P.E.R.C. NO. 79-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

Docket No. CO-78-27-56

-and-

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

An unfair practice charge was filed by the Sayreville Education Association alleging that the Sayreville Board of Education violated the New Jersey Employer-Employee Relations Act by removing an employee from her position as Chairperson of the Foreign Language Department. It is alleged that the removal of that employee, who was the immediate past grievance chairperson of the Association, constituted an illegal discrimination against that employee in violation of her statutory rights. The Hearing Examiner, in his Recommended Report and Decision, concluded that there was no causal connection between the exercise of any protected activities by the employee as the Association's grievance chairperson and the Board's failure to reappoint her as Department Chairperson. The Hearing Examiner found that the abolishment of the department chairpersonship was apparently done in accordance with the appropriate provisions of Title 18A and was not discriminatorily motivated. Accordingly, he recommended that the charge be dismissed. Exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Association.

The Commission, after reviewing the entire record including the exceptions and considering the arguments contained therein, agreed with the Hearing Examiner's recommendation that the complaint should be dismissed in its entirety. The Commission agreed with the Hearing Examiner that the Association had failed to prove anti-union animus on the part of the Board or that the Board was motivated in its decision to abolish the department chairpersonship as a result of any dispute between the individual and any representative of the Board.

P.E.R.C. NO. 79-21

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SAYREVILLE BOARD OF EDUCATION,

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-and- Docket No. CO-78-27-56

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

Appearances

For the Respondent, Casper P. Boehm, Jr., Esquire

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs. (Mr. Sanford R. Oxfeld, Of Counsel)

DECISION AND ORDER

On August 5, 1977, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Sayreville Education Association (the "Association") alleging that the Sayreville Board of Education (the "Board") engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Association alleged that the Board removed Kitty Ludlow, the immediate past Grievance Chairman of the Association, from her position as Chairman of the Foreign Language Department due to her Association activities, thereby violating N.J.S.A. 34:13A-5.4(a)(1), (2) and (3).[1/]

1/ These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (2) Dominating or interfering with the formation, (Continued)

The charge was processed pursuant to the Commission's Rules, and it appearing to the Director of Unfair Practices 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 February 3, 1978. A hearing was held on April 13, 1978 and May 12, 1978 before Alan R. Howe, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Subsequent to the close of hearing, the parties submitted memoranda of law, the final memorandum being received on July 18, 1978. On September 5, 1978, the Hearing Examiner issued his Recommended Report and Decision,[2/] which includes findings of fact, conclusions of law, and a recommended order. The original of the report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. Timely exceptions to the report were filed by the Association on September 28, 1978 and a letter memorandum in lieu of a formal brief in support of the Hearing Examiner's Recommended Report and Decision was filed by the Board on October 4, 1978.

1/ (Continued) existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

2/ H.E. No. 79-14, 4 NJPER 391 (Para. 4175 1978).

Having found that no causal connection was established between the exercise of any protected activities by Ms. Ludlow as grievance chairman and the Board's failure to reappoint her as foreign language chairman, the Hearing Examiner concluded that the Association had failed to meet its burden of proving the charge by a preponderance of the evidence. The Hearing Examiner further found that the Board's abolishment of the foreign language department chairmanship for the 1977-78 school year was apparently done in accordance with the appropriate provisions of the Education Law, Title 18A, and was not discriminatorily motivated. Accordingly, the Hearing Examiner recommended that the charge be dismissed.

The Commission, after careful consideration of the briefs, record and the exceptions filed by the Association, accepts the Hearing Examiner's findings of fact and conclusions of law, and makes additional findings of fact necessitated by the Association's exceptions.

The Association takes exception to the Hearing Examiner's finding that Ms. Ludlow could point to only one grievance where she encountered any problem with the administration in its processing. It is contended that the Hearing Examiner completely ignored the magnitude of this dispute and the extreme and unreasonable reaction of the Superintendent of Schools.

