

P.E.R.C. NO. 89-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-140

BELLEVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Belleville Board of Education violated the New Jersey Employer-Employee Relations Act by transferring an Association building representative in retaliation for his protected activity. The Commission also finds that the Association did not prove that another building representative was transferred in retaliation for her protected activity.

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Docket No. CO-H-88-140

BELLEVILLE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Gacciona, Pomaco & Beck, P.C.  
(Frank Pomaco, of counsel)

For the Charging Party, Klausner, Hunter & Oxfeld, Esqs.  
(Nancy Iris Oxfeld, of counsel)

DECISION AND ORDER

On November 30, 1987, the Belleville Education Association ("Association") filed an unfair practice charge against the Belleville Board of Education ("Board"). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3),<sup>1/</sup> by transferring two Association building representatives

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<sup>1/</sup> 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; 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.

who allegedly were active in a successful attempt to have their principal transferred and in representing other teachers.

On February 22, 1988, a Complaint and Notice of Hearing issued. The Board filed an Answer admitting the transfers, but denying that the building representatives were active in the principal's transfer or in problems concerning teachers' employment. The Board claims it had a prerogative to transfer and that it acted in good faith.

On May 20, 27, 31 and June 14 and 17, 1988, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by September 1, 1988.

On September 29, 1988, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 89-12, 14 NJPER 626 (¶19263 1988). He found that the Board did not violate the Act when it transferred building representative Philip Squatrito from School No. 4 because the Board established a legitimate business justification for its action. He further found that the Board did not violate the Act when it reassigned representative Francine D'Agostino from School No. 4 because the Board did not know she was a building representative nor did it manifest anti-union animus toward her.

On November 14, 1988, after an extension of time, the Association filed exceptions. It claims that: the recommendations of acting principal Cummis and superintendent Nardiello to transfer Squatrito were based on Squatrito's role as building representative;

parental complaints about Squatrito concerned his union activities; Squatrito's complaints about teachers were not motivated by their support of former principal Forte; any problems regarding Squatrito's role in the school derived from his protected activity; the Hearing Examiner improperly attached no probative value to the testimony concerning Board member Joseph Capello; the Board had no legitimate justification to transfer Squatrito; it is not the business of the public employer to inquire as to whether or not the complaints of a union representative are representative; Cummis' recommendation cannot be dismissed because she was "merely a novice"; there was other evidence of anti-union animus besides Cummis' letter; the Board knew of and was hostile to D'Agostino's protected activity, and the Hearing Examiner erred in finding that D'Agostino's desire to be reassigned remained unchanged notwithstanding her participation in the December 19 meeting with Nardiello.

On December 23, 1988, the Board filed a reply. It claims that a certain respect for the administration is necessary for every teacher, union representative or not. It further claims that Squatrito overstepped his bounds when he began reporting complaints only against teachers who had supported former principal Forte, when he was having daily discussions with his group, and when he interrupted school operations. It further claims that a union representative should attempt to encourage harmony among the teachers in a cooperative relationship with the administration. The

Board argues that the business justification for its action in transferring Squatrito is its duty to run a school in a manner conducive to the children's education and the staff's peace of mind. It further argues that it transferred both Forte and Squatrito because they detracted from this atmosphere - Squatrito was disruptive and antagonistic. It agrees with the Hearing Examiner that it had no knowledge of D'Agostino's protected activity; that she requested reassignment, and that Capello's statement was not binding on the Board.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-14) are mostly accurate, but incomplete. We incorporate them with these modifications and additions.

We modify finding No. 1 to show that D'Agostino was reassigned to Schools 5, 7 and 10.

We modify finding No. 7 to show that the Board knew that D'Agostino was a building representative at School No. 4. While D'Agostino did not specifically recall when the Board was informed she was a representative, she stated that the Board knew of her Association activity (1T91-1T93). Cummis testified that she did not remember when she learned that D'Agostino was a representative. It might have been before she became acting principal or during that time (3T80). Frank Scelba, the Director of Performing Arts and D'Agostino's supervisor, knew she was building representative (1T98).

We modify finding No. 8 n. 5 to show that Board Member Joseph Capello told D'Agostino that when it came to the transfer of teachers, Squatrito would be the first to go.<sup>2/</sup>

We add to finding No. 11 that Forte evaluated Squatrito as exemplary (4T82; 5T3).

We add to finding No. 12 that parental complaints about Squatrito included that the principal could not deal directly with a staff member, no matter how small the situation might be, because the teacher was instructed to go to Squatrito as the Association representative (4T121). We add that Nardiello (4T102) and Cummis (2T42) knew that the Association and the New Jersey Education Association had decided they wanted to speak with one voice -- Squatrito's. Nardiello was aware that Squatrito became involved in all issues arising at School No. 4 because he was building representative. Cummis told teachers at a building meeting that they should begin to come to her individually and that Squatrito, as building representative, was the one getting all the grief from the administrators (2T42).

We modify finding No. 14 to indicate that Cummis knew, before she became acting principal, that Squatrito was building representative. While she could not pin down when she became aware that D'Agostino was a building representative, she did not deny

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<sup>2/</sup> The record does not indicate that Capello was acting contrary to the Board's desires when he indicated his animus towards Squatrito. Contrast Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 85-110, 11 NJPER 307 (¶16109 1985). While Capello, in his individual capacity, could not bind the Board, his statement is one piece of evidence relevant to the employer's attitude towards Squatrito.

knowing this (3T80). Although some of Squatrito's complaints involved supporters of former principal Forte, the record does not support a finding that Squatrito was targeting Forte supporters. Teachers came to Squatrito to complain about school incidents. He was the conduit through which teacher complaints were brought to the administration's attention. Squatrito testified that Cummis asked for the names of the teachers involved in the incidents and that the Association reluctantly released the names. Cummis testified that Squatrito did not complain about teachers by name (3T82-3T83). For example, Squatrito complained that the student hall monitors were not doing their assigned duties, but denied naming the teacher (5T36). Cummis concluded that a pattern of complaints about Forte supporters had developed (3T94).<sup>3/</sup> Cummis also testified that what concerned her was that Squatrito claimed he represented the entire Association when he lodged his complaints. She felt that teachers on one floor could not have complained about what teachers on the other floor were doing because they could not see them. She further testified that it would have been more acceptable to her if Squatrito had claimed he represented only the teachers on the second floor (4T9).

