

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY SPECIAL SERVICES
SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CI-H-87-22-82

WALTER POLITZER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission issues a compliance order in an unfair practice proceeding between the Bergen County Special Services School District and Walter Politzer. The Commission orders various amounts of back pay for the 1986-87, 1987-88, 1988-89, 1989-90 school years plus credit for some unused sick leave and personal days during those years. The Commission remands to the Hearing Examiner for proceedings to determine backpay eligibility for the period March 1, 1988 through April 10, 1989, except for a period of disability during which backpay is denied.

P.E.R.C. No. 91-9

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WALTER POLITZER,

Charging Party.

Appearances:

For the Respondent, Gruen & Ritvo, attorneys
(Harold Ritvo, of counsel)

For the Charging Party, Balk, Oxfeld, & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On March 21, 1988, we held that the Bergen County Special Services School District violated subsection 5.4(a)(3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it discriminatorily denied Walter Politzer a full-time position as a sign language interpreter. P.E.R.C. No. 88-83, 14 NJPER 241 (¶19088 1988). We ordered the District to make Politzer "whole for lost wages and other benefits he would have received had he been employed on a full-time basis in the 1986-87 and 1987-88 school years, plus interest pursuant to R. 4:42-11." The Appellate Division affirmed this order. App. Div. Dkt. No. A-4105-87T5 (3/28/89).

Politzer and the District could not agree on the backpay and other benefits owed Politzer. Our Chairman ordered a compliance hearing and directed Politzer to file a backpay specification and the District to file an answer.

On November 30, 1989, Hearing Examiner Richard C. Gwin conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed briefs by February 1, 1990.

On April 10, 1990, the Hearing Examiner issued a report. H.E. No. 90-43, 16 NJPER 275 (¶21116 1990). He recommended that Politzer receive various amounts of backpay for the 1986-87, 1987-88, 1988-89 and 1989-90 school years plus credit for some unused sick leave and personal days during those years. He recommended that Politzer not recover the estimated value of insurance policies; his expenses for tuition, transportation and tools while learning to be a plumber; and backpay for the time he spent at trade school and after he quit working as a plumber.

The Hearing Examiner served his report on the parties and informed them that exceptions were due by April 24, 1990. The parties filed untimely exceptions.^{1/}

^{1/} The parties apparently granted each other extensions of time without informing us. We disapprove of this practice and warn litigants that belated filings may be rejected in the future. We also note disapprovingly that Politzer's exceptions asserted facts outside the record.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 6-14) are generally accurate and complete. We incorporate them. We modify finding no. 5 to state that Politzer looked for an interpreter's job for three to four months before deciding to go to plumbing school. He then gave up his search (T79). We add to finding no. 14 that the interpreter referral service handled requests for freelance interpreters, usually for only an hour or two and sometimes without pay. The referral service apparently did not place interpreters in full-time, permanent jobs (T130-T131).

The District excepts to the Hearing Examiner's finding that Politzer made a reasonably diligent search for employment during the summer and fall of 1986 and his recommendation that Politzer should be placed on the second step of the 1986-1987 salary guide.

Politzer excepts to the Hearing Examiner's recommendations that he be denied recovery for: (1) backpay, tuition, transportation and tools while attending trade school from December 1986 to June 1987; (2) backpay while disabled from March 1988 to April 1989; (3) unused personal days in the 1986-87 and 1987-1988 school years; and (4) unused sick days in the 1987-88 school year. Politzer also seeks pension contributions based on the annual salaries he should have been paid and a finding that the District did not post the required notice.^{2/}

^{2/} Politzer asked for oral argument. We deny that request.

Goodman v. London Metals Exchange, Inc., 86 N.J. 19 (1981), states the principles for determining whether a backpay award should be reduced because the employer has shown that the discriminatee could have secured other employment by reasonable means. Id. at 34.^{3/} Mitigation is an affirmative defense for the wrongdoer to prove. Mitigation depends upon the facts. If the discriminatee has obtained other employment, the employer will be credited with those earnings. If not, mitigation will not be applied unless the facts show that there were similar jobs available and the discriminatee did not make a reasonable and diligent effort to obtain one. Goodman; Miami Coca-Cola Bottling Co., 360 F.2d 569, 62 LRRM 2155 (5th Cir. 1966). Similar employment refers to the nature, location, and compensation of the job discriminatorily denied. A discriminatee may search for a job in the same industry for a reasonable time, but may then have to expand or lower his sights. Goodman at 36-40. See also N.L.R.B. v. Madison Courier, Inc., 505 F.2d 391, 87 LRRM 2440 (D.C. Cir. 1974).

The employer may establish a prima facie case by showing that comparable employment opportunities were available. Whether a job was sought is irrelevant in the absence of a position. The burden of going forward then shifts to the employee who may

^{3/} Goodman does not control liability determinations under our Act. In re Bridgewater Tp., 95 N.J. 235, 243 (1984). But its discussion of mitigation relies upon private sector labor relations precedents and is an appropriate guide for us.

introduce evidence that comparable employment did not exist, that reasonably diligent efforts had been unsuccessful, or that circumstances did not justify acceptance of a dissimilar job. The ultimate burden of persuasion rests on the wrongdoer -- doubts will be resolved against it. Goodman at 40-41; Miami Coca-Cola Bottling Co.

The District asserts that Politzer did not make a reasonably diligent search for employment between July and December 1986. Applying Goodman's standards to the facts, we hold that the District has not established a prima facie case or carried its burden of persuasion.

Politzer was discriminatorily denied a position as an interpreter in late July 1986. The record does not show that there were any comparable interpreter jobs available between July and December 1986, besides the one illegally denied Politzer and other jobs which Politzer applied for but did not get. Politzer made several efforts to find jobs as an interpreter. He could have taken one more step -- checking with the Union County College placement program -- but there is no evidence that the placement program knew of comparable and available jobs between July and December 1986.^{4/}

^{4/} We reject the subsidiary contention that Politzer should be denied backpay for October and November 1986 because he had given up the search for work as an interpreter after he decided to go to plumbing school. The employer has not proved that comparable interpreter jobs were available during those two months and it is unclear to us precisely when Politzer gave up his search. First, he testified that he answered ads

Nor was Politzer required to change his sights from seeking work as an interpreter to seeking work as an accountant. In 1980, Politzer made a reasonable career choice in quitting his work as an executive and seeking what to him would be less stressful and more fulfilling work as an interpreter. When the District laid him off from a part-time position and then discriminatorily refused to hire him in a full-time position, he was entitled under Goodman to seek work in his chosen field for a reasonable period of time. See also Madison Courier. He did so. In any event, the employer has not shown that any accounting-related jobs were available.

