

P.E.R.C. NO. 80-135

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAPE MAY CITY BOARD OF EDUCATION,

Respondent,

Docket No. CO-78-13-57

-and-

CAPE MAY CITY EDUCATION ASSOCIATION
and CHARLES MC CARTY,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Chairman of the Commission, noting the absence of exceptions, adopts the Hearing Examiner's findings of fact, conclusions of law and recommended order for the reasons cited by the Hearing Examiner. The Chairman agreed that the Charging Party did not establish by a preponderance of the evidence that the negative evaluations themselves were motivated by anti-union animus, but does agree that certain comments contained in two evaluations did relate to Mr. McCarty's exercise of protected activity and that inclusion of the comments in the evaluations constituted an unfair practice within the meaning of the Act. The Board was ordered to cease and desist from including negative comments in evaluations about the majority representative writing letters on behalf of the employees of the Board and was further ordered to cease and desist from evaluating employees on the basis of rebuttals submitted by an employee. The Board was ordered to remove certain negative comments from the February 1 and April 1, 1977 evaluations.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAPE MAY CITY BOARD OF EDUCATION,

Respondent,

Docket No. CO-78-13-57

-and-

CAPE MAY CITY EDUCATION ASSOCIATION
and CHARLES MC CARTY,

Charging Party.

Appearances:

For the Respondent, Martin R. Pachman, Esquire

For the Charging Party, Greenberg & Mellk, Esqs.
(William Greenberg, of Counsel)

DECISION AND ORDER

On July 21, 1977, the Cape May Education Association and Charles McCarty filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Cape May City Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, N.J.S.A. 34:13A-1 et seq. Specifically, the Association alleges that the four evaluations performed by the Administrative Principal of Charles McCarty, a teacher, were negative in nature and were motivated by a desire to discipline Mr. McCarty because of his position as Chairman of the Association's Negotiations Committee. It is alleged that this action constituted a violations of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4).

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the

Act, a Complaint and Notice of Hearing was issued on February 6, 1978. Hearings were held before Commission Hearing Examiner Edmund G. Gerber on April 14, 19, 20, May 17, 18, 19, October 23, 25 and November 14, 1978 at which time both parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties filed briefs by June 11, 1979. Thereafter, on March 19, 1980, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 80-35, 6 NJPER ____ (§____ 1980), a copy of which is attached to this Decision and Order and made a part hereof. The report was served upon the parties and the case was transferred to the Commission N.J.A.C. 19:14-7.1. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. N.J.A.C. 19:14-7.3 provides, in part, that any exception which is not specifically urged shall be deemed to have been waived.

In accordance with N.J.S.A. 34:13A-6(f), the Commission has delegated to the undersigned the authority to render decisions on behalf of the Commission in cases where exceptions to Hearing Examiners' Recommended Reports and Decisions have not been filed.

The Hearing Examiner found that the Charging Party had not established by a preponderance of the evidence that the negative evaluations themselves were motivated by anti-union animus. However, he did find that although most of the comments contained in the evaluations of Mr. McCarty were not related to his exercise of protected activities, certain comments contained in the February 17 and April 1, 1977 evaluations did relate to Mr. McCarty's

exercise of protected activity; and that the inclusion of the comments in the evaluation reports constituted an unfair practice within the meaning of the Act. The Hearing Examiner recommended that the specified portions of the evaluation reports be removed.

Based upon a review of the entire record and noting particularly the absence of exceptions, the undersigned adopts the findings of fact, conclusions of law and recommended order of the Hearing Examiner substantially for the reasons cited by the Hearing Examiner. There is ample record evidence which supports his findings and conclusions that the specified portions of the two evaluations were related to Mr. McCarty's exercise of rights which are protected under this Act.

ORDER

It is HEREBY ORDERED that Respondent, its officers, agents, successors or assigns shall:

1. Cease and desist from interfering with, restraining or coercing any employees in the exercise of the rights guaranteed to them by the Act by evaluating employees on the basis of rebuttals submitted by an employee.

2. Cease and desist from discriminating against its employees in order to discourage the exercise of protected rights by including in evaluations negative comments about the majority representative writing letters on behalf of the Respondent's employees.

3. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

- (a) Remove from Charles McCarty's evaluation of February 17 the following language:

Unfortunately, we see no improvement of attitude. We believe that free speech and rights do not endow a teacher as a school district employee, with a license to vilify his superior publicly or in writing. The employer-employee relationship restrains the right of the employee to the extent reasonably necessary to retain the harmony and loyalty which is necessary to the efficient and successful operation of the education system.

It is individuality that each teacher brings to the educational scheme that contributes to educational success. That individuality, however, must be sublimated to the educational good. A teacher is expected to maintain a civility commensurate with his or her professional status. A reading of this teacher's rebuttal of the administrator himself rather than the teacher's evaluation tends to show that he has failed to meet even the minimum professional standards expected of him.

A course of action of continued harassment, unprofessional conduct and intimidation of the administrator shall cease immediately.

(b) Remove from the evaluation of Charles McCarty of

April 1 the following language:

He refuses to accept that he is a public employee, holding a position of public trust. His students have learned not only what this teacher has taught but what they see, hear and experience about this teacher in the cafeteria and in the halls. A teacher is expected to maintain a civility commensurate with his or her professional status, but instead he has set out to harass and intimidate the administrator and other teachers by using Board members, N.J.E.A., County Education Association members and local Education Association members while threatening the administration with legal actions.

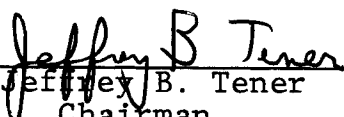
(c) Post at its central offices in the School District of Cape May City, New Jersey, copies of the attached notice marked "Attachment II". Copies of said notice on forms to be provided by

the Chairman, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter on conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that such notices are not altered, defaced or covered by any other material.

(d) Notify the Chairman, in writing, within twenty (20) days of receipt of the Order of the steps the said Respondent has taken to comply herewith.

4. IT IS FURTHER ORDERED that the particular sections of the Complaint which allege that the Cape May City Board of Education engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(4) be dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
April 21, 1980

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce any of our employees in the exercise of the rights guaranteed to them by the Act by evaluating our employees on the basis of rebuttals submitted by our employees.

WE WILL NOT discriminate against our employees in order to discourage the exercise of protected rights by including in evaluations negative comments about the majority representative's actions.

WE WILL remove from the evaluations of Charles McCarty specific references to rebuttals prepared by him and negative comments concerning protected activities of the majority representative.

CAPE MAY CITY BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____ (Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

CAPE MAY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-13-57

CAPE MAY CITY EDUCATION ASSOCIATION
and CHARLES MC CARTY,

Charging Party.

