

H.E. NO. 2019-2

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

In the Matter of

CLARK TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2015-132

CLARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a complaint alleging that the Clark Township Board of Education retaliated against Michael Mancino by refusing to appoint him to extra-curricular varsity football coaching assignments due to his union activities and him becoming Association President. The Hearing Examiner found that when Mancino was appointed as head football coach in 2011, he agreed to resign from his basketball coaching position out of the district. After granting Mancino requests to continue to coach basketball out of the district for two additional seasons, the Board decided to enforce the agreement and insisted Mancino resign his basketball coaching position to focus more on the students in Clark. The Hearing Examiner found that this decision was made prior to Mancino becoming Association President.

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
Weiner Law Group
(Patricia C. Melia, of Counsel)

For the Charging Party
Oxford Cohen
(Randi Doner April, of Counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On December 11, 2014, the Clark Education Association (Charging Party or Association) filed an unfair practice charge against the Clark Township Board of Education (Respondent or Board). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4a(1), (3) and (5),^{1/} when the

^{1/} These provisions prohibit public employers, their
(continued...)

Board retaliated against teacher and Association President Michael Mancino (Mancino) by refusing to appoint him to extra-curricular varsity coaching assignments due to his union activities.

On March 8, 2016, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing (C-1)^{2/} on only the 5.4a(1) and (3) allegations. The Director assigned the matter to me for hearing.

On March 11, 2016, Respondent filed its Answer (C-2). It admits that Mancino served in positions as both assistant varsity football coach (2000-2011) and varsity head football coach (2011-2014) at Johnson High School (Johnson)^{3/}, but asserts that when Mancino was hired as the head varsity football coach in 2011, he was also the head varsity coach for softball at Johnson

1/ (...continued)
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. (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/ Commission exhibits are marked "C" while Charging Party and Respondent exhibits are marked, respectively, "CP" and "R".

3/ Johnson High School is the only high school in Clark.

and head varsity basketball coach at Caldwell.^{4/} Given the heavy burden of coaching three varsity sports, the Board asserts that Mancino was advised by the Board that he would not be allowed to coach all three varsity sports and would have to resign one of the positions. The Board acknowledges that Mancino was elected as Association President in April 2014. The Board also admits that it advised him on June 24, 2014 that he would not be renewed as the head varsity football coach for the 2014-2015 school year, but denies that Mancino was told it was because of election as Association President. The Board also asserts a legitimate business justification for not appointing Mancino as assistant football coach, namely, not wanting to create a situation where the new head football coach could be undermined.

A hearing was conducted on September 28 and November 21, 2017 and March 5, 2018.^{5/} The parties examined witnesses and introduced exhibits into evidence. On the first day of hearing, I granted Charging Party's motion to sequester witnesses. Respondent raised no objection (1T9). The resource person for Charging Party was Association President Michael Mancino and for

^{4/} Caldwell High School is part of the Caldwell-West Caldwell school district.

^{5/} Transcript cites for the hearing dates are "1T", "2T" and "3T." "1T" refers to the first day of hearing, "2T" refers to the second day of hearing, and "3T" refers to the third day of hearing.

Respondent was Superintendent Edward Grande (1T9-1T10).^{6/}

Post-hearing briefs were filed by June 8, 2018. Upon the record, I make the following:

FINDINGS OF FACT

1. The Board and Association are, respectively, public employer and public employee representative within the meaning of the Act (1T8).

2. Mancino is currently employed by the Ramapo Indian Hills School District as an assistant principal in the high school (1T21-1T22). Mancino was previously employed by the Clark Township Board of Education beginning in 2006 as a math teacher at Johnson, teaching mostly basic math skills in the High School Proficiency Assessment (HSPA) class (1T22-1T23, 1T69). He worked as a teacher from approximately 7:15 a.m. until 3:00 p.m. (1T24). From 1993 to 1998, and again from 2000 to 2011, Mancino was also employed at Johnson as an assistant football coach (1T23).

3. Konstantinos Kalikas (Kalikas) has been employed by the Board since 1998 (3T4). From 1998 to 2008, Kalikas was an English teacher and a coach of multiple sports including football (3T5). From 2008 to present, Kalikas has been the athletic director for the district (3T5). As athletic director, he is responsible for running all athletic programs in Clark, including

6/ Resource persons remained in the hearing room throughout the course of the hearing. Mancino was a witness, although Grande was not a witness.

scheduling as well as monitoring and evaluating coaches (3T5). He also conducts interviews for coaching positions and makes recommendations to the athletic committee, and ultimately the Board, for final approval of all coaching appointments (3T5-3T7). Coaching appointments are usually made two times a year (3T6).

Also, as athletic director, Kalikas is on the Board's athletic committee and is responsible for facilitating committee meetings for which he prepares the agenda and minutes (3T6).

4. Kalikas and Mancino were very good friends (3T7, 3T42). Kalikas worked with Mancino from 1998 until Mancino left the district last year (3T7).

Appointment of Mancino as Head Football Coach in Spring 2011

5. In the spring of 2011, Kalikas and Board Member Carmine Brocato (Brocato), who was also on the Board's athletic committee, approached Mancino about assuming the head football coach position because the current coach was not being reappointed (1T25, 1T58). Loretta Caliguire (Caliguire) was also a member of the Board and on the athletic committee at this time (2T80, 2T83).

6. The committee wanted to make all of the teams more competitive which was going to require the head varsity coaches to do off-season training in addition to conducting practices and games (2T84). At the time that Mancino was approached about the football coaching position, he was already head coach of the

girls varsity softball team and was also employed by the Caldwell School District as the boys head varsity basketball coach (1T26-1T27).

7. The committee was particularly concerned that if Mancino took the head football coaching position, he would be coaching three varsity sports, something that no other coach in New Jersey was doing (1T59). The committee also felt that holding the three positions could be problematic if the seasons overlapped, especially as to off-season practices (1T84).