The District next asserts that Politzer should be placed on step 2 instead of step 3 of the 1986-87 salary guide. We disagree. No District formula or policy fixes the step on which Politzer would have been placed absent the illegal discrimination. Instead, placement in a particular case was based on the employee's experience and value and negotiations with the employer. The very act of discrimination created the uncertainty now before us -- we do not know how these factors would have interrelated or played out. The wrongdoer must bear the burden of any doubt in resolving this uncertainty. The Hearing Examiner reasonably estimated that

4/ Footnote Continued From Previous Page

for three to four months, that is late-October or late-November. Second, it is unclear whether Politzer meant that he abandoned his search after he decided in theory to go to any plumbing school or after he decided in fact to go to a particular plumbing school. We resolve these doubts against the wrongdoer.

Politzer would have been placed a step higher than Eynon since he had twice the experience and the employer initiated the idea of crediting part-time experiences. We reject the employer's assertion that Eynon's case was exceptional because of her allegedly superior skills and evaluations. This assertion contradicts the finding at the heart of the Commission and Appellate Division decisions on liability: if the same criteria had been applied to Politzer as to Eynon, Politzer would have been hired for the second position. Politzer had the same qualifications in the vocational setting as Eynon had in the academic setting: experience, familiarity, and good-to-excellent evaluations.

We next consider Politzer's contention that he should recover backpay for the time he spent at trade school and the money he spent on tuition and transportation. Politzer concedes that he was not looking for employment during this time. That admission establishes a willful removal from the job market. See, e.g., Miller v. Marsh, 766 F.2d 490, 38 FEP Cases 805 (11th Cir. 1985) (backpay cut off after claimant entered law school); Taylor v. Safeway Stores, Inc., 524 F.2d 263, 11 FEP Cases 449 (10th Cir. 1975). Contrast Brady v. Thurston Motor Lines, 753 F.2d 1269, 36 FEP Cases 1805 (4th Cir. 1985) (backpay not cut off where student kept looking for jobs and would have quit school upon finding one). Potter v. Village Bank of N.J., 225 N.J. Super. 547 (App. Div. 1988) entitles employees who search in the job market to recover their expenses in finding a comparable job, but it does not entitle employees to drop out of the job market to attend school.

Politzer reentered the job market and obtained work as a plumber's helper in September 1987. The Hearing Examiner therefore determined that Politzer should receive backpay for the 1987-88 school year (through March 1, 1988) minus the amount he earned as a plumber's helper. Absent any exceptions to this recommendation, we accept it.^{5/}

We next consider whether Politzer should receive credit for unused personal days for the 1986-87 and 1987-88 school years. The Hearing Examiner denied recovery because these personal days could not be accumulated under the parties' contract. We accept this recommendation. Politzer will receive his salary (minus mitigation) for these years. To credit him with the personal days now or to pay him the value of those days would result in Politzer's getting more than the salary and benefits he would have been contractually entitled to -- making him better than whole.

We next consider whether Politzer should be paid for any available paid sick days for the 1987-88 school year. The answer is yes. Had Politzer not been the victim of discrimination, he could have used available paid sick days during his hernia operation and recuperation at the end of the school year.

^{5/} It is not inconsistent to deny Politzer backpay while he attended plumbing school yet allow reduction for his earnings as a plumber. While at school he was out of the job market; while at work he was in it. We will, however, reduce the amount of mitigation by the cost of tools (\$400) Politzer bought to take a plumbing job.

Posting a notice was not identified as an issue in the notice of the compliance hearing and was not an issue litigated at the hearing. The employer asserts that it did post the notice and Politzer neither submitted any competent evidence of non-compliance nor raised that issue until after the hearing. We dismiss this exception.

We next consider whether the order should direct the District to make pension contributions in accordance with applicable statutes and regulations. The answer is no. The compliance pleadings did not frame a dispute as to pension contributions, and the absence of a dispute was confirmed at the hearing (T44). Politzer may raise his pension claim in another forum.

We finally consider whether Politzer should receive backpay for the period from March 1, 1988 until his reinstatement on April 10, 1989. On this record, we believe that Politzer was justified in quitting his plumbing job. He gave it a fair trial but it proved too burdensome to be comparable. The Hearing Examiner recommended denying further recovery because Politzer abandoned his search for interim employment. We believe the record is insufficient to accept or reject that recommendation. No evidence shows that Politzer renewed his job search after he quit plumbing. Likewise, no evidence shows that he did not. This aspect of the dispute is remanded to the Hearing Examiner to permit the parties to produce additional evidence with respect to this issue. On the basis of the supplemental record, the Hearing Examiner should make recommended

findings of fact and conclusions of law with respect to the availability of comparable employment during this period and Politzer's efforts to secure such employment.^{6/} Under Goodman, the employer must first show that comparable and suitable employment opportunities were available. Then the employee may introduce evidence that comparable employment did not exist, that reasonable and diligent efforts had not been successful, or that circumstances did not justify acceptance of a dissimilar job. The ultimate burden of persuasion rests on the employer. Id. at 46.

ORDER

The Bergen County Special Services School District is ordered to take the following steps to comply with the March 21, 1988 order of the Public Employment Relations Commission:

1. 1989-90 school year. Place Politzer at step 6 on the salary guide and pay him the difference between the step 6 rate and what he was paid at step 5, plus interest pursuant to R. 4:42-11(a).
2. 1988-89 school year. Pay Politzer the difference between the step 5 rate and what he was paid at step 4 from April

^{6/} We note that Politzer was disabled for a portion of this period. Politzer does not claim and the evidence does not establish a causal connection between the job Politzer quit and his hernia operation two months later. Backpay is denied for his period of disability. See Doe v. Osteopathic Hosp. of Wichita, Inc., 333 F.Supp. 1357, 3 FEP Cases 1128 (D. Kan. 1971); Peters v. Missouri Pacific R.R. Co., 3 FEP Cases 792 (E.D. Texas 1971), aff'd 483 F.2d 490, 5 FEP Cases 853 (5th Cir. 1973), cert. den. 414 U.S. 1002; Smyth Mfg. Co., 277 NLRB No. 66, 121 LRRM 1044 (1985); NLRB Casehandling Manual (Part Three): Compliance Proceedings ¶10612 (1984). Contrast Whatley v. Skaggs Co., 707 F.2d 1129, 31 FEP Cases 1202 (10th Cir. 1983) (discrimination forced plaintiff out of management position and into strenuous blue-collar job resulting in back injury).

