

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

In the Matter of

SADDLE BROOK BOARD OF EDUCATION,
Respondent,

-and-

Docket No. CO-2010-137

SADDLE BROOK EDUCATION ASSOCIATION,
Charging Party,

SADDLE BROOK BOARD OF EDUCATION,
Respondent,

-and-

Docket No. TI-2010-001

PATRICIA DOLAN,
Charging Party,

SADDLE BROOK BOARD OF EDUCATION,
Respondent,

-and-

Docket No. TI-2010-002

THERESA MARTIN,
Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Saddle Brook Board of Education violated 5.4a(3) and derivatively (1) of the Act by transferring Theresa Martin and Patricia Dolan because Martin raised various complaints against Director of Special Services Laurie Thoresen. Specifically, Martin complained about the assignment of aides in her classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen. Additionally, Martin was discriminated against because special education staff were meeting through the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen.

The Hearing Examiner also recommends that the Board independently violated 5.4a(1) of the Act when its agent James Sarto sent an e-mail to Association President Marcus on June 19 threatening to report insubordinate behavior of staff to the Board and Superintendent Groveman in connection with activities related to the Association's no-confidence vote meetings.

Finally, the Hearing Examiner recommends that the Board violated N.J.S.A. 34:13A-25 when it transferred Theresa Martin from the Helen I. Smith School to the middle school for disciplinary reasons. However, the Board did not violate N.J.S.A. 34:13A-25 when it transferred Patricia Dolan (TI-2010-001). The Hearing Examiner recommends that the Commission dismiss her contested transfer petition.

H.E. NO. 2011-8

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THERESA MARTIN,
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Appearances:

For the Respondent,
Anthony N. Gallina, of counsel

For the Charging Party and Petitioners,
Bucceri and Pincus
(Sheldon Pincus, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 20, 2009, the Saddle Brook Education Association (Charging Party or Association) filed an unfair practice charge against the Saddle Brook Board of Education (Respondent or

Board). The charge alleges that the Board violated 5.4a(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Specifically, the Association contends that the Board involuntarily transferred Association Representative Theresa Martin from the Helen I. Smith Elementary School where she taught a self-contained special education class for over twenty years and received exemplary evaluations to the Middle School where she is assigned to a collaborative classroom as a co-teacher with another teacher who acts as the primary teacher. It is further alleged that Martin was not given notice of the transfer decision pursuant to the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-12(b)(8) nor was the transfer listed as an item on the Board's agenda. Finally, the transfer, it is alleged, was made to discourage the exercise of protected activities, namely Martin's personal criticism of and participation in organizing a vote of no-confidence in the Director of Special Services.

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act;(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."

The charge also alleges that Association Representative Patricia Dolan was involuntarily transferred from the Middle School where she has taught for the last 14 years in a collaborative and resource room setting to the Helen I. Smith Elementary School where she is teaching in a self-contained classroom. It is further alleged that Dolan also was not given notice of the transfer decision pursuant to OPMA nor was the transfer listed as an item on the Board's agenda. Finally, it is alleged that the transfer was made in response to her protected activities, including her representation of a teaching staff member and her participation in the no-confidence vote regarding the Director of Special Services.

The charge seeks as a remedy a posting, a cease and desist order, and an order that the Board transfer Dolan and Martin, at their option, to a school and position for which they are both qualified and to which they desire to be transferred.

Additionally, on August 3, 2009, Martin and Dolan (Martin, Dolan or Petitioners) each filed petitions for contested transfer determination, alleging that the Board transferred them between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25.

On October 27, 2009, a Complaint and Notice of Hearing (C-1) and an Order Consolidating Cases together with Notices of Hearing in the Contested Transfer Petitions (C-2) issued.^{2/}

On August 21 and November 6, 2009, respectively, the Board filed its Answers to the Contested Transfer Petitions (C-4 and C-5) and to the unfair practice charge (C-3). Basically, the Board denies that its decision to transfer Dolan and Martin was disciplinary or that it violated the Act. The Board asserts that the Superintendent acted at the recommendation of the building principals and in the best interests of Dolan, Martin, and the students. Also, the transfers, it asserts, will benefit the educational program and contribute to the provision of a thorough and efficient educational system.

The Board raises various affirmative defenses, including among others, its managerial prerogative to transfer; that Martin and Dolan were not entitled to notice of the transfers pursuant to OPMA; that, in any event, the Commission lacks jurisdiction over violations of OPMA; that the transfers were for predominantly educational reasons; that the Board had no knowledge of nor was it hostile to Martin's and Dolan's protected

^{2/} "C" refers to Commission exhibits received into evidence at the hearing. "J" refers to joint exhibits. "CP" refers to Charging Party/Petitioners exhibits. "R" refers to Respondent's exhibits. Transcript references to hearing dates are "1T" through "6T" respectively.

activities; and that the Board would have made the transfers regardless of the asserted protected activities.

At the pre-hearing conference, I granted the parties' mutual request to sequester witnesses. Each side was allowed one resource person who could also be a witness. Since the matter was consolidated, Charging Party/Petitioners were entitled to have two resource persons. Respondent's resource person was Dr. Harry Groveman, while Charging Party/Petitioners designated Petitioners Theresa Martin and Patricia Dolan as resource persons. The resource persons were present during witness testimony throughout the hearing. The parties also agreed to prepare stipulations of fact before the first day of hearing (J-1).

A hearing was held on February 2, 3, and 4, April 16, 19 and 22, 2010, at which the parties examined witnesses and presented exhibits. After mutual requests for extensions to file were granted, briefs and replies were filed by October 21, 2010. Based on the record, I make the following:

FINDINGS OF FACT

The Parties' Stipulated Facts (J-1)^{3/}

^{3/} J-1 consists of stipulated facts separately numbered 1 through 21. Stipulation 22 lists and attaches 32 documents that the parties stipulated were authentic and admissible, although the parties did not stipulate as to the truth of the matters asserted therein or as to relevance. At the hearing, it was agreed that these documents would be

(continued...)

1. Charging Party, the Saddle Brook Education Association is the exclusive representative for collective negotiations concerning the terms and conditions of employment for all certified personnel, whether under contract, on leave, on a per diem basis, employed or to be employed by the respondent, Saddle Brook Board of Education, but excluding the Superintendent of Schools, Principals, Vice-Principals and Directors.

2. The Association and Board are employee representative and public employer, respectively, within the meaning of N.J.S.A. 34:13A-1 et seq. The parties stipulate that Theresa Martin and Patricia Dolan are public employees within the meaning of N.J.S.A. 34:13A-2 and N.J.S.A. 34:13A-22 of the Act. The parties further stipulate that Dolan and Martin were transferred between work sites within the meaning of N.J.S.A. 34:13A-25 and that under this subsection of the Act, the only issue is whether their transfers were for disciplinary reasons (1T12).

3. The Association and Board are parties to a collective negotiations agreement for the period July 1, 2007 through June 30, 2010.

4. The Saddle Brook School District is a comprehensive K-12 district comprised of three K-6 elementary schools (Franklin,

3/ (...continued)
separately marked as "J", "CP" or "R" exhibits. I cautioned the parties that to the extent they wanted me to consider relevancy or the truth of the matters contained therein, I would need witness testimony.

Long Memorial and Helen I. Smith), Washington School, which houses a number of early intervention special education programs, and Saddle Brook Middle/High School, which houses grades 7-12.

5. Grades 7-8 are located in one wing of the building and follow a middle school curriculum.

6. The student population for the 2009-2010 school year is approximately 1850 total students.

7. At all times material to this action, Dr. Harry Groveman has served as the Superintendent of Schools for the Saddle Brook School District.

8. At all times material to this action, Laura Thoresen has served as the District's Director of Special Services. She further has served as the Principal of the Washington Elementary School.

9. At all times material to this action, James Sarto has served as the Principal of the District's high school/middle school.

10. At all times material to this action, Caroline Gaynor has served as principal of the District's Helen I. Smith School.

11. Theresa Martin is a tenured teaching staff member employed by the Board since September 1987.

12. From September 1987 to June 30, 2009, Martin had always been assigned to teach in the District's Helen I. Smith Elementary School.

13. On June 15, 2009, Martin attended a meeting at which Thoresen, Sarto, and NJEA UniServ Representative Rose Ann Spina were present.

14. On June 23, 2009, Groveman met with Martin at her request.

15. On June 24, 2009, the Board voted in public session to approve the transfer of Martin to the Saddle Brook Middle School, effective September 2009, and upon the recommendation of Superintendent Groveman.

16. The proposed transfer of Martin to the middle school was not discussed with Martin prior to the Board's vote approving the recommendation of Superintendent Groveman.

17. Patricia Dolan is a tenured teaching staff member who has been continuously employed by the Board since September 1990.

18. Dolan had been assigned to the District's middle school from on or about September 1993 to on or about June 30, 2009.

19. On June 24, 2009, the Board voted in public session to approve the transfer of Dolan to the Helen I. Smith School, effective September 2009, and upon the recommendation of Superintendent Groveman.

20. The proposed transfer of Dolan to the Smith School was not discussed with her prior to the Board's vote approving the recommendation of Superintendent Groveman.

21. The collective negotiations agreement defines a grievance as "a claim by a teacher or the Association based upon the interpretation, application, or violation of the Agreement, policies or administrative decisions affecting a teacher or group of teachers."

Theresa Martin Background

22. Martin holds certifications in both elementary education and teacher of the handicapped (1T184).

23. In 1987, when Martin was hired by the Board and assigned to Helen I. Smith Elementary School, she taught 7th and 8th grade special education in a self-contained classroom (1T182). A self-contained class in the elementary school is a class where students primarily receive all or most of their academics within that classroom from a special education teacher and are taught on the grade level dictated by their IEPs (Individualized Education Program) (4T226).

In the middle school, special education is taught by a special education teacher in either a resource or collaborative classroom. In a resource classroom, the special education teacher provides academics for students who are mainstreamed for part of the day (4T225). A special education teacher in a collaborative classroom works as a team with a regular education teacher who acts as the lead teacher (4T227).

In 1992 or 1993, when the middle school was moved to the high school, Martin remained at Helen I. Smith and was assigned to teach 5th and 6th grade special education students in a self-contained classroom where she remained until her transfer in the 2009-2010 school year (1T182-1T183). In addition to Martin, Smith has five full-time special education teachers (4T225). Martin was happy with her assignment at the Smith School (1T183).

24. Martin has been a union building representative for approximately 8 to 10 years (3T58). At no time during those years or at any time has she been disciplined or reprimanded for her activities as a building representative or performance-related activities (3T59). Smith Principal Caroline Gaynor was aware that Martin was a building representative, and that Martin was involved at the end of 2009 with representing Association member Wayne Rogers in a disciplinary matter. But Gaynor was not involved in the Rogers matter (4T238).

Martin Observations/Evaluations/Honors

25. Throughout her career, Martin has received outstanding evaluations (1T184).

26. CP-2 is Martin's annual evaluation for the 2007-2008 school year prepared by Gaynor. Martin received "highly successful" ratings in all areas. In the evaluator comments area Gaynor wrote "Mrs. Martin's energy, enthusiasm and dedication are to be commended. Her classroom is a place where flexible

grouping fosters inquiry, discovery and learning for all her diverse students" (CP-1). Gaynor communicated no concerns or criticisms of Martin's teaching performance in that evaluation (1T194).

27. That school year, Gaynor observed Martin's class on October 12, 2007 (CP-4). She also rated Martin as "highly successful" in all areas. The lesson on that particular day related to the history and creation of paper. Among Gaynor's comments were that the lesson was well planned, highly motivating and promoted self-management in a flexible classroom allowing for multiple activities happening simultaneously. Gaynor also wrote that "Mrs. Martin's knowledge of special education strategies and materials is strong. Her willingness to share and collaborate is to be recognized" (CP-2).

28. CP-1 is Martin's annual performance evaluation for the 2008-2009 school year prepared by Gaynor and dated May 2009. Gaynor again rated Martin "highly successful" in all areas. Among various comments, Gaynor wrote, in part, that Martin's lessons were well planned and that she collaborated effectively with her colleagues. Gaynor also remarked on Martin's running of a school-wide program, entitled "Caught You Being Kind", which Martin started to provide students with opportunities for positive character development and behavior management. Gaynor described the program as a Smith School tradition.

Another program started by Martin, "Kidz Stop", which is the school store, was praised by Gaynor in the evaluation as being a benefit to the entire school and an effective instructional strategy for Martin's students who learn through discovery and inquiry. The purpose of the school store was to teach Martin's students life skills. One morning a week her classroom was turned into a store with a working cash register. Her students were sales clerks and managers (2T77). There was inventory and a shopping schedule for students from grades 1 through 6 to come in to shop (2T77). For 10 or 15 years, Martin ran the school store and used a portion of the profits to purchase technology for the school-wide elementary program (2T76).

Gaynor also commented in the evaluation that Martin's "firm yet nurturing demeanor provides a safe haven for her special needs students." (CP-1)

Gaynor then wrote that Martin was an invaluable resource as a member of the School Planning Committee and Sunshine Committees as well as being the Smith School LEARNIA Lead Teacher, a role Martin accepted that year. LEARNIA was a new program that required attendance at workshops and training in order to facilitate concerns of staff members (2T101). Gaynor praised Martin's assistance to other teachers through her LEARNIA leadership (CP-1).

Finally, in the evaluator comment section, Gaynor wrote: "Mrs. Martin's passion for teaching is evident in the success of her diverse learners" (CP-1). Gaynor admits that CP-1 supports that Martin was doing a fabulous job in 2008-2009, and that Martin was an excellent teacher (4T249, 5T68).

29. Martin and Gaynor met for 5 or 10 minutes and discussed the evaluation on June 5, 2009 which they then signed (CP-1; 1T188). During the short meeting, Gaynor expressed no concerns or criticisms of Martin's teaching performance.

30. CP-3 is Gaynor's only observation of Martin's classroom in 2008-2009 (1T197). The observation was conducted on December 12, 2008. The lesson was in social studies, specifically a Jeopardy Unit Review. Gaynor observed that Martin's lessons were well developed, the classroom was set up to allow for maximum use of flexible space, and the fast pace together with the use of technology promoted student focus.

Gaynor observed Martin utilizing a laptop and projector to put the social studies jeopardy game on a large screen. In particular, Gaynor remarked that "[s]tudent enthusiasm abounded in this high interest lesson." As to knowledge of the subject, Gaynor wrote that "Mrs. Martin is to be commended for creating this computer game/review for her students. It is an example of utilizing alternate strategies and materials to address all learning styles." During her conversation with Martin about the

observation, Gaynor related no concerns, criticisms or anything negative (1T197).

31. At some point while Gaynor was principal, Martin received the New Jersey State Governor's Teacher Award for being an outstanding teacher within the District (1T200). In 1999 or 2000, Martin also received the Region Four Special Educator Award which is presented to an outstanding special education teacher (1T202).

32. Gaynor states that her style of leadership is not to write negative comments in evaluations or observations if they don't affect student performance or educational strategies (5T94). Presumably, therefore, based on Martin's evaluations and observations, nothing about Martin's performance in 2007-2008 or 2008-2009 impacted negatively on either her students' performance or educational strategies.

33. At no time during the 2008-2009 school year did Gaynor ever indicate her intention to transfer Martin, even when they discussed what was going to happen in the summer of 2009 to prepare for the next school year. For example, on June 22, 2009, Gaynor e-mailed Martin to inquire what needed to be done to mount a ceiling projector and incorporating new technology into the classroom (CP-22; 1T188, 1T191-1T192; 2T79). Gaynor states that at the end of the school year, she didn't want to discuss the

possibility of a transfer because she didn't want to upset Martin or cause her stress (4T261).

34. Martin felt that the Board's investment in her attendance at conferences made the timing of her transfer suspicious (2T80-2T81). Specifically, Gaynor and Thoresen approved her attendance at three-day workshop training regarding the Wilson Reading Program which took place in May 2009 (4T245; 5T70-5T71, 5T139). The Wilson Reading Program is primarily used at the elementary level. Although it can also be used at the middle school, it is currently used only in the District's elementary schools (4T245; 5T72, 5T140, 5T230; 6T175-6T176).

In 2009, Gaynor also approved Martin to attend a workshop about increasing student proficiency using capitalization, punctuation and grammar for 1st to 3rd grades which was appropriate to Martin's assignment teaching 5th and 6th grade because her students were reading at this level (5T68-5T69). Also, Gaynor approved Martin's attendance at a technology workshop geared to enhancing and enriching student learning in grades K through six (5T69-5T70). Finally, at the June 24 Board meeting, the Board approved Martin's transfer from Smith and also approved her attendance at a workshop that was appropriate to Martin's assignment at the Smith School (6T35).

The Board's policy for professional development is to encourage it and set aside funds to facilitate the professional

development of staff to enhance their skills and abilities in order to promote successful student instruction (4T242; 6T34). Approval for professional development must relate to a teacher's current assignment (6T34). As to Martin's approval for workshops in 2009 that were arguably relevant to her assignment at the Smith School, Superintendent Groveman explains that certain workshops can be applied generally to any assignment as long as it is within the teacher's area of expertise (6T35).

Martin also felt that Gaynor's approval over the last two years of the purchase of technology for the school -- a projector with profits from the school store and components to the Alpha Smarts laptop computers -- as well as training she received on the technology, suggests that the timing of the transfer decision and the rationale was suspicious (2T81).

Martin's Relationship with Gaynor

35. According to Martin, her relationship with Gaynor was a relaxed professional one (2T50; 3T55). They shared information and private e-mails about Gaynor's family -- e.g. Gaynor's parents' illness and her husband's retirement (CP-35; 2T50; 5T5, 5T8-5T9, 5T77). Martin was once invited to Gaynor's house for a get-together which Martin was unable to attend (2T50; 5T5). Occasionally, Gaynor, Martin and another colleague would meet for dinner at the beginning or the end of the school year (2T50).

Prior to her transfer and this litigation, Martin had no reason to believe that Gaynor harbored any hostility to her (3T55-3T56).

36. Gaynor has been principal at Smith School for ten years (4T223-4T224). She holds certifications in elementary education and English as well as supervisor, principal and chief school administrator certifications (4T224).

Gaynor is a member of the Saddle Brook Administrator's Association (SBAA) and held the position of SBAA president in the past (4T225; 5T28). The SBAA represents principals, vice-principals, the director of special services and the director of the Community School (4T113). After Gaynor's tenure as president, Dr. Onorato became SBAA president and James Sarto acted as vice-president. When Onorato was promoted to assistant superintendent effective July 1, 2009, Sarto took over his responsibilities first as acting SBAA president in June 2009 and then as SBAA president after July 1, 2009 (5T30, 5T80-5T81). Gaynor as well as the other administrators receive notification from the Association at the beginning of each school year of the building representatives throughout the District.

37. Gaynor agrees that she and Martin had a good, professional relationship (4T228). For instance, Martin always welcomed her eagerly into her classroom, and the two worked well together on problems involving students as well as scheduling

(4T229). Gaynor considered Martin an integral part of the Smith School staff (4T229).

Martin's Relationship with Thoresen-June 1 Observation/Classroom Aide Issue

38. Laurie Thoresen was hired by the Board as director of special services and principal of Washington School effective July 1, 2006 (5T106). She holds certifications as a principal and school psychologist (5T107). As director, she supervises the Child Study Team (CST) as well as all of the special education staff within the District and is on the same level in the administrative hierarchy as principals who she works with collaboratively to supervise the special education staff (5T110). Thoresen is a member of the SBAA.

Thoresen describes her relationship with Martin and Dolan prior to their transfers for the 2009-2010 school year as "fine" (5T111, 5T186). In particular, Thoresen feels Martin is a great teacher (5T187). As to Dolan, Thoresen describes her two formal observations of Dolan as wonderful (5T188).

39. Martin disagrees with Thoresen's characterization of their relationship. Although Martin's relationship with Gaynor as well as the Smith students and staff were good, if not excellent, her relationship with Thoresen was strained and had been since the 2006-2007 school year when Thoresen was hired. The difficulties Martin was experiencing over a two-year period caused her to eventually conclude that Thoresen was unfairly

targeting her and that she (Martin) had to put an end to what she felt was Thoresen's harassing, unprofessional and unethical behavior (CP-16; 2T209, 2T211).

Martin had not previously filed any formal grievance or raised her concerns about Thoresen with the Board or administration in writing, but she did discuss various issues as they arose with Gaynor (2T141, 2T172; 5T14-5T15). However, matters worsened throughout the Spring of 2009 and came to a head after Thoresen conducted a classroom observation on June 1, 2009 and changed Martin's classroom aide assignment for 2009-2010 (5T174). These incidents cemented Martin's belief that Thoresen was targeting her. However, Martin did not ask to meet with Thoresen during this period.

40. What finally pushed Martin to request a meeting with Thoresen was a comment Thoresen made to Martin after observing her reading lesson on June 1, 2009 (CP-16; 1T204). At the end of the class, as the students were leaving, Martin asked Thoresen if she had any questions about the reading program (1T205). Thoresen said she did not but gestured to Martin to come closer and then told her that her shirt was too low cut and that when Martin bent down she could see her bra. Thoresen told Martin to watch what she wore (1T205-1T206). Martin had worn this outfit numerous times (1T206). No one during her employment had ever questioned or commented about her dress (1T206).

