

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH WARREN REGIONAL BOARD  
OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-260-91

NORTH WARREN REGIONAL EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

The North Warren Regional Education Association filed Unfair Practice Charges against the North Warren Regional Board of Education. The Commission adopts the Hearing Examiner's findings of fact and conclusions of law that the Board violated the Act by discharging Ms. Lattoz and by denying her and two other teachers representation at meetings held with the principal and superintendent. The Commission also agrees with the Hearing Examiner that the Board's discharge of Mr. Tompkins was not an unfair practice.

Exceptions to the Hearing Examiner's Recommended Decision regarding Mr. Tompkins were filed by the Association. After a thorough independent examination of the record the Commission finds this exception to be without merit. It is the Commission's opinion that the Charging Party failed to establish that the Board was acting with intent to discriminate when it voted not to renew Mr. Tompkins' contract. Sufficient evidence was introduced at the hearing to prove that the Board based its decision upon Mr. Tompkins' poor performance as a teacher rather than a desire to retaliate against an employee engaging in protected activity. This conclusion is buttressed by Mr. Tompkins' own testimony in which he admitted experiencing difficulty in maintaining proper classroom decorum. Any inference that the Board's actions were tainted by union bias was overcome by the evidence, contained in the record, indicating that legitimate business justification existed for the Board's conduct.

The Commission orders the Board to cease and desist from threatening its employees with reprisals during evaluation meetings, from failing to renew contracts of any of its employees in order to discourage them from exercising protected rights, and from denying employees the right to have an employee representative at investigatory hearings; and affirmatively orders the Board to re-instate Claire Lattoz with full back pay; to post appropriate notices, and to notify the Commission in writing of the steps taken to comply with the Commission's order.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Thomas Savage, Esquire

For the Charging Party, John Thornton, Jr., NJEA

DECISION

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on April 5, 1976 by the North Warren Regional Education Association (the "Association") against the North Warren Regional Board of Education (the "Board") alleging unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). In particular, the charge alleges unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (5) by virtue of the Board's threats to and eventual discharge of Douglas Tompkins and Claire Lattoz and its refusal to permit several individual employees to have Association representatives present at meetings with the principal and superintendent.

The charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Director of Unfair

Practices that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 28, 1976.

Nine days of hearing were held before Hearing Examiner Edmund G. Gerber commencing on September 2, 1976 and concluding March 11, 1977 at which both parties were represented and were afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. The Association filed a post-hearing brief September 1, 1977. On July 14, 1978, the Hearing Examiner filed with the Commission and served on the parties his recommended report and decision, H.E. No. 79-3, 4 NJPER 279 (Par. 4142 1978), a copy of which is attached and made a part hereof.

The Hearing Examiner concluded that the Board did not violate N.J.S.A. 34:13A-5.4(a)(3) by its dismissal of Douglas Tompkins. According to the Hearing Examiner's report, no evidence was produced at hearing which would indicate that the Board's action was attributable to a desire to discourage union activity or motivated in whole or part by anti-union animus. However, substantial evidence was introduced which supported the Board's contention that Tompkins' dismissal was based upon his inability to maintain the necessary decorum in his class room.

With regard to Claire Lattoz, the Hearing Examiner found that the Board violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (4) of the Act when it did not renew her contract for the following year and accordingly recommended that the Commission order her

reinstatement with back pay.

In addition, the Hearing Examiner concluded that the Board, through its agent, Ira Isajiw, violated N.J.S.A. 34:13A-5.4 (a)(1) of the Act when Mr. Isajiw refused to allow Rodney Rufe and Claire Lattoz representation at a meeting held on March 25, 1976 where the latter was accused of violating school policy for failing to notify the principal of a room change. Similarly, a violation of N.J.S.A. 34:13A-5.4(a)(1) was found when, at a March 16, 1976 meeting, Douglas Tompkins was denied representation and threatened with dismissal.<sup>1/</sup>

Pursuant to N.J.A.C. 19:14-7.3(a) and several approved requests for extensions of time within which to file exceptions to the Hearing Examiner's Report were filed by the Association on September 5, 1978. The Association's exceptions related to Mr. Tompkins. Counsel for the Board contends that the Association's exceptions were untimely filed and has requested an opportunity to reply to these exceptions if the Commission elects to consider them. In view of our decision herein, a response from the Board is unnecessary. There being no exceptions filed to the other recommended findings of fact and conclusions of law, the Commission, having independently reviewed the entire record, hereby adopts those portions of the Hearing Examiner's Report.<sup>2/</sup>

It is the Association's contention that Mr. Tompkins'

<sup>1/</sup> The Association does not claim that Mr. Tompkins was active in the Association prior to the meeting of March 16, 1976 at which he requested Association representation.

<sup>2/</sup> We do not adopt the Hearing Examiner's conclusion regarding the alleged (a)(4) violation. Our remedy and decision is unaffected by that aspect of this case which was not fully or adequately litigated before the Hearing Examiner. Therefore, we will dismiss that aspect of the complaint.

dismissal was motivated by anti-union sentiment. In support of this contention, the Association cites the testimony of Mr. King, who served as principal of North Warren High School from February 1974 through June 1975. His testimony, found by the Hearing Examiner to be credible, established the existence of animosity between Mr. Kline, the Superintendent, and the Association. In addition, the Association relies upon the Hearing Examiner's conclusion that Mr. Isajiw, who was the principal of the high school at the time the unfair practice is alleged to have occurred, threatened Mr. Tompkins with dismissal and denied him union representation in violation of N.J.S.A. 34:13A-5.4(a)(1) during a March 16, 1976 meeting. Furthermore, the Association claims that no real evidence was introduced pertaining to Mr. Tompkins' teaching abilities.

Based upon the above, the Association urges the following conclusions. First, that underlying the refusal to renew Mr. Tompkins' contract was the Board's desire to harass an employee for exercising rights protected under the Act. Second, the Association asserts that the Hearing Examiner exceeded the scope of his authority when he passed judgment on Mr. Tompkins' effectiveness as a teacher. Both contentions will be dealt with separately. We wish to make several preliminary observations, however. To determine whether an employer's alleged discriminatory conduct is violative of N.J.S.A. 34:13A-5.4(a)(3), the Commission applies the standard adopted in In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977). Therein the Commission declared that:

A violation of N.J.S.A. 34:13A-5.4(a)(3) should be found if it is determined that a public employer's discriminatory acts were motivated in whole or in part by a desire to encourage or discourage an employee in the exercise of rights guaranteed by the Act or had the effect of so encouraging or discouraging employees in the exercise of those rights. <sup>3/</sup>

However, in that case we also made clear that this test does not interfere with an employer's right to discharge, suspend or refuse to promote employees for reasons unrelated to union activities. Furthermore, consistent with N.J.S.A. 34:13A-5.4(c), the Commission squarely placed upon the shoulders of the charging party the burden for proving its case by a preponderance of the evidence. Once the charging party has shown that an employee who has been disciplined, discharged, etc. has engaged in protected activity and that the employer had knowledge of such activity and was hostile toward the union, a prima facie (a)(3) violation is made out. The burden then shifts to the respondent which must demonstrate that its actions were taken for legitimate reasons. If the evidence produced at hearing indicates that the rationale offered by respondent is merely pretextual, a violation of the Act may be found. However, if the evidence indicates that the respondent's justification is valid, then it becomes the obligation of the trier of fact to determine, bearing in mind that the charging party has the burden of proof by a preponderance of the evidence, that the action was taken, at least in part, in retaliation for the employee's exercise of protected rights. <sup>4/</sup>

<sup>3/</sup> P.E.R.C. No. 77-36, p. 4, 3 NJPER at 72 (1977).