Whether the Hearing Examiner comprehended the full intensity of the personal dispute between Ms. Ludlow and Superintendent Counsman is not determinative of this charge. Even assuming, arguendo, that Counsman desired to take punative action against

Ms. Ludlow for her conduct as grievance chairman, the Association has failed to prove its case. In order to prevail in an unfair practice case the charging party must prove by a preponderance of the evidence[3/] that a causal connection exists between the dispute over the employee's exercise of protected rights and the ultimate decision by the employer.[4/]

The essence of the Association's charge is that the Board was motivated to remove Ms. Ludlow as department chairman due to the dispute between her and Superintendent Counsman. The Association presented no evidence to prove that the Board, in removing Ms. Ludlow, was aware of and motivated by this dispute. Superintendent Counsman made no recommendation to the Board concerning the abolishment of the chairmanship. Rather, the recommendation was made by Assistant Superintendent Parnell and simply conveyed to the Board by the Superintendent.[5/] The Association failed to prove that Assistant Superintendent Parnell was motivated by anti-union animus and the Commission finds substantial evidence to support the Hearing Examiner's finding of a legitimate educational justification for the Board's adoption of Parnell's recommendation

3/ N.J.A.C. 19:14-6.8.

4/ The Commission dismissed an unfair practice charge on the basis that the charging party had failed to prove that the Board's decision not to reappoint a teacher and thereby deny him tenure was influenced by the possible anti-union animus of two subordinate agents. In re State of New Jersey, P.E.R.C. No. 78-55, 4 NJPER 153 (Para. 4072 1978), appeal pending App. Div. Docket No. A-3422-77.

5/ The Commission notes that Superintendent Counsman was not even present when the Board, at its August 16, 1977 meeting, decided to abolish the chairmanship. Exhibit "D" of the Respondent's brief.

that the position of foreign language department chairman be abolished.[6/] Ms. Parnell testified that she recommended abolishment of the chairmanship due to the decline in enrollment and teaching staff, the lack of non-tenured teachers, the use of foreign language teachers to teach English on an increasing basis, the improved efficiency of the teaching staff due to increased length of service, and the general change in educational circumstances. The Music Department Chairmanship had been abolished for the same reasons.

In its next exception the Association contends that the Hearing Examiner failed to properly consider the fact that Ms. Ludlow was initially removed from the chairmanship on July 16, 1976 and then, after an unfair practice charge was filed, was reappointed to the chairmanship by the Board on August 23, 1976. From a careful review of the record, the Commission concludes that no inference of improper motivation can be inferred from the initial removal and then reappointment by the Board of Ms. Ludlow.

Ms. Parnell testified that on her own initiative she did not place Ms. Ludlow's name on the list of teachers to be recommended to the Board for appointment as chairmen for the 1976-77 school year. Ms. Parnell believed that Superintendent Counsman would not recommend Ms. Ludlow due to the dispute over

6/ It is apparent that the Hearing Examiner, in observing the demeanor of the witness, found that Parnell was not motivated by anti-union animus. Questions of credibility are for the Hearing Examiner. In re Long Branch Board of Education, P.E.R.C. No. 77-70, 3 NJPER 300 (1977); In re Hudson County Board of Chosen Freeholders, P.E.R.C. No. 78-48, 4 NJPER 87 (Para. 4041 1978). The Commission, in reviewing the transcript, finds no basis for rejecting the Hearing Examiner's determination.

the grievance and his belief that it was a conflict for her to be both a department chairman and grievance chairman. In order to save Ms. Ludlow the embarassment of not being recommended, Ms. Parnell, on her own, gave Ms. Ludlow a non-supervisory schedule. Once the Board was made aware of the situation[7/] it rectified the problem by reappointing Ms. Ludlow.[8/] Accordingly, the record does not establish that the Board reappointed her because of the threat of an unfair practice charge, rather than a sincere desire to correct the actions of Ms. Parnell.[9/]

In its next exception the Association asserts that the Board was not able to present a sufficient legitimate educational justification for its decision. As discussed earlier, the Commission finds this exception to be without merit.

Next, the Association appears to be excepting to the Hearing Examiner's implied finding that Ms. Parnell displayed no union animus. Again, the Commission has already discussed this argument and finds it to be without merit. The Commission additionally notes that Ms. Parnell in conversations with Ms. Ludlow did not support Mr. Counsman's position but only suggested

7/ The record is not clear on how the Board became aware of the problem.

8/ Her subsequent reappointment could as easily support the Board's position in this case that it bore no animosity towards Ms. Ludlow because of her union activities.