SYNOPSIS

A Hearing Examiner issued a Recommended Report and Decision in which he found that the Cape May City Board of Education violated the New Jersey Employer-Employee Relations Act when it included negative comments in an employee's evaluation concerning the submission of a written rebuttal which challenged an earlier evaluation of that same employee. It was found that the employee had a right to file a written rebuttal pursuant to the collective negotiations contract, and to negatively comment on that act constituted a violation of section 5.4(a)(1) of the Act. It was further found that the employer violated sections 5.4(a)(1) and (3) of the Act when in another evaluation of that same employee, the Board negatively commented on the activities of the City of Cape May Education Association and affiliated organizations, who wrote letters to the Board on behalf of the employee.

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

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

In the Matter of

CAPE MAY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-13-57

CAPE MAY CITY EDUCATION ASSOCIATION
and CHARLES MC CARTY,

Charging Party.

Appearances:

For the Respondent
Martin R. Pachman, Esq.

For the Charging Party
Greenberg and Mellk, Esqs.
(William Greenberg, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On July 21, 1977, the Cape May Education Association and Charles McCarty filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Cape May City Board of Education (Board) had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (Act), as amended, N.J.S.A. 34:13A-1 et seq. Administrative Principal John Demarest evaluated a teacher, Charles McCarty, four times during the 1976-1977 academic year. The Association alleges that these evaluations were negative in nature and were motivated by a desire to discipline McCarty because of his advocate position as Chairman of the Negotiations Committee of the Cape May City Education Association "in violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4)." ^{1/} It appear-

^{1/} These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

ing that the allegations of the charge if true may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued thereon on February 6, 1978. Hearings were held on April 14, April 19, April 20, May 17, May 18, May 19, October 23, October 25 and November 14, 1978. Both parties were given full opportunity to examine witnesses, present evidence and to argue orally. Both parties filed briefs by June 11, 1979.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

I. The Parties

The Board operates a school district located in the City of Cape May comprising of grades K through 6. For some years, the Association has been the exclusive representative for collective negotiations concerning the terms and conditions of employment of the certified teachers employed by the Board. Over the years, the parties have negotiated and entered successive collective agreements covering these employees. I find and conclude that the Board is a public employer and the Association is an employee organization and majority representative of employees in an appropriate unit, respectively, within the meaning of the Act. Charles McCarty is a teacher in the school district. He first came to the district in September 1970 and has taught fourth grade since 1972.

II. The Unfair Practice

The Evidence

McCarty has been an officer in the Association since 1972, when he became Vice-President. He served as President of the Association from 1974 to 1976. In 1972-1973 he was chairman of the Professional Rights and Responsibilities Committee (in this position McCarty served as Association representative in the grievance process). From January to May 1976 McCarty served as the acting negotiations chairman. (He acted in place of the regular chairman, George Loper.) In September of 1976 McCarty became the regular Negotiations Chairman.

Negotiations between the Board and the Association for a two-year contract covering 1976-1977 and 1977-1978 began in the spring of 1976. Agreement was reached

late in January 1977. On October 28, 1976, McCarty, on behalf of the Association sent a letter (A-2 in evidence) to John Daly, the chief negotiator for the Board, accusing the Board of arrogance, of "deliberate harassment" in negotiation, of "being unfair and incorrigible, and of making a "sham of the negotiations process by threats and innuendos" etc. The letter concluded "We hope that negotiations... can be culminated...without our filing additional unfair labor practices against the Board." When this letter was discussed at a Board meeting, a board member Mildred Blomkvest said that she thought the letter was disgusting and objected that the language of the letter was too curt to be coming from an employee to his employer. On November 29, 1976, John Demarest (the administrative principal who served on the Board's negotiating committee ^{2/}) issued the first of his four negative evaluations of McCarty (see Attachment I) issued that year. In the three preceding years McCarty was evaluated only once per year. At the end of the school year the Board, at Demarest's recommendation, voted to withhold McCarty's increment. McCarty appealed to the Board and the Board reversed its action and granted the increment. The Association argues that Demarest issued these poor evaluations because of his anti-Association animus and his hostility toward McCarty which grew out of McCarty's exercise of protected rights.

Antagonism between the two men date back to the spring of 1973 when Demarest recommended to the Board that they deny tenure to McCarty. At that time the Board did not follow Demarest's recommendation and granted McCarty tenure. The Association argued that Demarest acted on the basis of his animus that dated from 1973. At that time McCarty was chairman of the PR&R committee and he successfully represented four teachers in the grievance process when they challenged Demarest's evaluations of those four teachers. In January of 1973, the Board ordered certain comments removed from these evaluations. In February 1973 Demarest resigned but was persuaded by the Board to return and in March of 1973 Demarest made his recommendation to not grant tenure to McCarty. It is claimed that Demarest's action in 1973 was an attempt to get back at McCarty for representing the four teachers in their grievance. However, a careful analysis of McCarty's evaluations during this period does not bear this contention out. The Respondent correctly points out that certain teaching traits that Demarest did not approve of in 1976-1977 were already apparent in McCarty's early evaluation. These included his strict discipline, lack of support

^{2/} He testified he was only concerned with non-economic matters.

for individual needs, and an "attitudenal conflict."

In McCarty's evaluation of February 15, 1973 (which was just after McCarty successfully represented the four teachers) Demarest rates McCarty as average or above in all areas and states, "We continue to be pleased by this teacher's progress. We are very optimistic about his future."

His first poor evaluations came two weeks later on March 2, 1973. A number of parents expressed concern to Board members about McCarty's harsh discipline. Demarest wanted McCarty to meet with the parents and discuss their concerns. McCarty stated he would meet with them only if a representative of the New Jersey Education Association was present. Demarest would not agree to such a meeting. He wanted McCarty to meet with the parents by himself. It was this incident which precipitated Demarest's change in his opinion of McCarty and not McCarty's activities on behalf of the Association. ^{3/} For the next three years McCarty received favorable evaluations from Demarest, although it was at this time that McCarty became President of the Association.

By November of 1976 the old antagonisms had flared up and there were a number of incidents which caused friction between the two. Some of them were inconsequential, i.e. a routing slip was posted on the bulletin board concerning evaluations; it was to be signed by all teachers. McCarty signed it and wrote, "read notice only." Some of the incidents were significant. On October 21, 1976, parents were in attendance at a PTA meeting, but McCarty walked out on them. ^{4/} Also McCarty was involved in an incident with a fellow teacher, Kathleen Bogel. On November 1st McCarty was on duty in the school cafeteria. Bogel had the habit of eating lunch in the cafeteria with the students. While she was seated, a student left the food line to go and talk to Bogel. McCarty ordered the student back in line. A short time later another child approached Bogel. McCarty began shouting at Bogel in front of the children in the cafeteria. "If you are going to eat in the cafeteria you're going to be treated like one of the kids in the cafeteria" and he began waving his clip board at Bogel. That same day McCarty filed a Behavioral Problem Form (which was used in the cafeteria for pupils) and submitted it with Bogel's name on it. Bogel told Demarest of her run-in with McCarty. Also during this time, Mrs. Blomkvest and several other Board members had received complaints from parents of four of McCarty's students regarding his overbearing conduct with some of their children and of McCarty's telling lurid stories in class. ^{5/}

^{3/} In no sense could a meeting between McCarty and these parents be considered an investigatory interview where there would be a right to representation. See, In re East Brunswick, P.E.R.C. 80-31, 6 NJPER (1979)

^{4/} Vol. 6, p. 113.

