

P.E.R.C. NO. 85-93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF
RIDGEFIELD PARK,

Respondent,

-and-

Docket No. CI-84-29-97

WILLIAM DUFFY,

Charging Party.

BOARD OF EDUCATION OF
RIDGEFIELD PARK,

Respondent,

-and-

Docket No. CI-84-30-98

NORMAN LANCHART,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Board of Education of Ridgefield Park violated the New Jersey Employer-Employee Relations Act when it withheld William Duffy's salary increment for the 1983-1984 school year. The Commission, applying the governing tests of In re Township of Bridgewater, 95 N.J. 235 (1985) finds that the increment was unlawfully withheld in retaliation for Duffy's support of the Ridgefield Park Education Association. However, the Commission dismisses a Complaint based on an unfair practice charge that Norman Lanchart filed against the Board of Education of Ridgefield Park. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it withheld Lanchart's increment. Applying the Bridgewater test, the Commission finds, in agreement with the Hearing Examiner, that the Board would have withheld Lanchart's increment even in the absence of activity on behalf of the Association.

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NORMAN LANCHART,

Charging Party.

Appearances:

For the Respondent, Aron & Salsberg, Esqs.
(Louis L. Rosen, of Counsel)

For the Charging Parties, Zazzali, Zazzali & Kroll, P.C.
(Robert A. Fagella, of Counsel)

DECISION AND ORDER

On October 17, 1983, William Duffy and Norman Lanchart, teachers employed by the Board of Education of Ridgefield Park ("Board"), filed unfair practice charges against their employer with the Public Employment Relations Commission. The charges alleged that the Board violated subsections 5.4(a)(1) and (3)^{1/} of the New

^{1/} These subsections 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 the 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 of the rights guaranteed to them by this act."

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), when, allegedly in retaliation for Duffy's and Lanchart's support of the Ridgefield Park Education Association ("Association"), it withheld their employment and adjustment increments for the 1983-1984 school year.

On February 24, 1984, the Administrator of Unfair Practice Proceedings issued an order consolidating the charges and also issued a Complaint and Notice of Hearing. The Board then filed an Answer admitting it had withheld the increments, but denying it did so in retaliation for the employees' Association activities.

On May 7, 8 and 9, 1984, Hearing Examiner Nathaniel L. Fulk conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs by August 13, 1984.

On September 6, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-10, NJPER (Par 1984) (copy attached). Applying the governing tests of In re Township of Bridgewater, 95 N.J. 235 (1984) ("Bridgewater"), he found: (1) Duffy and Lanchart had both established a prima facie case that their protected Association activity was a motivating or substantial factor in the increment withholdings; (2) with respect to Duffy, the Board had not established that it would have withheld his increments even absent his protected activity; and (3) with respect to Lanchart, the Board had established that it would have withheld his increments even absent his protected activity. He

therefore recommended a holding that the Board violated subsections 5.4(a)(1) and (3) of the Act when it withheld Duffy's increments in retaliation for his protected activity and a dismissal of the Complaint's allegations concerning Lanchart.

The Board filed exceptions asserting that the Hearing Examiner erred in finding that Duffy and Lanchart had proved a prima facie case of illegal motivation and in finding that the Board would not have withheld Duffy's increments even absent his protected activity. Duffy filed a reply supporting the Hearing Examiner's determination that his increments were illegally withheld.

Lanchart filed exceptions asserting that the Hearing Examiner erred in finding that the Board would have withheld his increments even absent his protected activity. The Board filed a reply supporting the Hearing Examiner's determination and also asserting that Lanchart had not proved a prima facie case of illegal motivation.

We have reviewed the record. We commend the Hearing Examiner for a thorough, well-documented and well-organized presentation of the facts (pp. 3-17, 25-37). We specifically adopt his credibility determinations. We incorporate the Hearing Examiner's facts here with the following additions.

With respect to Duffy's Association activities, we add the following facts. All of Duffy's superiors in the chain of evaluation were hostile towards his protected activity as an Association official and supporter. The superintendent of schools

was a member of the Board's negotiating team and Duffy was a vocal member of the Association's negotiations team during the bitter negotiating sessions in 1982 and 1983. The superintendent complained to the Association's president about Duffy's being too outspoken and militaristic and told the president that he should try to get better qualified people on the executive board. The superintendent also played a role in the grievance process and Duffy was grievance co-chairperson. The superintendent resented the high number of Association grievances and arbitrations and in February 1983 circulated a memorandum to all staff listing all these proceedings; he told the Association president he did so to show everyone how unfair and unreasonable the Association was.^{2/}

Duffy's principal and Duffy had a dispute in October 1982 when the principal asked Duffy to waive certain contractual rights of the Association; the principal accused Duffy of "hurting the kids in this district" by not waiving these rights. The principal also told Duffy that he should be more cooperative and less antagonistic. On another occasion, the principal told Duffy that he had been hurt more than anyone else because of his Association involvement and

^{2/} By the time of the hearing in 1984, about 90% of these grievances had been tentatively resolved; following their acrimonious relations leading up to the November 1983 strike, both the Association and the Board have strived to improve their relations. This improvement, however, is in contrast to the hostility existing at the time of the decision to withhold Duffy's increments and does not bear on the employer's motivation at that time.

responded affirmatively when Duffy said his increment withholding was an example of being hurt.^{3/} Duffy's supervisor, new in the school district in the fall of 1982, was aware of the bad relations between the Association and the administration and of Duffy's position on the Association's executive board. His relationship with Duffy got off on the wrong foot when at one of the earliest department meetings in the fall of 1982, Duffy read from the collective negotiations agreement; the supervisor reported this incident to the principal and stated that he believed he had been put on the defensive.

With respect to Duffy's alleged deficiencies, we add the following facts. Throughout the school year, Duffy mailed guidance department deficiency forms to the parents of children with scholastic problems; his supervisor criticized him for not contacting parents without checking to see if these forms had been sent. Duffy was criticized for calling a special education child "spastic" in a class in early September, but it is undisputed that Duffy was not told about the special education classification and his supervisor was unsure whether that information was even made available before the "...beginning of October or September or middle of September". The supervisor testified that it might even have

^{3/} Neither the superintendent nor the principal testified. Thus, Duffy's testimony on these points is uncontradicted.

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been mid-October before the information was made available.<sup>6,
4/</sup>

Duffy was criticized for not keeping certain materials in a storage room in neat order; the supervisor's criticism reflected a citation for clutter issued by the fire marshall and the supervisor did not know these materials concerned Association business. Finally, Duffy's previous supervisor testified that he would have preferred to criticize teachers by speaking to them personally, but that he would include any criticisms which had not been corrected in an evaluation.^{5/}

Bridgewater articulates the governing legal standards for considering allegations of discriminatory personnel actions in violation of subsections 5.4(a)(1) and (3) of the Act. The charging party must first establish a prima facie case that his or her protected activity was a substantial or motivating factor in the disputed personnel decision. In some cases, that prima facie case may be made out by direct evidence of anti-union motivation for that disciplinary action; in other cases that case may be made out by circumstantial evidence that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile towards the exercise of protected activity. Id. at 246. If

4/ We certainly do not condone this comment, but note that Duffy did not know the child was a special education student.

5/ This supervisor did not testify, as the Board asserts, that he never made negative comments in an evaluation.

the charging party establishes a prima facie case, the burden shifts to the employer to prove, as an affirmative defense and by a preponderance of the evidence, that the action occurred for legitimate business reasons and not in retaliation for the protected activity. Ultimately, the factfinder must resolve any conflicting proofs. We also emphasize that these standards must be applied to the facts and their interrelationship in each particular case.

We first consider the Hearing Examiner's conclusion that the Board illegally withheld Duffy's increments. We agree. We adopt his analysis (pp. 18-25) and add the following observations.

Duffy clearly established a prima facie case. His principal admitted that the increment withholding was an example of how Duffy had suffered more than anyone else because of his involvement with the Association; this admission is direct evidence of anti-union motivation. Moreover, regardless of whether that direct evidence, standing alone, would have been sufficient to establish a prima facie case, the circumstantial evidence of illegal motivation is compelling. There is no dispute that Duffy was a vocal Association leader and that the Board and its representatives knew of his activities. It is also overwhelmingly clear that the people who evaluated Duffy and participated in the decision to withhold his increments were each hostile towards him because of his pro-Association activities.

We also agree with the Hearing Examiner that the Board has not proved by a preponderance of the evidence that it would have

withheld Duffy's increments even absent his protected activity. We repeat that Duffy's prima facie case of direct and circumstantial evidence of anti-union motivation is particularly strong. We also agree with the Hearing Examiner that the marked contrast between his good evaluations in previous years and his bad evaluations in 1982-1983 -- especially the contrast on many identical points such as use of the blackboard and questioning skills -- and the marked deviation from the normal procedure for evaluating tenured teachers -- formative evaluations preceding one year end summative evaluation -- contribute to an inference of anti-union motivation and undercut the proffered justification.^{6/} We also agree with the Hearing Examiner that there are many inconsistencies in the Board's allegations against Duffy: for example, Duffy and his supervisor agreed to a series of formative evaluations of Duffy's classes, but the supervisor did not carry out this agreement; Duffy was accused of not advising parents about students' problems when he had done so all year by mailing deficiency forms and telephoning them; Duffy was accused of not consulting his colleagues in the science department, yet it appears that he did so; and Duffy was criticized for his

^{6/} We note that the parties' collective negotiations agreement required two negative summative evaluations before an increment could be denied. Without the deviation from the normal evaluation procedure in Duffy's case, it appears his increments could not have been withheld. This deviation is one factor among many that we find significant in Duffy's case; the same factor exists in Lanchart's case but is insufficient in the context of all the facts of his case to support finding a violation.

large percentage (50%) of failing students in the first marking period, but he corrected this problem in later marking periods. In sum, given the strong prima facie case of anti-union motivation and given the deviations and inconsistencies in the proffered justifications, the Board has not carried its burden of persuading us that it would have withheld Duffy's increments absent the hostility of its agents towards his protected activity. We therefore hold that the Board violated subsections 5.4(a)(1) and (3) when it withheld Duffy's increments.

We now consider the Hearing Examiner's conclusion that the Board did not illegally withhold Lanchart's increments. We agree. We adopt his analysis (pp. 37-43) and add the following observations.