We modify finding No. 15 to omit the determination that Cummis' recommendation to transfer Squatrito was completely

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<sup>3/</sup> Cummis and Squatrito's testimony did not conflict. We therefore delete the finding that Cummis was more persuasive.

independent of his status as building representative. Cummis' written recommendation is filled with references to Squatrito's role as Association representative. We reject the Hearing Examiner's contrary finding in light of the record as a whole. Whether Cummis would have transferred a hypothetical sixth grade teacher who acted like, but was not, a building representative is not the point. Squatrito was responsible for expressing teacher views.<sup>4/</sup>

We modify finding No. 18 to show that Squatrito's role as building representative played a part in Nardiello's decision to recommend his transfer (4T121).<sup>5/</sup> There were comments at the Board meeting that the transfer was not to be viewed as disciplinary (4T128).

N.J.S.A. 34:13A-5.3 declares that:

Public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization....

Subsecton 5.4(a)(3) prohibits public employers from discriminating against employees to encourage or discourage the exercise of section 5.3 rights. In re Bridgewater Tp., 95 N.J. 235 (1984) establishes

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<sup>4/</sup> We need not decide if such a teacher's conduct would be protected even if that teacher were not representing the Association.

<sup>5/</sup> We reject the Hearing Examiner's credibility finding. It did not resolve conflicting testimony and is not persuasive based on the record as a whole. Nardiello testified that teachers' dealing through their representative, Squatrito, rather than directly with the principal, was detrimental to the school and motivated the transfer (4T121).



the test to be used in discrimination cases. The charging party must prove by a preponderance of the evidence that anti-union animus motivated the employer's adverse personnel action. In the absence of any direct evidence of anti-union motivation, a charging party must prove that the employee engaged in protected activity, that the employer knew of this activity, and that the employer was hostile toward the exercise of the protected right. Id. at 246. If the charging party shows that anti-union animus motivated the personnel action, the employer can avoid an unfair practice finding by proving that it would have taken the same action absent the protected activity.

We begin with the allegations concerning Philip Squatrito. Squatrito was engaged in protected activity and the Board knew of it. This case turns on whether or not the Association proved that the Board was hostile to Squatrito's role as Association building representative.

Conditions at School No. 4 were marked by parent, student and teacher discontent. As early as 1982, Nardiello had recommended that Principal Forte be transferred from School No. 4. In early 1986 the situation worsened. Nardiello testified:

Within the context of many things that were going on, I think it was at that time that Mr. Forte really started to show the manifestations of a building out of control. And I think you heard it from the previous witness, that he started to attack the landscape, and I would imagine that he zeroed in on some of those things on Mr. Squatrito, him being a man, I guess him being the building representative, I guess Mr. Forte saw that as a direct challenge to him. So

everything that was going on was being laid at this fellow's doorstep. And I didn't see that much that would call my attention to these indiscretions that were laid at Mr. Squatrito's doorstep by Mr. Forte at that time (4T91-4T92).

Nardiello rejected Forte's recommendation that Squatrito be transferred, in part because Forte had given Squatrito an exemplary teaching evaluation. On February 24, 1987, Forte was reassigned from School No. 4 and replaced by Paula Cummis, a reading supervisor. Squatrito continued in his role as an aggressive building representative. The Association had told unit members to use Squatrito as their conduit in addressing concerns to the administration. They did just that. When teachers complained, Squatrito forwarded the complaints to Cummis.

When Cummis became principal, relationships at School No. 4 were already tense. The staff questioned many aspects of the schools' day-to-day operation. Squatrito's position placed him in the midst of the fray.

On April 14, 1987, Nardiello asked Cummis her opinion about Forte's earlier recommendation that Squatrito be transferred. Her reply is telling. She believed that Forte's removal was interpreted by some teachers as a "victory in power." She urged that their notion be quickly dispelled. Cummis believed that some teachers were now complaining through Squatrito about minor "real or imagined" infractions by other teachers and that Squatrito had used his Association office to foster the complaints. She questioned whether that was the proper role of an Association representative.

She felt that this energy could be used more productively and suggested that Squatrito's transfer might dissipate some of that "negative energy" and eliminate his daily discussions with his group.

We do not question Cummis' desire to alleviate the conflict which developed in the prior administration. We must, however, intercede because Cummis crossed the barrier the Legislature enacted to protect employee rights. Squatrito was an Association representative. In this role he was often the conduit for employee complaints. He has a right to initiate grievances and pursue complaints, although that right is not without limitation. See, e.g., Manchester Reg. H.S. Bd. of Ed., P.E.R.C. No. 88-17, 13 NJPER 715 (¶18267 1987) (increment withholding and tenure changes for misconduct); Middletown Tp. Bd. of Ed., P.E.R.C. No. 86-142, 12 NJPER 521 (¶17194 1986), aff'd App. Div. Dkt. No. A-5781-85T7 (1987) (teacher transfers for "uncooperative attitude" unrelated to protected activity); City of Camden, P.E.R.C. No. 83-163, 9 NJPER 395 (¶14180 1983) (discharge of union president for misconduct). Here, Squatrito's conduct was neither outside the parties' agreed-upon procedures nor incompatible with his responsibilities as an employee.

Forte's recommendation that Squatrito be transferred was motivated by Squatrito's role as Association representative. Nardiello conceded as much. The incidents that motivated Cummis to recommend the transfer all arose out of Squatrito's protected activity. He was relaying employee complaints to management.

Nardiello's decision to recommend to the Board Squatrito's transfer was founded on Forteand Cummis' recommendations. Even the parental complaints about Squatrito concerned his role as building representative.

Cummis testified that she might not have transferred Squatrito had she believed he truly represented all the teachers he purported to represent. This conclusion does not constitute a legitimate business justification and instead interferes with the Association's selection of its representative. Squatrito had received an exemplary teaching evaluation and was not being disciplined for employee-related misconduct. It was his role as union representative that the Board sought to influence. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981) addressed the mutual respect labor and management must maintain for each other:

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be appropriate and even legal action, as threatened here, may be initiated to halt or remedy the other's actions. However, as in this case, where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment. [Id. at 503.]

Tainting each of the Board's reasons for transferring Squatrito are hostile comments triggered by his activity as Association representative. Forte, Cummis, and Nardiello's

recommendations all centered on Squatrito's role as building representative. The testimony about Capello's comments supports a finding of hostility. Based on our independent evaluation of the record, we find that the Association proved that protected activity motivated the Board's decision to transfer Squatrito and that the Board failed to prove that it would have transferred him absent that activity.

We now address the allegation concerning Francine D'Agostino. We have already found that she engaged in protected activity and that the Board knew of that activity. This allegation also turns on whether the Association proved that the Board was hostile to that activity.