^{5/} One story was about someone who buried a cat and then ran over its head with a lawn mower. The other concerned a cat that urinated on some meat in the local market. It is not clear if the two stories concerned the same cat.

Further, Bogel complained to Demarest that McCarty was not releasing students to go to the remedial math course which she taught. Demarest complained to Blomkvist that since the Board refused to go along with his recommendation as to tenure he was powerless as to McCarty. Blomkvist responded that if he was more specific in this evaluation then the Board might be able to take action. It is reasonable, under the circumstances, for Demarest to have evaluated McCarty on November 29th as he did. It is important to note that evidence of antagonism between Demarest and McCarty in negotiations was minimal. Demarest accused McCarty of impeding negotiations, and the letter of October 28, 1976, did not go to Demarest, it went to John Daly, a board member. But it was the Board that voted to reinstate McCarty's increment.

Before leaving the November 29 evaluation two other things are worth noting. First, the evaluation mentioned an R2R or Right to Read program. Two outside lecturers came to give a talk about the program. McCarty and his fellow teachers promptly left the meeting at 3 o'clock without any advance notice in the middle of the lecture. ^{6/} Under the contract the teachers have a right to leave but Demarest's comments are ambiguous. They could refer to the manner in which the teachers left caused embarrassment or they could refer to the exercise of contractual rights. Second, McCarty claimed that the notification in the evaluation that he will attend in I4L or Interning for Learning program ^{7/} was sudden and without foundation is not supported by the evidence. In McCarty's May 9, 1974, evaluation it was suggested that McCarty attend this program. By the time of this instant evaluation McCarty was the only staff member in grades K through 4 who had not participated in the I4L program. All other teachers had volunteered for this workshop.

A document known as the "Teacher Evaluation Analysis" gives teachers the right to "react verbally to a grievance." McCarty responded to the evaluation by submitting a letter in which he stated, "I hereby expect a specific explanation and clarification in writing from you of the question below" and thereafter listed twelve questions regarding the comments on the evaluation. Demarest refused to comply with McCarty's letter, stating that he would abide by the contract and the Teacher Evaluation Analysis Document and declined to respond to McCarty's demands. McCarty then responded with a nine-page rebuttal in which he states an immediate

^{6/} McCarty did tell the lecturers at 2 o'clock they would leave at 3 o'clock.

^{7/} This program was given at the county level.

reply is expected to the earlier memo. In the rebuttal McCarty accuses Demarest of anti-union animus and alleges that the poor evaluation was motivated by said animus.

On December 22, the day that McCarty submitted the rebuttal, McCarty entered the general office of the school and ran off copies of his rebuttal. Demarest was about to use the Xerox machine. When he saw McCarty he challenged McCarty's personal use of the Xerox machine. McCarty claimed he had a right to use the machine for Association business under the collective negotiations agreement and refused to stop. The following day Demarest placed a notice on the bulletin board that "A teacher in our school continues to interfere with the normal operation of our school office by his persistent misuse of Board of Education property and loitering in the office. The administrator noticed, again on December 22, 1976, as we prepared to use the Xerox machine the teacher running off reams of paper for his own personal use without proper notification. In the future no one will use the Xerox machine without the administrator's authorization that the equipment is not in use." The notice went on to state, "There will be a 10 cent a sheet assessment for each copy." The Association maintains this notice constituted unlawful harassment, but the contract provides in Article 5, Association Rights and Privileges, that the Association may use such equipment "at reasonable times when such equipment is not otherwise in use, upon notification. The Association shall pay for the reasonable cost of all materials and supplies incidental to such use." Given the circumstances of Demarest's confrontation with McCarty the day before and the clear language of the contract, Demarest was well within his rights and no unlawful motive can be imputed in Demarest's conduct.

Immediately after the Christmas recess, Demarest released a memo to John Mathis, the President of the Association, with copies to all teachers in which Demarest reviewed Article 5, the Association Rights and Privileges section of the contract, and reviewed how teachers were not complying with the provision that required prior approval for use of school equipment as well as mail boxes and the bulletin board. The memo also stated the provision concerning Teacher Evaluation, Sick Leave and Personal Leave were not being adhered to. Demarest stated that the contract provision would be strictly enforced. The Association claims that this was done to put pressure on the Association to settle the outstanding contract dispute. Demarest testified that the confrontation with McCarty over the Xerox

machine triggered the notice. Given the timing of the incident I find Demarest's testimony credible and do not find the notice to be violative of the Act.

Also, on this same date, Demarest evaluated McCarty. Once again Demarest commented in the evaluation that McCarty had attitude problems. The evaluation stated that "There continues to be a need for this teacher to cooperate with other teachers in reaching agreeable behavior patterns outside the classroom." As to the latter statement, Demarest testified that McCarty has had run-ins with Bogel, as discussed above, as well as other teachers including Levin.^{8/} The undersigned is satisfied that McCarty did have problems with some teachers. It is obvious that the "attitude problem" referred to the incident with the copy machine on December 22. It is also evident that this second evaluation was motivated by Demarest's anger over this incident.

On January 28, 1977, Bogel called Demarest at home. Bogel had found a note stuck in her door stating, "I shot you at 9:00 o'clock." The note was written on the back of a photostatic copy of a letter to Demarest that Bogel had prepared about the cafeteria incident. Bogel had kept this same copy in her desk at school. Both Bogel and Demarest testified they believed that McCarty was responsible for the note and they called the police. Although there is no direct evidence linking McCarty with the threat, I see no reason to discount Demarest's testimony as to this belief that McCarty was responsible.

On February 10, 1977, McCarty filed a written rebuttal to the January 3, 1977, evaluation. In a cover letter McCarty states, "The fact that you have refused to answer, in writing or orally to me and my representative the question that I posed (in the earlier) memo, demonstrate its lack of validity." The letter concludes, "This rebuttal does not preclude any other action that I or my legal adviser deem necessary, concerning the evaluation of 1-3-77."