8. The New Jersey State Interscholastic Athletics Association (NJSIAA) governs when high school athletic seasons begin and end, allowing one team meeting prior to the start of each season. Also, the NJSIAA allows all sports to start practice the day after Spring State finals for the summer session (1T27-1T28, 1T60, 1T65, 1T67). Generally, football season runs from the second week in August to around Thanksgiving, while basketball season runs from the Monday after Thanksgiving when practice can begin until sometime in February, depending upon how far a team advances in the playoffs (1T28-1T30). Softball season begins the first Friday in March and ends in May unless the team makes State finals, in which case the season would end the first week in June (1T30).

9. Specifically, if Mancino accepted the football coaching position, football practice begins the second week in August and

ends before or after Thanksgiving depending on whether the team makes State finals with the pre-season team meeting occurring in April or May (1T29, 1T61).^{7/} The games were mostly on Friday nights (1T70).

Once school started, Mancino and the coaches held practices with the football players five to six days a week for an hour, or for 2 to 3 hours on days before games (1T68). There were also coaches meetings every day ranging from half an hour to four hours (1T67). During football season, Mancino spent very little personal time with his family (1T69).

10. Mancino was first appointed as girls varsity head softball coach for the 2010-2011 season. As to Mancino's commitment during softball season, there was a team meeting in February, but the first practice was held the first Friday in March (1T78). Practices were held Monday to Friday after school and most Saturdays for two hours (1T78). Games took place two or three times a week (1T78). Each year Mancino's softball team made it into post-season play, but with the exception of 2004, never made it past the first round and so the season usually ended around Memorial Day (1T75-1T77, 1T79).

11. Mancino was the head basketball coach at Caldwell from

7/ During the years that Mancino was head football coach, the team never made it to the State finals, so although the end of football season and the beginning of basketball season could overlap, they never did while he held the head coaching positions for those sports (1T73).

the 2000-2001 school year through the 2014-2015 school year. For that position he earned a stipend of approximately \$9,500. During the season, Mancino would leave Clark around 4:30 p.m. and arrive at Caldwell for practices between 5:30 p.m. and 6 p.m. Practices ended around 8 p.m. and were conducted five nights a week and on Saturdays (1T27, 1T50-1T51, 1T72). His assistant coach, Jeff Edwards ran the conditioning and training program in Caldwell for the team (1T74). The games started the third week in December and took place two or three times a week around 7 p.m. until 8 or 8:30 p.m. (1T74).

During this period, Mancino also ran a two-week summer basketball camp in Caldwell that started around July 4 from the morning to early afternoon (1T51-1T52). He would leave the camp in Caldwell around noon in order to be in Clark for the weight training program by 1 p.m. or 1:30 p.m. (1T57).

12. In addition, since 2006, Mancino worked during the summer with Kalikas in the weight room for which he was also paid a stipend (1T53-1T54). Every athlete participates in the summer weight training program, so Mancino's responsibilities included meeting with coaches in mid-May to discuss his hours of availability in the weight room as well as who would volunteer their own time (1T54). Because he ran the program, Mancino would set the hours and be there every day unless he was sick.

(1T55-1T56).^{8/}

Weight training began from the first Monday in June after school and during the summer from about 1 p.m. to 3 or 3:30 p.m. (1T54-1T55). The weight training program ended the last week in July, so that the athletes had the first week of August off (1T57). However, the weight room was open for all athletes from January to June before school at 6 a.m. and after school (1T62). Basically, the athletes did strength and speed conditioning in the weight room (1T62).

13. So in 2011 when Kalikas and Bracato approached him, Mancino had a very busy schedule with softball and Caldwell basketball as well as the summer weight training program and summer basketball camp. During the summer sessions (the beginning of the summer for all sports and after the first week in August for football), Mancino was required to be present at all practices (1T65, 1T67). Mancino knew that the commitments of a head varsity coach were extensive and required full dedication to the athletes and to the job (1T79).

8/ Anthony DelConte who succeeded Mancino as head football coach testified that during the summer, Mancino missed a number of days in the weight room and reneged on a deal to split his weight room stipend with DelConte and another assistant coach, Cristofero DiNucci, who were basically running the weight room for Mancino at his request (2T19-2T20). DiNucci also testified but not about the weight room stipend. No other witness corroborated DelConte's testimony in this regard, and I give it no weight.

14. Because of these extensive commitments, Mancino was initially not sure that he wanted to take on the head football coach position and told Kalikas and the committee that he wanted to speak to his wife about it (1T31, 1T45). Nevertheless, after speaking with his wife about the extra responsibilities and later to Kalikas about what he wanted to see happen with the football program if he accepted the position, Mancino took the head football coaching position, explaining to Kalikas that he felt he had the ability to balance his responsibilities, but that if he felt he could not handle it, he would decide later what sport he would give up (1T31-1T33, 1T99).

15. The witnesses disagree about whether Mancino agreed that he would give up his Caldwell coaching position at the time that he agreed to take on the position of head football coach for the 2011 season. Mancino maintains that he never specifically agreed to give up his Caldwell basketball coaching position and, in fact, told Kalikas he would not do so (1T33, 1T46). He contends that neither Brocato or Kalikas insisted that he give up the Caldwell position at the time that he accepted the head football coach position in the spring of 2011 or thereafter until the spring of 2014 (1T34). Kalikas disagrees with this testimony. He had recommended Mancino for the football position, because he felt that he would do a good job, but Kalikas was aware of the concerns raised by Board members about Mancino

coaching three varsity sports, and that they expected Mancino to eventually give up the Caldwell job (3T11). He himself knew that coaching three varsity sports was a big undertaking (3T11). Kalikas testified that during the interview for the position, then Superintendent Knops, Bracato and Kalikas spoke to Mancino regarding his Caldwell position (3T9, 3T28). According to Kalikas, in the interview for the football position, Mancino explained that he wanted to continue coaching in Caldwell because one of his players was close to the 1000-point milestone. He wanted to stay and coach this player for one or two years and then, Mancino stated, he would give up his Caldwell position (3T10, 3T28-3T29). This agreement, Kalikas explains, was never reduced to writing because he considered Mancino a friend, and the committee took Mancino at his word that he would honor the agreement (3T29).

