H.E. NO. 2017-5

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

In the Matter of

SOMERSET HILLS BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2012-349

SOMERSET HILLS EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Somerset Hills Board of Education ("Board") violated sections 5.4a(1), independently and derivatively, and a(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Somerset Hills Education Association ("Association") filed an unfair practice charge alleging that in May and June 2012, the Board's negotiations committee sent letters directly to Association members concerning the Board's then-current collective negotiations offers. The Association contends that sending the letters violated the parties' agreed-upon ground rules and constituted threats of reprisal and refusal to negotiate in good faith in violation of the Act. The hearing examiner finds that both letters clearly implied consequences for the Association's continued refusal to settle the contract, and caused a chilling effect among Association members, thus violating the Act.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair 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.

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Appearances:

For the Respondent
Adams, Gutierrez, & Lattiboudere
(Adam Herman, Esq.)

For the Charging Party
Law Offices of Oxfeld Cohen, P.C.
(William Hannan, Esq.)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On June 22, 2012, the Somerset Hills Education Association ("the Association") filed an unfair practice charge against the Somerset Hills Board of Education ("the Board"). The charge claims that in May 2012, the Board's negotiations committee sent a letter to Association members concerning the Board's then-current collective negotiations offer to the Association. The letter specifically stated: "The Board will not be offering any retroactive salary if the agreement is not settled before the end of the current school year." The Association contends that

sending this letter violated the parties' agreed-upon ground rules and constituted a threat of reprisal and refusal to negotiate in good faith in violation of sections 5.4a(1), (2), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[1/]

On December 16, 2013, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the 5.4a(1) and 5.4a(5) allegations. The Director declined to issue a complaint on the 5.4a(2) allegation. On January 2, 2014, the Board filed an Answer. It admitted sending the letter to Association members but denied that the letter constituted a threat of reprisal or violates the Act.

On June 19, 2014, I conducted a hearing at which the parties examined witnesses and presented exhibits.[2/] During the hearing,

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

2/ "C" refers to the Commission's exhibits; "J" refers to joint exhibits; and "CP" refers to the Charging Party's exhibit. The Respondent ("R") did not enter any documents into evidence. The transcript for the hearing on June 19, 2014 is cited as "T-", followed by the page number.

Although the entire hearing took place on June 19, 2014, the (continued...)

the Association sought to amend its unfair practice charge to include a June 18, 2012 letter sent by the Board to Association members concerning the status of negotiations (1T9). I allowed the amendment over the Board's objection, finding that the document had been provided in discovery and thus did not constitute a surprise to the Board. I instructed the Association to file an amended charge to include its allegation that the June 18, 2012 letter constitutes a threat of reprisal (1T9-1T10). While the Association did not file the amended charge after the hearing, the attendant circumstances of the letter, including the letter itself, have been fully and fairly litigated and I consider it to be part of the record.

Both parties filed post-hearing briefs on August 5, 2014 and reply briefs on August 20, 2014. The record closed on August 20, 2014. Upon the entire record, I make the following:

2/ (...continued)
transcript was received in five separate parts, each part setting forth the entire testimony of one of the five witnesses. For ease of reference, 1T is the transcript of Judith Martin's testimony, commencing at 11:41 a.m.; 2T is the transcript of Jeffrey Falzaran's testimony, commencing at 12:29 p.m.; 3T is the transcript of Mike Szakiel's testimony, commencing at 12:39 p.m.; 4T is the transcript of Joseph Foglia's testimony, commencing at 12:49 p.m, and 5T is the transcript of Robert Baker's testimony, commencing at 1:16 p.m. The starting times are located on page 2 of each transcript.

FINDINGS OF FACT

1. The Board and the Association are, respectively, a public employer and public employee representative within the meaning of the Act (C-1, C-2).

2. The parties stipulated that the Board and Association were parties to a collective negotiations agreement effective July 1, 2008 through June 30, 2011 (1T15).

