

P.E.R.C. NO. 2003-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2001-53

CAMDEN CITY FEDERATION OF SCHOOL  
ADMINISTRATORS, LOCAL 39,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Camden Board of Education violated the New Jersey Employer-Employee Relations Act transferring a vice-principal and not paying her commensurate with her new position, in retaliation for union activities. The Commission concludes that the vice-principal's acting pay grievance motivated the Board's decision to transfer her and the Board did not prove that it would have transferred her absent its hostility to her protected activity. However, the Commission concludes that the Federation did not prove that the vice-principal was not appointed to several positions because of anti-union animus. The Commission orders the Board to immediately transfer the vice-principal back to her original school or to another school by mutual consent of the parties.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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CAMDEN CITY FEDERATION OF SCHOOL  
ADMINISTRATORS, LOCAL 39,

Charging Party.

Appearances:

For the Respondent, The Murray Law Firm, attorneys  
(Karen A. Murray, of counsel)

For the Charging Party, Jennings Sigmond, attorneys  
(Mary L. Crangle, of counsel)

DECISION

On September 11 and October 20, 2000 and September 6, 2001, the Camden City Federation of School Administrators, Local 39, filed an unfair practice charge and amended charges against the Camden Board of Education. The charge, as amended, alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3)<sup>1/</sup>,

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

by not appointing Claudia Cream, a vice-principal, to various positions and by transferring her and not paying her commensurate with her new position, in retaliation for her union activities.

On November 21, 2000, a Complaint and Notice of Hearing issued. On December 7, 2000 and October 1, 2001, the Board filed Answers generally denying the allegations and stating that it transferred Cream to fulfill an educational need.

On October 10 and 11 and December 12, 2001 and March 13, April 10 and June 21, 2002, Hearing Examiner Wendy L. Young conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On January 17, 2003, the Hearing Examiner issued her report and recommendations. H.E. No. 2003-13, 29 NJPER 43 (¶16 2003). She concluded that the Board violated the Act when it transferred Cream as vice principal to head an alternative school, formerly administered by a principal, in retaliation for her filing a grievance claiming she was entitled to acting pay for filling in for the principal of her school. In particular, the Hearing Examiner found that suspicious timing, together with the different reasons offered for the transfer and the manner in which Cream's transfer appeal was handled, supported an inference of hostility against her for filing the grievance. Also, there

was a nexus between the acting pay grievance and the transfer. However, the Hearing Examiner found no violation in the Board's handling of Cream's applications for various principal positions. She also concluded that the Board did not violate the Act in paying Cream as a vice principal in the school to which she was transferred. She found that the Federation failed to establish that Cream was treated differently from other applicants for principal positions or from two other vice principals assigned to head alternative schools.

The parties each filed exceptions and responses. We will address the issues raised by those submissions in the course of this decision.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 5-53) with the following modifications.

We modify finding 23 to reflect that the then Director of Human Resources testified that she did not recall whether the principal position at Pyne Poynt Family School was re-posted because of Federation concerns or because of a request by the first interview team (3T229).

In finding 24, the Hearing Examiner inferred that a second round of interviews for the Pyne Poynt principalship was not scheduled after the June reposting because the former principal

consented to stay until a replacement was found. The Association excepts to this finding and contends that a more reasonable inference is that hostility to Cream and the complaints she had made motivated that decision. The Director of Human Resources testified that she did not recall who told her not to schedule the second interviews. Absent some other evidence explaining why the interviews were not conducted, we reject the Hearing Examiner's inference that it was the principal's staying on that explained the decision not to have the interviews at that time. Absent additional evidence, we similarly reject the Association's request that we infer that it was Cream's protected activity that motivated the decision not to have interviews that summer.

The Association excepts to the Hearing Examiner's statement in finding 37 that Cream's new duties as vice-principal at Challenge Square Academy and at Pyne Poynt "only differ in a couple of respects." We modify that finding so as not to comment on the magnitude of the difference in the two assignments.

We modify finding 40, consistent with our modification of finding 24. We do not find why the Board delayed the second round of interviews.

The Federation alleges that Cream's transfer and the decisions not to promote Cream to various principal positions were in retaliation for her protected activity. The Hearing

Examiner found that the transfer decision was motivated by anti-union animus, but the promotion decisions were not.

Under In re Bridgewater Tp., 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present 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 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. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a

motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

The Hearing Examiner applied these standards to the facts of this case. We adopt her well-reasoned analysis.

We begin with Cream's transfer from her position as vice principal at Pyne Poynt to vice principal in charge of Challenge Square.

The Hearing Examiner inferred hostility from the timing of the transfer occurring shortly after Cream's filing of a grievance seeking acting principal's pay at Pyne Poynt together with the shifting explanations proffered for the transfer, the disparate treatment of Cream's transfer appeal by the Board, and the nexus between the acting pay grievance and her transfer as vice-principal to a position at Challenge Square formerly held by a principal.

In its exceptions, the Board argues that there were no conflicting reasons sufficient to create an inference of anti-union animus. We disagree. The Assistant Superintendent told Cream that she was the best possible candidate for the Challenge Square position, and the Interim Superintendent told Cream that the transfer was based on a request of her principal because she

could not get along with the other staff at Pyne Poynt. We reject the suggestion that these two reasons are not contradictory, but complementary and consistent.

The Board argues that hostility should not have been inferred from its response to Cream's "appeal" of the transfer. The Hearing Examiner noted that unlike nine other proposed and challenged transfers, Cream's was the only one not rescinded or accommodated.<sup>2/</sup> We agree with the Hearing Examiner that the Board did not explain what differing educational concerns led it to deny Cream's appeal and grant the other appeals.

The Board argues that an inference of hostility cannot be drawn based on timing since the interim superintendent was on the job for less than four weeks at the time of the transfer. We accept the Hearing Examiner's inference that the timing was suspect. The transfer came as a surprise to Cream who had been a vice-principal at Pyne Poynt for four years with a spotless performance record. She was a strong candidate to become principal when the transfer was announced. The transfer came within six month's of her filing a grievance seeking acting principal pay and two months after she complained about the interview process for the Pyne Poynt principal position. The Board did not call as witnesses either the superintendent or the

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<sup>2/</sup> One transfer occurred when a position was eliminated.



principal involved in the transfer to explain the conflicting reasons for the transfer.<sup>3/</sup> Accordingly, we accept the Hearing Examiner's conclusion that the explanations for the transfer were pretextual and draw an inference of hostility to protected activity.

Finally, the Board argues that there is no evidence that either the superintendent or the principal knew of Cream's acting pay grievance. We reject this exception. We are not prepared to find that the transfer decision was made in a vacuum by the principal and new superintendent. Given the totality of the circumstances, where various superintendents and Board members knew of Cream's grievances, we accept the Hearing Examiner's conclusion that Cream's acting pay grievance motivated the transfer and that the Board did not prove that it would have transferred her absent its hostility to her protected activity.

We continue with a discussion of the decisions not to promote Cream to various principal positions and the Federation's exceptions to those determinations.

The Hearing Examiner concluded that the decision not to promote Cream to principal at Pyne Poynt was unrelated to her protected activity. The Federation excepts, arguing that the

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<sup>3/</sup> Unlike the Hearing Examiner, we draw no adverse inference from their failure to testify. We simply note that conflicting reasons for the transfer were not explained away.

preponderance of the evidence supports a finding of unlawful discrimination. Specifically, it points to these alleged indicia of discrimination: Cream's precipitous transfer out of Pyne Poynt where she had successfully served as vice principal; the irregularities with respect to the May interview of Pyne Poynt principal; the failure to conduct interviews after the June 2000 reposting of that position; the appointment of an acting principal prior to the October 2000 interviews; the disparate manner in which Cream received notice of her October 2000 interview; and the fact that the October interview committee was essentially the same as the May interview committee. The Hearing Examiner considered all of these arguments and rejected them. We accept her analysis.

Camden is an Abbott school district subject to whole-school reform. See N.J.A.C. 6A:24-1.2; Abbott v. Burke, 100 N.J. 269 (1985). The school management team is a component of whole-school reform. Each school has a team that, in addition to other duties, is authorized to make recommendations for the appointment of a building principal. The team must make recommendations to the superintendent who may select one of the candidates for recommendation to the Board. Under this system, the team acts as a screen and the superintendent cannot recommend a candidate not recommended by the team.

Eleven candidates were interviewed for the Pyne Poynt principalship, including Cream and the then acting principal. As was district practice, the names of the top three scoring candidates were forwarded to the superintendent. Cream ranked fourth. The acting principal was the highest scoring candidate and was appointed.

We are troubled by the fact that Cream was illegally transferred out of Pyne Poynt during the long interview process and that, as found by the Hearing Examiner, the transfer may have disadvantaged her candidacy. But the Hearing Examiner found that although Cream may have been disadvantaged, there is no evidence that she would have been appointed absent the transfer. We defer to the Hearing Examiner's judgment and the inferences she drew and did not draw from the evidence presented. She was in the best position to evaluate all the circumstances of this case, and absent a compelling reason to reject her overall judgment, we accept her finding that the decision not to promote Cream to principal at Pyne Poynt was not motivated by hostility to her protected activity.

There may have been deviations from what had been standard Board practice in how and when interviews were conducted. But in the end, it was the interview team that made the recommendations to the superintendent, and there is no evidence that the members

of that team were hostile to Cream or that the team's makeup was engineered to disadvantage her because of her protected activity.

We also accept the Hearing Examiner's recommendation to dismiss the allegations involving the principalships at Camden High School and Yorkship Family School. Cream was not one of the top five recommended candidates for the high school position. The evidence does not support a finding that the interview team's recommendations were tainted by anti-union animus. As for the Yorkship Family School, Cream was on vacation during the interviews and, consistent with district practice, her individual vacation schedule was not accommodated.

Finally, we reject the Federation's exception which claims that but for Cream's protected activities, the position at Challenge Square would have remained a principal position and the incumbent would be entitled to be paid as a principal. The record does not support the Federation's claim. The Hearing Examiner found that the decision to change the administration of all the District's three alternative schools was the proper exercise of a managerial prerogative and not motivated by hostility to Cream's protected activities. We accept that finding.

ORDER

The Camden Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she had filed a grievance.

2. Discriminating in regard to terms and conditions of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

B. Take this action:


1. Immediately transfer Claudia Cream to Pyne Poynt Family School as vice principal or to another school by mutual consent of the parties.

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 on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: May 29, 2003  
Trenton, New Jersey  
ISSUED: May 30, 2003



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

**We hereby notify our employees that:**

**WE WILL** cease and desist from interfering with restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she had filed a grievance.

**WE WILL NOT** discriminate in regard to terms and conditions of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

**WE WILL** immediately transfer Claudia Cream to Pyne Poynt Family School as vice principal or to another school by mutual consent of the parties.

**CO-H-2001-53**

Docket No.

**CAMDEN BOARD OF EDUCATION**

(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

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

H.E. NO. 2003-13

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

In the Matter of

CAMDEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2001-53

CAMDEN CITY FEDERATION OF SCHOOL  
ADMINISTRATORS, LOCAL 39,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Camden Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, 5.4a(3) and derivatively a(1), when it transferred Claudia Cream as vice principal to head an alternative school, formerly administered by a principal, in retaliation for the filing of a grievance for acting pay. In particular, the Hearing Examiner found that timing, together with the different reasons proffered in support of the transfer decision and the manner in which Cream's transfer appeal was handled, support an inference of hostility. Also, there was a nexus between the acting pay grievance and the adverse personnel action.

However, the Hearing Examiner found no violation in the Board's handling of Cream's application for various principal positions. She also concluded that the Board did not violate the Act in paying Cream as a vice principal in the school to which she was transferred. The Association failed to establish that Cream was treated differently from other applicants for principal positions or from two other vice principals assigned to head alternative schools.



H.E. NO. 2003-13

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Docket No. CO-H-2001-53

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ADMINISTRATORS, LOCAL 39,

Charging Party.

Appearances:

For the Respondent  
Murray & Murray, attorneys  
(Karen A. Murray, of counsel)

For the Charging Party  
Jennings Sigmond, attorneys  
(Mary L. Crangle, of counsel)

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

On September 11 and October 20, 2000 and September 6, 2001, the Camden City Federation of School Administrators, Local 39 (Federation or Charging Party) filed a charge and amended charges (C-1 and C-2)<sup>1/</sup> against the Camden Board of Education (Board or Respondent) alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically

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<sup>1/</sup> "C-" represents Commission exhibits, "CP-" represents Charging Party's exhibits, and "R-" represents Respondent's exhibits.

subsections 5.4a(1) and (3).<sup>2/</sup> The charge and first amended charge allege that the Board discriminated against Claudia Cream by not appointing her to various positions, transferring her and not paying her commensurate with her new position in retaliation for her union activities. The second amended charge alleges that Cream applied for but was not appointed to the position of principal at Camden High School in retaliation for her union activities.