Caliguire has known Mancino as a teacher for the past 12 years since she has been on the Board. Mancino also taught her daughter and was her son's football coach (2T82). Caliguire also testified as to Mancino's agreement that if he took the head football coaching position he would give up the Caldwell basketball coaching position after the 2011-2012 school year (2T85). Specifically, Caliguire testified that after the committee raised concerns about his two coaching commitments and adding a third to his schedule, Mancino told the committee that

he was very eager to coach football and that he would be willing to give up his Caldwell job as head basketball coach but not for 2011-2012 (2T85). Caliguire confirmed that Mancino explained to the committee that he had a senior player on the Caldwell team who was going for his 1000th point and that having coached him for years, Mancino wanted to stay with him for his senior year (2T85).

As a parent, Caliguire understood Mancino's rationale because her son would also want his coach to stay with him (2T85). Caliguire herself was a huge proponent of appointing Mancino to the position because he would be great for the program and for her son who was on the football team (2T97). According to Caliguire, after Mancino assured the Board that his Clark players would not be affected, the Board agreed that Mancino could continue to coach in Caldwell for the 2011-2012 season after which Mancino agreed to resign his Caldwell position (2T85, 2T99). This agreement was verbal (2T99).

Robert Smorol became a member of the Board beginning in January 2013 and chair of the Board's athletic committee as well as the finance committee (2T25). When he first became a Board member, multiple Board members expressed concern about Mancino coaching three varsity sports because, in their opinion, it would be virtually impossible for him to be effective in all three sports (2T28, 2T54-2T55). These members pointed out to him that

they did not know any other coach in New Jersey who was coaching three varsity sports (2T28). Approximately six to eight months after Smorol became a Board member, he learned from other Board members and Athletic Director Kalikas that when Mancino was offered the head football coach position, Mancino agreed to resign from his Caldwell basketball position (2T29, 2T92-2T93). However, the Board agreed to grant Mancino's request for a one-year extension allowing him to coach in Caldwell for his first year as head football coach at Johnson High School (2T29-2T30).

Based on this conflicting testimony, I credit Kalikas and Caliguire, that when he accepted the position as head football coach, Mancino agreed that he would resign the Caldwell coaching position after the 2011-2012 season. Neither witness had a bias against Mancino, in fact both had supported his application for the football position and thought he would be successful. Kalikas had recommended Mancino and was a longtime friend. Their testimony was detailed and consistent with each other.

Since witnesses were sequestered, they had no opportunity to consult and tailor their testimony to be consistent. Also, Smorol, who had no direct knowledge of the agreement since he joined the Board in January 2013, confirmed that he learned of the agreement afterwards but his understanding was consistent with Kalikas' and Caliguire's testimony. Accordingly, I find

that Mancino entered into a verbal agreement with the Board upon accepting the position as head football coach for the 2011-2012 season to resign as head basketball coach in Caldwell after the 2011-2012 season.

Appointment as Head Football Coach for 2012-2013 Season

16. Although the agreement called for Mancino to resign his Caldwell position after the 2011-2012 school year, he did not do so. At the end of the 2011-2012 school year when the athletic committee was meeting to discuss coaching appointments for 2012-2013, Mancino came to the committee meeting (2T86). The committee wanted to make sure that he was resigning his Caldwell coaching job before they approved his appointment as head football coach for the 2012-2013 season (2T86). Kalikas approached them with a request that Mancino be permitted to coach in Caldwell for one more year because he was not in a position financially to give up the Caldwell stipend (2T86-2T87, 3T11-3T12). Although the committee discussed the extension request amongst themselves, Kalikas discussed the committee's decisions with Mancino afterwards (3T36-3T37).

17. At the athletic committee meeting on July 30, 2012, Mancino was approved for the head football coach position for the 2012-2013 school year (R-3). The minutes reflect that Mancino's position in Caldwell was discussed, and that Mancino stated that he planned on giving it up but that it would be difficult to

forgo the \$12,000 stipend for coaching basketball. The minutes also reflect that Kalikas attested that Mancino "has not cheated the Crusader program in the least, and gives 100% of his time and effort to the Crusader athletic programs he is involved in" (R-3).

As a result, the Board approved Mancino's appointment as head football coach at a stipend of \$9,053 and as softball coach for the 2012-2013 season (R-3; R-13; 2T87-2T88). The extra curricular roster for 2012-2013 also lists Mancino as approved for the summer weight room with a stipend of \$1,711 (R-13). This was the second extension Mancino received to continue coaching basketball in Caldwell.

18. Kalikas evaluated Mancino at the end of 2012-2013 and concluded that he did a good job coaching both football and softball (3T33-3T34). However, Kalikas also felt that doing well was not the same as saying that Mancino could do better (3T34). Kalikas felt that Mancino's spending time in Caldwell was time not spent with athletes at Johnson High School (3T34). Kalikas' evaluations were focused on what Mancino did on the field in any particular year not what the expectations were when he was hired, namely that Mancino would give up his Caldwell coaching responsibilities (3T35).

Head Football Coach Appointments for 2013-2014 and 2014-2015

19. After being granted two extensions on the requirement

to resign from Caldwell, the Board expected that he would resign for the 2013-2014 basketball season (2T35, 2T62). However, Mancino was not asked at the end of the 2012-2013 season to resign his Caldwell coaching position nor did the athletic committee ask for proof that he had done so (2T62).