The Hearing Examiner found that Lanchart established a prima facie case of illegal motivation, even though he found the nexus between Lanchart's protected activity and the increment withholding to be very tenuous. We agree that the nexus is very tenuous. Lanchart was not as active as Duffy in Association affairs, particularly negotiations and grievance processing, and his superiors were not as hostile as Duffy's superiors towards that activity.^{7/} The contrast between the content and timing of his evaluations in 1982-1983 and the content and timing of his

^{7/} Lanchart's principal had a heated discussion with the Association's president concerning a dispute which Lanchart tried to mediate. The Hearing Examiner, however, found that the matter was later dropped and the principal did not bear any grudge.

evaluations in previous years appears to reflect a set of offenses outside the classroom unique to 1982-1983 rather than any anti-union hostility. In any event, if Lanchart had established a prima facie case of illegal motivation, it is clear to us that the Board would have withheld his increments even absent his protected activity. This finding rests in large part on the Hearing Examiner's credibility determinations which we will not disturb. Further, the inconsistencies found in the criticisms of Duffy's teaching are not present in the criticisms of Lanchart's conduct; the criticisms are well-supported.^{8/} In sum, the mix of factors in Lanchart's case is very different from the mix of factors in Duffy's case: the evidence of anti-union motivation is considerably weaker and the evidence of legitimate business justification is considerably stronger. We therefore dismiss the allegations of the Complaint concerning Lanchart's increment withholding.

ORDER

- I. The Ridgefield Park 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 by

^{8/} We note that Lanchart has always been a good teacher and that his principal continued to praise his teaching in 1982-1983. The increment withholding was due instead to proven indiscretions occurring outside the classroom that particular year. Thus, the contrast between Lanchart's previous
(Footnote continued on next page)

withholding from William Duffy his employment and adjustment increments in retaliation for his protected activity on behalf of the Ridgefield Park Education Association; and

2. 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 rights guaranteed to them by withholding from William Duffy his employment and adjustment increments in retaliation for his protected activity on behalf of the Ridgefield Park Education Association.

B. Take the following affirmative action:

1. Restore the employment and adjustment increments withheld from Duffy for the 1983-1984 school year together with 12% simple interest pursuant to R. 4:42-11.

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 Board's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Ridgefield Park Board of Education to insure that such notices are not altered, defaced or covered by other materials.

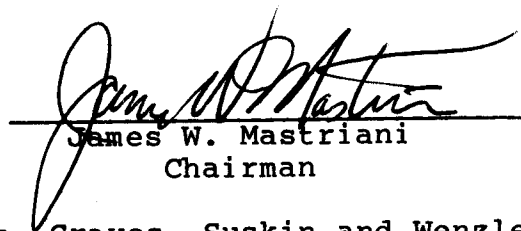
(Footnote continued from previous page)

evaluations and the 1982-1983 evaluations is not as startlingly as the contrast between Duffy's evaluations. Lanchart, unlike Duffy, was not alleged to have become a bad teacher overnight.

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

II. The allegations of the Complaint concerning the increments withheld from Norman Lanchart are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin and Wenzler voted in favor of this decision. Commissioner Hipp abstained. However, Commissioner Graves dissented from that portion of the order regarding Norman Lanchart.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985

NOTICE TO ALL 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 violated the New Jersey Employer-Employee Relations Act when we withheld William Duffy's employment and adjustment increments for the 1983-1984 school year in retaliation for his protected activity on behalf of the Ridgefield Park Education Association.

We will make William Duffy whole by paying him the employment and adjustment increments due him for the 1983-1984 school year together with interest.

BOARD OF EDUCATION OF RIDGEFIELD PARK

(Public Employer)

Dated _____

By _____ (Title)

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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

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NORMAN LANCHART,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did violate Subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it denied an employment and adjustment increment to William Duffy, a science teacher, in the 1983-84 school year, for his exercise of protected activities. Mr. Duffy has been a teacher with the Board for eighteen (18) years and for seventeen (17) of those years he received good evaluations. During the 1982-83 school year, a year in which Mr. Duffy was on the Association's negotiation team, and in which the parties were unable to reach an agreement on a successor contract, Mr. Duffy received three (3) very negative evaluations which formed the basis for his increment denial. In these evaluations, Mr. Duffy was criticized in areas in which he had previously been commended. The Board was unable to convince the Hearing Examiner that it would have made the same decision absent Mr. Duffy's exercise of protected activities.

The Hearing Examiner also found that the Board did not violate Subsections 5.4(a)(1) and (3) of the Act when it denied Norman Lanchart, a health and physical education teacher, an employment and adjustment increment for the same year. The Hearing Examiner was persuaded that the Board would have made the same decision even absent Mr. Lanchart's exercise of a protected activity.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Charging Party.

Appearances:

For the Respondent, Aron & Salsberg, Esqs.
(Stephen R. Fogarty, of Counsel)

For the Charging Parties, Zazzali, Zazzali & Kroll, P.C.
(Robert A. Fagella, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

Unfair Practice Charges were filed with the Public Employment Relations Commission ("Commission") on October 17, 1983, by both William Duffy ("Mr. Duffy") and Norman Lanchart ("Mr. Lanchart") alleging that the Board of Education of Ridgefield Park ("Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.1 et seq. ("Act"). Both Mr. Duffy and Mr. Lanchart have alleged that the Board unlawfully denied them their employment and adjustment increments for the 1983-84 academic year, because they had engaged in protected activity. This, they allege to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3)

of the Act. ^{1/}

The Board denied that it had withheld the teachers' increments because they had engaged in protected activities. Rather, it argued that in each case both teachers proved to be deficient in certain areas and that both had failed to correct such deficiencies, after being warned that failure to do so would result in an increment withholding.

It appearing that the allegations of both Unfair Practice Charges may constitute unfair practices within the meaning of the Act, Complaints and Notices of Hearing were issued on February 24, 1984. ^{2/} Hearings were then held in this matter on May 7, 8 and 9, 1984, in Newark, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs, the last of which was received on July 26, 1984. ^{3/}

Unfair Practice Charges having been filed with the Commission, questions concerning alleged violations of the Act exist, and after hearing, and after consideration of the post-hearing briefs, the matter is appropriately before the Commission by its designated

^{1/} These subsections 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."

^{2/} On February 24, 1984, as well, the Commission's Administrator of Unfair Practice Proceedings also issued an Order Consolidating Cases.

^{3/} Due to an unforeseen occurrence, a complete set of transcripts were not delivered to the undersigned until the last week in June. A filing date for the parties' post-hearing briefs was then set and an additional ten day extension of time was granted upon request from the Board. A reply brief was submitted in behalf of Messrs. Duffy and Lanchart on August 13, 1984.

Hearing Examiner for determination.

In the interests of clarity, each charge will be treated individually and when appropriate references will be made to one or the other.

Concerning the charge of William Duffy, upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Board of Education of Ridgefield Park is a public employer within the meaning of the Act and is subject to its provisions.

2. William Duffy is a public employee within the meaning of the Act, and is employed by the Board as a science teacher. He is a member of the Ridgefield Park Education Association ("Association") and has been teaching in Ridgefield Park for eighteen years.
(1T-27) ^{4/}

3. Mr. Duffy has been an Association member for all of his eighteen (18) years and has been a faculty representative since 1969. He has also been a member of the Association's executive committee as the recording secretary for the last twelve years, and has been on the negotiations committee for the same period of time. During the 1982-83 school year he was also a grievance co-chairperson (1T-11, 12, 27, 28, 29, 30, 31). During the 1982-83 year Mr. Duffy personally handled five or six grievances and met with Administration members, as a member of the Association's negotiations committee, to engage in collective negotiations (1T 33, 34).

^{4/} All transcript citations are labeled with a T preceded by the transcript volume number.

4. The Association and the Board have contractually agreed upon the procedure by which teachers are to be evaluated. Evaluations are classified as either formative or summative.

The formative evaluation is designed to aid the teachers in their instruction techniques and focuses on particular areas which have been agreed upon at a pre-observation conference between the teacher and the supervisor. The major task of the supervisor is to record actual, observable events or behavior. Formative evaluations can only contain information concerning the specific classroom observation and they cannot be used to adversely affect a teacher's status.

Following the classroom observation, there is a post-observation conference in which the parties discuss the lesson, and whether the previously discussed lesson objectives were attained. Recommendations are then made to the teacher by the supervisor, to aid that teacher in fulfilling his objectives. After the post-observation conference, the supervisor documents the results of the classroom observation. The teacher may, if he desires, make comments on the evaluation form within ten days after the post-observation conference. ^{5/}

The summative evaluation consists of classroom observations and evaluations of a teacher's total performance as an employee. Prior to a summative evaluation being placed in a teacher's file, there must be a conference between the teacher and his supervisor concerning the evaluation. These evaluations include when pertinent, a report on a teacher's strengths and weaknesses as observed since

^{5/} According to the terms of the contract, non-tenured teachers are to receive three formative evaluations per year while tenured teachers shall receive formative evaluations at the discretion of the administration.

the last evaluation and specific suggestions as to measures the teacher might take to improve those areas where weaknesses are found. All tenured teachers must receive at least one summative evaluation per year while non-tenured teachers are to receive such an evaluation at least three times a year.

Summative evaluations are used in determining whether a non-tenured teacher is retained by the Board for the following year. They are also used in determining whether a teacher's increment is to be withheld. No increment shall be withheld however unless a teacher has received at least two consecutive negative evaluations. (1T 55, 2T 58).

5. Since receiving his tenure, Mr. Duffy has always received only one summative evaluation a year and that summative has always been preceded by a formative evaluation. Mr. Duffy's one summative evaluation always came at the end of the school year and all of them, at least from the 1977-1978 school year until the 1982-1983 school year, were positive.

On May 17, 1978, he received a formative evaluation from supervisor Robert Mollusky, which stated that the lesson was a good learning situation and that Mr. Duffy had held the students' interest and stimulated many interesting questions from those students. (CPD-4). ^{6/}

From September 1977 to June 1978, Mr. Duffy received one summative evaluation which was positive. His supervisor, Thomas E. Maisano, stated that he had had another fine year and that "He has demonstrated his conscientious planning abilities, organizational

^{6/} For the purpose of clarification, all documents submitted into evidence jointly will be referred to as "J" when concerning Mr. Duffy, and "JL" when concerning Mr. Lanchart. Those documents submitted by Mr. Duffy will be referred to as "CPD" and those documents submitted by Mr. Lanchart will be referred to as "CPL." Any documents submitted by the Board will be referred to as either "RD" or "RL."

abilities, varied teaching techniques and personal qualities in an admirable fashion." The only negative comment concerned Mr. Duffy's appearance and it was recommended that he dress in a more appropriate manner. (CPD-5).