Specifically, the Federation alleges that the Board had knowledge of Cream's role in both negotiating the most recent contracts and processing grievances on behalf of Federation members and herself individually. It asserts that the Board was generally hostile to Cream's activities, in particular, the increase in grievance filings after she became grievance chair in 1998. Additionally, the Federation contends that Board President Sara Davis harbored particular hostility toward Cream because in 1994 Davis, then a Federation unit member, unsuccessfully filed a charge against the Federation, asserting that Cream and others on the Federation's negotiating team caused her salary to be reduced in retaliation for Davis' activities when she was CEA president. The Commission dismissed Davis' charge on May 28, 1998. As a result of

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<sup>2/</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, and (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 or the rights guaranteed to them by this Act."

Board hostility generally and Davis' hostility specifically, the Federation asserts Cream was denied promotions to principal of several district schools and involuntarily transferred as vice-principal to an alternative school where she performed the responsibilities of principal without commensurate compensation.

On November 21, 2000, a Complaint and Notice of Hearing issued on the charge and first amended charge. On October 2, 2001, the complaint was amended to include the allegations relating to the principal's position at Camden High School (C-2). N.J.A.C. 19:14-2.2.

On December 7, 2000, and October 1, 2001, the Board filed Answers (C-3 and C-4) generally denying that it transferred Cream and did not appoint her to other positions in retaliation for her union activities. With respect to the transfer, it raises the affirmative defense that it was acting within its managerial prerogative to transfer Cream to fulfill an educational need.

More specifically, the Board contends that Cream's status as a union officer alone is insufficient to support a finding of hostility and the facts do not support a finding that the Board was hostile to either her activities on the Federation's negotiating team or as grievance chair. Moreover, it contends the number of grievances filed by Cream, although an increase over previous years, was not significant - ten grievances over a period of three years. Additionally, the Board asserted the grievance activity occurred during a transitional period when there were four different

superintendent's overseeing the district. Despite these personnel changes, the Board argued that most grievances were resolved amicably at the initial steps of the grievance process with only one grievance being arbitrated. In sum, the Board contends the Federation failed to establish a nexus between the increased grievance activity or Cream's participation on the negotiation team and Board animus because some "successful" grievants as well as one member of the Federation's negotiation team were subsequently promoted.

Regarding the alleged hostility of Board President Sara Davis, the Board asserts first, that Davis filed the 1994 charge against not only the Federation, but also against the Board which it argues defeats the Federation's claim of anti-union animus. Next, it asserts Davis was not involved in the process of recommending candidates for appointment to principal at Pyne Poynt Family School, Yorkship Family School or Camden High School. That process was controlled locally by school management teams at each school under guidelines established by the Abbott regulations without either Superintendent or Board in-put. It asserts that its actions in appointing others to principal positions and transferring Cream to Challenge Square Academy were a legitimate exercise of its managerial prerogatives to promote and transfer. In any event, the Board asserts it had legitimate business justification for each personnel action taken.

Hearings were conducted on October 10 and 11, and December 12, 2001, and March 13, April 10 and June 21, 2002.<sup>3/</sup> Post-hearing briefs were filed by August 28, 2002, and reply briefs were submitted by September 11, 2002. Based upon the entire record, I make the following:

**FINDINGS OF FACT**

1. The Camden Board of Education is a public employer within the meaning of the Act. The Camden City Federation of School Administrators, Local 39 is an employee organization within the meaning of the Act and is the majority representative for the Board's administrators in various titles including principal and vice-principal (CP-1, 1T12). Claudia Cream is a public employee within the meaning of the Act and is vice-president of the Federation (1T12, 1T27-1T28).

2. There are approximately 125 employees represented by the Federation (1T171). Some unit members hold ten-month positions while others such as principals, supervisors and directors hold twelve-month positions (2T62-2T63). The Federation's liaison committee, consisting of the Federation president and vice president, meets regularly with the superintendent to discuss various issues, including outstanding grievances. Meetings take place throughout the year although meetings are usually suspended for the summer months (CP-1, 1T40, 2T63, 2T71).

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<sup>3/</sup> Transcript references shall be "1T" to "6T" respectively.

3. The Board and Federation are parties to a series of agreements the most recent of which is effective from July 1, 1999 through June 30, 2001. The prior two agreements were effective from July 1, 1997 through June 30, 1999 (CP-1) and July 1, 1994 through June 30, 1997 (1T28-1T29, 1T152-1T153).

The parties' contract provides a four-step grievance procedure ending in binding arbitration. The first step of the grievance process is an informal discussion with the grievant's immediate superior, the second step is a formal written grievance to the immediate superior, the third step is an appeal to the superintendent, and the fourth step is an appeal to the Board.<sup>4/</sup> The Board has the option to hold a hearing (CP-1).

4. The Board's employees are also represented by the Camden Education Association (CEA) and the Communication Workers of America (CWA). The CEA represents teachers and other employees in various titles including instructional assistants, security personnel and business aides (1T49, 3T14). The CWA represents custodial workers among other employees (3T14).

5. The Camden school district consists of 23 elementary and K-8 schools; 5 middle schools, 5 high schools and an environmental center (CP-40). Among these schools are five family

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<sup>4/</sup> The superintendent's decision is final in three situations: where a method of review is prescribed by law, where there is a Commissioner of Education rule or regulation governing the appeal or where the grievance arises out of the refusal to re-employ a non-tenured administrator (CP-1).

schools: Henry L. Bonsall School, Riletta T. Cream School, Cooper's Poynt School, Lanning Square School and Pyne Poynt Middle School. However, it is not clear from the record the significance of a family school designation. Additionally there are three alternative schools/programs for students requiring specialized services: Challenge Square Academy, South Camden Alternative School and Richard Feters Alternative HS Program. Challenge Square and South Camden are middle schools servicing grades six through eight. Challenge Square has a student population which fluctuates between 20 and 40 students. Feters has approximately 112 students in grades 9 through 12 (CP-35, CP-40, 1T177, 1T196-1T197, 6T28).

School Management Teams (SMT): Purpose, Structure, Responsibilities

6. I take administrative notice of the following facts.

In a series of court decisions beginning with Abbott v. Burke, 100 N.J. 269 (1985) (Abbott I), the New Jersey Supreme Court addressed the issue of whether school children attending public schools classified as "special needs districts" were receiving a constitutionally adequate education under the Comprehensive Education Improvement and Financing Act (CEIFA) of 1996, N.J.S.A. 18A:7F-1 to 36, and regulations promulgated thereunder. To remedy what the Court determined was the constitutional deficiency of CEIFA, it adopted the Commissioner of Education's recommendations to implement whole-school reform and other remedial measures. The rules and regulations adopted to implement the Court's mandates are reflected in N.J.A.C. 6A:24-1 et seq.

The City of Camden is an Abbott school district subject to whole-school reform. N.J.A.C. 6A:24-1.2.

The school management team (SMT) is a component of the whole school reform concept and is a school-based planning and decision-making team established pursuant to N.J.A.C. 6A:24-2. Each school in an Abbott district is required to have a SMT whose purpose is "to ensure participation of staff, parents and the community in school level decision making and to develop a culture of cooperation, accountability and commitment, all with a focus on improving student achievement." N.J.A.C. 6A:24-2.1(a).

The SMT is made up of various constituencies in the school system - the building principal, teachers, school-level support staff and community members. N.J.A.C. 6A:24-2.1(d). Its activities are monitored by a team of department of education (DOE) staff, known as the school review and improvement team (SRI), assigned by the Commissioner to work with Abbott schools in supplementing the court's decisions and ensuring the effective implementation of site-based management and comprehensive school reform. N.J.A.C. 6A:24-1.2 and N.J.A.C. 6A:24-4.1(g).

7. The School Management Team Operational Procedures and Guidelines 1999-2000 (Guidelines) for Camden City Public Schools was developed pursuant to the requirements set forth in the Abbott regulations. It sets forth the purpose, structure and responsibilities of the Board's SMTs and reflects the regulations promulgated under N.J.A.C. 6A:24-1.1 et seq. (CP-32).



Under the Guidelines, Camden SMTs are required to reflect the ethnic diversity of the student population and of the community at large. The Guidelines provide that the SMT shall include: "principal (1), community representative (1), support staff members (2 maximum), teachers (less than 50%, but must represent the majority of team membership),<sup>5/</sup> parents (25% of total membership), students (2 maximum, for middle/family and high schools only), central office representative (1)." Board members may not serve on SMTs. Additionally, Board employees may not serve as either a parent or community member on any SMT in the district (CP-32).

SMT members are nominated or volunteer and are selected by the groups they represent with the exception of the community member who is appointed by the building principal. If the number of those nominated and/or volunteering equals the number of members needed in each group, they are automatically appointed and an election is not necessary. Service on SMTs is voluntary (CP-32).

Each SMT elects a chairperson for a two-year term and only the principal is ineligible for election to this position. SMT members also serve two-year terms. All members are selected on a staggered basis so that at least one-half of the membership remains each year to ensure continuity within the team (CP-32). Neither the superintendent nor Board members participate in the selection of the SMT (5T129).

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<sup>5/</sup> Under N.J.A.C. 6A:24-2.1(d), no one group may constitute 50 percent or more of the SMT membership.

The Guidelines dictate that, in the event SMTs are not in compliance with the operational procedures, a transition plan to bring the SMT into compliance will be developed jointly by the SMT and SRI which may include waivers of the requirements if the SMT demonstrated that it had representation by parents and community members and was functioning effectively (CP-32).

8. The SMT meets at least once a month with dates, times and location determined by the membership. Meetings are open to the public and minutes maintained with copies sent to the superintendent's office for public review.

Under N.J.A.C. 6A:24-2.2, the SMT of each school is responsible for developing a whole-school reform plan. Additionally, SMTs are responsible for, among other things, ensuring that curriculum, instruction and instructional delivery systems comport with core curriculum content standards, reviewing statewide assessment results and taking appropriate action to improve student achievement, ensuring a program of professional development, and developing an educational technology plan.

Also, after receiving specific training, SMTs are authorized to approve school-based budgets and to make recommendations for the appointment of a building principal, teaching staff members and instructional aides for early childhood programs. The SMT must make at least three candidate recommendations to the Superintendent who may select one of the three candidates for recommendation to the Board. The

Superintendent can ask for more candidate recommendations, but can not recommend any candidate for appointment to the Board unless the SMT has recommended that candidate to the Superintendent. (emphasis added) (CP-32, 1T190, 2T43-2T44).

If the SMT in any particular school chooses not to exercise its option to be included in either budget approval or recommendations for personnel appointments, the principal is responsible for making the decision or recommendation. SMTs are advised of the actions to be taken and given an opportunity to provide in-put (CP-32).

9. Since 1999, an SRI consisting of about twenty individuals, has assisted the Camden school district with compliance issues related to the Abbott regulations (2T69-2T70, 4T170-4T171). Each school has an assigned SRI representative responsible for verifying that the SMT is in compliance (CP-32, 5T130). Since January 2001 when Annette Knox became Superintendent for the Camden School Board, the SRI identified no problems or concerns regarding the composition of SMTs in the district (3T181).

Additionally, sometime between 1999 and 2000, an audit team sent by either the Commissioner of Education or the State's treasury department reviewed personnel records maintained by the human resources office (4T172-4T173). As part of the audit, the team reviewed documents, forms and various guidelines related to the filling of positions and the personnel interview process. As a result of the audit, the team made no recommendations to change the

interview process to fill personnel positions (4T173-4T174, 4T183-4T186).

Filling Vacant Positions: Roles of the SMT, Superintendent and Board

10. Linnell Wright was appointed director of human resources effective January 1, 1999, shortly before the Abbott regulations were implemented and she remained in that position until December 31, 2000 (4T97). During her two-year tenure, Wright reported to two different assistant superintendents for administration, Marion Proffitt and Dr. Wilma Farmer, respectively. She also reported during her tenure to three different superintendents, Superintendent Dr. Roy Dawson and Interim Superintendents Leon Fitts and Theodore Johnson (3T220, 4T96). Between December 31, 2000, when Wright left the position and September 2001, when the Board appointed Dan Bevilacqua in an acting capacity, there was no director of human resources. The Board eventually appointed Cheryl Harper sometime in October 2001, as the permanent director (2T124, 5T28, 5T64-5T65).

11. Most SMTs in Camden opted to participate in the personnel selection process at their schools. The office of human resources through its director was responsible for providing training to SMT members in the interview process. In the summer of 1999 and fall of 2000, Wright conducted training sessions in each school. She instructed SMTs how to conduct fair and accurate interviews. The training sessions were observed and approved by the SRI. On occasion Wright went back to some schools to retrain

because the SMT membership changed (3T212-3T214, 4T12-4T13, 4T101-4T102, 4T106, 4T135, 5T125-5T126).

