

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF
BRADLEY BEACH,

Respondent,

-and-

Docket No. CO-79-347-23

BRADLEY BEACH EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission in an unfair practice case filed by the Association against the Board determines that the Board of Education violated N.J.S.A. 34:13A-5.4(a)(3) and derivatively (a)(1) when it failed to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 summer school program within the school district. The Commission sustained the Hearing Examiner's conclusion that the Board's failure to hire Liebeskind and Abramson, who were two Association activists, was motivated, at least in part if not exclusively, by anti-union animus manifested toward them by certain members of the Board because of their activities on behalf of the Association in negotiations and the processing of grievances. The Commission ordered the Board to make Liebeskind and Abramson whole for the monies they would have received if hired less interim earnings during July and August 1979.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Kalac, Newman & Griffin, Esqs.
(Mr. Peter P. Kalac, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.
(Mr. Arnold M. Mellk, of Counsel)

DECISION AND ORDER

The Bradley Beach Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging violations of the New Jersey Employer-Employee Relations Act ("Act") by the Bradley Beach Board of Education ("Board") in denying summer employment to two teachers in retaliation for activities protected by the Act. After a hearing in which both parties had full opportunity to present testimony and relevant evidence, Hearing Examiner Alan R. Howe issued his Recommended Report and Decision, H.E. No. 80-39, 6 NJPER ___ (¶ 1980). A copy is appended hereto and made a part hereof.

The Hearing Examiner found that the Board violated N.J.S.A. 34:13A-5.4(a)(3) and derivatively (a)(1) when it failed to hire Arlyne Liebeskind and Mark Abramson as Title I teachers for the 1979 summer school program. Recommended as the remedy was payment of the amount they would have earned less any monies earned in mitigation. Exceptions have been filed by the Board to which a response has been received from the Association.

Several specific exceptions to the Hearing Examiner's Report are stated by the Board. First, it is claimed that there is a contradiction between the finding of fact that five named teachers - including Abramson but not Liebeskind - were recommended for appointment and Liebeskind was rejected at an executive session of the Board, and a further finding that the Board had always approved the Superintendent's recommendations in the past but did not this time. Relied upon is the fact that Liebeskind was not on the original list of recommendations to the Board. However, the Hearing Examiner specifically noted in footnote 10 of his decision that Liebeskind's name was added to the list before it was presented to the Board. No contradiction is apparent to us.

The Board's complaint that the Hearing Examiner ignored proof as to business justification regarding Abramson is without merit. Although one of the teachers substituted by the Board for Abramson and another teacher deleted from the Superintendent's

list was a reading coordinator, Abramson as a language art teacher had taught reading in the 1978-79 school year, and was recommended for appointment by the Superintendent while the teacher who got the job was not. The Hearing Examiner found the proffered explanation to be pretextual and we believe the record supports that conclusion.

We are convinced that the Hearing Examiner's basis for inferring a discriminatory motive was sufficient. It is not disputed that Liebeskind and Abramson were the principal Association activists for negotiations and grievances, nor that hostile statements were made by Board members to both of these teachers. Given that the context of these remarks was always in relation to either negotiations or grievances, the Commission is convinced that these remarks were not indicative of "generalized animus" as the Board would have us believe, but instead were prompted by the individuals' protected exercise of activities and therefore indicative of an illegal motive. It is not enough to point out that Jo Ann Pagano, appointed as Title I coordinator, was also active in the Association. Discrimination need not be found against all union adherents to sustain a conclusion that the Act has been violated. In any event, Pagano had resigned from the Association during the 1978-79 school year, which removes whatever thrust there may have been to the Board's contention.

None of the exceptions having been found meritorious, and our own review of the record leading us to the same conclusion, we affirm the recommendations of the Hearing Examiner in this matter.

ORDER

For the foregoing reasons, and based upon the entire record herein, IT IS HEREBY ORDERED,

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to hire teachers for the Summer School Program, such as Arlyne K. Liebeskind and Marc Abramson, because of their exercise of such rights.