<sup>4/</sup> It must also be noted that while a finding that the action was taken in part, in retaliation for protected activity will establish that a violation of the Act has occurred, a remedy of  
(continued)

For the Association to sustain its burden of proof, particularly in the case of Mr. Tompkins, where the Board has come forward with valid business justifications for its action, it is not sufficient for it to merely show that the principal and superintendent were antagonistic toward the union. In addition, it must demonstrate that the decision of the Board, the body authorized to make the final decision regarding employment, was tainted by the biased recommendations of Mr. Kline and Mr. Isajiw and took its actions in retaliation for an employee's exercise of protected activities.

As the Commission has stated in Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State of New Jersey, P.E.R.C. No. 78-55, 4 NJPER 153 (¶4072 1978), appeal pending App. Div. Docket No. A-3422-77 where there exists valid, independent grounds for an employer's actions and where improper recommendations have not influenced the decision, a violation of the Act will not ordinarily be found.

After careful independent review of the record, the Commission adopts the findings of the Hearing Examiner. It is our judgment that the charging party failed to establish that the Board itself was acting with the intent to discriminate when it voted not to renew Mr. Tompkins' contract. Two Board members were called as Association witnesses; however, both denied ever having discussed or considered Mr. Tompkins' protected activity in their deliberations. Moreover, considerable evidence was introduced demonstrating that Mr. Tompkins' performance as a teacher was

4/ (continued) reinstatement will not necessarily be required to effectuate the purposes of the act when the evidence also indicates that the employee's performance would have justified the dismissal.

lacking and that therefore Mr. Isajiw and Mr. Kline could make their recommendations to the Board concerning Mr. Tompkins' continued employment independent of any anti-union animus. On March 1, 1976, Mr. Isajiw conducted an evaluation of Mr. Tompkins which criticized his inability to effectively control his students. This evaluation was made prior to the March 16 meeting between Mr. Tompkins and Mr. Isajiw and cannot therefore be attributed to anti-union animus. Unrefuted testimony by Mr. Isajiw also established that he held four meetings with Mr. Tompkins prior to March 16 at which the latter's disciplinary statements were discussed. Furthermore, by his own admission, Mr. Tompkins sent 42 students to the principal's office during the year, whereas the average number of pupils sent by other teachers was 12. Mr. Tompkins further admitted that Mr. Pappachia, the head of discipline for the school, as well as Mr. Isajiw, complained to Mr. Tompkins that on many occasions he should have taken action with these pupils on his own rather than having reported them to the office. On balance, the inference that the Board's actions at issue herein were tainted by union bias is overcome by the evidence, contained in the record, indicating that legitimate, independent grounds existed upon which the Board could base its decision.

As stated by the Fourth Circuit in Neptune Water Meter Co. v. NLRB, \_\_\_ F.2d \_\_\_, 94 LRRM 2513, 2514 (1977)

...mere union membership and concerted activity does not, of course, insulate a worker from being discharged for just cause. Nor does an employer's anti-union animus destroy his right to discipline for just cause.



The Court went on to note that an unfair practice will only be found if, after weighing all the relevant factors, it is possible to conclude that absent employer animus toward the union, the employee would not have been discharged.

To the Association it is incomprehensible how the Hearing Examiner could on the one hand find that the Board's dismissal of Ms. Lattoz was motivated by anti-union animus, and on the other not find that the same anti-union animus tainted its decision regarding Mr. Tompkins. However, a review of the record makes clear that the respondent was unable to supply anything but a pretextual rationale for its refusal to renew Ms. Lattoz' contract. Although respondent claimed that Ms. Lattoz was dismissed due to her inability to discipline students, the Hearing Examiner correctly determined that there was insufficient evidence to support this assertion. Moreover, when the evidence offered by the Board regarding the teaching performance of Ms. Lattoz is contrasted with the Respondent's testimony concerning Mr. Tompkins, it is obvious why an unfair practice was found in one instance and not the other. The testimony put forward by the Board to demonstrate that it was dissatisfied with Ms. Lattoz's teaching performance which triggered its actions rather than hostility toward the Association was uncorroborated and lacked credibility. Ms. Lattoz's alleged failure to properly notify the administration of a room change on March 1 is the only specific event cited by the respondent to counter the Association's unfair practice allegations. Standing alone, this occurrence does not rebut the evidence that anti-union animus was responsible for Ms. Lattoz's dismissal.

In addition, there is no evidence in the record that Ms. Lattoz received poor evaluations or warnings prior to her dismissal. However, such evidence was introduced as to Mr. Tompkins. For the above reasons the Commission cannot agree with the charging party that a finding of no unfair practice regarding Mr. Tompkins is inconsistent with the conclusion that Ms. Lattoz's dismissal constituted a 5.4(a)(3) violation.

Finally, the Commission wishes to point out that the Hearing Examiner, by evaluating whether the respondent's assertions concerning the teaching ability of Mr. Tompkins were accurate, was not, as the Association contends, making an educational policy decision. Quite the contrary: he was necessarily attempting to determine whether the Board's decision was based upon factors other than education policy.

#### ORDER

Accordingly, for the reasons set forth above, the Public Employment Relations Commission hereby determines that the respondent, North Warren Regional Board of Education, has violated N.J.S.A. 34:13A-5.4(a)(3) with regard to Claire Lattoz and that it has violated N.J.S.A. 34:13A-5.4(a)(1) with regard to Rodney Rufe, Claire Lattoz and Douglas Tompkins and IT IS HEREBY ORDERED that the respondent, North Warren Board of Education, shall

1. Cease and desist from:

(a) threatening its employees with reprisals during evaluation meetings if they exercise their rights guaranteed to them under this Act;

(b) failing to renew the contracts of any of its employees in order to discourage employees from filing a charge or otherwise exercising rights guaranteed by this Act;

(c) interfering with the rights of its employees by denying to them their right to have an employee representative of their own choosing at investigatory hearings.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer to Claire Lattoz a teaching position at the salary level under the current contract consistent with the level she would be at had she not had her contract non-renewed in April of 1976.

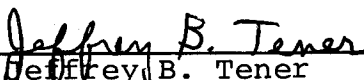
(b) Reimburse Claire Lattoz monies she would have earned from September 1976 to the time of compliance if she were not discriminatorily discharged, less all monies actually earned by Ms. Lattoz during this same period of time, exclusive of summer earnings.

(c) Post in a prominent place at the North Warren Regional High School copies of the attached notice. Copies of said notice, on forms provided by the Commission shall, after being signed by the respondent's representative, be posted for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the respondent to ensure that such notices are not altered, defaced or covered by any other material.

(d) Notify the Chairman, in writing, within twenty (20) days from the receipt of this Order what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the portions of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(a) (2), (4) and (5) be dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett and Graves voted for this decision. Commissioners Hipp and Schwartz abstained. However, Commissioner Graves dissented from the one aspect of the decision finding no violation of N.J.S.A. 34:13A-5.4(a) (3) with respect to the termination of Douglas Tompkins.

DATED: Trenton, New Jersey  
September 19, 1978  
ISSUED: September 20, 1978

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT threaten employees with reprisals during evaluation meetings for exercising their rights guaranteed by this Act or interfere with the rights of employees by denying to them their right to have an employee representative of their own choosing at investigatory hearings.