Four days after the observation, Martin received an e-mail from Thoresen with two questions about the lesson, one of which was why Martin was not instructing the students on grade level (CP-16; 2T34-2T35). Gaynor told Martin that Thoresen felt the lesson was at too low a level for the students (CP-16). Martin explained that student IEPs determine the academic instructional level (2T35).

41. Besides the June 1 observation issue, Martin was particularly concerned about her classroom aide assignment for 2009-2010. At the end of 2007-2008 school year, Martin's aide for the past 19 years, Madeline Romaine, was moved to Ms. Sutera's 4th and 5th grade special education classroom, while Sutera's aide, Greta Radel was moved into Martin's class (CP-16; 2T22). The aides (Romaine and Radel) were upset with the switch, as were the affected teachers (2T23-2T25). Martin was told by Gaynor and Thoresen that the reason for the change was that the teams were stale, namely that the teachers and aides were working together too long, and that the younger class needed a certified aide so that the special education teacher could have preparation periods (CP-16; 2T21, 2T25).

Martin, in particular, was very frustrated with the aide swap for 2008-2009 because she felt strongly that this was another example of Thoresen targeting her (2T29). Romaine was retiring at the end of 2008-2009 so, as far as Martin was

concerned, the swap made no sense and provided no benefit (2T32). Martin chose, however, not to object to the swap of Romaine and Radel for 2007-2008 (2T32). Martin recognized that the assignment of aides was the administrations responsibility (3T6).

Then on June 5, 2009, when Martin was getting her annual performance evaluation, Gaynor informed Martin that Radel was being moved back to Sutera's class, and for 2009-2010, Martin was being assigned two part-time, non-certified aides on a rotating basis - three days on and two days off (CP-16; 2T25, 2T28). Thoresen had already informed Radel of the change in assignment on June 1, but told Radel not to tell Martin (2T27). According to Gaynor, Thoresen was responsible for the decision to place the two part-time aides on a rotating basis in Martin's classroom for 2009-2010 (4T259).^{4/}

When Martin learned that Radel was being moved back to Sutera's class, the explanation that Martin had been given the year before for the Radel/Romaine switch -- that the change in aides was done because the teams were stale -- made no sense and

^{4/} Gaynor's testimony as to who made the aide-placement decision was inconsistent and unreliable. On cross, she testified that she made the decision in collaboration with Thoresen (5T18). The matter is not material since whether the decision was Thoresen's alone or in concert with Gaynor, Martin's perception was that Thoresen was the primary motivator, and this perception contributed to Martin's feeling that Thoresen was targeting her. That feeling led her to complain to Gaynor who concluded that Martin was unhappy, a reason Gaynor put forth to support the transfer recommendation.

supported in Martin's mind that she was being targeted by Thoresen (2T32).

Martin objected in particular to the change in aides for 2009-2010 because she had always worked with certified aides and in order to leave her classroom -- e.g. to remove a child with an emotional issue -- a certified staff member must be in the classroom at all times (2T30, 3T10). Additionally Martin was concerned with the lack of continuity and consistency of the instruction and support that her students would receive if the aides were rotated (2T31; 3T14).

In a self-contained classroom, an aide functions in many capacities (3T9). For instance, the aide functions in an instructional capacity supporting students in a mainstream environment and, also, provides teacher coverage in the classroom so that the teacher can receive preparation periods or go on a field trip (3T9). Martin used her preparation period often to call in orders or deal with problems related to running the school store (3T11-3T12).

42. Martin spoke to Gaynor as well as Association President Linda Marcus about her frustrations with the classroom aide assignment (1T47; 2T31). Marcus first attempted to discuss the issue with Thoresen. Marcus and Teri Quirk, a speech therapist and building representative assigned to Washington School, met at some point in the beginning of June with Thoresen and Sarto in

Thoresen's office to discuss the concerns raised by the special education staff and the assignment of Martin's classroom aides (5T143, 5T232-5T233, 5T261). Thoresen and Sarto did not recall the exact date of this meeting, but it was sometime before June 16 when the formal written transfer recommendation was given to Groveman, because Marcus referred to the meeting in her June 16 e-mail (CP-15) to Groveman. Also, I infer that this meeting took place before June 9 since Thoresen suggested that Marcus speak to Groveman about the aide assignment, and Marcus first e-mailed him to request a meeting about this topic on June 9 (CP-15; 1T47).

At the meeting, Thoresen recalls Sarto telling Marcus that she should not think that what was said at Association meetings is confidential (5T143). Sarto corroborated her testimony and admitted that he told Marcus that what goes on at Association meetings is not private (4T57-4T58). Sarto testified he told Marcus:

In a small district, nothing's private, you know, between the Board, between the parents, between anything. I said what makes you think anything is private. It's just, somebody always talks. There's always a teacher who talks to another teacher in a teachers' room or somebody who's talking in a hallway and another teacher or another kid over hears or a parent . . . If something happens, you find out about it within 24 hours. And that's with working with the police too, because nobody can keep quiet. They always say - somebody always says something because they know something the other person doesn't. They love to spread that.

That's how I get all my information in this district on anything, is that you start hearing it going back and forth with the students.

Or a parent calls up and says, 'I heard this,' because so-and-so Johnny did this on the ball field. It's just - there's nothing private. [4T58-4T59]

Sarto denies that this testimony meant that he knew about the Association's no-confidence meetings (4T59). I do not credit his denial which is self-serving. His testimony regarding what he told Marcus was detailed. The fact that he rethought what he testified to after his counsel's questioning does not support Sarto's denial. I find that Sarto knew about the meetings from both Thoresen and his own teachers.

Sarto also denied knowing specifically that Martin or Dolan attended the no-confidence meetings (4T59). As to Martin, his testimony is not credible. Sarto knew about the meetings being conducted among elementary special education staff and that Martin, in particular had concerns she raised at both the June 10 Board meeting and that she had requested to meet with Thoresen about those concerns. I infer that Sarto concluded Martin was part of the group meetings about Thoresen.

In any event, after Sarto told Marcus that what goes on at Association meetings is not private, Marcus turned to Quirk and stated that they had to remember to reiterate to Association

members that Association meetings are confidential and not to be shared outside the meeting (5T144). Marcus subsequently reminded the membership at a meeting in the beginning of June and at the June 15 Association meeting that what was discussed was to remain private (3T95-3T96, 3T161-3T163).

43. After this meeting about the classroom aide assignments and the concerns of the special education staff, Marcus followed Thoresen's suggestion to speak to Groveman (1T47). By e-mail on June 9, Marcus unsuccessfully attempted to set up a meeting with Groveman to discuss the placement of aides in Martin's class for 2009-2010 (CP-15). On June 10, Martin together with special education staff and parents appeared before the Board at its meeting to protest the aide assignment. Despite the teacher/parent opposition, the Board approved the assignment of aides at its meeting that night (CP-14).

44. Marcus called Spina about her failure to get a meeting with Groveman who had not responded to her June 9 e-mail request to meet. Both Marcus and Spina felt that the aide assignment had a direct impact on Martin's preparation and lunch periods, issues covered by the parties' collective negotiations agreement (J-2; 1T73-1T74). In particular, having a certified aide permitted Martin to leave her classroom to get her guaranteed preparation and lunch periods (1T47). Accordingly, Spina's concern initially

regarding the aide assignment was enforcement of the parties' collective agreement (1T48).

June 10, 2009 Board Meeting

45. Martin not only contacted Marcus and Spina about the aide issue, but, on June 10, she appeared at the Board's regularly scheduled meeting (6T47-6T48). The aide assignments for the next school year were on the Board's agenda for approval that evening (CP-14). A great many parents as well as Martin and other special education staff attended the meeting and spoke out against Martin's aide assignment for 2009-2010, particularly the use of part-time aides (5T231). Up until this point, every self-contained classroom at the Smith School had a full-time aide (6T121). The parents who spoke disagreed with the administration's decision to place part-time, rotating aides in Martin's classroom, but because of budgetary concerns, Groveman had pressed his principals and Thoresen to use part-time aides instead of full-time aides (6T49).

46. Groveman and Sarto were at the June 10 Board meeting. Groveman knew generally that Martin had concerns about the aide assignments but this was the first time he learned about Martin's concerns about the placement of part-time, non-certified aides on a rotating basis (5T15; 6T46-6T47, 6T121-6T123). Presumably, Groveman learned for the first time about her specific concerns since he knew from Marcus that Martin generally had concerns

because Marcus had been trying to schedule a meeting with him since June 9 to discuss those concerns (CP-15).

Groveman had not responded to Marcus' request by the June 10 meeting, because he felt that the assignment of aides was a managerial prerogative, and he had never met with an association president regarding the aide assignment for a particular teacher (6T83-6T84). Groveman does recall some concern expressed that placing a non-certified aide^{5/} in a self-contained classroom might prevent the teacher from getting their preparation period. Although having a certified aide does make it easier for a teacher to take a preparation period, Groveman and Gaynor felt if this became a problem the Association could file a grievance (6T8-6T88, 6T107, 6T139). Basically, Groveman felt that the Association and Martin ". . . did not have the right to argue or issue discussion or enter into discussion about who gets placed with who" (6T86).

47. Based on the appearances of the parents and Martin at the June 10 meeting, Groveman concluded that Martin and her former aide Madelyn Romaine were responsible for the large turnout of parents and staff protesting the aide assignments (6T90, 6T184).

5/ A certified aide is an aide who is at least substitute certified or actually a certified teacher (6T87). Groveman admits that having a certified aide

June 11, 2009 Administrative Council Meeting

48. Administrative Council consists of all administrators, including principals, vice-principals, directors and the IT coordinator, and it meets generally the day following the Wednesday Board meeting (6T11-6T12). Usually it is at the April and May Administrative Council meetings that transfers for the coming year are discussed (4T18).

At the June 11 Administrative Council meeting, Groveman discussed the June 10 protest with Thoresen, Gaynor and Sarto as well as the other attendees (5T231). It was at this June 11 meeting, that Groveman recommended to Gaynor and Sarto that they consider transferring Martin and Dolan (6T14-6T15).

Groveman recalled that Sarto had mentioned periodically that Dolan wasn't happy with the number of collaborative classes that she was assigned (6T12, 6T56-6T57, 6T129). Groveman also testified generally that the mental health of Martin and Dolan came up, but until June 11 there was never any mention of transferring them. On June 11, Groveman mentioned to Gaynor that she seemed to have similar concerns about Martin -- that Martin seemed agitated and emotionally drained -- that Sarto had about Dolan who Sarto felt didn't like teaching in a collaborative classroom and wanted a class of her own (6T11, 6T14-6T15).

Groveman concluded that the two principals were telling him that Martin and Dolan were "burnt out"^{6/} and suggested that the two should sit down and talk about possible transfers (6T14-6T15). Groveman spoke to Sarto and Gaynor on June 12, and they informed him that they were going to make a formal recommendation to transfer Martin and Dolan (6T164) [see discussion below].

June 11 or 12 Meeting of Sarto and Gaynor to Discuss Transfers - Their Rationales for Recommending the Transfers

49. At Groveman's suggestion, on either June 11 or June 12, Gaynor and Sarto met in Sarto's office for about half an hour either between 9:30 and 11:00 a.m. or sometime after 1:00 p.m. but before 4:00 p.m. (4T232; 5T26, 5T31, 5T33). During the meeting, Gaynor recalls Sarto mentioning the June 10 Board meeting he attended and at some point discussed rumblings among the special education staff regarding Thoresen (5T34-5T36). Gaynor shared that Martin was unhappy and Sarto told her he had a teacher (Dolan) who was not a good match for his school and was very unhappy with her schedule because her assignment included too many collaborative versus resource classrooms (4T231). Eventually, the two decided to swap teachers (4T232).

^{6/} Groveman used the term "burnt out" in his certification but testified that Gaynor did not use that phrase; it was his terminology based on what she was telling him about Martin (CP-26; 6T14, 6T98-6T99).

50. Gaynor had several professed reasons for recommending Martin's transfer, but basically Gaynor testified that she recommended Martin's transfer because Martin appeared to Gaynor to be stressed and unhappy about, among other things, the classroom aide assignment for 2009-2010 (4T256, 4T258). Martin told Gaynor that having the two part-time aides would interfere with her ability to take preparation periods and that the aides did not have the same ability level as the aides Martin had worked with previously (4T256-4T257). Gaynor suggested Martin not worry because the schedule would be adjusted to provide her with the five preparation periods (4T258).

Gaynor also reminded Martin that the aide was only an assistant to the teacher, not a second teacher (4T258). As to whether an aide should always be assigned to the same teacher each year, Gaynor testified that it is good professionally to move staff around so they don't get too comfortable (4T258). Gaynor, however, approved the placement of Romaine in Martin's classroom for many years because she did not see a need to move her (4T259). Gaynor's testimony does not explain why she approved Romaine's placement in Martin's class for years and then in 2007-2008 moved Romaine out a year before her retirement.

Gaynor related that another sign of Martin's stress in 2008-2009 was when Martin told Gaynor in January or February 2009 that she wished it was four years from now so she could retire

(4T230; 5T13). Gaynor also described that a few times Martin cried or stamped her foot in frustration (4T230-4T231). Gaynor states that at these times, Martin would be discussing Thoresen and issues related to her students and the special education program (5T13-5T14). Gaynor also testified that Martin's concerns or complaints related to Gaynor herself as well as Thoresen and CST issues (5T50).

Martin refutes Gaynor's characterization or suggestion that she was unhappy with her teaching situation at the Smith School or with Gaynor (2T106-2T109). Martin admits that she was unhappy with the aide assignment and that she was extremely frustrated and concerned that she was being targeted by Thoresen, but does not recall telling Gaynor that she wished it was four years from now so that she could retire (2T108).

I do not credit Gaynor's testimony characterizing Martin's complaints as general unhappiness with her teaching assignment at the Smith School and/or with Gaynor herself. The evidence supports that Martin's complaints or concerns in the two-years before her transfer related overwhelming to Thoresen and Thoresen's leadership of the special education program as well as the CST. Gaynor testified specifically that Martin raised concerns throughout 2008-2009 about the CST and Thoresen, in particular about the CST not being available when she needed them (4T266-4T267). For instance, Martin's concerns caused Gaynor to

reach out to a CST member to come to Martin's classroom (4T268). Also, when Thoresen came to Gaynor in the spring of 2009 to express concern that Martin was feeding information to a parent, Gaynor determined to get more involved in the CST meetings regarding the particular student (4T270).

Gaynor's testimony regarding why she made the decision to transfer Martin minimizes Thoresen's role in the transfer decision in order to justify Gaynor's rationale for transferring Martin from the Smith School by stating that she was unhappy with her teaching assignment. If Martin's real problems stemmed from Thoresen, then transferring her to another school, where she would still be under Thoresen's supervision, made no sense.

Gaynor was asked why she would recommend the transfer of a teacher who she describes as excellent. Gaynor responded as follows:

I would - I would recommend the transfer of an excellent teacher and in this case Ms. Martin because she was showing signs of stress and unhappiness in her role as a teacher.

And certainly when a teacher is an excellent teacher, we want them to have a situation, a classroom, a group of students to teach that will showcase their excellence, not a situation where their teaching might be affected by the stresses of their job.
[4T240-4T241]

Then Gaynor was asked what she hoped to accomplish by transferring Martin to another building and she replied that she

hoped Martin “. . . would embrace the new position and be a happier, better, satisfied teacher” (2T241).

Gaynor concedes that despite what she described as Martin's stress and unhappiness in 2008-2009, that state of mind did not impact her teaching assignment. Martin's evaluations and observations suggest that Martin was doing a fabulous job and that the extra activities Martin undertook that year support that she was not “burnt out” (CP-1, CP-3; 5T91-5T92). Those activities included running the school store, incorporating new technologies and teaching her students to become independent with the technologies, volunteering to tutor a student after school several days a week, accepting the role of LEARNIA leader, taking her students on several interesting and educational field trips, volunteering for bus duty as well as the Intervention and Referral Services Committee that she (Martin) would occasionally chair, organizing a prize basket for the “Caught You Being Kind” program that Martin developed (4T246-4T247; 5T58, 5T60-5T63, 5T66-5T68). Gaynor states that she approved these activities hoping that if Martin kept busy she would be less dissatisfied with her position (5T91-5T92).

Martin refutes the suggestion that she was unhappy and states that before the transfer, Gaynor never communicated to Martin that she thought that she was unhappy or that she was “burnt out,” the term Groveman used to describe what Gaynor told

him when recommending Martin's transfer (2T98). Martin suggests that the activities she undertook in 2008-2009 and described by Gaynor belie the suggestion that she was burnt out or unhappy with her assignment at the Smith School (2T101-2T105; 5T56).

During 2009-2010, Martin admits that she related concerns, not complaints, to Gaynor, about certain issues such as the assignment of classroom aides because she was advocating for her students (2T107). As a special education teacher, Martin feels it is her job to advocate for her students (2T107). Gaynor testified that Martin's complaints underscored that Martin was stressed and unhappy in her role as a teacher (4T240-4T241, 4T278-4T279; 5T14). I do not credit this testimony. Martin's complaints to Gaynor addressed the treatment she was receiving from Thoresen, not about her classroom assignment or teaching duties.

Gaynor corroborates Martin's testimony that she never discussed with Martin her perception that she was unhappy or Gaynor's determination to make her "happier" by transferring Martin from the Smith School to the middle school where Sarto would be her principal and where Martin could only teach in a collaborative class with another teacher as the lead. Gaynor explained her reason for not speaking to Martin about what she was contemplating:

We were - I was already contemplating transferring her or looking for some kind of

different assignment for her. But she was - we were still in the final stages of the school year. We still had a month of school left. There would have been no reason for me to give her any further stress or upset (4T262).

Gaynor admits that she struggled with the decision not to discuss her thoughts about the transfer with Martin and what would be the best way to handle it, but in the end, she just chose not to discuss it with her (4T251). Gaynor believes that transfers don't always need to be discussed with staff before the recommendations are made, because administrators have the right to transfer staff and do it for a variety of reasons. Staff, Gaynor explained, should be able to accept that the transfer decision ". . . is made thinking that the needs of the district are what we are looking out for" (4T251). In the end, Gaynor states, Martin's transfer would be best for the District and for Martin, and so she didn't discuss it with her (4T288-4T289).

Gaynor never saw the document prepared at the no-confidence meetings (CP-18)^{2/} containing the specific complaints against

^{2/} Respondent objected to my admitting CP-18 into evidence since no one who contributed to or prepared the document testified. Spina did not put it together (1T93-1T100). However, Martin testified that several concerns that she raised at the Association meetings were incorporated into CP-18 (2T62). Additionally, although there is no evidence that the Board or any other agent of the employer actually saw the contents of CP-18, I infer from Sarto's June 19 e-mail to Marcus and the Association (CP-15) that he was aware of these meetings critical of Thoresen that were taking place among the special education staff and the possibility
(continued...)

Thoresen compiled by Quirk and denies that CP-18 played a role in her transfer recommendation. Although I credit that Gaynor did not actually see CP-18, I do not credit her claim that the complaints against Thoresen, which Gaynor knew about from Martin, Thoresen and Sarto, played no role in her decision to transfer Martin. Gaynor's denial is not supported by the factual record.

Gaynor also testified that she was not aware of the Association meetings regarding Thoresen and the no-confidence vote until after she made the transfer recommendation to Groveman on June 16 (4T238-4T241). However, Gaynor knew at least as of June 15 that the meetings were taking place because she gave and then withdrew permission for one of these meetings to be held at the Smith School after receiving a phone call from Sarto about the meeting. Her testimony regarding what she knew and when is

7/ (...continued)
of a no-confidence vote. Groveman's testimony also establishes that he was aware of complaints about Thoresen raised by Martin and the special education staff because he was informed of the complaints in a meeting with Spina on June 17 (1T101-1T102, 1T116-1T117). Even Thoresen testified that she knew about the meetings and was concerned, a concern she communicated to both Sarto and Groveman. There is therefore a residuum of testimony on the record to support that CP-18 is the document prepared by Quirk from comments of special education staff at the Association meetings. Moreover, I admit CP-18, not to demonstrate the truth of any matter asserted therein, but for the limited purpose of supporting that there were complaints by special education staff about Thoresen that were being collected by the Association during meetings in the spring of 2009 in order to take a vote of no-confidence and that the administration was aware of these activities.

unreliable and not credible. It is likely that Gaynor knew much earlier about the Association meetings from discussions with Groveman, Sarto and Thoresen, especially since the discontent with Thoresen came mainly from the elementary special education staff and, in particular, Martin. In any event, Gaynor was aware of Martin's concerns about Thoresen and that Martin and parents appeared to protest the aide assignments at the June 10 Board meeting before she made the transfer recommendation.