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 them by the Act, particularly by failing to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 Summer School Program.

B. That the Respondent Board take the following affirmative action:

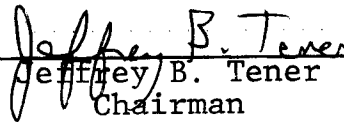
1. Forthwith make payment to Arlyne K. Liebeskind the sum of \$900.00, the salary that she would have received as a Title I teacher for the six-week 1979 Summer School Program, less any interim earnings received by her in July and August 1979.

2. Forthwith make payment to Marc Abramson the sum of \$900.00, the salary that he would have received as a Title I teacher for the six-week 1979 Summer School Program, less any interim earnings received by him in July and August 1979.

3. Post at 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, after being signed by the Respondent's authorized representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other material.

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

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed.

DATED: Trenton, New Jersey
July 10, 1980
ISSUED: July 11, 1980

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 our employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to hire teachers for the Summer School Program, such as Arlyne K. Liebeskind and Marc Abramson, because of their exercise of such rights.

WE WILL NOT discriminate 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 the Act, particularly by failing to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 Summer School Program.

WE WILL forthwith make payment to Arlyne K. Liebeskind the sum of \$900.00, the salary that she would have received as a Title I teacher for the six-week 1979 Summer School Program, less any interim earnings received by her in July and August 1979.

WE WILL forthwith make payment to Marc Abramson the sum of \$900.00 the salary that he would have received as a Title I teacher for the six week 1979 Summer School Program, less any interim earnings received by him in July and August 1979.

BOARD OF EDUCATION OF BRADLEY BEACH

(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 Jeffrey B. Tener, Chairman, 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

In the Matter of

BOARD OF EDUCATION OF BRADLEY BEACH,

Respondent,

- and -

Docket No. CO-79-347-23

BRADLEY BEACH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated Subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it failed to hire two long-term teachers for employment in the 1979 Summer School Program. The Hearing Examiner found that one of the teachers, Arlyne K. Liebeskind, had been active in the Association as an officer and negotiator since 1975 and had processed approximately 20 grievances at the Board level. Similarly, the Hearing Examiner found that the second teacher, Marc Abramson, had been active as a negotiator since 1971 and as Chairman of the Grievance Committee since 1975 had processed numerous grievances at the Board level.

The Hearing Examiner concluded that the Board's failure to hire Liebeskind and Abramson in the Summer of 1979 was motivated, at least in part, if not exclusively, by anti-union animus manifested toward them by certain members of the Board because of their activities on behalf of the Association in negotiations and the processing of grievances. The Hearing Examiner rejected the Board's defense that it had hired other teachers in the Summer of 1979, who had also been active in the Association, on the ground that their activities were considerably more limited than those of Liebeskind and Abramson. The Hearing Examiner noted that the Board had given no reason for the rejection of Liebeskind and Abramson, notwithstanding that the Superintendent had recommended them for hire.

By way of remedy, the Hearing Examiner ordered the Board to make Liebeskind and Abramson whole for the monies they would have received if hired less interim earnings during July and August 1979.

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.

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

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BOARD OF EDUCATION OF BRADLEY BEACH,

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BRADLEY BEACH EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Board of Education of Bradley Beach
Kalac, Newman & Griffin, Esqs.
(Peter P. Kalac, Esq.)

For the Bradley Beach Education Association
Greenberg & Melk, Esqs.
(Arnold M. Melk, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 25, 1979 by the Bradley Beach Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Board of Education of Bradley Beach (hereinafter the "Respondent" or the "Board") had 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. (hereinafter the "Act"), in that the Respondent failed to hire two teachers, Arlyne Liebeskind and Marc Abramson, for the 1979 Summer School Program. Each had been active in the Association for several years, either as officers and members of the Executive Board of the Association or as negotiators on behalf of the Association, and it is alleged that they were not hired because of their aggressive Association activities, notwithstanding that they were recommended for hire by the Superintendent of the Board, all of which is alleged to be a violation of

N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act. ^{1/}

It appearing that the allegations of 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 October 22, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on February 4, 1980 ^{2/} in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by March 6, 1980.