If an SMT member could not attend the training session, Wright advised them that they would not be able to serve on an interview team (3T216). She also advised the SMT members that their interview committees should reflect as much as possible the ethnicity of the school and the community and the environment that the applicant was going into. Wright, however, had no responsibility for selecting the interview committees (3T225, 4T107). The Board and Superintendent had no involvement in this process either. Each interview committee was selected by the SMT. There are no regulations either permitting or prohibiting the use of interview teams as a sub-set of the SMT. There are also no regulations governing who must be on an SMT interview team other than ethnic diversity and the requirement that they be trained in the interview process (4T106-4T109, 5T141-5T142). The SMT picks a chairperson of the interview team (4T11).

12. In addition to training, from the time a personnel vacancy was identified, the office of human resources through its director and her staff was responsible for the processing of paperwork including job postings, interview schedules, notification to candidates of interview dates and times, preparation of individual packets to be used by the interviewers in scoring candidates during the interviews and preparing superintendent recommendations from the summary composite evaluation sheets

prepared by the interview team (3T206-3T211). In 1999/2000 and 2000/2001 Gladys Reyes was the human resources clerk primarily responsible for processing paperwork relating to job postings, interviews and Board recommendations sent to the Superintendent (3T211).

13. The process to fill a vacancy is triggered by a staffing request form which is completed by the person requesting the filling of a position and approved by Board Secretary Leon Freeman as fiscal officer, verifying that there is money available in the budget for the position. The staffing request must also be approved by the assistant superintendent and the human resources director. The request form is then forwarded to the human resources clerk who is responsible for creating the actual job posting from the job description, listing the minimum qualifications and setting a deadline for submission of applications. The posting must be approved by the county Superintendent (3T206-3T208, 4T112-4T113, 5T10, 5T13-5T14). The deadline for submission of applications is usually 30 days from posting unless a shorter time frame is communicated to the clerk (5T14).

Once the posting is approved, the clerk sends it to school principals as well as department directors and union representatives. Occasionally job postings are submitted to the newspapers. When applications are received, the clerk generates a list of applicants and submits it to the director of human resources who reviews the applications for minimum qualifications. The

director returns the list of qualified candidates to the clerk who sets up an interview schedule in consultation with the chairperson of the SMT interview team (3T207-3T208, 3T223-3T224, 4T8-4T10, 4T133, 5T15-5T18).

Usually, interviews for a position take place in one day but if there are too many candidates, interviews will be scheduled for two days (5T21). All qualified candidates, namely those meeting the minimum qualifications and submitting the requisite paperwork such as recommendations, are interviewed. The clerk then prepares an interview schedule and submits it to the Superintendent, assistant superintendent, human resources director, affirmative action officer and members of the SMT interview committee (4T11, 5T19).

The time from the deadline for receipt of applications to the scheduling of interviews varies depending on the urgency to fill a position. Usually if the Board is filling a principal's position, there is a need to fill that position as soon as possible so interviews will be scheduled within five to seven days after the closing date for applications (4T130-4T131).

14. The clerk usually notifies candidates for a particular position by letter of their scheduled interview date and time. However, if the interview is to take place on short notice, the clerk telephones the candidates. If a particular candidate has problems with the schedule, the clerk notifies the chairperson of the interview committee. However, the clerk has no authority to

change an interview date or time (4T15, 4T140, 5T20). Additionally, it is the policy of human resources not to change interview dates because interviews are scheduled to coincide with Board meetings so that superintendent recommendations can be considered promptly for Board action (4T16-4T17). Also, it was not the practice in human resources to accommodate individual schedules when setting up interviews because it was not possible to accommodate everyone's vacation or other scheduling problem. It was viewed as an issue of fairness (4T147).

15. On the day of the interview, the clerk takes packets containing scoring sheets and other necessary documentation to the interview team (4T16).

Each interviewer is given a blank score sheet known as a composite evaluation score sheet with names of all the candidates. The scoring of the candidates is done by giving points based on a point system set out in guidelines for the interview process prepared by the office of human resources and approved by the Board (R-13, R-14).<sup>6/</sup>

Points are scored in various categories based on the candidate's academic credentials, work experience, answers to written and oral questions which were prepared by the interview team with assistance from human resources (all candidates are asked the

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<sup>6/</sup> Although the interview team could change the point system, it needed approval from all members of the interview team. The point system was rarely changed (4T22).



same oral and written questions), and personal qualifications for leadership as judged by the interviewers. The last three categories (oral and written questions and leadership qualifications) are subjective and result in different scores from each interviewer. The work experience and academic credentials are objective based on points determined by the point system guide (4T155-4T159).

Once all candidates are interviewed, the chairperson prepares a summary composite evaluation sheet based on scores for each candidate as reflected by the individual interviewer's composite evaluation score sheet (4T53-4T54).<sup>7/</sup> Finalists are sometimes numbered or highlighted on the summary composite evaluation sheet by the chairperson of the SMT interview team (3T208-3T209, 4T16, 4T19-4T20, 4T149-4T150, 5T22-5T24, 5T78-5T79). If there is no numbering or highlighting, the human resources clerk selects the rankings based on the highest scores (5T78).

The interview team returns a packet to the human resources clerk containing the job posting, interview schedule, the summary composite evaluation score sheet (with or without highlighting), the individual composite evaluation sheets, a breakdown of the bachelor and masters requirements for the candidates, answers to written questions and candidate applications (R-13, R-14, R-15, 4T21-4T26). The clerk prepares a recommendation for the Superintendent from the

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<sup>7/</sup> The composite evaluation sheets were developed before 1999 by the office of human services and used in all supervisor interviews in the district (4T53-4T54).

top scoring candidates listed on the summary composite evaluation sheet. The recommendation is signed by the human resources director and forwarded to the Superintendent together with the summary composite evaluation sheet, candidate applications and their written answers (3T209, 4T16, 4T153, 5T24, 5T78). Except for initially signing off on the staffing request form, the Superintendent has no involvement in the interview and selection process of posted positions until receiving the interview team's recommendations (4T18).

16. The Superintendent has the option to interview or not to interview any or all of the candidates interviewed by the SMT committee whether recommended or not. The Superintendent also has the right to send the list of candidates back to the SMT interview committee and ask for other candidate recommendations if she is not satisfied with the candidates that appear on the list which can trigger a new interview process. Once the Superintendent is satisfied with a recommended candidate, she recommends the candidate to the Board for appointment (3T18). The Superintendent cannot recommend any candidate for appointment to the Board unless the SMT has recommended that candidate to the Superintendent (N.J.A.C. 6A:24-2.2(c)2, CP-32). The Superintendent's recommendation is placed on the Board minutes and voted on by the Board at a public meeting (3T210).

Claudia Cream

17. Claudia Cream has been employed in the Camden school district since 1975 in various teaching positions at different schools. In 1990 she became a vice-principal and has held that position in six different schools. Her most recent appointments were to the Pyne Poynt Middle School from 1996 to 2000 and the Challenge Square Academy from September 2000 to present (R-1, 1T24-1T26).

From 1991 to 1996, Cream was the Federation's corresponding secretary. In 1996 she became vice-president, her current union office. She was also a member of the negotiating teams for the three most recent contracts (1T27-1T28). Federation President Elaine Cathers and John Donahue who held the position of district supervisor during the negotiations were on the negotiating team with Cream for the 1999-2001 contract. After the negotiations concluded in the summer of 2001, Donahue was promoted to principal (1T153-1T154, 2T49).

In 1998, Cream became grievance chair. From July 1998 to August 2000 she processed 12 grievances with varying results: 1 was withdrawn (CP-2); 8 were resolved at various stages of the grievance process (CP-3, CP-4, CP-6, CP-7, CP-8, CP-10, CP-11, CP-12), e.g., 2 were resolved by Board Secretary Leon Freeman (CP-6, CP-8) and 1 was settled in current contract negotiations (CP-11). Two of these grievances went to arbitration, but one was settled just prior to arbitration; and one grievance is pending ((CP-5, CP-9, CP-16, CP-17, 1T39-1T43, 1T161-1T167). Of the 12 grievances, three

grievances were processed by Cream in 1998, 4 in 1999 while the remaining 5 grievances were processed in 2000 (CP-2 through CP-12, CP-16, 1T170, 1T175-1T176). None of the grievances were responded to by formal written reply from the Superintendent or Board. Most, however, were resolved (CP-2 through CP-12).

One grievance which went to arbitration involved a claim for overtime compensation by Dr. Fred Reiss, director of research and planning (CP-5). There were two hearings involving this matter which was eventually resolved without payment of compensation to Reiss (1T163-1T164). Reiss has since been promoted to assistant superintendent effective October or November 2001 (1T41, 1T162-1T163, 3T13). Superintendent Annette Knox recommended him for the promotion (3T61-3T62).

The other grievance which went to arbitration was filed by Cream in December 1999 seeking compensation for acting principal pay while she was vice-principal at Pyne Poynt School (CP-16). This grievance was settled in April 2001 with the payment to Cream of acting principal's pay (CP-17).

The grievance which is pending was filed by Betty Herring when she was a vice-principal. She has since been promoted to principal by Knox and approved for appointment by the Board (CP-9, 1T166).

The grievance resolved in the current contract negotiations was filed by Horace Gibson when he was acting guidance supervisor. He has since received a permanent promotion to guidance supervisor (CP-11, 1T167).

The grievances filed by Cream between 1998 and 2000 (CP-2 through CP-12) represented an increase from previous years when grievances were rarely filed (1T45, 1T169, 2T107, 2T113-2T116). During this same time period, there were four superintendents in either permanent or interim capacities. They were, chronologically, Superintendent Dr. Roy Dawson, Interim Superintendents Dr. Leonard Fitts and Dr. Theodore Johnson, and Superintendent Annette Knox who was appointed effective January 2001 (1T157-1T158, 3T10).

Sara Davis

18. In 1991, Sara Davis became an administrator covered by the Federation's bargaining unit. Prior to 1991, she was a teacher in the Camden school district and president of the CEA.

In May 1994, Davis filed unfair practice charges, docket nos. CI-94-75 and CI-94-76, against the Board and the Camden Administrators' Council (Council), the former name of the Federation. The charges alleged that the Council/Federation breached its duty of fair representation by decreasing her salary through collective negotiations in collusion with the Board and in retaliation for her protected activity while she was CEA president. (CP-13, R-32). Specifically, Davis asserted the Council/Federation retaliated against her as a result of a grievance she filed as CEA president against Cream when Cream was a teacher and member of the CEA. Davis believed Cream as well as others on the union's negotiating team harbored animus towards her. Camden Bd. of Ed., H.E. No. 98-19, 24 NJPER 97, 98 (129050 1998) (CP-14 at finding of

fact nos. 5 and 6; R-33 at transcript pages 25-27, 49, 97-103; 1T49-1T50).

In May 1998, the Commission, adopting the Hearing Examiner's recommended decision, dismissed Davis' complaint as to both the Board and the Council/Federation. Camden Bd. of Ed., P.E.R.C. No. 98-144, 24 NJPER 294 (¶29140 1998) (CP-15).

As of May 1998, Davis retired from the school district and was elected to a three-year term as a member of the Board (1T53-1T54, 1T173). In 2001 Davis became president of the Board (1T137, 2T65).

#### Pyne Poynt Family School

19. The Pyne Poynt Family School services approximately 400 students in grades four through eight. Cream was its vice-principal from 1996 until 2000 (1T24-1T25, 1T53). Vernon Dover was the building principal. When he took sick leave from October 1999 to January 2000, Cream performed his duties and received no extra compensation for the additional responsibilities (1T54, 1T179, 6T21).<sup>8/</sup>

On December 22, 1999, Cream filed a grievance seeking acting principal's pay (CP-16). The grievance was eventually settled in April 2001 prior to a scheduled arbitration. Cream was paid for her time in the higher ranking position (CP-17, 2T52).

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<sup>8/</sup> The Board took no official action placing her in an acting principal capacity (1T180-1T181). It is unclear from the record whether official Board action was necessary.

20. When Dover returned from sick leave in January 2000,<sup>9/</sup> he announced his intention to retire as of June 30, 2000 (R-26, 1T79, 4T79). The Pyne Poynt principal's position was posted in March 2000 (R-7, 1T182). The posting was developed in the office of human resources by Mae Chadler, a human resources clerk (5T26). Dr. Fitts was interim superintendent at this time and Wright was director of human resources (1T181, 4T70).

Cream applied for the position. On May 10, 2000, Cream, together with eight other candidates, was interviewed by the SMT interview committee which consisted of Dover and teachers from the school as well as an affirmative action officer who observed the process (R-8, 1T71-1T72, 1T74, 2T76).

21. Cream had previously participated in a number of interviews.<sup>10/</sup> Based on her previous experiences she identified

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<sup>9/</sup> Cream's testimony is inconsistent as to the year in which these events took place. At first she testified Dover was on sick leave from October 27, 2000 to January 2, 2001 (1T54). Also, the April 2001 settlement of the 1999 grievance (CP-17) references paying Cream for time in a higher ranking position between October 15, 2000 and January 2, 2001. However, Cream also testified Dover was on sick leave from October 1999 to January 2000 (1T54, 1T69). Her grievance concerning acting pay for the time Dover was on sick leave is dated December 1999 (CP-16). More importantly, Dover retired sometime in August 2000 (4T83). Based on the date of the grievance and the date of Dover's retirement, I find Dover was on sick leave beginning in October 1999 until the beginning of January 2000.