51. As to Sarto's professed rationale for recommending Dolan's transfer, Sarto felt that Dolan had been unhappy for several years with having too many collaborative classes; she wanted a resource room where she would be the only teacher (4T21, 4T23). Sarto was hired by the Board in 2004 as principal of the middle/high school (4T6). He holds certifications as a principal, supervisor and music teacher (4T9, 4T134). The middle school which shares a building with the high school has approximately 150 7th and 8th grade students (4T8). Vice-Principal Porfido is assigned to the middle school and conducts meetings with teaching staff and is primarily responsible for their evaluations and observations (4T139).

As an example of Dolan's unhappiness with collaborative classes, Sarto explained that Dolan taught a collaborative science class with another teacher, Ms. Dunlap, who at the end of 2007-2008 asked Sarto to assign Dolan to her class for the next

year (4T70-4T71). At the end of 2008-2009, Sarto states, Dunlap came to him telling him that she didn't want Dolan back in her class for 2009-2010 because Dolan was miserable in the collaborative class, didn't do anything and kept telling Dunlap that she (Dolan) wanted her own room (4T22). He did not repeat this conversation because he didn't want to create bad feelings between Dolan and Dunlap (4T188, 4T216).

Dolan refutes Sarto's testimony in regard to Dunlap. Dolan states that when she reviewed Sarto's certification (CP-30) about the Dunlap/Sarto conversation, she approached Dunlap and asked her directly whether what Sarto related in his certification regarding their alleged conversation was true, that she ever told Sarto that she didn't want Dolan in her class for the next year, because Dolan didn't do anything. According to Dolan, Dunlap absolutely denied what Sarto alleged she told him (3T138-3T139).

Both Sarto's and Dolan's testimony in this regard is hearsay. Dunlap did not testify to corroborate either testimony. However, CP-9 is an observation conducted by Vice-Principal Robert Porfido on December 12, 2008 of a collaborative class taught by Dunlap and Dolan. In the narrative portion of that evaluation, Porfido commented in pertinent part:

Evidence of good planning was seen in Ms. Dolan's ability to collaborate with Mrs. Dunlap to prepare a lesson that was well developed to address course objectives.

* * * *

Ms. Dolan helped to create a positive learning environment by using positive reinforcement to encourage student participation. She also established herself as a co-teacher in her role in the collaborative team teaching model.

* * * *

From the onset of the class I would not have been able to know that Ms. Dolan was the collaborative teacher as she took an active role in team teaching the lesson. Ms. Dolan should continue to collaborate and take the lead as it is suggested in the collaborative team teaching model (CP-9).

At least in so far as the allegation that Dunlap did not want Dolan in her class because she did nothing, this observation supports Dolan's testimony that Dunlap denied making the statement to Sarto about Dolan's unhappiness with their collaborative teaching efforts and doing nothing in the class.

Dolan also refutes Sarto's allegation in his certification that she had been in his office on more than one occasion in tears asking for a class of her own (CP-25, CP-30; 3T133-3T134; 4T16, 4T56). First, Dolan states that she was only in Sarto's office on one occasion in tears and that incident related to a cancer scare, some medical tests and a request for time off. Next, Dolan explained that she never asked Sarto for a class of her own, because a self-contained class is not available at the middle school (3T133). She had, however, questioned Sarto as to why she had been given the number of collaborative classes that

he gave her; she wanted two collaborative and two resource classes (3T133-3T134). In particular, Dolan questioned why some of the newer teachers had all resource classes (3T134). I credit Dolan that she did not cry on more than one occasion and that she did not cry about the scheduling situation but about a personal matter. Sarto's testimony was vague in this regard.

52. However, I find that Dolan had been unhappy for a couple of years with the number of collaborative versus resource room classes assigned to her as well as the number of science classes and that she preferred less collaborative classes because in a resource room she would be the sole teacher for the particular subject, free to use her own methods and teaching style. In May or June, she went to Sarto to discuss her 2008-2009 schedule, specifically the assignment of three collaborative classes for 2008-2009 (3T133-3T134, 3T188-3T189).

Dolan is highly qualified in all four special education core subject areas -- science, social studies, math and language arts (3T75-3T76). She taught at Smith School for two years (1991-1992 and 1992-1993), but since 1993, when the District created a middle school, she has taught 7th and 8th grades (3T74). In 2008-2009, Dolan was assigned to teach two collaborative science classes, one collaborative social studies class and one resource room science class (3T78).

Sarto tried to accommodate Dolan's scheduling concerns -- one year he gave her a full-size classroom taking her out of a smaller room where she was assigned due to construction -- but scheduling in the middle/high school is particularly difficult, especially for the special education staff because of individual student IEP requirements (4T17, 4T60-4T61). Teachers are consulted and given input, but there are no guarantees that he can accommodate their preferences based on student needs and individual teacher certifications (4T16, 4T23, 4T61-4T62). Sarto explained to her that because Dolan was highly qualified in all areas, it was easier to move her around in the schedule than the newly hired teachers who were not highly qualified in all areas (3T75-3T76, 3T135; 4T56, 4T65). Although Dolan questioned why Sarto gave her more collaborative classes because teachers don't have to be highly qualified to teach in a collaborative class, she concedes that having three collaborative classes made her unhappy (3T195).^{8/}

Thoresen corroborated Sarto's testimony that Dolan had expressed concerns for a couple of years over her schedule (5T147-5T148). Thoresen provides input to Sarto and Porfido as

^{8/} Dolan states that Sarto told her that he had asked the newly hired teachers to become highly qualified (3T194). She subsequently asked the three new teachers whether Sarto had asked them to become highly qualified, and they denied that he told them this (3T204-3T205). This testimony is hearsay not supported by a residuum of testimony on the record.

to the middle/high school schedules to make sure that student IEP needs are met (5T145). Particularly, during the summer of 2008 when Dolan's schedule had to be revised because a new teacher was hired, Dolan told Thoresen she felt it was unfair that she was getting more collaborative classes (5T148-5T149). Dolan told Thoresen that she like teaching in resource classrooms and felt that because she was highly qualified in all major subject areas she should be assigned resource rooms (5T149). Thoresen, however, knew that Dolan's being highly qualified afforded she and Sarto a greater deal of flexibility in changing her schedule and fitting the other teachers with more limited qualifications into the schedule while accommodating student IEPs (5T148, 5T251).

Dolan's evaluations and observations over the years have been good^{9/}; she has received mostly "highly successful" ratings. In her 2008-2009 annual performance evaluation dated April 2009, Porfido who as vice principal is responsible for evaluating teachers in the middle school rated Dolan "highly successful" in six of eight areas and "successful" in the other two areas (CP-8; 3T79). Under "Evaluator Comments", Porfido wrote:

^{9/} In September 2007, Dolan received a less than complimentary observation from Porfido (3T80, 3T83). She went to Sarto who suggested that she speak to Porfido (3T81). Dolan and Porfido spoke, and Porfido agreed to withdraw the observation (3T81). Dolan and Sarto disagree as to whether Sarto told her that Porfido was having a bad day when he did the observation. I do not find this fact material.

Ms. Dolan has done a great job in her role as the collaborative teacher and has taken the lead in lesson development, instruction, and assessment of student progress as the collaborative teacher. It is recommended that her current status be maintained for the 2009/2010 school year (CP-8).

Dolan has acted as a building representative for many years in the middle school and has served in the past as grievance chair (3T99). Dolan recalls only one incident where she acted as a union representative and there was a heated discussion. That incident involved her questioning Porfido about the 8th grade teachers not getting their lunch period throughout graduation practice and Porfido raised his voice (3T175). Dolan recalls no other incidents where there was any animosity toward her as a union representative.

Dolan, however, raised various concerns at Association meetings that Dolan feels, in light of Sarto's testimony that nothing at Association meetings is private, he knew about and was hostile to and formed the basis of her transfer (CP-15, CP-29; 3T124-3T125). Those issues during 2008-2009 involved compensation to facilitators, the failure to give middle school staff a 45-minute duty-free lunch, and an improper communication from an Association member who Dolan felt was acting on behalf of the administration by sending a mass e-mail reminding the membership that staff were to sign in on time (3T117-3T119, 3T120-3T123). Sarto was aware that Dolan was an Association

representative, one of seven at the middle/high school, but during his tenure as a principal, Dolan never came to him with any union issues nor was he aware of her involvement with any specific issue (4T27-4T29, 4T67). Sarto is not familiar with the Wayne Rogers disciplinary matter or Dolan's involvement (4T31).

I do not find that because Dolan raised these issues at Association meetings, even if Sarto was aware of them, the evidence supports that he was hostile to those activities or that they formed the basis for his decision to transfer her.

Sarto describes his relationship with Dolan as fine, like any other staff member who he talks and jokes with or sees at the beginning and end of the day in the hallways (4T14). The only real discussions they had were about Dolan's schedule (4T66). In that regard, Sarto recalls her coming into his office on a couple of occasions and she was upset, her face was red (4T69). Specifically at the end of 2007-2008, Dolan came to him to tell him that science was her least favorite subject and he told her that he would see what he could do (4T171, 4T207-4T208).

53. At the June 11 meeting, Sarto surmised that although both Dolan and Martin were excellent teachers, the transfer would just mean moving the teachers one grade level (Martin to 7th and 8th and Dolan to 5th and 6th) and that since a true middle school is 6th, 7th and 8th grades, it seemed like a good fit (4T19, 4T210). Also, he reasoned the buildings were only a mile apart.

Besides, the transfers, he determined, would be in the best interest of the students, since if both teachers were happy, they would do a better job (4T210).

Sarto admits that Dolan's 2008-2009 annual performance evaluation (CP-8) as well as her December 2008 observation (CP-9) both prepared by Porfido made no reference to Dolan being unhappy (4T52). Sarto had nothing to do with preparing either CP-8 or CP-9 since Porfido is in charge of doing the evaluations and observations of middle school staff, but Sarto noted that Dolan's observation and evaluation for that year reflected "highly successful" ratings that he himself had given Dolan in the past (4T51-4T52, 4T178-4T180). Porfido's observation made no reference to Dolan's alleged unhappiness, Sarto explained, because it was only one class period (4T52). I infer he means that it is only a brief slice of time. Sarto, however, has no explanation for why Porfido's annual evaluation also does not reflect the unhappiness Sarto used as the basis to recommend Dolan's transfer. Indeed, when asked why as an administrator and given Dolan's "highly successful" ratings, he would want to transfer her, Sarto testified:

Simply because she's unhappy. If - she's visibly unhappy. She does work. I'm not saying she's a bad teacher, because she's not. She's a good teacher. She's got years of experience. She's certified. She's qualified. She's just not happy. And it - it comes through. It - you know. The students are learning, but it's the same as -

if you could have a better fit so the kids get more out of it, that's going above and beyond, and really focusing more on the kids, rather than this is what I'm doing because this is my job. You know, I don't want to be here, but I'm doing everything right. But I really don't want to do this. It comes through (4T53).

Sarto testified that Dolan seemed unhappy for at least two years before the transfer recommendation (4T17). When asked why he waited until 2009 to recommend her transfer and not the year before, he replied:

It - it - it just seemed that, it was the first year that she showed that she was - Ms. Dolan was showing she was unhappy, who would like to - and [Gaynor] was, well, I have Ms. Martin and possible, whatever, some of the other teachers. But it never came through as far as, you know - but as it was getting year, the next year, and it was just showing that there was not improvement. And here this was just another year that Ms. Dolan came down crying in my office and was like she really, I - I don't want to go through another year like that. Because if she's not happy, it's not coming out to the students. And what the whole idea of this is, is for the students. It's - you know, they're the ones who need to benefit from the teacher. I mean these are - these - both teachers are very experienced. They're both, you know, very experienced. They're both, you, know certified, qualified to do this. And it's a certified, qualified to do this. And it's a grade level between that we're switching. It seemed to be a good choice (4T20-4T21).

Sarto admits that he never actually observed Dolan's performance in 2008-2009, because Porfido was her primary evaluator. Other than discussing her schedule with Dolan, his

conversations with her that year were brief discussions, while passing in the hallway (4T66). In particular, Sarto did not discuss with Dolan that he was considering her transfer because ". . . I'm the building principal. This is something that falls within my parameters. This is what I needed to do. And, again, it's all about the students" (4T57). Basically, according to Sarto, he and Gaynor concluded that Martin and Dolan would be less unhappy after the transfers (4T20). Despite teaching 15 or 20 years in the middle school, Sarto felt that Dolan needed a fresh start (4T97). Sarto admits, however, that Dolan never asked him for a transfer, but only for less collaborative classes (4T172-4T174).

As to timing, Sarto states that the transfer decision was made basically in April or May at the Administrative Council meetings when he brought up that Dolan was unhappy and asked if there was any place she could be moved (4T18). I do not credit this testimony as to the timing of the transfer decision. Sarto's testimony is vague and self-serving.

Additionally, Dolan credibly testified that up until June, Sarto as well as Thoresen were making changes to Dolan's schedule for the 2009-2010 school year giving her an extra science collaborative course (3T106-3T108). Sarto confirms that he in concert with Thoresen was making changes with Dolan and Guidance Counselor Milch as late as June 2009 (4T177-4T178). At that

point, Sarto gave Dolan no indication that she would be transferred for the following year. Presumably, if Sarto had made the transfer decision a month or more earlier, he would not have been making these schedule changes in June.

Also, Sarto never indicated to Vice-Principal Porfido, Dolan's immediate supervisor, that he intended to transfer Dolan. Porfido told Dolan, after the June 24 Board meeting announcing her transfer, that he was not aware of the transfer and not officially notified of it until July 8 (3T130-3T131). Sarto testified that he never told Porfido because he considered the transfer decision a matter between two principals, although Sarto knew Porfido was aware of Dolan's unhappiness from discussions at the administrative meetings (4T189). Sarto's explanation for why he never informed Porfido is weak and does not support Sarto's testimony that he made a decision to transfer Dolan before Groveman spoke to him and Gaynor on June 10.

Thoresen's testimony also does not support Sarto's assertions. She recalled that although there was some discussion at the April and May 2009 administrative meetings that Dolan and Martin were unhappy, at no time during the meetings did Sarto or Gaynor indicate they were contemplating the transfer swap (5T202-5T203). Groveman testified that at the Administrative Council meetings, staffing issues were discussed and generally

that Dolan and Martin were unhappy, but the issue of transfers never came up at these meetings (6T10, 6T128).

Thoresen's and Groveman's testimony refutes Sarto's that the transfer decision was essentially made at the administrative council meetings or even before the June 11 or 12 meeting between he and Gaynor. I credit their testimony as to timing. Indeed, Thoresen first learned of the transfer recommendation when Sarto and Gaynor called her on June 16 to tell her what they were planning (5T202-5T203).

54. Although the decision to recommend the transfers of Martin and Dolan was made on the 11th or 12th, Sarto and Gaynor were very busy with end of the year activity and decided to get together after the weekend to write their recommendation to Groveman (4T20, 4T232-4T233).

June 15, 2009 Meeting between Martin, Spina, Thoresen, Sarto

55. Martin asked Spina to facilitate a meeting with Thoresen to document concerns Martin had about their relationship. Spina contacted Thoresen on June 10 or 11, 2009 to set up the meeting to discuss Martin's concerns (1T159, 1T204; 5T153, 5T240). Thoresen agreed to a meeting with Martin and Spina on June 15, 2009 at 11:00 a.m. in Thoresen's office at the Washington School (1T53, 1T138; 5T153-5T154, 5T240).

56. Thoresen then contacted Sarto, as acting president of the SBAA, to represent her since she was not yet tenured and

because she knew about, what she termed, rumblings among the special education staff (5T154, 5T241).

57. When Thoresen contacted Sarto on June 12 about the scheduled meeting with Martin and Spina, he agreed to attend to represent her interests, although at that point he had only assumed the duties of SBAA president for two weeks (4T26, 4T138, 4T140). Thoresen filled him in on what the requested meeting was about, namely that Martin was unhappy with some of her decisions (4T74). Sarto asked Thoresen if what she was doing was within her rights as the director of special services. Thoresen explained that she was doing what needed to be done by code and law (4T74).

Thoresen also told him about the no-confidence vote and meetings of the special education staff regarding her (4T32, 4T34, 4T162-4T163). Sarto knew about the Association meetings regarding Thoresen before she told him. Several special education teachers in his building had come to him complaining that their names were being used against Thoresen without their permission. They didn't want to be dragged into the controversy (4T34). In Sarto's opinion, the teachers in his building got along well with Thoresen (4T34).

Sarto testified that when he received the call from Thoresen to represent her on June 15, he and Gaynor had already spoken about the Martin and Dolan transfers, but he did not share this

fact with Thoresen when she called him on June 12 asking him to represent her (4T164-4T165). I find this testimony highly improbable and not credible. The transfer decision discussed by Gaynor and Sarto on June 11 or 12 at the suggestion of Groveman directly impacted the meeting that was to take place on June 15 between Martin and Thoresen.

58. Before the June 15, 2009 meeting, Martin met with Spina and gave Spina notes she had prepared outlining the concerns that Martin wanted to raise with Thoresen (CP-16; 2T209, 2T211). Martin felt it was important to document her concerns at this time because Thoresen's harassing behavior toward her was escalating, culminating in the comments Thoresen made about Martin's clothing at the June 1 classroom observation (2T169-2T170).

In particular, Martin had worked with 17 different administrators and had never experienced these difficulties (2T170). So the purpose of the June 15 meeting as far as Martin was concerned was to both document her concerns about Thoresen and get some answers from Thoresen about these concerns (2T170). Martin hoped that the meeting would not only put an end to Thoresen's behavior, but that she (Martin) would get off Thoresen's radar (1T211). At this time, Martin had no idea about the e-mails going back and forth between Marcus and Groveman about setting up a meeting among she, Groveman and Martin to

discuss Martin's concerns about her classroom aide assignment for 2009-2010 (CP-15; 1T208).

59. In addition to the classroom aide issue and the June 1 observation, the following are the topics that Martin felt supported her conclusion that she was being targeted by Thoresen and that were discussed at the June 15 meeting (CP-16; 1T50, 1T56, 1T60):

A. In 2006-2007, Thoresen did not offer Martin summer instruction (ESY) for one of her students (1T212). Past practice was that the teacher of a particular student would have the right of first refusal for ESY, so that there would be continuity of instruction during the summer months for the student (1T212). Martin called the Association President who contacted Thoresen (her maiden name at that time was Dilkes). Thoresen said it was an oversight since she was new to the district. Thoresen then offered Martin the summer position (1T214). However, in 2007-2008, Martin was again not offered ESY for one of her students. Martin decided to let it go because she wanted to get off Thoresen's radar so that things would get better, but she raised this issue at the June 15 meeting (1T214-1T215).

B. Another topic that Martin wanted to cover and did discuss at the June 15 meeting was a September 2008 meeting between Martin, Gaynor and Thoresen to discuss a student placed in Martin's class and the obstacles that Martin faced in trying

to educate him. Martin felt that Thoresen treated her harshly at the meeting by suggesting that Martin was not doing her job (2T6-2T7, 2T9-2T10). In particular, Thoresen accused Martin of not knowing or understanding how CST operated, specifically CST protocol. As to correct protocol, Thoresen instructed Martin to communicate only through her case manager who would, in turn, speak to Thoresen and that Thoresen would then speak to the case manager who would then speak to Martin (2T10, 2T181).

Martin was not aware of this change in protocol. In the past, if she had a concern about a specific child, Martin spoke directly to the director of special services who welcomed and encouraged that communication (2T182). Martin disagreed with Thoresen's philosophy, but, more importantly, felt that if Thoresen was changing the communication protocol, Martin should have been informed from the start and not criticized at a meeting for not knowing something she had never been told (2T182).

C. At the June 15 meeting, Martin also wanted to discuss an accusation Thoresen leveled at her about a particular student (A.C.). On October 23, 2007, after a very long and difficult meeting with A.C.'s parent, Thoresen spoke to Gaynor and accused Martin of feeding information about A.C. to the parent to encourage that parent to secure a one-on-one aide (2T11, 2T36). Gaynor communicated Thoresen's accusation to Martin (2T11).

According to Martin, A.C. was having a difficult year academically, socially and emotionally (2T13). The parent was very persistent in pursuing a one-on-one aide (2T13-2T14). Martin felt that Thoresen was accusing her of doing something wrong by communicating with the parent when Martin discusses all her students' academic performance and social concerns with their parents as part of her job (2T185, 2T188).

There was another incident related to the October 23 meeting that confirmed to Martin that Thoresen was unfairly targeting her. After the October 23 meeting, Martin sent the CST case manager (Jessica Bernstein) a written summary of what she (Martin) understood, as a result of the meeting, was to be done regarding A.C. (CP-21; 2T15, 2T191-2T192). Among other things, Martin understood that A.C. would not be getting the one-on-one aide as requested. Martin then restated her position in regard to the student as follows:

A.C. is clearly overwhelmed, frustrated and very nervous throughout much of each school day. Although the classroom paraprofessional and I are more than willing to do everything we can to assist this student, I do not feel we can provide her the necessary supports to alleviate her current emotional state and provide authentic and appropriate academic modifications and assistance (CP-21).