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 Board of Education of Bradley Beach is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Bradley Beach Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Arlyne K. Liebeskind has been employed by the Board as a teacher for 14 years and has been a member of the Association during this period. Liebeskind became a member of the Executive Board of the Association in 1975 and served as Secretary for two years (1975-77). In 1977 she became President of the Association and served for two years (1977-79). At the time of the hearing, she was a member of the Executive Board and the Chairman of the Negotiating Committee of

1/ These Subsections prohibit 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/ The hearing was originally scheduled for December 17 and 18, 1979. However, due to the unavailability of a Respondent witness, requested by counsel for the Charging Party, the hearing was rescheduled to the first mutually available date, that being February 4, 1980. Also, the case was in the interim reassigned on January 22, 1980 from Robert T. Snyder to the undersigned.

the Association. Liebeskind was active in the negotiations leading to the July 1, 1976-June 30, 1978 collective negotiations agreement, serving on the committee in charge of publicity. Thereafter Liebeskind, as President of the Association, was chief spokesman in negotiations for a successor agreement which, after approximately 15 months of negotiations, was settled in January 1979 by a Memorandum of Understanding, the agreement to be effective from July 1, 1978 to June 30, 1980. During the period of these latter negotiations she handled publicity and teacher job actions on behalf of the Association. Finally, during her four years as an officer and Executive Board member of the Association, Liebeskind has been involved in the processing of approximately 20 grievances and was present at all grievance hearings before the Board.

4. Marc Abramson has been employed by the Board as a teacher for 12 years and has been a member of the Association during this period. He was Co-Chairman of the Association's Negotiating Committee from 1971 to 1973 and was Chairman of the Negotiating Committee from 1975 through 1979. Abramson, who also serves as a New Jersey Education Association Consultant, commenced participation in the negotiations for the successor agreement, supra, after the negotiations reached "impasse" in the Fall of 1978. He has served as Chairman of the Grievance Committee since 1975 and has processed a number of grievances in this capacity at hearings before the Board.

5. Negotiations for a successor agreement to the agreement which was to expire June 30, 1978, supra, commenced in October 1977. As noted previously, Liebeskind was President and chief spokesman for the Association during these negotiations. The Board's Negotiating Committee consisted of George A. DeNardo and Joel S. Axelrod, both of whom testified at the hearing, and a Mr. Rubenstein. These same persons constitute the Board's Personnel Committee.

6. One of the first issues which came up during negotiations for a successor agreement was "Eligibility for Course Reimbursement." This issue was resolved in negotiations "away from the table" by DeNardo and Liebeskind in a memo dated January 11, 1978 (CP-4). ^{3/}

7. For the past three years, commencing with the 1977-78 school year, Liebeskind has been awarded a special contract as a Coordinator for the "gifted." The first year it covered grades 5-8 and for that she was paid \$800 per year.

^{3/} Liebeskind testified that this was a tentative agreement although CP-4 does not so indicate. The matter of this agreement will be discussed further hereinafter (see Finding of Fact No. 11, infra).

For the 1978-79 school year, the Board proposed that she be the Coordinator for the "gifted" for only grades 7 and 8, for which she was to be paid \$400 per year. Another teacher was to be Coordinator for grades 1-6. Liebeskind protested the reduction in scope of the position and the monies to be paid. A parent of one of the "gifted" children initiated a petition to the Board, the thrust of which was that there be only one Coordinator, and that this person should be Liebeskind (R-1). This petition was signed by a number of parents. Liebeskind independently initiated a petition within the Association regarding her reduction in status as a Coordinator for the "gifted." Liebeskind also filed a grievance in this matter, which was processed by Abramson, and brought before the Board on or about May 1, 1978 where Liebeskind was represented by Hayden L. Messner, an NJEA representative. At the outset of the hearing before the Board, DeNardo said that Liebeskind was "...the biggest troublemaker in the school and she has caused more problems with the parents and teachers and Board Members that (sic) anybody else in town" and that "we gave her the position of Coordinator for Grades 7 and 8, what more does she want" (Tr. 24; see also Tr. 83).