<sup>10/</sup> It is unclear from the record whether Cream participated as an interviewee or interviewer but it was her previous experience which caused her to conclude there were irregularities in the Pyne Poynt interview process.

what she considered to be irregularities in the May 10 interview process: (1) there was no representative from central administration on the interview team; (2) a number of the SMT teacher members were supervised or evaluated by Cream in her capacity as vice- principal; (3) the SMT chairperson was also an initial applicant for the position, although the chairperson did not meet the minimum qualifications listed in the job posting and was not interviewed; and (4) Dover interviewed her which Cream felt was unprecedented since she was unaware of any other situation where a principal was involved in selecting his/her successor (1T74-1T76). Immediately after the interview, she expressed her concerns to Federation President Lynn Johnson (2T75).

22. On that same day, <sup>11/</sup> without identifying Cream as the source of her concerns, Johnson sent Interim Superintendent Fitts a memo outlining the irregularities which seemed to "contaminate the objectivity of the interview process" (CP-18). Johnson expressed concern in particular about "the apparent biases and conflict[s] of interest" in the make-up of the interview team and queried Fitts about Dover's participation in the process. Johnson requested that the interview process start over with a broader base of objective representatives on the interview team and that all candidates meet the minimum requirements of the posting (CP-18, 1T76-1T77, 1T182, 2T76-2T77). Johnson also sent copies of the memorandum to Board members (1T78).

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<sup>11/</sup> The memo was incorrectly dated May 10, 1999 when it should have reflected May 10, 2000 (1T76).



Fitts acknowledged receipt of the memo and referred Johnson's letter to the Board's attorney and to human resources for review and recommendations. He indicated a reply to her would be forthcoming (CP-19). Fitts, however, never followed up directly with Johnson, but her concerns were discussed at a Board personnel committee meeting. Sara Davis chaired the personnel committee which consisted of Wright and other Board employees. Either Assistant Superintendent Proffitt or Davis brought Johnson's concerns to the attention of the committee which was responsible for issues relating to staffing and personnel (4T73-4T76, 4T121-4T124).

In response to the committee's request, Wright explained the interview process, namely that only qualified candidates were forwarded by her office for interview and that selection of the interview team was made by the SMT based on the training she had given them (4T76-4T78, 4T123, 4T125). There was no discussion about Cream individually as the person concerned about the interview process. The discussion was focused on Johnson's letter (4T162-4T164).

The committee also asked Wright to arrange for Dover to come to a committee meeting to explain the interview process. Dover came and explained the process. As a result of these discussions, Proffitt became involved in the next round of interviews when Fitts granted the Federation's request to repost the position and conduct new interviews (1T184, 2T79-2T80, 3T226-3T227, 3T229-3T330, 4T78, 4T125-4T126).

23. In addition to the concerns raised by the Federation about the Pyne Poynt interview process, the chair of the SMT interview team telephoned Wright after the May 10 interviews to ask what would be the procedure if they had not found a candidate to recommend. Wright told them to put their concerns in writing and forward it to the assistant superintendent. She explained that it was likely that the position would be reposted. Later, Wright received an undated written memo from the interview team requesting that the position be reposted. Wright shared the memo with Assistant Superintendent Proffitt because Wright could not make the decision about reposting. On May 17, 2000, the SMT interview team notified all staff that it had completed its initial interviews for the position of principal at Pyne Poynt and recommended reposting the position (CP-20, R-6, 1T78, 3T217-3T218, 3T227, 4T81, 4T118-4T120).

The position was reposted both because of the Federation's concerns about the interview process and the interview team's failure to find an acceptable candidate (3T229).

24. When the position was reposted on June 6, 2000, Cream became part of the applicant pool, because it was standard procedure for human resources to consider the original applicant pool in a reposting provided, of course, the individual still wanted to be considered as a candidate for the position (1T79, 1T124, 4T84). However, before any interviews were scheduled or conducted, Dover announced that the new Interim Superintendent, Dr. Theodore Johnson,

requested he postpone his June 30, 2000 retirement until a candidate could be selected to replace him. Dr. Johnson's own appointment as interim superintendent became effective July 1, 2000 (R-27, R-28, 1T79-1T80). Additionally, Superintendent Johnson and Assistant Superintendent Proffitt wanted Dover to remain through the summer to complete all tasks necessary to open school in the fall (4T82-4T83). They requested that he remain as either principal or an educational consultant (R-27). At an August 28, 2000 Board meeting, it was recommended that the Board approve Dover's appointment as an educational consultant at Pyne Poynt as of July 1, 2000 until a replacement for principal could be identified (R-28). From this I infer that interviews were not scheduled after the June reposting because Dover consented to stay. Dover, finally, left the district sometime in August or September 2000 (4T83). Daniel Edwards who was a supervisor at Lanning Square School was appointed as acting principal at Pyne Poynt effective October 1, 2000 (R-29, 1T126).

25. Interviews for the second reposting took place on October 24 and 25, 2000 (R-10, R-11). There were eleven applicants, including Cream and Edwards. Of the original candidates for the position who were interviewed on May 10, 2000, only Pagan, Cream and Sandra Sims-Foster were interviewed in October for the reposted position (R-10, R-11, R-15).

In response to the concerns raised by the Federation concerning the composition of the first interview team, Proffitt was

added to the second interview team. Dover who had retired was no longer on the team. Also, one teacher, Brooks, who had been a candidate in May but was no longer a candidate, replaced a teacher on the second team. Otherwise, the team remained the same (1T125, 1T185, 1T187-1T188). Cream, however, was no longer vice-principal at Pyne Poynt when the second interview took place. As of September 1, 2000, she was transferred to Challenge Square Academy (CP-21).

Transfer to Challenge Square Academy

26. Challenge Square Academy was established in 1995 as an alternative middle school or program servicing students who are having difficulties functioning in a regular school environment. It is unclear from the record whether Challenge Square Academy is a school or a program (1T82, 3T167-3T169). In the Camden City School Directory for the 2001-2002 academic year, under the heading "Alternative Programs/Schools", there are three listings: Challenge Square Academy, Richard Feters Alternative HS Program and South Camden Alternative School (CP-40). Challenge Square Academy like South Camden Alternative and other schools in the district has a separate budget which it submits each year for approval (CP-44, 3T167-3T168). The other alternative school/program, Feters, does not have a separate budget. Its budget is maintained centrally by the Board (3T168-3T169). Also, the DOE has assigned a school code to each school in the district, including Challenge Square (CP-44, 6T6). However, it is not necessary for me to determine whether Challenge Square and the other alternative schools/programs are

technically schools or programs. I find that Superintendent Knox considered Challenge Square, South Camden and Fetters to be programs, not schools, because of the size of their student populations (3T41). Because she considered them to be programs, Knox concluded that it was appropriate that they be administered by vice-principals supervised by principals whose primary responsibilities were in other schools (3T163-3T164, 3T166-3T167).

27. Challenge Square services a population of approximately 20 to 40 students in grades 6 through 8. Students having difficulties functioning in a regular school setting were assigned to the Board's alternative schools (1T82, 2T6, 3T40). The population is transient and varies frequently depending on the individual student's situation, such as involvement in the court parole system (2T6-2T7). Challenge Square's population in 2000-2001 was approximately 40 students (6T28).<sup>12/</sup>

Charles Jones was Challenge Square's first principal. When Jones took sick leave and eventually retired, he was replaced by Acting Principal Dorothy Thomas (1T83-1T84).

28. For the 2000-2001 academic year, vice-principals were assigned for the first time to head the Board's three alternative schools/programs under the supervision of principals with primary responsibility for other schools. The vice-principals were Cream, Ramona Pearson-Hunter and James Henderson. Challenge Square had not

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<sup>12/</sup> Fetters has a student population of approximately 112 (6T28).

previously been paired with another school. Like Challenge Square, South Camden and Fetters had been previously headed by principals (CP-28, CP-40, 1T83-1T84, 1T102, 1T198, 1T205-1T206, 2T54, 2T107). However, although this was the first time the alternative schools were headed by principals with dual assignments, other schools in the district were structured with principals who were responsible for two schools, e.g., Betty Goins headed Catto and Dudley Schools; Janice Taylor was principal of Broadway and Powell Schools; and John Donahue headed the Molina School and Molina School Annex (CP-35, CP-40).

Although vice-principals were assigned to head the three alternative schools/programs in 2000-2001 under the supervision of off-site principals, there was no Board action abolishing the now vacant positions of principal at each school (2T107-2T108). It is unclear from the record whether this change in structure at the alternative schools/programs required Board action (2T107-2T111).

29. On July 27, 2000, while the Pyne Poynt position was being reposted, Cream was notified by Delia Brown, acting director of the division of curriculum and instruction, that "[d]ue to unavoidable circumstances and in the best interest of the school district . . .", it was recommended to the Board that Cream transfer as a vice-principal to the Challenge Square Academy effective September 1, 2000 (CP-21, 1T80-1T81). At the same time, Cream was notified by Interim Superintendent Johnson that the Board would consider her transfer at its July 31 meeting (CP-22). No one had

previously discussed the transfer with Cream, but it is not uncommon for staff transfers to occur without discussion with the administration beforehand (1T81, 1T101, 2T82-2T83). Cream has never been notified in advance of Board action approving an involuntary transfer (R-1, 2T59). Moreover, unlike the CEA contract, the Federation contract requires no discussion before transfer. The contract only requires notification of the transfer (CP-1, 2T8-2T10).

30. Upon learning of the transfer to Challenge Square, Cream contacted Brown but was told Assistant Superintendent Farmer had directed Brown to generate the letter notifying Cream of the transfer. Cream then contacted Farmer who indicated that there was a vacancy at Challenge Square and she had been asked to recommend candidates. Farmer indicated she recommended Cream as was the best possible candidate to fill the vacancy (1T85-1T86, 1T208, 2T5).

On the morning of July 31, 2000, prior to the scheduled Board meeting, Cream met with Interim Superintendent Johnson to discuss the reasons for her transfer. He told her she was transferred at Dover's request because, among other reasons, she could not get along with staff and was harsh and inflexible. Johnson was not able to give her any specific examples of the behavior Dover objected to but indicated that he normally honored principal transfer requests. Johnson also indicated that she was being transferred to give her an opportunity to prove herself and give him an opportunity to evaluate her abilities (1T88-1T89).

31. Cream did not understand the reasons proffered by Johnson for her transfer (1T89). During her tenure at Pyne Poynt, Dover never indicated to Cream that he had any problems with her performance or any concerns about the way she interacted with staff and/or students. His comments to her were favorable. He told her he was impressed with her creativity and the new programs she introduced (1T91-1T92).

Cream received only two performance reviews from Dover in the four years at Pyne Poynt. Both were favorable (CP-23, CP-24, 1T91). For instance, in June 1997, Dover noted that Cream "effectively assisted with the supervision of teaching and support staff . . . [and] [h]elps to maintain [a] good school climate." Dover further observed that Cream "[p]erforms administrative duties with [a] high level of professionalism." He reviewed her as "good" in other categories and wrote under "Personal Qualifications" that she "demonstrates concern for all persons at the facility." (CP-23). Similarly, in her June 29, 1999 performance review, Dover noted that she assisted him and staff in overall facets of the academic program, setting high standards for both staff and students. Dover also commented that Cream contributed "a great deal to fostering a climate conducive to learning." In all other performance categories he rated her "good" (CP-24).

32. At the July 31, 2000 Board meeting, Cream together with about ten other Board employees who were being transferred for the 2000/2001 academic year addressed the Board in closed session.



Sara Davis was present together with other Board members and then Board President Phillip Freeman as well as the Board attorney and Federation President Johnson (1T92-1T94, 2T23)

At the Board meeting Davis only asked Cream one question, whether her individual performance improvement plan (IPIP) indicated any areas for improvement. Cream responded that no areas for improvement were indicated in her IPIP. Davis made no other comments (1T94).

No action on Cream's or the other transferees was taken that night. The decisions were tabled to an August 17 special Board meeting (CP-25, 1T95).

33. At the August 17 meeting, three transfers of the original ten recommended to the Board on July 31 were approved for the 2000-2001 school year. The other transfers were rescinded. Cream's transfer to the Challenge Square Academy was approved by a vote of five to two. Davis voted with the majority. Transfers of two other employees, Olan Avant and Carmen Stokes were also approved (CP-26, 2T24). Avant, a teacher, was originally slated to be transferred to Bonsall Family School but the Board granted his request to be transferred instead to a teaching position at the Forest Hill School. Stokes who had been a community school coordinator at the Early Childhood Development Center was transferred to the HB Wilson Elementary School because her position was eliminated (1T100-1T101). Neither Avant or Stokes were members of the Federation bargaining unit (2T24).