After sending CP-21 to Bernstein, Martin received an e-mail from Thoresen on November 5, 2007 with the subject heading "A.C." (CP-21). The body of the e-mail from Thoresen to Martin stated:

"Just to keep you in the loop. This shows her true feelings on the topic." I infer that either Martin or Bernstein sent Thoresen a copy of CP-21.

Martin was confused when she received this e-mail because Martin had been very forthcoming to Thoresen about her feelings in regard to A.C. (2T15). Martin e-mailed Thoresen asking for clarification as to the meaning of her e-mail, writing in pertinent part "[a]s you know I am very concerned about this child and I am looking for direction as to how to proceed so that she can have a meaningful educational experience this school year" (CP-21).

Thoresen responded to Martin's request for clarification by explaining that her e-mails had been messed up for a week and that the message was intended as a personal e-mail to a family member (CP-21; 5T190). Martin, however, did not buy this explanation, since the subject heading of the e-mail was "A.C.". Martin felt that the e-mail was an "oops" not intended for her (Martin), but intended for someone else (1T195; 2T17, 2T195-2T196). Thoresen's remark about "her true feelings" was, Martin felt, a reference to Martin's feelings about how A.C.'s education should be handled (2T195; 2T197).

I agree with Martin's conclusions and reject Thoresen's explanation of mixed-up e-mails as not credible. Thoresen's reference to "her true feelings" comports with Thoresen's and

Martin's disagreements over the appropriate special education services to provide A.C. as well as Thoresen's accusation that Martin was feeding information to A.C.'s parent. Thoresen had also leveled a criticism of Martin that she was not working with, but against the CST (5T168). Thoresen's criticisms of Martin suggest that Thoresen's e-mail was mistakenly sent to Martin, and that Martin correctly adduced that the e-mail was not about a relative, but about her.

In any event, the e-mail reinforced for Martin that Thoresen was not willing to work with her to solve problems and enhance the students' education, but rather that Thoresen was working against Martin, targeting her and was hostile toward Martin (1T195; 2T18). Martin categorically denies that she was feeding information to A.C.'s parent (2T18).

D. At the June 15 meeting, Martin also raised the issue of a particularly difficult and long IEP meeting on May 1, 2009, where the parent was hostile toward Martin and others at the meeting. Thoresen told Gaynor after the meeting that the meeting was so difficult, because Martin was running her own agenda (CP-16; 3T22-3T23).

On May 2, 2009, the day after the meeting, Martin spoke to Gaynor who asked her how long the meeting had gone (2T37). Martin explained that it had gone very late and she had been left alone with the parent because one of the child study team members

left (2T37). Gaynor assured Martin that she knew how difficult the parent was and that Martin should not have been left alone to finish up the meeting (3T23).

Gaynor also shared Thoresen's comment about Martin running her own agenda with Martin which Martin interpreted as Thoresen blaming her for the difficult meeting (3T22-3T23, 3T67). Gaynor assured Martin that she (Gaynor) knew the meeting was not difficult because of Martin and explained that Thoresen protects her team "like a lioness protects her cubs" (2T37). Gaynor told Martin not to worry about it (2T37).

E. The final topic discussed at the June 15 meeting was a re-entry meeting to discuss a student who had threatened to kill Martin and burn down the school. The student had been sent for a psychiatric evaluation after making the threats to Martin and about the building, but Martin had been given no direction as to how to deal with the student after the evaluation (2T38-2T39). The purpose of the re-entry meeting was to provide Martin with information as to what the findings of the evaluation were and whether there were any changes in the student's IEP that would effect how Martin was to deal with the student (3T26).

According to Martin, Thoresen refused to speak directly to Martin or acknowledge her presence (CP-16). Basically, Thoresen directed all her comments and questions to Gaynor or CST member Bernstein (3T26-3T27). Additionally, Martin was never asked for

her input during the meeting or asked how she was dealing with the student who had been back for some time after his threatening comments even though she was the person with the most contact with the student (CP-16; 2T40).

At the end of the re-entry meeting, Martin asked Gaynor if she could speak to Thoresen alone (3T28). Gaynor seemed surprised. Nevertheless, Martin spoke to Thoresen asking her if there was a problem or a reason why she was not speaking to Martin since Martin was the person that was going to be dealing with the student every day and Martin was the one whose life was threatened (3T28). The record is unclear if Thoresen responded to Martin's query at that time.

60. The June 15 meeting took place in the morning and lasted about 90 minutes (1T209; 2T114-2T115). Gaynor knew about the meeting because she released Martin from her building to attend (3T35). Martin was not surprised to see Sarto who she only knew to say hello to if they passed in the hallway (1T210). Spina, however, was surprised to see Sarto, because she recalled only one other meeting where an administrator brought a representative of the SBAA. That meeting was between Thoresen and a non-certified aide, represented by Spina (1T139, 1T141, 1T175-1T176). At the meeting with the aide, Thoresen brought then SBAA President Dr. Onorato who spoke very little and only to clarify some positions (1T177; 5T156-5T157). In Spina's view,

since Thoresen was Martin's supervisor, and there was nothing that Martin could do to Thoresen, Spina was present to level the playing field between her member and the supervisor (1T141). Spina was not aware at that time whether Thoresen was tenured or not (1T139).

61. Thoresen had very little to say during the meeting (2T40). Sarto did the talking. Sarto answered most of the questions and occasionally Thoresen would tell them that the area of concern was not within her purview and advised them to speak to Groveman (1T56).

Martin felt that Sarto was agitated and very upset with her (Martin's) answers to some of his questions (1T56; 2T40-2T41). For example, Sarto told Martin she was insubordinate for not responding to an e-mail from Thoresen (2T41). Martin disagreed and explained to Sarto that the protocol, as explained to her by Thoresen, was that she (Martin) was not to contact Thoresen directly but she was supposed to go through her CST case manager (2T41-2T42).

62. Spina expected the meeting would help resolve issues, but Sarto, in her opinion, was confrontational and created hostility because he absolutely disagreed with any issue raised by her and Martin (1T148-1T149). Spina describes Sarto during the meeting as serious, occasionally flip, sarcastic and, at one point, rude (1T57, 1T147).

In particular, he was flip when Spina suggested that Thoresen was not treating Martin in a professional manner (1T59). He was rude to Martin when she would answer a question and would come back at her like he was conducting a trial (1T59-1T60). In regard to the issue of aide assignment, Sarto responded "that's the way it is" (1T148). Spina felt this was flip because she and Martin are not administrators and don't know "the way it is" (1T148). Although the assignment of aides is a managerial prerogative, Spina expected a straight answer to the question about aide assignments, because having a non-certified instead of a certified aide impacted Martin's ability to leave the classroom for her preparation periods which are guaranteed under the parties' collective negotiations agreement (1T148).

63. Martin agrees with Spina's testimony that Sarto was flip and rude during the conference, although Martin admits that she did not use the words flip, rude or agitated in her reply certification describing the June 15 meeting (CP-28; 3T29, 3T34). For example, Martin states that Sarto was flip when they were discussing the classroom aide assignments. He questioned Martin as to how she knew that the aide reassignment would impact scheduling -- e.g. not allow her to take preparation periods (2T42).

Martin responded that she had been doing schedules for over 20 years and was aware that at least two to three times per week,

her aide was left in the classroom so Martin could have her preparation period (2T42-2T43).^{10/} Sarto's response was to ask Martin if she really makes schedules and whether she had a supervisor's certification or a counseling certification that would permit her to do so (2T43). When Martin replied that she did not, Sarto replied in a sarcastic tone that "it's very nice of you to be willing to make a schedule, however, that doesn't fall under your certification. So you're not qualified to do that" (2T43).

As to Sarto's being rude, during the meeting, Martin explained to Sarto that she had worked under 17 different administrators prior to Thoresen and had never had any issues except for professional discussions (2T44). Sarto's response was that he had heard many things about Martin and some of them were not that nice (2T44).^{11/} Spina interrupted at that point and told Sarto that he was being out of line (2T45).

64. Thoresen and Sarto agree that Sarto did most of the talking at the meeting because Spina did most of the talking for

^{10/} Gaynor corroborated Martin's testimony in this regard. Gaynor felt there was a benefit to consulting her teachers on their schedules and that Martin has assisted her in creating her own schedule, in particular in regard to accommodating preparation periods (4T253; 5T53-5T54).

^{11/} Sarto was asked if he made this statement. He did not recall but did not deny saying it (4T90, 4T152). I credit Martin's testimony that Sarto told her he had heard many things some of which were not nice.

Martin (4T73, 4T144-4T145; 5T155). Thoresen described Spina's demeanor as being like a "bulldog" - very accusatory and unprofessional, whereas Sarto, she felt, was professional and protective of her interests - not flip or rude - although he raised his voice at times (5T156, 5T242-5T243). Sarto also described Spina's demeanor as like a "bulldog" and added that she came out "guns blazing" and confrontational (4T75, 4T77-4T78, 4T84-4T85, 4T144). Based on the witness testimony, I find that both Spina and Sarto aggressively represented the interests of Martin and Thoresen. In doing so, each, at times, was confrontational.

65. Sarto knew nothing about Martin's concerns, which is why he kept asking for specifics (4T75, 4T146). He went down all of the topics listed in Martin's memo (CP-16) for discussion and felt none of the concerns raised by Martin supported that Thoresen's conduct was unethical, harassing or unprofessional (4T75, 4T79-4T80, 4T146).

According to Sarto, Spina admitted that some of what Thoresen was doing was within her rights as Martin's immediate supervisor, so he wanted to know what the problem was (4T76; 5T158-5T159). Besides, he told Spina that a lot of the complaints being raised had already been considered by the Board and superintendent who concluded that Thoresen's actions were within her rights as director of special services, that she was

acting under code and law (4T76-4T77). In any event, Sarto had concluded that the staff didn't like Thoresen because the previous director was more flexible and lax. The staff, he felt, did not like that Thoresen knew the law and codes and dotted all her "I"s and crossed all her "T"s" (4T76).

66. Sarto described Martin's demeanor during the meeting as professional and calm (4T78-4T79). When asked on direct whether at any time during the meeting he suggested to Martin that she was acting inappropriately by raising her concerns, Sarto responded as follows:

I may have, I may have directed that it's inappropriate to do that, if you didn't go through the proper channels. You need to go through the channels. You don't jump all around, if you have a - if you have a direct boss, you go to them first. If not, you know you go to the next step. You go to the building principal . . . (4T88).

Sarto denies, however, that he was suggesting that Martin was insubordinate in bringing her concerns to Thoresen (4T89).

By the end of the meeting, Sarto felt that there was still some misunderstanding about the parameters of what the director of special services could do, what she could share, and what things are confidential under the law (4T90).

67. At the end of the meeting, Thoresen felt that despite the fact that Sarto did not agree with anything that Martin or Spina said, Thoresen felt from her perspective that she and

Martin had a better understanding of each other, and that the meeting went positively (5T179, 5T243-5T244, 5T263).

As to Martins specific concerns raised at the meeting (CP-16), Thoresen did not respond at the meeting but testified in explanation as follows:

A. The past practice attached to ESY assignments as described by Martin is accurate, but Thoresen does not recall why in either 2006-2007 or 2008-2009 she did not offer it to Martin as per the past practice (5T160-5T162).

B. As to the meeting about A.C. and a one-on-one aide at which Martin felt she was treated harshly, Thoresen testified that Martin made it known to many individuals that she wanted the aide for A.C. as did the parent (5T165-5T166). Thoresen and the CST told Martin at the meeting why they did not feel a one-on-one aide was needed and explained CST protocol, telling Martin to follow procedures (5T166). Thoresen established the chain of command because of her availability (5T182-5T183). Thoresen recalls Martin coming to her over the years regarding her students' needs (5T182).

C. On the issue of Thoresen's accusing Martin of feeding information to a parent, Thoresen recalls being told that parents who spoke to case managers were using similar language/words as used by Martin. This led the CST to believe

Martin was telling parents what to request for their children such as the type of aide or particular services (5T167).

Thoresen admits that she never asked Martin whether she was feeding information to parents (5T245). She also admits that regulations for classified students have a particular vocabulary and that in discussions among parents and staff similar words are often used because the discussions relate to the development and delivery of IEPs (5T245-5T246). Finally, Thoresen concedes that there is no procedure or policy in effect prohibiting special education teachers from speaking directly to parents and, indeed, Thoresen has no problem with a teacher doing so (5T168). The problem with Martin feeding information was that Thoresen felt Martin was unhappy with CST decisions, and that she was not working together with the CST as a part of the team (5T168).

D. As to the classroom aide assignment, Thoresen knew that Martin was unhappy with the 2009-2010 assignment, but explains that she and Gaynor moved Radel back to Sutera's class because Sutera was going to be teaching both Stevenson and Wilson Reading Programs (5T172). The record does not reflect the connection between Sutera's reading programs and the need for a full-time aide.

Thoresen further explains that Martin was assigned two part-time aides on a rotating basis because the Board was no longer hiring full-time aides (5T171). At the June 15 meeting

when Martin voiced concerns about the two non-certified aides preventing her from taking her preparation periods, Sarto responded that Martin should file a grievance (5T171).

E. As to why Thoresen did not speak to Martin after the June 1 observation about any concerns she had, Thoresen explained that she had bronchitis and had very little voice that day (5T172). Also, she wanted to reflect on what she had observed in both Martin's class and others. That is why she sent out e-mails to the teachers four days after the observation (5T174).

Specifically, as to Thoresen's comment to Gaynor that she thought Martin's lesson she observed was not at the appropriate level for Martin's students, Thoresen explains that she was not concerned that the lesson was too low, but that there were pictures on the reading cards for the sound to cue the students' memories and she felt parents might be upset that sixth graders had pictures on their reading cards (5T175).

Finally, Thoresen explained that although she hardly had any voice on the day of the observation, she did make a comment to Martin "one woman to another" and cautioned her to be careful when she bent down because she could see right down Martin's shirt (5T173). According to Thoresen, Martin responded that she had lost a lot of weight and hadn't had time to buy new clothes (5T174).

F. As to the topic of the difficult IEP meeting and Martin running her own agenda, Thoresen has no recollection what was said about this at the June 15 meeting but recalls telling Gaynor that this is what a parent told her (Thoresen) (5T176). Gaynor had expressed to Thoresen that the meeting ran too long and that in the future, meeting times should be shortened even if a parent had to be cut off at a certain point (5T176-5T177). When asked on cross why Thoresen did not speak to Martin directly about the parent's alleged comment, she responded that probably because Gaynor offered to do so (5T177). Gaynor testified but did not corroborate Thoresen's testimony that she offered to speak to Martin. I do not find this as a fact; Thoresen's testimony was vague and tentative.

G. Finally, as to the re-entry meeting for the student who had threatened Martin and to burn down the school, Thoresen explained to Martin at the June 15 meeting that she was not ignoring her but that when Martin entered the meeting she (Thoresen) was in a conversation with Gaynor. Thoresen states she did greet Martin, but Martin probably did not hear her (5T178). Thoresen confirms Martin's testimony that Martin and she spoke at the end of the meeting (5T178). Martin asked Thoresen if she had a problem with Martin, and Thoresen denied that she did (5T178).

Thoresen's testimony does not refute Martin's that Thoresen ignored her during the meeting. Being in conversation with Gaynor when Martin entered the room does not refute Martin's description that Thoresen basically ignored her during the meeting. I credit Martin's testimony in this regard.

68. At no time during the June 15 meeting did Sarto or Thoresen indicate that they were contemplating transferring Martin for the 2009-2010 school year or that they were not happy with her performance (2T45). In fact, Sarto at one point told Martin that she had an excellent reputation as a teacher in the District (2T45). After the meeting with Martin, Sarto had the impression that she would be a good teacher, even though he did not know her at all before June 15 (4T68, 4T89, 4T149).

Sarto explains that he did not tell Martin because he and Gaynor had not yet given Groveman their formal written recommendation and although they were 99% sure he would agree with them, Groveman could have rejected it. After Groveman, the recommendation had to go to the Board. Also, Sarto did not feel that since he was at the June 15 meeting as a union representative, it was the right time to tell Martin (4T154-4T156).

69. Martin and Gaynor spoke about the June 15 meeting either the afternoon after the meeting or the next day (2T46-2T47). Martin told Gaynor that she had been informed that

she was not qualified to make classroom schedules and, therefore, she would not be making schedules in the future (2T47). When Gaynor asked Martin who told her that, Martin explained that Sarto had during the meeting (2T47-2T48). Gaynor seemed annoyed with Martin's recounting, but she never indicated that she had spoken to Sarto or that she was thinking of transferring Martin (2T48).

70. On June 16, as she does after most meetings like the June 15 meeting, Spina wrote Martin summarizing the salient topics discussed (CP-17). Spina wrote that the purpose of the meeting was to "address actions of Mrs. Thoresen [sic] over the past two years, which are unprofessional, unethical and harassing in nature" (CP-17). Spina continued:

Through most of the discussion, Mr. Sarto took notes and was the speaker for Mrs. Thoreson [sic]. He asked the questions and made the comments (one of which was totally inappropriate) while [Thoresen] may have said three sentences during the entire ninety minute meeting (CP-17).

The letter goes on to summarize what Spina felt was the understanding of herself and Thoresen and Sarto as to what would occur following the meeting:

1. That you be treated as a professional with the unprofessional, unethical and the harassing behavior to end immediately.
2. To be treated in a respectful manner by Mrs. Thoreson [sic] as your objective is to be the advocate for your students.

3. Understanding that Mrs. Thoreson [sic] is the Director of Special Services, you will be speaking with her as protocol and procedure will dictate (CP-17).

Spina did not copy Sarto or Thoresen or even Superintendent Groveman on the letter. She confirms that neither Sarto nor Thoresen signed off on any of these 3 understandings as outlined in Spina's letter to Martin nor during the meeting did Sarto or Thoresen admit that Martin was being harassed (1T143-1T144). No grievance was filed about any of the items outlined in the letter (1T145).

Thoresen and Sarto deny that at any time during the June 15 meeting, they agreed that Thoresen's conduct was unprofessional, unethical or harassing to Martin (4T102; 5T181).

Meetings of Special Ed Teachers about No-Confidence Vote

71. In late February/early March 2009, Marcus called Spina about numerous complaints she had been receiving about the special education department from the special education staff. Specifically, some staff were fearful about voicing an opinion about the direction of the special education department under Thoresen's supervision (1T79). Spina suggested that since this was an issue impacting the special education department, she (Spina) would meet with the special education staff, not the entire Association membership, to discuss the concerns (1T79).

72. There were several formal meetings the end of March 2009 and in May and/or June 2009 (1T80). The purpose of the

meetings was to put together statements from various special education staff regarding complaints about Thoresen to support a vote of no-confidence (CP-18; 1T83-1T84, 1T106).

73. Marcus conducted the meetings together with Quirk who took notes (1T105-1T106). The initial meetings took place on school premises (1T82).^{12/} There were approximately 20 certified and non-certified special education staff who attended the first meeting (1T106). There were about 25 to 28 attendees at the second meeting (1T110).

74. The meeting that took place in the afternoon of June 15 stands out in Spina's mind because Marcus called Spina during the lunch hour and explained that Gaynor who initially gave permission to use the Smith School for the meeting withdrew her permission (1T81). Marcus asked Spina to suggest an alternative meeting place. Spina suggested the public library or, if not, a park (1T82).

75. Gaynor confirms that Quirk, who, as a speech therapist based at Washington School, spends several days a week at the Smith School, approached Gaynor on the 15th for permission to conduct an Association meeting that day in the cafeteria at the school (5T37, 5T82-5T82, 5T97, 5T99). Gaynor knew that Quirk was also the Washington School building representative, but since

^{12/} It is unclear from Spina's testimony which school(s) hosted the meetings.

Quirk was working at the Smith School that day, Gaynor assumed that was the reason Quirk wanted to hold the meeting there. Gaynor gave permission (5T82, 5T99).

However, Sarto called that afternoon and told Gaynor that he was calling as a fellow administrator and that it would probably not be wise for her to permit the meeting in her building, because the meeting was not a sanctioned or official Association meeting called by the Association president (5T37-5T38, 5T83-5T84, 5T100). Sarto explained that a splinter group was meeting to conduct some kind of union business that was not regular union business, because the whole Association membership did not know about the meeting (5T85). Presumably, Sarto was referring to the no-confidence vote as being not regular union business.

Although Sarto could not, as a fellow principal, dictate to Gaynor what she could do, she felt he was protecting her from allowing an unofficial meeting of a group of teachers not under the auspices of the Association (5T101). Gaynor was asked on cross examination what she felt about Sarto as president of the Administrators' Association calling her about Association business:

Q. Did it occur to you, especially given the fact that you had served for a number of years, I think you said, as the president of the Administrators' Association, that here it was the president or your understanding the vice president of the Administrators'

Association was calling you about another unit and telling you what their business was?

A. I felt that he was protecting me from allowing a meeting that - that was not an official meeting, that was something that was a group of people meeting together, which certainly they have a right to do, but it wasn't really under the awning - under the - under the SBEA group (5T101).