In the rebuttal McCarty accuses Demarest of harassment and intimidation and of making inferences and allegations without substance. He states that Demarest's attitude toward him has not changed since 1973. He claims that the evaluation consists of "unprofessional, unfounded and bias(sic) opinions," that the evaluations are "a true expression of the unfounded, harassing, unprofessional attitudes by the administrator towards myself and the evaluations are his 'opin-

^{8/} Also, McCarty would not release children to attend Bogel's classes and Levin had a name plate stolen from his door. Levin believed that McCarty did it.

ion' - not fact." The letter accuses Demarest of refusal to answer questions. In his testimony McCarty also accused Demarest of not offering assistance, although McCarty never asked the people to whom Demarest directed him for help and instead demanded that the Superintendent perform a lesson for him. McCarty challenged almost every comment, good or bad, in the evaluation and questioned the ability, qualifications and expertise of the evaluator.

In a companion case to this one, In re Cape May City Board of Education, P.E.R.C. 80-31, 6 NJPER __ at (1979), the Commission adopted a Hearing Examiner's finding of fact wherein it was found, during an evaluation meeting with two non-tenured teachers, that on February 13 Demarest questioned them about their loyalty. Demarest stated, "I don't want any more Charlie McCarties." The Hearing Examiner found, at footnote 38, this statement was ambiguous. "It could reflect Demarest's discomfort at having the Board supersede his tenure recommendation, or it could refer to McCarty's activism in the union." The report went on to say, "One may infer animosity toward McCarty from the record, but not animus." Such animosity is visible in all of Demarest's evaluations. The Board has demonstrated ample reasons for this animosity independent of animus.

Then on February 17, Demarest again observed McCarty and issued a third report. The overall comments of Demarest concerning McCarty's teaching ability and relationship with his students were uniformly positive. But once again Demarest was critical of McCarty's "attitude." He states, at point 2 of the evaluation,

Unfortunately, we see no improvement of attitude. We believe that free speech and rights do not endow a teacher as a school district employee, with a license to vilify his superior publicly or in writing. The employer-employee relationship restrains the right of the employee to the extent reasonably necessary to retain the harmony and loyalty which is necessary to the efficient and successful operation of the education system.

It is individuality that each teacher brings to the educational scheme that contributes to educational success. That individuality, however, must be sublimated to the educational good. A teacher is expected to maintain a civility commensurate with his or her professional status. A reading of this teacher's rebuttal of the administrator himself rather than the teacher's evaluation tends to show that he has failed to meet even the minimum professional standards expected of him.

A course of action of continued harassment, unprofessional conduct and intimidation of the administrator shall cease immediately.

McCarty had a right to "react in writing to an evaluation" pursuant to the "Teacher Evaluations Analysis."^{2/} Although this document is separate from the collective negotiations agreement and there is some confusion as to its origins, the lead paragraph of the document provides it is an "agreement of the teachers, Board and administration." Further, the document makes specific reference to the Association. Accordingly I find it constitutes part of the collective negotiations agreement, and McCarty in preparing the rebuttal was exercising his contractual right. In North Brunswick Twp. Board of Education, P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205, 1978) at footnote 16 the Commission held "individual employee conduct, whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective negotiations agreement or existing working conditions of employees in a recognized...unit, constitute protected activities under our Act." See, Dreir v. Krump Mfg. Co., 545 F.2d 320, 93 LRRM 2739 (7th Cir. 1976) and NLRB v. Interboro Contractors Inc., 388 F.2d 455, 67 LRRM 2083 (2nd Cir. 1967).

Accordingly, the filing of the rebuttal here constituted the exercise of protected rights. There is no absolute right to exercise such rights. "Any employee may not act with impunity even though he is engaged in protected activity. An employee's rights under the Act must be balanced against the employer's right to maintain order in its operation by punishing acts of insubordination." Crown Central Petroleum Corp. v. NLRB, 430 F.2d 724, 74 LRRM 2855 (7th Cir. 1965). Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068, 1979).

McCarty was responding to the clear animosity that Demarest exhibited against him and he was questioning whether Demarest was capable of performing evaluations in an objective manner. The language used by McCarty was strong, but it was understandable. He had no right to demand that Demarest respond to the question he had posed but there was nothing genuinely humiliating or opprobrious in McCarty's rebuttal. He did not lose the protection of the Act when he submitted this rebuttal to Demarest. It follows that when Demarest included his criticism of the rebuttal in the February 17 evaluation, he interfered with and restrained McCarty's exercise of protected rights and violated §5.4(a)(1) of the Act. In effect, Demarest was disciplining McCarty for the exercise of protected rights.

^{2/} See Bethlehem Twp. Board of Education, P.E.R.C. No. 80-5, 5 NJPER 291 (¶10159, 1979) and N.J.A.C. 6:3-1.21. State v. State Supervisory Employees Association, 46 N.J. 54 (1979).

McCarty had grieved each of the evaluations in the 1976-1977 school year. On February 28, 1977, McCarty's grievance of the November 1976 evaluation proceeded to Level 3 of the procedure: hearing before the Board. At that meeting, Demarest recommended to the Board that they withhold McCarty's increment. Demarest made his recommendation on the basis of three factors--cooperation and conduct, which were discussed above, and health. McCarty had exceeded his allotted 10 sick days by one in 1973-1974 and by six in 1975-1976. Again the undersigned finds that the Association has not proven that Demarest was motivated by animus in making his recommendation for as discussed above the Respondent demonstrated how unprotected acts engendered Demarest's animosity.

On April 1, 1977, Demarest conducted his fourth evaluation of McCarty. This evaluation was also favorable as to McCarty's teaching ability but again attacked McCarty's attitude, stating it has grown progressively worse.

He refuses to accept that he is a public employee, holding a position of public trust. His students have learned not only what this teacher has taught, but what they see, hear and experience about this teacher in the cafeteria and in the halls. A teacher is expected to maintain a civility commensurate with his or her professional status, but instead he has set out to harass and intimidate the administrator and other teachers by using Board members, N.J.E.A., County Education Association members and local Education Association members while threatening the administration with legal actions.

The above language in this evaluation is violative of the Act.

Simply because an action is taken in the name of a majority representative does not mean that said actions are protected by the Act. If indeed the Association or its affiliates named by Demarest did harass and intimidate him, then such a comment might not be violative of the Act. The only evidence adduced to show that the Association and its affiliates attempted to harass and intimidate Demarest was that the County Education Association wrote letters in support of McCarty to the Board of Education. Yet the activity complained of is clearly protected, North Brunswick, supra, and giving an employee a poor evaluation because he exercised protected rights is discriminatory. Hence, to include comments of Association activity in McCarty's evaluation was discrimination with the intent to discourage the exercise of protected rights in violation of §5.4(a)(3) of the Act.

The evidence satisfies the undersigned that the exercise of protected rights was not one of the motivating factors in McCarty's earlier poor evaluation however. In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977).

