

PERC NO. 87-142

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-177-119

WEEHAWKEN EDUCATION ASSOCIATION,
LA FRONZ, et al,

Charging Party.

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-18-21

WEEHAWKEN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Weehawken Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to renew the employment contracts of James Furno, Paul Fitzpatrick, Harry Untereiner and Robert Schmidt and subsequently failed to reinstate Schmidt to a full-time position. The Commission finds that these actions were taken to retaliate against activity on behalf of the Weehawken Education Association. The Commission further holds, however, that other non-renewals and transfers did not violate the Act.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-177-119

WEEHAWKEN EDUCATION ASSOCIATION,
THOMAS LA FRONZ, ARTHUR KAPLAN, JAMES
FURNO, PAUL FITZPATRICK, HARRY UNTEREINER,
ROBERT DERMODY, ROBERT SCHMIDT, DIANE
PONDISCIO and MARIANNE KELLY,

Charging Parties.

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-18-21

WEEHAWKEN EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Krieger, Ferrara, Feinsilver, Flynn
& Catalina, Esqs. (Brian N. Flynn, of counsel)

For the Charging Parties, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On December 28, 1976, the Weehawken Education Association ("Association") and its officers and members Thomas LaFronz, Arthur Kaplan, James Furno, Paul Fitzpatrick, Harry Untereiner, Robert Schmidt, Diane Pondiscio and Marianne Kelly filed an unfair practice charge against the Weehawken Board of Education ("Board"). The

charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (3),^{1/} when it did not renew the employment contracts of LaFronz, Kaplan, Furno, Fitzpatrick, Untereiner and Dermody and transferred Schmidt, Pondiscio and Kelly for the 1976-1977 school year. The charge alleges these actions were taken in retaliation for the employees' engaging in activity protected by the Act.

On July 27, 1981, the Association filed a second charge against the Board. This charge alleges the Board violated the Act when it abolished the position held by Robert Schmidt, former Association president, and did not renew the full-time employment contract of Carol Gallagher, the Association's grievance chairperson, but instead offered her a part-time position. The charge further alleges that the Board repeatedly transferred Association building representatives. This charge also alleges these actions were taken in retaliation for the employees' engaging in activity protected by the Act.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

On September 30, 1981, the Association amended the second charge to allege that the Board violated the Act when it refused to re-appoint Anne Grewe and Linda Purpuro to teaching positions for the 1981-1982 school year. On October 20, 1982, the Association again amended its charge to allege that the Board violated the Act when it transferred teachers for the sole purpose of preventing Robert Schmidt's reemployment pursuant to a Commissioner of Education decision ordering the Board to "comply with legal requirements...through the recognition of [Schmidt's] placement on a preferred eligibility list." The Association alleges this action was taken to penalize Schmidt for his leadership and participation in Association activities.

On May 11, 1977 and August 7, 1981, Complaints and Notices of Hearing issued.

On May 16, 1977 and October 16, 1981, the Board filed its Answers. It admitted taking the employment actions alleged, but denied they were in retaliation for protected activity.

On November 15, 29 and 30, 1977, January 24, 1978 and October 4, 1979, hearings were held before Hearing Examiner Edmund G. Gerber concerning the first Complaint. At that time, the parties agreed to stay the hearings pending the outcome of related proceedings before the Commissioner of Education; those proceedings concluded on June 10, 1982 with an Appellate Division decision. Hearings on the two unfair practice Complaints then resumed. Hearings were held on March 23, 24, 25, 26, 29, 30 and 31, April 1 and 2, October 1,

November 8, 9, 10 and 17 and December 15 and 17, 1982, February 22, May 4 and June 9, 1983. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs.^{2/}

On January 22, 1987, the Hearing Examiner recommended that the Complaints be dismissed. H.E. No. 87-42, 13 NJPER ____ (¶ 1987). He concluded that the Board took the employment actions because the Association engaged in strikes in both 1973 and 1980. However, he concluded that such action did not violate the Act because strikes are illegal and not protected by the Act.

On March 4, 1987, after receiving an extension of time, the Association filed exceptions. It contends the Hearing Examiner's report does not contain adequate findings of fact and relies on the generalized conclusion that the Board's actions were motivated by the strike without analyzing whether the Board's actions were motivated by the employees' protected activity.

The Hearing Examiner's report is not adequate. It does not address substantial relevant testimony. In particular, its total reliance on the Association's strike activity to warrant the Complaints' dismissal is too conclusory given the posture of the

^{2/} On March 5, 1986, the Association moved to supplement the record to include tenure charges filed against Superintendent Onorevole. The Hearing Examiner apparently did not decide the motion but we deny it. Those charges are irrelevant to this proceeding. On January 16, 1987, the Association filed a motion for leave to appeal to the Appellate Division from the inaction of the Hearing Examiner. It withdrew the motion when the Hearing Examiner issued his report. The issuance of the report does not moot our concerns regarding the delay.

case. The charging parties did engage in two strikes and strikes are not protected by our Act. But this case requires much more than a summary conclusion. The crucial factual issue presented was the Board's motivation in taking the challenged employment actions. The report makes insufficient findings.

This case is not simple. The Board was faced with complex problems. It took certain steps which resulted in certain responses from the Association. The Board then responded to those actions by the Association. Our task is to review both parties' actions and determine which were valid under our Act and which were not. We begin by making the following findings of fact.

The 1976 RIFs and Transfers

The Weehawken School District is a relatively small urban school district, consisting of four schools. Webster and Roosevelt, until September 1977, were K-6 schools. Wilson was, until 1977, K-8. All seventh and eighth grade students before 1977 were sent to Wilson. In 1977, Webster, Roosevelt and Wilson became K-7 schools.

Beginning in the early 1970s, the district experienced fiscal difficulties caused primarily by a declining school enrollment and decreased revenues and State aid. School budgets had been consistently defeated. These difficulties resulted in the layoff of 22 non-tenured teachers for the 1973-1974 school year and other reductions in force in the 1974-1975 and 1975-1976 school years.

Greg Cordano, then president of the Association, was RIFed^{3/} when the elementary shop program was eliminated. Most foreign language courses were also eliminated.

In 1970, the school population was close to 2,900 students. By 1974, it was reduced to 2,300 students. The immediate cause of the reduction was that the Secaucus school district, which had been sending its high school students to Weehawken, built its own high school. Beginning in 1972, Weehawken retained only the Secaucus students who had commenced high school there. The following are the enrollment figures from 1974-1981:

<u>Enrollment</u>	<u>Webster</u>	<u>Roosevelt</u>	<u>Wilson</u>	<u>High</u>	<u>Teachers</u>
74-75	356(K-6)	472(K-6)	650(K-6)	886	152
75-76	358 "	471 "	614 "	791	146
76-77	328 "	453 "	604 "	690	134
77-78	382(K-7)	465(K-7)	483(K-7)	637	
78-79	363	449	460	643	
79-80	365	443	429	597	
80-81	352	457	447	566	
81-82	328	445	385	510	

On October 1, 1974, Dr. Richard Onorevole was appointed superintendent of schools. He immediately became concerned with the poor performance at the Wilson school. The elementary classes were overcrowded and the seventh and eighth grade students were performing poorly on standardized tests. At this time, the seventh and eighth grades were departmentalized and had been for many years. Under the departmental system, one teacher would teach only

^{3/} The phrase RIF stands for reduction in force and means the elimination of an employment position.

one subject. For instance, there would be separate social studies, English, math, science, education, art, music and home economics teachers. A student in seventh or eighth grade would have several teachers and would move from room to room to meet with the "specialist" teacher. Discipline was poor at Wilson and changing classes became "bedlam" and interfered with the elementary grades. The elementary school (K-6), in contrast, would have one teacher, known as a "generalist", who was certified to teach several different subjects from K-8 and who taught the same students all day.