8. At an Executive Session of the Board on June 13, 1978, following a presentation by Liebeskind at a regular public meeting of the Board, a majority of the members of the Board felt that she should not be given the position as Coordinator for the "gifted" for grades 7 and 8. The Superintendent and counsel for the Board felt that she should be offered the position due to an Unfair Practice Charge which she had filed. ^{4/} The Superintendent also stated that she was qualified for the position and should be considered on her qualifications and not based upon any statements made at the prior public meeting. The Board first voted 6 to 3 against Liebeskind's appointment but then, after the change of three votes, the Board by a vote of 6 to 3 appointed Liebeskind. All of the foregoing is reflected in the minutes of the Executive Session (CP-5).

9. Thereafter, during the course of negotiations for the successor agreement, supra, Liebeskind spoke at a public meeting of the Board in November 1978 regarding the resumption of negotiations. She testified that she told DeNardo that he would be held responsible for any job actions by the Association "...to get negotiations going" (Tr. 19). In December 1978, the Association staged a "mass demonstration" in Bradley Beach and went to a public meeting of the Board where Liebeskind asked DeNardo if he would agree to resume "marathon negotiation" 4/ The said Charge was actually filed by Jo Ann Pagano (see footnote 12, infra).

sessions" (Tr. 20). DeNardo, after polling the Board at Liebeskind's request, responded in the negative. (Tr. 43).

10. In January 1979, following "impasse" and mediation and fact-finding, the Association accepted the Fact-Finder's report. DeNardo, on behalf of the Board, refused to accept the report. The Association then went to the Commissioners of Bradley Beach to put pressure on the Board, which, following further negotiations, resulted in a Memorandum of Understanding that was executed by the parties in January 1979. ^{5/}

11. Following the Board's preparation and submission to the Association of a proposed written successor agreement, the parties met in May 1979 where DeNardo insisted on language regarding "course reimbursement." The representatives of the Association, including Liebeskind and Abramson, responded that there would be no new language as it was not provided for in the Memorandum of Understanding of January 1979. ^{6/} DeNardo was "extremely upset" and stated that Liebeskind had "misled him, and was not acting in good faith" and thereafter DeNardo "stormed out of the meeting" (Tr. 22). Before leaving the meeting DeNardo also said, in the temporary absence of Liebeskind, that he get "along basically with everyone except her (Liebeskind)" (Tr. 85). ^{7/}

12. In February 1978 Abramson processed a grievance before the Board involving substitutes. At one point, in the course of Abramson's presentation, DeNardo interrupted him and asked if he liked "working here." When Abramson inquired as to what DeNardo meant, Abramson testified without contradiction that DeNardo replied, "...it seems to me you're always grieving something, and if you don't like working here, maybe you should leave." (Tr. 82).

^{5/} Abramson testified that Board Negotiating Committee member Axelrod said at the conclusion of these negotiations, "Marc, you raped us. You really raped us" (Tr. 86). Axelrod acknowledged that he said to Abramson, "Well, you raped us this time" and thereafter shook hands with Abramson. Axelrod said that this statement was "half in truth and half in jest." (Tr. 128).

^{6/} Apparently, the Memorandum of Understanding, which was not offered in evidence, made no provision for any change in language in the successor agreement consistent with DeNardo's obvious reference to the "away from the table" agreement on "Eligibility for Course Reimbursement," which was executed by DeNardo and Liebeskind on January 11, 1978 (see Finding of Fact No. 6, supra).