9/ The Commission does note, however, that the conduct of an agent of an employer motivated by concerns such as Ms. Parnell's when she listed teachers to be reappointed as chairperson for the 1976-77 school year could well support a finding of an unfair practice if divorced from other considerations. However, any causal relationship between Ms. Parnell's actions relating to the 1976-77 school year and the decision by the Board a year later to abolish the position of Chairman of the Foreign Language Department has not been established.

how Ms. Ludlow might settle the dispute.

Lastly, the Association contends that the Hearing Examiner did not properly apply the decision in In re Long Branch Board of Education, P.E.R.C. No. 78-6, 3 NJPER 314 (1977), Motion for Reconsideration denies P.E.R.C. No. 78-6, 3 NJPER 314 (1977), appeal dismissed App. Div. Docket No. A-4787-76. In that case the Commission stated that even though an employer is exercising a managerial prerogative it still commits an unfair practice if it is motivated, at least in part, by reasons proscribed by the Act to discriminate against public employees.[10/] The Hearing Examiner having concluded that the Board was not motivated by anti-union animus, but had a legitimate educational justification for eliminating the chairmanship, the Commission finds that he properly applied the holding in Long Branch.

Accordingly, for the reasons set forth above, the Commission orders the charge to be dismissed in its entirety.

ORDER

It is HEREBY ORDERED that the Complaint herein be dismissed in its entirety.

BY ORDER OF THE COMMISSION

Charles H. Parcells
Commissioner

Commissioners Hartnett and Parcells voted for this decision. Chairman Tener, Commissioners Hipp and Schwartz abstained. None opposed.

DATED: Trenton, New Jersey

H.E. NO. 79-14

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-78-27-56

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Association alleging that the Board was discriminatorily motivated when it refused to reappoint Catherine Ludlow as Foreign Language Chairman for the 1977-78 school year. Ms. Ludlow had for several years through 1976-77 been the Association's grievance chairman. The Hearing Examiner concluded that the Association failed to meet its burden of proving its charge by a preponderance of the evidence in that there was no causal connection established between the exercise by Ms. Ludlow of any protected activities by her as grievance chairman and the fact that the Board failed to reappoint her as foreign language chairman.

The Hearing Examiner noted that Ms. Ludlow had been grievance chairman for several years and had been foreign language department chairman during those years as well as years preceeding her becoming grievance chairman. The Hearing Examiner agreed with the Board that it had abolished the foreign language department chairman for the 1977-78 school year in accordance with the provisions of the Education Law, Title 18A, and that its actions had not been discriminatorily motivated under the Commission precedents construing the New Jersey Employer-Employee Relations Act, as amended.

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. 79-14

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-78-27-56

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Sayreville Board of Education
(Casper P. Boehm, Jr., Esq.)

For the Sayreville Education Association
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 5, 1977 by the Sayreville Education Association (hereinafter the "Association" or the "Charging Party") alleging that the Sayreville Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Board had on August 3, 1977 notified one "Kitty" Ludlow, the immediate past grievance chairman of the Association and chairman of the foreign language department, that she was being removed from her position as chairman of the foreign language department, and it was alleged further, that the said action of the Board was "solely" due to Kitty Ludlow's activities on behalf of the Association, all of the foregoing of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (3) of the Act. 1/

1/ These Subsections prohibit employers, their representatives or agents from:
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.
(continued next page)

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 3, 1978. Pursuant to the Complaint and Notice of Hearing, hearings were held on April 13 and May 12, 1978 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The Association filed a post-hearing brief on June 22, 1978 and the Board filed a post-hearing brief on July 17, 1978.

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

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

FINDINGS OF FACT

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

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

3. Catherine "Kitty" Ludlow was hired by the Board to teach Spanish and English in March 1962. Ms. Ludlow was certified to teach French, Spanish and English and was also certified to be a supervisor.

4. Ms. Ludlow became department chairman for foreign languages in September 1968, which department covers both the Junior and Senior High Schools.

5. The current collective negotiations agreement between the parties, effective July 1, 1976 to June 30, 1978 (J-1), provides in Schedule A-No. 3" for the salary of department chairman, the additional compensation on the salary guide being determined by the number of teachers in the department.

1/ (continued)

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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 the second day of hearing, May 12, 1978, the Hearing Examiner granted a motion by counsel for the Charging Party to amend the charge by deleting the word "solely" (2Tr. 10).

6. As of September 1975 there were eight foreign language teachers in the Junior High School and seven foreign language teachers in the Senior High School, a total of 15 teachers, and, in accordance with Schedule "A-No. 3" of J-1, supra, Ms. Ludlow taught two classes and received additional compensation of $725.00 per year.