WE WILL offer to Claire Lattoz a teaching position at the salary level under the current contract consistent with the level she would be at had she not had her contract non-renewed in April of 1976.

WE WILL reimburse Claire Lattoz monies she would have earned from September 1976 to the time of compliance if she were not discriminatorily discharged, less all monies actually earned by Ms. Lattoz during this same period of time, exclusive of summer earnings.

NORTH WARREN REGIONAL 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08608.

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

In the Matter of

NORTH WARREN REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-260-91

NORTH WARREN REGIONAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the North Warren Regional Board of Education committed unfair practices when its agent, the principal of the high school, threatened a teacher, Douglas Tompkins, in an evaluation meeting that his participation in protected activities within the meaning of the Public Employer-Employee Relations Act would be held against him in his evaluation. The North Warren Regional Education Association also alleged that Tompkins' contract was not renewed because of Tompkins' exercise of his protected rights, but Tompkins actual participation in the exercise of such rights was minimal and Tompkins had substantial problems as a teacher. Accordingly the Hearing Examiner recommends to the Commission that this portion of the complaint be dismissed.

The Hearing Examiner did recommend that the Commission find that the non-renewal of another teacher, Claire Lattoz, was motivated, in part, by the animus of its agents for her participation in Association activities. The Hearing Examiner could not credit the reasons expressed by the Board for Lattoz's non-renewal.

The Hearing Examiner also recommends that the Commission find that the Board violated the rights of Tompkins and Lattoz when it refused to allow an Association representative at an investigatory meeting where Lattoz was accused of a school policy infraction and when Tompkins was threatened with dismissal above.

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

STATE OF NEW JERSEY  
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Respondent,

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Docket No. CO-76-260-91

NORTH WARREN REGIONAL EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the North Warren Regional Board of Education  
Thomas Savage, Esq.

For the North Warren Regional Education Association  
John Thornton, Jr., NJEA

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

The North Warren Regional Education Association ("Association") filed a series of unfair practice charges and amendments with the Public Employment Relations Commission ("Commission") alleging that the North Warren Regional Board of Education ("Board") directly and through its agents threatened and ultimately discharged Douglas Tompkins and Claire Lattoz and refused individual employees, Douglas Tompkins, Claire Lattoz, Rodney Rufe and Carol Linkiewicz, the right of representation at meetings with the principal and superintendent of the North Warren Regional High School. It was alleged that all these acts were in violation of Sections 5.4(a)(1), (2), (3), (4) and (5) of the Public Employer-Employee Relations Act ("Act"). <sup>1/</sup>

1/ The original charge contained four allegations: 1) the principal of the high school, Mr. Ira Isajiw, threatened Mr. Tompkins on March 16, 1976, and subsequently recommended to the Board that he not be renewed for the coming school year because he participated in grievance proceedings and acted under the influence of members of the local association; 2) Mr. Isajiw refused to allow teachers, specifically Claire Lattoz, Rodney Rufe, Douglas Tompkins and Carol Linkiewicz, representation by the Association during

(continued)

1/ (continued) ... conferences or meetings; 3) the administration threatened non-tenured personnel about becoming involved with older staff who were members of the Association; 4) Mr. Isajiw attempted to interfere with the Association in the processing of a grievance concerning meetings held outside the contractual school day. On May 3, 1976, the Association amended their charge to allege that "Mr. Douglas Tompkins, Ms. Claire Lattoz and Mrs. Virginia Knepp, ... were discharged for exercising the rights guaranteed to them under the Act."

Pursuant to a motion for more definite statement on August 11, 1976, the Association amended their charge once again. It was specifically claimed that direct threats were made to Tompkins on March 16, 1976; Lattoz on January 5, 1976; Rufe on April 16, 1976, and Dally in September 1974.

The allegation that Virginia Knepp was discharged for exercising protected rights was abandoned. In connection with the claims that Isajiw interfered with the processing of a grievance concerning meetings outside school hours, it was alleged this interference occurred with Julie Kole on May 28th, members of the History Department on May 19th, the Science Department on May 20th and the Mathematics Department on May 26th. The Association clarified these contentions that members of the bargaining unit had the right to request representation by Association representatives at any time. They limited this claim or right to "those times when an individual is summoned to a meeting that could affect his employment, compensation, working conditions, future employment, probable disciplinary action or issues directly related to the contract and/or security related issues (sic). The employee is entitled to request a representative of the bargaining agent accompany him to said meeting.

On the first day of hearing, the charges were amended by Mr. Thornton, the representative of the Association who withdrew all allegations of fact which occurred over six months prior to the filing of the original charge and clarified his position as to the right of representation at meetings with administrators. Specifically the August 11 amendment was meant as a modification of the Association's legal theory rather than an amendment to the charge.

Finally the charging party withdrew the allegations that the principal interfered with the processing of a grievance relating to before and after school hour meetings.

It is specifically alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (5) and these sections provide that employers and their representatives or agents are prohibited 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 conditions of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act; and (5) refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.



The Board filed a motion to dismiss the complaint, which could not be disposed of until the first day of hearing. Accordingly, it never filed a separate answer. It is undisputed however that it denied the allegations that it committed any unfair practices.

It appearing that the allegations of the charges if true might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 28, 1976, and nine days of hearings were held before the undersigned commencing September 2, 1976, and concluding March 11, 1977. <sup>2/</sup>

The undersigned will treat these allegations separately. However, the testimony of one witness, Raymond King, is common to all issues. Although he was not a party to any of the incidents which will be discussed below, he testified to the underlying animosity that existed between the Association officers and the Board's administrative staff.

King served as principal from February 1974 through June 1975. He testified that when he first came to the high school, the superintendent of schools, Mr. Kline, said King was the fifth or sixth administrator that the school had had in a five-year period. This was due to the actions of about one-half of the teachers, about ten or twelve, who were anti-administration and active in the Association. Kline related how the faculty was split in half: on one side were teachers basically new to the staff without tenure and on the other side were the active members of the teachers association. According to Kline the latter group of teachers would "react in a hostile manner in an effort to get (King) out as quickly as possible." Kline felt that "they were trying to get rid of him to take control of the building as though they were the enemy, my enemy and his." <sup>3/ 4/</sup>

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<sup>2/</sup> The hearing dates were September 2, 1976, September 3, 1976, September 8, 1976, September 20, 1976, September 21, 1976, January 11, 1977, January 28, 1977, March 10, 1977, and March 11, 1977. Transcripts from these nine days of hearing will be identified in chronological order as Volumes I through IX in this report.

Both parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Both parties were given an opportunity to file post-hearing briefs and only the Association did so. A brief was received on September 1, 1977.

<sup>3/</sup> Volume I, pp. 60 and 61.

<sup>4/</sup> King also related how he scheduled staff for the 1975-76 school year but when Kline saw the schedule he became upset and had the schedule changed. He wanted the more senior teachers to have more "preparations," that is more different types of classes, apparently only to increase workload and make their assignments more difficult. Vol. I, p. 132.

King's credibility was challenged by the respondent during cross-examination. King admitted that since he left North Warren he has come to the conclusion that Kline, in effect, double-crossed him by not giving him (King) good recommendations and thereby preventing him from obtaining another supervisory position. I am satisfied, however, that King's testimony was credible.