Dr. Onorevole did not favor the departmental approach for seventh and eighth graders. He believed that a "generalist" approach to education would better suit the students' needs. He also was in favor of replacing "specialists" with "generalists" in the seventh and eighth grades because generalists were better at general education and gave the administration greater flexibility in scheduling. Charles Rogers had been principal of Wilson school for ten years, during which the "departmental" concept was used. He believed that approach was better for seventh and eighth graders because it provided for better in-depth training in the various disciplines. Onorevole, in contrast, believed that the various disciplines should be integrated and the child's needs should be looked at "in total." He thus favored creating a "middle school." This middle school would integrate the students from all the elementary schools at an earlier age, but continue general education. The departmental structure would be eliminated.

On February 10, 1976, the Board adopted the following resolution:

WHEREAS, the school organization should provide a program for the emerging adolescent that is adapted to the ever-changing physical needs of this learner; and

WHEREAS, opportunities for interaction among students of different age and physical development should be fostered; and

WHEREAS, instruction may be related to individual needs; and

WHEREAS, a curriculum shall provide for the intellectual and physical limitations of adolescent students; therefore

BE IT RESOLVED, that the Weehawken Board of Education supports the concepts of the Middle School organization and authorizes the administration to develop an educational program for establishing a Weehawken Middle School.

James Furno was a social studies teacher from 1967 through 1976. He was offered reemployment in 1978. He was very active in Association activities. He was vice-president, chairperson of the negotiations committee, member of the community relations committee, chairperson of the Action Committee in 1974-1975, member of the executive committee in 1975-1976 and building representative. He also was one of the leaders of the nine day strike in 1973. The Action Committee was formed to combat the reductions in force and curriculum changes and was opposed to Dr. Onorevole. He was also active in supporting Association candidates in Board elections.

In April 1975, at a faculty meeting, Furno informed Onorevole that the Association had voted "no confidence" in his

administration. He told Onorevole that the RIFs and transfers were without justification and that he acted arbitrarily in not consulting the faculty with respect to educational matters. He also criticized Onorevole's actions at public board meetings. At one meeting, after he had criticized Onorevole, Board president Lettieri told him, "You'll wish you never said that." The next day Onorevole told him, "You've already shouted at me twice in public, if you should do it again,...[I]'d have to do something about it."

Furno also picketed the schools in spring 1975 as part of the Action Committee. Furno also was a leader in the Association's "non-cooperation policy." Under this policy, in effect 1974-1976, Association members refused to participate in extracurricular activities.

In 1974-1975, Furno successfully arbitrated his request to be put on the M+30 salary step. A staff member, active in the Association, testified that a principal, Warren Buehler, said, "Dr. Onorevole said he wanted to get Furno and LaFronz."

Paul Fitzpatrick was employed as a social studies teacher from 1968 until he was laid off in 1976. He then was rehired in 1977 to teach English and history after he obtained an elementary certificate. He had been a member of the Association's executive committee and had been a building representative in the early to mid-1970's. He also was a member of the Action Committee and participated and picketed in the 1973 strike.

Harry Untereiner taught social studies from 1971 until he was RIFed in June 1976. He was reemployed in September 1978. He was a member of the Association, but did not hold office.

Robert Dermody was a non-tenured social studies teacher until his layoff in 1976. He was not active in the Association. Because of his low seniority and the declining enrollment, it was clear, by January 1976, that he would be RIFed.

Thomas LaFronz was a psychology teacher from 1962 through 1976 when he was RIFed. He was reemployed in September 1978. He was active in the Association. He was a member of the negotiations team from 1964-1971 and was President from 1968-1971 and from 1975-1976. He was a leader in the strikes and picketed in support of the strikes. He had formulated, along with Robert Schmidt, Carol Gallagher and Arthur Kaplan, the Association's non-cooperation policy.

In 1975-1976, a staff member said that Warren Buehler, the principal, said that the Superintendent was "out to get LaFronz...so I should watch myself." During this time, LaFronz had been processing grievances. On April 15, 1976, he was notified of his layoff. He filed a petition with the Commissioner of Education challenging his layoff on the grounds of seniority; the petition was unsuccessful. He testified that Stanley Iacono, a Board member, agreed with LaFronz that the layoff was because of his union activities, but that he couldn't help him.^{4/} Onorevole encouraged him to get another certificate such as typing.

^{4/} Stanley Iacono denied making that statement. He testified that he met with LaFronz, but only told him that he would look into it and see if he could do anything.

After the layoff, LaFronz continued as president. He was once ordered off the campus by police because he had not signed in and was interrupting classes.

Arthur Kaplan was a driver's education teacher from 1960 through 1974. In 1975 he taught in the business department. He was active in the Association throughout his employment. He was vice-president and president in 1969-1970 and 1970-1971. He was on the negotiations committee from 1970-1974. He was on sabbatical during the 1973 strike, but participated in the non-cooperation policy.

In 1975, driver's education was eliminated and Kaplan transferred to the business department. He was then notified, in April 1976, that he would be laid off. In June 1976, tenure charges were lodged against him for unauthorized absence from teaching duties -- playing tennis while he was scheduled to teach. The Commissioner of Education upheld the charges.

Furno, Fitzpatrick, Untereiner and Dermody all taught social studies at the Wilson School. They all had specialized certificates. Onorevole decided to replace them. He said it was because of his "generalist" philosophy. They were replaced with teachers that had elementary certifications. Social studies classes were reduced from 33 to 22 from 1975-1976. However, Jerry Lange, an

NJEA representative, testified that Board President Lettieri told him Robert Dermody was laid off "in order to get at Fitzpatrick and Furno but that Lettieri would deny he ever said it." However, the departmental approach continued the next year. Also, generalists did not replace specialists in other departments. Thomas LaFronz, a psychology teacher, was also RIFed because interest in psychology was declining and because of budget problems. Psychology courses were then reduced from six to three, and were taught by two guidance counsellors and one social studies teacher.

Fitzpatrick, Furno, Untereiner, Kaplan and LaFronz challenged their layoffs on seniority grounds to the Commissioner of Education. Kaplan's claim was dismissed because he had been dismissed due to tenure charges because of unrelated conduct. The Commissioner found that Furno was improperly laid off and reinstated him with back pay. He found the other layoffs to be proper. This determination was affirmed by the State Board. The Appellate Division, however, reversed as to Fitzpatrick and found that he was also improperly terminated in violation of his seniority rights. Fitzpatrick was also reinstated with back pay.