In September 1986, D'Agostino requested a reassignment out of School No. 4 because of the atmosphere she felt was created by Forte's administration. In spring 1987, when it looked to her like Forte might be coming back the next fall, D'Agostino met with her supervisor, Scelba, and agreed that she would be reassigned out of School No. 4. D'Agostino assumed she would continue at School No. 7. Scelba later informed D'Agostino that Forte was not returning and that she would remain at School No. 4. The following day, D'Agostino participated as building representative in a "heated" meeting with Squatrito and Cummis. The next day, Scelba decided to reassign D'Agostino because Arthur Pico, administrator in charge of Schools No. 4, 7 and 9, could not guarantee that Forte would not be

returning to School No. 4.<sup>6/</sup> In the fall, D'Agostino was able to arrange, through Scelba, a return to School No. 7.

Under all these circumstances, we find that the Association did not prove that D'Agostino's reassignment was motivated by her activity as building representative. The timing of the reassignment - immediately following her meeting with Cummis and Squatrito - is relevant. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 8 (¶17002 1985). But given D'Agostino's request and the lack of evidence of hostility from Scelba or Pico, it is not enough.

ORDER

The Belleville Board of Education shall:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this Act, particularly by transferring Philip Squatrito because of his activity as building representative for the Belleville Education Association.

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 the rights guaranteed to

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<sup>6/</sup> The Association claims that Scelba told D'Agostino that Pico had told him that D'Agostino would not be at School No. 4. The Hearing Examiner made findings based on Scelba and Pico's contrary testimony. We have not disturbed those findings.

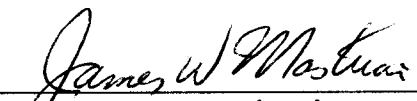
them by this Act, particularly by transferring Philip Squatrito because of his activity as building representative for the Belleville Education Association.

B. Offer Philip Squatrito the opportunity to transfer back to School No. 4.

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

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

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey  
February 10, 1989  
ISSUED: February 14, 1989

# 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 cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this Act, particularly by transferring Philip Squatrito because of his activity as building representative for the Belleville Education Association.

WE WILL cease and desist from 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, particularly by transferring Philip Squatrito because of his activity as building representative for the Belleville Education Association.

WE WILL offer Philip Squatrito the opportunity to transfer back to School No. 4.

Docket No. CO-H-88-140

BELLEVILLE 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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.



H.E. NO. 89-12

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

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-140

BELLEVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Subsection 5.4(a)(1) or (3) of the New Jersey Employer-Employee Relations Act when it transferred Philip Squatrito on August 10, 1987, from School No. 7 to School No. 8 and when it reassigned Francine D'Agostino on September 9, 1987 from School No. 4 to Schools No. 5, 9 and 10 in the District. Although, in the case of Squatrito, the Charging Party met the first part of the Bridgewater test, the Board established a legitimate business justification for its transfer, namely, that he was a divisive Building Representative in terms of the school environment in School No. 4. In the case of D'Agostino, she was reassigned independent of any illegal motivation and, in fact, the Charging Party failed to establish either knowledge or hostility by the Board toward her as required under the first part of the Bridgewater test.

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.

H.E. NO. 89-12

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

In the Matter of  
BELLEVILLE BOARD OF EDUCATION,  
Respondent,

-and-

Docket No. CO-H-88-140

BELLEVILLE EDUCATION ASSOCIATION,  
Charging Party.

Appearances:

For the Respondent, Schwartz, Pisano, Simon, Edelstein &  
Ben-Asher, Esqs. (Nathanya G. Simon, of counsel)

For the Charging Party, Klausner, Hunter & Oxfeld, Esqs.  
(Nancy Iris Oxfeld, of counsel)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on November 30, 1987, by the Belleville Education Association ("Charging Party" or "Association") alleging that the Belleville Board of Education ("Respondent" or "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), in that two tenured teachers, Philip Squatrito and Francine D'Agostino, had for many years been assigned to School No. 4; that during the 1986-87 school year both Squatrito and D'Agostino served as Building

Representatives for the Association and were actively involved in what became a successful attempt to have the School Principal, Pat Forte, transferred; and further, that both of these teachers were active in representing other teachers with their problems concerning their employment; and that in September 1987, Squatrito and D'Agostino were transferred to other schools contrary to their expressed wishes, which transfers were in retaliation for their exercise of the rights guaranteed to them by the Act; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act.<sup>1/</sup>

It appearing that the allegations in the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 22, 1988. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 20, 27, 31, and June 14 & 17, 1988, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by September 1, 1988.<sup>2/</sup>

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<sup>1/</sup> 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."

<sup>2/</sup> The delay in filing post-hearing briefs was occasioned by the vacation and workload schedules of counsel for the parties.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Belleville Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Belleville Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The following facts have been admitted by the Board in its Answer and were stipulated (1 Tr 8-13):

a. Philip Squatrito is a tenured elementary school teacher, who has since September 1978, been assigned to School No. 4.

b. Francine D'Agostino is a tenured elementary art teacher, who has at least since September 1983, been assigned to School No. 4, in addition to Schools No. 3 and 7.

c. During the 1986-87 school year Squatrito and D'Agostino served as Building Representatives for the Association in School No. 4.

d. The Principal of School No. 4, Pasquale Forte, was reassigned to the Board's Central Office, effective February 24, 1987 through June 30, 1987, after which he was transferred to the position of Vice-Principal at the high school, effective September 1, 1987 (R-36).

e. The Board on August 10, 1987, transferred Squatrito from School No. 4 to School No. 8, effective September 1, 1987 (R-22).

f. D'Agostino was administratively reassigned from Schools No. 4 and 7 to School Nos. 5, 9 and 10, effective September 1, 1987 (compare R-29 with R-31).

4. Squatrito also served as the Association's Building Representative at School No. 4 during the 1985-86 school year, in addition to the 1986-87 school year, supra. Although Squatrito testified that he "...was responsible for any of the members...if they have any grievances..." and would, if necessary, approach administration, he acknowledged on cross-examination that during the 1985-87 school years he did not actually file a written grievance. [1 Tr 23, 24, 51; 4 Tr 102; 5 Tr 40].

5. D'Agostino also served as the Association's Building Representative at School No. 4 during the 1985-86 school year, in addition to the 1986-87 school year, supra (1 Tr 55, 103). As in Squatrito's case, D'Agostino never filed a written grievance (1 Tr 102-104) although she did make an informal complaint to Michael A. Lally, the Board's Assistant Superintendent, early in the 1986-87 school year (1 Tr 88, 89, 104, 105).

6. The Hearing Examiner finds as a fact that the Respondent had knowledge of Squatrito's exercise of the protected activity of having served as one of the Association's Building Representatives at School No. 4 at least during the 1986-87 school year (R-11A; 3 Tr 80, 96-99; 4 Tr 98, 102; Respondent's Brief, pp. 27, 28).