34. On August 18, 2000, Cream filed a grievance about the transfer (R-2). On August 30, 2000, in response to the grievance, Interim Superintendent Johnson wrote to Federation President Johnson that Cream was being transferred "to fulfill an educational need" and advised her Cream would be under the supervision of HB Wilson Elementary School Principal Michael Hailey (CP-27, R-2, 2T11). The grievance was never arbitrated (2T19). It is unclear whether the grievance is still pending.

35. On September 1, 2000, Cream assumed her position at Challenge Square Academy. She had no contact with Hailey. When Cream received the minutes from the October 12, 2000 special meeting of the Board, she learned for the first time that she was no longer under Hailey's supervision but under the supervision of Parkside Elementary School Principal Dolores Sanchez (CP-28, CP-29, 1T103-1T104).

In the letter notifying Sanchez of her appointment as principal of Parkside and Challenge Square, Interim Superintendent Johnson wrote that it was essential that Sanchez review all major communications, visit the second site (Challenge Square) preferably weekly, regularly meet with the administrator assigned to the second site and coordinate resolution of major labor problems at the building (CP-29). Despite these instructions, Sanchez visited Challenge Square Academy only twice, once in early October 2000 and again in mid-November 2000. She never prepared or completed paperwork regarding the operation of Challenge Square nor did she

require Cream to submit documents for her approval prior to submission to the Board or administration. Additionally, Sanchez did not regularly meet with Cream or handle any labor related matters at Challenge Square Academy (1T108-1T111, 1T201).

36 Although Cream's official title at Challenge Square is vice-principal and she is paid as such, she has received correspondence from the Board's attorney and the administration referring to her as principal of Challenge Square Academy or requiring that she participate with other district principals in certain activities (CP-33, CP-35, 1T117). For instance, in October 2001, she received a memo from Superintendent Annette Knox to "All Building Principals" concerning the scheduling of focus groups to gather information "about the workings of [the] district's school management teams and the relationship between a school's SMT and its principal." A chart is attached to the memo containing "the names of principals and the time [they] are to report to [their] scheduled session" (CP-35). Cream's name appears in the chart under the heading of principal. Also, on the chart and listed as principal is James Henderson and Ramona Pearson-Hunter whose official titles are also vice-principal at South Camden and Fetters as well as Mary Evans whose official title is supervisor at Woodrow Wilson School (1T122-1T123, 2T34-2T35).

Wright prepared the memo for the Superintendent's signature because human resources was overseeing the focus groups in collaboration with an outside organization which was assigned to

conduct the groups (CP-35, 4T93-4T94). Although Wright knew that Cream, Henderson and Pearson-Hunter were vice-principals, she addressed them generically as principals because she perceived them as the individuals in charge of their buildings (4T95).

In addition to the Focus Group memo, Cream received a form letter dated May 31, 2001 from Knox requiring each of the Board's principals to participate in a Performance Review Conference (CP-41, 3T176-3T177). The letter, however, although requiring principals to participate, is addressed to Cream as vice-principal. Knox sent the letter to anyone in the district who was in charge of schools and programs including the three vice-principals assigned to the alternative schools/programs (3T177-3T178, 3T196-3T197). However, unlike Cream, other vice-principals who were in charge of schools and under the supervision of principals with dual responsibilities did not participate in Performance Review Conferences. Cream attended these conferences conducted by the Superintendent (6T14-6T15).

Cream is also listed in the 2001/2002 Camden School Directory as Principal/Administrator for Challenge Square Academy (CP-40). However, the directory lists other individuals who do not hold the official title as principal under the heading of Principal/Administrator such as Pearson-Hunter, Henderson, Public Information Officer Bart Leff and James Flanagan who is in charge of the Board's environmental center program (CP-40, 3T193-3T194).

37. Cream's duties as vice-principal at Challenge Square and her duties as vice-principal at Pyne Poynt only differ in a couple of respects. At Challenge Square she signs documents requiring the principal's signature, including the payroll. Also, she now has budget responsibilities (1T147-1T149). For instance, Cream fills out DOE forms regarding the whole school reform budget for Challenge Square Academy. She executes the document under the heading "Signature of School Principal & Date," and submits it to the Superintendent who in turn forwards the form to the State (CP-44, 6T4-6T6).

38. The Federation attempted to discuss restoring full-time designated principals at the alternative schools with both interim superintendents, Fitts and Johnson, but the parties tabled the discussion pending the appointment of a permanent superintendent (1T198-1T199). When Knox was appointed in January 2001, Cream and Cathers met with her to discuss the alternative schools/programs and the titles of the administrators heading them. Knox felt that the programs which serviced a small student population did not warrant a principal's position (3T41).

The alternative schools/programs have since been discussed by Knox and the Board to determine whether they should remain stand alone programs or whether they should be combined. The feasibility of restructuring these programs is currently under study (3T45-3T46). Any restructuring of an academic program or the creation of a new position must be presented to the Board's

personnel committee for recommendation to the full Board for action. Whether a school warrants having a principal or vice-principal is based on considerations of student population and staffing requirements (3T41-3T42, 4T91-4T92, 4T166-4T167).<sup>13/</sup>

39. On October 4, 2001, in addition to her assignment as vice-principal at Fetters, Pearson-Hunter became acting principal at the J. Riggs Adult Education High School replacing Principal Vedas Williams who was on worker's compensation leave. Riggs services approximately 100 students (CP-35, 2T34, 2T60, 6T10, 6T33). When Gilliams returned from leave, she was assigned to Fetters as acting principal, because she held the title of principal before her leave. Upon returning from leave and being reassigned to Fetters she retained her title. Pearson-Hunter remained as acting principal at Riggs. The Riggs principal's position for the 2002-2003 academic year is currently posted (3T174-3T175, 6T9-6T10, 6T33-6T34).

#### The Pyne Poynt Principal Reposting and Interview

40. The principal position at Pyne Poynt Family School was reposted on June 6, 2000 and September 12, 2000 (CP-42, R-9). Because Dover agreed to stay on until his replacement could be found, interviews were not scheduled or conducted after the June

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<sup>13/</sup> When the Creative Arts Academy was first opened in 1998, it was headed by Davida Coe as a vice-principal. Interim Superintendent Johnson recommended to the Board that the designated head of the Creative Arts be changed to a principal's position. The position was posted and Coe was appointed. When she headed the school as vice-principal she was paid as a vice-principal. Her salary was only changed upon her promotion (1T204).

reposting. Instead, a decision was made not to fill the position over the summer (4T127). Interim Superintendent Johnson directed that the position be reposted in September because of several vacancies throughout the district (R-9, 4T127-4T129). There was no change in the minimum qualifications between the June and September repostings. (CP-42, R-9).

41. Cream was on sick leave when the October 24 and 25, 2000 interviews were scheduled. Cream received no written notification of the interview schedule. A human resources clerk telephoned her on October 23 informing Cream that she was scheduled to be interviewed on October 24th. Cream explained that she was just getting out of the hospital but the clerk told her the interview would not be rescheduled. Other candidates received letters informing them of the interview (R-10, R-11, 1T124-1T126).

42. The October 12 announcement of the October 24 and 25 interview schedules listed the interview team consisting of Proffitt as chairperson and three teachers (R-10, R-11). The actual interviews, however, were conducted by Proffitt, the three teachers originally listed and three additional teachers (R-15, 1T125 1T191-1T192). The change in the composition of the interview team did not invalidate the interview process since all interviewers were present on both days and followed the standard procedures in conducting the interviews, e.g., all candidates were asked the same questions (4T137-4T139, 5T89-5T90).

43. Eleven candidates including Cream and Daniel Edwards, the acting principal, were interviewed on October 24 and October 25 (R-10, R-11, 3T232-3T234). All eleven candidates met the minimum qualifications listed in the posting which had been a concern to Cream and the Federation after the first interview process (1T189, 3T234).

44. Once the interview process was completed, human resources received the interview packet including the scoring sheet. Wright reviewed the packet and forwarded it to the Superintendent with the scores of the top three candidates highlighted on the composite evaluation summary sheet. This was standard procedure (R-12, 2T236-2T237, 4T68).

Daniel Edwards was one of three candidates who was recommended as a finalist by the SMT to the Superintendent together with Luis Pagan and Norris Thomas. Pagan was the only one of the three recommended candidates who was previously interviewed on May 10. Edwards received the highest score with 334.5 points. Thomas and Pagan received scores of 291 and 280.9, respectively (R-8, R-12, R-15). Cream was the fourth highest scorer with 250 points (R-15).<sup>14/</sup> Edwards was selected for the position and appointed by

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<sup>14/</sup> Also forwarded to the Superintendent were the top three candidates for the principal's position at Dudley/Catto: Betty Goins, John Donahue and Luis Pagan (R-12). Some of the candidates interviewing on October 24 and 25 for the Pyne Poynt position also wanted consideration for the Dudley/ Catto principalship and were interviewed at the same time for both positions. It appears that Cream was not interviewing for Dudley/Catto. Goins who held the position of vice-principal at Dudley was appointed (R-29).



the Board upon Interim Superintendent Johnson's recommendation at its November 13, 2000 meeting (R-29, 3T237, 4T90).

Cream was never personally informed of the decision to appoint Edwards. She learned from Board minutes that Edwards was the successful candidate (1T128). The Board, however, does not routinely send out notification to unsuccessful candidates (1T194-1T195).<sup>15/</sup>

Annette Knox

45. Effective January 2, 2001, Annette Knox was appointed superintendent succeeding Interim Superintendent Johnson. She had not previously been employed by the Board having served as regional superintendent for the Cleveland Municipal School District and for 29 years in various positions in the New York City Public School District (3T10).

46. Knox's executive staff consists of Assistant Superintendent of Curriculum and Instruction Charles Highsmith who was new to the school district when he was appointed effective July 1, 2001, Assistant Superintendent of Administrative Services Fred Reiss and Fiscal Officer Leon Freeman (1T162-1T163, 3T12).

Knox meets with the Board's three largest bargaining units (Federation, CEA and CWA) periodically to discuss issues of concern to their memberships (3T14-3T15).

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<sup>15/</sup> In the summer of 2001, human resources clerk Gladys Reyes instituted a procedure notifying all candidates that a position is filled (5T45-5T46).

Camden High School Principal's Position

49. When Knox was appointed Superintendent, she noted that Camden High School was the most troubled school in the district (2T131). It was critical to Knox that order be restored to the school (3T104). She concluded that a change in the existing administration was needed, namely the principal and vice-principal positions. Knox spoke to several Board administrators about the changes she needed to make. She encouraged Cream and Ramona Pearson-Hunter to apply for the principal's position when it was posted. Knox felt their leadership styles would be key to improving Camden High School around (3T29-3T32, 3T104, 3T117). However, Knox made no promises to Cream or Pearson-Hunter because she had no control over the candidates recommended by the SMT interview committee (3T33).

48. When Knox first spoke to Cream about the principal's position at the end of February or March of 2001. They arranged a meeting. At the meeting Knox explained about the changes that she wanted to make and asked Cream if she would be interested in becoming principal. There was to be an opening at Camden High School as a result of the June 30, 2001 transfer of Principal John Randall (2T45, 2T131, 3T120).

Cream did not give Knox a response at that time because she wanted to think about it and to make sure proper posting and interview procedures were followed (1T130-1T131, 2T95-2T96, 2T132, 3T119). After spring break Knox again spoke to Cream who indicated that if the position became available she would apply (1T131).

49. Subsequently, in June 2001, before the closing of school, Cream had two separate conversations which led her to believe she was a strong candidate for the high school principal's position: one was with Board member Dwayne Williams, and the other was with Assistant Superintendent Highsmith. Williams asked Cream if she was aware what the Board had planned for her. Cream inferred that to mean the position at the high school. The other conversation occurred after a Board meeting when Cream introduced herself to Highsmith as the Federation vice-president. He indicated that he heard she was being considered for the principal's position at the high school and looked forward to working with her to turn the high school around (1T131-1T132, 1T136, 2T120).

The high school position was posted on May 2, 2001 (R-16, 1T133). Cream applied and was scheduled for an interview on June 20, 2001, together with 12 other candidates. However, before the interviews, one candidate declined to interview for the position and one candidate did not show up for the interview, so the final number of interviewees was eleven, including Cream (CP-37, R-17, 1T134).

50. When the Abbott regulations were first adopted, Camden High School opted to participate in the interview process for personnel positions. Its SMT was elected by the high school staff (CP-32, 5T126, 5T128). There were approximately 30 individuals comprising the high school SMT which met twice a month based on a schedule published in September of the academic year (5T129, 5T180-5T181).

For the 2000-2001 academic year, Lula Vereen was first acting chairperson and then permanent chairperson of the SMT (5T123). Vereen has been employed by the Board since 1993 and was a math teacher at Camden High School (4T122). In 1999, she was appointed to the first SMT at Camden High School. The team was trained in the interview process by Wright in the summer of 2000. She had a follow-up session in the fall of 2000 (5T135).

Frank Basso was the State task force member assigned to ensure that the SMT at Camden High School complied with Abbott regulations and followed proper procedures. He attended all SMT meetings and received reports and other documentation generated by the meetings. He did not, however, get involved in the selection of the interview teams but served in an advisory capacity in the event of questions (5T130-5T132).