Marianne Kelly was transferred to teach seventh grade social studies at Wilson School in 1976. She had previously taught third grade at Roosevelt. She has been active in Association affairs. She was negotiations chairperson, Action Committee chairperson and

building representative. She also participated in the non-cooperative policy by refusing to be cheerleader advisor. She did not participate in the 1973 strike.

She had an angry meeting with the Superintendent after the layoff notices were issued in April 1976. She was subsequently transferred. When she asked school principal Jeanette Adler why, Adler responded, "You've been a bad girl, Marianne, and you're being hand slapped." Onorevole said it was the decision of the administrative cabinet, which consisted of all the principals.

Kelly was transferred to the Wilson School at the request of Charles Rogers because she was a good teacher. In addition, she was having disputes with Principal Adler. The other teachers were transferred because the Superintendent believed that teachers should become acquainted with the entire district.

Diane Pondiscio was a teacher at Weehawken from 1968 through 1978. She was a fifth grade teacher at Webster until she was transferred to Roosevelt in 1976. She was a building representative, negotiations committee member, grievance committee member, secretary and Action Committee member. She also spoke at Board meetings. She picketed the superintendent's house, along with LaFronz, Kelly and Furno, during the 1973 strike.

The 1981 Transfers

Twenty teachers were transferred, effective September 1981. This was by far the most transfers since 1971. The closest to this was the 1975 and 1977 school years when there were seven. The

Association alleged these transfers took place to punish building representatives for their leadership and participation in Association activities.

Carol Roming is a teacher-librarian. In September 1981, she was transferred from full-time at Webster to Webster for one day and Roosevelt the other four days. She was building representative at Webster in past years and was Association vice-president in 1980-1981. She was an active participant in the 1980 strike and was observed picketing by Board members. She had earlier engaged in the 1970 and 1973 strikes. She had also filed grievances against the Board and had spoken at Board meetings. There was a reduction in force in librarians from four to three in 1981.

Carol Molnar was active in the Association as a building representative from 1975-1979. From 1979-1981 she was a member of the negotiations, grievance and social committees. She was active in the 1980 strike and picketed at the high school.

On June 9, 1981, the Board advised her that her assignment had not been formalized, but on July 14, 1981 she was rehired. On August 9, however, Molnar said she would not be coming back and asked to be released from the 60 day statutory notice of termination. The Board agreed to do so and Molnar took a position with the Wyckoff Board of Education.

Jill Leone was transferred from seventh to fourth grade in 1981. She was active in the Association as a member of the Action Committee and was building representative in 1980-1981. She was

also a leader of the 1980 strike and picketed Board meetings, schools and Board members' homes and businesses. She had been receiving prank phone calls and one Board member, Joseph Atallo, asked her about the calls. But she had only told one friend, in secrecy, that she had been receiving such calls.

Hoover Aurora was transferred from Wilson to Roosevelt in 1981. Her classroom at Roosevelt was in the basement. She was an assistant building representative for the Association in 1979-1981 and was an active participant in the 1980 strike, which included picketing Board meetings and Board members' homes. During the strike, Board member Atallo told Aurora that, "People were going to suffer because of this." He said the Association's leaders had misled the membership and "they were going to suffer the consequences." Aurora said the worst thing that could happen to her was to teach in the basement at Roosevelt School. Board member Pizzutto told Aurora's husband that Aurora should keep a low profile because she was up for tenure. Pizzuto denied making this statement.

Carol Gertenbach was transferred to Roosevelt School from Webster, where she had been assigned for 13 years. She had been active in the Association -- building representative in 1972-1973, 1975-1976, treasurer in 1973 and member of the grievance committee since 1976. She was active in the 1980 strike, distributing flyers and picketing.

Rosemary Baldassari was transferred to Wilson from Webster in 1981. She had participated in the 1980 strike and picketed.

Irene Schoenberger was transferred to Webster after teaching in Roosevelt School for 12 years. She picketed in support of the 1980 strike.

Sonia Prendergast was transferred to Wilson after the 1980 strike. She picketed in support of that strike.

Patricia Allegretta was transferred to Wilson after participating in the 1980 strike. She picketed Board members' homes and the Roosevelt and High Schools.

Onorevole denied that the 1981 transfers were motivated by anti-union animus. Rather, he testified that the transfers were made for the following educational reasons: Patricia Allegretta, Carol Gertenbach, Irene Schoenberger, Aurora Hoover, and Sonia Prendergast were transferred to equalize the racial balance in the schools pursuant to a request from the Office of Equal Educational Opportunity; Rosemary Baldassari was transferred to replace a teacher on sabbatical leave, and Carol Roming was transferred because of a reduction in force among librarians.

Robert Schmidt was employed by the Board from September 1972 through May 31, 1981. He taught seventh and eighth grade English from 1972-1975 and then taught high school for one year. He then transferred back to grade school and then back to high school. For 1980-1981, he taught compensatory education exclusively. He was active in Association activities. He was a leader of the Action Committee and picketed Board meetings and the homes and work places of Board members. He also was active in the 1973 and 1980 strikes.

In 1976, Schmidt was treasurer, building representative and member of the political action committee. He also was involved in the non-cooperation policy and refused to coach baseball. With Gallagher, Kelly, and LaFronz, he prepared a leaflet criticizing the Board and the Superintendent. He also publicized the Association's vote of "no confidence" in the Superintendent and relayed it to the Board. In 1978-1979, he was Association president, co-chairperson of the grievance committee and a member of the social and political action committee. In May 1981, Schmidt became vice-president and chief negotiator for the Association.

On June 30, 1975, Schmidt was notified that he was to be laid off, but was rehired the day school reopened in September. In June 1976, on the last school day, Schmidt was transferred from the high school to Woodrow Wilson.

On March 1, 1977, Schmidt was reprimanded for leaving his classroom. On May 13, 1977, his principal criticized him for publicly criticizing aspects of the school system, specifically the Weehawken Individualized Language Arts, saying he was disloyal to the school. He was then sent on a training session for that program. This was subsequently cancelled after Schmidt complained. In his June 1977 evaluation, his principal commented negatively on his "out of classroom attitudes and involvement." At the end of the year, he was transferred back to the high school. In June 1980, his evaluation criticized him for not attending the voluntary language arts meetings. Schmidt said they took place during his preparation

period and were not mandatory under the parties' contract. On May 31, 1981, Schmidt was RIFed. However, the Board subsequently advertised for reading teachers. In September 1981, the compensatory education reading courses were taught by several teachers, including one part-time teacher. This teacher was originally scheduled to teach four reading courses, but later exchanged one reading course with one math course after an Association member complained that Schmidt was qualified to teach these courses. One Board member, Auriemma, told Gallagher that Schmidt would never have a job in Weehawken because "he had made this whole thing personal." Auriemma, on March 22, 1982, told Carol Roming that he was not going to vote for any RIF's because, "I took care of the ones that I wanted to take care of last year." Board member Pizzutto told Lange that "the Board did Bobby Schmidt a favor last year in putting him back on as a compensatory education teacher. And now, all he did was open his mouth this year and now they're really after him."