7. The Hearing Examiner finds as a fact that the Respondent did not have knowledge<sup>3/</sup> of D'Agostino's exercise of the protected activity of having served as one of the Association's Building Representatives at School No. 4 during the 1986-87 school year (1 Tr 91-93; 3 Tr 80; 4 Tr 98; cf. 1 Tr 98).<sup>4/</sup>

8. The Hearing Examiner finds as a fact that the Respondent manifested hostility or anti-union animus toward Squatrito by the conduct of Paula Cummis, the Acting Principal at School No. 4 during the latter half of the 1986-87 school year when she sent a letter to Nardiello on April 20, 1987, in which she recommended Squatrito's transfer, the terms and tone of which

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<sup>3/</sup> See first part of Bridgewater test, infra: Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (at 246) [1984].

<sup>4/</sup> The testimony of D'Agostino and the Board's Superintendent, Michael D. Nardiello, who provided the only evidence as to the Respondent's knowledge of her protected activity as Building Representative, failed to establish prima facie proof of knowledge.

indicated an intention to undermine Squatrito's status as a Building Representative at School No. 4 (R-11A).<sup>5/</sup>

9. The Hearing Examiner finds as a fact that the Respondent did not manifest hostility or anti-union animus toward D'Agostino, notwithstanding that the Hearing Examiner denied a Motion to Dismiss at the conclusion of the Charging Party's case as to D'Agostino on the question of hostility (2 Tr 126, 127).<sup>6/</sup>

10. Nardiello was the Principal of School No. 4 from 1967 through 1980 and in his opinion it was "...one of the best run

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<sup>5/</sup> No probative value is attached to the testimony of Roxanne Flocke, a teacher at School No. 7, and D'Agostino, both of whom testified regarding an alleged statement made by Joseph M. Capello, who was still a member of the Board in June 1987. Capello is alleged to have said to D'Agostino, at a gathering in his private home, that when it came to the transfer of teachers Squatrito would be "...the first to go..." (1 Tr 85, 86; 2 Tr 3-6). Assuming that this statement was made by Capello, it was uttered in a private setting, and, thus, was not binding upon the Respondent. [See Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 85-110, 11 NJPER 307 (¶16109 1985)]. Further, Capello resigned from the Board on July 13, 1987, prior to the Board's meeting on August 10, 1987, when Squatrito was transferred, infra (R-34; R-22).

<sup>6/</sup> The Hearing Examiner's denial of the Motion at that time was based upon the fact that D'Agostino had testified that on June 18, 1987, the day after she had met with Cummis and Squatrito, she received a telephone call from Frank Scelba, the Board's Director of Performing Arts, and a supervisor of D'Agostino's, advising her that she was to be reassigned from School No. 4 to School Nos. 5, 9 and 10. This raised the issue of "timing" as possible retaliation against D'Agostino for having participated in an adversarial meeting with Cummis the previous day (1 Tr 72-74). However, Scelba credibly denied any illegal motivation in his action of reassignment (3 Tr 43-46) thereby neutralizing any record evidence of hostility or anti-union animus on the part of the Respondent toward D'Agostino.

buildings in the district..." (4 Tr 88). Nardiello was replaced by Forte as Principal of School No. 4 and, after Nardiello became Superintendent in mid-1983, he saw a change in the climate of School No. 4 in 1984. This was indicated by a divisiveness among teaching staff, a lack of discipline among students and a decline in student scores (4 Tr 89). This decline at School No. 4 continued and by the fall of 1986 the situation had worsened (4 Tr 96; R-5).<sup>7/</sup>

11. Early in 1986, Nardiello and Lally had observed a conflict between Forte and Squatrito. Forte perceived Squatrito as a challenge to his authority and Forte had recommended the transfer of Squatrito at the end of the 1985-86 school year. [4 Tr 77-79, 91, 92]. Nardiello refused Forte's request to transfer Squatrito because no justification existed at that time (4 Tr 78-80, 92, 93). In October 1986, Squatrito was disciplined for having used profanity to Forte and this incident was appropriately documented (4 Tr 74-78; R-2, R-3 & R-4).

12. Following a request by Carol Rosenfeld of the NJEA on December 10, 1986, Nardiello met with her, Squatrito, D'Agostino and several teachers on December 19th where a series of complaints were registered regarding Forte and the administration at School No. 4 (R-6; 4 Tr 96, 97, 99, 100). Following this meeting, Nardiello sent a memorandum to the Board on December 22, 1986, in which he outlined in detail what had transpired at the meeting and incorporated a

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<sup>7/</sup> As early as 1983 or 1984, Nardiello had recommended the transfer of Forte from School No. 4 (4 Tr 95).



recommendation that Forte be transferred to the Middle School as of January 5, 1987 (R-7). At a Board meeting on December 22nd, Nardiello discussed at length the subject of the December 19th meeting, supra, and his recommendation that Forte be transferred (4 Tr 100). Nardiello also testified without contradiction that the Board members also discussed at their December 22nd meeting the comments received from parents that Squatrito was part of the problem at School No. 4 and that it was not Forte alone (4 Tr 101, 102).

13. Forte was reassigned from School No. 4 to the Central Office of the Board on February 24, 1987, supra, and he was replaced by Cummis as Acting Principal (3 Tr 65; 4 Tr 104).<sup>8/</sup>

14. When Cummis became Acting Principal in the latter part of February 1987, she became aware of the division among the teaching staff as to those who had been supporters of Forte and those who had been opposed to him (3 Tr 79, 80). She quickly learned that Squatrito was the School No. 4 Building Representative but did not gain that impression as to D'Agostino (3 Tr 80). Between the end of February 1987 and in or around mid-April 1987, Cummis recalled five specific incidents which caused her to recommend Squatrito's transfer out of School No. 4 (3 Tr 81-94; 4 Tr

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<sup>8/</sup> The decision of Nardiello to recommend the reassignment of Forte from School No. 4, effective February 24, 1987, was based in part on the investigation and a recommendation by Arthur M. Pico, an Assistant Superintendent, who recommended Forte's reassignment on January 30, 1987 (R-9; 4 Tr 102, 103).