#### The Discharge of Douglas Tompkins

Tompkins began working for the North Warren Board of Education on September 7, 1975. On April 30, 1976, he was informed that he would not be renewed the following September. During this academic year Tompkins was evaluated some four times: November 1st, March 1st, March 31st and April 14th. Tompkins claimed his first evaluation was very good. The evaluation of March 1st (Attachment 1), however, was totally negative. During the evaluation Tompkins conducted a science class by having everyone in the class compose a poster for a voluntary contest being conducted throughout the school. The principal of the high school, Ira Isajiw, conducted the evaluation. He was very critical of the conduct of the students as well as the content of the lesson. This evaluation disturbed Tompkins and pursuant to the contract, <sup>5/</sup> Tompkins wrote a rebuttal to this evaluation and Isajiw in turn wrote a rebuttal to Tompkins' rebuttal. Tompkins refused to sign this surrebuttal and asked for a day to think it over. Tompkins testified that he contacted the Association and, upon their advice, signed the surrebuttal the following day. He added the comment, "Signature does not constitute an agreement with the contents of this rebuttal but merely acknowledges receipt of the same." One day later Isajiw met with Tompkins to discuss the rebuttal to the evaluation. Tompkins asked Isajiw if he could have a representative from the Association, Ron Ivins, at the meeting. Isajiw replied, "My business is with you, not with Ron Ivins." <sup>6/</sup> Tompkins testified that at the meeting Isajiw stated Tompkins was "being influenced by the Association," and that "I (Tompkins) was being ill-advised by the Association and he (Isajiw) didn't think it was right for me to get involved as a first-year teacher." Tompkins also maintains that Isajiw stated that he was being stubborn because he chose to write a rebuttal and "one of the factors in rehiring teachers is whether he (Isajiw) can work with the teacher fairly and he

<sup>5/</sup> Article X, B(5), a teacher may submit a written reply to any observation.

<sup>6/</sup> The issue of refusal of representation will be discussed below.

was saying to me he hoped that I would not be stubborn." Some two weeks later, on March 31st, the Association President signed the original charge in the instant matter. Said charge was received by the Commission on April 5th. It is alleged that Tompkins was threatened at this March 16th meeting by Isajiw and that "Isajiw had recommended that Tompkins not be re-employed for participating in grievance proceedings and for acting under the influence of members of the local Association." In fact, the Board had taken no such action at this time. Tompkins received two further evaluations; on March 30th and again on April 14th. These evaluations were characterized by Tompkins as being positive and showed signs of improvement. It was not until April 28th that Tompkins received any indication that he would not be retained. <sup>7/</sup>

The Association does not claim that Tompkins was active in the Association prior to the above incident. Rather, they claim the Board non-renewed Tompkins because he filed the rebuttal pursuant to his rights under the contract and sought representation from the Association. They also argue that the Board retaliated against Tompkins because he was party to the original charge. <sup>8/</sup> Isajiw, who was the Board's only witness, claimed that Tompkins was not threatened at the March 16th meeting. He testified that he never made any reference to the Association at this meeting. Isajiw does admit stating, however, that he told Tompkins "Don't you know that defending a weak position can only make you weaker?" When Isajiw testified as to these threats he was restless, tapped his hands, rocked in his seat, furrowed his brow and in general was hesitant in his speech. On the basis of his demeanor as well as the totality of the evidence (particularly King's testimony <sup>9/</sup>), the undersigned finds Isajiw did threaten Tompkins in violation of Section 5.4(a)(1) of the Act.

The question to be resolved, however, is whether Tompkins' attempt to exercise his rights under the contract and his involvement with the Association was one of the factors in Tompkins' non-renewal. It cannot be denied that Tompkins had problems as a teacher. In no way can the evaluation of March 14th be attributed to anti-union motivation. Tompkins also had a history of poor discipline. Isajiw testified that Tompkins had the worst discipline problem in the

<sup>7/</sup> This was when Tompkins read in a local newspaper that the Board voted to non-renew his contract. Vol. IV, pp. 51 to 56.

<sup>8/</sup> Vol. III, p. 51.

<sup>9/</sup> Although Isajiw denied it, Kline's dislike for the Association and its members was undoubtedly known to Isajiw for Isajiw and Kline were friends and associates before either came to North Warren. Accordingly if Kline was so candid with King vis-a-vis his opinion of the Association and its members he undoubtedly let Isajiw know his feelings as well.

entire school: "His discipline, control of students and supervision of classroom was poor and totally unacceptable" <sup>10/</sup> and it was for this reason, claimed Isajiw, that he recommended that Tompkins not be renewed. Isajiw related how he had at least five or six formal meetings with Tompkins on his discipline problem, four of which occurred prior to March 16th. <sup>11/</sup> Other teachers, who were named by Isajiw, complained of the noise from Tompkins' room. Tompkins himself admitted to sending some 42 students to the principal's office for discipline problems. The average number of pupils sent to the office during the year by other teachers was 12. Tompkins further admitted that Mr. Poppachia, the head of discipline for the school, as well as Isajiw, complained to Tompkins that on many occasions he should have taken action with these pupils on his own rather than having reported them to the office. <sup>12/</sup> Tompkins admitted that he had discipline problems and further that he did have extensive conferences with Isajiw during the course of the year concerning discipline. Isajiw characterized Tompkins' first evaluation as acceptable although it was not introduced into evidence. But he never did testify as to the content of the last two evaluations either on direct or cross-examination, nor did either party introduce them into evidence. Tompkins only said the last two evaluations were "positive and showed improvement," and it is impossible to draw any conclusion as to whether these evaluations acknowledged Tompkins' discipline problem, or whether he had overcome it.

Certainly the timing of the incidents involved here are questionable. Threats were made on March 16th. On March 31st the Charging Party brought the instant action and on April 28th the Board voted to non-renew Tompkins on the basis of recommendations of Kline, who, in turn, forwarded the recommendations of Isajiw to the Board.

As expressed in In re Hackensack, P.E.R.C. No. 77-19, 3 NJPER 143 (1977), appeal pending, Appellate Division, Docket No. A-2546-76, and In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977), a violation of N.J.S.A. 34:13A-5.4(a)(3) will be found when animus based on employer knowledge of protected activity is one of the motivating factors for an employer's action that is detrimental to an employee's term and condition of employment.

<sup>10/</sup> Vol. VIII, p. 59.

<sup>11/</sup> Vol. VIII, p. 110.

<sup>12/</sup> Vol. III, September 20, 1976.

The actual decision not to renew Tompkins rested with the Board. There is no evidence that they had improper motives. Two Board members, Salvatore Simonetti and Ann Schmidt, testified. They denied the Board ever discussed or considered Tompkins' protected activity in their determinations. Both were called as Association witnesses and no effort was made to impeach their testimony. <sup>13/</sup> Nevertheless, if Isajiw's and, therefore, Kline's recommendation to the Board was tainted, then it would follow that the Board's action was tainted. See, In re State of New Jersey and Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, P.E.R.C. No. 78-55, 4 NJPER \_\_\_\_ (1978).