On March 23, 1979, Mr. Duffy received a formative evaluation in which it was stated that he used excellent questioning techniques with questions that were stimulating and clear, and which prompted a good student response. Mr. Duffy was also commended for his good use of charts and the blackboard. (CPD-6).

From September 1978 to June 1979, Mr. Duffy received one summative evaluation from Robert Mollusky which was very positive. In this evaluation Mr. Mollusky stated that Mr. Duffy continued to do a fine job and that his classes were well-planned and well organized. He was commended for his art of questioning and his effective blackboard usage. It was also stated that Mr. Duffy motivated his students by using appropriate materials and varied teaching methods and that a learning atmosphere existed in his classroom because of an established disciplinary procedure. He was also commended for his cooperation with other science teachers and for offering his assistance whenever needed, and was deemed to be an asset to the science program (CPD-7).

On February 28, 1980, Mr. Duffy received another positive formative evaluation. His excellent use of questions was mentioned as well as the good student participation, and his use of good judgment and sensitivity (CPD-8).

During the 1979-1980 school year Mr. Duffy received one summative evaluation which was positive. He was classified as a teacher who was thoroughly prepared and who ran disciplined and well managed classes (CPD-9).

On April 1, 1981, Joseph Celauro, the building principal, conducted a formative evaluation and reacted very positively to Mr. Duffy's teaching methods and stated that the steps Mr. Duffy was taking to raise the academic standards were apparent throughout the lesson (CPD-10).

From September 1980 to June 1981, Mr. Duffy received one summative evaluation. This evaluation, also performed by Mr. Celauro, was very positive. Mr. Duffy was commended for the amount of time he devoted to the planning and organization of his lessons. He was also commended for his unique and effective use of detailed board outlines and was told that he had made good progress with his professional development plan for the school year (CPD-11).

On March 16, 1982, Mr. Duffy received another formative evaluation from Mr. Mollusky. The evaluation was positive and Mr. Mollusky recommended that Mr. Duffy continue to utilize the skills needed to maintain student interest and continue to plan and meet his objectives as he had done during this observation (CPD-12).

From September 1981 to June 1982, Mr. Duffy received one summative evaluation. Mr. Mollusky stated that during the year Mr. Duffy's lessons evidenced planning, organization, subject competency, enthusiasm, and sensitivity to the students' needs. It was stated as well that Mr. Duffy had gone out of his way to assist those students needing extra help and that he was to be commended for maintaining a learning atmosphere in his class. In concluding his evaluation, Mr. Mollusky stated that, "Your pride in yourself as a teacher, your sensitivity to your students' needs and your willingness to give of yourself have established you as an effective teacher." (CPD-13).

6. Prior to the 1982-83 school year, the Board hired

Edward Nemeth as a non-tenured Supervisor of Science Instruction (2T-2, 26). One of Mr. Nemeth's responsibilities was to supervise and evaluate the science department, of which Mr. Duffy was a member. During the 1982-83 year Mr. Nemeth performed four evaluations of Mr. Duffy - three summative and one formative (1T-40, 41). This was the first time that Mr. Nemeth had ever performed these types of evaluations (2T 30). He did not discuss these evaluations with the Science Department's previous supervisor, nor did he believe that the evaluations were to be done in any particular order (2T 30, 31). Mr. Duffy was the only member of the department to receive a summative evaluation before a formative (2T 32).

The first summative covered the period from September 1982 to December 1982 and was dated December 20 (J-2). It was written following two partial observations on October 8 and November 18, and one full observation on October 27 (2T-4). 7/

The evaluation was negative and critical of Mr. Duffy in several areas. Mr. Nemeth stated that Mr. Duffy's method of questioning too often focused on only one student, with the rest of the class losing interest, and that seldom were questions rephrased when not understood by a student. It was also mentioned that Mr. Duffy asked "right answer" questions rather than "open-ended" ones and that his questions did not vary in difficulty and were not used effectively. There was also a comment on the need of Mr. Duffy to make a greater effort to put into effect the techniques and behaviors of Mastery

7/ Mr. Nemeth and Mr. Duffy also had a meeting on December 3 where the two discussed the high failure rate in Mr. Duffy's classes, as well as Mr. Duffy's Mastery Learning Technique. Mr. Duffy informed him that he had sent deficiency notices to the failing students' parents. Mr. Nemeth believed that something more was required and asked Mr. Duffy to call these parents. Mr. Nemeth later learned that Mr. Duffy was calling parents and writing to those he could not reach by phone (2Ta, 43, 44).

Learning. 8/ This Mr. Nemeth explained could be achieved if the teacher would provide "multiple opportunities of varied modes of instruction."

Mr. Duffy had also had a large percentage of his class failing during this first grading period (1T 102, 103, 104, 2T 10), and Mr. Nemeth recommended that he continue to make efforts to confer with the parents of these students. Mr. Nemeth also suggested that a greater variety of assignments suiting the students' needs and a greater adaptation of the curriculum to meet the students' learning needs, would aid Mr. Duffy in his effectiveness. 9/

Mr. Duffy was also advised to examine his classroom disciplinary techniques in order to allow "promotion of efficient and constructive behavior patterns on the part of the students." This examination was prompted by Mr. Duffy's use of the term "spastic" in reference to a student who had been disrupting the class. 10/

8/ Mr. Nemeth testified that the Mastery Learning technique involved the taking of a concept and breaking it down into smaller parts thus enabling a student to fully learn the lesson being taught (2T-6).

9/ Both Mr. Duffy and his supervisor from the previous year, Mr. Molusky, admitted that a teacher who was failing 50% of his students in the first marking period, as was Mr. Duffy, was a cause for concern to the administration (1T 103, 182).

10/ The incident referred to took place in September and concerned a Special Education student who was in one of Mr. Duffy's science classes. Although the student was not mentally disabled, he did have a high energy level which caused him to tap loudly on his desk. He was asked by Mr. Duffy several times to stop the tapping and when he did not, Mr. Duffy called him a spastic (1T 118).

The child reported this to his parents and the parents then called the building principal to complain. Mr. Duffy then had two meetings with the principal over this incident and believed the matter was over (1T 120, 153).

There was some discrepancy over whether Mr. Duffy should have known that the child was classified as "Special Education." Mr. Duffy testified that he did not know the child's classification, and that had he known he would not have used the term (1T 117, 118). Nemeth admitted that the teachers were not told when they had Special Education students in their classes but stated that information pertaining to these students was available, and that Duffy should have

(continued)

Mr. Nemeth concluded his evaluation by remarking that "...considering your years of service and experience, you do not exhibit the teaching skills which should be in place at this stage of your career. The negative aspects of your actions may even play a role in students not selecting to continue their science education at the high school level." Mr. Nemeth also stated that he would provide frequent observations and conferences in order that Mr. Duffy might improve his teaching performance.

7. Mr. Duffy received the first summative evaluation the day before Christmas vacation and met with Mr. Nemeth following the vacation (1T 51) 11/ At this conference Mr. Duffy expressed his disagreement with the evaluations and told Mr. Nemeth that he had been criticized in areas where he previously had been commended. Mr. Duffy asked if he could sit in on some of Mr. Nemeth's classes to see how he conducted them. Mr. Nemeth declined (1T 53). The two later agreed however that Mr. Nemeth would conduct a series of formative evaluations which would address those areas that concerned him (1T 53).

10/ (continued) known (2T 8, 48, 49). Nemeth also admitted however that there was a chance that this information was not made available until sometime after the incident had occurred (2T 50).

11/ Mr. Duffy attached five pages of comments onto this evaluation. He stated that Mr. Nemeth's remarks caught him by surprise and that he had had no inclination that Nemeth believed his teaching performance was sub-par until he received the evaluation. He then commented on each of the points raised by Mr. Nemeth and concluded that he hoped this evaluation had nothing to do with the anti-union feelings existing in the district.

Mr. Nemeth responded to this claim in a memo dated December 21, 1982. He stated that, "...the intent of the Summative is an evaluation of your classroom activities with the focus on improving classroom instruction for the thorough education of your science students. Any union activity in which you participate is strictly your concern." (RD-1).

8. On January 27, 1983, Mr. Nemeth observed Mr. Duffy's class and wrote his formative evaluation (J-2). This evaluation was positive and Mr. Nemeth concluded his remarks by recommending that Mr. Duffy continue to implement the suggestions outlined in the first summative evaluation.

9. Subsequent to the above evaluation, Mr. Duffy and Vincent Giordano, an N.J.E.A. representative, Charles Juris, the superintendent, and Joseph Celauro, the high school principal, met to discuss Mr. Duffy's first negative summative evaluation (1T 56, 57). At this meeting Mr. Duffy told the superintendent that he did not believe the evaluation was accurate and pointed out that his previous evaluations had all been excellent.

10. After this meeting Mr. Duffy approached Mr. Nemeth and asked when another formative evaluation could be scheduled. Mr. Nemeth told him that there was no need for another formative until Mr. Duffy would take responsibility for the criticisms he had made in the first summative (2T 14). Mr. Nemeth suggested that they video tape one of Mr. Duffy's classes so that they both could make observations together, however Mr. Duffy declined (1T 130, 2T 14, 15). ^{12/}

12/ Both Mr. Duffy and Mr. Nemeth disagreed as to whether, after the first summative evaluation, they had agreed to a series of formative evaluations. Mr. Duffy testified that the two had agreed to a series of formative evaluations and his comments attached to J-1 support that understanding. In those comments he stated, "In our discussion of the evaluation, we agreed that Mr. Nemeth and I would schedule formative evaluations over the next one to two months."

The undersigned believes that the two had agreed to a series of the formative evaluations in light of Mr. Duffy's testimony and the fact that immediately following their discussion Mr. Duffy wrote this on his comments. In further support is the fact that Mr. Duffy approached Mr. Nemeth on several occasions asking him to schedule another evaluation.

Mr. Nemeth not only testified that he declined to do another formative evaluation because he did not feel that Mr. Duffy would benefit from it until he admitted the truth of Mr. Nemeth's criticism but also because he believed that after the formative evaluation, Mr.