7-19). These incidents included a complaint by Squatrito that teachers were not in front of their rooms when children entered; that a teacher had allowed her class to enter the library unattended; that hall monitors were not properly performing; that a teacher had permitted students to use the Xerox machine, etc. After addressing these various complaints by Squatrito, Cummis concluded that "...a pattern had developed..." in which the complaints made by Squatrito against certain teachers were those who happened to have been supporters of Forte (3 Tr 94). Three of the teachers involved in Squatrito's complaints were specifically identified by Cummis as those who had been supporters of Forte (3 Tr 94). Squatrito's denial that his complaints were not based upon the teachers having been supporters of Forte is not credited since the testimony of Cummis is more persuasive. [Compare 3 Tr 94 and 5 Tr 34, 36].

15. On April 14, 1987, Nardiello sent a memorandum to Cummis, in which he advised Cummis that Forte had previously recommended the transfer of Squatrito out of School No. 4 and Nardiello asked Cummis for her own opinion on this subject (R-10; 4 Tr 108-111). Cummis responded on April 20, 1987, when she sent a one-page memorandum to Nardiello, in which she recommended the transfer of Squatrito (R-11A; 3 Tr 97, 98). In Cummis' memorandum she stated that several teachers had complained through Squatrito of infractions by other teachers, who had been considered supporters of Forte, and that Squatrito had used his position as Building

Representative to foster these complaints. Cummis cited one incident involving a teacher named Weyland and the Xerox machine to illustrate the problem. Finally, she stated that Squatrito's transfer might "...eliminate his daily tete-a-tetes with his group..." (R-11A). The testimony of Cummis was consistent with her memorandum to Nardiello, adding that Squatrito was "...contributing to continued unrest at School No. 4" (3 Tr 97, 98; 4 Tr 28). Cummis testified credibly that her recommendation to transfer Squatrito was completely independent of his status of Building Representative, and that she would have made the same recommendation even if he had been a "...sixth grade teacher with the same types of complaints..." (3 Tr 99). Cummis' contacts with Squatrito continued on essentially the same basis from mid-April 1987 through the end of the school year in June (3 Tr 99-118).

16. After receiving the recommendation from Cummis that Squatrito should be transferred from School No. 4, Nardiello met with Squatrito on April 28th to discuss the subject of his transfer. Nardiello had previously discussed the matter with Cummis, Lally and Pico. [4 Tr 112, 113]. Nardiello told Squatrito that he thought that it would be in "his best interest and in ours..." for Squatrito to leave School No. 4 (4 Tr 113, 114). Nardiello testified credibly that they talked about different schools to which Squatrito might be transferred, and he indicated a willingness to try to accommodate Squatrito's wishes (4 Tr 114). Squatrito, while stating a preference to remain at School No. 4, suggested other schools to which he might be transferred (4 Tr 115).

17. Thereafter on April 30, 1987, Squatrito sent a letter to Nardiello, in which he referred to their meeting and, after stating again his preference to remain in School No. 4, he agreed to be transferred so long as it was not conditioned "...upon the transfer of Mr. Forte..." (R-12). Squatrito stated his school preference for transfer, adding that he had "...much to offer the students at any of these schools..."

18. On May 4, 1987, Nardiello advised the Board that he was going to recommend the transfer of Squatrito, stating that Cummis had supported this recommendation (R-14).<sup>9/</sup> Again, on May 27, 1987, Nardiello addressed the Board in a memorandum, a portion of which reiterated his recommendation that Squatrito be transferred from School No. 4 (R-17). Nardiello also testified credibly as to his reasons for recommending Squatrito's transfer (4 Tr 119, 121), stressing, however, that Squatrito's role as a Building Representative played no part whatsoever in his decision (4 Tr 121, 122).<sup>10/</sup>

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9/ On May 5, 1987, Nardiello sent a memorandum to Pico and Cummis, requesting a report by June 5th on four issues among which was staff transfers from School No. 4 (R-15). Their response came in a June 3rd memorandum, which recommended the transfer of the entire School No. 4 staff (R-19). This recommendation was never adopted by Nardiello or the Board.

10/ The Hearing Examiner discounts completely any testimony suggesting that Squatrito's having worn shorts to school or his having brought his children to school were factors in his transfer (see 4 Tr 33, 35, 40; 5 Tr 24, 37, 38).

19. After a Board meeting on July 13, 1987, where the members were split on the question of approving the transfer of Squatrito from School No. 4, the Board met again on August 10, 1987, in a regular meeting and the vote was 5 to 1 to approve Nardiello's recommendation to transfer Squatrito to School No. 8 (4 Tr 126-130; R-22).<sup>11/</sup> Nardiello testified credibly that the Board in its deliberations on whether or not to approve his recommendation that Squatrito be transferred from School No. 4 was devoid of any consideration of Squatrito's status as a Building Representative of the Association (5 Tr 29).

20. As early as November or December 1986, D'Agostino expressed to Nardiello, Lally and Scelba her desire to be reassigned from School No. 4 to another school (3 Tr 30, 31; 4 Tr 93, 94). The origin of D'Agostino's desire for a reassignment to School No. 4 was the situation in the school under Forte, which she expressed to Scelba (3 Tr 29-31).<sup>12/</sup> D'Agostino's unhappiness with School No. 4 continued through the spring of 1987, and by June, Scelba had

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<sup>11/</sup> Nardiello explained the distinction between a transfer and a reassignment, namely, a reassignment involves a specialty teacher (such as D'Agostino), which is made administratively without approval of the Board, as opposed to a transfer from one school to another, which requires a recommendation by the Superintendent and Board approval by resolution (5 Tr 3, 4).

<sup>12/</sup> D'Agostino's desire to be reassigned remained unchanged, notwithstanding her participation in the meeting with Nardiello on December 19, 1986, supra, where the teachers present decided as a group not to request transfers from School No. 4 (compare 5 Tr 5, 6 & R-7 with 3 Tr 29-36; 4 Tr 93, 94).

concluded that he would reassign her to another school if Forte were to return to School No. 4 as Principal, to which D'Agostino expressed no objection (3 Tr 32-36).

21. In order to overcome certain logistical problems in D'Agostino's reassignment Scelba advised her on June 19th that her schedule would be interchanged with that of another teacher (3 Tr 36-41, 45). When she was apprised of his decision, D'Agostino asked Scelba if it was "punitive," to which he replied "It's certainly not. Why should it be punitive?" (3 Tr 45, 46). D'Agostino made no further response. In fact, between the date of June 19, 1987, and the end of that month, D'Agostino never expressed to Scelba any further concern about reassignment from School No. 4 (3 Tr 48, 53).

22. Due to Scelba's having been a 10-month employee, who did not work in July and August of 1987, the actual reassignment of D'Agostino did not occur until September 9, 1987, when she was reassigned from School No. 4 to School Nos. 5, 9 and 10 (R-35; 3 Tr 50-52). D'Agostino acknowledged on direct examination that her reassignment occurred at that time (1 Tr 78) and Scelba testified that she made no comment (3 Tr 52).