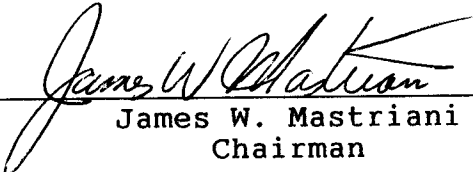
10, 1989 until the end of the school year, plus interest. Credit Politzer with any unused personal days consistent with Articles X.B. and XII of J-2 and up to 10 unused sick leave days.

3. 1987-88 school year. Pay Politzer the step 4 rate from the beginning of the school year through March 1, 1988, minus \$3,896 (the amount he earned in mitigation as a plumber's helper minus the cost of plumbing tools), plus interest. Pay Politzer for any sick leave days which were available for use during his hernia operation and recuperation.

4. 1986-87 school year. Pay Politzer at the step 3 rate from the beginning of the school year until he enrolled in trade school in December 1986, plus interest. Credit Politzer with 10 unused sick days.

Backpay is denied for the period of disability during Politzer's hernia operation and recuperation. Other issues of backpay eligibility for the period March 1, 1988 through April 10, 1989 will be determined after the proceedings on remand. The remaining backpay specifications are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained from consideration.

DATED: Trenton, New Jersey
July 19, 1990
ISSUED: July 20, 1990

H.E. NO. 90-43

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

In the Matter of

BERGEN SPECIAL SERVICES
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-and-

Docket No. CI-H-87-22-82

WALTER POLITZER,

Charging Party.

SYNOPSIS

The Compliance Officer recommends the amount of backpay that the Bergen Special Services School District owes Walter Politzer from the time he was unlawfully denied a full-time interpreting job for the 1986-87 school year until he was reinstated on April 10, 1989. It is recommended that Politzer: 1) receive backpay at step 3 of the interpreters' salary guide from the beginning of the 1986-87 school year until he abandoned his search for comparable interim employment and attended a trade school to learn plumbing; 2) receive no backpay for the time he spent in plumbing school because, having stopped his job search, he is assumed to have an earning potential equal to the amount he would have received if he had not been unlawfully denied employment by the District; 3) receive backpay at step 4 from the beginning of the 1987-88 school year until March 1988, when he quit his plumbing job; and 4) receive no backpay from March 1988 until his reinstatement on April 10, 1989 because he did not look for interim employment.

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The Compliance Officer also recommends that Politzer be credited for the unused sick and personal days he would have accrued had he worked for the District during the backpay hearing. It is recommended that Politzer not be credited for unused sick days during the 1987-88 school year because he had a hernia operation in May 1988 and recuperated for six weeks. It is recommended that Politzer not be reimbursed the value of the health, dental and prescription insurance policies offered by the District during the backpay period because he did not prove an economic loss due to a lack of coverage arising from the District's unlawful conduct. It is also recommended that Politzer not be reimbursed his cost for plumbing school tuition, transportation to school and plumbing tools. Finally, it is recommended that Politzer be placed at step 6 of the 1989-90 interpreters' guide and receive the difference between the rate of his proper step placement and what the District actually paid him in 1988-89 and 1989-90.

The compliance officer rejected the District's argument that Politzer failed to mitigate his loss by not looking for a job related to his former business career.

The procedure followed by the Compliance Officer was similar to the NLRB's backpay proceedings.

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Appearances:

For the Respondent, Gruen & Ritvo, Esqs.
(Harold Ritvo, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
Esqs. (Sanford R. Oxfeld, of counsel)

COMPLIANCE OFFICER'S REPORT
AND BACKPAY RECOMMENDATIONS

Procedural History and Background

On March 21, 1988, the Public Employment Relations Commission found that the Bergen County Special Services School District ("District") committed an unfair practice when it failed to offer Walter Politzer a full-time sign language interpreter's position for the 1986-87 school year. The District's conduct was unlawfully motivated by Politzer's activities as chief negotiator for the Bergen County Special Services School District Education

Association ("Association").^{1/} Politzer advised the Commission that the District had failed to comply with the Commission's order to make him "whole for lost wages and other benefits he would have received had he been employed in the 1986-87 and 1987-88 school years." 14 NJPER at 243. The District later confirmed that the parties could not agree on the amount of backpay and other benefits required to make Politzer whole.

Deputy General Counsel Don Horowitz met with the parties and tried to resolve the matter informally. Unable to settle the dispute, the parties requested a compliance hearing.

On September 21, 1989, the Chairman issued a Notice of Compliance Hearing [C-1] directing Politzer to file a backpay specification setting forth:

1. The name of the individuals eligible for back pay;
2. The period of back pay eligibility;
3. The gross amounts of back pay claimed, including the formula by which the amount of back pay has been calculated.
4. The gross amount earned in mitigation including the formula by which the amount earned in mitigation has been calculated; and
5. Any other claimed wage or fringe benefit entitlement.

^{1/} Bergen Co. Spec. Services Sch. Dist., P.E.R.C. No. 88-83, 14 NJPER 241, (¶19088 1988), aff'd A-4105-87T5 (App. Div. 3/28/89). N.J.S.A. 34:13A-5.4(a)(3) prohibits public employers, their representatives or agents 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."

The Chairman also directed the District to file an answer to the backpay specification.

On October 25, 1989, I informed the parties on the record, that Politzer must first show his gross amount due, earnings, expenses and other pertinent information about the backpay period. The burden then shifted to the District to prove that Politzer's figures do not accurately reflect the amount due to make him whole.

While similar to NLRB backpay proceedings, this procedure differs by requiring the charging party rather than an agency officer to document the damages claimed to be due in a specification.^{2/} This approach was based on the well-established principle of looking to NLRB experience where appropriate and a recognition of the differing prosecutorial and adjudicative roles that the Board and the Commission fill in processing unfair labor practice cases. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 33-36 (1978).