(continued)

11. On April 11, 1983, Mr. Nemeth visited one of Mr. Duffy's classes unannounced and observed it for the full period. (2T 11, 16, 17). Following this observation Mr. Nemeth performed a second summative evaluation covering the period from January 1983 to April 1983 (J-3). In this evaluation there were several criticisms of Mr. Duffy's teaching. He first criticized Mr. Duffy for wasting too much time as he fumbled through a bag containing fossils. He stated that advanced preparation would have avoided any problems. He also criticized Mr. Duffy for his questioning technique and stated that he lectured too much and did not provide a student-centered atmosphere. He also found fault with Mr. Duffy's use of the blackboard and stated that too many notes were placed upon it, making it difficult for the students to concentrate. He finally stated that Mr. Duffy had begun to contact parents of failing students as he had earlier suggested, and that there was a general decrease in the number of students failing the second marking period, however he also mentioned that he had received no evidence that this practice had continued during the subsequent marking periods.

Mr. Nemeth concluded his remarks by stating that, "...the implementation of the recommendations for good teaching mentioned in the last summative through proper planning and pre-selection of teaching and questioning techniques has neither occurred with satisfaction or regularity," and that, "Although some minimal efforts have been made, in my judgment your performance remains unsatisfactory."

12/ (continued) Duffy had corrected those deficiencies found by Mr. Nemeth and knew what had to be done (2T 14). It is apparent then, that at least the thought of doing a second formative evaluation had entered Mr. Nemeth's mind but for the above reasons he declined to conduct one. I believe he entertained this thought because of an understanding reached between the two and then failed to comply.

12. On April 21, 1983, the superintendent, sent Mr. Duffy a letter informing him that because of numerous deficiencies found in his evaluations, the Board might call for a withholding of his increment for the 1983-84 school year, unless those deficiencies were corrected (J-5). This letter was sent to Mr. Duffy without the superintendent first discussing the evaluations with Mr. Nemeth (2T 59, 60). In fact Mr. Nemeth admitted that he had no discussion with the superintendent at any time after the April evaluation was performed.

Following this notice, Mr. Duffy sent a letter to Mr. Juris asking him to detail those areas where he was found to be deficient, and on May 5, 1983, Mr. Juris addressed a letter to Mr. Duffy in which each deficient area was treated specifically (J-6). Those areas and the superintendent's comments are as follows:

- a) Makes realistic provisions for differences in abilities.
If you will turn to your evaluation of December 20, 1982, you will find on page 2, paragraph 2: "Greater variety of assignments according to student needs and greater adaptation of the curriculum to meet the learning needs of pupils" ...
- b) Plans and provides for involvement of students in planning, selection, and evaluation of program wherever possible.
Turn to your evaluation of April 14, 1983, page 1, paragraph 3: "A more student-centered atmosphere"...
- c) Wherever possible individualize instruction according to the learning style of each student.
Evaluation of December 20, 1982, page 2, paragraph 2: "Greater variety of assignments according to student needs and greater adaptation of the curriculum to meet the learning needs of pupils"...
- d) Uses prompt and frequent feedback to make learning tasks meaningful.
Evaluation of December 20, 1982, page 2, paragraph 1: "A greater use of formative and corrective exercises, and more frequent feedback would be appropriate.

- e) Conducts effective discussion.
Evaluation of April 14, 1982, page 1, paragraph 3: "When an 'open-ended' question is posed, students are rarely allowed sufficient time to answer before you lapse back to a lecture mode."
- F) Provides opportunities for students to develop qualities of leadership and self direction.
Evaluation of December 20, 1982, page 2, paragraph 3: "A closer look at various classroom disciplinary techniques which will allow promotion of efficient and constructive behavior patterns on the part of the students"...
- g) Varies assignments according to students needs.
Evaluation of December 20, 1982, page 2, paragraph 2: "Greater variety of assignments according to student needs"...
- h) Inspires students to participate in discussion and activities.
Evaluation of December 20, 1982, page 1, paragraph 2: "Your method of questioning often focuses on one particular student in the class. As the target student is questioned, the rest of the class lose interest and inspiration to participate in the activity, thus group cohesiveness is discouraged and motivation becomes negative."
- i) Motivates differentially according to differences that exist from child to child and in the same child from time to time.
Evaluation of April 14, 1983, page 1, paragraph 3: "A more student-centered atmosphere"... should be provided.
- j) Questions frequently are open-ended rather than questions with "right" answer.
Evaluation of December 20, 1982, page 1, paragraph 2: "Most of the questions observed are categorized as 'right answer' types rather than 'open-ended'."
Evaluation of April 14, 1983, page 1, paragraph 3: "...you still rely too much on the lecture technique with most of the questions classified as 'one-word,' 'right answer' types rather than the more stimulating 'open-ended' questions."
- k) Accepts personal problems or handicaps with consideration, understanding and sympathy.
Evaluation of December 20, 1982, page 2, paragraph 3: "This examination of your techniques is warranted to avoid the use of terms such as "spastic" while maintaining classroom discipline.
- l) Maintains good but professional rapport with the students.
Evaluation of December 20, 1982, page 2, paragraph 3: Your evaluator cites that there is a need for you to create a

classroom atmosphere which would provide for your "generating warmth, understanding and a professional rapport with students."

- m) Recognizes, analyzes and attempts to correct causes of group or individual unrest.

Evaluation of December 20, 1982, page 2, paragraph 3: "A closer look at various classroom disciplinary techniques which will allow promotion of efficient and constructive behavior patterns on the part of students..."

- n) Confers with individual parents regarding their child's work and development.

Evaluation of December 20, 1982, page 2, paragraph 2: "...continue to make efforts to confer with individual parents of the large percentage of failing students.

Evaluation of April 14, 1983, page 2, paragraph 2: "However, no evidence suggests that this practice has continued during the subsequent marking periods."

- o) Utilizes such human relation techniques as acceptance, praise and humor when warranted.

Evaluation of December 20, 1982, page 2, paragraph 3: In pointing out areas where improvement has to occur, the evaluator suggests that you need to develop an atmosphere which will generate "warmth, understanding and a professional rapport with students."

- p) Is calm and mature in his reactions (has self-control; able to cope with unexpected; responds positively to constructive criticism).

Evaluation of April 14, 1983, page 2, paragraph 3: "In general, the implementation of the recommendation for good teaching mentioned in the last summative through proper planning and pre-selection of teaching and questioning techniques has neither occurred with satisfaction nor regularity."

- q) Endeavors, whenever possible, to use the results of instruction in terms of student achievement to improve instruction.

Evaluation of December 20, 1982, page 2, paragraph 1: "A greater use of formative and corrective exercises, and more frequent feedback would be appropriate."

After this letter of warning, Mr. Nemeth did not ask to meet with Mr. Duffy to discuss anything concerning it, because he felt that Mr. Duffy would not be receptive to that idea (2T 63).

13. In June of 1983, Mr. Nemeth conducted a final summative

evaluation covering the period of September 1982 to June 1983 (J-4). Between April 14, 1983, when Mr. Nemeth last observed a class of Mr. Duffy's and in June when Mr. Nemeth prepared his final summative evaluation, Mr. Nemeth observed Mr. Duffy's class on one occasion on June 6, (2T 64). 13/

In this final evaluation Mr. Nemeth stated that Mr. Duffy had maintained a lesson plan book which Mr. Nemeth reviewed every week, promptly completed written reports, attended department and general faculty meetings, maintained a written record of student grades, communicated via phone or letter with parents of failing students, included Career Education lessons on a periodic basis, and supervised the hallways. He also stated that in compliance with Mr. Duffy's "P.D.P." he had planned a single concept demonstration for viewing by a seventh and eighth grade audience.

Mr. Nemeth also criticized Mr. Duffy in several areas. He stated that in the next year he should focus upon a dedicated incorporation of Mastery Learning Techniques in order to decrease the high number of failing students. He also suggested that he schedule more quizzes in order to insure that students had learned previously discussed concepts and that there should be in-depth reviews of all tests before going on to a new subject. He also criticized Mr. Duffy for his use of the chalkboard which he characterized as "cluttered with copious amounts of near illegible notes."

There were also other areas in which Mr. Nemeth found fault. Those areas included Mr. Duffy's typed notes and information

13/ Mr. Nemeth admitted that he thought it was possible for Mr. Duffy to improve his teaching performance enough between April and June to avoid an increment withholding, however he still only observed his class once during that period and confined the rest of his evaluations to a weekly reading of Mr. Duffy's lesson plan book (2T 65).

sheets which he stated should utilize wider margins, larger print and greater space between the lines. Mr. Duffy was also criticized for his storage of chemicals and equipment, and it was stated that he should engage in productive dialogue with his fellow science teachers. Mr. Nemeth concluded his evaluation by saying, "You are in receipt of the Superintendent's letter outlining performance deficiencies. To date, you have failed to satisfy our concerns relative to those areas and need to address corrective action to improve."

14. On June 17, 1983, the superintendent sent a letter to Mr. Duffy informing him that on the day before, the Board had voted to withhold his 1983-84 employment and adjustment increment (J-7).

15. During the 1982-83 school year the Board and the Association were negotiating for a new contract. No agreement was reached however and the teachers started the 1983-84 year without a contract (1T 13). The relationship between both parties was very poor (1T 11, 32) and in early November the teachers went out on strike (1T 14). Mr. Duffy was a named defendant in a suit instituted by the Board as a result of this strike (1T 33). Two memos were distributed by the superintendent in early December to all of the teachers, which were highly critical of the Association and its affiliate, the New Jersey Education Association (CPD-2, CPD-3).

Following the strike, the relationship, while not particularly amorous, has improved (1T 26). ^{14/}

14/ Mr. Duffy testified that after the strike, he met with the high school principal, Mr. Celauro, who told him that he had been hurt the most by his involvement in the Association and when Mr. Duffy said, "Sure, my increments have been withheld," Mr. Celauro responded, "Yes, of course." (1T 39, 40).

The Board did not cross-examine Mr. Duffy on this testimony nor did it present Mr. Celauro as a witness. The undersigned finds Mr. Duffy's testimony credible and believes that this conversation took place.

Analysis

In Township of Bridgewater v. Bridgewater Public Works Association, 95 N.J. 235 (1984) the Supreme Court affirmed the Commission's use of the standard to be utilized when discriminatory action is alleged and when the employer offers a legitimate business justification for its action, enunciated in Wright-Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980) and adopted by the United States Supreme Court in NLRB v. Transportation Mgt. Corp., U.S. , 103 S.Ct. 2469, 76 L.Ed. 667 (1983). In these cases the Supreme Court stated that:

...the employee must make a prima facie showing sufficient to support the inference that the protected union conduct was a motivating factor or a substantial factor in the employer's decision. Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action. Transportation Management, supra, U.S. at , 103 S.Ct. at 2474, 76 L.Ed. 2d at 675. Once that prima facie case is established, however, the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity. Bridgewater 95 N.J. at 242.