Moreover, even though Association President Marcus teaches part-time at the Smith School, Gaynor never attempted to verify what Sarto was telling her about the meeting before she followed his advise and called Quirk to withdraw permission (5T37-5T38, 5T82, 5T102-5T103). Basically, Gaynor followed Sarto's advise without question.

Gaynor also states that during his telephone call, Sarto never mentioned about the meeting he had earlier in the day with Thoresen, Martin and Spina (5T85). I do not credit this testimony. The timing suggests that Sarto had completed the June 15 meeting with Martin and Spina shortly before he called Gaynor. It is not credible that the topic of Martin who is supervised by Gaynor and who Gaynor knew was meeting with Thoresen that day would not come up, particularly since the two meetings - the one at 11:00 a.m. between Martin, Spina, Thoresen and Sarto and the afternoon Association meeting at the Smith School - were both about Thoresen. Everything at this time was about Thoresen and what was apparently a movement to address concerns about her

leadership and to bring those concerns to the Board and Superintendent Groveman.

Gaynor telephoned Groveman on either the 15th or 16th to inform him of her decision to revoke permission for the afternoon meeting. He told her it was fine. Groveman was not concerned with her decision (6T159-6T160).

76. The rescheduled Association meeting, conducted by Marcus on June 15, took place in a park after school but was cut short when there was a downpour (1T83). The purpose of this meeting was to look at the draft of the notes that had been taken from attendees at the other meetings and to continue the discussion about Thoresen (CP-18; 1T112). Eventually, the statements taken from the special education staff by Quirk at the meetings were typed up in a document (CP-18). Spina testified that CP-18 was transmitted to Groveman, Thoresen and the Board only when the contested transfer petition was filed, not before, as far as she knows (1T86, 1T114-1T115).

Martin/Dolan Attendance at June 15 and 22, 2009 Association Meetings Regarding the No-Confidence Vote

77. Martin attended two of the about Thoresen and the no-confidence vote - one in the afternoon of June 15, 2009 in a public park and the other on June 22, 2009 in a Saddle Brook church (2T56-2T57). Martin heard about the meetings by word of mouth from Quirk (2T120, 2T123). There were about 25 attendees

at the two meetings of special education teachers and aides (2T118).

Dolan also attended both the June 15 and 22 Association meetings regarding the no-confidence votes (3T88). She was invited to the June 15 meeting by e-mail from Quirk that was addressed to Dolan and five or six other special education teachers at the middle/high school (3T87-3T88, 3T148). It was not unusual to receive notification of an Association meeting through the school's e-mail system (3T199). Some of the new teachers were not on the e-mail invitation and Dolan assumed it was because Quirk did not work at the school and therefore did not know them (3T148-3T149, 3T167).

At the June 15 meeting Dolan learned about the no-confidence vote. In her 21 years of employment, this was the first time she had been at an Association meeting involving a no-confidence vote in an administrator (3T155-3T156).

78. Marcus conducted both meetings (2T117). Statements were taken from attendees at both meetings (2T59). Dolan did not raise any concerns or provide any statements at the meetings, although she recalls that at the June 22 meeting Quirk read from a document and reviewed the statements regarding Thoresen that had previously been submitted (3T91-3T93, 3T154, 3T158).

Martin, however, shared her experience with the transfer and assignment of her classroom aides that, she felt, was done with

little regard to the impact on the program or the students. Martin also complained about Thoresen's lack of knowledge about educational code, special education curriculum and supervisory decisions (CP-18; 2T60, 2T128-2T129, 2T131-2T132). Finally, Martin complained to the group about the protocol and procedure in the special education department (2T60). As far as Martin knows, the no-confidence vote was never taken (2T135). Martin never told Sarto, Gaynor or Thoresen that she attended the June 15 or 22 meeting (2T115-2T116). I infer, however, that since Thoresen, Sarto and Gaynor knew about Martin's complaints about Thoresen and, especially after the June 10 protest at the Board meeting and the heated June 15 morning meeting, the three adduced that Martin was involved with the no-confidence vote meetings.

79. After her transfer, Martin contacted a colleague to get her (Martin) a copy of the statements taken from special education staff at the June 15 and 22 meetings regarding Thoresen (CP-18; 2T61). When Martin reviewed CP-18, she noted that it reflected some of the comments and concerns she expressed at the two meetings she attended (2T62).

80. No grievance was ever filed by the Association based on the contents of CP-18 (1T114). However, after the transfers of Martin and Dolan, Spina sent the Board a letter dated July 31, 2009 requesting a meeting with the Board to discuss concerns of the Association membership relative to Thoresen's supervision of

the department of special education (CP-19; 1T87).^{13/} In particular, Spina asked to discuss Thoresen's unprofessional behavior, favoritism and lack of knowledge in educational codes, special education curricula and supervisory practices. Also, Spina explained to the Board that she was concerned because after one particular meeting with Thoresen, her representative and two staff members, both staff members had, what Spina described as, "unmerited disciplinary actions" (CP-19). In the letter, Spina continued that the disciplinary action lent credibility to her members' fear of retaliation and supports their reluctance to come forward (CP-19).

Spina surmises that her July 31 letter (CP-19) is the first time the Board became aware of the concerns set forth in CP-18 (1T115-1T116). I cannot find this as a fact, since Groveman met with the Board in closed session on June 24 to discuss the Martin/Dolan transfers. There is no way of knowing what, if anything, was discussed with the Board about Martin's problems with Thoresen and the Association meetings regarding a no-confidence vote or the concerns of the special education staff. I infer, however, that since Groveman felt that Martin

^{13/} Respondent objects to the admission of CP-19 on the grounds that Respondent was not aware that the letter was sent until after the transfers were effectuated. Respondent's argument goes to the probative value and the weight that I give this document. Respondent's objection was noted at the hearing, and I explained that I would consider Respondent's arguments as to relevance in the parties' post-hearing briefs.

needed a change of environment in light of the June 10 Board meeting and protests over the classroom aide assignments as well as other issues raised at the Association meetings about Thoresen, that at least some of the discussion in the closed session involved concerns raised about Thoresen by Martin individually, concerns that were incorporated in CP-18.

The Board never responded to CP-19, although Spina went to a Board meeting in November 2009 to express her concerns about the special education department and her hope that the Board would grant her some time in closed session to discuss those concerns (1T87-1T88). The Board did not respond to this request (1T88).

Thoresen Knowledge of June 15 Association No-Confidence Meeting

81. The subject of the Association meetings and the no-confidence vote never came up at the June 15 meeting between Spina, Martin, Thoresen and Sarto (1T113). However, Thoresen learned about the June 15 Association meeting that evening when she received calls on her cell phone at home. Four special education staff members called separately to tell her they were very concerned about things being said about Thoresen (5T125-5T126, 5T128, 5T216-5T218). No one mentioned that Martin or Dolan were at the meeting, but they did mention that there was an unsuccessful attempt to get a no-confidence vote against Thoresen (5T128-5T129).

82. In her almost three years in the District, this is the first time Thoresen was aware of a no-confidence vote being taken against a supervisor (5T130).

83. After receiving calls from the four teachers the evening of the 15th, Thoresen placed a call the next morning to the New Jersey Principals and Supervisors Association (NJPSA) and spoke to Mr. Stein, who is presumably a NJSPA representative (5T219-5T220). She told Stein about the Association meetings and the possibility of a no-confidence vote and asked him for advice (5T220). Stein told her to tell her SBAA representative about it (5T220-5T222). Thoresen testified that she waited a few days to call Sarto because Stein put her at ease and because she had a lot of things going on including health issues (5T223-5T224).

84. Specifically, Thoresen denies that she told Sarto or Gaynor about the June 15 meeting when they called later that morning on June 16 to discuss their formal recommendation to transfer Martin and Dolan (5T131). This explanation is not credible in light of Sarto's role as her SBAA representative and that Stein specifically advised her to contact Sarto who as her representative was present at the morning June 15 meeting with Martin.

June 16 Sarto/Gaynor Meeting to Formalize Transfer Recommendation

85. On June 16, Gaynor and Sarto met in his office in the morning, sometime between 9:30 a.m. and 11:00 a.m., to prepare

the transfer recommendation letter (CP-12; 4T160-4T161; 5T46-5T48). At some point during their meeting, Sarto and Gaynor contacted Thoresen to ask her about Martin's qualifications to teach in the middle school (4274). Thoresen confirmed that Martin could teach in the middle school but only in a collaborative classroom (4T274; 5T33-5T34).

86. According to Gaynor, Thoresen told the two principals that she didn't think the transfers they were contemplating were a good idea, but did not elaborate her reasons. Gaynor states that since Thoresen's objection was not stated more strongly, she assumed that Thoresen was leaving the decision in their hands (4T275).

87. Sarto confirmed that the transfer recommendations were decided by he and Gaynor without Thoresen who, he states, played no role and was only consulted for the first time on June 16 when he and Gaynor were in the process of writing the formal recommendation to Groveman (4T33, 4T165). The decision, Sarto explained, was based on the perceived unhappiness of Martin and Dolan over the previous two years (4T33). According to Sarto, when he and Gaynor called Thoresen, she told them that she would not recommend the transfers because with everything that was going on, she did not want it to look like she recommended the transfers (4T33).

88. Thoresen recalls receiving the call about the transfer swap (5T204). This was the first time, Thoresen learned "officially" of the transfers (4T165-4T166).^{14/} Although building principals can act without her permission, as a matter of practice, principals confer with her before any recommendation is made to the superintendent or Board in regard to the assignment of special education staff (5T204). Therefore, in keeping with this practice, it did not come as a surprise when Gaynor and Sarto called her on the 16th, but Thoresen told them in no uncertain terms "I absolutely don't want it" (5T204).

Thoresen was concerned she would get the blame because of the June 15 meeting with Martin and because of the Association no-confidence vote (2T205-2T206). In particular, Thoresen thought she would get the blame because of the June 15 meeting between herself, Sarto, Spina and Martin and because of the "SBEA rumblings" that she described as unfounded criticisms of herself and a no-confidence vote (5T116-5T117, 5T180, 5T200-5T206). Thoresen didn't want to be labeled as being behind the transfers (5T206).

^{14/} Sarto testified generally that he mentioned the transfers at the April and May administrative meetings, but no witness corroborated this testimony, while Thoresen and Groveman both testified that transfers were not mentioned during the meetings, just general discussions that Dolan was unhappy with her schedule and that Martin was unhappy. I do not find as a fact that transfers were discussed at the April/May meetings.

Thoresen testified that Sarto and Gaynor never said these were the reasons that they were recommending the transfers (5T117). Sarto and Gaynor explained to her that they felt the transfers were necessary to improve education at both schools and that it would make both teachers happy (5T115, 5T186). As to Dolan, Thoresen recalls being told that she would be happier with her own classroom (5T187). Thoresen does not recall whether Gaynor or Sarto elaborated on why Martin was unhappy, although Thoresen concluded that Martin felt things needed to be changed and was unhappy with the aide assignment (5T187).^{15/} I infer that Thoresen knew precisely why Martin was unhappy based on her meeting with Martin on June 15.

Finally, Sarto and Gaynor asked Thoresen about Martin's and Dolan's qualifications (5T114, 5T184). Thoresen explained that Dolan could teach at the Smith School, and that Martin could teach in a collaborative class at the middle school, but she was not sure if Martin was highly qualified to teach in any particular subject area (5T114, 5T184, 5T198-5T199). Thoresen further explained that she would have to check Martin's file but

^{15/} Thoresen also testified that she concluded Martin was unhappy because Martin was a proponent of the Stevenson Reading Program and not another program (5T187). This testimony was random and not supported by either Martin, Gaynor or any evaluation/observation introduced into evidence. I do not find this as a basis for Martin's alleged unhappiness and do not credit Thoresen's testimony in this regard.

that Martin could send in paper work to become highly qualified (5T184, 5T199). Thoresen eventually checked Martin's file during the summer of 2009 (5T200). Sarto never looked into Martin's qualification until November 2009 because he knew that she could teach in a collaborative setting (4T219-4T220).

89. After speaking to Thoresen, Gaynor and Sarto typed the letter to Groveman recommending the transfer of Martin to the middle school and Dolan to the Smith School. The letter explained that Sarto and Gaynor had spoken to Thoresen and that they felt the transfers were in the best interest of the students and staff (CP-12). Gaynor and Sarto walked the letter to Groveman's office which is in the middle school/high school building. The letter was handed to Groveman who accepted it without any discussion (5T46-5T48; 6T11).

June 16, Groveman E-Mail to Marcus Refusing to Meet on Aide Assignment Issue

90. Also, on June 16, after receiving several e-mails from Marcus requesting to meet with him to discuss the aide issue, Groveman finally responded to her by e-mail at 8:51 a.m. that he would not meet with her or Martin since the topic was not open for discussion and, in any event, he told her he was close to recommending that Martin be transferred (CP-15). Groveman does not recall at this point whether he had yet received the formal written recommendation from Gaynor and Sarto, although he was aware that a recommendation was being forwarded (6T85, 6T36). I

find that he had not yet received the formal recommendation because Gaynor and Sarto both testified that they only got together to prepare it, at the earliest, between 9:30 a.m. and 11:00 a.m. on the 16th, although he knew that the transfer recommendation from Gaynor and Sarto was coming (6T125).

91. Marcus immediately responded by e-mail asking Groveman what would be the harm in meeting to discuss why Martin was not getting a certified aide in 2009-2010 or at least to explain the change in policy (CP-15).

92. Groveman responded to Marcus at 10:19 a.m. that same day (CP-15). Basically, he told Marcus that the aide assignment was not based on the need to have certified aides in the classroom and that he saw no need to meet as the issue did not impact the contract. However, he informed Marcus that he would share her e-mail request with Thoresen in case she saw it differently, namely that they were exposing themselves to grievances based on lack of preparation time (CP-15; 6T89).

Groveman then wrote:

Between what has transpired at last weeks board meeting, what is currently going on between my administrators and some of your members and the stirring up of parents who only know what some teachers want them to know, my patience with this issue is very thin. Personally, I think Theresa needs a change of environment (CP-15).

Groveman testified that what he meant when he wrote "what went on at last weeks board meeting" was the large turn out at the June 10 meeting of parents who were protesting the placement of two part-time aides in Martin's classroom (6T90). Martin together with Madelyn Romaine, her former aide, instigated the protest (6T90, 6T186). As to what he meant by "what is currently going on between his administrators and some of your members", Groveman stated he was referring to the Association meetings regarding the no-confidence vote as well as Sarto's representation of Thoresen (6T90-6T91). Presumably, Groveman meant Sarto's representation of Thoresen at the June 15 meeting.

Next, Groveman explained that his reference in the e-mail to the "stirring up of parents" referred to parents who spoke out at Board meetings not only about the aide issue but about Thoresen and the district's special education program which they painted in a very negative picture (6T91). Groveman viewed Martin as "certainly" involved in the stirring up of the parents (6T140). Groveman testified that his "patience was very thin" because these issues were festering (6T91).

Finally, Groveman states that he suggested transferring Martin because he felt these issues had really gotten to her and that ". . . if we were going to move forward with having two instructional assistants in that classroom that she would not be in a very good mental set for the 2009-2010 school year" (6T92).

Groveman denies that the subject of this e-mail influenced his decision to transfer Martin or discipline her for raising these issues (CP-15; 6T93-6T94). Groveman's denial in this regard is self-serving. Both the 10:19 a.m. e-mail to Marcus and Groveman's explanations of its meaning suggest that Martin's activities and the activities of the Association regarding Thoresen were the basis for the transfer decision.

Marcus also forwarded Groveman's e-mail refusing to meet to Spina who e-mailed Marcus that she did not understand Groveman's focus on Martin when she was not the only one complaining about Thoresen. Spina viewed Groveman's e-mail as a threat to Martin (CP-15).

93. When Marcus received Groveman's 10:19 a.m. e-mail, she responded immediately explaining that she had already discussed the aide issue with Thoresen and Sarto who had referred her (Marcus) to Groveman. She continued that if the aide placement effects time spent in the classroom, particularly lunch or preparation periods and/or past practice, then the issue effects Association members and the parties' collective agreement (CP-15).

Groveman's Rationale for Recommending the Transfers

94. After receiving the formal transfer recommendation from Gaynor and Sarto on June 16, Groveman did not decide to accept

the recommendation right away, because he wanted to weigh the pros and cons (6T16).

95. In the pro column, Groveman felt first and foremost he wanted to support his administrators - Gaynor and Sarto. He also considered whether or not it would be good for Martin and Dolan and whether the transfers would be good for the students (6T18).

96. In the con column, Groveman had a strong feeling the transfers would be contested because Dolan and Martin were both strong teachers who had satisfactory employment records and had done very good things over their careers (6T18). In particular, Groveman knew there were a lot of issues and things going on that could cloud whether or not this was a good educational decision or not (6T171). I infer that Groveman meant the Association meetings regarding Thoresen, the no-confidence vote and the June 10 protests over the aide assignments.

He also was concerned about the timing of the transfers that were being decided late in the school year; he was not sure he would have the support of the Board (6T18). Groveman would have preferred for the transfers to be considered in May when staff are reappointed for the next year (6T171). Next, Groveman had concerns raised to him by Spina who was requesting to meet with him.

Basically, Groveman felt that getting the transfers approved was not going to be clean cut because he was transferring two

teachers with multi-years of experience and success, something that is not done a lot (6T171). It gave him pause (6T172). Involuntary transfers in Saddle Brook were not common (R-6 through R-16). The Board produced exhibits demonstrating that transfers had occurred between 2003 and 2008, but only one teacher - Ida Borer - was actually involuntarily transferred during that period (R-8, R-9, R-16).^{16/}

97. Groveman also did not decide about the transfers immediately because he wanted to speak with Thoresen to ask about the certification issues regarding Martin and Dolan and whether the transfers would be doable (6T16-6T17). When he called Thoresen about it on either the 16th or 17th, she told him what she had told Gaynor and Sarto, namely that she was against it, that she would be blamed because of all the issues with the special education staff, that the transfers would come back to "bite her" and that she was dead set against the transfers (5T257; 6T17, 6T156). Thoresen told him she would be happy to keep things the way they were (5T257).

98. In considering the transfer recommendation, Groveman did speak to Thoresen about Martin's qualifications. He confirmed that although Martin was qualified to teach in the middle school under the State education guidelines (R-1), she was

^{16/} Dolan was recommended for an involuntary transfer in 2003, but the transfer was modified by Board action allowing her to remain in her previous assignment (R-15).

not highly qualified in any subject area (6T77-6T78). Therefore, he knew that the only role Martin could assume in the middle school would be as a teacher in a collaborative classroom (6T78, 6T163). Groveman spoke to Thoresen about whether Martin was willing to fill out the paperwork to qualify for the HOUSE (High Objective Uniform Statements of Evaluation) standards to become highly qualified in subject areas in order to teach in a resource room setting (R-2, R-3, R-4, R-5; 6T79). The paperwork was due by June 30, 2010 (6T79).

It was only in November 2009, however, that Groveman formally asked Martin to become highly qualified (CP-36; 6T79, 6T161-6T162). To date, Martin has not taken the steps to become qualified under the HOUSE standards (6T79).

99. After weighing the pros and cons, Groveman decided to support his administrators' recommendations (6T19). Groveman explains, however, that he discounted Thoresen's opinions on the transfers because he felt that Sarto and Gaynor, as building principals, knew Martin and Dolan best which gave their opinion more weight. Also, Thoresen's reasons for opposing the transfers did not address educational reasons, but were personal to her, namely the no-confidence vote and the timing of the transfers (6T168-6T170, 6T183).

100. Groveman also supported Martin's transfers, he explained, because he felt she would do better with a slightly

older student population such as 7th and 8th grade (6T19). Groveman did not articulate the basis for this reasoning. I do not credit his testimony in this regard.

101. Groveman was aware that both Martin and Dolan were building representatives (6T20). He had very little contact with Martin in her union capacity and had no problems with those activities (6T20-6T21). He worked with Dolan a little more over the years as a union representative because Dolan had been grievance chair, but he had no problems with Dolan's activities in this regard (6T21). Specifically, although he was aware of a couple of issues raised by Dolan in the middle school such as duty free lunch and lead teacher compensation, Groveman had no problems with this (6T54-6T55). In particular, Groveman knew that Dolan and Martin advised and represented Wayne Rogers before the Board at his disciplinary hearing, but Groveman denies factoring in these activities in the transfer decision (6T24-6T25). I find no evidence in the record that Groveman factored in these activities when making the transfer decision.

102. However, Groveman also denies that the Association meetings regarding Thoresen and the no-confidence vote factored into the Martin/Dolan transfer recommendations (6T28). Groveman first became aware of rumors about the Association meetings in the second week of June when Thoresen called him to tell him about it (6T25-6T26). He told her that Saddle Brook has a

history that is ripe with rumors and not to worry about it because nothing formal had come to him (6T29). He told her that if and when something came to him, he would look into it (6T29). Groveman heard specifically about a no-confidence vote again in the middle of June before he made the transfer recommendation (6T27). To date, however, he never saw the formal written statements regarding Thoresen collected by Marcus and Quirk at the meetings (CP-18; 6T81-6T82). Groveman also denies knowing whether Martin or Dolan attended the meetings (6T28-6T29).