3. The parties stipulated that negotiations between them for a successor agreement began in January 2011 (1T15).

4. The parties stipulated that they agreed to ground rules in January 2011 (1T15). Ground rule #8 provides:

> The contents of regular negotiation sessions shall be confidential between the respective Committees. However, each Committee shall have the right to advise and update their respective memberships as to the progress of negotiations. Neither party shall contact or advise the public as to the contents of negotiations unless the parties agree to do so jointly. (J-1).

5. Judith Martin (Martin) has been employed by the Board for thirty-two years (1T24). During negotiations for a successor agreement to the 2008-2011 contract, she was President of the Association and also one of its negotiators (1T25). Martin had also been a negotiator for multiple prior contracts (1T25). Ground rules were always agreed to by the parties prior to bargaining and ground rule #8 was a rule the parties had agreed to in several previous negotiations (1T26). According to Martin,

the Association interpreted rule #8 to prohibit each party from communicating with the other party's constituency, and that neither party could provide specific details about the negotiations to its respective membership until a memorandum of understanding (MOA) was reached (1T27). Martin testified that she believed that the language stating, "[h]owever, each committee shall have the right to advise and update their respective memberships as to the progress of negotiations," meant that the negotiating committee could only update other committee members if they missed a meeting, not update the general membership on the progress of negotiations (1T40). I credit Martin's testimony as to her understanding, and the parties' historical interpretation, of the communication parameters of ground rule #8.

6. The parties stipulated that negotiations for the successor agreement to the 2008-2011 contract were long and contentious (1T15, 1T16).

7. The parties stipulated that the Board's negotiations committee sent a letter dated May 8, 2012 to the teaching staff members, which was delivered to teachers' school mailboxes (1T16).

8. The May 8, 2012 letter, signed by the Board's Negotiations Chairman and three members of its negotiation committee, states in its entirety:

> Dear Somerset Hills Board of Education Staff Member,
>
> The Somerset Hills Board of Education values all staff members and realizes the toll that the unsettled employment contract has taken on the entire school community. The purpose of this letter is to provide the facts to you regarding the Board's current offer.
>
> - The last Board salary offer to SHEA is 1.5% for the 2011-2012 school year; 2% for the 2012-2013 school year; and 2% for the 2013-2014 school year. The current offer represents significant movement from the Board's initial offer.
>
> - The Board has also offered an increase in longevity and an increase in stipends.
>
> - The Board will not be offering any retroactive salary if the agreement is not settled before the end of the current school year.
>
> The Board will continue to work with the Somerset Hills Education Association (SHEA) to settle the contract either through the upcoming fact-finding process or by direct communication with SHEA. The Board looks forward to resolving negotiations as quickly as possible. Thank you for continuing to serve the students of Somerset Hills School District.
>
> Sincerely,
>
> The Negotiation Committee, on behalf of the Somerset Hills Board of Education
>
> (J-2).

9. The parties stipulated that the Association was not notified before the Board sent Association members the May 8, 2012 letter (1T16).

10. According to Martin, the Association took issue with the May 8, 2012 letter because it believed the ground rules prohibited such a communication, and although the Board told the Association during negotiations that there would not be any retroactive pay if the contract was not resolved by the end of the school year, the Board's report of that statement in its letter was meant to put pressure on the Association to settle the contract (1T29, 1T31, 1T33, 1T34). Martin testified that several Association members contacted her expressing similar concerns about the letter (1T32). Martin further testified that to her knowledge, the Board had never sent a letter directly to Association members during prior negotiations (1T35). I credit Martin's testimony that the Board had never sent such a letter during prior negotiations, and that Association members contacted Martin to express their concerns.

11. Jeffrey Falzaran (Falzaran) is an English teacher and has been employed by the district for eleven years (2T5). Falzaran testified that the May 8, 2012 letter made him "a little upset" and made him think that there was an intent to create a divide within the Union (2T7). Falzaran further testified that he discussed the letter with several coworkers, and they seemed to share his sentiments (2T8). I credit Falzaran's testimony.