Although there was no testimony as to what was discussed by the Board about Tompkins, the undersigned is satisfied that Tompkins' discipline problem was legitimate and severe. It is apparent that Isajiw and, therefore, Kline could make their recommendation not to renew Tompkins to the Board independent of any union animus, particularly when Tompkins' limited involvement in the exercise of protected rights is balanced against his obviously questionable record as a teacher. The undersigned cannot say that, either in whole or part, Tompkins was non-renewed in order to discourage union activity nor was his discharge motivated in whole or part by union animus. See In the Matter of Neptune Water Meter Co. v. NLRB, \_\_\_\_ F.2d \_\_\_\_, 94 LRRM 2513 (CA4, 1977), where a Federal Circuit Court of Appeals which basically follows the NLRB's one of the factors test (which was adopted by the Commission in Haddonfield, supra) stated that "if the employee has behaved badly it won't help him(her) to adhere to the union and his employer's anti-union animus is not of controlling importance." Accordingly it will be recommended to the Commission that the portion of the charge alleging Tompkins' non-renewal was violative of Section (a)(3) of the Act be dismissed.

#### Discharge of Claire Lattoz

Claire Lattoz began work for the Board in January of 1976 as an agriculture and science teacher. Lattoz testified that, when she began work on the 5th, Isajiw conducted an orientation meeting with her. He stated that there were certain members in the faculty that are against the administration and that she should "go in with an open mind, choose carefully those people whom I want to associate with." <sup>14/</sup>

<sup>13/</sup> See Rule 20 of the N.J. Rules of Evidence which in effect bind a party that calls a witness to that witness' testimony, except in cases of surprise.

<sup>14/</sup> Vol. II, p. 63.

Lattoz was first evaluated on January 21st and received the report the following day. Neither party chose to introduce this evaluation into evidence nor was there any testimony as to the contents of said evaluation.

On March 25th a controversy arose between Ms. Lattoz, a second teacher Rodney Rufe, and Mr. Isajiw. Two of Lattoz's agricultural courses were held in Room C-38, the agricultural room, which has facilities suitable to conduct such a class, e.g. a sink and storage closets. Lattoz also taught one agricultural class in D-27, a room normally used for English classes. Lattoz wanted to do some work with tomato plants with a class that normally met in D-27 and wanted to use the facilities of Room C-38. There was a scheduling conflict, however, for Rufe was scheduled to conduct an arts and crafts class in C-38 during the same period. Lattoz asked Rufe if it would be all right if they shared the classroom for this one period so she could conduct her demonstration in C-38. Rufe said he would agree if she could get permission to do so. Lattoz called the school office and spoke to Isajiw's secretary, Mrs. Brockmann, and told her she was about to share the room with Rufe. Brockmann said all right and Rufe and Lattoz proceeded to share Room C-38 and conduct their classes together. At this time Isajiw had a visitor to the school and was conducting him on a tour. They stopped at Lattoz's regularly scheduled classroom so the visitor could see an agricultural class in progress. Naturally when they got there, there was no one to be seen. Isajiw then went to C-38 and found Lattoz teaching her class together with Rufe and his class. Isajiw and the visitor stayed in the classroom for about five minutes. After the class was over, Isajiw called Rufe and Lattoz into his office to discuss this change in classroom assignment. Isajiw testified that "he was at a loss to understand why the change occurred and why it occurred without his knowledge." <sup>15/</sup> Isajiw testified that neither Rufe nor Lattoz requested representation at this meeting nor did he perceive this as a disciplinary meeting. Isajiw claimed his purpose for calling the meeting was to clarify the situation and correct any misunderstanding that the two teachers might have had about changing rooms. Lattoz claimed Isajiw started yelling during the meeting that Rufe and Lattoz were disobeying the rules, for he was not notified of the room change. Lattoz responded that she had asked members of the faculty what the procedures were for bringing one class to another class. They told her that all she had to

15/ Vol. VIII, p. 46.

do was call the office and tell them where she was going. She stated if she knew about other rules she would have done what they required. During the meeting Isajiw's secretary called him and informed him that Mrs. Kole, the president of the Association, wanted to see him. He indicated he was in the middle of a conference, to which the secretary indicated that is what Kole wanted to see him about. Isajiw refused to allow her into the room. <sup>16/</sup> Isajiw testified that he did not know Lattoz was a member of the Association at the time of the meeting. It should not be forgotten however that Kole attempted to represent Lattoz at this meeting.

Lattoz had her second evaluation on April 15th by Mr. Kline. The oral discussion of this evaluation did not occur for another ten days. At this discussion Lattoz was asked to sign her written evaluation but she became upset. She felt that Kline's characterization that students seemed to be disinterested was untrue (this evaluation is Attachment 2). Lattoz refused to sign the evaluation and she sought the advice of the Association, specifically John Thornton. At the second meeting Lattoz agreed to sign the evaluation and submitted a rebuttal to the evaluation. Apparently at the same second meeting Lattoz asked Kline if she could have a copy of the evaluation in question. Kline initially resisted, stating that she already had copies of the observation report but finally gave her a copy. He also told Lattoz that she was strange and crazy. At this time Lattoz brought Mrs. Kole with her and asked Kline to allow her to act as her representative. It is noted that the second meeting took place on April 29th, three days after the Board decided to non-renew Lattoz. <sup>17/</sup> Lattoz had a third evaluation, but like the first it was never introduced into evidence.

Lattoz had at least one other disagreement with Isajiw and Kline which was unrelated to either the Association or protected rights under the Act, i.e. a student of Lattoz's went to Isajiw to complain that the students weren't being allowed to go on a field trip. Isajiw called Lattoz into his office and accused her of instilling rebellion in her students. (Lattoz had earlier asked permission from Isajiw to go on this same field trip, but this request was denied.)

<sup>16/</sup> Once again the issue of the right of representation will be discussed below.

<sup>17/</sup> Lattoz was inconsistent as to the dates of her evaluation. Vol. III, p. 6, line 24 should be compared with p. 11, lines 1 through 24.

Lattoz testified she was never told that she would not be renewed for the following year until she read of the Board's formal action in a local newspaper. Just before she read this article Isajiw had told her she was doing a fine job and was boasting to a visitor how well the agricultural program was going.

It is noted that Lattoz never filed a grievance nor did she have her Association dues deducted from her pay check. Aside from Kole's attempt to represent her, Lattoz's only other protected activity was her participation in the filing of the April 4th charge. No evidence was introduced that the Board itself was consciously acting with the intent to discriminate against Lattoz. Lattoz herself stated that she does not believe that her involvement with the Association was the sole cause of the non-renewal. In her words, "It may have been one of the reasons but not the only."

Nevertheless, since the Association was able to prove that Kline had a strong union animus, a presumption has been raised by the Association that one of the motivating factors in Lattoz's non-renewal was her engaging in protected activities.

Lattoz testified that after she received notice that she would not be renewed she started to look for another position. She went for an interview in the Lopatcong Township school district with the principal of the high school, Mr. Drago. At the conclusion of this interview Drago stated he would recommend to the school board that she be hired as an instructor in agriculture. Lattoz then stated that she worked at North Warren and explained her situation there. Drago then responded that he would have to do some thinking before he recommended Lattoz to his board. Lattoz never did get the job. Lattoz contacted her college adviser, Dr. William Smith of Cook College. She explained her situation to him. According to Lattoz, Smith spoke to Drago about the job. Drago in turn told Smith that he had spoken to Kline and Kline said Lattoz was a militant. <sup>18/</sup> Admittedly this statement standing by itself is ambiguous. Lattoz was involved in disputes with Isajiw and Kline on issues in matters not necessarily involving rights protected under the Act.