Schmidt challenged his layoff before the Commissioner of Education, contending that it violated his tenure and seniority rights. The Commissioner, agreeing with an Administrative Law Judge's determination, found that Schmidt should have been placed in a part-time position in 1981-1982 since he had greater seniority than two other teachers who had been assigned to teach a total of three sections of language arts and English. The Commissioner further held that he should be placed on a preferred eligibility

list as an English teacher for 1982-1983.^{5/}

After the initial decision was issued, three teachers, Connie Ruymen, Carol Clancy and Mary Kingwall, had their 1982-1983 class assignments changed to include teaching English. These teachers had greater seniority than Schmidt. Howard Wolf, principal of Wilson School, told Ruymen the change was made because Schmidt had won his case and he had been directed to change the schedules. Wolf said these changes were made so Anthony D'Angelo and Barbara Pastore would not be RIFed. These two teachers had less seniority than Schmidt, and these schedules were changed in 1982-1983 to eliminate English.

Schmidt's father, John, and Board member Frank Pizzutto met at a political meeting in October 1981 after Robert Schmidt had been RIFed. John Schmidt asked, "What are you people trying to do to my son in Weehawken." Pizzuto responded, "Smitty, if he would keep his big mouth shut he would be all right." Pizzutto denied making this statement.

^{5/} Schmidt appealed and the Appellate Division remanded. The Commissioner then determined that under education law, a reading specialist, such as Schmidt, is eligible to teach Basic Skills Improvement remedial reading. It is not clear from the record how this determination affected Schmidt's employment.

According to Onorevole, Schmidt was terminated because the school needed a compensatory education teacher for reading and math. Schmidt was only certified to teach reading. However, Schmidt's replacement started the next school year teaching only compensatory education in reading. A few days into the school year, after Carol Gallagher complained that Schmidt could teach those courses, she switched classes with another teacher and thereafter taught one math compensatory education class.

Linda Jo Purpuro taught at Weehawken from September 1978 until June 1981. She was not tenured. She refused to cross the picket line during the 1980 strike. She was notified of her termination in April 1981. She was notified that another full-time elementary bilingual position would be available and she applied for it and was interviewed by the superintendent. She was not appointed, however. Afterwards, Onorevole asked what her position was during the strike.

Anne Grewe also taught for the Board at Webster School from 1978-1981 when she was terminated. She did not participate in the 1980 strike, but did call in sick one day. She applied for a third grade position at Roosevelt in August 1981. She was not appointed.

The Board decided at an August 26, 1981 meeting not to appoint Purpuro and Grewe. Board member Pizzutto voted the appointment of Laurie Currier, another non-tenured teacher being considered for another position, and stated, after the vote when she, Purpuro and Grewe were not appointed, that the Board was

engaged in union-busting. Board members Principe and Olvesen concurred in that statement. Pizzutto apologized for that statement at the next Board meeting and said it was inaccurate and was made out of frustration and anger because Currier was his neighbor.^{6/} Board member Atallo said, "He couldn't recommend to the Board of Education to hire anyone who had demonstrated an attitude as militant as these people had in participating in the strike."

Carol Gallagher is a tenured business teacher at Weehawken High School. She has also been very active in the Association. She was secretary in the early 1970's and since 1976 has been chairperson of the grievance committee. She was also vice-president in the mid-1970's. She was a named defendant in the restraining order issued in the 1973 strike. Gallagher was also active in the Association's non-cooperation policy in 1976-1977 and refused Dr. Onorevole's request that she participate during the orientation meeting for the 1976-1977 school year. She also picketed the homes of Board members and the Superintendent and passed out literature in the spring of 1976 to protest the reduction in force. She was a leader of the September 1980 strike which lasted 11 days.

In Spring 1978, Gallagher reviewed her personnel file. She saw documents pertaining to the strike and picketing and asked that

^{6/} Pizzutto testified he was referring to Laurie Currier, but we do not so find in view of his inconsistent earlier deposition when he said he was referring to Purpuro and Grewe and Board member Olvesen's corroborating testimony.

copies be made. These files were later misplaced and Gallagher did not receive copies.

Her Association correspondence to the Superintendent did not include the salutation "dear." On November 7, 1979, the Superintendent sent her the following letter:

You have been teaching secretarial skills in the District for a considerable amount of time. I trust that you are aware of the general greeting to be used in a letter and I would like to meet with you, Mr. Sheldon Mayer, Department Chairman and Mr. Peter Olivieri, Principal of the High School, to discuss the teaching and use of this specific objective: Greeting in a formal letter.

I want to discuss your instructional methodology and practices on November 14, 1979 at 3:00 P.M. in my office.

They met to discuss this. The Superintendent wanted to know why Gallagher didn't address him as "Dear" Doctor Onorevole. Gallagher responded that she did not desire to use a term of endearment when referring to him.

Gallagher was required to request leaves in writing, unlike others who made oral requests. Her principal, Peter Olivieri, said it was for "protection" because her Association activities were being kept track of by the administration.

In April 1981, during a grievance meeting, Gallagher and Onorevole had a heated argument after Gallagher said that she would not invite him to speak at an Association meeting. On June 26, 1981, she was advised that she would be RIFed from her full-time

position, but was offered a part-time position.^{7/} There were six other RIFs in 1981. In January 1982, she resumed a full-time position.

The Hearing Examiner did not sufficiently analyze this case. Given the detailed record, it simply was not sufficient to conclude summarily that the Board retaliated against the employees because they engaged in strikes. There were two important factual questions which the Hearing Examiner did not address. The first was the employees' exercise of protected activities. It is, of course, true that striking is not protected by the Act. But the record is replete with Association members' engaging in protected activity. The Hearing Examiner, therefore, was obliged to set forth findings of fact with respect to that issue. Further, even if an employee has struck, an employer may not use that unlawful activity as a pretext to discipline him or her, when his motivating or substantial reason was to discriminate against that employee for his protected activity. The second important issue in this case, therefore, is the Board's motivation. The Hearing Examiner sets forth no reasons to support his conclusion that the Board took the various actions because of the two strikes. Such a summary conclusion is especially disturbing given the posture of the case: The Board consistently denied that it was motivated by the strikes; instead, it contended

^{7/} She grieved the original salary figure and the Board offered her a higher salary based upon a pro rata amount.

at all times, and its witnesses testified that its actions were motivated by educational and economic considerations.

There is only one legal issue in this case: Did the Board unlawfully retaliate against Association members by transferring and dismissing them for engaging in activity protected by our Act.

In re Bridgewater Tp., 95 N.J. 235 (1984) sets forth the governing principles we must apply in determining whether the charging parties were unlawfully discriminated against.

The charging party must first establish a prima facie case that his or her protected activity was a substantial or motivating factor in the disputed personnel decision. In some cases, that prima facie case may be made out by direct evidence of anti-union motivation; in other cases it may be made out by circumstantial evidence that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile towards the exercise of protected activity. Id. at 246. If the charging party establishes a prima facie case, the burden shifts to the employer to prove, as an affirmative defense and by a preponderance of the evidence, that the action occurred for legitimate business reasons and not in retaliation for the protected activity.