I do not credit Groveman's testimony that the Association meetings did not factor into his decision to transfer Martin and Dolan. His June 16 e-mail to Marcus (CP-15), in which he explains why he is refusing to meet to discuss Martin's classroom aide assignment, specifically references the meetings of the Association membership as a reason why he felt Martin needed a change of environment. Groveman's testimony explaining the e-mail confirms the connection between the two issues (6T140-6T141).

103. Groveman also did not consider in making the transfer recommendation that there was no documentation in Martin's or Dolan's evaluations and observations prepared by their immediate supervisors to support that either teacher was unhappy (CP-1, CP-2, CP-3, CP-4, CP-8, CP-9; 6T41-6T42). These forms, he felt, do not lend themselves to a statement of a teacher's overall

mental state or their emotional state as it relates to performance. Nevertheless, Groveman admits that in the narrative area nothing restricts such comments (6T42-6T43, 6T146). In any event, he did not discuss these evaluations with Martin's or Dolan's immediate supervisors (Gaynor and Porfido), because everyone knew both teachers were "very strong, very talented, good teachers" (6T43-6T44).

Nevertheless, Groveman admits that even through the evaluators had concerns about Martin's and Dolan's unhappiness which were not put into their evaluations, these concerns should have been shared with the two teachers who the principals perceived to be unhappy. Neither Gaynor nor Sarto ever spoke to Martin or Dolan about their concerns regarding their happiness (6T149-6T150). In fact, Groveman had advised them to do so and yet he never followed up to determine whether Gaynor or Sarto spoke to Martin or Dolan (6T147-6T148).

Everything that was done in regard to the transfer decision was done without any input from Martin or Dolan (6T164). Despite this fact, Groveman explained that the immediate issue for him was whether the transfers would make Martin and Dolan happy because, in his view, happy people tend to be more productive (6T44).

104. Groveman eventually decided that the transfers were meritorious and should be brought to the Board for approval at the June 24 Board meeting (6T16).

June 17, 2009 Groveman/ Spina Off-the-Record Conversation

105. On June 17, 2009, Spina came to Groveman's office for an off-the-record discussion (1T101; 6T62).^{17/} Groveman believed that the off-the-record meeting might have taken place on June 24 (6T61). His testimony, however, was tentative. Thoresen testified that when she met with Groveman on June 18, he had already met with Spina (5T210). I find, therefore, that the off-the-record meeting occurred on June 17.

106. Groveman and Spina had, what Spina describes as an off-the-record conversation, very much like conversations Spina has with all of her superintendents in discussing and trying to resolve various issues in the district (1T101). Spina brought up the concerns of the special education staff about the program and Thoresen. Spina was also upset with the June 15 meeting that took place between her, Martin, Sarto and Thoresen (6T62; 1T101-1T102). Spina explained that she was mostly upset with Sarto and that it was not a productive meeting (6T62; 1T102). Spina mentioned to Groveman Thoresen's unprofessional behavior,

^{17/} Respondent objects to the admission of testimony related to the off-the-record discussion on equitable grounds. I admitted the testimony because there was no asserted privilege for barring its admission and find no equitable reason to prevent its admission into evidence.

favoritism and not adhering to educational codes - issues discussed at the June 15 meeting (1T102).

Spina told Groveman that she wanted to address the Board about the concerns related to Thoresen. Groveman told her the Board was aware of the concerns and had already arranged for Thoresen to come before them to discuss the programs and related issues in closed session (6T62).

Groveman told Spina that he had some discussions with Thoresen and that hopefully she would heed his advice and that the situation would take care of itself (1T102). Groveman also indicated during the conversation that he was considering a transfer of Martin and Dolan (1T102; 6T63). Spina told him it would be a terrible mistake because it would be purely disciplinary (1T103). Groveman told her he intended to share that with the Board (6T63).

Spina did not present CP-18 to Groveman at this meeting, although she summarized the various complaints that the special education staff expressed and incorporated in CP-18, complaints that went back almost 2 years (1T116-1T117). Spina also did not alert Martin after her conversation with Groveman that he was considering her transfer (1T130-1T131).

June 18 Meeting Between Thoresen and Groveman

107. Thoresen came to Groveman on June 18 to discuss her concerns growing out of the Association's June 15 meeting

regarding her (5T210). Groveman had previously assured her at the April 2009 Board meeting that she would get tenure but that she had to wait until July 2 for formal approval because that is when she would be employed for three years (5T226-5T227).

108. Groveman told Thoresen not to worry and that everything would be taken care of; it would be okay (6T157, 6T180-6T181). Groveman told her that he did not feel that any of the concerns raised at the Association meeting were founded (5T211-5T212).

109. Thoresen also told Groveman about the June 15 meeting she and Sarto attended with Martin and Spina (6T180).^{18/} Although Thoresen had called him before the June 15 meeting to say that it was requested, she did not tell him at that time that she was going to bring Sarto (6T58-6T59). Thoresen explained that she needed Sarto with her given everything that had been going on (6T180). Groveman advised her for the future that she should go to such a meeting without representation and, if the meeting got out of hand or she was uncomfortable, she could stop the meeting. The meeting would reach a more amicable solution without one union representative talking to another (6T180). Having

^{18/} Groveman claims that he only learned the specifics of the June 15 meeting as part of this litigation (6T60). However, he met with Spina on June 17, and she told him how upset she was with the meeting, Sarto's demeanor and about the concerns of the special education staff (6T61). I find that Groveman was aware of at least some of the issues raised at the June 15 meeting.

representation on both sides, he has learned, ratchets up the meeting, and the issues don't really get openly discussed (6T59).

As to the specifics discussed at the June 15 meeting, Groveman states that Thoresen had come to him during the year with at least two issues: her CST complained that meetings attended by Martin were at times problematic and that there was a feeling Martin was feeding information to a parent (6T70-6T72).^{19/} Groveman advised Thoresen to speak to Martin (6T71-6T72). Groveman himself has no problem with Martin begin a strong advocate for her students and hopes that she continues to be a strong advocate for her students in the middle school (6T73).

June 18 Meeting Between Thoresen and Sarto

110. Thoresen went to Sarto's office on June 18 to meet with him to discuss the Association meetings regarding the no-confidence vote and what she viewed as the attempt to get her tenure revoked (5T133).^{20/}

^{19/} Groveman confirmed the ESY practice of giving classroom teachers of a particular student a right of first refusal for summer assignments (6T67). Groveman testified that he discussed at some point with Thoresen that based on a parent request she was looking to offer ESY to someone else, not Martin (6T67). This testimony is double hearsay and not supported by Thoresen's testimony or any other evidence on the record. I do not find it as a fact.

^{20/} Thoresen testified that this was the first time she discussed the Association meetings with him (5T133, 5T224). I do not credit this testimony. When Thoresen asked Sarto to represent her at the June 15 meeting with Martin and Spina, she spoke to him on June 11 or 12 about her concerns
(continued...)

111. At this time, when Thoresen told Sarto about the Association meetings and the rumblings among the special education staff, Sarto never told her that he thought the staff were violating any Board policy in regard to e-mails to schedule the meetings (5T252).

112. Sarto assured Thoresen that he would represent her if needed at any hearing and would speak to any necessary parties, although he never elaborated who he considered necessary parties (5T133, 5T226-5T227).

June 18, 2009 Moving-Up Ceremony

113. Every year at Smith School the 6th graders have an assembly to commemorate the completion of their elementary school career and the milestone of moving to the middle school (2T50-2T51).

114. On June 18, at the end of the moving-up ceremony, a parent of one of Martin's students approached Martin (2T51). She was very emotional and hugging Martin, thanked her for the support and assistance she had given her child over the years (2T51). The parent was crying (2T51). Gaynor approached and asked if anything was wrong (2T51). The parent explained how much her child was going to miss Martin in the coming school year, because Martin was such an important part of his growth.

20/ (...continued)
and the subject of the Association meetings in all likelihood came up.

The parent suggested that she would have to take Martin with her child to middle school (2T51-2T52). Gaynor looked at Martin and the parent and said that "you never know, she might just end up there" (2T52). Gaynor admits that she might have made this statement because the transfer decision had already been made (4T273).

115. Gaynor's statement was probably true in light of the fact that Gaynor and Sarto had given Groveman their formal written recommendation on the Martin/Dolan transfers on June 16, 2009 (CP-12; 3T65-3T66).

June 19, 2009 E-Mail from Sarto to Marcus about Association No-Confidence meetings

116. On June 19, 2009, at 11:31 a.m., Sarto e-mailed SBEA President Linda Marcus, as well as SBEA Vice-President Susan Rusciano, with copies to Groveman, Assistant Superintendent Robert Onorato and Thoresen (CP-15). Under the subject heading SBEA, Sarto wrote:

It is my understanding that several elementary school special education teachers have been setting up meetings under the platform of SBEA business. These meetings are focused on attempting to discredit, malign and defame the Director of Special Services, Mrs. Thoresen.

As I have just discussed with Ms. Rusciano, vice president of the SBEA (who is apparently unaware of these meetings), teachers' names are being used in e-mails without their permission. And once again, the school e-mail system is being used for this purpose.

The name that keeps popping up and who allegedly is spearheading this action is Teri Quirk, who I believe is not an officer of the SBEA. Please document for me if you indeed are aware that your membership is holding such meetings. It is obvious that the middle and high school teachers know little to nothing of what's going on.

Please be aware that, as SBAA president, if this is indeed occurring and continues I will be contacting the superintendent of schools and the Board of Education concerning the above referenced as well as insubordinate behavior of staff members to their superior.

I truly believe we work very well together. That is the reason for inquiring as to the validity of the above referenced and your involvement as association president (CP-5).

117. Marcus e-mailed Spina at 2:46 p.m. that afternoon forwarding Sarto's e-mail (CP-5) and commenting that she had spoken to Spina's Uniserv partner Joe Tondi about the Sarto e-mail (CP-15). Marcus informed Spina that Sarto sent Rusciano to talk to her (Marcus) and that Sarto threatened to go to the Board about the situation (CP-15). Finally, Marcus wrote Spina that she (Marcus) took the Sarto e-mail as a threat and asked Spina for advice concluding with "who does [Sarto] think he is?" (CP-15).

118. Spina was not thrilled with the Sarto e-mail to Marcus and felt that some of what he said was not even accurate (CP-5; 1T78). For instance, the reason that the middle and high school teachers did not know about the Thoresen issue was that it was an issue that impacted special education teachers and aides, not the

entire membership (1T78-1T79). Also, the membership can and do usually hold meetings on school premises (1T78). Spina felt that the meetings that Sarto was referencing were the no-confidence vote meetings taking place that Spring of 2009 (1T123).

119. Spina feels that the Sarto's e-mail is one of the motivating factors in the Martin/Dolan transfers (1T121). Spina admits that it would not be improper in general for a local administrator to contact a local president about what he considers insubordinate behavior or specifically, that members of the special education staff told him their names were being used in e-mails without their permission, but she had never seen an e-mail such as Sarto's, where an administrator threatened to contact the Board or superintendent about insubordinate behavior (1T124-1T125).

120. This e-mail was discussed at the June 22, 2009 Association meeting of the special education staff (2T64; 3T97, 3T169-3T170). It was felt that Sarto was threatening the members who were meeting especially by naming who he considered to be ring leaders (2T64; 3T97, 3T170).

121. Sarto explained that his e-mail (CP-5) to Marcus came about because three special education teachers in his building came to him both as SBAA president and as the building principal to complain about their names being used without their permission in e-mails regarding concerns about Thoresen and a no-confidence

vote (4T34-4T35, 4T37). Sarto e-mailed Marcus, he explains, seeking proof of whether the meetings were taking place because as SBAA president he had concerns for his special education teachers who were unhappy and frustrated at being pulled into the controversy (4T35-4T36, 4T203). It is unclear from the record why Sarto's concerns for his teachers' complaints about the use of their names particularly concerned Sarto as SBAA president since the teachers were not in his negotiations unit, and he had no responsibility for their representation. I find that his concerns were tied to his role as building principal, not union representative.

Sarto also sent the e-mail because he felt the use of the district's e-mail system for the purpose of setting up meetings outside of school to discuss Thoresen violated the Board's policy of using the e-mail system only for educational purposes, not for personal use or Association business (R-19; 4T42, 4T110-4T111). Using the district's e-mail system to schedule a meeting to discuss a no-confidence vote with respect to a supervisor of the teachers is not school business as far as Sarto is concerned and is a misuse of the e-mail system and violated Board policy (4T200). Sarto asserted, however, on cross examination that the SBAA has the right to use the district's e-mail system for its business, particularly for him to use the district's e-mail system to send Marcus an e-mail such as CP-5 (4T114).

I do not find, based on Sarto's testimony alone, that the e-mails to set up the Association meetings regarding the no-confidence vote violated any Board policy. In any event, Groveman has no problem with the Association's use of the district's e-mail system for union business and would view the use of the e-mail system to set up Association meetings off-site on a case-by-case basis (6T119).

Next, Sarto explained that he sent the e-mail (CP-5) to find out, specifically, whether the meetings were being conducted under the auspices of the Association, or if it was just a bunch of teachers getting together to talk about an administrator (4T37, 4T40, 4T193). Sarto never credibly explained why he needed this particular information, namely whether the Association or a group of teachers on their own were conducting the meetings. Sarto testified, however, that since Marcus never got back to him, he never found out if the meetings were actually taking place (4T37). This testimony is not credible. Sarto had been told by Thoresen on June 12 when she called and asked him to represent her at the June 15 meeting with Martin about the no-confidence vote meetings. Also, he knew about the meetings from the teachers in his building who contacted him to complain about the use of their names without permission.

The e-mail Sarto sent also addressed concerns Sarto had as SBAA president about protecting Thoresen's interests (4T41).

Sarto states that this was the first time he remembers Association meetings being conducted for the purpose of discussing a no-confidence vote with respect to an administrator (4T37).

As to his reference in CP-5 to insubordinate behavior of staff members to their superior, Sarto explained what he meant as follows:

Well, if it was something that teachers were getting together under the format of you know, the platform of the association, then and they didn't first go to the Director of Special Services or go to their building principal or go to the superintendent, then that's insubordinate. That's - that's going against, without giving just cause, without going and actually talking it over with the person they should be talking it over with.

And so that's how I addressed it. And like I said here. I believe, yeah, I'll be contacting superintendent and the board if insubordination is there.

I - I need to pass it along and let the superiors know about it, if something like that was happening with one of the administrators (4T43).

Sarto denies actually telling any Association member that the special education staff should not meet, but felt that if staff members weren't going through proper channels - through the administration's chain of command - and were rallying without

doing their homework then the staff was being insubordinate to the administrator they were complaining about (4T47, 4T201).^{21/}

Based on Sarto's explanation, I find that he considered the meetings to discuss a no-confidence vote regarding Thoresen, whether under the auspices of the Association or conducted by a group of special education staff, to be insubordinate.

Nevertheless, Sarto contends that CP-5 played no role in Dolan's transfer, and that he barely knew Martin (4T44). I do not credit this testimony. The evidence supports that although Sarto did not know Martin well before the June 15 meeting with Thoresen, Martin's specific criticisms of Thoresen were being echoed generally by the special education staff at the Association meetings. I infer that Sarto connected Martin's concerns which she raised at the June 15 meeting, as well as her concerns expressed at the June 10 Board meeting that Sarto attended, with the concerns Sarto was raising in CP-5 about the Association no-confidence vote meetings that he considered to be possibly insubordinate behavior.

122. Sarto insists that he sent CP-5 only in his capacity as SBAA President and not as principal of the middle/high school

^{21/} On direct, Sarto testified that the Association no-confidence vote meetings violated Board policy 3211, "Code of Ethics" (R-18; 4T108). This issue was not raised in CP-5 and, therefore, is irrelevant as a motivating factor for Sarto's e-mail. What motivated Sarto's e-mail was what Marcus knew about the Association meetings and whether the meetings were being conducted by the Association.

(4T125). He insists that he was not wearing two hats, but on cross examination when asked whether charging staff with insubordination is not something a supervisor or administrator, not a union president would do, Sarto replied:

This is between the two people, again the same as Ms. Marcus always does, when she e-mails me either as the principal or whatever, and sent through the e-mail system, "I understand this" or "I heard this about a teacher," "I heard this."

And that's - we try to take care of it that way. As I said at the bottom, we work very well together. It's just nonthreatening, here we are, let me know if this is happening. I just want to know if this has anything to do with association so I'll know how to proceed (4T128).

Sarto explained that his statement that he would report insubordinate behavior of staff to their superiors to the Board and superintendent was just "telling the facts" (4T129).

Sarto also admitted that he perceived the dissatisfaction and criticism of Thoresen to be mainly an issue with the elementary school staff, but he copied only Groveman, Thoresen and Onorato, not any of the elementary school principals who were also member of the SBAA (4T123-4T124). This fact combined with Sarto's evasive answer on cross as to whether charging staff with insubordination was not the function of a supervisor supports that Sarto was acting both as the SBAA president and an administrator when he sent CP-5.

123. Groveman received a copy of Sarto's e-mail on June 19 but did nothing when he received it (CP-5; 6T30). Groveman testified on direct examination that he had no idea what Sarto was referring to in the e-mail regarding meetings to discredit, malign and defame Thoresen or teacher's names being used without their permission in e-mails, the Quirk meetings or insubordinate behavior among staff to their superiors (6T31-6T32). However, on cross, Groveman admitted that he had received phone calls from Thoresen and Sarto sometime between June 10 and June 16 about the Association's no-confidence vote meetings (6T142-6T143).

I do not credit that when Groveman received Sarto's e-mail on June 19, he was ignorant as to the issues Sarto was discussing. Groveman knew by the 19th not only about the no-confidence vote meetings but about Martin's activities regarding Thoresen. Whether he knew specifically about the teacher complaints to Sarto about their names being used or what Sarto considered to be insubordinate behavior is irrelevant.

After receiving Sarto's e-mail, Groveman contacted Sarto a week later and asked him to explain the purpose of the e-mail (6T32). Sarto told him that Thoresen asked him to look into the Association meetings and the no-confidence vote, so as SBAA president, he was trying to get clarification as to what activities were being conducted under the auspices of the Association (6T32-6T33). Groveman told him that he thought the

e-mail was a bit strong and that the tone Sarto took with Marcus could have been more collegial, a little softer (6T33). Other than the tone of the e-mail, Groveman had no problem with it (6T33-6T34). Groveman did not question Sarto about his comment about insubordinate behavior (6T33).

124. Thoresen was on vacation when CP-5 was sent and only saw it when she got back on Monday, June 22, 2009 (5T131). Although she was copied on the e-mail, Sarto had not told her in advance that he was going to send it or discussed it with her beforehand (5T131).

Thoresen understood Sarto's reference in the e-mail to meetings to discredit, malign and defame her as referring to the Association no-confidence vote meetings where written statements were being collected about her in order, she felt, to get her out of the District (5T132). Thoresen states that Sarto knew about these meetings because of the e-mails going through the district and staff telling him about the meetings (5T132). As to Sarto's reference in CP-5 to e-mails and teachers' names being used without their permission, she concluded he was writing about special education teachers writing to each other and using individual's names without their permission in connection with problems they were having with her (5T134). Indeed, Teacher Lakeya Smith had called Thoresen specifically to make this complaint (5T225).

Thoresen called Sarto on June 22 when she read CP-5 (5T136). He told her that as president of the SBAA, he had a right to send the e-mail, particularly since several teachers had come to him complaining about their names being used without permission and in light of some staff spearheading actions against Thoresen (5T136, 5T228). Thoresen asked him if she had anything to worry about as an untenured administrator (5T137). It is unclear what, if anything, was Sarto's response to this specific question. There was some discussion that Sarto felt that the individuals involved in the meetings were in violation of the Board's code of ethics, but did not elaborate and explain how he reached this conclusion (5T252-5T253). Thoresen states that the subject of the transfers did not come up during this conversation (5T137).

June 23, 2009 Meeting between Groveman and Martin about 2009-2010 Aides Assignment

125. On June 23, 2009, which was the last day of school, Martin was on her way home when she turned around, because she decided that she could not start her summer vacation without attempting to speak to Groveman about her part-time rotating classroom aide assignment for 2009-2010 (2T53). Martin went to Groveman's office and asked his secretary if she could speak to him for a minute (2T53; 6T51).

126. Martin thanked Groveman for his time and told him that she was extremely concerned about rotating two part-time aides, in particular because this would be the last experience the

students would have before middle school and that the students would suffer (2T54). Martin also told him that she felt the decision to reassign aides was made to punish her (2T54). Martin then asked Groveman to at least consider eliminating the rotating schedule, if there was no way to assign a full-time aide to her classroom (2T54).

127. According to Martin, it was a strange conversation because Groveman never made eye contact and appeared aloof even though in the past he and Martin had a decent relationship (2T54). Groveman just thanked her for sharing her concerns and concluded the meeting which lasted no more than 10 minutes (2T55). At no time did Groveman indicate that Martin was being considered for a transfer to a different building in 2009-2010 nor did he communicate any criticism of her teaching (2T55).