^{7/} A complete successor agreement was ultimately approved and executed by the parties in August 1979. This agreement was likewise not offered in evidence so that the Hearing Examiner cannot make a finding as to whether or not "course reimbursement" was included in the final agreement.

13. Liebeskind first applied for hire as a teacher in the Summer School Program in 1979 while Abramson had first been employed as a teacher in the Summer School Program in 1972. Abramson applied for the Summer School Program in 1973 but was not hired. ^{8/} He applied again for the Summer of 1974 and was hired. ^{9/} Abramson also applied for a teacher position in the Summer School Program in 1979.

14. The following positions were available for the 1979 Summer School Program: one Title I Coordinator and five Title I Teachers. Sixteen persons applied for the six positions, supra, and among those recommended by Board Superintendent DeCapua for employment as Title I teachers were Liebeskind ^{10/} and Abramson. ^{11/}

15. At an Executive Session of the Board on May 15, 1979 Jo Ann Pagano ^{12/} was recommended for appointment as the Title I Coordinator and the following five teachers were recommended for appointment as Title I Teachers: Abramson, Marion

^{8/} Abramson testified without contradiction that in or about this time, at the end of a "heated" negotiating meeting, as Abramson was about to "say goodnight," DeNardo became indignant and said to Abramson, "You better hope you never come before me for anything." (Tr. 78).

^{9/} Abramson testified without contradiction that Gavin DeCapua, who became Superintendent July 1, 1973, termed Abramson's hiring as the "miracle of the century." (Tr. 80).

^{10/} DeCapua's recommended list for the five Title I Teachers did not at first include Liebeskind although she was later added before presentation of the list to the Board.

^{11/} Abramson testified, essentially without contradiction, that the recommendations of the Superintendent as to hiring for the Summer School Program had always been approved by the Board, and that this was true of DeCapua's recommendations since he became Superintendent. It is noted here that from 1974 through 1979 approximately 34 to 37 teaching positions existed in the Summer School Program and that DeCapua made recommendations to the Board each year as to whom should be hired. DeCapua testified that only once did he not recommend a teacher who was ultimately appointed for a summer School Program by the Board, namely, Nancy Riley in 1974. However, DeCapua did recommend Riley in 1979 and she was again appointed by the Board (see Findings of Fact Nos. 15-17, infra).

^{12/} Pagano was President of the Association for two years (1975-77). She was on the Association's Negotiating Committee and was spokesman for the Association in the negotiations for the agreement which expired June 30, 1978. Pagano was also on the Association's Executive Board for the 1978-79 school year by virtue of having been a Past President; however, she resigned from the Association during that year. According to Liebeskind, Pagano had also filed two grievances at times not specified. Superintendent DeCapua also confirmed that Pagano had filed a grievance and added that she had filed an Unfair Practice Charge on behalf of Liebeskind regarding her appointment as Coordinator for the "gifted," supra.

Mahan, ^{13/} Mary Jane Wilson, Noreen Tarriff and Nancy Riley. The Superintendent's recommendation with regard to Liebeskind was rejected by the Board at this meeting. All of the foregoing is reflected in the minutes of this meeting (CP-1). ^{14/}

16. At the Board's Executive Session on May 22, 1979, preceding the regular public meeting of the Board on that date, two members of the Board's Personnel Committee, DeNardo and Rubenstein, changed their recommendations with respect to the five Title I Teachers, who were to be employed for the Summer of 1979. Abramson's name was eliminated, along with Mary Jane Wilson, and the names of Carl Knuelle and Carolyn Kinsey were substituted. Superintendent DeCapua testified that Knuelle and Kinsey were not on his list of recommendations to the Board. All of the foregoing is reflected in the minutes of this meeting (CP-2). ^{15/}

17. At the regular public meeting of the Board on May 22, 1979, following the Executive Session, supra, the Board formally appointed Pagano and the five teachers agreed upon at the preceding Executive Session. The foregoing is reflected in the minutes of this meeting (CP-3).