7. The duties of department chairman include, inter alia: the evaluation of non-tenured teachers three times per year; the observation of tenured teachers two times per year; the writing of monthly reports on the activities of teachers; the ordering of supplies monthly and textbooks annually; going on trips with students; checking on substitutes; attending monthly meetings of department chairmen; attending monthly meetings with departmental teachers; and interviewing and making recommendations in connection with new-hires.

8. Ms. Ludlow joined the Association in 1962 when she was first hired and later became faculty representative. About four or five years ago she became grievance chairman ("PR&R") and remained grievance chairman through the 1976-77 school year. As grievance chairman it was her duty to process grievances through the steps of the grievance procedure under the collective negotiations agreement.

9. Ms. Ludlow could point to only one grievance where she encountered any problem with the administration in its processing. This grievance involved JoAnn Brown and arose in June 1976. Ms. Brown had received a bill for $22.25 from the Board for Xerox charges. Ms. Ludlow first called the Superintendent, Henry Counsman, who said that Ms. Brown was going to have to pay. Ms. Ludlow filed a grievance for Ms. Brown. The principal signed the grievance and when it reached the Superintendent, Mr. Counsman, he yelled at Ms. Ludlow and called it trickery (1Tr. 40). The Superintendent's reaction occurred on either June 26 or June 29, 1976. Mr. Counsman testified that he felt he had been set up and that Ms. Ludlow was "unprofessional" (2Tr. 76). Mr. Counsman testified that Ms. Ludlow's version of the filing and processing of the grievance was accurate in every respect (2Tr. 75).

10. On May 24, 1976 Dr. Marie Parnell, the Assistant Superintendent in charge of instruction and the principal of the War Memorial High School, sent a memo to Ms. Ludlow setting forth Ms. Ludlow's schedule for the 1976-77 school year. (CP-1). This memo indicated that Ms. Ludlow would, as in the past, teach two periods and supervise five periods as department chairman.

11. Under date of July 16, 1976 Ms. Ludlow was informed that her schedule had been changed and that she would have six teaching periods, a planning period and lunch, the effect of which was that her supervisory periods were eliminated

and she was deposed as department chairman (CP-2). This change was countermanded on August 23, 1976 and Ms. Ludlow was restored to her department chairmanship (R-1, CP-3). 2/

12. Under date of May 27, 1977 Dr. Parnell sent Ms. Ludlow a notice of teaching assignment for the 1977-78 school year, indicating that she would have teaching and planning periods and no supervision, i.e., she was being deposed again as department chairman (CP-4).

13. Ms. Ludlow indicated by letter to Dr. Parnell under date of May 18, 1977 that she was agreeable to Dr. Parnell's suggestion that as department chairman she teach four classes during the 1977-78 school year instead of two as in the past (R-2). When this matter was brought to the attention of counsel for the Board, he advised the Superintendent under date of May 26, 1977 that the matter should be negotiated with the Association (R-4). However, counsel for the Association under date of June 20, 1977 advised the Board that under the contract Ms. Ludlow was obligated only to teach two periods as department chairman and that the Association would not concur with her teaching four periods (CP-5).

14. Under date of July 29, 1977 Dr. Parnell advised Ms. Ludlow by memo of a revision in her tentative assignment for the 1977-78 school year which changed her courses but did not include supervision as department chairman, i.e., Ms. Ludlow was again deposed as department chairman for the 1977-78 school year.

15. In 1976-77 school year there were six foreign language teachers in the Junior High School and six foreign language teachers in the Senior High School. In the 1977-78 school year there were six foreign language teachers in the Junior High School and five foreign language teachers in the Senior High School. Statistically the record is not clear as to whether there was a decline in foreign language enrollment for the 1977-78 school year as opposed to the 1976-77 school year. Dr. Parnell did testify that there was a decline but there were no figures introduced into evidence to corroborate this.

16. The Superintendent made no independent recommendation to the Board with respect to the matter of reappointment of Ms. Ludlow as department chairman for 1977-78 school year. The recommendation not to reappoint was solely that of

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2/ The record does not indicate clearly what accounted for the change between the action of the Board of July 16, 1976 and the countermanding action of August 23, 1976. Dr. Parnell did ask Ms. Ludlow if she had had any words with the Superintendent to which she replied that she had. Ms. Ludlow had threatened legal action in connection with being deposed as department chairman.