In October 2013, the Board realized that Mancino had not resigned and decided that it would not be fair to the Caldwell players to force Mancino to resign at that point because Caldwell would have one month to search for and hire a coach before the season was to start (2T35, 2T72). Therefore, the Board did not approach Mancino at that time about honoring his agreement (2T30-2T31). As a result, Mancino coached in Caldwell for the 2013-2014 basketball season (2T31). However, according to Smorol, the Board had internal discussions that the 2013-2014 basketball season would be the absolute last season that Mancino would be able to coach in Caldwell (2T36). Mancino was not privy to any of these internal Board discussions (2T64, 3T17-3T18).

20. When Mancino went right from basketball season to softball season, the Board again had a discussion about Mancino resigning, but as chair of the athletic committee, Smorol told the Board to hold off speaking to Mancino about resigning his Caldwell position so as not to distract him from his girl's softball coaching responsibilities (2T37, 2T71). Therefore, the Board agreed that at the end of the softball season, Kalikas

would speak with Mancino and tell him that he had to resign from the Caldwell coaching position (2T37).

21. There is no dispute that during the three seasons -- 2011-2012, 2012-2013, 2013-2014 -- Mancino coached all three sports, his performance evaluations were good (1T39, 1T41-1T42, 3T19, 3T40). Nevertheless, at the Board's direction and for the third year in a row, Kalikas explained to Mancino that the Board expected him to abide by the agreement to resign from Caldwell and focus on the head coaching positions in Clark (2T37, 3T19). The Board also authorized Kalikas to offset the loss of the Caldwell assignment by offering Mancino an assistant basketball position (2T77-2T78). The offer to Mancino was that if he refused to resign from Caldwell, he had to choose to give up his position as head coach for softball or football (2T95). The Board was hoping that Mancino would accept its offer of the assistant basketball coach position, resign from Caldwell as he agreed to do in 2011 and continue as head coach of two varsity sports at Johnson (2T78, 2T95, 2T111-2T112).

22. Kalikas and Mancino disagree as to whether Mancino's union activity was broached by Kalikas during the meeting to discuss his resigning from Caldwell or in any subsequent discussions about the 2014-2015 head football coach position. According to Mancino, Kalikas spoke to Mancino in Kalikas' office and told him that they (presumably the Board) wanted him to give up the Caldwell basketball coaching position, because Mancino had too much on his plate, specifically mentioning his newly elected position (since March or April 2014) as Association president (1T34-1T36, 1T85, 1T87).^{9/} Mancino claims, in regard to his union activities, Kalikas referred to a particular Board meeting where Mancino raised a question concerning health insurance and the commission rate being paid to the Board's broker, and that Kalikas then suggested that it was that type of activity that was going to cost Mancino one of his coaching positions (1T36-1T38, 1T87-1T88).

Kalikas denies ever telling Mancino that the Board was upset with him because he asked a question at a Board meeting (3T21). Nor did he tell Mancino that he was not being appointed as head football coach because he was Association president or speak to

9/ Before becoming Association president, Mancino was Association vice-president (1T36). He also previously held the position of building representative in 2008 or 2009 until 20011-2012 and grievance chair, although in the latter position he does not recall ever filing a grievance (1T80-1T81).

him at all about his position with the Association (3T21). Kalikas testified, however, that Mancino told Kalikas that he felt that his Association office was a reason for the Board's decision (3T21).

I credit Kalikas. Based on subsequent witness testimony concerning statements of Kalikas during this period, witnesses consistently testified that Mancino told them he felt that his position as Association president was the actual reason he was not being re-appointed as head varsity football coach for 2014-2015. Only one witness, Ryan Redfern, corroborated Mancino's testimony, while two other witnesses -- DiNucci and DelConte -- refute Mancino's testimony as to these statements attributed to Kalikas.

23. Specifically, Redfern testified that at a coaches' meeting in May 2014, there was discussion about what would happen going forward if Mancino was not reappointed (1T119). Redfern has known Mancino since high school when Mancino coached him in basketball. Mancino recommended Redfern for several paid and volunteer positions including freshman basketball coach in Caldwell and assistant football coach in Caldwell (1T115-1T116, 1T123-1T125).

According to Redfern, there were questions posed to Kalikas during the meeting and raised by many coaches as to why the issue of non-reappointment was being done at this time in May and was

not done at the end of the season in November (1T120). Redfern testified that Kalikas responded ". . . it's because of Mike as the union president and him bringing up issues in front of the Board, which is why he wasn't approved as head football coach" (1T120). Present at the meeting besides Redfern and Kalikas were Mancino, Drexel, DiNucci and Petacini (1T120).^{10/}

DiNucci has known Mancino for many years as a student being coached by Mancino and professionally as an assistant football coach at Johnson High School (2T16). DiNucci refutes Redfern's testimony asserting that he never heard Kalikas state that Mancino was not being reappointed to the football coach position due to his union membership, although he did hear generally that the reason for the non-appointment was that the Board wanted Mancino to coach JV basketball (2T10, 2T13). Indeed, during a meeting in Kalikas' office, DiNucci heard Kalikas comment that if Mancino would agree to coach assistant basketball, he would still be head football coach (2T14). However, DiNucci confirmed that

^{10/} Redfern testified to one other conversation with Kalikas about Mancino's union role (1T121). Redfern was recently appointed the offensive coordinator, a position that Kalikas previously held (1T121). While they were talking about football towards the end of the meeting, Redfern asked Kalikas about why the Board was doing this to Mancino (1T121). Kalikas responded that Mancino had recently "brought up some issues to the Board of Ed and they want to take away his football job because he knows he likes coaching football" (1T121). This conversation was vague, lacking specifics as to topic and had no context as to time. Therefore, I do not credit the statement attributed to Kalikas.