The undersigned now turns to the facts as they concern Mr. Duffy and applies them to the standard found in Bridgewater. In order to establish a prima facie case it must first be apparent that Mr. Duffy was engaged in a protected activity and that the Board knew of this activity.

The record clearly shows that Mr. Duffy has been an Association member for eighteen (18) years, a faculty representative since 1969, the Association's recording secretary in its Executive Council, a member of the Association's negotiation committee for the last twelve (12) years, and the grievance co-chairperson for the 1982-83 school year. The Board and the Association engaged in collective negotia-

tions during 1982-83 which both parties classified as "bitter," and the Board knew full well that Mr. Duffy was a member of the Association's team. The record also indicates that Mr. Duffy represented teachers in at least (5) grievances before the Board in 1982-83.

In order to establish his prima facie case, Mr. Duffy must also show that he was discriminated against and that his protected activity was a substantial or motivating factor in this discriminatory act. Mr. Duffy was denied his increment for the 1983-84 school year based upon his negative evaluations in 1982-83. In the years since receiving his tenure, Mr. Duffy received one formative and one summative evaluation per year, the formative preceding the summative, and these were all positive. The summative evaluations also always came at the end of the year. In 1982-83 he received one formative and three summative evaluations, a summative preceding the formative, and the summatives were highly critical and negative. No other teacher received more than one formative and one summative evaluation in 1982-83, and the formative always preceded the summative. Additionally, Mr. Celauro, the high school principal, mentioned to Mr. Duffy that his increment had been denied because of his union involvement. 15/

The undersigned is convinced that Mr. Duffy has made a prima facie showing sufficient to support an inference that his protected activity was a motivating factor in the Board's decision to deny him his increment. The undersigned now must investigate whether the Board would have taken the same action even in the absence of Mr. Duffy's protected activity.

15/ While this statement is not necessarily dispositive, it certainly is another indication in aiding Mr. Duffy's prima facie establishment and certainly creates a clear nexus between Mr. Duffy's union activity and his increment denial.

The Board states that the reason why Mr. Duffy was denied an increment in 1983-84 was because of his poor teaching performance in 1982-83. It claims that Mr. Duffy was made aware of his deficiencies as early as December 20, 1982, and that for the rest of the year he showed little or no improvement in any of these deficiencies. It was also stated by his supervisor, Mr. Nemeth, that the reason why Mr. Duffy received so many evaluations in 1982-83 as opposed to the teachers in the Science Department, and why he received a summative evaluation in December was because he observed no deficiencies in the other teachers after observing them. Only Mr. Duffy's poor performance warranted such treatment.

While it is true that a teacher exhibiting the deficiencies recorded in Mr. Duffy's evaluations may in fact be a strong candidate for an increment denial decision, there are too many inconsistencies which require closer examination.

In Mr. Duffy's first summative evaluation he was severely criticized in the following areas: a) his questioning techniques; b) his Mastery Learning; c) his lack of a varied method of instruction; d) his large percentage of failing students; and e) his disciplinary techniques where he was asked to examine his use of the word "spastic" in referring to one of his students. In his second summative evaluation, Mr. Duffy was criticized in the following areas: a) his lack of advanced preparation as evidenced by his having to fumble through a bag of fossils before finding the correct one to present to the class; b) his poor questioning techniques; and c) his practice of placing a copious amount of notes on the blackboard. He was commended for contacting parents of failing students and was told that this effort may have helped his students to improve their

low averages. The evaluation also stated that his classes still continued to evidence a lack of planning and further that his efforts to correct his "deep-seated deficiencies" were only superficial. In Mr. Duffy's final summative evaluation, it lists several of his accomplishments including the fact that he had communicated with parents of failing students. Mr. Duffy was also advised however, to: a) focus upon a dedicated incorporation of Mastery Learning Techniques into his planning and teaching strategies in order to decrease his failure rate; b) conduct frequent quizzes and review each test to insure that the students have fully grasped the concept; c) correct his use of the blackboard; d) type all of his correspondence to parents and use wider margins in the papers distributed to his students; e) clean the storage room containing chemicals and papers; and f) engage in productive dialogue with the other department members.

For the previous seventeen years Mr. Duffy received positive and sometimes glowing evaluations. In those evaluations dating from 1978 to 1982, and introduced into evidence, Mr. Duffy was commended for a variety of different reasons. Several times he was praised for his questioning techniques and his use of the blackboard. It was mentioned in every evaluation that Mr. Duffy's classes were well planned and organized and that he was thoroughly prepared. It was mentioned as well that he displayed a wide variety of teaching techniques, always promoted a learning atmosphere in his classes, cooperated with other staff members, and conducted a well disciplined and managed class. In his summative evaluation for 1981-82, Mr. Duffy was labeled an "effective" teacher.

The undersigned is hardpressed to see how a teacher could, for so long, be such a highly evaluated teacher and then one year

have such "deep-seated" deficiencies, especially in some of the exact areas in which he had been previously praised. While it is true that the 1982-83 evaluations were performed by an individual new to the school district, I do not believe that two individuals would have had such drastic impressions of the same man's teaching performance in just one year's time. This difference of impressions is made all the more telling when one considers that Mr. Duffy's other evaluations were not all performed by the same individual.

There are other troublesome factors. In his first summative evaluation in December 1982, Mr. Duffy was criticized for his large percentage of failing students. Both Mr. Duffy and his previous supervisor testified that a teacher who was failing 50% of his students in the first marking period, as was Mr. Duffy, was a cause for concern to the administrator and believed this criticism to be valid. While this was a legitimate concern of the Board's, the undersigned notes that this situation was rectified in later marking periods, and it was mentioned by Mr. Nemeth that Mr. Duffy's efforts to communicate with the parents of these students affected this result. This then should not have been a factor in the Board's decision to deny Mr. Duffy his increment. It was, however, and was one of the deficiencies mentioned by the superintendent in his letter to Mr. Duffy on May 5, 1983.

Mr. Duffy also admitted that his use of the word "spastic" in referring to a special education child was serious and cause for alarm. The record indicates that at the time the term was used Mr. Duffy did not know that the child was special education and further that Mr. Duffy had had a conference with the principal over the situation and apologized for having made the remark. This was also a factor in the Board's decision to deny Mr. Duffy his increment even

though there were no other instances similar to this one for the rest of the year.

Equally important is the manner in which the decision to deny Mr. Duffy's increment was made. Mr. Nemeth admitted that after the first summative evaluation, he never discussed it with the superintendent, however he did discuss it with the principal, Mr. Celauro, who expressed no surprise at the discrepancy between previous evaluations and the one performed in December 1982 (2T 47). ^{16/} Mr. Nemeth also admitted that he had no discussions with the superintendent at any time after the second summative evaluation was performed. He also admitted that even though he thought there was a chance that Mr. Duffy's performance could have improved enough to avoid his increment denial between April and June, he still only observed his class one time. It is difficult for the undersigned to believe that a decision like this would be made, considering the fact that Mr. Duffy was such a highly evaluated teacher for such a long period of time, without the superintendent at least making inquiries of Mr. Nemeth. While Mr. Nemeth stated that he spoke with the assistant superintendent on June 6, 1983, and reported that he had seen no improvement, in Mr. Duffy's teaching performance, he did not know if this information was passed on to the superintendent (2T 26).

There obviously was some communication gap. In reviewing the superintendent's letter of May 5, 1983, to Mr. Duffy in which he

^{16/} This in itself is hard to believe especially when considering that Mr. Celauro performed Mr. Duffy's summative evaluation covering September 1980 to June 1981 in which he stated, "...you devote much time to the planning and organization of your lessons. In general your lessons set clear objectives and are unique in their effective use of board outlines. Your use of a variety of instructional materials and techniques also make them effective." Mr. Celauro also indicated that, "There are some activities which are indicative of the extra lengths you go [to] to provide for your pupils progress." (CPD-11).

detailed deficiencies he included that Mr. Duffy was deficient in conferring with parents regarding their children's work and development. We know that in the final evaluation Mr. Nemeth stated that Mr. Duffy had been communicating with parents, but we do not know if the superintendent was made aware of this corrected deficiency, or if the Board considered it on June 16, 1983, when it made its decision to withhold the increment.

Another disturbing consideration was the agreement between Mr. Duffy and Mr. Nemeth after the first summative evaluation. Mr. Duffy stated that the two had agreed to a series of formative evaluations before another summative was performed. Mr. Nemeth even stated in the first summative that "frequent observations and conferences will be provided in the effort to improve upon the recommendations included within this evaluation." Only one formative evaluation was performed between the first and second summative. Mr. Nemeth stated that after the formative on January 27, 1983, he was satisfied that Mr. Duffy knew what had to be done, even though Mr. Duffy continued to ask for more formative evaluations. Mr. Nemeth also stated that until Mr. Duffy would admit that he was deficient in the areas noted, he saw no need to schedule any more formative evaluations. He knew however after the first evaluation that Mr. Duffy found fault with his evaluations, and he still consented to further observations and conferences.

Mr. Nemeth stated as well that he did not want to schedule any more formative evaluations because he knew that Mr. Duffy would prepare for these observations and address those areas in particular, where Mr. Nemeth found him to be deficient. He stated that his intuition was correct in that when he observed Mr. Duffy unannounced,

Mr. Duffy's performance was deficient. Even if this were the case, it should not have prevented Mr. Nemeth from making more unannounced observations and then conferring with Mr. Duffy, as he said he would do.

In reviewing the record in this matter and reviewing the Board's business justification for denying Mr. Duffy his increment, as well as the bitter relationship between the Board and the Association, the undersigned is not convinced that the same action would have taken place even absent Mr. Duffy's presence on the Association's negotiation team and position as a grievance co-chairperson. For the above reasons the undersigned recommends that the Commission find that the Board committed violations of subsection 5.4(a)(3), and derivatively (a)(1), when it discriminated against Mr. Duffy for engaging in protected activity and denying him his increment for the 1983-84 school year.

