact, Della Bella acknowledged that Gatens submitted written responses to grievances and gave her reasonable access to her personnel files. There is simply insufficient evidence to prove that Gatens interfered with the Association's protected rights. Accordingly, I recommend that the 5.4a(1) allegations also be dismissed.

CONCLUSIONS OF LAW

The Norwood Board of Education did not violate 5.4a(1) or (3) of the Act by the transfers it made to start the 2013-2014 school year, nor did it interfere with or deny the Association access to information it was entitled to receive.

RECOMMENDATION

I recommend that the Commission ORDER that the Complaint be dismissed.

/s/Jonathan Roth

Jonathan Roth  
Hearing Examiner

DATED: July 25, 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 August 4, 2017.