^{2/} The NLRB's rules and regulations regarding backpay pleadings and proceedings are set forth at 29 C.F.R. SS102.52 to .59 (1987)("Backpay Proceedings"). After the NLRB orders an employer to pay backpay to a wrongfully discharged employee, the Regional Director decides whether a formal proceeding will be required to resolve the amount owed. If it appears that the parties will dispute the amount of backpay owed to the employee, the Regional Director may issue a document called a "backpay specification" and call for an ALJ hearing. The backpay specification sets forth in detail the backpay period, specific figures regarding the gross amount due, earnings and expenses for each quarter, net backpay due, and other pertinent information. The employer must file an answer to the specification admitting, denying, or explaining each allegation of the specification. If the employer fails to file an answer, the NLRB may find that specification is true and award backpay accordingly.

I conducted a hearing on November 30, 1989. The parties examined witnesses and introduced exhibits. They waived oral argument. Briefs were filed by February 1, 1990.

The Charging Party's Position

Politzer claims the Board owes him \$51,988.51. (C-2). He asserts that if the District had not discriminatorily refused to offer him a full-time position for the 1986-87 school year, he would have been hired at step 4 with an annual salary of \$14,750. He claims that in 1987-88 he would have received \$15,250 at step 4 (the top of the guide), and that from September through April 10, 1989 he would have received \$12,078 based on a pro-rated step 5 salary of \$16,661. He contends that the interest due, under R.4:42-11, is \$4,010.51. Politzer also claims that he should have moved to step 6 in the 1989-90 school year.

Politzer asserts that he should be reimbursed \$2,260.00 for learning a new trade. Politzer paid tuition of \$980.00 to attend The Berk Trade School in New York City to learn plumbing. He claims his transportation costs to school were \$780.00 and that he should be reimbursed \$400.00 he spent on plumbing tools. He concedes that the Board is entitled to an offset of \$4,296.00, which is what he earned as a plumber in 1987 and 1988.

Politzer also contends that he is entitled to \$8,036.00, his estimated value of the health, dental and prescription policies that the District provided its employees during the backpay period.

Politzer also claims that he is entitled to 30 sick days and 9 personal days he would have received had he been employed during the backpay period.

The District's Position

The District claims that Politzer is entitled to no compensation because he failed to mitigate his damages. It argues that "Politzer was a capable, educated and trained businessman who had the ability to earn as much or as little as he chose in his field as a controller and economics expert." (C-3) It argues that Politzer did not make a reasonable search for work and willfully withdrew from the work force during the backpay period. The District contends that had Politzer been hired for the 1986-87 school year he would have been placed on step 2 of the salary guide, not step 4 as he asserts. The District argues that Politzer is not entitled to credit for plumbing school tuition or his plumbing tools because he retains the skill he learned and the tools he bought. The District denies that it owes Politzer any transportation expenses because he would have borne that expense had he been employed.

The District asserts that Politzer incurred no medical expenses because he was covered by his wife's benefits. The District suggests that paying Politzer an amount equal to the value of the insurance policies would not make him whole but "give him an added benefit." (C-3). Finally, the District contends that

Politzer is not entitled to credit for unused sick and personal days because he did not work during the backpay period.

FINDINGS OF FACT

1. Politzer started working for the District as a sign language interpreter in September 1983 and was paid an hourly rate of about \$6.00. He worked part-time for three school years (1983-86). He was assigned to the Paramus Campus of Bergen County Vocational Tech and usually worked mornings, from 8:15 until noon (T17-T18, T131).^{3/}

2. Shortly after the District failed to offer Politzer a full-time position for the 1986-87 school year, he spent a few months looking for another interpreting job (T64). He looked for advertisements for interpreters in the Bergen Record, The New York Times and The Monthly Communicator, a Department of Human Services publication. He contacted about six public and private employers and told the District that he was still interested in a full-time

^{3/} Morning classes started at 8:15 and ended at 11:15. Politzer claims he stayed and was paid till noon - 3.75 hours each day, five days a week - and thus averaged 18.75 hours per week. The District claims he averaged between 15-17 hours per week based on his pay checks. The District claims that Politzer worked 44% of a full-time schedule based on a ratio of its calculation of his average hours per week and a full-time work week of 34.1 hours. Politzer claims he worked more than half of a full-time schedule. He said that the average work week at the Paramus Campus was 30 hours - 5 six-hour days. No records were introduced. I conclude that Politzer worked about half a full-time schedule. Without supporting documentation on the record, a more precise calculation is impossible (T95, T113-T114, T132-T133).

interpreting job. (T26-T27, T64-T65, T78-T79, T136).^{4/} He filed for unemployment and told an unemployment officer that he would "like to be a plumber," but would "rather be a sign language interpreter" (T77). On direct examination, he explained:

A. Well, I called Governor Livingston which is very far away, and I called IBM somewhere in New Jersey, I forget the town. They said oh, yes, we need interpreters. So I registered with them, and figured that wasn't, that's not going to work. I notified Bergen County Special Services that I was still interested in a position, and didn't hear from them.

Q. That didn't surprise you you didn't hear from them?

A. No, but I wanted to let them know I was still interested in the position because at that time I still didn't know why they didn't, you know, get back to me. I knew they needed interpreters. I knew they hired many subsequently to the time they didn't hire me. I don't know about "many," but I knew they hired some. So I said well, I'm still interested. But no, it didn't surprise me. I just thought I'd try that avenue anyway. Then I thought now I would try to do something else.

Q. What did you decide you wanted to do?

A. Be a plumber.

[T26-T27].

3. Politzer, at 62, has had a long and varied career. He graduated from City College in 1951 with a degree in economics and accounting. He did some related graduate work and started a business career. From 1957-62 he worked for Curtiss Wright--two of

^{4/} Politzer knew that Union County College had a placement program for interpreters but he did not contact the College. (T137).

the five years as a cost manager. From 1962-67 he worked at Revlon as a cost manager. He was next employed as a controller for a publishing company and then for a meat packing company. In 1969 he started working for Value Line, a financial publishing and money management firm. By the time he quit Value Line in 1980, he was a Senior Vice President making approximately \$50,000 per year. He resigned because he was tired of the long hours (60-80 per week) and the stress. He decided "to try to become a sign language interpreter." (T55). He enrolled in Union County College and three years later graduated with a certificate in sign language interpretation for the hearing impaired (T46-T56). In 1983 he started working for the District. After his first year there, the District asked him to return as a full-time interpreter. Politzer declined but returned as a part-time interpreter the next two years. (T17-T19).