18. The 1979 Summer School Program commenced on July 5th and lasted six weeks. The salary was \$900 for the six-week period. Abramson was employed elsewhere for eight weeks during July and August 1979 and earned approximately \$700. ^{16/}

THE ISSUE

Did the Respondent Board violate Subsections (a)(1) and (3) of the Act when it failed to hire Liebeskind and Abramson as Title I teachers for the 1979 Summer School Program?

^{13/} Mahan has been Treasurer of the Association for two years (1978-80) and is presently serving as Chairman of a Teacher Evaluation Committee.

^{14/} No reason for Liebeskind's rejection appears in these minutes nor did the Respondent adduce any evidence in this regard.

^{15/} No reason for Abramson's elimination appears in these minutes. The minutes do reflect that "Mrs. Springer" (Marjorie G. Springer, Board President, and a witness for the Respondent) questioned why Kinsey had not been considered since she had "...a great deal of experience in reading and was an LDS Specialist..." Kinsey was ultimately recommended, supra. It is here noted that Abramson taught 8th Grade Language Arts, which includes reading, during the 1978-79 school year (Tr. 97), and that DeCapua testified that the 1979 Summer School Program included reading (Tr. 103).

^{16/} No evidence was adduced as to whether or not Liebeskind was employed elsewhere during the Summer of 1979.

DISCUSSION AND ANALYSIS

The Respondent Board Violated Subsection (a)(3) of The Act, and Derivatively Subsection (a)(1), 17/ When it Failed to Hire Liebeskind and Abramson as Title I Teachers For the 1979 Summer School Program

Based upon the foregoing Findings of Fact, the Hearing Examiner finds and concludes that the Charging Party has proven by a preponderance of the evidence that the Respondent violated Subsection (a)(3) of the Act because its actions in failing to hire Liebeskind and Abramson for the 1979 Summer School Program were "...motivated, at least in part, if not exclusively, by (anti-) union animus:" Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (1978), 18/ aff'd. App. Div. Docket No. A-4824-77 (Jan. 9, 1980). It is noted that the Charging Party preliminarily proved that Liebeskind and Abramson were exercising rights guaranteed to them by the Act, i.e., negotiating and/or grieving on behalf of the Association, and that the Respondent had actual or implied knowledge of such activity: Haddonfield, supra (3 NJPER at 72).

In so finding and concluding, the Hearing Examiner is aware of the Respondent's contention that it established a legitimate business justification in deciding not to hire Liebeskind and Abramson in the Summer of 1979 and that its actions were not discriminatorily motivated. 19/ The Respondent's proofs in this regard are rejected as pretextual. 20/

17/ See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976). For reasons which will be apparent hereinafter the Hearing Examiner does not find it necessary to consider the contention of the Charging Party that the Respondent Board independently violated Subsection (a)(1) of the Act (see Charging Party's Brief, pp. 9-14).

18/ As precedent, the Commission cited its standard for a Subsection (a)(3) violation in Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71, 72 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143, 144 (1977), rev'd. on other grounds, 162 N.J. Super. 1 (App. Div. 1978), aff'd. as modif., 81 N.J. 1 (1980). Further, for a Subsection (a)(3) violation to be found the actions of the public employer must be "discriminatory" (see Haddonfield, supra) and must have been committed with a "discriminatory motive" (see Cape May City Board of Education, P.E.R.C. No. 80-87, 6 NJPER 45, 46 (1980)).

19/ See Respondent's Brief, pp. 5-8.

20/ On the matter of the respective burdens of proof in a Subsection (a)(3) case see Cape May City Board of Education, supra (6 NJPER at 46) and Township of Clark, P.E.R.C. No. 80-117 (slip pp. 7, 8), 6 NJPER ____ (1980).