128. Groveman testified that he decided not to discuss the transfer, Martin's state of mind or her unhappiness because he was not sure the Board would support his recommendation to transfer her, and that if he brought up the possibility of the transfer, he believed it would have caused Martin angst over something that might not occur (6T176-6T178). However, when Martin left the meeting, Groveman felt that she was telling him that no matter what, she would do her best in the coming year to work with the aide assignment (6T107).

June 24, 2009 Board of Education Meeting

129. The general practice of the Board is to hold a caucus meeting on a Monday and public meeting on that Wednesday to act on the agenda (6T100). The administrative council composed of all administrators, including the superintendent, principals, vice-principals, and directors, meets once a month the day after the Wednesday Board meeting (6T11-6T12).

In June 2009, there was a caucus meeting on Monday, June 8, and the regular Board meeting was Wednesday, June 10 (CP-13; 6T100). There was an administrative council meeting on June 11 (6T14-6T15). Additionally, the Board always conducts an end of the year meeting to tie up loose ends. The last meeting in 2009 was the Wednesday, June 24 meeting. There was no separate caucus meeting that week. It is the practice of the Board to go into caucus on the night of the last Board meeting and that is what occurred on June 24, 2009 (1T132; 6T100-6T101).

130. Martin and Dolan attended the June 24, 2009 Board meeting as union representatives assisting a teaching staff member, Wayne Rogers, who was being disciplined (2T66; 3T98-3T99, 3T177). Rogers was there with his attorney but Martin sat at the table with then and together with Dolan was present in the closed caucus meeting(3T41-3T42, 3T177).

131. When Martin reviewed the agenda for the meeting (CP-6), there was no indication that her transfer would be

discussed or acted on (2T67). Martin received no Rice notice that her employment would be discussed by the Board (2T68).

A RICE notice is a notice to an employee that their employment status may be adversely affected and will be discussed at an upcoming Board meeting (6T76). The notice provides the teacher an option to have the discussion in public session (6T150-6T151). Groveman chose not to give Martin or Dolan a RICE notice about their transfers or put the transfers on the regular agenda, because he felt that their salaries were not going to change and that they would still be working within their certifications (6T76). I infer that Groveman felt that their employment status would not be adversely affected by the involuntary transfer. He was also not sure that the Board wouldn't want to table the action until July for further discussion (6T76-6T77).

132. When the Board went into closed session, Groveman discussed the Martin/Dolan involuntary transfer recommendations as well as some issues related to the Wayne Rogers disciplinary matter (6T101). As to the transfers, Groveman told the Board what Gaynor and Sarto recommended and that, while he supported their recommendations, the Board needed to be aware that the transfers would likely be contested and that some issues could become problematic (6T101-6T102). Nevertheless, Groveman

recommended going forward with the transfers (6T102). The Board then voted to approve the transfer recommendations (6T102).

Although the transfers were not on the regular agenda, Groveman had prepared an addendum to the agenda that he read when the Board came out of caucus session and the motion to approve the transfers of Martin and Dolan were made and approved (CP-6; 6T155).

133. At some point during the meeting while she was talking to Wayne Rogers, she heard an announcement that Dolan was being transferred from the middle school to Smith School (2T69). Next, she heard that she was being transferred from Smith School to the middle school (2T69).

134. Dolan was shocked when she heard Groveman announce that she was being involuntarily transferred to the Smith School and that Martin was being transferred to the middle school (3T101-3T102). It came out of nowhere for her (3T102). The transfer was not on the Board agenda, and Dolan had not been given a RICE notice prior to the meeting that the transfer would be discussed (CP-6; 3T178). In 2003, when Dolan was being considered for an involuntary transfer she had received a RICE notice that the transfer would be discussed at the Board's August meeting (CP-11).

Additionally, neither Sarto nor Thoresen had ever discussed with her whether she would be happier teaching at the elementary

level or indicated to her that there were problems with her teaching in the middle school (3T114-3T115). Sarto confirmed that he never discussed the transfer with Dolan and explained that he considered it just an assignment, and besides he had transferred teachers in the past without explanation (4T54-4T55). This testimony is self-serving. Involuntary transfers in Saddle Brook were uncommon, and, during Sarto's tenure, there is no evidence that there were any involuntary transfers (R-6 through R-14). Accordingly, if Sarto effectuated any transfers during his tenure, they were presumably voluntary and would not require explanation to the individual being transferred.

135. When Martin heard the transfer announced, she felt like she had been hit in the stomach (2T69). She was extremely upset and emotional (2T69). This was the first she learned of the transfer (2T153-2T154).

136. At this same Board meeting, the Board approved Martin's attendance at a July 2009 conference in Massachusetts to learn about "Reading with TLC" which is a multi-sensory reading program used with learning disabled students some of whom have dyslexia (2T71, 2T160). The program is designed for self-contained classrooms (2T71). There are no self-contained special education classes at the middle school, and Martin felt that it was not necessary for her to attend the program because of her transfer but she attended it anyway (2T71, 2T161).

Earlier in the year (February and March 2009) Martin had been approved to attend workshops in writing and grammar skills and another utilizing web sites to enhance classroom education both geared for elementary not middle school students and both of which were approved and paid for by Gaynor and the Board (2T72-2T74). Martin had also attended the Wilson Reading Seminar in May 2009 with colleagues who taught first through sixth grade (2T74-2T75). The program was expensive and the Board approved it and paid for it (2T75-2T76). At no time before or after she was approved for these programs did anyone tell Martin that there was no need for her to attend because of her transfer (CP-23; 2T83-2T84).

137. After Martin learned of the transfer, she did not address the Board at the public session, but she approached two Board members, Dr. Filipeck and Mrs. Robinson (2T85; 3T47-3T48). Dolan also did not address the Board in public session but she accompanied Martin when she approached the two Board members and heard what transpired (3T111). Dolan corroborates Martin's description of the conversation (3T111).

Martin was very upset and asked them how they could treat a long time employee this way and whether they were aware of the June 15 meeting with Thoresen and how the transfer was, in her opinion, disciplinary (2T85-2T86). Robinson told Martin in Filipeck's presence that they had only heard about the transfer

30 minutes before it happened and did not know about the June 15 meeting (2T86).

138. On June 25, 2009, Martin and Dolan received letters from Groveman about their transfers (CP-7, CP-10). The letters stated:

I received a recommendation from your current principal asking that a non-voluntary transfer from your current position to a similar position at our Middle School be enacted. After discussing this matter with your current principal, I felt a change in assignment was warranted and presented the recommendation to the Saddle Brook Board of Education. The matter was discussed with the Board during their closed caucus session on the evening of June 24, 2009.

As a result of this action, you have been assigned to the Saddle Brook Middle School starting in September 2009. Based on their discussion, the Board of Education approved this non-voluntary transfer at their regular open meeting also held on the evening of June 24, 2009 (CP-7, CP-10).

Martin and Dolan were advised to contact Sarto and Gaynor, respectively (CP-7, CP-10).

Martin/Sarto July 2009 Discussion about her 2009-2010 Assignment

139. In July 2009, Martin and Sarto exchanged e-mails, and she learned for the first time what would be her assignment for 2009-2010 (2T87). She was going to be assigned two collaborative social studies classes, two collaborative science classes and one collaborative health class (2T87). She had never taught in a collaborative classroom (2T87).

140. Martin's initial dismay was that she is not highly qualified to be the primary or lead teacher in the middle school (2T89-2T90). Martin was also unhappy with the transfer and new assignment because she would not be the lead teacher with her own classroom (2T89). According to Martin, collaborative education is a model where a special educator and a regular educator are paired (2T88). Usually, the two participants have similar styles of teaching which are seen as compatible and are willing participants (2T88). The collaborative team assists special education students that are mainstreamed in a classroom and enhances the learning environment for the other students in the class (2T88). The primary teacher is the regular education teacher who is in charge of planning the curriculum while the collaborative teacher implements any modifications to the program using different learning strategies and techniques to assist the classified students (2T88-2T89).

Martin Assignment in Middle School Since Transfer

141. Although Martin prefers a self-contained classroom, she has performed well teaching in a collaborative setting since her transfer (2T166-2T167). However, she is not happy being an assistant in a classroom (3T49).

142. Also, after the transfer, Groveman notified her that there was an extension of the regulations governing qualifications and that if she took a course she could become

highly qualified, but to date, Martin has not availed herself of this opportunity (3T50-3T51).

Dolan Assignment at Smith School Since Transfer

143. When Dolan contacted Gaynor, she learned that her assignment for 2009-2010 was in a self-contained special education classroom in grades five and six, Martin's old assignment (3T112).

144. Dolan had been teaching in the middle school for 16 years and was concerned that she would not be as productive in teaching the reading program because she had not done so for many years (3T113-3T114). According to Gaynor, Dolan has been performing well at the Smith School since her transfer (4T262).

Remedy

145. If Martin prevails in this litigation she requests that I recommend that the Commission reinstate her to the position she previously held at the Smith School as a self-contained fifth and sixth grade special education teacher (2T111-2T112).

146. Dolan does not want a transfer back to the middle school if she prevails in her contested transfer petition because she is fearful that Sarto would retaliate (3T142, 3T190-3T191). Dolan is happy in her assignment at the Smith School (3T190, 3T193).

ANALYSIS

The Association contends that the Board involuntarily transferred Special Education Teachers Theresa Martin and Patricia Dolan in retaliation for their protected activities in violation of N.J.S.A. 34:13A-5.4a(1) and (3) of the Act and transferred them for disciplinary reasons between work sites in violation of N.J.S.A. 34:13A-25.

CO-2010-137

In re Tp. of Bridgewater, 95 N.J. 235 (1984), articulates the standards for determining whether personnel actions are motivated by discrimination against the exercise of protected activities in violation of subsections 5.4a(3) and, derivatively, (1) of the Act. A Charging Party must prove, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse personnel action. This may be done by direct or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Some times, however, the record demonstrates that both motives unlawful under our Act and other

motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense need not be considered, however, unless the Charging Party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the Commission to resolve.

Here, Martin, individually, as well as 25 or 30 special education staff, were engaged in protected activities involving Director of Special Education Thoresen. Martin appeared at a June 10, 2009 Board meeting, together with special education staff and parents, to speak out against the decision to assign two part-time aides on a rotating basis to Martin's classroom for 2009-2010. Martin also arranged a meeting through Uniserv Representative Rose Ann Spina with Thoresen to discuss her (Martin's) concerns about the classroom aide assignment as it impacted her ability to take preparation and lunch periods, terms guaranteed by the parties' collective agreement, as well as other concerns that had been brewing between the two for a couple of years and that led Martin to conclude Thoresen was harassing her.

While Martin was confronting Thoresen on an individual basis, a group of special education teachers and aides, mostly in the elementary schools, were meeting under the auspices of the Association to discuss their complaints about Thoresen, namely her running of the special education program, and to take a vote of no-confidence. Martin and Dolan attended some of the meetings and Martin, in particular, expressed complaints that were later incorporated into a written document together with the complaints of others who attended the no-confidence vote meetings. Whether the Board or their representatives ever saw the actual document is irrelevant, since the decision makers -- Superintendent Groveman as well as Principals Sarto and Gaynor -- were aware of the Association meetings and of Martin's discontent with Thoresen.

Finally, both Dolan and Martin were building representatives. As such, both were involved in representing a unit member, Wayne Rogers, in June of 2009 at a disciplinary hearing before the Board. Dolan also had raised various issues at the middle school involving enforcement of the collective negotiations agreement.

Both Martin and Dolan were engaged in protected activities, not only when acting as building representatives but also in their activities, individually and collectively, involving Thoresen. In particular, Martin's appearance at the June 10

Board meeting to protest the classroom aide assignment, her meeting with Thoresen and Sarto on June 15 as well as her and Dolan's attendance at the Association meetings regarding a no-confidence vote constitute activities protected by our Act. In North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205 1978), aff'd NJPER Supp. 2d 63 (¶45 App. Div. 1979), the Commission considered whether a key punch operator was engaged in protected activity when she complained to her supervisor about a change in her hours of work. The Commission determined that the employee first engaged in protected activity when she initially strenuously objected to any change in her hours to her immediate supervisor. Citing federal precedent^{22/}, the Commission wrote at footnote 16 that:

. . . individual employee conduct, whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective agreement or existing working conditions of employees in a recognized or certified unit, constitute protected activities under our Act. Id. at 454.

See also, City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987) (Act protects collective action through litigation to enforce statutory pension rights).

22/ Dreis v. Krump Mfg. Co., 545 F.2d 320, 93 LRRM 2739 (7th Cir. 1976); NLRB v. Interboro Contractors Inc., 388 F.2d 455, 67 LRRM 2083 (2nd Cir. 1967).

The next question is whether the Board or its agents were hostile to the exercise of these protected activities. Ordinarily, there is little or no direct evidence of hostility - e.g. a smoking gun. In that instance, hostility is inferred circumstantially from the evidence, such as the timing of events. Here, however, there is both direct as well as circumstantial evidence to support that the decision-makers were hostile to Martin's protected activity.

As to direct evidence of hostility, Superintendent Groveman sent an e-mail (CP-15) to Association President Marcus on June 15, 2009. Groveman was responding to Marcus's June 9 request to meet about Martin's concerns regarding the classroom aide assignment for 2009-2010. Groveman wrote that between what happened at the June 10 Board meeting as well as "what is currently going on between my administrators and some of your members and the stirring up of parents who only know what some teachers want them to know, my patience with this issue is very thin. Personally, I think [Martin] needs a change of environment" (CP-15).

Groveman's testimony supports that he was upset with the large parent turnout at the June 10 Board meeting challenging what he viewed as exclusively a management decision to assign classroom aides and that he attributed the turn out directly to the efforts of both Martin and her former aide Madelyn Romaine.

Groveman explained that his e-mail reference to "what was currently going on between [his] administrators and some [Association] members" referred both to the Association no-confidence vote meetings as well as Sarto's representation as SBAA president of Thoresen at the meeting with Martin.

As to Groveman's reference in the e-mail to the "stirring up of parents," he confirmed that he meant, not only that the parents who appeared at the June 10 meeting spoke out about the aide assignment, but also that the parents generally were speaking out and painting a very negative picture about the District's special education program. Groveman viewed Martin as an instigator in stirring up the parents. Groveman was not pleased with Martin's activities in this regard, and his decision to transfer her is directly connected to that displeasure. The day after the June 10 meeting, he recommended to Principals Sarto and Gaynor that they consider transferring Martin and Dolan.

As to the hostility of Sarto who, together with Gaynor, formally recommended the transfers of Dolan and Martin to Groveman, Sarto also demonstrated through an e-mail direct evidence of hostility, in particular to Association efforts to discredit Thoresen through a no-confidence vote. That e-mail (CP-5) establishes that Sarto felt the Association's no-confidence vote meetings were attempts to "discredit, defame and malign" Thoresen who, as a member of the Administrator's

Association, was represented by Sarto. He also, however, considered such activities insubordinate if the teachers did not go through the proper channels or follow the chain of command - e.g. if they did not go first to Groveman, their building principals or Thoresen to discuss their complaints or concerns. Sarto threatened in the e-mail to contact Groveman and the Board about what he considered insubordinate behavior.

Sarto's e-mail demonstrated his hostility to the collective and individual criticisms against Thoresen, a fellow administrator and member of his negotiations unit. In deciding that the challenge to Thoresen violated the chain of command and was, thus, insubordinate behavior, that the members and/or Martin should first be airing any criticism through himself, Thoresen, other principals or the superintendent, he was acting as a supervisor not a union president.

Sarto's hostility to the activities of the Association and Martin in criticizing Thoresen, was transferred to Gaynor who basically followed Sarto's lead without question not only as a fellow administrator but also as a former Administrators' Association president. For example, when Sarto left the June 15 meeting between himself, Martin, her union representative and Thoresen who was represented by Sarto as SBAA president, he immediately called Gaynor to suggest that she withdraw permission for an Association meeting scheduled that afternoon at the Smith

School. His rationale -- that the meeting might not be a sanctioned Association meeting -- was never challenged by Gaynor who simply followed through on his suggestion, withdrawing her permission for the meeting without first confirming with Association President Marcus that Sarto's characterization of the meeting was accurate.

Gaynor never plausibly explained why she, who had been a former SBAA president, never questioned why Sarto should be concerned about another union's meeting in her school. Her explanation -- that Sarto was just trying to protect her interests in the event the meeting was an unauthorized one -- is weak. It is more likely that she knew why he advised her that the meeting was inappropriate, namely that it was regarding Thoresen and a no-confidence vote. Gaynor was fully aware, when Sarto called, that Martin had been released to attend the June 15 meeting with Thoresen. She was also aware of the complaints generally against Thoresen. It is improbable that she would simply accept his "suggestion" unless she was advised by Sarto that the meeting was to discredit Thoresen. Thus, Sarto's hostility was transferred to Gaynor when she withdrew permission for the meeting.

As to circumstantial evidence of hostility, I draw an inference from the timing of events that Groveman, Sarto and Gaynor were hostile to Martin, individually, to Dolan who was

drawn into the transfer decision by the actions against Martin and to the collective efforts of the special education staff and the Association who questioned Thoresen's running of the special education department.

Timing is an important factor in assessing the motivation for adverse actions and putting them into context. Warren Hills Reg. Bd. of Ed. and Warren Hills Reg. H.S. Ed. Ass'n., P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004); aff'd 32 NJPER 8 (¶2 App. Div. 2005), certif. den. 186 N.J. 609 (2006); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). Here, Thoresen had been assured by Groveman at the April 2009 Board meeting that she would be approved for tenure but that she would have to wait for formal approval until July when she would have a full three years of employment. During that Spring, however, it became apparent that the special education staff, particularly, in the elementary schools were concerned about Thoresen specifically and about the special education program generally. The staff wanted to bring those concerns to the Board through the Association and a no-confidence vote.

Groveman was aware of the Association sponsored no-confidence vote meetings as well as Martin's concerns about the classroom aide assignment and other issues connected to Thoresen because Thoresen had come to him throughout the year to

alert him to those issues. Groveman had even advised Thoresen to speak to Martin, but she apparently never followed his advise.

Groveman viewed Martin, in particular, as organizing protests questioning both Thoresen and the special education program. He believed the program was being thrown into a negative light by Martin's and others complaints. Groveman told Thoresen not to worry when she brought concerns related to the no-confidence vote to his attention, that he would take care of things. But clearly these concerns were a potential impediment to Thoresen's tenure approval and also cast the District's special education program in a negative light. Both displeased Groveman because they challenged his administrative authority and decision-making.

One day after the parent protest at the June 10 Board meeting, Groveman called Gaynor and Sarto to "suggest" that they consider transferring Martin and Dolan. Although there was discussion at the administrative meetings in April or May that Dolan was unhappy with her schedule in the middle school and that Martin was unhappy, there is no credible evidence on the record that any discussions of transferring the two were raised before June 11.

Sarto was already aware of Martin's attempt to meet with Thoresen to discuss concerns about Thoresen when Groveman suggested to him and Gaynor that they consider the transfers of

Martin and Dolan. Thoresen had called Sarto to alert him that she would need his representation at the June 15 meeting. Sarto also knew about the Association no-confidence vote meetings from both Thoresen and several teachers in his school who had complained to him about their names being used in e-mails about the meetings without their permission. Additionally, Sarto was present at the June 10 Board meeting and witnessed the parent protest over the classroom aide assignment for 2009-2010 that Groveman concluded was orchestrated, at least in part, by Martin. Sarto was primed to accept Groveman's June 11 "suggestion" to transfer Martin to his school and Dolan to Smith School where Gaynor was principal. Martin's transfer would have the effect of stifling her criticism of Thoresen and of bringing Martin under his control both as principal at the middle school and as president of the Administrator's Association -- two roles that Sarto apparently cannot keep separate. Gaynor had already demonstrated a propensity for following Sarto's lead.

In any event, the timing of Groveman's June 11 "suggestion" to Sarto and Gaynor to consider the transfers was extremely suspicious. Additionally, the formal written transfer recommendation was not delivered by Sarto and Gaynor to Groveman until June 16, one day after the contentious meeting between Martin, Spina, Thoresen and Sarto. Even if the decision to transfer Martin and Dolan was essentially a done deal after

Groveman "recommended" it to the two principals on June 11, the fact that Sarto attended the June 15 meeting to represent Thoresen and defend her against what he considered to be unwarranted concerns raised by Martin about Thoresen's harassing behavior sealed Martin's fate.