<sup>18/</sup> It is noted that although the statement itself is against the interest of the Board and is attributable to his agent, Kline, a question would arise as to its admissibility in a court proceeding as double hearsay. See Rule 66, N.J. Rules of Evidence. However, as held in In re Application of Howard Savings Bank, 143 N.J. Super. (App. Div. 1976, N.J.S.A. 52:14B-10, expressly adopts the universally recognized doctrine that in administrative agency hearings the parties shall not be bound by the rules of evidence, whether by common law or the rules of court. As long as the respondent was afforded the names of the individuals who transmitted the statement against interest and was not denied an opportunity to call same (to say nothing of Kline himself, who, as noted elsewhere, did not testify) then the respondent is not denied fundamental fairness. The court also noted the residuum rule is applicable only where the respondent would be incapable of impeaching or rebutting the testimony in dispute.



However, Isajiw testified as to two reasons for recommending the non-renewal of Lattoz. These reasons are unrelated to what Kline told Drago. One reason was that she refused to improve herself as a result of suggestions, <sup>19/</sup> and the other was she had a "laissez-faire type of discipline." <sup>20/</sup> In explaining what was meant by the latter criticisms Isajiw stated they did not have to do with noise or disruption, rather "her lack of discipline or inability to affect students in a positive way to permit those activities which had been performed in the classroom." <sup>21/</sup> In explaining the former reason, Isajiw did not imply that she was disrespectful, rather she just did not respond to suggestions.

Unlike his testimony about Tompkins, however, there is no way to corroborate Isajiw's claim either by written evaluations or evidence of any special meetings. As Isajiw testified, where there was a serious problem with a teacher he would write a memo and give it to the teacher but none were written to Lattoz. Isajiw's characterization of Lattoz's discipline problem lacks the ring of truth. He almost seems to be saying that she had no problem but he didn't like her style. This must be coupled with Isajiw's poor credibility as discussed above. The undersigned cannot accept Isajiw's testimony as to the reasons for his, or Kline's, recommendation to the Board. Finally the divergent opinions of Kline and Isajiw as to the reason for Lattoz's non-renewal create additional doubt in the undersigned's mind. The Hearing Examiner is admittedly relying on Lattoz's second-hand statement of what Kline told Drago - but this statement stands un rebutted since Kline chose not to testify. Accordingly the Board's evidence was insufficient to overcome the presumptions raised by the Association.

Although Lattoz may have created problems for the administration in ways not protected by the Act and might even have been a marginal teacher, the undersigned does not believe that Kline's and Isajiw's mutual recommendation to the Board not to renew Lattoz was based solely on education policy. Rather, their respective opinions were colored by their contact with her vis-a-vis her exercise of her protected rights and their own anti-employee association bias. It follows that the Board's decision, since it relied on the recommendations of Kline and Isajiw, was tainted. Therefore a discriminatory motive did play a part in the non-renewal of Lattoz and the Board violated Section 5.4(a)(1), (3) and (4) of the Act when it did not renew Lattoz's contract for the following year. And, accordingly, the undersigned will recommend to the Commission that they order the Board to reinstate

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<sup>19/</sup> Line 8, p. 157.

<sup>20/</sup> Vol. VIII, p. 47.

<sup>21/</sup> Vol. IX, p. 25.

Lattoz and pay her the monies she should have earned from September 1976 to the time of compliance if she were not discriminatorily discharged less all monies actually earned by Lattoz from September 1976 to the time of compliance. <sup>22/</sup>

#### The Right of Representation at Meetings

There were three times when the right of representation was at issue: the two meetings mentioned above, specifically Tompkins' meeting with Isajiw concerning the rebuttal to the evaluation and Lattoz's and Rufe's meeting with Isajiw concerning room assignments. The third was testified to by Carol Linkiewicz, chairman of the grievance Committee. <sup>23/</sup> She claimed there were two occasions when she was denied representation - once was in June of 1974 and once was in April of 1976. The 1974 incident clearly falls outside the six-month limitation imposed by the Act. <sup>24/</sup> and will not be considered by the undersigned. That leaves only the April 1976 meeting. At that time, Linkiewicz had a scheduled meeting with Isajiw to discuss and file grievances. She was accompanied by another Association member, Robert Smith.

Before the meeting began Isajiw said he wanted to see Linkiewicz about a matter concerning her classroom procedure. <sup>25/</sup> Linkiewicz asked if Smith could sit in on the meeting but Isajiw refused. This meeting lasted about ten minutes. When they began discussing the grievances Smith was allowed into the meeting.

The Commission found in In the Matter of Dover Township, P.E.R.C. No. 77-43, 3 NJPER 81 (July 13, 1977), an individual had the right to be represented by the majority representative in the processing of a grievance, although the contracted grievance procedure was silent as to such a right. Also, in NLRB v. Weingarten, 420 U.S. 251, 88 LRRM 2689 (1975), the U.S. Supreme Court stated

<sup>22/</sup> It should be noted that although Lattoz is entitled to her salary for these two years, she did not teach for the Board during this time and, hence, this time should not be considered as a credit toward the earning of tenure.

<sup>23/</sup> Neither she nor any member of the committee has ever been denied the right to represent someone in connection with the filing of a grievance.

<sup>24/</sup> Section 5.4(c) of the Act provides that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge.

<sup>25/</sup> It should be made clear that this meeting was not about her classroom performance. Vol. II, p. 103, line 24.

that the language of § 7 of the National Labor Relations Act "(employees have the right to engage in "concerted activities for...mutual protection") grants to employees the right to have their own union representative present at an employer's investigatory interview as a witness when an employee might reasonably believe that such an interview could result in disciplinary action against him (or her). If however the employer refuses to allow a representative at such a meeting, the employee has a right not to attend such a meeting."

While the Act does not contain identical language, Section 5.3 of the Act does provide in part that "a majority representative of public employees in an appropriate unit shall be entitled to act for...and shall be responsible for representing the interests of all such employees." If one may interpret this language in the broad manner that the Appellate Division interpreted the grievance procedure language of this same statute in Red Bank Education Assn. v. Red Bank High Board of Education, 151 N.J.S. 435 App. Div. (1977), cert. granted \_\_\_ N.J. \_\_\_, it would certainly seem that the Act grants the same right of representation the Supreme Court found in Weingarten, supra.<sup>26/</sup>

In the case of the meeting with Linkiewicz no such right was violated. As stated above Isajiw only wanted to speak to her concerning classroom procedures. Nothing substantive was involved at the meeting; there was no hint that any type of discipline was involved in the meeting and, indeed, none was. Accordingly, Isajiw was not compelled to permit a representative at his meeting with Linkiewicz.

An investigatory interview did take place, however, when Isajiw called Lattoz and Rufe into his office after he discovered them sharing the same room.

It was reasonable for Lattoz and Rufe to believe that disciplinary action might be taken against them. As discussed earlier, it was the president of the Association, Kole, who requested to be present, rather than either Rufe or Lattoz. Nevertheless as their designated representative she had the right to make this request. Isajiw's refusal to allow her presence constituted a violation of Section 5.4(a)(1). It must be emphasized that had Isajiw allowed Kole's presence

<sup>26/</sup> See also, Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970) where the Supreme Court stated the Commission should look to the NLRB and the federal sector for guidance in interpreting the Act.

at the interview Kole would have no right to actively participate, her sole role would have been as an observer. Further, Isajiw was not compelled to allow Kole's presence, but once he denied her presence, he had the obligation of stating to Rufe and Lattoz that they were no longer compelled to remain at the interview if they so chose.