That Liebeskind and Abramson have been the principal Association activists with respect to negotiations and the processing of grievances cannot be gainsaid. Liebeskind has been a member of the Association during her 14 years of employment as a teacher and her Association activities, first as an Executive Board member and Secretary, and then as President and Chairman of the Negotiating Committee, commenced in 1975. She was active in the negotiations leading to the 1976-78 collective negotiations agreement and was chief spokesman during approximately 15 months of negotiations for the 1978-80 agreement. During these latter negotiations she also handled publicity and teacher job actions on behalf of the Association. During the years since 1975 Liebeskind has been involved in the processing of approximately 20 grievances and was present at all grievance hearings before the Board. (See Finding of Fact No. 3, supra).

Similarly, Abramson has been an Association member during his 12 years of employment as a teacher and commenced his Association activities as Co-Chairman of the Negotiating Committee in 1971, serving as its Chairman from 1975 to 1979. He has served as Chairman of the Grievance Committee since 1975 and processed a number of grievances in this capacity at hearings before the Board. (See Finding of Fact No. 4, supra).

On the other hand, the activities of Pagano and Mahan on behalf of the Association were much more limited ^{21/} than those of Liebeskind and Abramson and, further, provoked no hostility from Respondent's Board members unlike Liebeskind and Abramson.

The conduct of the Respondent from which the Hearing Examiner infers a discriminatory motive and the manifestation of anti-union animus toward Liebeskind and Abramson is based upon the following:

Liebeskind - (a) the statement by DeNardo at the Board hearing on Liebeskind's personal grievance as Coordinator for the "gifted" on May 1, 1978 that Liebeskind was "...the biggest troublemaker in the school and she has caused more problems with the parents and teachers and Board Members that (sic) anybody else in town..." and (b) DeNardo's statement in May 1979 that he could get "along basically with everyone except her (Liebeskind)", which occurred in the context of approximately 15 months of negotiations from October 1977 to January 1979, during which Liebeskind, as President of the Association and its chief spokesman, on several occasions had public confrontations with DeNardo over the Board's

^{21/} See footnotes 4, 12 and 13, supra. Pagano and Mahan were hired for the 1979 Summer School Program (Findings of Fact Nos. 15-17). Riley, who was also hired, has filed one grievance.

negotiating tactics. (See Findings of Fact Nos. 3, 5, 7, 9-11, supra).

Abramson - (a) DeNardo's indignant statement in 1973 that "You better hope you never come before me for anything;" (b) DeNardo's statement in February 1978 during the presentation of a grievance by Abramson "...it seems to me you're always grieving something, and if you don't like working here, maybe you should leave;" and (c) Axelrod's statement at the conclusion of the negotiations in January 1979 that Abramson "...really raped us." (See Finding of Fact No. 12 and footnotes 5 and 8, supra).

The Hearing Examiner rejects the Respondent's contention that Liebeskind's and Abramson's problems with the Board constituted nothing more than a "personality clash" and that "(g)eneral animus is not sufficient to support a finding of discrimination," citing Borough of Pine Hill Board of Education, P.E.R.C. No. 79-98, 5 NJPER 237 (1979). ^{22/} Respondent's reliance on Pine Hill is misplaced since the Commission there noted that Barnes' (a terminated teacher) "...Association activities were relatively slight and, therefore, no inference can be drawn that (Superintendent) Sorce's generalized feeling of anti-union animus was also directed specifically to Barnes as an Association activist..." (5 NJPER at 238). In the instant case, the Hearing Examiner does infer that the Board's manifestations of anti-union animus were "specifically directed" to Liebeskind and Abramson, whose Association activities were anything but "slight." ^{23/}

Turning now to the Respondent's alleged non-retaliatory exercise of its "legitimate managerial prerogative regarding appointments," ^{24/} it is noted first and foremost that no reason appears in the record for the rejection of Liebeskind by the Board at its Executive Session of May 15, 1979 and the subsequent elimination of Abramson at the Board's Executive Session on May 22, 1979, Abramson having initially recommended at the May 15th Executive Session. (See Findings of Fact Nos. 15 and 16, supra). Supt. DeCapua's recommendations had, for all practical

^{22/} Respondent's Brief, pp. 12, 13.