Mancino told him he thought the Board's decision was based on his position as Association president (2T13).

DelConte is currently head football coach at Johnson High School replacing Mancino who he considered to be a caring and successful coach (2T18). Like Redfern and DiNucci, DelConte was coached by Mancino as a student and then worked under him as an assistant football coach (2T18, 2T24).

After the 2013-2014 school year ended, Mancino came into DelConte's classroom to discuss the position of head football coach. No one else was present for this conversation (2T18-2T19). Mancino told DelConte that he intended to give up one of his coaching positions, probably football, because it required too much of a time commitment for the stipend that he was paid (2T18-2T19, 2T21). Mancino did not mention his union activities or duties as part of the rationale (2T19). Also, according to DelConte, during this time frame -- the end of the 2013-2014 school year -- he never heard Kalikas state that Mancino was not being reappointed to his head football coach position due to Mancino's union membership or activities (2T19).

Based on the testimony of Redfern, DiNucci and DelConte, I do not find that Kalikas attributed the Board's decision to Mancino's union activity. All three witnesses had longstanding relationships with Mancino as students being coached by him and as teachers and assistant coaches working with Mancino. However,

Redfern has a personal friendship with Mancino which has been maintained even after Redfern left the Board's employ, including regular telephone conversations to catch up and attending a golf outing together recently (1T128). This friendship would tend to sway Redfern's testimony supporting Mancino's assertion regarding the Board's motives.

24. Although both DiNucci and DelConte also have longstanding relationships with Mancino as students and assistant football coaches, they do not have the personal relationship with Mancino that would have colored their testimony regarding Kalikas' statements. Also, they both testified that they admired Mancino professionally. Their testimony was not biased against him.^{11/}

25. Also, the testimony of Kalikas, Smorol and Caliguire was consistent that the Board's concern about Mancino's commitment to three varsity sports dated back to his appointment as head football coach in 2011. This concern did not arise after Mancino was elected Association president in March or April 2014. Specifically, Kalikas had no reason to prevaricate over a

^{11/} I recognize that DelConte testified about Mancino reneging on a promise to split a weight room stipend. However, he apparently never pursued the issue and I infer that it was not significant for him. Moreover, he became head football coach after Mancino was not re-appointed. I find, therefore, that any resentment from that incident dissipated and did not carry over into his testimony. His answers were forthright and consistent.

conversation with Mancino who he considered a very good friend and whose professional career Kalikas promoted. He testified credibly that he recognized Mancino as a good coach and tried vigorously to persuade him to abide by the terms of his original agreement, but Mancino could not be swayed (3T22).

26. Similarly, Caliguire looked favorably upon Mancino as both her children's teacher and coach. She testified in a forthright fashion that there were no discussions at the athletic committee meetings or Board meetings in 2014 about Mancino's plate being too filled with negotiations or about his affiliation with the Association nor was his union activity discussed relative to the decision not to appoint him as the head football coach in 2014-2015. Smorol was also a credible witness and supported both Kalikas' and Caliguire's testimony regarding the decision not to reappoint Mancino.

27. Finally, Mancino's testimony as to what Kalikas told him is questionable, because he testified that no one had previously approached him about or discussed with him resigning from Caldwell (1T47, 1T86). That testimony was credibly challenged by witnesses -- Kalikas, Caliguire and Smorol -- as well as July 30, 2012 athletic committee meeting minutes (R-3). Accordingly, he is not a reliable witness in regard to testimony about what Kalikas told him were the Board's motives. Therefore, I do not credit his testimony in this regard.

The Telephone Conversation with Smorol

28. Even though discussions had previously occurred concerning his coaching three varsity sports, Mancino felt blindsided by his conversation with Kalikas because at no time between 2011 to 2014 had Kalikas or any Board member questioned his performance as head football or softball coach (1T39). At the end of each coaching season, Mancino was given performance evaluations evaluating his performance both on and off the field (1T41).^{12/} He met with Kalikas each time to discuss the evaluations and was never told of any deficiencies in either sport (1T42). Indeed, he was often told that they could not figure out how he got so much done (1T39). Between 2011 and 2014, Mancino was never accused by any administrator or Board member of stealing time from the district or not being where he was supposed to be (1T99).

29. Mancino asked Kalikas whether there was somebody he could appeal to challenge that decision (1T35). Kalikas told him to call Board member Robert Smorol (1T35). Mancino telephoned Smorol to discuss the head football coach position (1T89).

30. According to Mancino, Smorol told him that he (Mancino) had too much on his plate with his union responsibilities,

12/ Charging Party introduced for identification CP-1 and CP-2 consisting of performance evaluations pertaining to his head football and softball coaching positions. Charging Party did not move these exhibits into evidence so I do not consider them in my factual findings.

specifically negotiations which were coming up and with his coaching jobs and advised Mancino that the Board was not going to reappoint him (1T89, 1T96, 1T103-1T104).

Smorol denies discussing Mancino's union activities during their telephone conversation. According to Smorol, Mancino explained why he felt he could handle coaching three varsity sports (2T38). Smorol responded that, in the Board's opinion, it was not in the best interest of the student athletes to have Mancino coach the three sports, that he was the only coach in New Jersey to do so, and that the Board expected Mancino to honor his agreement to resign from the Caldwell coaching position (2T38).

According to Smorol, after Mancino mentioned the stipend associated with the Caldwell position, Smorol responded that the Board was willing to work with him to supplement his income by giving him either an assistant varsity basketball coach, JV basketball coach, or freshman coaching position (2T39). Mancino responded that these positions would not make up for the \$16,000 a year that he made as Caldwell head varsity basketball coach (2T39). Smorol thought that the quoted figure seemed high and subsequently learned that Mancino was alluding to the stipend of the head basketball position as well as a summer basketball camp he ran (2T39).