See also the Commission decision in Cape May, supra, wherein Demarest recommended a teacher for tenure who he knew was "loyal to the Association" yet recommended the non-renewal of two teachers who Demarest did not believe were loyal to the Association. The Association also argues that the poor relation with fellow teachers that Demarest criticized McCarty for was in reality a split in the Association that was an internal Association matter and should be of no concern of Demarest. The evidence does not so indicate. McCarty's poor relationship with Bogel and Levin --who were part of the group that split within the Association--had nothing to do with the Association in any legitimate way. Witness the note that Bogel found in the door that she perceived to be a threat on her life by McCarty.

Conclusion of Law

- 1) By including in its February 17 evaluation Demarest's adverse criticism of McCarty's rebuttal which under the circumstances was a protected activity, the Respondent engaged in a course of conduct constituting an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1).
- 2) By including in the April 1 evaluation references to protected activity of the Association and its affiliates the Respondent engaged in a course of conduct constituting an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(3) and derivatively §5.4(a)(1).
- 3) There being no evidence at the hearing regarding a violation of N.J.S.A. 13A-5.4(a)(4), this section of the Complaint should be dismissed.

Recommended Order

Respondent, its officers, agents, successors or assigns shall

1. Cease and desist from interfering with, restraining or coercing any employees in the exercise of the rights guaranteed to them by the Act by evaluating employees on the basis of rebuttals submitted by an employee.
2. Cease and desist from discriminating against its employees in order to discourage the exercise of protected rights by including in evaluations negative comments about the majority representative writing letters on behalf of the Respondent's employees.

3. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

a) Remove from Charles McCarty's evaluation of February 17 the following language:

Unfortunately, we see no improvement of attitude. We believe that free speech and rights do not endow a teacher as a school district employee, with a license to vilify his superior publicly or in writing. The employer-employee relationship restrains the right of the employee to the extent reasonably necessary to retain the harmony and loyalty which is necessary to the efficient and successful operation of the education system.

It is individuality that each teacher brings to the educational scheme that contributes to educational success. That individuality, however, must be sublimated to the educational good. A teacher is expected to maintain a civility commensurate with his or her professional status. A reading of this teacher's rebuttal of the administrator himself rather than the teacher's evaluation tends to show that he has failed to meet even the minimum professional standards expected of him.

A course of action of continued harassment, unprofessional conduct and intimidation of the administrator shall cease immediately.

b) Remove from the evaluation of Charles McCarty of April the following language:

He refuses to accept that he is a public employee, holding a position of public trust. His students have learned not only what this teacher has taught but what they see, hear and experience about this teacher in the cafeteria and in the halls. A teacher is expected to maintain a civility commensurate with his or her professional status, but instead he has set out to harass and intimidate the administrator and other teachers by using Board members, N.J.E.A., County Education Association members and local Education Association members while threatening the administration with legal actions.

c) Post at its central offices in the School District of Cape May City, New Jersey, copies of the attached notice marked "Attachment II." Copies of said notice on forms to be provided by the Commission, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon

receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter on conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that such notices are not altered, defaced or covered by any other material.

d) Notify the Commission, in writing, within twenty (20) days of receipt of the Order of the steps the said Respondent has taken to comply herewith.

4. IT IS FURTHER ORDERED that the particular sections of the Complaint which allege that the Cape May City Board of Education engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(4) be dismissed.



Edmund G. Gerber
Hearing Examiner

DATED: March 19, 1989
Trenton, New Jersey

Attachment I

CAPE MAY CITY SCHOOL
CAPE MAY, NEW JERSEY

TEACHER OBSERVATION REPORT

TEACHER'S NAME Mr. McCarty DATE 11/29/76
GRADE Four TIME 9:00 to 9:45 A.M.
CLASS OBSERVED Science, Math, Language Arts

PERSONAL QUALIFICATIONS:

- a. Care for appearance.....Seems appropriate.
- b. Regard for child behavior.....Teacher accentuates child behavior.
Some children adjust well. Others
fear teacher.
- c. Use of voice.....Seems reasonable.

PROFESSIONAL QUALIFICATIONS:

- a. Knowledge of subject.....Orientated toward skill subjects
such as math and science. Teacher
has good background in social
sciences.
- b. Command of language.....Appropriate for fourth graders.
- c. Understanding of pupils.....Teacher is orientated toward high
school students. He may not
comprehend sensitivity of 9 year
old children.

SCHOOL MANAGEMENT:

- a. Maintenance of control.....Excellent. If teacher is absent
or children under supervision of
others, children usually become
discipline problems.
- b. Handling routine and materials.....Excellent. Materials available in
great quantities.
- c. Use of time in classroom.....Question lack of coordination with
curriculum K-4. While teacher worked
with math group C, others in the
class worked with S.R.A., reading
and letter writing. Plan book seemed
to indicate groups A & B were to work
in math?

TEACHING EFFECTIVENESS:

- a. Preparation and use of plans,.....Plans always include materials. No reference ever made to desired outcomes of lesson for students. An initial presentation on Climate and Weather was not included in plan book sent to office.
- b. Provides for group participation.....Children participated in groups.
- c. Selection of materials and activities..As usual, teacher is trying to do too much with curriculum. Quantity is overwhelming. Needed are check points to make certain students receive the kind of instruction they require. Rigorous screening and diagnostic procedures shall be enforced. In fact, an integrated program of skills array from R2R, Interning for Learning, Title I and compensatory specialists is needed.
An in-service program for I4L will be given this teacher during the week of December 6th to orientate him to a program that is more rigorous and diagnostic. When he returns to school the following week, he shall implement the I4L program to obtain basic skills needed.
- d. Provides for individual differences....Teacher tries hard in academic areas. He needs curriculum structure badly. He shall learn that children have individual needs and are not to be retained in the classroom when assigned to instrumental music, gym, remedial math or any other special teacher activity.
- e. Provides for student participation.....Some participated well. Others did not seem to know what to do and as a result for 5 to 10 minutes did nothing.
- f. Establishes rapport.....Rapport with some children is good; with some children it is poor. Poor rapport is due to an attitude problem that prevents him from remaining "open" to constructive criticism from parents, peers, or even from children.

FINAL OBSERVATIONS - RECOMMENDATIONS:

- 1. Teacher continues to be strong academically orientated teacher.
- 2. Standards set in classroom are usually teacher developed.

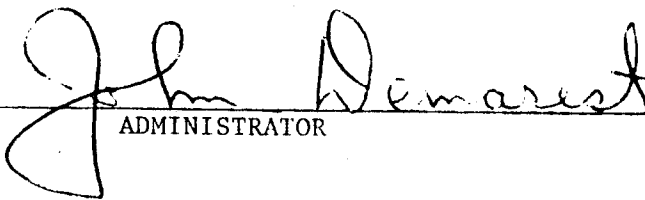
TEACHER OBSERVATION REPORT - Mr. McCarty

Page 3.