The third incident occurred when Isajiw asked Tompkins to meet with him concerning Tompkins' rebuttal. Tompkins brought a representative with him, but Isajiw would not let this representative attend the meeting. As stated above, this meeting was the culmination of a series of events growing out of Tompkins' bad evaluation. The undersigned does not believe that there is any right of representation at an evaluation meeting. Admittedly an employee's job may be at stake if an employee's evaluations are bad; nevertheless, such evaluations are part of the basic educational process. N.J.S.A. 18A:27-3.1 provides that non-tenured teachers shall be evaluated three times during the year and "Each evaluation shall be followed by a conference between that teaching staff member and his or her supervisor. The purpose of this procedure is for recommendations as to re-employment," etc. As long as evaluation procedures are not used to infringe upon protected rights under the Act, there can be no right of representation at such a meeting. <sup>27/</sup>

However, such was not the case at this meeting. As has been previously established, Isajiw threatened Tompkins not to get involved in the Association. Unquestionably such conduct has no relation to educational policy. As stated in Board of Education of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976), "Arbitrary action on the part of the (employer) which bear no reasonable relationship to educational goals...cannot and will not be tolerated." The nature of these threats create an atmosphere where the protected interests of Tompkins and the entire negotiations unit are at stake. The presence of a representative would ensure and protect those threatened rights.

<sup>27/</sup> See Teaneck Board of Education v. Teaneck Teachers Association, App. Div. Docket No. A-5211-76 (July 5, 1978), where the court in reviewing the Commission decision in P.E.R.C. 78-3, 3 NJPER 224 (1977) stated that evaluative criteria are illegal subjects of negotiation. It would flow from this that substantive aspects of evaluations are not terms and conditions of employment and therefore in the absence of union animus not subject to the provisions of the Act.

Had his meeting with Tompkins concerned only the evaluation process, then there would have been no right to representation. Once Isajiw went beyond the evaluation process, Tompkins had the right to have a representative present or to call a halt to the meeting and Isajiw's refusal to allow a representative to be present was a violation of Tompkins' right under the Act.

Accordingly, the undersigned will recommend to the Commission that they find that the Board through its agent, Ira Isajiw, violated Section 5.4(a)(1) of the Act when Isajiw refused to allow Rodney Rufe, Claire Lattoz and Douglas Tompkins representation at the two meetings discussed above.

No evidence was introduced at the hearing concerning the alleged violations of §§5.4(a)(2) or (5). Accordingly it is hereby recommended that the allegations concerning the violation of these two subsections be dismissed.

RECOMMENDED ORDER

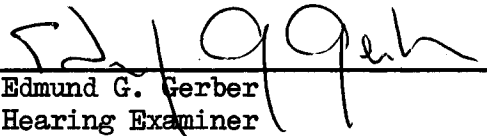
It is recommended that the Commission order the Respondent, its officers and agents to

- 1) Cease and desist from:
  - a) threatening its employees with reprisals during evaluation meetings if they exercise their rights guaranteed to them under this Act;
  - b) failing to renew the contracts of any of its employees in order to discourage employees from filing a charge or otherwise exercising rights guaranteed by this Act;
  - c) interfering with the rights of its employees by denying to them their right to have an employee representative of their own choosing at investigatory hearings.
- 2) Take the following affirmative action which is necessary to effectuate the policies of the Act:
  - a) Offer to Claire Lattoz a teaching position at the salary level under the current contract consistent with the level she would be at had she not had her contract non-renewed in April of 1976.
  - b) Reimburse Claire Lattoz monies she should have earned from September 1976 to the time of compliance if she were not discriminatorily discharged,

less all monies actually earned by Lattoz during this same period of time.

c) Post in a prominent place at the North Warren Regional High School copies of the attached notice, Attachment 3. Copies of said notice, on forms provided by the Commission shall, after being signed by the Respondent's representative, be posted for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other material.

3. It is further recommended to the Commission that that portion of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(2) and (5) be dismissed.

  
Edmund G. Gerber  
Hearing Examiner

DATED: July 14, 1978  
Trenton, New Jersey

NORTH WARREN REGIONAL HIGH SCHOOL  
Blairstown, N. J.

OBSERVATION REPORT

Teacher ..... Mr. Douglas Tompkins ..... Date ..... March 1, 1976 .....  
Tenure ..... Non-Tenure ..... X ..... Subject ..... Science - Grade 8 .....

1. CLASSROOM ACTIVITIES:

You handed out information on a Poster Contest dealing with Ecology of the next 200 years. All students were asked to make a rough draft of such a poster. As the activity got underway, the noise level caused by the students became excessive; many students did not actually undertake to work on the assignment. In the meantime, you circulated around the room trying to respond to individual student questions.

2. COMMENDABLE POINTS:

None

3. SUGGESTIONS FOR IMPROVEMENT:

- a) Do not use such projects as poster contests to replace relevant lessons. In this case, the poster contest was not related to the unit of work in science for your class.
- b) Plan and structure your activities in such a way as to assure cooperation and proper behavior from the students.
- c) Take steps to control noise level and the degree of movement of students in your room.
- d) You should have given the poster contest as an optional assignment to the students.
- e) It seems that you should concentrate on developing stronger techniques of discipline control in your classes.
- f) If and when a class assignment is issued for a given class make sure that all students actually work on the assignment.

..... *Mr. Douglas Tompkins* ..... *H. D.* .....  
Teacher's Signature ..... Evaluator's Signature

Conference Held: ..... 3/2/76 .....

*This signature does not mean that I agree with the above statements, only that I have seen this report - Please see attached note.*

to Mr. Isajiv

March 5, 1976

## Observation rebuttal

### Classroom Activities:

All students were asked not just to make a rough draft of a poster but, to begin with a rough draft and then to proceed with a final copy. My records show that fifteen students had actually begun a final copy half way through the class period. Many students did actually undertake to work on the assignment and my records show that only one student did not receive a grade for a completed poster. The noise level caused by the students was not excessive of a normal laboratory situation.

### Commendable Points:

Your observations obviously were not accurate when you listed under commendable points, "none" because the commendable points shown by me in that class were;

- (1) increased the motivation of the students by offering a lesson in



which a students could actively take part. (some students became so motivated in fact, that they willingly searched for information in the library concerning their poster.)

(2) Individual attention was given to every student during class time.

(3) Class activity was conducted in a friendly atmosphere in which the students were excited and highly motivated.

(4) Good planning was shown by having copies of poster contest information, rules and materials for students to work.

(5) Good organization was shown by having students prepared to clean up before the end of class.

(6) The activity was conducted in a atmosphere of expected laboratory behavior.

Mr. Douglas Jenkins

NORTH WARREN REGIONAL HIGH SCHOOL  
Blairstown, N. J.

March 9, 1976

Memo to: Mr. Douglas Tompkins  
From: Ira Isajiw, Principal

Re: Comments to your rebuttal on my Observation Report  
of 3/1/76

In your rebuttal of my observation report you seem to argue several points. I would like to clarify them to you by way of this memo. Surprisingly, you did not mention any of those points during our past observation conference. The proper place and time for such comments is such a conference. One of the most important reasons why observation conferences are required is to prevent lengthy rebuttals in writing.

Also please note, that most of the points which you are contesting are presented in the observation report as "Suggestions for Improvement." If these suggestions imply criticism, it is only in the sense of requesting changes or improvements. Since you seem to be contesting those suggestions, you, in effect, lead me to think that you don't feel you should or would like to make any improvements in your teaching. This conveys a very dangerous attitude on your part and detracts from the credibility of your intention to improve.