Mike Szakiel (Szakiel) is a physics teacher and has been employed by the Board for eight years (3T5). Szakiel testified

that he was surprised when he received the May 8, 2012 letter because it was his understanding from discussions with his colleagues and Association officers that the Board would not communicate directly with the teachers, but that all communication would come through the Association's negotiations team (3T7, 3T10, 3T11). Szakiel was alarmed by the entire letter, but found bullet point number three particularly unsettling:

> Because it was almost a threatening – I was actually very upset reading this. And I took it as an ultimatum from the Board to all the teachers saying, "Okay, here's the offer. If you don't take it, you will face the consequences," which was spelled out in the letter (3T8).

Szakiel testified that other teachers were discussing the letter "like a beehive . . . outraged by the ultimatum and questioning the legality of this" (3T8). I credit Szakiel's testimony.

Joseph Foglia (Foglia) has been employed by the Board for thirty-two years and has participated in seven negotiations as part of the Association's negotiations team (4T5). Foglia testified that the Board had never previously sent Association members a letter similar to the May 8, 2012 letter (4T6). I credit Folgia's testimony.

12. Robert Baker (Baker) has been a member of the Board's negotiating committee since 2008 (5T6). He served as Chairman of

the negotiating committee for the contract that expired in 2008, as well as for the 2011-2014 contract negotiations (5T6).

13. Baker signed the ground rules on behalf of the Board on January 25, 2011 (J-1).

14. Baker testified that the Board negotiating committee believed that ground rule #8 gave them the right to discuss the status and progress of negotiations with the rest of the Board members (5T7). Accordingly, the Board believed the Association had that same right, and expected the Association's negotiating committee to update its own membership regarding the status of negotiations (5T8).

15. Baker testified as the Board and Association were finishing mediation and moving into the fact-finding level of negotiations, several Board members reported getting "feedback" from Association members who "felt they were in the dark" and confused by some of the numbers they were hearing (5T9-5T10, 5T16). Consequently, the Board sent the May 8, 2012 letter to clarify any confusion regarding what its offer was (5T10). Baker admitted that the offer that was highlighted in the May 8, 2012 letter, including that there would be no retroactive salary if the contract wasn't settled by the end of the school year, was factual and had been previously communicated to the Association's negotiating committee to the Association prior to the letter being distributed (5T11).

On direct examination, Baker was asked:

> Q: Was there anything in this letter that you feel constituted any threat to the membership or to SHEA?
>
> A: No, we used the word offer every single time. We were negotiating. This was the current offer. Obviously if they rejected this, we would have to come up with another offer. So that's the way I reviewed this. But this was our current offer.

(5T11-5T12). Baker believed that ground rule eight was silent about the Board's ability to communicate with the Association membership (5T9, 5T15). I credit Baker's testimony that he relied upon ground rule #8's silence about the Board's ability to communicate with the Association's membership in deciding to contact the members directly.

16. The Board's offer in the May 8, 2012 letter was rejected by the Association (5T12).

17. The Board then sent a second letter dated June 18, 2012 directly to Association members. (CP-1). This letter states in its entirety:

> Dear Somerset Hills Board of Education Staff Member,
>
> The Somerset Hills Board of Education is sad to report that our last offer has been rejected by the negotiating team for the Somerset Hills Education Association (SHEA). The purpose of this letter is to provide the facts to you regarding the Board's current offer:

- The Board's current salary offer to SHEA is 1.0% for the 2011-2012 school year; 2.75% for the 2012-2013 school year; and 2.75% for the 2013-2014 school year for a total salary offer of 6.5% for the three year period.
- The current offer will expire at 6pm on June 27, 2012.
- The Board has also offered an increase in longevity and an increase in stipends.
- There are no reductions to health benefits.
- New employees who work 25 hours or less per week would not be entitled to health benefits. All current full time employees will be grandfathered.
- There is a proposed cap on tuition reimbursement of $150,000 per year in the second and third year of the contract with a maximum of 9 credits per employee per year. Tuition reimbursement expense for the current school year is $123,000.
- The fact-finding process could take one and one-half years to conclude, based upon feedback from other districts.