FINAL OBSERVATIONS - RECOMMENDATIONS: (Continued)

3. Teacher should recognize that more sensitive children "fear" him.
4. Teacher should refrain from telling ludicrous stories to 9 year olds.
5. Lack of attendance at PTA meetings, as agreed, has effect on other teachers.
6. An unprofessional approach to R2R has adversely affected program. Dr. Daniels and Ms. Battendieri have refused to visit the school district since your treatment of them.
7. Failure to return contract in past years has set a precedent that two other teachers have now followed. Though not mandated, certainly a transgression in developing good relationships.
8. Refusal to allow phone number to be used for business purposes certainly is contrary to what is regarded as the right of an employer.
9. As a public employee serving parents it would appear a teacher should be sensitive to the needs of parents and offer assembly programs at 10:00 A.M. for them, as do other public employees in the school.

This teacher must understand that he is a public employee who holds a position demanding public trust, and in such position shall teach, inform and mold habits and attitudes, and influence the opinions of his pupils. His students learn, therefore, not only what they are taught by the teacher, but what they see, hear, experience, and learn about the teacher. It is my judgment, as administrator and evaluator in the Cape May City School District, this teacher's attitude has not changed as he promised in his letter of March 27, 1973 to the Board of Education and, in fact, he has created conditions under which the proper operation of the Cape May City School has for several years been adversely affected.



ADMINISTRATOR

EMPLOYEE

CAPE MAY CITY SCHOOL
CAPE MAY, NEW JERSEY

TEACHER OBSERVATION REPORT

TEACHER'S NAME Mr. McCarty DATE 1/3/77
GRADE Four TIME 12:35 to 1:05 - Interning
1:05 to 1:30 P.M. - Weather
CLASS OBSERVED IFL- Weather

PERSONAL QUALIFICATIONS:

- a. Care for appearance.....Improvement noted.
- b. Regard for child behavior.....During Interning program teacher coordinated lesson well. During presentation on "Weather" teacher dominated classroom. There continues to be a need for this teacher to cooperate with other teachers "in reaching agreeable behavior patterns outside the classroom".
- c. Use of voice.....Seems reasonable.

PROFESSIONAL QUALIFICATIONS:

- a. Knowledge of subject.....High energy level noted as teacher made initial attempts to blend children's learning experience through our K-4 Interning for Learning Program. Centers were well constructed, thought questions offered. Some attention should be given to isolating learning centers, seating in the classroom library area and storage of materials.
The concept "Weather" was also presented. This area of the curriculum is given too much attention. Time is seized from "skill subjects", math and reading.
- b. Command of language.....Seems acceptable.
- c. Understanding of pupils.....Standards of teacher eventually surface. The Interning program thrusts the teacher in the direction of evaluating children based on their own abilities. However, once the classroom assignment returned to Climatology and Meteorology the teacher became the transmitter of information, and all children became listeners instead of doers.

TEACHER OBSERVATION REPORT - Mr. McCarty

Page 2.

SCHOOL MANAGEMENT: (Continued)

- a. Maintenance of control.....Excellent in classroom. Outside classroom behavior patterns are unacceptable. There is no support for constructive self-discipline.
- b. Handling routine and materials.....Materials available in great quantities.
- c. Use of time in classroom.....Improvement noted after teacher was orientated for one week outside classroom. Interning program necessitates optimum use of time. He is on the right "track" and needs help from the more experienced teachers we have available to help him overcome his difficulties.

TEACHING EFFECTIVENESS:

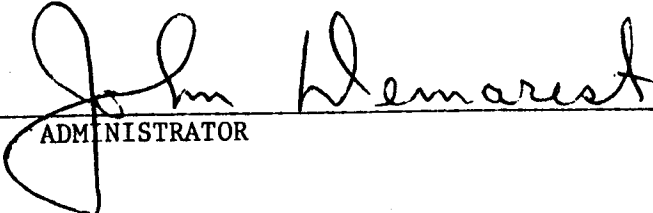
- a. Preparation and use of plans.....The teacher shall follow recommendations as indicated in 11/29/76 observation and write plans to include performance objectives for students. What is expected of students as a result of his teaching. Our priority is student performance and not information to subs on what page he is on.
- b. Provides for group participation,.....Children participated in groups.
- c. Selection of materials and activities.....The Interning curriculum has more sequence than his previous programs. Several teachers in school are available to help him overcome his lack of experience. Perhaps the teacher may want to take advantage of some of our teachers' abilities? We are pleased he started Interning on January 3, 1977.
- d. Provides for individual differences.....Teacher has tried hard in the past academic areas with unacceptable results as measured by our S.R.A. achievement and intelligence tests administered on April 26, 1976 for school year 1975-76. We believe other teachers' successes with the curriculum of Interning for Learning and Open Programs may be communicated.
- e. Provides for student participation.....Participation in Interning was good considering teacher is inexperienced.

TEACHING EFFECTIVENESS: (Continued)

- f. Establishes rapport.....His attitude problem persists and has been damaging to his progress in becoming a team member of an outstanding group of Cape May City teachers.
The teacher continues to adopt a defensive position and is extremely sensitive to constructive criticism from parents, his peers, and the administrator.

FINAL OBSERVATIONS - RECOMMENDATIONS:

1. The teacher shall learn to acquire the understanding of and the ability to form responsible relations with a wide range of other people, including those with characteristics different from his own.
2. The teacher shall acquire the knowledge, skills and understanding that permit him to play a satisfying and responsible role as an I4L teacher. In-service programs completed at expense to the Board of Education may be helpful to assist this teacher.
3. In understanding his pupils, he shall learn to develop an understanding of his own worth, abilities, potentialities and limitations.
4. He shall present programs which bear a meaningful relationship to the present and future needs and interests of pupils rather than to what is of interest to him.
5. He shall accept the standards established by the State and District Board of Education for assessing and evaluating his abilities with students.
6. He shall write performance objectives based on district goals for students.
7. He shall work to obtain a school environment designed to foster positive feelings by pupils toward self and others.
8. He shall initiate an on-going communication program between himself and parents of pupils participating in our education programs.
9. To insure adequate opportunities for him to demonstrate his efforts in the specified inefficiencies outlined to him in his evaluation of November 29th, 1976 and again on January 3rd, 1977, he can expect increased classroom observations. It is to be clearly understood that we have teachers available to provide assistance with in-service programs at his request at any time.



 ADMINISTRATOR

 EMPLOYEE

CAPE MAY CITY SCHOOL
CAPE MAY, NEW JERSEY

TEACHER OBSERVATION REPORT

TEACHER'S NAME Mr. C. McCarty DATE 2/17/77
 GRADE Four TIME 8:45 tp 9:45 A.M.
 CLASS OBSERVED I4L

PERSONAL QUALIFICATIONS:

- a. Care for appearance.....Improvement noted.
- b. Regard for child behavior.....Coordination of the Interning for Learning program went well. Teacher seemed alert to problem areas as he worked with groups.
- c. Use of voice.....Seems reasonable.