31. In any event, Mancino asked Smorol to go back to the Board and ask if he could stay for one more year as head coach in

Caldwell (2T39). Although Smorol did not support an extension for another year, he agreed to communicate Mancino's proposal to the Board (2T39). After doing so, the Board refused to grant another extension (2T39).

Finally, Smorol testified that, at no point in the telephone conversation did he or Mancino mention Mancino's union activity nor did Smorol ask him to give up his union duties (2T39-2T40). Indeed, Smorol asserts that he did not know what Mancino's union duties included (2T40). Specifically, Smorol states that he did not mention that contract negotiations were beginning and that, therefore, Mancino would have much more on his plate as Association president (2T74).

32. I credit Smorol and find that Mancino was never asked to give up his union duties or that anything related to his union activity was discussed with Mancino. His testimony was detailed, in particular regarding the discussion over the Caldwell stipend. Smorol's testimony was also consistent with Kalikas' in regard to what Mancino was told regarding the Board's decision to enforce the original agreement regarding the Caldwell coaching position.

Events After Mancino's Non-Appointment as Head Football Coach

33. After the Board made its decision not to grant Mancino

another extension to coach in Caldwell and communicated its position to him, Mancino took a couple of days to think about it and then informed the Board that he was not resigning as Caldwell's head basketball coach (2T40).

34. Prior to learning of Mancino's decision not to resign, the Board intended to approve Mancino's appointment as head football coach for the 2014-2015 season (2T40-2T41). In fact the minutes of the athletic committee meeting from May 30, 2014 reflect that Mancino was listed as head football coach for the Fall 2014 sports (R-4; R-5; 2T44). After Mancino decided not to resign from Caldwell, Kalikas met with Mancino as well assistant coaches Ryan Redfern, Cristoforo DiNucci and Anthony DelConte and explained that one of the coaches on Mancino's staff would become head coach (1T89-1T90, 1T100-1T101).

35. The Board had not expected that Mancino would refuse to resign. But once they learned of Mancino's decision, the Board met in emergency session and decided to hire Anthony DelConte, who was then the assistant football coach (R-5; 2T17-2T18, 2T41).

36. In an email to Johnson Football Families dated June 26, 2014, which was after the Board met and appointed DelConte, Mancino explained that he was told that he was not being re-appointed as head football coach (R-1; 1T111). He wrote in pertinent part:

I am reaching out to everyone to update you regarding my status as Head Football Coach at

Johnson High School.

Similar to every season I re-applied for the position early in June. A few days later I was told that in lieu of my position as President of the Clark Education Association, I would need to resign my position as Head Basketball Coach at Caldwell High School if I still wanted to coach football at Johnson. I was told that the school district felt that I would not have the time or energy to coach football. . . For a variety of personal/family reasons, I have continued to coach at Caldwell. At no time has my responsibilities at Caldwell affected my time or commitment to the Johnson Football Program. . . Therefore it is with great regret that I inform you that I will stop doing football workouts with the team as of Friday, 6/27/14. We will not be going to the Rutgers 7x7 on Saturday, 6/28. Also, I have begun the process of canceling the Albright Team Camp and return the money to those who have paid. . . Although I disagree with their reasons for not re-appointing me, I respect that the BOE makes the final decision on all district personnel matters. [R-1]

37. On July 2, 2014, Mancino received a letter from then Superintendent Knops refuting allegations in the email as factually incorrect, in particular as to why Mancino was not reappointed head football coach for the 2014-2015 school year denying specifically the link between the coaching assignment and Mancino's duties as Association president (R-2; 1T43).^{13/} Knops wrote in pertinent part:

As you are aware, prior to you being offered

13/ The stipend for that position was just under \$10,000.00 (1T44).

the position of Head Softball Coach at Arthur L. Johnson High School in 2011, the Board expressed serious concern over the fact that if granted the Softball position,^{14/} you would be coaching three high school varsity sports (i.e., Johnson Football, Caldwell Basketball and Johnson Softball). The Board of Education was concerned that such a time commitment would detract from the level of attention afforded to each sport.

Accordingly, the Board of Education felt strongly that this was not in the best interest of Arthur L. Johnson's student athletes. At the Board of Education's request and contingent on your approval as Head Softball Coach, you verbally agreed that you would discontinue coaching the James Caldwell Basketball team. However, at the same time you asked permission to coach the Caldwell team for the upcoming 2011/2012 season. After consideration, you were granted this permission and approved as the Arthur L. Johnson Head Softball Coach by the Board of Education. Over the past two seasons (i.e., 2012/2013 and 2013/2014), you have continued to coach three sports and have failed to honor your agreement of 2011. Over the past two years, the Board of Education never supported this decision and in 2013/2014, this issue was discussed internally with Mr. Kenneth J. Knops, Superintendent; Mr. Edward Grande, Assistant Superintendent; and Mr. Gus Kalikas, Director of Athletics. The Board ultimately made a decision that at the end of the 2014 school year you would be required to honor your agreement from 2011 and resign your position as Head Basketball Coach at James Caldwell High School.