Ultimately, the factfinder must resolve any conflicting proofs. We also emphasize that these standards must be applied to the facts and their interrelationship in each particular case. We now apply this test to the challenged employment actions.

The 1976 Rifs

First, we reject the Hearing Examiner's conclusion that the 1973 strike motivated the employer's decision to RIF and transfer the named charging parties. The three year delay from the strike to the layoff substantially discounts the strike as the motivating reason. This is especially true given the surrounding facts. The Board had been reducing its force from 1973 through 1976 and, in fact, RIFed 22 teachers after the 1973 strike. Presumably, they would not have waited three years to RIF other employees, but would have done so immediately if they were so motivated. We also believe it noteworthy that Onorevole was the motivating force and recommended the 1976 RIFs. But he was not Superintendent during the 1973 strike and would have little reason to harbor animosity from that strike. In fact, there is no evidence that the Board or any of its agents harbored any such ill feelings from that strike and we will not assume any, especially given the passage of time.

The RIFs of Furno, Fitzpatrick, Untereiner and Dermody must be considered together and revolve around Furno's activities. The Association's theory is that the Board was "after" Furno, but was forced to lay off the other three because Furno had the most seniority.^{8/} Unlike Untereiner and Demody, Furno engaged in much

^{8/} This theory, if proved, would require the reinstatement of the other employees even though it was not aimed at them. E.g., State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 85-77, 11 NJPER 74, 82 (¶16036 1985).

activity protected by the Act.^{9/} Furno was a vigorous and active spokesperson for the Association. He spoke at numerous Board meetings. He informed Onorevole of the no-confidence vote and criticized him in public meetings concerning the RIFs, transfers and curriculum changes.^{10/} He also successfully arbitrated a salary grievance.

The Board was, of course, aware of these activities. There is also evidence that it was hostile to such activities. Board President Lettieri told Furno, after he criticized Onorevole at a Board meeting, that, "You'll wish you never said that." Onorevole warned him the next day about public critical statements; Lettieri said others were laid off to get to Furno. All of these facts establish, and we so find, a prima facie case.

We now consider the Board's alleged business justification defense. The Board's reason was that, in light of declining enrollment, it believed greater flexibility and "generalists" rather than "specialists" would best serve the students needs at Wilson School. We do not accept that proffered justification under the circumstances of this case. We find the "generalist" justification

^{9/} He was also a leader of the non-cooperation policy in which teachers engaged in a concerted refusal to accept extracurricular assignments. Such activity is not protected by our Act. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd 176 N.J. Super. 35 (App. Div. 1980.)

^{10/} These activities are protected by the Act. Laurel Springs, P.E.R.C. No. 78-4, 3 NJPER 228 (1977).

to be a pretext. The fact is that the Wilson School remained departmentalized the following year: the "generalist" approach was not used. Second, we find it quite suspicious that only social studies teachers were removed. The Board did not explain why generalists did not replace specialists in departments other than social studies. Thus, the Board did not meet its burden that it would have made this change absent Furno's protected activity.

The Board did not, however, violate the Act when it RIFed Dermody. The record establishes that, as a non-tenured teacher with little seniority and given the decline in social studies offerings, he would have been RIFed anyway.

We dismiss the remaining allegations concerning the 1976 RIFs and transfers. LaFronz did engage in protected activity and the Board did know it, but the record demonstrates that the Board had a legitimate business justification in RIFing him. It is undisputed that the RIFs were going to be made because of declining enrollment, especially in the high school. There was waning interest in psychology, the only course LaFronz taught and at that time, psychology could have been taught by other teachers. Finally, his RIF was in accordance with State seniority regulations. Under all the circumstances, we find that the Board did not violate the Act when it RIFed LaFronz.^{11/}

^{11/} Therefore, we need not resolve the credibility issue concerning Iacono's statements.

Nor do we believe Kaplan's termination violated the Act. He was terminated because he was playing tennis when he should have been teaching.

We also do not believe the transfers violated the Act. As of 1976, there is no evidence that these transfers were in retaliation for any exercise of protected activity. Kelly was not getting along with her principal at Roosevelt, Jeanette Adler. Rogers, the principal at Wilson, believed she was an excellent teacher. It, therefore, made sense to transfer her from Roosevelt to Wilson. We have considered Kelly's testimony that Adler told her she was transferred because "you've been a bad girl Marianne and you're being hand slapped." Because of Kelly's union activities and the timing of the personnel action, such a statement could, under other circumstances, be evidence of anti-union animus. Here, however, we believe it was a statement attributable to personality differences and not anti-union animus. This is especially so given Rogers' preference for Kelly. We also do not believe the transfers of Pondiscio and Schmidt violated the Act. There is not sufficient evidence connecting Schmidt or Pondiscio's transfer to any protected activity. We, therefore, dismiss those aspects of the Complaints.

The 1981 RIFs and Transfers

The transfers which took place in May 1981 did not violate the Act. The Association did not establish that the transfers were made in retaliation for activity protected by the Act. It simply introduced evidence that the transferred employees engaged in the

1980 strike and were transferred in 1981.^{12/} Thus, the most it proved was that these employees were transferred for engaging in a strike. That does not violate our Act. Sayreville Bd. of Ed., P.E.R.C. No. 86-120, 12 NJPER 375 (117145 1985).

Likewise, we do not believe that the Board's refusal to rehire Purpuro or Grewe violated the Act. The Association did submit ample evidence that the Board was hostile to their purported participation in the 1980 strike. In fact, in explaining his vote, Board Member Atallo specifically referred to striking activity. This view, even if harsh, does not violate the Act.

We now consider Robert Schmidt's termination. Schmidt engaged in protected activity and the Board knew it. But he also engaged in unprotected activity and the Board knew that as well. The nice question presented is to sort his protected from unprotected activity and determine whether the Board was hostile towards his protected activity. There was definite hostility. Board member Auriemma told Gallagher that Schmidt would never have a job in Weehawken because "he had made this whole thing personal" and in 1982 said he "took care of the ones that I wanted to take care of

^{12/} There was also testimony that these employees picketed. Informational picketing by non-striking teachers would be protected. But in this case the picketing was engaged in pursuant to strike activities and was not separable.

last year." Board member Pizzutto referred to Schmidt's opening his mouth as the reasons for the terminations.^{13/} We interpret these statements to refer to Schmidt's protected activity of speaking publicly at Board meetings, in contrast to his strike activity. In fact, there had been earlier instances criticizing him for engaging in protected activity. He was reprimanded for making public comments critical of the Weehawken Individualized Language Arts program. In contrast, the record is silent concerning retaliation because of his strike participation. Accordingly, we hold that the Board violated the Act when it RIFed Schmidt in 1981. We do not, under the circumstances, accept the Board's justification that it sought a comp-ed teacher for both English and math. It had enough English comp-ed classes that such flexibility was not necessary and in fact replaced Schmidt with another teacher who originally was assigned to teach only English classes. Further, the Board advertised for reading teachers after Schmidt was RIFed.