PROFESSIONAL QUALIFICATIONS:

- a. Knowledge of subject.....Teacher possesses a "High Energy Level". We look forward to his becoming an experienced Interning for Learning teacher. Explanation of Centers #3, 5, and 7 is necessary, since they were difficult to find.
- b. Command of language.....Seems acceptable.
- c. Understanding of pupils.....There appears to be a concerted effort on the part of the teacher to better understand his children. In any case, the relationships between teacher and students were warmer. We look forward to continued efforts in this area.

SCHOOL MANAGEMENT:

- a. Maintenance of control.....We believe there was a specific attempt to support constructive self-discipline with the groups. Though the teacher had to speak several times to some of the students exhibiting verbal excesses, he is to be complimented by his handling of the situation. We are convinced it was not easy for him to concede.
- b. Handling routine and materials.....Abundance of materials in classroom gives an appearance of untidiness. He needs storage areas badly to remove materials from bookcases, clothing racks and from atop cabinets.

SCHOOL MANAGEMENT: (Continued)

- b. Handling routine and materials.....Routine seems to be handled well. However, an abundance of materials are everywhere in the classroom. Materials can be seen on top of large and small cabinets, papers piled on metal cabinets and clothing cubicle, papers thrown next to cabinets, yet the bottom drawer of cabinet was half empty. Musical instruments were placed precariously around tables where children were walking. The entire appearance of the room is untidy, including the teacher's own desk. Storage space is a problem to every teacher in every classroom, yet this teacher's excuse is "he has no storage space." Coats were thrown on the floor, other storage space was filled with composition paper that could have been stored in the teacher's assigned office storage area. On April 1st, 1977 his storage area in the office was near empty.
- c. Use of time in classroom.....We believe after several months of experience he shall overcome many of his deficiencies in handling Interning for Learning which makes maximum usage of time in the classroom.

TEACHING EFFECTIVENESS:

- a. Preparation and use of plans.....He still seems confused by the evaluator's release to all teachers on 1/20/77 "Performance Objectives help you individualize your teaching by clarifying your day-to-day instructional goals. Its purpose is to stimulate you to do this in a way which will get you thinking in terms of what YOUR STUDENTS SHOULD DO AS A RESULT OF YOUR INSTRUCTION. We know that at present you do think in terms of what You will do in the classroom. It is hoped that all will think in terms of observable student performances." We expect improvement in this area. If space continues to be a problem. as the teacher indicated to the observer, we suggest again, as we have on February 17, 1977 in his evaluation, that he use a binder to write his plans. If he is

FINAL OBSERVATIONS - RECOMMENDATIONS:

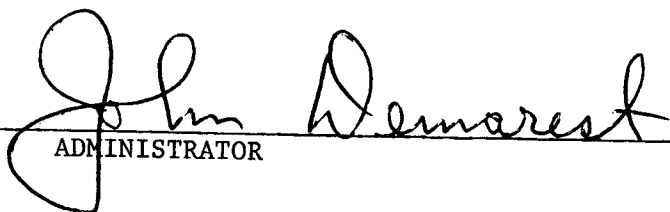
Page 3.

1. Improvement has been noted in his approach in understanding children within the class, his endeavors toward presenting Interning for Learning, his writing of performance objectives and his coordination of reading activities.
2. Unfortunately, we see no improvement of attitude. We believe that free speech and rights do not endow a teacher as a school district employee, with a license to vilify his superior publicly or in writing. The employer-employee relationship restrains the right of the employee to the extent reasonably necessary to retain that harmony and loyalty which is necessary to the efficient and successful operation of the educational system.

It is the individuality that each teacher brings to the educational scheme that contributes to educational success. That individuality, however, must be sublimated to the educational goal. A teacher is expected to maintain a civility commensurate with his or her professional status. A reading of this teacher's rebuttal of the administrator himself rather than the teacher's evaluation tends to show that he has failed to meet even the minimum professional standards expected of him.

A course of action of continued harassment, unprofessional conduct and intimidation of the administrator shall cease immediately.

3. Communication to outside sources without knowledge of the administrator has adversely affected public relations at the school. The teacher has placed the Board of Education in a position of criticism by his lack of attention to policy of the Board with regard to field trips. Mr. William Jaegger has criticism for the teacher in the way he was treated in not informing him of Field Trip Policy of the Board of Education.
4. He shall understand that supervision and evaluation of classroom teachers are a matter of professional judgement and are necessarily highly subjective. Seven and nine page rebuttals to the contrary are unacceptable when they concern matters other than the evaluation content.
5. I desire to make clear that I express no opinion as to the Board's decision to grant you tenure over my objection. That is their responsibility as governing officials. The law cannot compel me to act wisely, but it can and does compel me to act in good faith. I have, to the best of my ability, acted in good faith and evaluated you honestly.
6. It is my sincere hope that my evaluations during the 1976-77 school year will be taken in the spirit of honesty and perhaps, to some extent my suggestions to overcome your difficulties will be accepted in attaining skills for your teaching role.



 ADMINISTRATOR

 EMPLOYEE

CAPE MAY CITY SCHOOL
CAPE MAY, NEW JERSEY

TEACHER OBSERVATION REPORT

TEACHER'S NAME Mr. McCarty DATE 4-1-77
GRADE Four TIME 8:55 to 9:45 A.M.
CLASS OBSERVED IFL

PERSONAL QUALIFICATIONS:

- a. Care for appearanceAcceptable attire.
- b. Regard for child behavior.....Coordination of the Interning for Learning program was satisfactory, thus behavioral problems were of the minor variety.
- c. Use of voice.....Seems reasonable.

PROFESSIONAL QUALIFICATIONS:

- a. Knowledge of subject.....Teacher seems to be progressing satisfactory. The portable centers are acceptable at this grade level; however, the teacher should be aware that construction of centers around the room is necessary, since some children need to work by themselves. As instructed in his evaluation of January 3, 1977, we look forward to his attempt to isolate some centers. Perhaps he may want to take advantage of our human resources offered to him during the past six months?
- b. Command of language.....Seems appropriate for fourth graders.
- c. Understanding of pupils.....During classroom presentation he was observed making specific attempts to support constructive self-discipline in the group.

SCHOOL MANAGEMENT:

- a. Maintenance of control.....This is the second successive lesson observed since this teacher has been employed in this school district whereby he made an attempt to support constructi self-discipline. We look forward to thi continuing.

SCHOOL MANAGEMENT: (Continued)

c. Use of time in classroom.....Improvement continues to be noted as he works with each group. We believe the workshop on February 25th will be most helpful to him. Other instructional personnel are available at his request.