1. My observation report talks about "rough draft," because this is an announcement which you made in class. No where do I list this as a criticism of your technique. It was just a simple statement of fact.
2. You disagree with my judgement of the noise level. In my observation I am telling you that in my professional judgement and as a qualified supervisor, I am advising you of a standard or a norm which is to be adhered to in the future. Does your rebuttal of this point mean that you don't wish to accept this standard, and that you won't listen to suggestions?
3. What you would like to see as commendable points, are merely expected modes of behavior. I recognized the fact that "... you circulated around the room trying to respond to individual student questions." However, I did not list this as commendable because under the circumstances it was hardly achieving the intended results.

As to friendly atmosphere, motivation, etc., in my assessment of the situation it could hardly be interpreted as that. It is true that the students were not antagonistic, but at the same time they were free to talk about anything, as in the case of three girls sitting next to me,

March 9, 1976

or a student who went "table hopping" and talking about things not related to class, or a student who after about 10 minutes of drawing was frequently moving from place to place making facetious remarks about the project at hand. He was rather loud about it. A student in front of me worked on a drawing for about 15 minutes and then sat with his head resting on his arm and seemingly day-dreamed.

Do you really consider this to be commendable?

True, two girls did leave to go the library to look up information. Whether they did it out of motivation or boredom is questionable. Either way, this was not representative of the total atmosphere in your class.

4. Amount of work and quality of most of the posters were not concurrent with what should be expected from an 8th grade science class. If you did actually collect a drawing from all students, those drawings and/or posters could not have represented a product of 40 or 45 minutes work. I observed too many instances of lack of continuous work. This is why I suggested point "f" in my observation report.

May I also comment that on your part an attempt to defend a weak position makes you even weaker. And to the contrary, if you take the position which would convey your intention to strengthen and improve your teaching, it will make you a stronger and a more desirable teacher.

Received by:

Mr. Douglas Tompkins

Date:

March 10, 1976

Please see attached note.

To: Mr. Isaacs, Principal  
From: Mr. Douglas Tompkins

March 15, 1916

I would like to summarize my thinking concerning your observation report made of me on March 1 and your comments to my rebuttal which is attached to this letter. I would like to state that your suggestions for improvements have been noted by me and I have every intention to strengthen and improve my teaching. However, may I also state that it is my opinion that some commendable points should have been suggested in your observation report and that my attempt to defend this position is my constitutional right. I don't believe I have become a weaker teacher because I wish to use my rights to rebuttal, on the contrary, I believe it shows that I have a respect for individual rights and professional integrity.

NORTH WARREN REGIONAL HIGH SCHOOL  
Blairstown, N. J.

OBSERVATION REPORT

Teacher ..... Miss Claire Lattoz ..... Date .. April 15, 1976 - Period 2 .....

Tenure ..... Non-Tenure ..... X ..... Subject ..... Science 7-2 .....

1. CLASSROOM ACTIVITIES:

- Students took turns reading aloud.
- Discussion.
- Teacher reviewed the chapter orally.

2. COMMENDABLE POINTS:

- Homework questions assigned.
- Class was orderly.

3. SUGGESTIONS FOR IMPROVEMENT: Begin the class with some type of introduction.

Make-up tests should be given outside the normal classroom rather than while others read aloud on a new topic.  
 You tend to tell the students everything, rather than making them think and arrive at their own conclusions.  
 I saw no check on learning taking place. After you have taught something you need to evaluate your own performance by checking student learning.  
 A student entered late without pass unchallenged and another who had a pass kept it. Passes need to be collected so that they cannot be used again.  
 The students seemed to be disinterested. Perhaps you should change to another type presentation when you notice this.  
 When you correct a student or ask them to do a certain thing, you should insist that they do it rather than ignoring the fact that he does not comply.

12660101 sub with  
5/7/76

*Claire Lattoz*  
.....  
Teacher's Signature

*William K.*  
.....  
Evaluator's Signature

Conference Held: ... April 26, 1976 .....

Note: My signature above does not signify agreement with the article -  
*C. Lattoz*

no note attached

Holiday 4/16 - 4/25

5/3/76

~~Signature~~

May 6, 1976

REBUTTAL TO OBSERVATION BY MR. KLINE DATED APRIL 15, 1976  
FROM MISS CLAIRE LATTOZ

1. Mr. Kline has stated that I tend to tell my students everything, rather than making them think and arrive at their own conclusions. I feel that when I'm teaching my class a new subject it is quite necessary to tell them everything or they won't have enough information on which to base their own conclusions. Once the students have been sufficiently instructed they will be able to use their knowledge constructively in their search for the answers to my questions as well as their own. I feel it is a teacher's duty to stimulate the thinking process in students and to initiate the application of their knowledge.
2. When teaching a new topic, my students show great interest and attentiveness. I feel that stopping their discussions to review would interrupt the continuity of my lesson and hinder the learning process since discussions also facilitate learning. I check what the students have learned by beginning the next day's lesson with a review and reinforcement of the work done on the previous day. I have found this to be an effective method since I can use it both as a review and an introduction. In this way I become aware of any topic that needs to be repeated.
3. I did not challenge the student who walked in late because I already had full knowledge of her reason for being late.
4. Mr. Kline has stated that my students seemed to be disinterested. I think this is a very unfair statement since he had not previously discussed it with me when we met for an oral review of my observation. I also feel that he has no grounds on which to base this statement since in my class we are now studying the human body which happens to be of great interest to my students. They requested that they be taught this topic and have shown cooperation and outstanding enthusiasm in class. I make it a practice to always try to change my type of presentation so that I can give my students variety. The students have responded very well to this and have not been at all disinterested. One would only have to question my students to become aware of their enthusiasm and eagerness to learn.
5. I asked a student to raise her voice when reading to the class. She did raise her voice but since she is a shy and timid girl she does not speak very loudly. I didn't press the issue because I didn't want to embarrass her. This might only make her speak softer. I feel it is important for a teacher to make an introverted student feel comfortable in class. She must feel as though I am trying to help and not intimidate her or embarrass her in the presence of her peers. Belittling or harassing a shy student will only

cause resentment and impede the students learning process.  
It is much more profitable to build the students confidence  
in herself and make her feel comfortable. I did not ignore  
my request but only acted with compassion. It did not hinder  
the lesson since each student had a book with which they could  
follow her reading.

RECEIVED BY

W. H.

DATE

5/7/76

PAGE 3 OF 3

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT threaten our employees with reprisals during evaluation meetings if they exercise their rights guaranteed to them under this Act.

WE WILL NOT fail to renew the contracts of any of our employees in order to discourage our employees from filing a charge or otherwise exercising rights guaranteed by this Act.

WE WILL NOT interfere with the rights of our employees by denying to them their right to have an employee representative of their own choosing at investigatory hearings.

WE WILL offer to Claire Lattoz a teaching position at the salary level under the current contract consistent with the level she would be at had she not had her contract non-renewed in April of 1976.

WE WILL reimburse Claire Lattoz monies she should have earned from September 1976 to the time of compliance if she were not discriminatorily discharged, less all monies actually earned by Lattoz during this same period of time.

WE WILL post in a prominent place at the North Warren Regional High School copies of this notice, Attachment 3, for a period of sixty (60) consecutive days.

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