Concerning the charge of Norman Lanchart, upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Norman Lanchart is a health and physical education teacher for grades 6-8 at the Lincoln School. He has been a teacher in Ridgefield Park for seventeen (17) years (2T 75) and is a member of the Association. For five of the last six years Mr. Lanchart has been a faculty representative (2T 76). As a faculty representative he assists those teachers with problems, has access to teacher mailboxes and distributes Association documents, is a member of the advisory council consisting of both Association and administration members at Lincoln School, and attends Association rallies (2T 76, 3T 16). He also was the coordinator of strike activities during the strike in November 1983.

Mr. Lanchart was denied his employment and adjustment increment for the 1983-84 school year.

2. In the 1982-1983 school year Mr. Lanchart received four summative evaluations and one formative (2T 83). Generally formative evaluations preceded summatives (3T 81). In prior years, at least since 1977, he received only one summative evaluation per year (2T 82, 3T 82) and to the date of the hearing had yet to receive either a formative or a summative evaluation for the 1983-84 school year (2T 83, 3T 109).

From 1977 to the 1982-83 school year, Mr. Lanchart received consistently positive evaluations.

On May 7, 1978, Mr. Lanchart received a summative evaluation containing positive comments on his teaching ability as well as his willingness to cooperate with other staff members (CPL-1). This evaluation was followed by a formative dated June 20, 1978 which was also positive (CPL-4). On May 31, 1978, he received a summative which commented very positively on his teaching abilities which included as well, comments stating that he had shown considerable growth in his dealings with students and staffs and improvement in his disciplinary procedures (CPL-2).

On April 15, 1980, Mr. Lanchart received a formative evaluation where he was commended for the conduct of his class during the period (CPL-3). On June 16, 1980, he received another favorable summative evaluation covering the period of September 1979-May 1980. It was stated that Mr. Lanchart had made considerable progress in dealing with student behavior and that his contacting of parents regarding students for reason of commendation or problems should continue (CPL-5).

During the 1980-81 school year Mr. Lanchart received one

formative and one summative evaluation. Both the formative (CPL-6) and the summative (CPL-7) were positive and remarked favorably upon his teaching skills.

Mr. Lanchart also received one formative and one summative evaluation for the 1981-82 school year. The formative evaluation, dated May 12, 1982, was positive and stated that Mr. Lanchart had a good rapport with his students and that he was able to motivate them to take part in discussions (CPL-8). The summative evaluation, covering the period from September 1981 to May 1982, stated that Mr. Lanchart maintained a well balanced program, maintained a good feeling in his classes with good discipline, spent extra time with those students needing help, worked cooperatively with faculty and administration, and that he spent time calling parents and informing them of their children's progress. The only area of criticism was a recommendation that he be cautious of students wearing jewelry in the gym (CPL-9).

All of the above evaluations except during the 1981-82 year were performed by Mr. Mark John Ranone, the principal of the Lincoln School (3T 36). He has known Mr. Lanchart for at least seven years and has enjoyed a good relationship with him both personally and professionally for most of that time (2T 84, 3T 35, 37). In the 1982-83 year however both testified that their relationship changed (2T 84, 3T 37).

3. In April 1982, there were community-wide discussions over whether or not to construct a middle school in Ridgefield Park, an idea with which both the Board and the Association approved. Apparently a large number of the public disapproved of the idea and formed cottage parties to drum up support for their positions. At a

public Board meeting at which the middle school was defeated, a member of the public, George Fosdick, made a speech in which he commended the Board for their actions (3T 17, 18). Mark Press, president of the Association, applauded Mr. Fosdick's speech, and Mr. Ranone voiced his objection to Mr. Press' showing of support. Mr. Ranone told several teachers that he was surprised that the Association president would applaud a position against the new school, which if built, would insure more jobs for teachers (3T 19, 38). 17/ Mr. Lanchart relayed these remarks to Mr. Press and Mr. Press called Mr. Ranone. The two had a heated discussion (3T 19, 39). It was Mr. Lanchart who took it upon himself to set the two together following this discussion, and mediated their dispute (3T 18). 18/

17/ Mr. Press testified that while he philosophically opposed the position taken by Mr. Fosdick, he applauded him because he was a friend and believed that he had articulated his points very well (3T 18).

18/ Mr. Ranone testified that the matter was ultimately worked out after both he and Mr. Press met with the superintendent, however he does not deny that Mr. Lanchart was active in bringing the two together (3T 39).

Mr. Lanchart testified that as a result of this incident, Mr. Ranone's attitude toward him changed considerably (2T 86). He testified that Mr. Ranone made fun of him in front of his students (2T 87), that he allowed other teachers to take their classes out on the playground disrupting his own classes (2T 87), that Mr. Ranone failed to order needed equipment for his physical education classes, and that Mr. Ranone failed to have leaking pipes and a cracked window fixed when Mr. Lanchart complained about them. (2T 88, 89).

I am not inclined to credit this testimony however in light of the fact that Mr. Ranone testified credibly that the matter concerning Mr. Press had been dropped and that he had even invited both parties to his home, along with other members of the teaching staff, for a dinner in June of 1982 (3T 39). I am also not inclined to credit Mr. Lanchart's testimony based upon his demeanor throughout the hearing. He was often evasive in his response to questions and quite often appeared confused. He frequently asked that questions be repeated, was inattentive, and appeared rather nervous.

4. In the 1982-83 year Mr. Press joined the teaching staff at Lincoln School. In early October of 1982, Mr. Lanchart took both his class and Mr. Press' class out on the playground while Mr. Press went to the high school to pick up some science equipment. Mr. Ranone noticed that there were two classes on the playground supervised by one teacher (2T 110, 111, 3T 41, 42) and he later approached both Mr. Press and Mr. Lanchart about the incident. Mr. Press said that he thought his class was covered, however Mr. Ranone told Mr. Lanchart that Mr. Lanchart should not have been supervising both classes alone, without first receiving his permission (3T 41, 42).

On October 7, 1982, Mr. Ranone sent a memo to Mr. Lanchart stating that:

I expect as in the past, all changes of schedules which involve anything, to be checked and approved by my office prior to commencing activity.

While I agree and am supportive of tournaments to enhance and add vitality to the physical education program, I will not tolerate or support any changes of schedule which do not provide maximum supervision for the students (R-L 1).

Mr. Ranone testified credibly that this incident was never mentioned again in any of Mr. Lanchart's evaluations, because he believed the matter had been handled (3T 43). 19/

5. Mr. Lanchart received his first summative evaluation on March 8, 1983 (J-11). This evaluation was not the result of a series of classroom observations but rather concerned one incident. No comment concerning Mr. Lanchart's teaching ability was made. 20/

19/ Mr. Press did not receive a similar memo because Mr. Ranone felt that he had not actually committed any wrong, believing that his class was adequately supervised (3T 42).

20/ Mr. Ranone in fact admitted that the evaluations for 1982-83 were written not because he found any fault with Mr. Lanchart's ability as a classroom teacher but because he was deficient in other areas (3T 73).

This evaluation was out of the ordinary and was a change in the way evaluations for Mr. Lanchart had previously been performed (2T 91, 92, 3T 81, 82). 21/ On the evaluation itself, Mr. Ranone stated that the evaluation was being written up because of the seriousness of the "offense."

The incident concerned a student of Mr. Lanchart's who was referred to as a "classified" student, or one with problems stemming from the fact that he had no male role model at home. The child's mother had requested that he be placed in the Lincoln School and in the preceding summer the mother and child met with Mr. Ranone on several occasions. The child was having problems throughout the year in showing good judgment and was also having problems in Mr. Lanchart's class (2T 91, 3T 43, 44). On February 11, 1983, a new student entered Mr. Lanchart's homeroom and Mr. Lanchart asked the boy having difficulties to show the new student where the bathroom was located. 22/ The two were "fooling around" and causing a disturbance and another teacher told them to stop and go back to their classroom. This teacher, Mr. Wejnert, then reported the incident to Mr. Ranone who sent a note to Mr. Lanchart questioning his judgment in using that particular boy to show another student around the building (3T 45).

Rather than first discussing the incident with Mr. Ranone, Mr. Lanchart called the child's mother and showed Mr. Ranone's note

21/ Mr. Ranone testified that he generally performed a formative evaluation before a summative and that he normally only gave Mr. Lanchart one summative per year at the end of the year. He testified as well however that he had, in the past, given summatives to other members of the staff at some other time in the year when he felt it necessary (3T 81, 82).

22/ Mr. Lanchart testified that he chose this particular boy because he knew he was having difficulties, and used this situation to offer him some encouragement (2T 91).

to the child. The child became very upset. His mother called Mr. Ranone very angry that Mr. Lanchart had shown the boy the note and she asked that this not happen again. Mr. Ranone then met with Mr. Lanchart and told him about the mother's call and her request that her son not be involved in this type of situation again. He also expressed surprise that Mr. Lanchart took the actions that he did. On March 8, 1983, Mr. Ranone prepared a summative evaluation in which he declared that he found Mr. Lanchart's behavior to be "totally unprofessional and unethical." 23/

6. On March 10, 1983, Mr. Lanchart received his second summative evaluation (J-2L). There were five items noted by Mr. Ranone, 24/ The first criticized Mr. Lanchart for failing to sign

23/ The evaluation also reflects that there was another conference conducted concerning this incident on March 4, 1983 in which Mr. Ranone, Mr. Lanchart and a union representative were present.

Some time after this evaluation, Mr. Lanchart asked for a conference with Mr. Ranone, the boy, and his mother. When no time could be agreed upon, Mr. Lanchart approached the boy and asked him if he knew what was going on. When the boy told his mother about Mr. Lanchart's questioning she wrote a note to Mr. Ranone in which she said, "If anything further occurs between now and complete resolution of the problem I will remove Arthur from school until I receive an iron-clad guarantee that Mr. Lanchart will no longer be involved, in any way, with my son." (RL-2)

On that same day, following a meeting with Mr. Lanchart, Mr. Ranone issued a note to Mr. Lanchart which read:

At a meeting held in my office at 11:43 a.m. on April 13, 1983, I shared with you the attached note from Mrs. Morton. I have directed you on three previous occasions not to involve the students in matters of this nature.

I find that it is still happening and I also find this to be insubordination (RL-3).