The Board was very hopeful that the contract would have been settled today. We are extremely grateful to our staff for their hard work and dedication to our students over this past school year. The Board will continue to work on a settlement either through the upcoming fact-finding process or by direct communication with SHEA.

Sincerely,

The Negotiating Committee, on behalf of the Somerset Hills Board of Education

(CP-1).

The record does not reflect whether the date and time the Board set forth for the expiration of its offer set in the June 18 letter was previously communicated to the Association's

negotiations representatives. Based upon the entire record, I infer that it was not.

18. On June 21, the Association's negotiations team met with the membership to discuss the letters (1T34). Martin testified that Association's negotiations team, as well as individual members had the same concerns about the June 18, 2012 letter as they had with the May 8, 2012 letter; namely, that it violated the ground rules and was an attempt to put pressure on the Association to settle the contract (1T33). I credit Martin's testimony.

19. The Association also rejected the offer in the June 18, 2012 letter (5T13).

20. The parties stipulated that they reached an agreement in or about July or August 2012, with ratification by the Association taking place thereafter. The agreement was reached after mediation (1T15).

ANALYSIS

For the reasons that follow, I find that the Board violated 5.4a(1), independently and derivatively, and 5.4a(5) when it sent the May 8 and June 18, 2012 letters, containing threats of reprisal, directly to Association members in violation of the parties' agreed-upon negotiations ground rules.

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for a public employer to refuse to negotiate in good faith with a

majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

An independent violation of subsection 5.4a(1) of the Act will be found if an employer's action tends to interfere, restrain or coerce an employee's 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); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550, 551 n.1 (¶10285 1979). Neither illegal motive nor actual interference need to be proven to establish an a(1) violation. Orange Bd. of Ed.; Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982). Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. It is the tendency to interfere with protected rights and not motive or consequences that is essential for finding a violation. Mine Hill Tp., City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶4096 1978), aff'd App. Div. Docket No. A-3562-77 (3/5/79).

Section 5.4a(1) cases require a balancing of two important but conflicting rights: the employer’s right of free speech and the employee’s rights to be free from coercion, restraint or interference in the exercise of protected rights. See Rutgers

and URA-AFT Local 1766, AFL-CIO, H.E. 2014-11, 40 NJPER 541 (¶175 2014); State of New Jersey (Trenton State College) and CNJSCL NJSFT-AFT/AFL-CIO, P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987); County of Mercer, P.E.R.C. No. 86-33, 11 NJPER 589 (¶16207 1985). In striking that balance, all the circumstances of a particular case must be reviewed.

The Act permits public employers to express opinions about labor relations provided such statements are not coercive. An employer has the right to advise employees of the status of contract negotiations as long as the communication does not contain a threat of reprisal or promise of benefits. In analyzing speech cases, the total context in which the statements were made must be taken into consideration. See Camden County and Council 10, H.E. 2011-5, 37 NJPER 63 (¶24 2010); State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶18629 1987); Mercer County, supra, adopting analysis in H.E. No. 85-45, 11 NJPER 395 (¶16140 1985); Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981); Tp. of South Orange Village, D.U.P. 92-6, 17 NJPER 466 (¶22222 1991).

The Commission has held that as part of their obligation to negotiate over terms and conditions of employment, a public employer and public employee representative have the right to

negotiate over and agree upon ground rules for negotiations. East Windsor Regional Board of Education and East Windsor Education Association, H.E. 2013-2, 39 NJPER 130 (¶41 2012); Phillipsburg Bd. Of Ed., P.E.R.C. No. 83-34, 8 NJPER 569 (¶13262 1982). In the absence of an agreement on ground rules, the "free speech rule" applies, provided that the communication neither threatens reprisal or force nor promises a benefit. Rutgers, supra, citing N.L.R.B. v. Corning Glass Works, 204 F.2d 422 (1st Cir. 1953), 32 LRRM 2136. The concept has specifically protected an employer's right to communicate with its employees during contract negotiations. Proctor and Gamble Mfg. Co., 160 NLRB 334, 62 LRRM 1617 (1966); see also Black Horse Pike Regional Bd. Of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981); Middletown Tp., D.U.P. No. 89-7, 15 NJPER 84 (¶120035 1988).