^{13/} Pizzutto denied these statements and the Hearing Examiner failed to resolve the credibility question. We discount Pizzutto's denials, however, given the inconsistency between his statements regarding the union-busting statement and the inconsistency between his testimony as to who he was concerned about when he made the statement and his earlier deposition.

We also hold that the Board violated the Act when it did not reassign Schmidt to a full-time position in 1982-1983. The record reveals a blatant effort to retaliate against him by changing teachers' schedules so that he would not have sufficient seniority to come back as a full-time teacher. The record compels the conclusion that this was the sole reason the Board made the changes. We believe this action was vindictive and unlawful.

Finally, we dismiss the Complaint pertaining to Carol Gallagher. She proved protected activity and Board knowledge of such activity. But the record is insufficient to support a hostility finding. While requiring a teacher to take a salutation lesson for failing to address her Superintendent as "dear" appears petty, it falls short of establishing that her subsequent demotion, for a four month period, was because of her protected activity. We note that the Board had a legitimate business reason to drop certain of her classes and that she was immediately reinstated to a full-time position after another business teacher retired.

We have found that the Board unlawfully RIFed James Furno, Paul Fitzpatrick and Harry Untereiner. We have also found that it unlawfully RIFed and then refused to offer full-time employment to Robert Schmidt. Normally, the appropriate remedy would be to order these employees to be reinstated with backpay and interest. No such order, however, is necessary with respect to either Furno or Fitzpatrick since the Commissioner and the Appellate Division granted such relief. Untereiner was also reemployed September 1978. Therefore, he is entitled to back pay with interest for the 1976-1977 school year. Schmidt has also been reinstated, for at

least a part-time position, since September 1981. He should be reinstated to a comparable full-time position and receive back pay and interest for what he would have received in a full-time position from September 1981.

Posting a Notice of the violations and a cease and desist order are also appropriate.

ORDER

The Weehawken Board of Education is ordered to:

A. 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 failing to renew the employment contracts for the 1976-1977 school year of James Furno, Paul Fitzpatrick and Harry Untereiner because of Furno's protected activities and by failing to renew the employment contract of Robert Schmidt in 1981-1982 and failing to offer him full-time employment in 1982-1983 because of Schmidt's protected activities.

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 renew the employment contracts for the 1976-1977 school year of James Furno, Paul Fitzpatrick and Harry Untereiner to retaliate against Furno's exercise of protected activities and by failing to renew the employment contract of Robert Schmidt in 1981-1982 and failing to offer him full-time employment in 1982-1983 to retaliate against Schmidt's exercise of protected activities.

B. Take the following affirmative action:

1. Reinstate Robert Schmidt to a comparable full-time teaching position to which he was employed before being denied reemployment for the 1981-1982 school year.

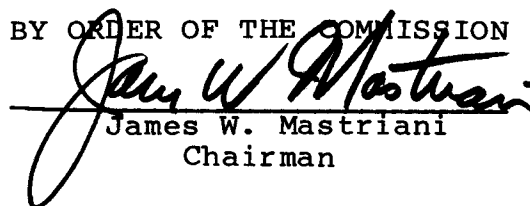
2. Make Robert Schmidt and Harry Untereiner whole for lost wages and other benefits less income that should be credited in mitigation plus interest at the rate authorized by R. 4:42-11.

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

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

The Complaints' remaining allegations are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
May 20, 1987
ISSUED: May 21, 1987

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to renew the employment contracts for the 1976-1977 school year of James Furno, Paul Fitzpatrick and Harry Untereiner because of Furno's protected activities and by failing to renew the employment contract of Robert Schmidt in 1981-1982 and failing to offer him full-time employment in 1982-1983 because of Schmidt's protected activities.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to renew the employment contracts for the 1976-1977 school year of James Furno, Paul Fitzpatrick and Harry Untereiner to retaliate against Furno's exercise of protected activities and by failing to renew the employment contract of Robert Schmidt in 1981-1982 and failing to offer him full-time employment in 1982-1983 to retaliate against Schmidt's exercise of protected activities.

WE WILL reinstate Robert Schmidt to a comparable full-time teaching position to which he was employed before being denied reemployment for the 1981-1982 school year.

WE WILL make Robert Schmidt and Harry Untereiner whole for lost wages and other benefits less income that should be credited in mitigation plus interest at the rate authorized by R. 4:42-11.

The Complaint's remaining allegations concerning the 1976 transfers and terminations and 1981 transfers are dismissed.

CO-77-177-119
Docket No. ~~CO-82-18-21~~

WEEHAWKEN BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____
(Title)

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

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

H.E. No. 87-42

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

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-177-119

WEEHAWKEN EDUCATION ASSOCIATION,
LA FRONZ, et al,

Charging Party.

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-18-21

WEEHAWKEN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Weehawken Board of Education did not violate the Public Employer-Employee Relations Act when it transferred and failed to renew the contracts of teachers who engaged in strikes. Striking is not a protected activity within the meaning of the Act.

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

H.E. No. 87-42

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

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-177-119

WEEHAWKEN EDUCATION ASSOCIATION,
LA FRONZ, et al,

Charging Party.

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-18-21

WEEHAWKEN EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent

Krieger, Ferrara, Feinsilver, Flynn & Catalina
(Brian N. Flynn, of counsel)

For the Charging Party

Bucceri & Pincus
(Sheldon H. Pincus, of counsel)

HEARING EXAMINER'S
REPORT AND RECOMMENDED DECISION

On December 28, 1976, the Weehawken Education Association (Association) and Thomas LaFronz, Arthur Kaplan, James Furno, Paul Fitzpatrick, Harry Untereiner, Robert Dermody, Robert Schmidt, Diane

Pondiscio, and Mariann Kelly filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) against the Weehawken Board of Education (Board) alleging that nine individuals were unlawfully discriminated against when some six of them, LaFronz, Kaplan, Furno, Fitzpatrick, Untereiner and Dermody, were denied contracts to teach in the 1976-77 school year, and three others, Schmidt, Pondiscio and Kelly, were transferred to different school buildings. It was alleged that these actions were taken because the teachers exercised protected rights. Additionally, two of the named teachers, Untereiner and Dermody, were denied reemployment rights, not directly because of their own exercise of protected activity, but rather because their inferior seniority status necessitated that, pursuant to N.J.S.A. 18A-1 et seq., they be let go by the Board first in order to discharge the four teachers who engaged in protected activity within the meaning of the Act.