. . . you responded that you would not resign

^{14/} Based on the consistent testimony of all witnesses and exhibits in evidence, I infer that Knops mistakenly references softball and that he intended to refer to the football coach position which caused concern over Mancino's coaching three varsity sports.

from your position at James Caldwell High School. As a result, and in the best interest of the . . . student athletes, the Board of Education was left with no other choice than to eliminate you from consideration as head coach for one of the two Arthur L. Johnson High School sports you were coaching and applying for in the 2014/2015 school year and post the Football coaching position. . . It is important to note that your position as President of the Clark Education Association, which you assumed in 2014, was never a factor in this decision, as you had agreed to the coaching arrangement well before you became President of the Clark Education Association. [R-2]

38. Sometime in early July of 2014, a position of assistant football coach became available and was posted (2T47). Mancino applied for the position (2T47). At Kalikas' suggestion, the Board did not select Mancino because DelConte, the new head coach, had worked under Mancino. The Board felt that appointing Mancino could create dissension among the coaching staff and players who would have divided loyalties having worked or played under Mancino as the head coach previously. Moreover, it was apparent that Mancino was not happy with how things worked out, namely with the Board's decision to enforce Mancino's verbal agreement to resign from Caldwell (2T47-2T48, 2T95-2T96, 3T22-3T23).

39. However, Mancino was reappointed by the Board as head softball coach for the 2014-2015 season (R-6; R-7; 2T49). That appointment for the 2014-2015 season was approved by the Board at its January 20, 2015 meeting with a stipend of \$6,767 (R-8). The

Board again reappointed Mancino to that position for the 2015-2016 at its February 9, 2016 meeting with a stipend of \$6,902 (R-9).

Jennifer Lewis

40. Jennifer Lewis was a teacher employed by the Board and Association vice-president, succeeding Mancino as Association president (2T51). She is currently retired (2T51).

41. Lewis emailed Smorol on September 7, 13 and 14, 2016 (R-10 through R-12). The emails pertained to a request from the Association's attorney for her, as Association president, to certify facts produced in discovery for the instant matter.

42. In the September 7 email to Smorol, Lewis forwarded an email that she wrote to the Association's attorney wherein she explained to the attorney that she could not certify Mancino's statements as true, because she knew many of them to be false based on her membership on the Association's executive board (R-10).

43. In the September 13, 2016 email to the Association attorney forwarded to Smorol, she wrote that she was upset because she learned the Board was shown a document stating that she agreed with everything Mancino stated, and that she, in fact, did not agree nor believe that Mancino's statements were true (R-11).

44. In the September 14 email to Smorol, Lewis explained

that she felt badly about this "whole mess" and was willing to testify that she did not answer the questions [in discovery] nor did she certify to them. Lewis further explained that when she met with the NJEA representative and the Association lawyer, she [not clear from the email who "she" is, but I infer it is either the NJEA representative or the Association lawyer] admitted that Mancino had to quit, but since he lost his [football] position after becoming Association president "this is a sure shot" (R-12).^{15/}

45. Smorol never had a personal conversation with Lewis about the matter mentioned in the emails (2T53).

ANALYSIS

Charging Party asserts that Mike Mancino was not reappointed as head football coach or appointed as assistant football coach for the 2014-2015 season in retaliation for his union activities, namely because he had been elected Association president in April 2014 and had raised questions regarding union issues at Board meetings. It contends that there was no agreement that Mancino would quit a coaching position in Caldwell, and that the Board's business justification for not reappointing him when he refused to do so -- that it was virtually impossible to coach three varsity sports -- was belied by Mancino's positive evaluations

^{15/} I do not find any of Jennifer Lewis' emails to be probative. Lewis did not testify and there is no basis for her conclusions as to the merit of Mancino's claims.

and performance during the three year period that he actually coached varsity softball, football and basketball.

The Board disagrees and states that Mancino's union activities and union office did not factor in to their decision not to reappointment him as head football coach or appoint him as assistant football coach in 2014-2015. Specifically, the Board argues that it was simply enforcing a verbal agreement Mancino made when he was initially appointed as head football coach for the 2011-2012 season that he would resign from his position as head basketball coach in Caldwell because coaching three varsity sports was not in the best interest of the Clark student athletes.

N.J.S.A. 34:13A-5.3 guarantees public employees the right to engage in union activities including but not limited to, organizing, making their concerns known to their employer, and negotiating collectively. Section 5.4a(3) prohibits an employer from retaliating against an employee for exercising his or her rights as guaranteed in this section. Under Bridgewater Tp., 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence 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 does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, 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, however, need not be considered unless the charging party has proven, on the record as a whole, that anti-union animus was a motivating or substantial factor or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the Commission to resolve.

Timing is an important factor in determining motivation and may give rise to an inference that a personnel action was taken in retaliation for protected activity. Tp. of West Orange, P.E.R.C. No. 99-76, 25 NJPER 128 (¶30057 1999); City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Bor. Of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986). However, each situation requires a factual analysis to determine

whether hostility can be inferred from timing. Timing alone cannot support such an inference. See Camden Bd. of Ed., P.E.R.C. No. 2003-77, 29 NJPER 223 (¶68 2003) (timing of transfer within 6 months of grievance filing together with conflicting reasons for transfer support inference of hostility).

Respondent concedes that Mancino was engaged in protected activity as Association president but denies that it was hostile to that activity. It asserts that its decision not to reappoint him as football coach for 2014-2015 was based solely on its belief that coaching three varsity sports was too much for one coach and not in the best interest of the student athletes, a belief which was communicated to Mancino when he applied for and was given the position in 2011. Mancino, it contends, understood this concern and verbally agreed to give up his Caldwell basketball coaching position after the 2011-2012 season. After being given one more extension to coach in Caldwell for 2012-2013, the Board determined to enforce the agreement and insisted that Mancino resign.

Charging Party asserts first that Mancino never agreed to resign his Caldwell coaching position when he took on the Clark head football coach assignment. However, I did not credit Mancino's testimony in this regard finding that he in fact entered into a verbal agreement with the Board to resign his Caldwell coaching job. Although given two extensions, the

Board's insistence at the end of 2013-2014 that he resign for the 2014-2015 season was not unexpected and, indeed, was the third year in a row Mancino was told by Athletic Director Kalikas that he would be required to do so.