^{23/} The Hearing Examiner has also considered and rejects as inapplicable the citation of the Hearing Examiner's decision in Cape May City Board of Education, H.E. No. 80-4, 5 NJPER 351, aff'd. P.E.R.C. No. 80-37, 5 NJPER 411 (1979) (see Respondent's Brief, pp. 8, 12). The employer there had no knowledge of the teachers' exercise of protected activities.

^{24/} Respondent's Brief, p. 4.

purposes, always been approved by the Board (see footnote 11, supra). DeCapua had recommended both Liebeskind and Abramson for hire as Title I teachers for the 1979 Summer School Program. Liebeskind had never applied for summer school prior to 1979 while Abramson had been hired in 1972 and 1974. The record does not indicate the teaching qualifications of Liebeskind. However, Abramson taught reading during the 1978-79 school year and the 1979 Summer School Program included reading (see footnote 15, supra).

The legitimacy of the Board's action in refusing to hire Liebeskind and Abramson for the 1979 Summer School Program is, in the opinion of the Hearing Examiner tainted principally by the conduct of DeNardo vis-a-vis Liebeskind and DeNardo and Axelrod vis-a-vis Abramson over several years. Thus, what would otherwise have been deemed as non-discriminatory and non-retaliatory actions of the Respondent in its selection of applicants for 1979 Summer School hire is not supportable on the instant record. 25/

Therefore, based on all of the foregoing, the Respondent Board violated Subsections (a)(1) and (3) of the Act when it failed to hire Liebeskind and Abramson as Title I teachers for the 1979 Summer School Program.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(3), and derivatively 5.4(a)(1), when it failed to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 Summer School Program.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to hire teachers for the Summer School program, such as Arlyne K. Liebeskind and Marc Abramson, because of their exercise of such rights.

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

25/ The Hearing Examiner has fully considered the Board minutes and the testimony of DeNardo, Axelrod and Springer at the hearing in reaching his decision.

exercise of the rights guaranteed to them by the Act, particularly, by failing to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 Summer School Program.

B. That the Respondent Board take the following affirmative action:


1. Forthwith make payment to Arlyne K. Liebeskind the sum of \$900.00, the salary that she would have received as a Title I teacher for the six-week 1979 Summer School Program, less any interim earnings received by her in July and August 1979. 26/

2. Forthwith make payment to Marc Abramson the sum of \$900.00, the salary that he would have received as a Title I teacher for the six-week 1979 Summer School Program, less any interim earnings received by him in July and August 1979. 27/

3. Post at 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, after being signed by the Respondent's authorized representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other material.

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

DATED: April 11, 1980
Trenton, New Jersey


Alan R. Howe
Hearing Examiner

26/ See footnote 16, supra.

27/ As indicated in Finding of Fact No. 18, supra, Abramson was employed during July and August 1979 and earned approximately \$700.00. Accordingly, Abramson is to be paid the difference between the salary of \$900.00 which he would have earned in the 1979 Summer School Program less the exact amount of his earnings elsewhere during July and August 1979.

"APPENDIX A"

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 our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to hire teachers for the Summer School Program, such as Arlyne K. Liebeskind and Marc Abramson, because of their exercise of such rights.

WE WILL NOT discriminate 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 the Act, particularly, by having failed to hire Arlyne K. Liebeskind and Marc Abramson as Title I teachers for the 1979 Summer School Program.

WE WILL forthwith make payment to Arlyne K. Liebeskind and Marc Abramson the sum of \$900.00, that being the salary that each would have received as a Title I teacher for the 1979 Summer School Program, less any interim earnings received in July and August 1979.

BOARD OF EDUCATION OF BRADLEY BEACH

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780