Dr. Parnell and the Superintendent merely conveyed her recommendation to the Board.

THE ISSUE

Did the Respondent Board violate the Act when it failed to reappoint Catherine Ludlow foreign language department chairman for the 1977-78 school year?

DISCUSSION AND ANALYSIS

Position of the Parties

The Association takes note of the fact that Catherine Ludlow was grievance chairman for the Association for several years through the 1976-77 school year and that in the course of processing a grievance for JoAnn Brown in May and June of 1976 she had a serious "run in" with the Superintendent. The Association argues from this that when the Superintendent refused to recommend Ms. Ludlow's reappointment as foreign language chairman for the 1977-78 school year it was motivated in whole or in part by considerations of discriminating against Ms. Ludlow on account of her activities on behalf of the Association, citing City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), rev'd. on appeal, Docket No. A-2546-76 (July 31, 1978).

The Respondent Board cites N.J.S.A. 18A:28-9 of the Education Law as authority for abolishing a position for reasons of economy, or because of a reduction in the number of pupils, or of a change in the administrative or supervisory organization of the district, or for other good cause, upon compliance with the provisions of the cited section. In connection therewith, the Respondent Board cites and attaches a decision of the Commissioner of Education in a case involving Middlesex County where the Board of Education was upheld in its decision to abolish a mathematics coordinator position and reassign that individual to a classroom teaching position. The Respondent Board contends that City of Hackensack, supra, is not apposite inasmuch as the Board was not motivated in whole or in part by discriminatory considerations when it refused to reappoint Ms. Ludlow as foreign language chairman for the 1977-78 school year.

The Respondent Board Did Not Violate The Act When It Failed to Reappoint Ms. Ludlow Foreign Language Chairman for the 1977-78 School Year

The Hearing Examiner finds and concludes that the Charging Party has failed to meet its burden of proof that the Respondent Board engaged in unfair practices by "a preponderance of the evidence". N.J.A.C. 19:14-6.8. The Hearing

Examiner is unwilling to find a causal connection between the activities of Ms. Ludlow as grievance chairman, particularly in connection with the JoAnn Brown grievance, and her failure to gain reappointment as foreign language chairman for the 1977-78 school year. The Hearing Examiner is pursuaded that the Board had every right under the provisions of N.J.S.A. 18A:28-9 to abolish the position of foreign language chairman for the 1977-78 school year. The Education Law clearly gives the Board wide latitude and discretion.

The Hearing Examiner finds that although Ms. Ludlow was engaged in protected activities in serving as grievance chairman, particularly in pressing the JoAnn Brown grievance, and that the Board knew of her activities as grievance chairman, nevertheless no anti-union animus against Ms. Ludlow can be imputed to the Board. The Hearing Examiner is unwilling to apply the "inherently destructive" principle to the instant case.

It is quite clear that under the decisions of Commission in City of Hackensack, supra, and Board of Education of the Borough of Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977) there has been no violation of the Act. As the Commission stated in Hackensack:

> "Under the Haddonfield decision, a Section 5.4(a)(3) violation may be found if the Charging Party can prove either that anti-union animus was one of the motivating factors for the discriminatory conduct or that the effect of the employer's actions was 'inherently destructive' of rights guaranteed to employees by the Act. Preliminarily, the Charging Party must prove that the employee was engaging in protected activities and the employer knew or thought he knew of such activities." (3 NJPER at 144).

The Charging Party's problem in the instant case is that it has not established one iota of union animus or discriminatory motivation in connection with the Board's actions in refusing and failing to reappoint Ms. Ludlow foreign language chairman for the 1977-78 school year. The contract obligates the Board to pay the additional stipend to a department chairman, providing that there is a department chairmanship for the year in question. There is no contractual obligation under the current agreement (J-1) that there be a foreign language department chairman for each and every year of the contract. Thus, Ms. Ludlow receives her stipend only if there is a department chairmanship to which she has been reappointed. The Board decided to abolish the foreign language chairmanship for the 1977-78 school year for nondiscriminatory reasons.

The Hearing Examiner is of the view that the "inherently destructive" principle should be applied sparingly and should not be used in each and every Subsection (a)(3) case to supply the elements of a violation where anti-union animus has not independently been shown. Plainly, the Charging Party has failed in its burden of proof to establish that the conduct of the Board in the instant case was "inherently destructive" of important employee rights.