51. When the position of principal was posted and human resources contacted Vereen with a list of candidates, she asked for volunteers to serve on an interview committee (5T139-5T140. 5T177-5T178). Vereen and other SMT members checked the list of volunteers to make sure their ethnic background satisfied Abbott requirements for diversity (5T140-5T141). Not all volunteers were selected, but the selection was by consensus of the SMT members (5T178).

The team consisted of six individuals including a librarian, three teachers, a security officer, and a vice principal (R-18, 5T174-5T176). The interview team members selected Vereen as

chairperson and contacted human resources with a couple of possible dates to conduct the interviews (CP-37, 5T182-5T184). Neither the Board nor Superintendent had any involvement in the selection of the interview team (R-5, 5T142-5T143).

Besides selecting the interview team, the SMT also suggested interview questions. Vereen considered the suggestions, then composed and submitted the questions to the SMT at its next meeting (5T185-5T187).

52. The actual interviews were conducted on June 20, 2001, at the central office building. Human Resources Clerk Reyes gave each team member the packet of documentation to conduct the interviews including a schedule of the candidates, a blank score sheet, the tally sheet, and written and oral questions which had been developed by the interview team as well as information about the candidates (5T145-5T147).

Each candidate was asked the same questions and given an opportunity to respond. The team members each asked one question. The individual interviews took about 30 minutes (5T148-5T150). Upon completion of the interviews, Vereen prepared a summary or composite evaluation sheet with the total point scores for each candidate based on the interviewers' individual score sheets (CP-37, 4T35-4T38, 5T159-5T160).<sup>16/</sup> She made some corrections in the

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<sup>16/</sup> Both the summary composite evaluation sheet as well as the individual composite evaluation sheet used by each interviewer had been developed by the office of human resources and was used in all supervisor and above interviews (CP-37, CP-39, 4T53, 4T55).

scores where an interviewer incorrectly added the interviewee's points (CP-37, 5T188-5T189). In one instance, Vereen incorrectly transposed an interviewer's score giving one candidate ten less points on the composite evaluation sheet than the interviewer had given him. The candidate, John Sills was the number three recommended candidate and would have been number two if his score had been adjusted (CP-37, CP-39, 5T189). Vereen then highlighted the top five candidates in numerical order because the Superintendent had requested five candidate recommendations (CP-37, 5T162-5T163, 5T190). Although it was not usual in Vereen's experience to get a request for five recommendations, the usual number was three, she understood it was the Superintendent's prerogative to ask for any number of recommendations (5T191-5T192).

Vereen delivered the completed interview forms to human resources (5T164). On June 21, 2001, she also prepared and delivered a recommendation memorandum to Knox listing the top five recommended candidates (R-18, 5T166). She had no discussions with the Superintendent or any Board members about the recommendations or any specific candidates (5T167, 5T192-5T193). Vereen conducted the interview process in the same manner she had conducted at least ten other interviews (5T168).

The office of human resources forwarded the summary composite evaluation form to Knox but not the individual interviewer sheets (CP-37, 4T60). At no time did the state task force identify any problems or raise any concerns about the interview process to Knox (3T183).

53. Betty Herring was the lowest scoring candidate of the top five with a score of 236 while the top scorer was Doris Carpenter with 272 points. Neither Cream nor Pearson-Hunter was among the top five recommended candidates (R-18, CP-36, CP-37, 3T104). Cream's score was 221, while Pearson-Hunter's score was 192 (CP-37).

54. After her interview, Cream had concerns about the make-up of the interview team, specifically that the vice-principal on the team had less than one year experience as an administrator, there was no central administration or parent representative, and the affirmative action officer was not present to monitor the interviews (CP-36, 1T133-1T134, 2T58, 2T98-2T99).

Cream discussed her concerns with the new Federation president Elaine Cathers. She and Cathers met with Knox on June 21st for a Federation liaison meeting and discussed the high school interview. Knox sympathized with their concerns but did not request that the interviews be redone with a new team. On July 9, 2001, Cathers followed up with a letter to Knox which was copied to the Board memorializing the Federation's concerns about the interview process expressed at the June 21st meeting (CP-36). In particular, Cathers noted that someone from central administration should have represented the central administrative office staff on the interview team. At this time Highsmith, who was newly appointed, was the only assistant superintendent. There was also a newly appointed director of human resources (CP-36, 2T128). Cathers did not receive a response from either Knox or the Board (2T100).

55. Knox decided to interview all of the candidates, not just the top five scorers, because she wanted to see if there was a way to get Cream or Pearson-Hunter recommended to the Board. If Knox had not been satisfied with the top five candidates after interviewing all eleven, she had the authority to send the process back to the interview team and asked for additional candidates (3T33-3T35, 3T38, 3T105, 3T110). The office of human resources scheduled the interviews for Knox (CP-38, 1T136, 2T96, 2T98-2T99, 3T161-3T162, 3T188).

On June 26, 2001, Knox interviewed ten of the candidates. One candidate, Odete Botelho, was out of the country and her interview was not rescheduled (CP-38, R-5, 3T128, 3T130-3T131, 3T188). Knox did not accommodate Botelho's schedule because she expected candidates who were interested in positions to make themselves available (3T128).

After the interviews, Knox was satisfied that there was a candidate within the top five who could do what she felt was necessary to improve conditions at Camden High School (3T105). She selected Betty Herring and recommended her to the Board at its July meeting (R-30, 3T149, 3T162). No one on the Board directed her to select or not to select any particular candidate (3T59). In particular, Sara Davis did not direct Knox to make or not to make any particular recommendation for the principalship of Camden High School (3T60).



56. At its July meeting, the Board refused to approve Herring. Board members were concerned about whether Herring could do the job required at the high school. The Board asked Knox to bring it information about Herring's performance as a vice-principal at Camden High School (3T150-3T151). Knox complied and brought the Board additional information about Herring's performance both at Camden High School and in other Board positions. She also personally observed Herring who Knox felt was doing an excellent job administering the summer school program and presented this information to the Board. Herring was approved at the next Board meeting without a closed session discussion (3T37-3T38, 3T151-3T155, 3T158-3T161).

57. Knox had no discussion with the Board about Cream as a possible alternate recommendation to Herring either at the first or second Board meeting when Herring's appointment was approved (3T190). Knox's testimony in this regard was uncontroverted. No Board member testified. I credit her testimony because it is not likely Cream's candidacy would have been discussed when the SMT interview team had not submitted her name to Knox as one of the top five candidates. Knox was not involved in the selection of the SMT interview team or its recommendations. Under SMT operational guidelines, Knox, as chief school administrator, could not recommend a candidate for appointment unless the SMT had recommended that candidate to her. The Board could not have considered Cream's appointment without the Superintendent's recommendation (CP-32).

58. On August 27, 2001, Cream was notified by human resources that another candidate (Herring) had been selected (R-19).

Position of Principal at Yorkship Family School

59. Yorkship was a kindergarten through eighth grade family school (3T50). There were two changes to the school in the 2001-2002 school year. First, its principal, Dr. Ogbonna, applied for and was selected to head the special needs department in central administration. Second, because of overcrowding in the school, Knox decided to move the sixth, seventh and eighth grades out of Yorkship. The parents were opposed to their children being moved out of the local community and were upset that Ogbonna was leaving as principal. For these reasons, it was important to Knox to select a candidate quickly to fill Ogbonna's position in order for Yorkship to open on time and with a principal that the community would accept (3T49-3T51).

60. On June 21, 2001, the position of principal at Yorkship Family School was posted (R-20). Knox recommended to Cream that she apply for the position (3T124). Cream applied.

On July 24, 2001, a letter was sent by Human Resources Clerk Reyes informing Cream of her interview scheduled for August 1. The letter stipulated that dates and times of interviews could not be rescheduled (CP-30). Cream, however, was on vacation when the notification letter was sent. Her vacation began July 20 and extended to August 13 (1T140-1T141). All interviews for the position were scheduled for August 1 and 2, 2001. There were eight candidates including Cream (CP-30).

61. Cream could not attend the interview because of her vacation (R-21, R-22, 1T140-1T141). Although Cream's vacation request had been submitted by June 30 to the Superintendent's office and personnel office as part of the check-off list for her year-end submissions, human resources did not maintain a separate list of employee's vacation schedules. Vacation requests were entered into database solely to track employee usage of vacation time. However, even if human resources had been aware of individual vacation schedules when setting up the interview dates, it was not the practice in human resources to accommodate individual schedules because it was not possible to accommodate everyone. Although accommodation's were made occasionally for illness or vacations, it was viewed generally as an issue of fairness (1T144, 2T26-2T27, 4T141, 4T147).

Nevertheless, on August 3, 2001, when Federation President Cathers learned from a teacher who served on the Yorkship interview team that Cream was a "no show" for the interview, she wrote newly appointed Assistant Superintendent Highsmith about Cream's vacation. Cathers requested that the decision on the principalship be postponed until Cream could be interviewed (CP-31, 2T101, 2T102, 2T120). She also delivered a copy of her letter to a clerk in human resources. There was no director of human resources at this time since Wright left the position effective December 31, 2000 (2T123-2T124).

Cathers received no written response from Highsmith (2T103). However, after a special Board meeting on August 8 or 9, 2001, Highsmith told Cathers he was attempting to work out an opportunity for Cream to be interviewed but needed to know when she was returning from vacation. Cathers told him she thought that Cream would be back on August 13th. Cathers herself then went on vacation and only found out when she returned on August 20 that Cream had not been interviewed (2T103-2T105). She never followed up with the Superintendent or any Board members (2T125).

62. When Cream actually returned from vacation on Friday, August 14, 2001, she called Highsmith's office and spoke to his secretary Maria. Highsmith was in a meeting and not available. Maria indicated that after the meeting Highsmith was going on vacation. Cream never spoke directly to Highsmith nor did she attempt to contact Superintendent Knox. She was never interviewed for the position. Although Knox recommended that Cream apply for the position, she was not aware until she received the interview packet from the SMT interview team that Cream had applied but not been interviewed because she was on vacation (3T125-3T126).

63. Knox decided to interview only Carol Morgan who was vice-principal at Yorkship and the highest scoring of the four recommended candidates. On Monday, August 20, 2001, at a special Board meeting, Knox recommended Carol Morgan for appointment as Yorkship principal. The Board did not direct Knox to make any particular recommendation with regard to the principalship of

Yorkship (R-4, R-23, R-24, R-25, R-31, 1T144-1T145, 2T38-2T41, 2T64-2T65, 2T105, 3T52, 3T54, 3T61, 3T123).

64. Since 1998, besides Morgan, there have been two other vice-principals who have received appointments as principals for the Board. Betty Goins was appointed as principal at Catto and Dudley Schools. Davida Coe was appointed as principal to the Creative and Performing Arts School where she had been principal. Morgan, Goins and Coe, are not Federation officers or on the negotiating teams for the Federation (1T146-1T147).

#### ANALYSIS

The issue in this matter is whether the Camden Board of Education retaliated against Claudia Cream for filing grievances on behalf of herself and others and for her activities generally on behalf of the Federation, namely her activities as vice-president, grievance chair and member of the negotiating team. In re Bridgewater Tp., 95 N.J. 235 (1994), sets forth the standards for determining whether personnel actions were motivated by discrimination against the exercise of protected activities in violation of subsections 5.4a(1) and (3). A charging party must prove, by a preponderance of evidence on the entire record, that protected conduct was a substantial and motivating factor in the adverse personnel action. This may be done by direct or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile towards the exercise of protected rights. Id. at 246.

If the employer does not present any evidence of a motive not illegal under the 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 unlawful motives under the Act and other motives contributed to a personnel action. In these dual motive cases, the employer has not 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 proven, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action.

Based on the Bridgewater standards, I find that Charging Party has established by a preponderance of evidence that Cream's filing of her acting pay grievance was a substantial or motivating factor in her transfer to Challenge Square Academy. I do not find however that Charging Party has carried its burden to establish by a preponderance of the evidence that Cream's non-appointment to principalships at Pyne Poynt Family School, Camden High School or Yorkship Family School was the result of discrimination for her exercise of protected activities on behalf of herself and the Federation.

First, it is undisputed that Cream engaged in substantial protected activities on behalf of unit members as Federation vice

president, grievance chair and member of the negotiations teams for the most recent contracts. The number of grievances filed since 1998 when she assumed the role of grievance chair, although not numerous, did represent an increase over previous years when grievance filings were rare. Additionally, she filed grievances on her own behalf regarding acting principal's pay and her transfer to Challenge Square Academy. The acting pay grievance was later settled by the Board with Cream receiving acting pay.

Next, it is also apparent from the record that the various superintendents and Board members were aware of her activities. Cream met with the superintendents in regular liaison meetings with the Federation's president to discuss, among other items, outstanding grievances. Although most grievances were resolved, they were processed through the various steps of the grievance procedure and were brought to the attention of the Superintendent and Board members, including Cream's own grievances for acting principal's pay and to protest her transfer to Challenge Square Academy. In the latter instance, Cream personally appeared before the Board to argue against the transfer. Moreover, the Board's attorney eventually settled Cream's acting pay grievance which settlement was approved by the Board.