The Board's professed reasons to justify the transfer decision are pretextual. Every witness -- Groveman, Gaynor, Thoresen and Sarto -- confirmed that both Martin and Dolan are excellent teachers. Martin is, by all accounts, an exceptional teacher. Martin's devotion to her students and her willingness to take on extra duties to enrich the special education program at Smith School for her students as well as her co-workers is unquestioned. She was praised by Respondent's witnesses as being a strong advocate for her students. And yet, Groveman, Sarto and Gaynor were determined to transfer Martin as well as Dolan because they were "unhappy" with their assignments, even though all testified that despite that "unhappiness" these two teachers' performance in the classroom did not suffer.^{23/}

No evidence supports that Martin was unhappy with her assignment as a special education teacher in a 5th and 6th grade self-contained classroom at the Smith School. She had been in this assignment since 1992. Unlike others who might have shown

^{23/} I did not credit Sarto's testimony that another teacher, Ms. Dunlap, complained about Dolan's classroom performance.

signs of stagnation after many years in the same assignment, Martin demonstrated an energy to explore new territory. For instance, she revived the school store to teach her students life skills, provide a service to the other students and earn money to purchase technology for the school. In 2008-2009, Martin volunteered for a new program (Learnia Leader) to facilitate concerns of her co-workers. She also volunteered to tutor one of her students an extra hour a day. Martin bought new technology with profits from the school store and learned how to operate it on her own time in order to integrate the technology into the classroom setting. As her principal, Gaynor observed Martin's passion for teaching is evident in the success of her students.

Nevertheless, Gaynor concluded that Martin was "unhappy" and that, therefore, an involuntary transfer to the middle school where Martin was only certified to teach in a collaborative setting with another teacher as the lead was warranted. This explanation is implausible. Martin's discontent was never with her assignment at the Smith School, but with Thoresen. As director of special services, Thoresen's authority extended to all schools in the district. The two would be interacting no matter what school Martin was assigned to teach in.

Gaynor must have known that transferring Martin from Smith, where she had taught successfully for many years and where she was considered by Gaynor to be an exceptional teacher and an

important part of the Smith School tradition, would not address the "unhappiness" Martin was experiencing with Thoresen.

Additionally, Gaynor's explanation for why she never spoke to Martin about the possibility of transferring her -- namely that it was the end of school and Gaynor did not want to give Martin any more stress -- is an admission that Gaynor knew that the transfer was not going to make Martin "happy".

Transferring Martin from the Smith School to the middle school was not designed to make Martin happier. The involuntary transfer did not address her concerns with Thoresen, concerns that were truly frustrating her and contributing to her discontent, namely that Thoresen was unfairly targeting her. Although the transfer would shut down Martin's criticism and concerns regarding the aide assignment, the aide assignment was only one of many concerns Martin had with Thoresen and that were addressed at the June 15 meeting. The transfer, therefore, served only to retaliate against Martin for criticizing Thoresen and decisions made by her as director of special services. Arguably, the educational program at the Smith School suffered at least in part from the fact that Dolan, who had not taught a self-contained elementary class in many years could not take on additional responsibilities, such as the school store, a program run successfully by Martin, because of the learning curve in Dolan's new assignment.

Also, Martin could no longer do what she loved doing, teach in a self-contained classroom. Because she was not highly qualified to teach any particular subject area at the middle school, Martin could only be assigned to teach in a collaborative classroom with a regular teacher who would take the lead. The fact that Martin could submit her application to become certified in subject areas is irrelevant to the issue as to whether the Board acted out of an illegal motive. So is the fact that both she and Dolan are performing well in their new assignments. That is only a testament to their consummate professionalism that despite the Board's illegal actions, their students have not suffered.

While Martin's transfer was a punishment for raising concerns and doubts as to Thoresen's performance and her decisions regarding Martin, Dolan's transfer was opportunistic; she was in the right place at the wrong time. Once Groveman determined to transfer Martin to the middle school and "suggested" to the two principals that they consider the transfer, Sarto and Gaynor needed a teacher who could be swapped for Martin.^{24/} The added bonus was that Dolan's transfer resolved her complaints about having too many collaborative classes. Dolan was admittedly not happy with her schedule at the middle

^{24/} I do not find that Groveman, Sarto or Gaynor were hostile toward Martin's and Dolan's representation of Wayne Roger's or Dolan's activities as a building representative.

school because, for a couple of years, she had too many collaborative teaching classes. She preferred teaching in a resource room. Thus, her transfer to the Smith School, although involuntary, gave Dolan what she wanted, namely her own class.

Nevertheless, Sarto's professed reason for transferring Dolan -- that she was unhappy with the number of collaborative classes -- rings hollow. Dolan had been complaining for a couple of years. Until Groveman suggested transferring Martin and Dolan, Sarto had previously ignored Dolan's scheduling complaints because Dolan's highly qualified status in all subject areas gave Sarto the flexibility to give her classes that he was not able to assign other teachers without that status. Dolan often got more collaborative classes than she wanted as a result. Sarto testified extensively how complicated scheduling is at the middle school because of differing teacher certifications and student IEP needs. Thoresen confirmed the complexity of scheduling. Both Sarto and Thoresen viewed Dolan's multiple certifications and highly qualified status as an asset in regard to scheduling. Sarto gave no credible explanation why he would transfer a teacher who was certified in all areas and who allowed him flexibility in scheduling, while accepting a teacher who gave him no flexibility because she was not highly qualified in any subject area at the middle school.

Sarto also gave no plausible explanation for why he never consulted or even informed Dolan's immediate supervisor, Vice-Principal Porfido, that he was contemplating the Dolan transfer. Porfido's evaluations for the previous two years demonstrated what a good collaborative teacher Dolan was. Her transfer impacted the program that Porfido was primarily supervising. Basically, Sarto's explanation for not consulting or informing Porfido about Dolan was that he (Sarto) didn't have to do so, because he (Sarto) was the principal, and it was solely his decision. That may be technically true, but the explanation casts suspicion on Sarto's true motivation. Certainly, as principal, he should have been concerned with the impact of Dolan's transfer on the middle school program, not just in making Dolan happy - something Sarto could have accomplished by simply giving Dolan a schedule with more balance between resource and collaborative classes. That he didn't consult Porfido suggests that the decision was made in haste to accommodate what was the real motivation which was to transfer Martin from the Smith School in order to stifle the protests against Thoresen and her complaints about the special education program.

It is interesting that the three administrators -- Groveman, Gaynor and Sarto -- who all professed to be concerned with the happiness of Martin and Dolan consciously chose not to discuss with either veteran teacher whether a transfer would make them

happier.^{25/} The decision to cloak the transfer recommendation in secrecy suggests that the administration wanted no interference from Martin or Dolan and, especially, from Martin who Groveman viewed as organizing protests against Thoresen and the District's special education program and who Sarto viewed as a real threat to Thoresen, an untenured administrator he represented as president of the administrator's union. The decision not to discuss the transfer with either Martin or Dolan also supports that the rationale of making them happier was pretextual. It is hard to fathom how not discussing what was being contemplated and whether a transfer would address their mutual unhappiness was designed to make Martin and Dolan happier. Indeed, cloaking the decision in secrecy, letting Martin and Dolan be blind-sided at the June 24 Board meeting, guaranteed the opposite effect.

Next, it is the testimony of Thoresen herself that confirms that the transfer of Martin and, by extension, Dolan was in retaliation for their activities against Thoresen - e.g. Martin individually and, Dolan and Martin collectively through the Association's no-confidence vote. When told of what Sarto,

^{25/} Groveman had alerted Spina in a conversation with her on June 17 that he intended to transfer Martin and Dolan (1T102). Spina cautioned him against doing so but did not communicate this to Martin or Dolan. However, by the time the Spina/Groveman discussion took place, the transfer decision had been made. I do not find it material that neither Spina nor Marcus alerted Martin or Dolan prior to the Board meeting of Groveman's recommendation.

Gaynor and Groveman proposed to do, Thoresen told them in no uncertain terms that she was categorically against transferring Martin and Dolan, because she knew she would be blamed with what was going on regarding the June 15 meeting with Martin and the general Association rumblings and no-confidence vote. Thoresen reasoned correctly that she was at the heart of the decision.

Nevertheless, when Thoresen voiced her concerns about her untenured status and the no-confidence vote to Sarto and Groveman, she was assured that she had nothing to worry about, things were being taken care of. These administrators -- Groveman, Sarto and Gaynor -- were circling the wagons around a fellow untenured administrator (Thoresen). Specifically, Groveman was protecting Thoresen and ensuring her tenure approval and shutting down Martin's questioning of administration decisions regarding the special education program thereby casting the program in a negative light. Sarto and Gaynor were following Groveman's lead. Also, Sarto was ensuring that any, what he viewed to be, insubordinate behavior by Martin and the other special education staff against Thoresen would be stifled. Accordingly, ignoring Thoresen's vehement opposition to the transfers, Sarto and Gaynor followed Groveman's "suggestion" and recommended the transfers to Groveman who recommended them to the Board for approval.

Groveman's other professed rationale for recommending Martin's transfer is also pretextual. Groveman allegedly wanted the two teachers to be not only happier, but, as to Martin, he believed she would do better with an older student population. Considering that Martin had been performing exceptionally well with her 5th and 6th grade students for many years and that Groveman provided no explanation for his conclusion that Martin would perform better with slightly older students (only a grade or two older), I reject this proffered explanation as pretextual.

Despite the rarity of involuntarily transferring staff - Respondent demonstrated one actual involuntary transfer in 2003, Martin/Dolan's involuntary transfers were the only ones of special education staff in 2009. Their transfers were approved after a closed session of the Board. Martin and Dolan were not given advance notice (RICE) that their transfers were being considered. Their transfers were approved without any opportunity to be heard.

Respondent argues that Martin and Dolan were not entitled to a RICE notice because their employment conditions did not change, and they were not adversely affected. This argument is belied by the Board's own actions in the past. Respondent's exhibits support that teachers who were involuntarily transferred in the past were given a RICE notice and opportunity to be heard (CP-11; R-8). The fact that Dolan or Martin were treated differently

provides additional support that Respondent's actions were retaliatory.

Finally, there is no evidence that the Board acted independently in considering and approving Groveman's transfer recommendation at the June 24 Board meeting. Apparently, the Board learned of the transfer on that evening according to the unrebutted testimony of Martin and Dolan in regard to discussions with two Board members after the meeting. That evening, the Board even approved the expenditure of funds for Martin's attendance at a reading workshop program that was utilized solely in the elementary school despite approving her transfer to the middle school.

No Board member testified to establish that they questioned Groveman's rationale for recommending the unusual involuntary transfer of two excellent teachers or that they did not simply accept Groveman's assertions that the two teachers were unhappy and would be happier in different schools and in different assignments. Groveman's motivation in the transfer recommendation stemmed from Martin's activities critical of Thoresen, the classroom aide assignments and the Association's no-confidence vote meetings. Without independent evidence of a non-hostile rationale, the Board's approval is tied inextricably to Groveman and by extension Sarto and Gaynor -- all three administrators' recommendations were effectively accepted.

Accordingly, the Board's actions bear the same illegal motivation as the three administrators.

Based on the foregoing, I recommend that the Board violated 5.4a(3) and derivatively (1) of the Act when it involuntarily transferred teachers Theresa Martin and Patricia Dolan for the 2009-2010 school year in retaliation for Martin's activities voicing concerns individually and collectively against Director of Special Services Laurie Thoresen as well as the concerns raised by the special education staff through the Association meetings to take a no-confidence vote regarding Thoresen. But for the retaliation against Martin, Dolan would not have been involuntarily transferred. Her transfer was causally connected to Respondent's illegal activities and, thus, also a violation of 5.4a(3) and derivatively (1) of the Act.

The Board also independently violated 5.4a(1) of the Act when Principal Sarto sent an e-mail to Association President Marcus on June 19 threatening to report what he considered to be insubordinate behavior of staff who, in conducting no-confidence vote meetings regarding Thoresen, without first going to the administration with their concerns and complaints violated the chain of command. An employer independently violates subsection 5.4a(1) if its action tends to interfere with an employees' statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER

287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp. Sarto's e-mail had a tendency to interfere with the employees' statutory rights to meet to discuss a no-confidence vote regarding Thoresen and lacked a legitimate and substantial business justification.

Specifically, although Sarto's e-mail sought information from one union president to another when he inquired of Marcus in the e-mail as to whether she was aware of the no-confidence vote meetings and whether names of some teachers were being used without their permission in e-mails related to these meetings, his subsequent threat to report what he considered to be the special education staff's insubordinate behavior by not following proper channels was separate and apart from the question about the use of teacher's names or general information about the meetings. His threat to report insubordinate behavior which he defined as not following the chain of command crossed the line from permissible free speech between two Association presidents dealing as equals under Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), to inappropriate threats from a supervisor to a subordinate about the exercise of

protected activity. See generally, New Jersey Dept. of Human Services (Garlanger), P.E.R.C. No. 2001-52, 27 NJPER 177 (¶32057 2001) (shop steward's conduct after meeting with yelling and physical intimidation not protected under the Act); Atlantic County Judiciary, P.E.R.C. No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd 21 NJPER 321 (¶26206 App. Div. 1994) (no violation where employee transferred for offensive and disrespectful speech); New Jersey Dept. of Ed., P.E.R.C. No. 85-85, 11 NJPER 130 (¶16058 1985) (employer appropriately reprimanded shop steward for insulting and intimidating behavior). Contrast, East Windsor Reg. Bd. of Ed., H.E. No. 2006-4, 31 NJPER 369 (¶147 2005) (Board members e-mail comments criticizing union president's alleged misconduct not violative of Act because no threats to employees).

Unlike the threatening e-mail, I do not agree with Charging Party that Sarto's presence at the June 15 meeting with Martin and Spina crossed the line between his role as Administrators' Association president and as principal of the middle/high school. His demeanor was aggressive, but then so was Spina's. He was acting appropriately in his role as Thoresen's representative in challenging the concerns being raised by Martin and her representative. There was no threat issued in this context and Sarto had a right to behave as he did as an equal with Spina in representing the interests of their unit members.

The Contested Transfer Petitions - TI-2010-1 and TI-2010-2

N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The petitioner has the burden of proving its allegations by a preponderance of the evidence. Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶29056 1998). A transfer is predominantly disciplinary when it is punitive and/or is not made for educational or staffing reasons. West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96, 98 (¶32037 2001). Accordingly, in exercising its jurisdiction under N.J.S.A. 34:13A-27, the Commission considers such factors as the transfer was intended to accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident that prompted the transfer.

In my analysis of the unfair practice charge consolidated with the petitions, I concluded that the Board through its agents - Superintendent Groveman and Principals Gaynor and Sarto - orchestrated the transfer of Theresa Martin and Patricia Dolan out of hostility in particular to Martin's complaints about Director of Special Services Laurie Thoresen and concerns raised by the special education staff at Association meetings to discuss a no-confidence vote tied to Thoresen's leadership. The purported educational rationale as to Martin, that she was

unhappy, was rejected by me as pretextual. Martin's transfer was not designed to address her "unhappiness" with Thoresen.

Moreover, transferring Martin, an exceptional teacher who, despite her complaints about Thoresen, was performing exceedingly well in 2008-2009 for her students, co-workers and the school's programs arguably negatively impacted the educational program at Smith School. Certainly, the fact that the school store can no longer operate because Martin who ran the program is transferred and Dolan cannot and has not taken on that responsibility is a real loss to the students and the school. Having no credible educational purpose, Martin's transfer to a school where she does not have the certifications to teach in a self-contained classroom was punitive and in violation of the Act.

Martin's transfer is similar to the transfer effectuated in West New York Bd. of Ed. There, the Commission determined that the transfer of a supervisor of technology was disciplinary because it was motivated by a desire to end his complaints about computer disrepairs and to prevent him from revealing the problem to the media. The intent, the Commission found, was to punish the employee and was, therefore, predominantly disciplinary within the meaning of N.J.S.A. 34:13A-27. See also, West New York Bd. of Ed., P.E.R.C. No. 91-94, 17 NJPER 248 (¶22113 1991) (teacher transfer disciplinary where effectuated shortly after posting signs protesting layoffs).

Here, the suggestion to transfer Martin was made by Groveman to Principals Sarto and Gaynor one day after a Board meeting at which a large number of parents appeared together with Martin and other special education staff to protest the assignment of aides in Martin's class for the following school year. The formal written recommendation to transfer Martin was delivered by Gaynor and Sarto the day after a particularly heated meeting between Martin, Martin's Uniserv representative, Thoresen and Sarto who was acting as Thoresen's union representative to discuss Martin's complaints against Thoresen. The timing combined with the Board's failure to articulate a non-pretextual rationale for its actions support that Martin's transfer was predominantly disciplinary.^{26/}

As to Dolan, her transfer as I reasoned in my analysis of the charge was an extension of the decision to transfer Martin. Once it was decided to remove Martin from the Smith School, Dolan's complaints about the scheduling in the middle school, where she was assigned more collaborative classes than she liked to teach, gave the administration, namely her principal, a convenient person to swap for Martin. Arguably, her transfer, like Martin's, also negatively impacted the educational program because Dolan's certifications in all core subject areas gave

^{26/} Groveman's, Sarto's and Gaynor's testimony that they did not make the transfer recommendation to discipline Martin is self-serving and not material.

Sarto flexibility in creating, what he termed, a very complicated and difficult scheduling system.

However, Dolan's transfer was not effectuated as a punishment or discipline as to her. The decision to transfer her was collateral damage from the Martin decision. Dolan was upset with having to team teach in too many collaborative classes, so to the extent that her transfer addressed these concerns and gave her what she wanted -- albeit what she could have had if she stayed at the middle school and was assigned to teach in more resource classrooms -- Dolan's transfer was not disciplinary or punitive as to her.

Based on the foregoing, I recommend that the Board violated N.J.S.A. 34:13A-25 when it transferred Theresa Martin from Smith School to the middle school for the 2008-2009 school year for disciplinary reasons. I recommend that the contested transfer petition (TI-2010-001) as to Patricia Dolan be dismissed.

CONCLUSIONS OF LAW

The Saddle Brook Board of Education violated 5.4a(3) and derivatively (1) of the Act by transferring Theresa Martin and Patricia Dolan because Martin raised various complaints against Director of Special Services Laurie Thoresen. Specifically, Martin complained about the assignment of aides in her classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen. Additionally, Martin was discriminated against because special education staff were meeting through the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen.

The Board independently violated 5.4a(1) of the Act when its agent James Sarto sent an e-mail to Association President Marcus on June 19 threatening to report insubordinate behavior of staff to the Board and Superintendent Groveman in connection with activities related to the Association's no-confidence vote meetings.

The Board violated N.J.S.A. 34:13A-25 when it transferred Theresa Martin from the Helen I. Smith School to the middle school for disciplinary reasons.

The Board did not violate N.J.S.A. 34:13A-25 when it transferred Patricia Dolan (TI-2010-001) and I recommend that the Commission dismiss her contested transfer petition.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. Respondent Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Theresa Martin because (1) Martin raised various complaints against Director of Special Services Laurie Thoresen and complained about the assignment of aides in Martin's classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen; (2) because special education staff were meeting under the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen; and (3) because Principal Sarto sent an e-mail to Association President Marcus on June 19 threatening to report what he considered to be insubordinate behavior of staff who conducted no-confidence vote meetings regarding Thoresen without first going to the administration with their concerns and complaints, thus, in his view, violating the chain of command.

2. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Theresa Martin because Martin raised various complaints against Director of Special Services Laurie Thoresen and complained about

the assignment of aides in Martin's classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen, and because special education staff were meeting under the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen.

3. Transferring Theresa Martin from Helen I. Smith School to the middle school for disciplinary reasons.

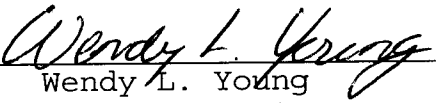
B. I recommend that the contested transfer petition filed by Patricia Dolan be dismissed.

C. That the Board take the following affirmative action:

1. Transfer Theresa Martin back to the Helen I. Smith School no later than the start of the 2011-2012 school year.

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

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


Wendy L. Young
Hearing Examiner

DATED: March 8, 2011
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 18, 2011.



NOTICE TO EMPLOYEES



PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed to them by the Act, particularly by transferring Theresa Martin because (1) Martin raised various complaints against Director of Special Services Laurie Thoresen and complained about the assignment of aides in Martin's classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen; (2) because special education staff were meeting under the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen; and (3) because Principal Sarto sent an e-mail to Association President Marcus on June 19 threatening to report what he considered to be insubordinate behavior of staff who conducted no-confidence vote meetings regarding Thoresen without first going to the administration with their concerns and complaints, thus, in his view, violating the chain of command.

WE WILL NOT discriminate in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act particularly by transferring Theresa Martin because Martin raised various complaints against Director of Special Services Laurie Thoresen and complained about the assignment of aides in Martin's classroom for 2009-2010 at a June 10 Board meeting and at a meeting on June 15 with Thoresen, and because special education staff were meeting under the auspices of the Saddle Brook Education Association in the Spring of 2009 to discuss a no-confidence vote regarding Thoresen.

WE WILL NOT transfer Theresa Martin from Helen I. Smith School to the middle school for disciplinary reasons.

WE WILL transfer Theresa Martin back to the Helen I. Smith School no later than the start of the 2011-2012 school year.

Docket No. CO-2010-137,
TI-2010-001,
TI-2010-002

Saddle Brook Board of Education
(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372