The Association argues that the Board violated N.J.S.A. 34:13A(1) and (5) when it sent the May 8, 2012 letter directly to Association members stating that an offer for retroactive pay would be withdrawn if the parties did not reach an agreement by the end of the 2011-2012 school year, and when it subsequently sent the June 18, 2012 letter containing statements "undermining" the Association's negotiations team and threatening to withdraw its offer if no agreement was reached by an arbitrary date. The Association asserts that both letters violated the ground rules between the parties, and were threatening and coercive in nature

within the greater context of the parties' protracted and contentious negotiations. (Charging Party's Brief at 7, 9, 10).

In support of its position, the Association cites Camden County and Camden Council No. 10 et. al., supra. In that case, in its Motion for Summary Judgement, Camden Council 10 alleged that the County violated the Act when the County Administrator gave a press interview and sent a letter to the homes of all negotiations unit members stating that one-half of the retroactive 3.5% pay increase for 2008 would be permanently withdrawn if the parties did not reach agreement by a certain date. Council 10 maintained that the County deliberately bypassed the union by publicly making the statement and directly communicating it to its members. Council 10 contended the statement was inherently coercive and designed to undermine and interfere with its leadership, especially when taken in the context of protracted and contentious negotiations and announced right before the next negotiations sessions. The County maintained that it had the right to directly communicate with its employees regarding the status of contract negotiations.

The Hearing Examiner granted the Motion in part, finding that the County violated subsection 5.4a(1) of the Act, because the timing and manner in which the County Administrator issued his statements tended to interfere and coerce rights guaranteed to employees under the Act without a substantial business

justification. Camden County at 65. Significantly, the hearing examiner noted:

> Never before had the County Administrator written directly to his employees, all bargaining unit members, regarding the status of contract negotiations. A copy of the County's letter was not provided to Council 10/Supervisory Unit leaders. After examining the totality of circumstances in which the statements were made, I find them to be coercive, threatening reprisal if an agreement is not reached by October 15th. I further find that the October 15 deadline was purely arbitrary and its selection tended to interfere with negotiations without a substantial business justification.

Camden County at 66. The hearing examiner denied the Motion as to the 5.4a(2) and (5) allegations, finding a hearing necessary to develop the record on those issues.

The Board argues that the Association's "sole claim in this matter is that a single sentence in a negotiations status update letter constitutes a threat of reprisal" and violates the Act (Respondent's Brief at 1). The Board maintains that the Act permits public employers to express opinions about labor relations and to advise employees of the status of contract negotiations, and that the Board's May 2012 letter provided "facts" regarding the Board's current offer and did not contain any threat of reprisal or any intimidating language (Respondent's brief at 2).

The Board further argues that the Association's reliance on Camden County is inapposite and distinguishable from this matter,

in that here, unlike Camden County, the Board did not send the May 8 letter to the homes of teaching staff members, and did not send the letter in response to any public demonstration by Association members, but simply sent the letter in response to inquiries it received from teaching staff members seeking clarification of the Board's offer (Respondent's Brief at 12, 13). Therefore, the Board argues, based upon a totality of the circumstances, the Board exercised its right to advise employees of the status of contract negotiations and did not violate the Act. As such, the Association's charge should be dismissed.

The Board argues that it was within its rights to communicate the status of negotiations to Association members because the ground rules were not explicit that it could not do so, and because its statements were factual and not coercive. Therefore, the Board argues, its statements were permitted by its free speech rights and not constrained by the parties' negotiations ground rules.