Certainly, Cream's participation on the Federation's negotiations teams focused attention on her role as an active union leader. She also expressed herself on at least two occasions regarding the make-up of interview teams, once directly to

Superintendent Knox at a liaison meeting and once through the Federation president, Johnson, after the May 2000 interview, for the principal's position at Pyne Poynt Family School.

The first two elements of the Bridgewater analysis - Cream engaged in protected activities and the Board knew about her protected activities - are satisfied. One issue remains, namely whether the Board was hostile to Cream's exercise of protected activities.

Transfer from Pyne Poynte Family School to Challenge Square Academy

There is no direct evidence of hostility motivating Cream's transfer to Challenge Square Academy. However, Board hostility may be inferred from the timing of the transfer occurring shortly after Cream's filing of her acting pay grievance together with the shifting explanations proffered for the transfer, the disparate treatment of Cream's transfer appeal by the Board, and the nexus between the acting pay grievance and her transfer as vice-principal to a position formerly held by a principal. Each of these elements taken together allow me to draw an inference of hostility.

Timing is an important factor in assessing motivation and may give rise to an inference that a personnel action was taken in retaliation for protected activity. City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987) (violation found where lifeguards filed suit against the City in September 1995, entered into a consent order in November 1995 settling the suit and were informed in March 1996 that they were not rehired for the summer 1996



season). See also Bor. of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986); Dennis Tp. Bd. of Ed., P.E.R.C. No. 86-69, 12 NJPER 16 (¶17005 1985); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); cf., Tp. of West Orange, P.E.R.C. No. 99-75, 25 NJPER 128 (¶30057 1999) (where the Commission found remarks by a supervisor a year before an employee's resignation were too remote in time to support a finding of retaliation for protected activities). Here, timing is suspicious. The July transfer occurred within six months of Cream's grievance for acting pay and two months after she registered complaints through the Federation President about the May interview process for the Pyne Poynt principal position.

Additionally, in most cases where timing supports an inference of hostility, the adverse personnel action is not anticipated and takes place at a time or in a manner inconsistent with the ordinary course of business. For instance, in Bridgewater an employee was promoted in June of 1979 and in March 1980 protested a unilateral wage increase offered by his supervisor. He was transferred and demoted six weeks later without the thirty day advance notice required in the employee handbook. See also Mantua Tp., P.E.R.C. No. 84-151, 10 NJPER 433 (¶15194 1984) (Township unlawfully laid off an employee for exercising protected activities where it acted four days after a PERC election, laid off the employee immediately with severance pay contrary to Township's practice in any other layoff and refused to grant the employee the

benefit of the re-employment personnel policy contained in the Township's code).

Here, the transfer came as a complete surprise to Cream who had been a vice-principal at Pyne Poynt for four years with a spotless performance record. Moreover, for several months that year she filled in for Principal Dover who was on sick leave thus performing his duties as well as her own and was applying for the position of principal at Pyne Poynt. Seemingly, Cream was a strong candidate to become principal when the transfer decision was announced.

The manner in which Cream's transfer appeal was handled also lends support to an inference of hostility. Cream appealed the transfer immediately and appeared before the Board together with nine others appealing transfers. Of ten transfers which were appealed to the Board, seven were rescinded. Only three transfers, including Cream's, were approved. Of the three approved, the Board accommodated the request of one employee to transfer to a school not originally assigned, while another employee's transfer was necessitated by the elimination of her position at her former school. Cream's transfer was not rescinded, accommodated or necessitated by the elimination of her position at Pyne Poynt.

The Board's contends that Cream was the only administrator among ten appellants. It asserts that different educational concerns support the Board's consideration and denial of her appeal. This argument is not persuasive. The Board does not

explain what "differing" educational concerns led it to deny Cream's appeal and grant the other appeals. Nevertheless, even if it had articulated an educational rationale for Cream's disparate treatment and there was no irregularity in the appeal process, I find that the business reasons proffered by the Board for the transfer were pretextual.

Cream was given several different explanations for her transfer. First, Acting Director of Curriculum and Instruction Delia Brown notified Cream in writing that her transfer was due to unavoidable circumstances and in the best interests of the school district. No specific explanations of the "unavoidable circumstances" or "best interests" were offered in the letter or through witness testimony. Brown told Cream she had drafted the notification letter at the instruction of Assistant Superintendent Farmer. Farmer then explained to Cream that she was the best possible candidate to fill the Challenge Square vacancy and, therefore, Farmer recommended her for the position. Finally, when Cream met with Interim Superintendent Johnson prior to meeting with the Board, he told her he recommended her transfer at the request of her immediate supervisor, Principal Dover, who told Johnson Cream could not get along with staff and was harsh and inflexible. Johnson could not give Cream any examples of the behavior which precipitated Dover's request, but explained his practice was to honor such requests.

These different and differing explanations allow me to draw an inference of hostility. Here, Johnson, not Farmer, had the authority to recommend Cream's transfer to the Board. However, Farmer's rationale is at odds with the reason proffered by Johnson. Farmer allegedly recommended Cream because her good performance led Farmer to believe she was the "best possible candidate" to administer a school, whereas Johnson recommended Cream's transfer at the request of a principal who felt Cream's performance in administering the school was inadequate. It is illogical that Farmer and Johnson would not communicate on this personnel matter. Their differing reasons are suspicious.

Additionally, Dover's rationale for requesting Cream's transfer is undermined by his own 1997 and 1999 performance evaluations of Cream. He observed that she assisted him and staff in all facets of the academic programs, setting high standards for both staff and students. Dover also commented in one evaluation that Cream contributed "a great deal to fostering a climate conducive to learning" (CP-23, CP-24). Until Cream filed her acting pay grievance, Dover had rated Cream's performance highly. There is no independent evidence in the record of any performance related difficulties during 1999/2000 to justify the shift in Dover's opinion which led him to request her transfer. Nor is there evidence in the record to support Johnson's explanation that he usually honors principal's requests to transfer and did so in this instance apparently with little or no verification of the basis for

Dover's request because Johnson was not able to cite any specific examples of performance difficulties attributable to Cream.

Neither Superintendent Johnson nor Dover testified. Indeed, no one involved in the transfer decision testified. When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. McCormick, Evidence §272 (3rd ed. 1984); International Automated Machines, Inc., 285 NLRB 1122, 129 LRRM 1265 (1987). The testimony of Superintendent Knox is immaterial in this regard because she was not employed by the Board until January 2001, six months after the transfer decision was made and effectuated. Because there is no evidence to support Dover's purported reason for requesting Cream's transfer or Johnson's practice to honor principal's requests, I conclude that Johnson's and/or Dover's explanations were pretextual. I draw an inference of animus from the transfer occurring within six months of the filing of her grievance for acting pay together with the pretextual explanations for the transfer.

In addition, I draw an inference of hostility because there is a nexus between the acting pay grievance and the adverse personnel action. Cream's transfer accomplished exactly what she had complained of in her acting pay grievance, namely the performance of principal's duties without commensurate pay. With the transfer to Challenge Square, Cream was assigned as

vice-principal to a school which had been previously headed by an on-site principal. Her duties at Challenge Square were substantially similar to those performed by her predecessor, but she was paid as a vice-principal.

The Board asserts that it treated Cream no differently than two other vice-principals who were transferred to alternative schools for that academic year. They were also paid as vice-principals and performed the duties previously performed by principals who headed those schools. However, while it is true that the Board has a managerial prerogative to determine the administrative structure of its schools, the fact that others were treated similarly to Cream does not offset the illegally motivated adverse personnel action it took against Cream when it transferred her in the first instance.

Having concluded that Dover and/or Johnson were hostile to Cream's grievance filing, under Bridgewater the burden shifts to the Board to prove, by a preponderance of the evidence, that it would have transferred Cream, even absent her protected activity. While the Board maintains that it had a managerial prerogative to transfer Cream, it may not do so if its managerial discretion is illegally motivated by the exercise of protected activities. Bridgewater. The Board's proffered business justification for its decision to transfer Cream as a vice-principal to head Challenge Square is that it changed the administrative hierarchy of all three alternative schools by replacing on-site principals with on-site vice-principals

supervised by off-site principals. The Board maintains that Cream was the best possible candidate to fill one of the three positions, but presented no witnesses to support its assertion. The evidentiary record establishes the opposite.

Johnson told Cream he transferred her at Dover's request because he was having difficulties with her performance. It is illogical that Johnson, having knowledge of Dover's criticisms regarding Cream's performance at Pyne Poynt Family School, would transfer Cream to a position where supervision of her performance was minimal or non-existent and to a school where students are assigned because they are at-risk or need special attention. In other words, she was transferred to a position which accorded her greater authority over staff and students, at a time when her principal was questioning her ability to relate to both staff and students.

Although I find that Cream's transfer was illegally motivated by her union activities, I cannot conclude that she is entitled to acting principal's pay for her time at Challenge Square. In order to do so I would have to conclude that the restructuring of Challenge Square was pretextual and motivated by hostility to Cream's union activities. However, the administrative restructuring impacted all of the Board's alternative schools. The model of one principal supervising two schools was not a unique concept in Camden. Historically, several schools were structured in this manner. Cream was treated no differently than the two other

vice-principal's assigned to head these schools. The decision to change the administration of these schools was a managerial prerogative exercised by the Superintendent and Board.

Finally, whether Cream and/or the other vice principals assigned to the alternative schools are entitled to acting principal's pay for performing out of title work is a contractual issue and must be pursued through the parties' negotiated grievance procedure. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984).

Based on the foregoing, I find that the Board violated 5.4a(3) and derivatively a(1) of the Act when it transferred Cream to Challenge Square Academy.

#### The Pyne Poynte Principal's Position

The Federation contends that Cream's failure to be appointed as principal at Pyne Poynt Family School where she had performed successfully as vice-principal for four years with excellent evaluations was motivated by hostility to her activities on behalf of the Federation and her own grievance for acting pay. I disagree.

Having found that Dover was hostile to Cream's protected activities, even if Dover's presence on the first (May) interview team for the Pyne Poynt position negatively impacted Cream's candidacy and tainted that process, Dover was not on the second (October) interview team nor did he play any other role in the process of appointing his successor. He had retired. I draw no



inference of hostility, as the Federation suggests, merely from the fact that a principal participated on the interview team to select his successor. Neither the Abbott regulations nor Board guidelines prohibit principals from serving on an interview team. Indeed, Abbott regulations require that a principal serve on the SMT and provide that if a SMT opts not to participate in the personnel decision-making process, the principal is responsible for making those decisions unless the decision impacts directly on the principal such as his/her own removal, transfer or appointment. There is no evidence that Proffitt, who replaced Dover on the second interview team, or any of the teacher interviewers harbored animosity toward Cream's union activities.

Additionally, there is no evidence of Board hostility to Cream as a result of her objections to the May interviews raised by Cream through the Federation President. The Board's personnel committee, chaired by Sara Davis, reposted the position and made changes to the composition of the second interview team. Without actual evidence that the second interview team collectively or individually harbored animus toward Cream's union activities or that the October process was tainted by Dover's hostility, I cannot draw negative inferences from that interview. Consequently, there is no violation under the Act.

Moreover, although Cream's transfer may have disadvantaged her candidacy for the principalship because the record reflects that several of the Board's vice-principals were appointed to principal

positions at the schools in which they then served, there is no evidence Cream would have been appointed if not for the transfer. She was the fourth highest scoring candidate. The successful candidate was the top scorer and was acting principal in Pyne Poynt when he was selected. Presumably, if his performance was good, his acting capacity gave him an advantage during the interview process, just as any poor performance would have negatively impacted his chances of being recommended.

The Federation contends that the deviation in practice when the position was reposted in June but no interviews were conducted supports an inference of hostility. However, there was a change in interim superintendents and Dover consented to remain in his position until a successor could be found. Therefore, although filling a principal position was usually a high priority according to a Board witness, there was no urgency in this particular instance. I draw no negative inference from the delay. The Board has a managerial prerogative to promote and fill positions. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); Paterson PBA v. Paterson, 87 N.J. 78 (1981). Unless there was evidence that the Board chose not to interview and fill the Pyne Poynt position because of its hostility to Cream's candidacy, there is no violation under Bridgewater.

Next, the Federation asserts that I draw an inference of Board hostility from the manner in which Cream was notified of the second interview as well as other irregularities in the process. I

disagree. Unlike other candidates who received written notification, Cream was notified by telephone 24 hours before her scheduled interview. Notification was controlled by a clerk in the human resources office. There is no evidence that the clerk was even aware of Cream's union activities or was given instructions from anyone else to delay Cream's notification. Additionally, despite the late notification, Cream was able to attend the interviews. The fact that she was not given another date to be interviewed comported with the practice of human resources not to give candidates alternate dates. In this regard, Cream was treated no differently than others in a similar position.