4. Testifying about his career decisions after leaving Value Line, Politzer explained that plumbing was:

A. One of the things I wanted to learn.

Q. And wasn't that what sign language was, one of the things you wanted to learn after you were in business?

A. One of the things. Is it one of the things? Yes, one of the things I wanted to learn.

Q. That's why you went there instead of doing something else, it was an interest of yours, isn't that fair to say?

A. Absolutely, and it still is.

Q. And the same thing for plumbing?

A. Nope.

Q. It wasn't an interest?

A. Yes, it is.

Q. Then why did you go to plumbing school? What led you to plumbing school as a vocation if you knew that you could earn \$5 an hour from it after spending a considerable period of time in school and a considerable amount of money and then go out and earn \$5 an hour with your background, history and your experience?

A. There are many things that interest me and it's only after trying them that I find out whether I'm suited for it or not.

[T72-T73].

5. Politzer's attempts to find work as an interpreter or a plumber during the summer and early fall of 1986 were unsuccessful. (See finding 1). He asked several plumbers to hire him as a helper but was told that he lacked experience. He reacted by looking for a vocational school where he could learn the trade. He enrolled in the Berk Trade School in New York and went to school from December 1986 to June 1987. When he started school, he gave up his search for a sign language interpreting job. He never looked for a job related to his former business career. In late August or early September 1987, he found work as a plumber's helper in Hillside, which is where he lives, at the apprentice rate of about \$6.00 an hour. He worked as a plumber's helper, averaging about 40-hour weeks until around March of 1988. He had planned to complete his apprenticeship but quit because he considered the heavy lifting too difficult. In May 1988 he had surgery to repair an inguinal hernia and recuperated for six weeks. He believes that the

hernia may have been related to his plumber's helper job but did not prove it. He did not file for workers' compensation. (T28-T32, T64-T66, T78-T79).

6. As a plumber's helper, Politzer earned \$2,764 in 1987 and \$1,512 in 1988. He had no other outside earnings during the backpay period. He spent \$980 for tuition at the Berk School and \$400 on tools. His transportation costs were \$780. Politzer calculated the District's cost to provide him with health, dental and prescription insurance during the backpay period at \$8,036. He was covered under his wife's comparable insurance benefits at that time. That insurance covered the cost of his hernia operation. He has not proved an economic loss as a result of not having been covered by the District's insurance policies during the backpay period. (T29-T31, T33, T38-T42, T67-T68; C-2A).

7. When the District reinstated Politzer on April 10, 1989, it placed him on step 4 of the 1988-89 interpreters' salary guide. The guide placement was based on the District's after-the-fact decision that, had it offered Politzer a full-time position in 1986-87, he would have received credit for 1.32 (44% x 3, see finding 1) years of experience and been placed on step 2 of the salary guide. (T95-T96). Politzer claims he would have been placed at step 4 had he been hired in 1986-87 in light of the guide placement of Susan Eynon when she began her full-time employment with the Board. (T21-T24).

8. Susan Eynon worked for the District as a sign language interpreter in parts of three school years. She was hired in March 1985 as a per diem teacher, was paid an hourly rate, and finished the 1984-85 school year in June. She returned in September 1985, while in her last year at Union County College finishing an associate's degree in applied science in human services-- interpreting. She worked for the District on days that she had no college classes-- every Tuesday and Thursday and days the college was not in session (e.g., winter and spring breaks). Like the previous year, she worked full days and was paid an hourly rate. She received no fringe benefits. Her work for the District partially fulfilled the requirements of the Union County College degree. (T3-T5; T13-T14).

9. In May 1986 the District advised Eynon that she would not be rehired on a part-time basis the following year. This suited her because she did not want to work part-time again. When she completed her associate's degree in May 1986, she told her supervisor that she would like to finish the school year working full-time (on an hourly basis) for the District. The District refused her request. Later in May, however, she was told that she could work full-time through June and that she would probably be offered a full-time position for the next school year. She replied that she would work full-time only if the District gave her a contract and the benefits of a full-time interpreter, effective June 1, 1986. The District agreed (T5-T7).

10. When Eynon was hired as a full-time interpreter in June 1986, she was placed on step 2 of the 1985-86 salary guide. This guide placement resulted from a discussion she had with her supervisors, Dr. Schwartz and Dr. Kiernan. Dr. Kiernan suggested that the District might place Eynon higher than step one, based on her experience in the district and her recent receipt of the associate's degree. After Kiernan obtained the approval of her supervisors, Eynon was placed on step 2 which provided an annual salary of \$12,750 (T7, T10-T11; T15; J-1, p. 30).

11. When Eynon returned as a full-time sign language interpreter in September 1986, she remained on step 2 of the 1986-87 guide at a salary of \$13,250. She did not receive an increment (T11, J-1, p. 30). Eynon worked the entire 1986-87 school year and returned in September 1987, at step 3 with an annual salary of \$14,500. She resigned January 31, 1988 because she was bored. (T12, T16, J-1, p. 30).

12. The District has no policy or formula for the guide placement of new full-time employees. The collective negotiations agreement between the District and the Association makes no provision for initial guide placement. As it did with Eynon, the District negotiates placement with new full-time employees (T85-T86, T93-T97). Dr. June Zabchin, the District's Assistant Superintendent explained:

When someone is in the process of being hired we take into account experience, the value to the District at that time in terms [of its] needs, and they of course negotiate. [T85].

13. Zabchin prepared a list of former part-time employees who were hired full-time by the District and started on step 1 of the appropriate salary guide. The list shows two certificated staff who worked part-time less than one year and were placed on step 1 when hired full-time. Eight certificated^{5/} part-time staff worked more than one year part-time and were hired full-time on step 1. Of the non-certificated staff, three worked part-time less than one year, seven worked part-time more than one year and all were placed on step 1 when hired full-time. The list does not show part-time staff who were hired full-time and placed higher than step 1. It did not include Eynon or another employee Zabchin recalled at the hearing. The only sign language interpreter on R-1 was a non-certificated employee who worked part-time less than one year and was hired full-time at step 1. In terms of showing a pattern or practice Zabchin's list has little value. (T87-T93, R-1).