I disagree. Camden County is on point to the facts of this matter, illustrating similar facts which formed the basis for a violation of the Act. Moreover, by agreeing to ground rules, the parties here mutually agreed to limit their respective speech on subjects of negotiations during those negotiations. They explicitly agreed to refrain from making "public" comment. Witnesses for both the Board and Association testified that this

ground rule had existed between the parties over several contract negotiations and this was the first time that either party had sought to communicate directly with the opposing party's constituency. While the rule is technically silent as to the parties' right to communicate with the opposite constituency, the record is clear that prior to the May 2012 letter, both parties clearly construed the rule to define the "public" as any body outside of the parties' respective negotiations representatives. But these negotiations were particularly contentious, and despite the Board's protestations to the contrary, I find that the May and June letters clearly violated the "spirit" of the long-established ground rule between the parties.

Moreover, negotiations chairman Baker's testimony unwittingly belied his intent in sending the May 2012 letter to the Association's membership: ". . . we used the word offer every single time. We were negotiating." (emphasis added). I infer from this testimony that Baker, an experienced negotiator, sought to influence the Association members by negotiating directly with them. In this context, I find that the Board's direct communication with Association members was a form of "public" comment, also violating the "letter" of Ground Rule 8.

Further, by communicating a previously unannounced offer expiration date in its June 2012 letter, it is clear that the Board intended to put pressure on the Association's negotiators

through its membership, to accept the Board's offer. It was the Association's exclusive right and responsibility to communicate the status of negotiations to its members as it saw fit. See Lullo v. IAFF, 55 N.J. 409, 426 (1970). No facts indicate any economic reasons for the offer's "expiration date." Both Association President Martin and several Association members directly testified to the chilling effect the letters created among Association members. The tenor of both the May and June letters clearly implied consequences for the Association's continued refusal to settle the contract. It is difficult to construe such words as anything but coercive. Thus, I find that through both letters, the Board communicated a threat of reprisal to the Association members, in violation of the Act.

Thus, I recommend that the Commission find that the Board violated 5.4a(1) and (5) of the Act.

Finally, the Association argues that the Association should not be permitted to amend its charge to include allegations pertaining to the June 18, 2013 letter, as its request is untimely and prejudicial. Respondent's brief at 8.

A hearing examiner has the discretion to permit the amendment of a Complaint at any point before the case is transferred to the Commission. N.J.A.C. 19:14-6.3(a)(8). When I granted the request to amend at the time of hearing, over the Board's objection, I found that the document had been provided in

discovery and thus was not a surprise to the Respondent. The Association's motion to amend was timely to the allegations of the original charge and the additional allegations were in the nature of those of the original charge, and have been analyzed as such. The Board's only dispute of the June 18, 2012 letter was whether it constituted a violation of the Act. Thus, I find that the Board was not surprised or unfairly prejudiced by the amendment. The amendment to the charge was thus appropriate for a full and fair hearing of all of the facts related to the original unfair practice charge.

CONCLUSION

The Board violated N.J.S.A. 34:13A-5.4a(1) and (5) by issuing the May and June 2012 letters containing threats of reprisal and by violating the parties' negotiations ground rules.

RECOMMENDATION

I recommend that the Commission **ORDER**:

A. That the Board cease and desist from:

1. Failing to negotiate in good faith with the Association concerning terms and conditions of employment, particularly by failing to comply with Ground Rules for Negotiations negotiated and agreed upon by the parties.

B. That the Board take the following affirmative action:

1. Comply with any ground rules for negotiations in the future.

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 shall, after being signed by the Board's authorized representative, be posted immediately and 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 with this order.

/s/Patricia T. Todd
Patricia T. Todd
Hearing Examiner

DATED: December 29, 2016
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 January 9, 2017.

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 cease and desist from failing to negotiate in good faith with the Association concerning terms and conditions of employment, particularly by failing to comply with Ground Rules for Negotiations negotiated and agreed upon by the parties.

WE WILL comply with any ground rules for negotiations in the future.

Docket No. CO-2012-349

Somerset Hills 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

APPENDIX "A"