23. Nardiello testified credibly that he played no role in the reassignment of D'Agostino, this being the responsibility of Scelba as Director of Performing Arts (4 Tr 107, 108; 3 Tr 40, 41). Further, Nardiello testified that his first knowledge of D'Agostino's reassignment was obtained from a form that he received from Scelba (4 Tr 130, 131). Finally, Nardiello testified that he

could recall no discussion at "...the Board level" concerning the reassignment of D'Agostino (4 Tr 132).

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate §§5.4(a)(1) Or (3) Of The Act When It Transferred Philip Squatrito From School No. 4 On August 10, 1987, Since The Board Established A Legitimate Business Justification For Its Action And, Further, The Respondent Did Not Violate The Act When It Reassigned Francine D'Agostino In September 1987 From School No. 4 Since The Board Had No Knowledge That She Was A Building Representative Nor Did It Manifest Hostility Or Anti-Union Animus Toward Her.

This case is governed by Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984) where the New Jersey Supreme Court adopted the analysis of the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980)<sup>13/</sup> in "dual motive" cases, involving an alleged violation of Section 8(a)(1) or Section 8(a)(3) of the National Labor Relations Act.<sup>14/</sup> In such cases, Wright Line and Bridgewater articulated the following test in assessing employer motivation: (1) the Charging Party must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision, in this case, the Board's transfer of Squatrito on August 10, 1987 and its reassigning of D'Agostino in

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<sup>13/</sup> The United States Supreme Court approved the NLRB's "Wright Line" analysis in NLRB v. Transportation Mgt. Corp., 562 U.S. 393, 113 LRRM 2857 (1983).

<sup>14/</sup> These provisions of the NLRA are directly analogous to Sections 5.4(a)(1) and (3) of our Act.

September 1987; and (2) once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (see 95 N.J. at 242), i.e., the employer must establish a legitimate business justification for its action.

The Court in Bridgewater further refined the above test by adding that the protected activity engaged in must have been known by the employer and, also, it must be established that the employer was hostile towards the exercise of the protected activity (see 95 N.J. at 246).<sup>15/</sup> Finally, as in any case involving alleged discrimination, the Charging Party must establish a causal connection or nexus between the exercise of the protected activity and the employer's conduct in response thereto: see Lodi Bd. of Ed., P.E.R.C. No. 84-40, 9 NJPER 653, 654 (¶14282 1983) and University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 86-5, 11 NJPER 447 (¶16156 1985).

Under the first part of the Bridgewater test, it cannot be doubted but that Squatrito engaged in protected activities under the Act, having served as the Association's Building Representative at School No. 4 during the two school years 1985-86 and 1986-87. Although he never filed a written grievance during these years, he

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<sup>15/</sup> The Court in Bridgewater stated further that the "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" (95 N.J. at 242).



testified, and the Board acknowledged, that he was active in the representation of teachers in School No. 4. [Finding of Fact No. 4, supra]. The fact that Squatrito never filed a formal grievance, having handled the complaints of teachers on an informal basis, is irrelevant to the issue of protected activity under the Act. The Commission in Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 9 (¶17002 1985) stated that "...Under Bridgewater...any level of protected activity could satisfy the first part of the test if that activity motivated the discipline..." (emphasis supplied). See also, No. Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (at fn. 16) [¶4205 1978].

The same result obtains in the case of D'Agostino, who also testified that she was a Building Representative for the Association at School No. 4 during the 1985-86 and 1986-87 school years. First, as in the case of Squatrito, D'Agostino never filed a written grievance although she did in the latter part of 1986 make a complaint on behalf of herself to Lally, regarding her dissatisfaction with remaining in School No. 4. [1 Tr 102-105]. Thus, although D'Agostino's protected activity as a Building Representative is marginal it would appear to qualify as protected activity under Downe and No. Brunswick, supra.

Next, as to the Board's knowledge of Squatrito's protected activity, having served as the Association's Building Representative for two years, it is clear that the Respondent had sufficient knowledge to satisfy the first part of the Bridgewater test. The

Hearing Examiner has previously found as a fact that the Board did have such knowledge (Finding of Fact No. 6, supra).

However, the Charging Party failed to adduce prima facie evidence that the Respondent Board had knowledge of D'Agostino's protected activity in having served as a Building Representative. D'Agostino's testimony regarding employer knowledge was equivocal at best. After testifying that she "believed" that she had told Nardiello that she was a Building Representative in December 1986, she modified her answer a few questions later to state that she did not remember "...to be very honest..." (1 Tr 91). This response was repeated again several questions later when she stated in, response to the same question about Nardiello's knowledge, that she "...really was not sure" and did not "know" (1 Tr 92). In contrast, Nardiello was firm in his testimony that he did not know that D'Agostino was a Building Representative at School No. 4 during the 1986-87 school year, adding that he did not realize that there was more than one representative, Squatrito being the one that he knew (4 Tr 98). Nardiello also stated that his first knowledge of D'Agostino's being a Building Representative was when the instant proceeding arose.

The final area of inquiry is whether there is prima facie evidence that the Respondent manifested hostility or anti-union animus toward Squatrito and D'Agostino, sufficient to satisfy the Bridgewater caveat that the "Mere presence of anti-union animus is not enough..." The Charging Party must also establish that

"...anti-union animus was a motivating force or a substantial reason..." for the Respondent's action in transferring Squatrito and reassigning D'Agostino.

The Hearing Examiner is satisfied that the Charging Party has adduced at least prima facie evidence that the Respondent manifested hostility or anti-union animus towards Squatrito, notwithstanding that the evidence rests solely on the April 20, 1987 memorandum from Cummis to Nardiello, in which she recommended Squatrito's transfer from School No. 4 (R-11A). The content and tone of this memorandum evinces a motivation on the part of Cummis that her recommendation that Squatrito be transferred is based upon her pique at the manner in which Squatrito has "...used his position as B.E.A. representative to foster...complaints...." Cummis also questioned whether it was the responsibility of a B.E.A. representative "...to warrant complaints against other teachers or is it rather to represent the majority of the staff..." Her dissatisfaction with Squatrito as the Association's Building Representative was also manifested in the last sentence of her memorandum where she stated "...Mr. Squatrito's transfer may prove to dissipate some of that negative energy (watching the behavior of others) and eliminate his daily tete-a-tetes with his group..." Based upon this memorandum, the Hearing Examiner concludes that the Charging Party has now satisfied prima facie the three requisites of the first part of the Bridgewater test, i.e., protected activity, knowledge and hostility.