Nevertheless, Charging Party contends that the Board's concerns were unwarranted, because Kalikas gave Mancino effective evaluations for the three years he coached the three varsity sports and could apparently handle all of the demands of the sports' games and practices as well as the summer training sessions. It was only after Mancino was elected vice-president and then Association president in April 2014 that the Board enforced the agreement and insisted Mancino resign from Caldwell. The timing, it suggests, causes an inference of hostility.

Here, however, I do not infer hostility based on the timing. Smorol credibly testified that in October 2013, when the Board learned that Mancino did not resign from his coaching position in Caldwell after already receiving two extensions, it had internal discussions and made the decision that the 2013-2014 season would be his absolute last season coaching in Caldwell. The decision to force Mancino to honor the agreement after the 2013-2014 season happened well before he became Association President in the spring of 2014.

Furthermore, I discounted Mancino's testimony as to statements made by Kalikas, namely that the Board felt his taking

on the union office would overload his already too full plate. Kalikas consistently denied making the statements and several witnesses including assistant coaches as well as Board members corroborated his testimony. The only witness produced by Charging Party to corroborate Mancino's version of what Kalikas allegedly stated to Mancino about the Board's decision not to re-appoint him as head football coach for 2014-2015 was Ryan Redfern who had a longstanding personal and professional relationship with Mancino from when he was a student who was coached by him. Mancino recommended Redfern for his first volunteer and paid positions. They are currently friends who catch up monthly and play golf together. His bias weighed against crediting his testimony as opposed to Kalikas' and others. The one thing all witnesses agreed on was that Mancino himself expressed the belief to them that the Board's decision was the result of his ascendancy to union office. That belief alone cannot be transferred to the Board as a motivating factor in the decision not to re-appoint him as football coach in 2014-2015.

Next, Charging Party contends that the Board's purported rationale for not reappointing Mancino makes no sense when Kalikas evaluated him as effective every year he coached the three sports, Mancino was not absent from games or practices, and there were no complaints against him. However, even if Mancino's

performance for the three years was evaluated effective, Kalikas and the Board concluded that Mancino could do better if he was focused on the two varsity sports in Clark.

Kalikas was hoping, as was the Board, that Mancino would honor his agreement to resign from Caldwell and continue coaching Clark varsity softball and football. Kalikas begged him to honor his commitment and resign from Caldwell. The Board even offered Mancino the opportunity to coach basketball in Clark as an assistant, a position that came with a stipend, which would partially make up for any loss of the Caldwell stipend. Therefore, the record supports that the Board and Kalikas were not seeking to hurt Mancino professionally, only to do what they had concluded in 2011 was in the best interest of the student athletes.

There is no doubt, and Mancino admits, that the responsibilities of a varsity coach are intensive and require extreme time commitments, in this instance time that Mancino did not spend with his family. The record supports that coaching commitments occupied twelve months of the year and required Mancino to jockey often between sites in order to fulfill his duties and responsibilities to all of the athletes. Although he performed "effectively", the Board and Kalikas had a right to demand that Mancino's primary focus was on the Clark student athletes. This concern predated any asserted union activity

Mancino engaged in the spring of 2014. Even if, in Mancino's opinion, Kalikas and the Board were wrong in their conclusions of Mancino's extraordinary ability to handle everything, as long as the Board's rationale was not pretextual, their actions were not illegal.

In this instance, the Board's rationale was not pretextual. Indeed, in each of the three years Mancino coached in Caldwell, the Board and athletic committee discussed his agreement to resign. Charging Party's suggestion that Mancino was unaware that the committee and Board expected him to resign is simply untrue. Kalikas consistently communicated those discussions to Mancino who was a very good friend. If Mancino assumed that having avoided the consequences of his agreement for two years -- first 2011-2012 because he wanted to coach a Caldwell student to his 1000th point and in 2012-2013 due to asserted financial hardship -- the Board was never going to hold him to it, he was mistaken.

Additionally, it appears from the facts in this case that Mancino had little or no intention of resigning from Caldwell even though he initially agreed to do so. At the end of 2011-2012, the year the Board allowed him to continue to coach in Caldwell, Mancino asked for another extension claiming to Kalikas and the Board that it would be a financial hardship to give up the Caldwell stipend. Kalikas urged the Board to once again

grant the extension which they did, but it was determined that thereafter Mancino would have to live up to his commitment to resign from the Caldwell position.

It is true that the agreement between Mancino and the Board was verbal, but that does not defeat the binding nature of his promise or the evidence on the record that such a promise was made. Nor does it support Mancino's claim that he never agreed to resign his Caldwell coaching position in order to coach football in Clark. Mancino asked in 2012-2013 for permission to coach another year in Caldwell. Certainly, if there was no agreement as Mancino maintains, it would not have been necessary to request permission. Perhaps in hindsight, the Board should have put the agreement in writing, but Kalikas' personal friendship with Mancino led him to believe a written agreement was not necessary, and that Mancino would keep his promise.

Finally, although Mancino applied for an assistant football coach position after he was not re-appointed as head football coach, he was not selected for valid reasons. Kalikas recommended, and the Board accepted his suggestion, that Mancino should not get the assistant position, because DelConte, the new head coach, had worked under Mancino. It was thought that having DelConte and Mancino working together would create divided loyalties among the staff and players. Also, Kalikas was afraid that Mancino's dissatisfaction with the Board's decision not to

re-appoint him as head coach would create dissension. Therefore, in denying him the assistant football coaching position, Kalikas and the Board were not influenced by any union activity that Mancino engaged in. Mancino was, however, renewed for 2014-2015 and 2015-2016 seasons as head softball coach.

Based on the above, I recommend that the Complaint be dismissed.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the complaint be dismissed.

/s/ Jordan Ablon

Jordan Ablon

Hearing Examiner

DATE: February 1, 2019
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 February 15, 2019.