24/ These items had already been discussed with Mr. Lanchart at the meeting on March 4, 1983. Following that meeting Mr. Ranone issued two summative evaluations: the one dealing with the boy which Mr. Ranone deemed serious enough to warrant an evaluation all by itself, and J-2L.

the late slip after arriving late to school on February 16, 1983. A memo was placed in Mr. Lanchart's mailbox advising him that he had failed to sign the slip. Mr. Ranone stated that students and teachers heard him comment on the memo and that his remarks were "appalling." ^{25/}

Mr. Lanchart was also criticized for his sloppy work habits. Mr. Ranone commented on how notes from Mr. Lanchart had been written on torn scraps of paper and that a mid-term examination was turned in for approval to his supervisor, which Mr. Ranone deemed to be unsatisfactory. Mr. Ranone also criticized Mr. Lanchart for taking two of his students out of his class to run off dittos concerning Association matters as well as a personal memo to Mr. Ranone. ^{26/} Mr. Lanchart was also criticized for his written and spoken English and told that the notes sent to Mr. Ranone showed a lack of mastery of basic English skills.

Mr. Lanchart was finally criticized for an incident in which he brought two students to Mr. Ranone's office and proceeded to discipline them in tones loud enough to cause another teacher to ask them to leave. This evaluation was concluded with Mr. Ranone stating that, "...I find your behavior to be totally unprofessional, unethical and unbecoming a teacher." Additionally Mr. Ranone stated that, "For

^{25/} In this first item Mr. Ranone also stated that Mr. Lanchart had made remarks to other teachers referring to Mr. Ranone as a "clown." Mr. Ranone testified however that this item was dropped after Mr. Lanchart denied having said it and that he had told both the superintendent and the Board that this matter had been dropped. (3T 91, 92).

^{26/} In his testimony Mr. Lanchart first admitted to having students run off Association material for him (2T 150), and then he stated that he could not recall whether he had or not (2T 150, 151). He finally testified that he had never given students Association information to run off (2T 152). In light of this complete contradiction the undersigned must conclude that Mr. Lanchart was attempting to cover up the fact that his first admission was true, and I do not credit his contrary testimony.

these deficiencies and others I am recommending to the Superintendent of Schools, Mr. Juris, the withholding of employment and adjustment increments for the 1983-84 school year. During this time, Mr. Ranone approached Mr. Press and asked him to speak with Mr. Lanchart about the "lousy" job he was doing in that year (3T 34, 59). ^{27/}

7. In the latter part of March, Mr. Ranone, Mr. Lanchart, and Mr. Giordano, N.J.E.A. representative, met to discuss the first two evaluations (2T 98, 99). This meeting did not go well and harsh words were spoken (2T 99).

8. On May 11, 1983, Mr. Ranone observed Mr. Lanchart's class to conduct a formative evaluation (J-3L). The evaluation was basically positive and Mr. Ranone stated that Mr. Lanchard had,

27/ At some time prior to the issuance of this evaluation, Mr. Ranone met with Mr. Lanchart and Mr. Press, who had been asked by Mr. Lanchart to attend this meeting as his representative. The time of this meeting is in question however since Mr. Lanchart claimed that it took place at the end of April (2T 99), Mr. Press testified that it was in late February or early March (3T 23), and Mr. Ranone testified that it took place sometime after May 4 because the incident discussed at this meeting was the one concerning Mr. Lanchart's leaving Association material on Mr. Ranone's secretary's desk (3T 67).

Mr. Press testified that the purpose of the meeting was to discuss the deficiencies found in Mr. Lanchart's evaluation and to seek ways in which Mr. Lanchart could improve (3T 24). The undersigned notes that in the summative evaluation dated March 10, 1983, Mr. Ranone commented that a conference had been held with Mr. Lanchart and his representatives in which they discussed the many incidents where Mr. Lanchart was found to be deficient (J2L) and believes that Mr. Press' recollection is the most accurate.

The parties testified that this meeting lasted about 15 minutes and that harsh words were spoken. When Mr. Lanchart asked Mr. Press what he thought, Mr. Ranone stated that, "I don't give a [expletive deleted] what Mr. Press thinks." (2T 100, 3T 25, 3T 67). Mr. Ranone testified that he apologized to Mr. Press both orally and in writing (3T 68) and the undersigned believes that the comment was made in the heat of the moment and did not necessarily reflect any continuing animosity between Mr. Ranone and either Mr. Press or Mr. Lanchart.

"...met the objective as stated."

9. On June 23, 1983, Mr. Ranone issued his third summative evaluation of Mr. Lanchart. This evaluation was also critical of Mr. Lanchart, although it first commended Mr. Lanchart for his classroom performance and stated that his command of the subject matter, and its delivery was good.

The evaluation reflects the fact that Mr. Lanchart had received an "Outline of Deficiencies" from Mr. Juris, similar to the letter sent to Mr. Duffy, and Mr. Ranone's comments referred to those areas deemed deficient in the letter. Those areas concerned the following:

- a) Failure to conduct parent conferences with skill.

Mr. Ranone stated that he had not received any feedback from conferences where he was not present but that those where he was present had gone well. 28/

- b) Failure to demonstrate concern for students. Mr. Ranone commented on the fact that he had spoken again with the problem child after he had been told not to, and that the mother had become angry.

28/ There was some additional testimony concerning Mr. Lanchart's parent-teacher conferences. On cross-examination Mr. Lanchart described an incident where a parent called him complaining that a grade he had given to her child was unfair. He met with the parent, however he cut the meeting short and left for a doctor's appointment (2T 140, 141, 172, 193).

Mr. Lanchart did not recall whether the parent was upset about his leaving but stated that if she had had a problem, there was ample opportunity to see him another day (2T 143) Mr. Ranone testified that immediately after the conference the parent came to him very upset about the manner in which the conference had ended, claiming that the problem had not been resolved (3T 64). He further testified that he was upset at how the conference had been abruptly terminated and that in the past, Mr. Lanchart would have normally first cleared it with him before leaving. He also stated that in times past he had continued conferences for Mr. Lanchart when Mr. Lanchart had to leave (3T 99, 100).

There is no mention why this incident was not recorded in the summative evaluation.

He also stated that Mr. Lanchart had left Association material openly on Mr. Ranone's secretary's desk, where it was viewed by students. 29/

c) Failure to remain calm and mature when having to cope with the unexpected or to respond positively to constructive criticism. Mr. Ranone stated that he noticed a change in Mr. Lanchart's general attitude, however that there had been a slight improvement.

d) Failure to improve your command of verbal and written communication. It was stated that memos sent to Mr. Ranone contained errors and that he must take greater care in reviewing all of his memos. 30/

e) Failure to improve upon your staff relations. Mr. Lanchart was commended for taking steps in this direction and it was also mentioned that he had sent a memo to the staff. 31/ Mr. Ranone

29/ Mr. Ranone testified that Mr. Lanchart had left Association material on his secretary's desk while she was at lunch. The material stated, "Don't hang alone, stop the administration." Two students saw this material, stopped the secretary as she was returning and said, "Stop Mr. Ranone before you hang alone (3T 66, 67). Mr. Lanchart admitted that he had openly left such material on the desk and corrected the problem thereafter (2T 107). Mr. Lanchart also testified however that in the following year Mr. Ranone told him to leave material openly on her desk (2T 108). I do not believe that this material was at all similar to that which Mr. Lanchart previously distributed and see no contradiction in Mr. Ranone's order.

30/ While Mr. Lanchart testified that in years past he had never been criticized for his written and spoken English (2T 96), he admitted that during the 1982-83 year a flood of memoranda had been distributed between Mr. Ranone and himself and that Mr. Ranone had had a greater opportunity to review this particular area (2T 140, 167).

31/ Mr. Ranone admitted that this was the first time he had criticized Mr. Lanchart for his staff relations however testified that he had discussed this matter with Mr. Lanchart prior to the evaluation (3T 102). He testified that the memo sent by Mr. Lanchart to the faculty stated that Mr. Lanchart was willing to discuss any problems that the staff might have with him. He stated that Mr. Lanchart told him that no one had responded. Mr. Ranone further stated that several teachers had approached him and told him that they did not respond because of the manner in which the memo was written (3T 103, 104).

Mr. Lanchart testified as well that the memo addressed to the staff stated that "if you have any problems with me, lets sit down and

(continued)

testified that he felt Mr. Lanchart had taken an initiative to improve his relations with other staff members (3T 103, 104).

f) Failure to utilize sound judgment. Mr. Ranone stated that Mr. Lanchart had made attempts to improve the deficiency however better judgment could have been used in particular instances.

g) Failure to maintain standards of excellence that facilitate students achieving their potential. Here Mr. Lanchart was commended for making a modest improvement.

Mr. Lanchart was also criticized for his inconsistent control of discipline and for sending students to Mr. Ranone's office for minor infractions.

10. On June 23, 1983, Mr. Ranone issued his fourth and final summative evaluation (J-52). The evaluation briefly stated that at a recent conference with Mr. Lanchart and his representative they discussed Mr. Lanchart's final examination. Mr. Ranone stated that the exam was poorly typed and reflected a disorganized approach. 32/

31/ (continued) talk about them" (2T 106). He further testified that no one responded but that when he approached several teachers to ask them why they had not responded, he was told that they never knew there was a problem (2T 107).

I find Mr. Ranone's testimony to be credible regarding this situation.

32/ There was testimony and evidence introduced regarding Mr. Lanchart's health examination. Mr. Lanchart testified that the 1982-83 school year was the first year in which he was required to give a final examination (2T 131, 164). He stated as well that he was required to first submit the examination to Mr. Ranone for his review and that Mr. Ranone was concerned about it. He further stated that he was only given a two-week notice that he would be required to give a final examination and that he should have been given more time (2T 132). He did state however that he had given a mid-term examination and that he had some indication that he might have to give a final (2T 135). Mr. Lanchart also stated that he was not criticized for the contents of the exam but only that its appearance was poor and that there were typographical and spelling errors (2T 133). By Mr. Lanchart's own admission, the contents of the examination took the greatest amount of preparation time, so it would appear that whatever notice time he was given, it did not affect his ability to prepare the contents of the examination.

(continued)

11. Mr. Ranone first talked with Mr. Juris about the withholding of Mr. Lanchart's increment in the latter part of March, 1983 (3T 105). At this meeting the two discussed how Mr. Lanchart's problems could be corrected. This meeting was followed by other meetings between March and June when the decision was finally made (3T 106).

12. Mr. Lanchart had previously been denied an employment and adjustment increment for reasons not having to do with his classroom performance but for deficiencies in other areas (2T 148).

Analysis

As was the case with Mr. Duffy, Mr. Lanchart alleges that his increment was denied for the 1983-84 school year because he had engaged in protected activity. The same standards utilized by the New Jersey Supreme Court in Bridgewater, supra, when determining a case involving dual motivations will be utilized here.