14. The District also introduced certified copies of the 1985, 1986, 1987 and 1988 annual reports of the New Jersey Department of Labor, Division of the Deaf. Accompanying the reports was a chart depicting the number of requests made to and filled by the Division's interpreter referral service. The reports do not show that interpreting work suitable to Politzer's background was

^{5/} Certificated staff received a state professional certificate. Sign language interpreters do not receive such certification, though they may earn a "certificate" for sign language interpreting.

available within a reasonable distance of Pulitzer's residence, had he applied to the service. (R-2 through R-6).^{6/}

DISCUSSION AND ANALYSIS

This case is the first requiring a backpay hearing to ensure compliance with a Commission remedial order. The parties were advised on the record on October 25, 1989 of the process that would be followed. The procedure used was a modified version of the NLRB's backpay proceedings. The major difference was that the initial burden of preparing and then documenting a specification was placed on the charging party. The burden then shifted to the respondent to contest the backpay computation.

Enforcing and modifying an NLRB order, the 7th Circuit in Graves Trucking and William Nash, 246 NLRB 344 [102 LRRM 1504](1979) enf'd, as modified 692 F.2d 470 [111 LRRM 2862](7th Cir. 1982), explained that, "a backpay order is a reparation order designed to vindicate the public policy of the statute by making...employees whole for losses suffered on account of an unfair labor practice." 111 LRRM at 2866, citing Nathanson v. Labor Board, 344 U.S. 25, 27, 31 LRRM 2036 (1952). The Court further explained that, "[i]n the traditional setting the purpose of the backpay award is to restore 'the economic status quo that would have obtained but for the

^{6/} Requests for interpreters come from many sources including state, county and municipal judges, hospitals, government organizations and private business. There is, however, no way to tell from these exhibits what positions were available or where an applicant would have had to travel to fill one.

company's wrongful refusal to reinstate.'" 111 LRRM at 2866, citing Golden State Bottling Co. v. NLRB, 414 U.S. 168, 188, 94 S.Ct. 419, 427, 38 L.Ed.2d 388, 405, 84 LRRM 2839 (1973), (quoting NLRB v. Rutter-Rex Mfg. Co., 396 U.S. 258, 263, 90 S.Ct. 417, 420, 24 L.Ed.2d 405, 411, 72 LRRM 2881 (1969)). The Court also discussed the effects of a backpay award: "From the perspective of the wronged individual, the award mitigates the inhibiting effect of the unfair...practice on exercise of protected rights." 111 LRRM at 2866. The Court added that, "The fact of the award must also demonstrate to other employees that the law will protect such exercise." Id.

Based on the similarity of the remedial provisions in N.J.S.A. 34:13A-5.4(c) and 29 U.S.C. §160(c), and at the direction of the New Jersey Supreme Court, I rely on the "experience and adjudication" under the Labor Management Relations Act in preparing this recommended award. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 9 (1978), (quoting Lullo v. Intern. Assn. of Fire Fighters, 55 N.J. 409 (1970)).

The Commission ordered the District to make Politzer whole for the wages and benefits he would have received if employed full-time in the 1986-87 and 1987-88 school years. The District did not implement the order until after the Appellate Division affirmed it on March 28, 1989. Politzer was reinstated on April 10, 1989.

Thus, the backpay period begins with the start of the 1986-87 school year and ends April 10, 1989.^{7/}

The calculation for gross backpay is based on the interpreters' salary guides contained in the collective negotiations agreements between the District and the Association in force during the backpay period. (J-1, J-2). Calculations are based on school years rather than calendar quarters as done by the NLRB under the Woolworth formula. (See F.W. Woolworth Company, 90 NLRB 289 (1950); and Palmer v. Conn. Railway & Lighting Co., 311 U.S. 544, 561 (1941); NLRB v. Kartarik, 227 F.2d 190, 192-193 (8th Cir. 1955) enfg. 111 NLRB 630 (1955)(NLRB not held to unattainable standard of precision in backpay computations, so choice of backpay formula may be made on facts, circumstances or reasonable inferences giving rational basis for a conclusion). I assume step movement on the guide from one school year to the next. This assumption is implicit in both parties' calculations for Politzer's 1988-89 guide placement, albeit their differences on his hypothetical 1986-87 starting point.

In calculating Politzer's guide placement for the 1986-87 school year, I rely on the District's testimony that it negotiated guide placement with new employees and that its negotiations stance was based on the employee's "experience [and] the value to the

^{7/} I also recommend, however, that Politzer's guide placement for the 1988-89 and 1989-90 school years be changed in order to restore him to status quo. (See pp. 17-18 infra).

District at that time in terms [of its] needs." (finding 12, quoting T85). The only evidence about the District's need for interpreters for the 1986-87 school year is Eynon's hiring. Eynon had worked part-time at an hourly rate for less than a year-and-a-half when she was placed, effective June 1, 1986, at step 2 of the full-time interpreters' guide. The Board did not compute the ratio of her part-time employment with that of a full-time interpreter. In fact it appears that the District initiated the idea of crediting her part-time experience. (See finding 10). It is therefore obvious that the District needed interpreters and was willing to give credit for part-time experience in placing them on the salary guide. When Eynon returned for the 1986-87 school year, she remained at step 2. Thus, Eynon was effectively given credit for one step based on one-and-one-half years of part-time experience.

Based on the District's treatment of Eynon, I conclude that Politzer should be credited two steps (for three years of part-time experience) and that the gross backpay computation be based on his placement at step 3 for the 1986-87 school year. Accordingly, Politzer's gross backpay for 1986-87 is \$14,000 (J-1). In 1987-88 he would have moved to step 4 at \$15,250. *Id.* In 1988-89 he would have moved to step 5 at \$16,661, (J-2) and in 1989-90 to step 6 at \$18,202. (See, Kawasaki Motors v. NLRB, ___ F.2d ___ (9th Cir. 1988), 128 LRRM 2913, 2919, enfg. 282 NLRB No. 28, 125 LRRM 1026, (NLRB properly found unlawfully discharged employee would have been promoted during backpay period, even though there is some doubt as

to employee's promotion. Doubts should be resolved against employer that acted unlawfully); NLRB v. Coca-Cola Bottling Co., 360 F.2d 569, 62 LRRM 2155, (5th Cir. 1966)(in considering backpay formulas, uncertainties will be resolved against the wrongdoer); Fruin-Colnon Corp., 244 NLRB 510 (1979)(the Board rejects theoretical backpay formulas offered by respondents which, while internally consistent, do not reflect realities of events).