No violation of the Act by the Board having been established by the Charging Party, the Hearing Examiner must recommend dismissal of the instant charge that the employer violated Subsections (a)(1) and (3) of the Act. The Hearing Examiner also finds that there was no evidence adduced which would constitute a violation of Subsection (a)(2) of the Act. Accordingly, the Hearing Examiner must recommend dismissal of the Complaint in its entirety.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (2) and (3) when it refused to reappoint Catherine Ludlow chairman of the foreign language department for the 1977-78 school year.

RECOMMENDED ORDER

The Respondent Board not having violated the Act, supra, it is HEREBY ORDERED that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

DATED: September 5, 1978
Trenton, New Jersey

H.E. No. 78-26

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-27-56

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

Upon referral to him by the Commission, a Hearing Examiner denies a motion by the Respondent-Board to dismiss the charge of unfair practices for want of jurisdiction. The Respondent-Board moved to dismiss on the ground that exclusive jurisdiction was vested in the Commissioner of Education because the Board eliminated the position of Chairman of the Foreign Language Department pursuant to Title 18A of the Education Law.

The decision of the Hearing Examiner, denying a Motion to Dismiss, may be appealed to the Commission if the appealing party first obtains leave from the Commission to file such an appeal. The Commission, in the event that an appeal is granted, may adopt, reject or modify the Hearing Examiner's Decision and Order.

H.E. No. 78-26

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-78-27-56

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Sayreville Board of Education
Casper P. Boehm, Jr., Esq.

For the Sayreville Education Association
Rothbard, Harris & Oxfeld
(Sanford R. Oxfeld, Esq.)

HEARING EXAMINER'S DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 5, 1977, by the Sayreville Education Association (hereinafter the "Association" or the "Charging Party") alleging that the Sayreville Board of Education (hereinafter the "Board" or the "Respondent") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent on August 3, 1977, discriminatorily removed the Chairman of the Foreign Language Department, Kitty Ludlow, which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (3). 1/

1/ These subsections prohibit employers, their representatives, or agents from:
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.
"(2) Dominating or interfering with the formation, existence or administration of any employee organization.
"(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."

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 3, 1978.

Prior to the scheduled hearing the Respondent filed with the Commission a Motion to Dismiss the complaint and charge of unfair practices on February 21, 1978. The Commission on February 22, 1978, referred the said Motion to Dismiss to the Hearing Examiner for disposition. The Charging Party filed a response to the Motion to Dismiss on February 24, 1978.

It is the position of the Respondent, as set forth in its Motion to Dismiss, that the Commissioner of Education is vested with exclusive jurisdiction of the matter since the Respondent, in abolishing the position of Chairman of the Foreign Language Department, did so pursuant to the provisions of N.J.S.A. 18A:28-9.

The Charging Party responds that Kitty Ludlow lost her position as Chairman of the Foreign Language Department solely because of her activity on behalf of the Charging Party in violation of the aforementioned sections of the Act. The Charging Party refers to § 5.4(c) of the Act which vests in the Commission the exclusive power to prevent persons from engaging in unfair practices under the Act and to provide remedies therefor.

Neither party has cited any administrative or judicial precedent for its position.

The Hearing Examiner first notes that under established authority, in disposing of a motion to dismiss, the allegations in the complaint and charge of unfair practices properly pleaded must be taken as true. The complaint and charge of unfair practices clearly allege, if taken as true, a violation of the Act since the allegation is clear that Kitty Ludlow was removed as Chairman of the Foreign Language Department because of her activities on behalf of the Charging Party.

Given the foregoing, and the provisions of § 5.4(c) of the Act, supra, it is clear to the Hearing Examiner that the Commission has primary and exclusive jurisdiction to remedy the alleged unfair practices. In the absence of precedent to the contrary indicating that jurisdiction lies exclusively with the Commissioner of Education, it is the opinion of the Hearing Examiner that the Motion to Dismiss must be denied.

ORDER

Based on consideration of the aforesaid Motion to Dismiss and the response of the Charging Party thereto, it is hereby ORDERED that the Motion to Dismiss is denied.

Alan R. Howe
Hearing Examiner

DATED: Trenton, New Jersey
February 27, 1978