The Board denied these actions were taken in order to discriminate against the exercise of protected rights. It claims the teachers whose contracts were not renewed were the subject of a Reduction In Force (or RIF) motivated by economic necessity and the transfers were made in order to insure that the best teachers were where they were most needed; that is, these transfers were made for educational reasons. It appeared that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, and a Complaint and Notice of Hearing was issued on May 11, 1977. Hearings in this matter commenced November 15,

1977 and after some five days of hearings the parties mutually agreed to pend further hearings and defer to a companion case that was concurrently being litigated before the Commissioner of Education. That litigation was ultimately the subject of an Appellate Division Decision of June 10, 1982. The Court there held that one of the teachers named as a Charging Party, Thomas Fitzpatrick, was the subject of an improper Reduction In Force. There were teachers with less seniority in the employ of the Board that should have been let go before Fitzpatrick. It was further held, however, that the other Board actions were not in violation of the provisions of Title 18A. Before the Appellate Division rendered the decision, the Association filed a second charge on July 27, 1981 which alleges that the Board abolished the positions of Robert Schmidt, a tenured teaching staff member who was a former president of the Association, and Carol Gallagher, the Grievance Chairperson of the Association, for engaging in protected activity. These two employees lost their positions although Gallagher was offered the opportunity to work at a less than full-time per diem position. In addition, the charge makes reference to the conduct that was the subject of the original unfair practice charge. Finally, it is alleged that the Board unlawfully transferred officers of the Association. All of these acts alleged were in order to discourage the exercise of protected activity. In its answer the Board denied that the actions were taken for anti-union animus and claimed that the transfers were made for reasons of educational policy and that

the RIF was done out of economic necessity. It appearing that the allegations of the charge if true might constitute an unfair practice within the meaning of the Act a Complaint and Notice of Hearing was issued on August 10, 1981.

Subsequent to the issuance of the Complaint there were an additional 19 days of hearing beginning March 23, 1982 and running through to June 9, 1983.^{1/}

The Weehawken School District is composed of four schools, and has grades ranging from K through 12.

The Association, by way of proving unlawful motivation on the part of the Board, introduced evidence back to, and before, a nine day strike in February of 1973 (Charging Party's brief, p. 10). All of the individuals, except for Dermody and Untereiner, named in the first unfair practice charge were active in that strike.

Carol Gallagher was the secretary of the Association at the time of the strike, picketed during the strike and was named in the restraining order that was issued in the Chancery Divison of Superior Court. Carol Roming picketed at the High School and Webster School. Picketers were observed by a member of the school

^{1/} The dates of the hearing were March 23, 24, 25, 26, 29, 30 and 31, April 1, 2, October 1, November 8, 9, 10, 17, December 15, 17, 1982, February 22, May 4 and June, 9, 1983. At which time all parties were given an opportunity to examine and cross-examine witnesses and present evidence and argue orally. Briefs in this matter were received in December 1983.

administration Mr. Stein, at the high school. During the strike, Association members went door-to-door distributing leaflets prepared by the Executive Committee and members of the Association. Sonia Pendergass attended meetings, distributed materials and made telephone calls while on strike. James Furno picketed, distributed leaflets and made telephone calls in support of the strike and was a member of the committee in charge of organizing strike activities. Paul Fitzpatrick participated in the strike by picketing and Diane Pondiscio was on the Association's Negotiating Committee at the time of the strike. She picketed at the schools and distributed literature in town.^{2/} Other pickets included Thomas LaFronz who picketed at the High School and organized the non-tenured teachers and Art Kaplan and Robert Schmidt. The Association's position that it struck because the Board of School Estimate had cut approximately \$400,000 from the school budget for the following year (Charging Party's brief p. 11). During the collective negotiations during the 1972-73 school year, the Board stated that the staff would be reduced by approximately 6 teachers because of alleged declining enrollments. In fact, the Board terminated 18 teachers. Of these 18, 16 had participated in the strike.

^{2/} Pondiscio testified that she also picketed at the home of Dr. Onorevole. It is noted however that Onorevole did not become Superintendent until August 1974 and had no experience in Weehawkin prior to that time (Trans. of November 15, 1977 p. 36). At the time of the strike, the Superintendent was A. Wallace Gendron

During, and following, the strike the then Superintendent of schools, A. Wallace Gendron had lists prepared detailing the employment histories and strike activities of all teachers in the school district. The following year Warren Buehler served as acting Superintendent of schools and in August of 1974 Dr. Richard Onorevole was appointed Superintendent of Schools and some 22 teachers were RIFed for the 1974-75 school year.

During this school year, James Furno was Chairman of the Association's Action Committee. In April of 1975 a meeting was conducted with Superintendent Onorevole and Furno as well as a number of teachers. Furno stated that "the Association had a vote of no confidence in his (Onorevole) administration of the school system." The meeting then broke up. Teachers began leaving the meeting and Onorevole dismissed them.

In May of 1975, Furno attended a meeting of the Board of Education. Furno, in the open meeting, asked Onorevole how a thorough and efficient education could be provided when Onorevole had acted arbitrarily in reducing the teaching force and transferring other teachers and further he had lost the confidence of the faculty and the support of the community. On the following day, Superintendent Onorevole stated that Furno shouted at Onorevole in public twice and if he shouted at him again, he would have to do something about it.^{3/}

3/ Tr. April 1, 1982 pp. 8 & 9.

La Fronz became President of the Association the following year, 1975-76, and in April 1976 the Board announced that the six teachers would not be renewed the following school year. Although La Fronz was one of the teachers who was not renewed he continued to serve as Association President. Kaplan, Untereiner, Fitzpatrick^{4/}, Furno and Dermody were also denied contracts for the new school year. In addition, Schmidt, Pondiscio and Kelly were transferred to different schools. LaFronz testified that he was told by his Principal that Warren Buehler sent a message that LaFronz should watch himself because Onorevole "was out to get him." Further, LaFronz testified that Board member, Stanley Iacono told LaFronz that the reason for his termination was because of union activities.

As a result of the announced staff reduction of April 1976, the Association began a non-cooperation policy whereby Association members refused to volunteer for various extra-curricular assignments. For example, Schmidt had been a baseball coach and color guard advisor for the previous two years. However, in the fall of 1976, he refused to volunteer for such duty.

In February 1977, Schmidt prepared a document entitled "Speaking the Truth About Our Schools." This document referred to a no confidence vote taken by the Association which was critical of the Superintendent's annual report.

^{4/} Fitzpatrick was subsequently reinstated pursuant to his case before the Commissioner of Education. Fitzpatrick et al. v. Weehawken, supra.

Schmidt served as Association President in 1977-78 and 1978-79. Schmidt received a letter from the Superintendent which criticized Schmidt for leaving his class to handle a grievance; also Schmidt's evaluation by Onorevole for 1979-80 was critical of Schmidt's missing voluntary department meetings while he performed other voluntary duties.

Carol Gallagher, was secretary of the Association at the time of the 1973 strike and was named in the restraining order that was issued. In April of 1978, she reviewed her personnel file. It contained several documents concerning her activities in the 1973 strike. Gallagher asked the Superintendent's secretary to have copies of these documents made. These documents, however, disappeared. They were either misplaced or destroyed and naturally Gallagher never received copies.

Moreover, Mary Blum, Onorevole's secretary recalls seeing newspaper articles about the 1973 strike in some of the teacher's files.

The Association also points out that Gallagher became chairman of the Association's grievance committee in 1976. Gallagher testified that Onorevole objected to the manner in which Gallagher addressed him in a letter concerning Association activity and inquired as to why Gallagher does not use "Dear Dr. Onorevole" in the greeting of correspondence.

Gallagher's school principal in 1977, Peter Oliveri, wanted her requests to leave the building early put in writing, for both

his own and Gallagher's protection, since she was an officer of the Association.