When Politzer was reinstated on April 10, 1989, he was placed at step 4 at \$15,841. He moved to step 5 at \$17,306 for the 1989-90 school year. To restore him to the economic position he would have enjoyed absent its unlawful conduct, the District must pay Politzer: the difference between what he was paid at step 4 from April 10, 1989 to the end of the 1988-89 school year, and what he should have been paid at step 5; and the difference between what he was paid at step 5 during the 1989-90 school year, and what he should have been paid at step 6. The District must also place Politzer at step 6 of the 1989-90 guide. Id.

I turn now to a calculation of Politzer's net backpay from the beginning of the 1986-87 school year until his reinstatement on April 10, 1989.

When Politzer was wrongfully refused a full-time position he was required to make a reasonable effort to obtain interim employment. Iron Workers Local 118 v. NLRB, 804, F.2d 1100, 1102 [123 LRRM 3234](9th Cir. 1986); NLRB v. Westin Hotel, 758 F.2d 1126, 1130 [118 LRRM 3297](6th Cir. 1985) (a wrongfully discharged

employee is not held to the highest standard of diligence in seeking interim employment); NLRB v. Arduini Mfg. Co., 394 F.2d 420, 423, 68 LRRM 2129 (CA 1 1968), (a discriminatee need not go beyond "reasonable exertion" in an effort to mitigate backpay liability); compare American Bottling Co., 116 NLRB 1303, 38 LRRM 1465 (1956). There is some disagreement among the circuits, but the prevailing view is that a wrongfully discharged employee is expected to seek only new employment that is substantially equivalent to the position lost. See e.g., Westin Hotel, 758 F.2d at 1130. "The employee is not required to seek or retain a job more onerous than the job from which he or she was discharged." Kawasaki Motors, 128 LRRM 2913, 2917, citing NLRB v. Madison Courier, Inc., 472 F.2d 1307, 80 LRRM 3377, (D.C. Cir. 1972). The Board does not require an employee who has found lower paying interim employment to continue a job search while so employed. Heinrich Motors Inc., 166 NLRB 783, 65 LRRM 1668 (1967); East Texas Steel Castings Co., 116 NLRB 1336, 1344-45 (Bogan).

In order to meet the duty of mitigating damages, however, an employee may not willfully incur a loss of earnings. Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 198-200, 8 LRRM 439 (1941); Heinrich Motors. The backpay period is not tolled if the employee abandons a search for interim employment, but the NLRB assumes that the employee would have earned an amount equal to the projected gross backpay during the time the employee was idle. The employee's backpay entitlement is reduced by the amount that would have been

earned if employment had not been discriminatorily denied. Shell Oil Co., 218 NLRB 87, 89 LRRM 1534 (1975).

The burden of proving that the employee failed to mitigate damages is on the employer, and any doubts must be resolved against the employer who committed the unfair labor practice. Madison Courier, Inc., 472 F.2d at 1321; Coca-Cola Bottling Co., 360 F.2d at 572-73.^{8/}

The District argues that when Politzer was unable to find work as an interpreter, he "should have drawn upon his extensive education and business experience and sought other suitable interim employment for which he was qualified." (post-hearing brief at p. 3). In making this argument, the District reviews Politzer's business career (see finding 3); it points out that "Politzer left his [Value Line position - with a salary of almost \$50,000] in 1980 at the approximate age of 53 because he decided to try...sign language interpreting"; and concludes that, "[i]t is therefore evident that Mr. Politzer was certainly qualified to obtain other positions, some of which could have paid even more than the part-time sign language interpreter position from which he was removed." Id.

Politzer was under no obligation to look for work as a business executive, controller, cost manager, or any other position that was more onerous than the full-time interpreting job the

^{8/} This is consistent with the notice the parties received on October 25, 1989 about how this case would proceed.

District unlawfully refused to offer him. Westin Hotel, Madison Courier. He left Value Line in 1980 because he was tired of the long hours and stress. That such work is more onerous than interpreting for the District is obvious. Moreover, the District has not shown the availability of work compatible with Politzer's background and age (he was about 59 in 1986), not requiring him to relocate.

While Politzer was not obligated to seek work more onerous than his former position, he was obligated to make a reasonable attempt at finding comparable interim employment. As the District points out in its brief, "The purpose of mitigation is designed primarily to further 'the healthy policy of promoting production and employment.'" (District's brief p. 1, quoting Phelps Dodge Corp., 313 U.S. at 199-200). To this end, Politzer filed for unemployment, scanned newspaper ads and applied for an interpreting position with approximately six employers. Though he could have done more--for example, he could have contacted the Union County College placement office--I consider his conduct an "honest good faith effort" to find a comparable job in interpreting. O., C.I.A. Workers Int. Union, AFL-CIO v. NLRB, 547 F.2d 598, 603 (D.C Cir. 1976).

Unable to find an interpreting job, Politzer tried to find a job as a plumber. His initial efforts were vigorous and unsuccessful. The District suggests that the time Politzer spent looking for work as a plumber should not count toward mitigation because he knew he could only earn about \$6.00 an hour as a

plumber's helper and should have been more diligent in looking for a job in interpreting or business. (District's brief p. 7). I have already concluded that Politzer had no obligation to find a more onerous job in business and that (during the summer and early fall of 1986) he was reasonably diligent in looking for an interpreter's position. I conclude further that the District has failed to meet its burden of proving that between the time he was wrongfully denied full-time employment and the time he entered the Berk Trade School, Politzer's conduct warranted a reduction of the gross amount of backpay. See e.g., Madison Courier Inc.