Mr. Lanchart has been a teacher in Ridgefield Park for seventeen years and is a member of the Association. He has been a faculty representative for five of the last six years and is an Association member of the Lincoln School's advisory council. He has access to teacher mailboxes as a faculty representative and distributes Associa-

32/ (continued)

Turning now to the examinations themselves, the Board introduced into evidence two copies of the 7th grade Health final (RL5, RL6) and two copies of the 8th grade Health final (RL4, RL7). RL4 and RL5 are photocopies of the original exams submitted by Mr. Lanchart to Mr. Ranone and they are in black ink. The copies are very difficult to read and are of poor quality. RL6 and RL7 are mimeographed copies of the original exam and they are in purple ink and far more legible. Mr. Lanchart testified that RL6 and RL7 accurately represent the copies of the examinations that were distributed to his students (3T 15).

Both RL6 and RL7, while more legible than RL4 and RL5, contain many typographical errors and smudges. It is also noted that RL7 contained a misspelled word and that another word was omitted. The undersigned notes that these two examinations are of poor quality and do not reflect a great deal of attention to detail.

tion materials to the staff by that means. It is apparent that Mr. Lanchart engaged in protected activity during the 1982-83 school year as a faculty representative and that the Board knew that he was engaging in this activity. The Hearing Examiner now turns to whether Mr. Lanchart has established that this protected activity was a substantial or motivating factor in his increment denial.

In June of 1983, a decision to deny Mr. Lanchart his increment for 1983-84 was made by the Board, and this decision was based upon his negative evaluations. In the years from 1977 to the 1982 Mr. Lanchart received only one summative evaluation per year and these evaluations were positive. In 1982-83 Mr. Lanchart was treated differently than in those previous years. He received four summative evaluations and these evaluations by and large were critical of him. They also criticized him in areas different from previous evaluations, and one evaluation dealt with only one incident which had never occurred before.

The undersigned is satisfied that Mr. Lanchart has made a prima facie showing sufficient to support at least an inference that the Board's denial of his increment was motivated by his exercise of a protected activity. The fact that in 1982-83 he received more evaluations than in prior years, and that they were markedly different from earlier ones places a doubt in the undersigned's mind as to the appropriateness of the Board's action. ^{33/} The prima facie case

33/ Mr. Lanchart also claimed that the parties' agreement states that before a second summative evaluation can be performed, there must be a conference over the first one, and that no conference was held between his first two evaluations. The parties' contract reads in Article XVI Section C:

A teacher shall be given a copy of a class visit or evaluation report prepared by his evaluators at least one (1) day before any mandatory conference to discuss it. No such report shall be submitted to the

(continued)

having been established, the burden shifts to the Board to show that the denial of Mr. Lanchart's increment was motivated by a legitimate business justification and that it would have made the same decision even absent Mr. Lanchart's protected activity.

The Board first of all admits that Mr. Lanchart has always been a good classroom teacher and that it has never had any problem with him in that regard. Even during the 1982-83 year Mr. Ranone admitted that Mr. Lanchart had performed well in the classroom. The negative evaluations given to Mr. Lanchart however, criticize him for activities taking place outside of the classroom, which in fact formed the basis for a previous increment denial.

A closer look at these evaluations is important. In his first evaluation, Mr. Lanchart was criticized for not showing proper judgment in his handling of a situation involving a student. Mr. Ranone testified credibly that he considered the matter so serious that it warranted a separate evaluation. Mr. Lanchart had not only showed poor judgment in choosing the child that he did, but he also showed the note of Mr. Ranone's to the child, causing a greater emotional stress. The record further shows that the problem did not

33/ (continued)

central office, placed in the teacher's file or otherwise acted upon without a prior conference with the teacher.

The undersigned does not read this contractual language in the same way as Mr. Lanchart and does not believe that this guarantees that there must be a conference in between each summative evaluation. It merely states that there must be a conference over an evaluation prior to it being submitted to the central office, placed in the teacher's file, or otherwise acted upon.

In any event Mr. Ranone testified that at the conference over the first evaluations he handed Mr. Lanchart the second evaluation (2T 83). Mr. Ranone also testified that no conference was held with Mr. Lanchart between the third and fourth evaluations (2T 84).

end with the negative evaluation but continued afterward when Mr. Lanchart continued to discuss the affair with the boy even though he had been told not to do so by Mr. Ranone.

On the same day Mr. Lanchart received the first evaluation, he was given a second one. In the second evaluation Mr. Ranone stated that he was recommending to the superintendent that Mr. Lanchart's increment be withdrawn. This evaluation contained a series of criticisms of Mr. Lanchart including his failure to sign the late arrival slip, sloppy work habits, taking students out of class to run off Association dittos on the school machine, poor written and spoken English, poor listening skills, and poor judgment in the disciplining of students.

Both Mr. Ranone and Mr. Lanchart testified that prior to 1982-83 the two had had a good relationship but that in that year it changed. Mr. Lanchart testified that in previous years Mr. Ranone would speak to Mr. Lanchart rather than perform evaluations or write memos. Mr. Ranone also admitted that prior to 1982-83 he would discuss things with Mr. Lanchart and express his concerns orally (3T 78, 79). The undersigned however is not persuaded that, given the same set of offenses in prior years, Mr. Ranone would not have also chosen to record them in Mr. Lanchart's evaluations and is convinced that these offenses were unique to the 1982-83 school year.

The fact that Mr. Ranone recommended to the superintendent that Mr. Lanchart's increment be withheld for the following year would be somewhat disturbing to the undersigned except for the fact that both Mr. Press and Mr. Ranone testified that Mr. Ranone had on several occasions approached Mr. Press and asked him to speak with Mr. Lan-

chart about the problems Mr. Ranone was noticing. Mr. Ranone testified that he told Mr. Press that it was very difficult to have to write negative evaluations for Mr. Lanchart (3T 59). The record is unclear as to how many times Mr. Ranone spoke to Mr. Press about Mr. Lanchart, or specifically when those times were, but the undersigned assumes that these conversations took place both before and after the second evaluation. This being the case Mr. Ranone's recommendation to the superintendent in the second evaluation obviously came about after attempts had been made by Mr. Ranone to correct the problems prior to the evaluation.

In the third summative evaluation dated June 23, 1983, Mr. Ranone continued to criticize Mr. Lanchart in areas that had been previously mentioned to him in the previous evaluations, and in the fourth summative evaluation, also dated on the same day, he criticizes Mr. Lanchart for the appearance of his final examination. The record does not show why these two evaluations were not combined into one. Mr. Ranone did however testify that the third evaluation was the annual performance review where he addressed those concerns found in previous evaluations and made comments on whether there had been improvement. (3T 62, 63). Mr. Ranone also testified that the fourth evaluation was written after he reviewed Mr. Lanchart's examination and discovered that it had been poorly typed (3T 72).

While the third summative evaluation noted that there was some improvement in certain areas, Mr. Lanchart was still criticized for speaking with the young boy who was the subject of the first evaluation, for leaving Association material critical of the administration where students could read it, for showing unsound judgment

in allowing students to play in muddied areas, and for being inconsistent in his disciplinary techniques. The undersigned has no reason to disbelieve Mr. Ranone's testimony that such criticisms were valid. As far as the fourth summative evaluations criticism of Mr. Lanchart's final examination, the undersigned viewed for himself that the exam contained typographical and spelling errors and was poor in appearance.

Based upon the above, the undersigned is convinced that the Board had a legitimate business reason for denying Mr. Lanchart his increment in 1983-84. The undersigned is also convinced that the same decision would have been made even absent any protected activity on Mr. Lanchart's part. While Mr. Lanchart was able to establish at least an inference, that there was a nexus between his protected activity and his increment, that nexus is very tenuous.

If there was a nexus, the undersigned does not believe that Mr. Ranone would have sought out the Association's president and asked him to help out with Mr. Lanchart's problems. The undersigned further does not believe that Mr. Ranone would have met with the superintendent on several occasions between March and June to discuss Mr. Lanchart's evaluations and to seek ways in which they could assist him. Also important is the fact that while the Board and the Association were going through difficult and bitter negotiations during the 1982-83 year, the same tension did not seem to exist between Mr. Lanchart and the Board as it did between the Board and Mr. Duffy, who was a member of the Association's negotiation team. The record also shows that even during this year, Mr. Ranone was enjoying a

friendship with other active Association members at the Lincoln School (2T 171).

As persuasive as any of the above factors however, was the undersigned's viewing of both Mr. Ranone and Mr. Lanchart as they testified. The undersigned found Mr. Ranone to be a more credible witness and believes that his testimony is accurate. Mr. Lanchart on the other hand, frequently gave evasive answers, was inattentive, and appeared rather nervous and confused. In light of this, the weight given to the Board's testimony was far greater than that given to the testimony of Mr. Lanchart.

For the above reasons, the undersigned is convinced that the Board did not discriminate against Mr. Lanchart for his exercise of protected activity when it denied him his employment and adjustment increment for the 1983-84 school year.

Recommended Order

For the foregoing reasons, the Hearing Examiner recommends that the Commission find the denial of an employment and adjustment increment in the 1983-84 school year to William Duffy by the Ridgefield Park Board of Education, CI-84-29-97, constituted violations of subsections 5.4(a)(1) and (3) of the Act and recommend that the Ridgefield Park Board of Education:

A. Cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by this Act by denying its employees employment and adjustment increments in retaliation for their exercise of those rights.

B. Take the following affirmative action:

1. Make William Duffy whole by paying him the monetary difference between the amount he would have received had his increment

not been unilaterally withheld and the amounts he in fact was paid subsequent to the beginning of the 1983-84 school year together with interest at a rate of 12% per annum from that date.

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

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

It is further recommended that the Commission order that the Complaint concerning violations of subsections 5.4(a)(1) and (3) filed by Norman Lanchart, CI-84-30-98, be dismissed in its entirety.


Nathaniel L. Fulk
Hearing Examiner

Dated: September 6, 1984
Trenton, New Jersey

NOTICE TO ALL 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 William Duffy in the exercise of the rights guaranteed to him by this Act by denying him an employment and adjustment increment in retaliation for his exercise of those rights.

WE WILL make William Duffy whole by paying him the monetary difference between the amount he would have received had his increment not been unilaterally withheld and the amounts he in fact was paid subsequent to the beginning of the 198384 school year together with interest at a rate of 12% per annum from that date.

RIDGEFIELD PARK BOARD OF EDUCATION
(Public Employer)

Dated _____

By _____
(Title)

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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.