I also draw no adverse inference of hostility from the apparent change in the October interview team between the original notice which listed an assistant superintendent (Proffitt) and three teachers, and the actual team which consisted of Proffitt, the original three teachers plus three more teachers. This change affected all candidates equally. There is no showing that the addition of three teachers specifically disadvantaged Cream. If anything, the larger interview team created more impartiality by reducing the likelihood that the process could be improperly influenced by outside forces hostile to Cream.

Moreover, I do not find that the presence on the October interview team of teacher Brooks, who had been a candidate in the May interview process, impaired Cream's candidacy. Brooks was not a candidate for the position in October. There is no showing that

her presence as an interviewer impacted Cream differently than any other candidate for the position.

Finally, the Federation contends that the interview process violated Abbott regulations and Board guidelines and, therefore, I should draw an inference of hostility to Cream's candidacy. Specifically, the Federation contends that the use of interview teams in lieu of the entire SMT and the composition of the interview team consisting of mostly teachers violated the Abbott regulations and Board guidelines. I do not agree.

A review of the Abbott rules and regulations reveals no prohibition against the delegation of the authority to create smaller interview teams. The practicality of conducting interviews requiring the attendance of the entire SMT argues against such a presumption.

As to the make-up of the actual interview team, the Federation argues that a team consisting of mostly teachers is a violation of the Abbott regulations. It relies on the Abbott regulations as well as the testimony of Linnell Wright, the former director of human resources in support of its contention. However, just as the Abbott regulations do not prohibit the SMT from creating an interview committee, the regulations are silent on the make-up of the committee. Wright testified that in order to serve on such a committee the SMT member only had to be trained by her in the interview process. She conducted the training.

Charging Party also asserted that the presence on both the May and October interview teams of mostly teachers whom Cream supervised contaminated the objectivity of the interview process and was designed to defeat her candidacy. However, there is no evidence that any teacher was hostile to Cream's union activities. If a teacher had negative experiences with Cream as a supervisor which resulted in her scoring lower during the interview process, this is not a violation of the Act. Only if the low score was motivated by the exercise of protected activities do we find a violation.

Finally, each district is assigned SRI teams by the Commissioner of Education to monitor the district for Abbott compliance. Each school has an assigned SRI representative responsible for verifying that the SMT is in compliance. The record reflects that no compliance issues were raised by the SRI representatives assigned to the Board regarding the SMT interview process at schools in the district. Therefore, I infer that the use of SMT interview teams was not prohibited by the Abbott regulations.

However, even if the Board's interview process violated Abbott regulations and Board guidelines, the use of interview teams and the composition of those teams comported with Board practices. There is no evidence that the process was manipulated to disadvantage Cream because of her high visibility as a union activist.

Based on the foregoing, I find no violation of 5.4a(3) or derivatively a(1) in the Board's failure to appoint Cream to the position of principal at Pyne Poynt Family School

Cream's Candidacy for Principal at Camden High School

Unlike the Pyne Poynt candidacy and transfer to Challenge Square, neither Dover nor Interim Superintendent Johnson were involved in Cream's candidacy for the principal position at Camden High School. Dover had retired and Johnson was no longer interim superintendent. By January 2001, Annette Knox had been appointed permanent superintendent. She initiated the process to appoint the principal at Camden High School after determining that a new administration was necessary. Knox recommended candidates to the Board for appointment based on recommendations of the locally based SMT interview teams. There is no evidence in the record that Knox was hostile to Cream's candidacy or to her activities as a Federation officer. Knox specifically contacted Cream on a couple of occasions and suggested that she apply for Board positions including the Camden High School position and one at Yorkship Family School.

Similarly, there is no support in the record for the Federation's contention that manner in which the selection process was conducted at the high school was irregular, thus, supporting an inference of hostility to Cream's candidacy. It asserts the delegation of the interview process to interview teams instead of the entire SMT and the make-up of these teams violated the Abbott regulations and allow me to draw an inference of hostility. However, a review of the Abbott rules and regulations reveals no prohibition against the delegation of authority to interview teams.

The practicality of conducting interviews requiring the attendance of the entire SMT refutes such a presumption. Also each district is assigned SRI teams by the commissioner of education to monitor the district for Abbott compliance. Each school has an assigned SRI representative responsible for verifying that the SMT is in compliance. The record reflects that no compliance issues were raised by the SRI representatives assigned to monitor the Board regarding the SMT interview process at schools in the district.

As to the make-up of the actual interview teams, the Federation contends that a team consisting of mostly teachers is a violation of the Abbott regulations. It relies on the Abbott regulations as well as the testimony of Linnell Wright, the former director of human resources in support of its contention. However, just as the Abbott regulations do not prohibit the SMT from delegating its personnel decision-making authority to an interview committee, the regulations are silent on the composition of the committee. Additionally, the Federation mis-characterized Wright's testimony. She did not testify that an interview committee consisting of mostly teachers violated the Abbott regulations. Wright only testified that in order to serve as an interviewer the SMT member had to be trained in the interview process and could be either certified or non-certified personnel as well as parents or community members.

Nevertheless, assuming arguendo that the process itself was flawed because it violated Abbott regulations or Board guidelines,

Cream's candidacy was treated no differently than other applicants for the position. There is no evidence that any irregularities in the process were designed specifically to defeat Cream's candidacy or that her chances were diminished vis-a-vis other applicants because of the process. The office of human resources generated the posting, the schedule of interviews and interview packets for the SMT interview team. No one in the office of human resources was hostile to Cream's candidacy or manipulated the process in any way to disadvantage Cream. Moreover, there is no evidence in the record that the high school SMT interview team conducted its interviews any differently than it had done in the past or that any individuals serving on the SMT interview team harbored animus toward Cream for the exercise of protected activity.

Nevertheless, as proof that Cream was really the choice of the SMT interview team, the Federation relies on two conversations which took place in June after the interview process. One conversation was between Cream and Board member Dwayne Williams and the other was between Cream and newly appointed Assistant Superintendent Charles Highsmith. Cream described her conversation with Williams as the latter asking her if she "knew what we have planned for you" (1T131). Cream herself concluded that he meant the principalship at Camden High School. This conclusion is mere conjecture on her part. Williams did not testify. As to Highsmith's conversation with Cream, he told her he heard she was being considered for the principal's position at Camden High



School. Since no appointment had been made at that time and Cream was one of the job applicant's Highsmith's comment carries no particular import as to her chances for success.

As to Board President Davis' alleged hostility to Cream's candidacy, her hostility was irrelevant. The Board did not and could not consider Cream's appointment as principal at Camden High School because it was not given the opportunity to do so. Between the posting of the high school principal's position and when Knox received a list of recommended candidates from the SMT interview team, neither she nor the Board were involved in the process. Cream was simply not among the top five recommended candidates. Without a recommendation from the SMT interview team, Knox could not under Abbott regulations and Board guidelines recommend Cream to the Board for appointment. If she was dissatisfied with the results of the interviews, Knox's authority was circumscribed. She could request that the selection process be redone.

The Federation suggests that Knox's actions requesting five not three recommendations from the interview team and then interviewing all of the candidates, not just the five recommended candidates, was irregular and, therefore, supports an inference of hostility. I do not agree.

First, Knox testified credibly that filling the high school position was key to her plans for the district. The importance of filling that position dictated her decision to request five recommended candidates in lieu of the standard three

recommendations, thus giving her a wider base of selection. There is nothing in the Abbott regulations or Board guidelines prohibiting the Superintendent from doing so. Even if the request for five recommendations was unusual, there is no evidence that Knox's request for five recommendations was designed to hurt Cream's chances for success. If anything, it improved the likelihood that Cream or Knox's other choice would be recommended by the interview team.

The Federation, however, contends that Knox's decision to interview all of the candidates despite having five recommendations establishes that Knox was doing Davis' bidding, specifically that Knox was trying to find any candidate but Cream to recommend. The record establishes the opposite. Knox had encouraged two employees to apply for the position, Cream and Ramona Pearson-Hunter. When neither Cream nor Pearson-Hunter was recommended by the interview team, Knox wanted to see if there was anyway she could get Cream or Pearson-Hunter recommended or at least assure herself of the viability of the recommended candidates. Therefore, she decided to interview all of the candidates. If Knox determined after the interviews that she disagreed with the recommendations or there were no viable candidates among the five recommended, she could have ordered the process redone. She chose not to after personally interviewing all applicants.

The Federation suggests that Knox did not have to interview all candidates but only the five recommended if she only wanted to

make sure that she had a viable candidate. However, this argument ignores Knox's other objective in conducting interviews which was to see if there was any way she could reach Cream or Pearson-Hunter. To do so, she would have to interview all candidates and do a side-by-side comparison to determine if she needed to redo the process. After the interviews, Knox was satisfied that Herring was a viable candidate and she recommended her to the Board for appointment. There is no evidence that she was being controlled by the Board generally or Davis in particular when she made the recommendation to appoint Herring.

Finally, the Federation contends that the Board's failure to offer an explanation for initially rejecting Herring's appointment supports that Davis, acting out of hostility to Cream's candidacy, eventually persuaded the Board to appoint Herring and not Cream. I do not agree. The fact that the Board asked for additional information on Herring before approving her appointment was unrelated to Cream's candidacy for the position. Under the Abbott rules and Board guidelines, Cream's appointment was not possible since she was neither recommended by the SMT interview team nor by Knox. The Board could not and did not consider Cream's appointment. Therefore, its reasons for initially rejecting Herring's appointment are irrelevant.

Based on the foregoing, I find no violation of 5.4a(3) or derivatively a(1) in the Board's failure to appoint Cream to the position of principal at Camden High School.

Cream's Candidacy for Principal at Yorkship Family School

I also find no basis to conclude that Cream's failure to be appointed as principal to Yorkship Family School was motivated by hostility to her exercise of protected activity. The Federation argues that the scheduling of interviews at a time when Cream was on vacation and the failure to accommodate her request for new interview date allows me to infer a discriminatory motivation. I disagree.

Although individual vacation schedules were kept by human resources for purposes of tracking employee usage of vacation time, it was not the practice of human resources to consult vacation schedules of job applicants before setting up interview date(s) or to accommodate employee vacations because it was not possible to accommodate everyone. The setting up of interview schedules was essentially a clerical function performed by a clerk in the human resources office after consultation with the chair of the SMT interview team to ascertain interviewers' availabilities. Neither the Superintendent nor Board was involved in this process. There is no reason to conclude in this instance that the interview schedule was manipulated to ensure Cream's non-attendance or that the schedule would have been adjusted to accommodate her vacation in any event.

On the contrary, the filling of principal positions was a Board priority. Specifically, Knox needed to fill the Yorkship position quickly because she had decided to move the sixth, seventh

and eighth grades to another location for the 2001-2002 school year and was facing parental opposition. She wanted a new principal appointed as quickly as possible so that the school could open on time and with a principal that the community would accept. Her explanation is plausible and not challenged by the Federation.

Next, interviews were conducted on August 1 and 2, approximately thirty-five days after posting which is the normal time frame for the Board. Cream together with other candidates was notified by letter dated July 24, but was on vacation and did not come back from vacation until August 13. There is no evidence that she was treated differently than other candidates in the posting or notification process. Presumably, when she applied for the position in June, Cream could have anticipated that interviews would take place based on normal Board time frames during her vacation and made alternative arrangements to have notification sent to family or friends who could in turn contact her on vacation. Delaying the interview process until after Cream's return was inconsistent with Board practice and at odds with Knox's goal of filling the position quickly.

Based on the foregoing, I find no violation of 5.4a(3) or derivatively a(1) in the Board's failure to appoint Cream to the position of principal at Yorkship Family School.

#### CONCLUSIONS OF LAW

The Board violated 5.4a(3) and derivatively a(1) of the Act by transferring Claudia Cream to Challenge Square Academy because

she filed a grievance for acting pay while at Pyne Poynt Family School.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. Respondent Board cease and desist from

1. Interfering with restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

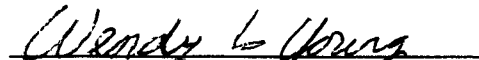
2. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

B. That the Board take the following affirmative action:

1. Immediately transfer Claudia Cream to Pyne Poynt Family School as vice principal or to another school by mutual consent of the parties

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

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

  
Wendy L. Young  
Hearing Examiner

DATED: January 17, 2003  
Trenton, New Jersey



**RECOMMENDED**



**NOTICE TO EMPLOYEES**

**PURSUANT TO**

**AN ORDER OF THE**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**AND IN ORDER TO EFFECTUATE THE POLICIES OF THE**

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,  
AS AMENDED,**

**We hereby notify our employees that:**

WE WILL NOT interfere with restrain or coerce our employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

WE WILL NOT discriminate in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Claudia Cream to Challenge Square Academy because she filed a grievance.

WE WILL immediately transfer Claudia Cream immediately to Pyne Poynt Family School as vice-principal or to another school by mutual consent of the parties.

Docket No. CO-H-2001-53

Camden Board of Education  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

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