Gallagher also pointed out that, on several occasions, Onorevole kept her waiting to have grievance meetings. She had a difficult time in getting permission to leave school early for physical therapy after an automobile accident in 1979 and Gallagher related how in the spring of 1981, Onorevole became upset when she would not allow him to attend Association meetings.

In September of 1980, the Weehawken Education Association again engaged in a strike against the Board. The strike lasted for eleven days.

Carol Gallagher engaged in picketing during this strike. She picketed in front of the High School. Carol Roming picketed at Webster School and organized meetings.

Linda Jo Pupuro did not engage in picketing. She, however, did report to work and kept in contact by phone with the Association relative to the strike. Carol Molnar, Jill Leone, Aurora Hoover, Carol Gertenbach, Irene Shoenberger, Rosemary Baldassari, Sonia Pendergass and Patricia Allegretta all engaged in picketing at the schools as well as the homes and places of employment of the School Board members.

During the course of the 1980 strike, Aurora Hoover spoke to Board Member Atallo. She testified that Atallo said that people were going to suffer because of the strike and something might happen to those who were involved. During this conversation, Atallo

stated that the worst thing that could happen to her was that she would be transferred to the basement of the Roosevelt School. In fact, she was transferred there the following year. Atallo admits speaking to Hoover by phone, but he denied making this statement.

At the Board meeting of August 26, 1981, the president of the Board, Pizzuto, stated that the hiring of new teachers from outside the District was union-busting tactics by the Board. Board member Olveson concurred in this opinion. Olveson further testified that, at a caucus on the same day, Board member Atallo brought up Greive's union affiliation and indicated that the personnel committee could not recommend reemployment for anyone who had demonstrated a militant attitude or participated in the strike. Although Atallo testified that he "did not clearly recall"^{5/} making this statement, given Atallo's equivocation, I must credit Olveson's testimony. Moreover, having found Atallo was less than totally credible in one aspect of his testimony, I find this determination calls into question the credibility of the balance of his testimony. Accordingly, I resolve the conflict in testimony concerning the conversation between Hoover and Atallo by crediting Hoover and find that Atallo did state people were going to suffer because of the strike.

In March of 1981, the Board notified Schmidt that he would not be rehired for 1981-82. In June of 1981, Gallagher received a

^{5/} Tr. May 4, 1983, p. 91.

written notice of termination. She also was offered a part-time job. Also, Jill Reone, Aurora Hoover, Carol Gertenbach, Rosemary Baldassari, Irene Schoenberg and Patricia Allegretta were transferred.

In Op. of Bridgewater, 95 N.J. 235 (1984), the N.J. Supreme Court established the test for establishing whether an unfair practice has been committed in §(a)(3) cases where an employer's motivation is at issue. First the Association must establish that protected activity was "a substantial, i.e., a motivating factor in the employer's disputed action. Once this is accomplished, the burden shifts to the employer to go forward and establish by a preponderance of the evidence that the action occurred for legitimate business reasons and not in retaliation for the protected activity." (at p. 244)

The facts shown and arguments made by the Association rely heavily on the premise that participation in the two strikes constitute this protected activity.

There clearly was hostility between the Association and the Board that carried over from the strikes. Such hostility was a substantial or motivating factor in both of the Boards' mass transfers and non-renewals.

This is not to say that there was no evidence of Association activity other than striking and much of this activity is arguably protected by the Act. What stands out are the two confrontations Furno had with Onorevole in the spring of 1975 one

year before the first round of lay offs and transfers. While it is not entirely clear that Furno's comments at the Board meeting are protected by the Act,^{6/} assuming without deciding that they are protected, the threats made by Onorevole were qualified ("if he shouts at me again"). Moreover, this conduct occurred one year before Furno's non-renewal and Furno was one of ten people who were non-renewed or transferred. Further, the Association introduced evidence demonstrating that the Board and its Superintendent kept records and reports of the strike. The maintenance of records about the strike demonstrates the Board's memory and state of mind about the strike.

I do not believe that these particular events or any of the other activities of the Association's members and officers who carried out Association business (i.e., processing of grievances and arbitration, etc.) can be carved out of the whole and, on their own, be found to be substantial or motivating factors in the Board action in the spring of 1976. Rather, the Association here has shown that the strike and its related activity establish the substantial motivating factors.

^{6/} Salem City Board of Education, P.E.R.C. No. 84-153, 10 NJPER 439 (¶15196 1984); City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶15017 1983); Commercial Township Board of Education, H.E. No. 82-67, 8 NJPER 456 (¶13214 1982); East Orange Public Library, App. Div. Docket No. A-1725-79, 7 NJPER 415 (¶12182 App. Div. 1981); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979); City of Hackensack, H.E. No. 78-23, 4 NJPER 4046 (1978); Laurel Springs, P.E.R.C. No. 78-4, 3 NJPER 228 (1977); Pietruni v. Board of Education of Brick Township, 128 N.J. Super 149 (App. Div. 1974), cert. denied 65 N.J. 573, U.S. cert. denied 419 U.S. ___ 1975).

However, the N.J. Supreme Court has held that it is illegal by common law rule in New Jersey for public employees to strike. See, Board of Education, Borough of Union Beach v. New Jersey Education Association, 53 N.J. 29 (1968).

In Union Beach, the Court upheld the Union Beach Board of Education when it failed to re-employ three non-tenured teachers who engaged in a coercive work stoppage. See also, Lullo v. International Association of FireFighters, 55 N.J. 409, 439 (1970) and Fair Lawn Education Association, 63, N.J. 112, 116 (1973).

Subsequent to the enactment of §5.4(a)(3) in Chapter 123 of the Laws of 1974 (as well as Chapter 85 of the Laws of 1977 which enacted interest arbitration for police and fire personnel), the New Jersey Supreme Court again stated that "public employees have never possessed a right, constitutional or otherwise to strike or engage in work stoppages". N.J. State PBA Local 29 v. Town of Irvington, 80 N.J. 271, 288 (1979).

The Commission specifically followed the holding of Union Beach in Sayreville Bd. of Ed., P.E.R.C. No. 86-120, 12 NJPER 375 (¶17145 1985).


Since public employees have no right to strike, the Association has failed to satisfy the first step of Bridgewater and prove that the exercise of protected activity was a substantial motivating factor for the non-renewal and transfers of 1976.

The evidence is far stronger than the non-renewals and transfers of 1981 were motivated by the 1980 strike. The

Association proved that subsequent to the 1975 lay-offs, Association officers Schmidt and Gallagher were very active and openly opposed Superintendent Onorevole's actions. However, there was no move by the Board against them until after the strike, and the Association adduced testimony which clearly demonstrates that the Board's action in the spring of 1981 in transferring and RIFing Association members was substantially motivated by their participation in the strike, witness the testimony concerning the statements of Board member Atallo in June of 1981. Once again the Association has failed to satisfy the first step of the Bridgewater test.

The Association has failed to establish that the Weehawken Board of Education was substantially motivated by the exercise of protected rights in either of the Complaints that are the subject in this decision.

Accordingly, it is recommended that the Commission dismiss the two Complaints in their entirety.



Edmund G. Gerber
Hearing Examiner

Dated: January 22, 1987
Trenton, New Jersey