I will assume, as the Board does in its brief, that Politzer knew he could only make about \$6.00 an hour as a plumber's helper. It is a fact that Politzer had no formal training as a plumber. It does not follow, however, that by attempting to pursue a career as a plumber, Politzer had abandoned his obligation to mitigate his losses. The \$6.00 rate is about what Politzer made from the District when he started interpreting part-time in 1983 (though he was working then less than 20 hours a week). Had he continued his employment as a plumber's helper, as planned, he would have worked four or five years as an apprentice. If Politzer had found a job in interpreting, he may have earned more than as a plumber's helper. He did not find an interpreter's job, however, and the District failed to show that comparable work was available. The job Politzer was looking for had an earning potential of about \$225-240.00 per week, or roughly \$11,000 to 12,000 annually. (When

Politzer later found work as a plumber's helper, he worked about 40 hours per week). Given the unavailability of a comparable job in interpreting, the amount he made as a part-time interpreter, and even the amount he would have made if hired full-time by the District (\$14,000--See p. 17), I consider his search for a plumber's helper job a reasonable attempt at mitigation. I conclude, therefore, that from the beginning of the 1986-87 school year until December 1986, his gross backpay should not be reduced.

When Politzer enrolled in the Berk Trade school, however, he willfully withdrew himself from the labor force.^{9/} He stopped looking for a job. (finding 5). Therefore, for the balance of the 1986-87 school year, he is assumed to have had an earning potential equal to what he would have earned had he not been unlawfully denied employment by the District. Phelps-Dodge; American Bottling Co.; Heinrich Motors Inc.; Shell Oil Co.; Compare Southeastern Envelope Co., 246 NLRB 63, 102 LRRM 1567 (1979) (employee entitled to backpay for two-month job training period because she did not stop job hunting).

Politzer completed his schooling by June 1987 and by September found a job as a plumber's helper. He earned about \$6.00 an hour and averaged 40-hour weeks until he quit his job because the

^{9/} I can find no precedent to support Politzer's claim that the District should bear the cost of training him to become a plumber. I recommend that he not be reimbursed for tuition to the Berk Trade School, his transportation costs to school or his plumbing tools. Cf. Southeastern Envelope, infra.

work was too burdensome. No evidence shows that Politzer renewed his job search after he quit plumbing in March 1988. I conclude that Politzer is entitled to backpay from the beginning of the 1987-88 school year until the first of March 1988 when he quit working and abandoned his search for interim employment. The backpay calculation for the 1987-88 school year should be based on a pro-rated step 4 salary of \$15,250 and should be offset by \$4,296, the amount he earned in mitigation.

Politzer also seeks fringe benefits he claims would have accrued but for the District's unlawful conduct. He seeks credit for 30 sick days, 9 personal days and his calculated value of health, dental and prescription insurance.

It is undisputed that the District permits full-time interpreters to accumulate up to 10 unused sick days each year. Politzer should receive credit for 10 sick days for the 1986-87 school year. He should not receive credit for sick days during the 1987-88 school year because in May 1988, he was unable to work due to his hernia operation and recuperation period.^{10/} Politzer should receive full credit for unused sick days during the 1988-89 school year.

^{10/} Politzer did not prove that the hernia operation was related to his job as a plumber's helper. He did not file for workmen's compensation and only suggested that there might be a connection. He had the operation at a time that would have been near the end of the school year-May.

A review of J-1 and J-2 reveals that employees could not accumulate unused personal days until the 1988-89 school year. J-2 permits unused personal days to be banked for a retirement benefit. (J-2 pp. 13, 14). Had he worked during the 1986-87 and 1987-88 school years he would not have been permitted to accumulate his unused personal days. He is therefore not entitled to receive them as part of a backpay remedy. He should, however, receive credit for any unused personal days for the 1988-89 school year.

Politzer also seeks \$8,036.00--his estimated value of the insurance policies under which he would have been covered during the backpay period. I conclude that he is not entitled to the money. He failed to prove that he incurred medical expenses due to the lack of coverage during the backpay period. Remedies should include only what is necessary to make the employee whole and should not be construed as requiring reimbursement for medical expenses other than those incurred due to a lack of coverage resulting from the unlawful discharge. See Freeman Decorating Co., 288 NLRB 139, 130 LRRM 1271 (1988); Searle Auto Glass dba Bert Glass Co., 280 NLRB 1365, 123 LRRM 1024 (1986).^{11/}

^{11/} Had Politzer proved that, due to the lack of insurance coverage, he was forced to buy comparable insurance, pay for medical treatment or contribute to expand his wife's policy to cover him, he might have been entitled to the expense. He made no such attempt. He seeks here much more than an amount that would make him whole. Id.

BACKPAY RECOMMENDATION

1. 1989-90 school year. Politzer should be placed at step 6 on the salary guide and paid the difference between the step 6 rate and what he was paid at step 5, plus interest. (R.4:72-11).^{12/}

2. 1988-89 school year. Politzer should be paid the difference between the step 5 rate and what he was paid at step 4 from April 10, 1989 until the end of the school year, plus interest. He should receive credit for any unused personal days consistent with Articles X.B. and XII of J-2. He should also receive credit for up to 10 unused sick leave days.

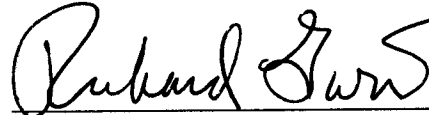
3. 1987-88 school year. Politzer should be paid at step 4 from the beginning of the school year through March 1, 1988, minus \$4,296, the amount he earned in mitigation as a plumber's helper, plus interest.

4. 1986-87 school year. Politzer should be paid at step 3 from the beginning of the school year until he enrolled in the Berk Trade School in December 1986, plus interest. He should receive credit for 10 unused sick days.

5. I recommend that the District not be ordered to pay Politzer: his estimated value of the insurance policies offered by the District to its employees during the backpay period; his costs for tuition, transportation and tools while attending the Berk Trade

^{12/} Pension contributions should be in accordance with the statutes and regulations governing the plan of which Politzer was a member.

School; and his salary from December 1986 through the end of the 1986-87 school year, and from March 1, 1988 until his reinstatement on April 10, 1989. I also recommend that Politzer not receive credit for unused personal days for the 1986-87 or 1987-88 school years or for unused sick days for the 1987-88 school year.



Richard C. Gwin
Hearing Examiner

Dated: April 10, 1990
Trenton, New Jersey