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The Hearing Examiner has previously found as a fact that unlike Squatrito, the Charging Party has not established prima facie that the Respondent Board manifested hostility or anti-union animus toward D'Agostino (Finding of Fact No. 9, supra). When the Hearing Examiner denied the Respondent's Motion to Dismiss on May 27, 1988, as to D'Agostino (2 Tr 126, 127), the sole basis was his conclusion that there was at least a "scintilla" of evidence at that stage of the proceedings that Scelba had acted in a retaliatory fashion on or about June 18, 1987 when he advised D'Agostino that she was being reassigned to School Nos. 5, 9 and 10 (1 Tr 74, 75). This call from Scelba on June 18th followed by one day a meeting between Cummis and Squatrito, at which D'Agostino appeared as a "witness" for Squatrito (1 Tr 69-71). On June 18th, Cummis sent a reprimanding memo to Squatrito about his conduct at the meeting on the day before (1 Tr 72; R-20). At the motion to dismiss stage, supra, the Hearing Examiner drew an inference favorable to the Charging Party that the coincidence of Scelba's call to D'Agostino on June 18th, advising her that she was being reassigned from School No. 4, might have been illegally motivated and in retaliation for D'Agostino's having accompanied Squatrito to the meeting on June 17th (R-20, supra),

However, Scelba later testified as a witness for the Respondent and the Hearing Examiner has credited his recital of the events, regarding his recommendation that D'Agostino be reassigned from School No. 4. After ascertaining from Pico that Forte might be

reassigned back to School No. 4, and knowing from prior conversations of D'Agostino's concern that she not be in the same school with Forte, Scelba developed a schedule for the 1987-88 school year wherein D'Agostino would be assigned to School Nos. 5, 9 and 10 in an exchange with another teacher (3 Tr 33-39). Scelba credibly denied any knowledge of Exhibit R-20, which Cummis had sent to Squatrito on June 18, 1987, and, also, further denied that he had had any contact or discussion with Cummis in or around the time that Cummis met with Squatrito and D'Agostino on June 17th (3 Tr 44, 45). On June 19th Scelba telephoned D'Agostino and advised her of his decision to reassign her from School No. 4, to which she inquired "...Is this punitive..." (3 Tr 45). Scelba's firm response was that it was not punitive and "...Why should it be punitive?..." (3 Tr 45, 46). Finally, Scelba testified that at that point D'Agostino gave no indication of a negative reaction to his decision, which testimony was not rebutted by D'Agostino (3 Tr 46).

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In summary, as to D'Agostino, there is an absence of prima facie evidence that the Respondent Board had knowledge of her exercise of the protected activity of Building Representative during the 1985 through 1987 school years. Further, the Charging Party has failed to adduce prima facie evidence that the Respondent was hostile toward the exercise by D'Agostino of this protected

activity.<sup>16/</sup> The Charging Party having failed to meet two of the three requisites in the first part of the Bridgewater test, supra, the Hearing Examiner must recommend dismissal of the Unfair Practice Charge as to D'Agostino. Given this circumstance it is unnecessary to decide whether or not the Respondent established a legitimate business justification for its reassignment of D'Agostino from School No. 4 to School Nos. 5, 9 and 10, effective in September 1987. Arguendo, the Hearing Examiner refers to Findings of Fact Nos. 20-23, supra, which appear clearly to support the conclusion that the Board did have a legitimate business justification for its September reassignment of D'Agostino.

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The Charging Party having established prima facie that Squatrito's protected activity as a Building Representative was a "substantial" or a "motivating" factor in the Board's decision to transfer him on August 10, 1987, it now remains to determine whether the Respondent Board has demonstrated by a preponderance of evidence that the same action would have taken place even in the absence of his exercise of this protected activity. It is the conclusion of the Hearing Examiner that the Respondent has met this burden and that a legitimate business justification has been established for its action in transferring Squatrito.

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<sup>16/</sup> Even if the Hearing Examiner was to assume that there was prima facie evidence of hostility or anti-union animus manifested by the Board toward D'Agostino, the absence of prima facie evidence of knowledge would still require a dismissal of the Unfair Practice Charge as to D'Agostino.

No one can seriously contend that the Respondent did not have a right to transfer Squatrito from School No. 4 to any other school: Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. Ed., 78 N.J. 144. 156 (1978).<sup>17/</sup> In this proceeding, we are inquiring into whether or not the Respondent Board violated Sections 5.4(a)(1) and (3) of the Act by its transfer of Squatrito on August 10, 1987. As previously found and discussed, the only evidence of animus or hostility manifested by the Board toward Squatrito was Cummis' letter of April 20, 1987, to Nardiello (R-11A). The ultimate question is whether or not the transfer of Squatrito would have been made, notwithstanding the Cummis letter.

The Hearing Examiner is convinced that the Respondent's evidence establishes clearly that Squatrito had had serious problems in functioning as a classroom teacher in School No. 4 both during the reign of Forte, which ended February 24, 1987, and continuing under the acting principalship of Cummis from February through June 1987. This inability of Squatrito to mesh in the School No. 4 environment before and after Cummis became Acting Principal was well known to Nardiello and to the Board (4 Tr 121, 122, 126; Findings of Fact Nos. 11, 12, 14, 15, 18 & 19, supra).

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<sup>17/</sup> The Charging Party has cited Article XVII, §2 (J-1, p. 27), involving involuntary transfers and notification to teachers, as applicable to the transfer of Squatrito. However, the Charging Party has not alleged that Sections 5.4(a)(1) and (5) of our Act have been violated. In any event, it would appear that no possible violation could be found under State of New Jersey, Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419, 421, 422 (1984).

The Charging Party makes light of the fact that the Board adduced testimony regarding the relationship between Forte and Squatrito when Forte was still principal in mid-1986. The Hearing Examiner has in Finding of Fact No. 11, supra, found that a conflict existed between Forte and Squatrito such that Forte recommended Squatrito's transfer in 1986, which was denied by Nardiello at that time. Additionally, in October 1986, Squatrito was disciplined for having used profanity to Forte. None of the facts found in this time frame militate against the additional finding that School No. 4, under Forte, was in serious decline during the several years prior to his administrative reassignment on February 24, 1987 (Findings of Fact Nos. 10 & 13, supra). The Hearing Examiner cannot overlook the fact that Nardiello testified without contradiction that the members of the Board at their December 22, 1986 meeting discussed comments received from parents that Squatrito was part of the problem at School No. 4 and that it was not Forte alone (Finding of Fact No. 12, supra). The significance of this discussion by the Board is not lessened by the fact that the subject of discussion originated with the comments of parents.<sup>18/</sup>