TEACHING EFFECTIVENESS:

a. Preparation and use of plans.....The teacher is now writing acceptable plans, including performance objectives for children. It would be advantageous if the teacher wrote larger so that his plans could be better read. If space is a problem, we suggest he use a regular binder to write his plans.

b. Provides for group participation.....Children participated well in both groups observed. The Scott Foresman series was used with the first group and we assume this non-adopted text better fit the needs of this particular group? The second group used our adopted reading text, the Macmillan series. Group one worked with consonants and vowels (long and short) with a follow-up lesson in Scott Foresman's workbooks. Some additional responsibilities should be given to Richard. He seemed unsure of his responsibilities after completing his work at a learning center.

c. Selection of materials and activities.....Learning centers were good. Walls were attractively decorated. Relocation of coat cubicles may allow for more seclusion of centers. Alphabets appeared on desks to advantage. We expect teacher take advantage of listening center? We suggest chair be removed from top of table for safety reasons and lights be turned on over blackboard where groups are working with teacher.

d. Provides for individual differences.....I4L program geared to individual differences.

e. Provides for student participation.....Student participation was good. We assume Craig's program is outgrowth of program being presented by Special Education Teacher?

f. Establishes rapport.....Rapport with groups of children seemed good.

TEACHING EFFECTIVENESS: (Continued)

- still confused we again can recommend several teachers who write performance objectives beautifully.
- b. Provides for group participation.....Children appeared to work satisfactory in groups.
- c. Selection of materials and activities.....The teacher has only three months experience yet he is progressing nicely with the construction of creative centers and activities. Some 30 centers are constructed, most of them are portable. A good idea at this grade level. However, the teacher is again reminded that some seclusion is necessary for centers located throughout the classroom. The listening center seemed appropriate. (Earth and its Axis). We suggest the teacher remove chairs from the top of desks during activities. They are hazards to the children.
- d. Provides for individual differences.....The program presented seemed to meet needs of individual students.
- e. Provides for student participation.....Student participation is improving. Children seem to be adjusting to I4L with only Greg confused as to his responsibilities.
- f. Establishes rapport.....Rapport with some is good; with some it is poor. Poor rapport is due to an attitude problem that prevents him from remaining "open" to constructive criticism from parents, peers or the administrator. His attitude problem has had a direct affect on relationships among teachers, causing a polarization of teachers and spin-off affect on parents in the community. The teacher continues to adopt a very defensive attitude and refuses to discuss his problems with the administrator, with the faculty, nor has he taken advantage of their proffered help.

FINAL OBSERVATIONS . RECOMMENDATIONS:

1. Teacher is progressing with Interning for Learning and the curriculum is better organized than previous "teacher developéd" programs.
2. He was observed making attempts to support constructive self discipline. We are delighted by his acceptance of this approach, since his approaches within the classroom were detrimental to some of the more sensitive children assigned to him.

FINAL OBSERVATIONS - RECOMMENDATIONS: (Continued)

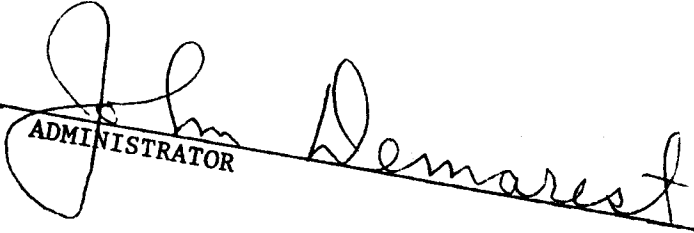
3. Appearance of the room leaves much to be desired. Lack of storage space is a problem, as it is in every room, yet his peers manage to do a very good job of preparing their rooms attractively.
4. Teachers' Performance Objectives have improved; however, he still needs help. Our January 20, 1977 release outlining the development of objectives for him to follow seemed simple enough. In fact, all teachers questioned on the faculty as of April 1, 1977 seem to understand what is expected of them with the exception of this teacher.
5. We are very pleased by the creativity of the teacher in constructing learning centers. There are some excellent centers constructed. We highly compliment him for his creative abilities.
6. The attitude of the teacher is becoming progressively worse. He refuses to accept that he is a public employee, holding a position of public trust. His students have learned not only what this teacher has taught, but what they see, hear and experience about this teacher in the cafeteria and in the halls. A teacher is expected to maintain a civility commensurate with his or her professional status, but instead he has set out to harass and intimidate the administrator and other teachers by using Board members, N.J.E.A., County Education Association members and local Education Association members, while threatening the administrator with legal actions. As an administrator in a 300-pupil school district, I find it difficult to understand why he needs to harass me with such an array of talent. He has the entire faculty upset with his personal problems and has caused a split among the members. This split has now affected parents, as children are directly involved with his personal outbursts.
7. He has continued to ignore most of my suggestions to aid him in overcoming his difficulties, some of which are:
 - a. Understand and try to form responsible relations with a wide range of people on the faculty.
 - b. Refuses to take advantage of the numerous human resources available.
 - c. He refuses to assess his own worth, potentialities and limitations.
 - d. He refuses to work to obtain a school environment designed to foster positive feelings.
8. The Commissioner of Education has consistently pointed out that those who enter the teaching profession have a significant influence upon those they teach and, therefore, should exhibit exemplary behavior. The heavy duty of teaching requires a degree of self restraint and controlled behavior rarely requisite to other types of employment.

In the matter of the Tenure Hearing of Herman B. Nash, School District of the Township of Teaneck, Bergen County 1971 S.L.D. 284 that:

"A teacher, as any citizen who decides to take any form of action or inaction does so at his own risk. No matter what the ultimate objective sought, the individual must accept the responsibility for his actions."

I desire to make clear that I express no opinion as to the Board's decision to withhold your increment. That is their decision as governing officials. The law cannot compel me to act wisely, but it can and does compel me to act in good faith. I have, to the best of my ability acted in good faith in evaluating you. In fact, to demonstrate my fairness to you, I shall give you additional opportunities to correct the specified inefficiencies outlined in your evaluations of November 29th, 1976, January 34d. 1977, February 17th 1977 and this evaluation of April 1st, 1977,

FINAL OBSERVATIONS - RECOMMENDATIONS: (Continued)
by granting you increased classroom observations.


ADMINISTRATOR

EMPLOYEE

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce any of our employees in the exercise of the rights guaranteed to them by the Act by evaluating our employees on the basis of rebuttals submitted by our employees.

WE WILL NOT discriminate against our employees in order to discourage the exercise of protected rights by including in evaluations negative comments about the majority representative's actions.

WE WILL remove from the evaluations of Charles McCarty specific references to rebuttals prepared by him and negative comments concerning protected activities of the majority representative.

(Public Employer)

Dated _____

By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.