Moving now to the situation at School No. 4 on and after the arrival of Cummis in the latter part of February 1987, it is first noted that Cummis' experience in the district had been as a

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<sup>18/</sup> The Hearing Examiner takes administrative notice of the fact that input into the workings of a school district may originate from the observations and comments of parents.



teacher and not as an administrator. Further, she did not enter upon the scene as an antagonist of Squatrito based on this record. She quickly became aware of the division among teaching staff as to those who had been supporters and opponents of Forte (Finding of Fact No. 14, supra). She also learned quickly that Squatrito was the Building Representative. Shortly after her arrival at School No. 4, five specific incidents occurred, which caused Cummis to recommend Squatrito's transfer. These incidents occurred between the end of February 1987 and continued through mid-April 1987. The recital of these incidents is found in Finding of Fact No. 14 and will not be repeated in detail here except to note that the five incidents involved complaints by Squatrito by or on behalf of teachers at School No. 4, which caused Cummis to conclude that a "...pattern had developed..." in which Squatrito's complaints against three specific teachers were those who happened to have been supporters of Forte (3 Tr 94). Obviously, this "pattern" reinforced the initial impression of Cummis in late February 1987, that there was a division among the teaching staff as to those who had been supporters and opponents of Forte (3 Tr 79, 80).

Thus, when Nardiello sent a memorandum to Cummis on April 14, 1987, requesting her opinion on the earlier recommendation of Forte that Squatrito be transferred from School No. 4, she had already had her own experience with Squatrito. A thorough reading of Cummis' response to Nardiello of April 20, 1987 (R-11A) discloses that while both its terms and tone appear to betray hostility toward

Squatrito as Building Representative, the actual content suggests that Cummis was merely a novice in dealing with what ultimately became a very sticky problem. Cummis impressed the Hearing Examiner as an essentially truthful witness and he accepts as a fact that her recommendation to transfer Squatrito was completely independent of his status as a Building Representative; she would have made the same recommendation even if he had been a "...sixth grade teacher with the same types of complaints..." (3 Tr 99).

It must be borne in mind throughout that it is Nardiello, the Superintendent, who makes recommendations to the Board, relying necessarily upon recommendations, observations and feedback that he receives from lower level administrators. It is next noted that Nardiello requested a meeting with Squatrito on April 28, 1987, at which he stated that it would be in the "best interest" of Squatrito and of the Board for Squatrito to leave School No. 4 (Finding of Fact No. 16). In this discussion, Nardiello testified that he and Squatrito spoke of different schools to which Squatrito might be transferred and that Squatrito, while stating a preference to remain at School No. 4, suggested other schools to which he might be transferred. Then on April 30th, Squatrito sent a letter to Nardiello, in which he renewed his preference to remain at School No. 4 but stated his agreement to be transferred so long as it was not conditioned upon the transfer of Forte, adding that he had "much to offer the students" at any of the schools to which he might be transferred.

On May 27, 1987, Nardiello advised the Board in writing that he was recommending, inter alia, the transfer of Squatrito, referring at one point to:

...The issues that surfaced during the past three years preclude him from attaining the excellence he can achieve if he remains at School #4. Although he would like to remain at School #4 and a segment of the community has supported this request, I with the Board's approval, will transfer Mr. Squatrito to another elementary school position... (R-17).

These comments of Nardiello in R-17 disclose that he had in mind his long experience in dealing with Squatrito at School No. 4, i.e., "...the past three years..." It is also significant that in Nardiello's memorandum to the Board on May 27th, he referred to the fact that Squatrito had support from "...a segment of the community..." and yet he still recommended that the transfer be made. The Hearing Examiner has credited Nardiello's testimony that his reasons for recommending Squatrito's transfer were not based upon his having been a Building Representative (4 Tr 121, 122).

Between the date of Nardiello's written recommendation to the Board on May 27, 1987 (R-17), and the Board's action in transferring Squatrito on August 10, 1987, nothing further transpired which would have in any way tainted the unbiased recommendation of Nardiello to transfer Squatrito (Finding of Fact No. 18, supra). The Hearing Examiner has previously rejected as not probative the testimony of Flocke and D'Agostino as to what was allegedly said by Capello regarding the transfer of Squatrito in or around June 1987. Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No.

85-110, 11 NJPER 307 (¶16109 1985). Thus, when the Board met on August 10th at a regular meeting and voted 5 to 1 to approve Nardiello's recommendation to transfer Squatrito to School No. 8, its actions were devoid of any illegal taint, notwithstanding Squatrito's status as a Building Representative. [See Finding of Fact No. 19, supra].

In conclusion, the Hearing Examiner reiterates that although the Cummis letter of April 20, 1987 (R-11A) contained manifestations of animus by her towards Squatrito's exercise of protected activities at School No. 4, this does not support the contention of the Charging Party that the hostility or animus by Cummis toward Squatrito tainted either the decision of Nardiello to recommend Squatrito's transfer in May 1987 or the Board's action of August 10, 1987, in adopting Nardiello's recommendation that the transfer be made.

As noted previously, the Charging Party must, in fulfillment of the whole record analysis under Bridgewater, establish a causal connection or nexus between the exercise of the protected activity and the employer's conduct in response.<sup>19/</sup> This is another way of stating that the mere presence of anti-union animus is not enough, the Charging Party must establish that animus "...was a motivating force or a substantial reason" for the employer's action. (95 N.J. at 242). This the Charging Party has failed to do.

<sup>19/</sup> A case on point is Middletown Tp. Ed. Assn. and Middletown Tp. Bd. of Ed., P.E.R.C. No. 86-142, 12 NJPER 521 (¶17194 1986), aff'd App. Div. Dkt. No. A-5781-85T7 (1987).

Accordingly, the Hearing Examiner will recommend dismissal of the Charging Party's allegations that the Respondent Board violated Sections 5.4(a)(1) and (3) of the Act when it transferred Squatrito in August 1987 and reassigned D'Agostino in September 1987.

\* \* \* \*


Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3) when on August 10, 1987, it transferred Philip Squatrito from School No. 1 to School No 8 nor did the Respondent Board violate the Act when it reassigned Francine D'Agostino on September 9, 1987 from School No. 4 to Schools Nos. 5, 9 and 10 since the Board, in the case of Squatrito, had a legitimate business justification for his transfer and, in the case of D'Agostino, the Board did not have knowledge of her exercise of protected activity nor had it manifested any hostility or anti-union animus toward her as required in the first part of the Bridgewater test, supra.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

  
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Alan R. Howe  
Hearing Examiner

Dated: September 28, 1988  
Trenton, New Jersey