

P.E.R.C. NO. 97-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

-and-

Docket No. CI-H-94-78

MARIANNE MURAWSKI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Marianne Murawski against Gloucester County College. The charge alleges that the College violated the New Jersey Employer-Employee Relations Act by deciding not to reappoint Murawski to the position of Coordinator of Academic Advisement because she tried to organize the College's coordinators. The charge also alleges that Murawski was removed from the list of College adjunct instructors because of her organizing. The Commission finds that the charging party has not proved that protected activity was a substantial or motivating factor in the decision to not renew her contract and her removal from the adjunct teaching list.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Genova, Burns, Trimboli & Vernoia,
attorneys (Stephen E. Trimboli, of counsel)

For the Charging Party, Albertson, Ward & McCaffrey,
attorneys (Thomas H. Ward, of counsel)

DECISION AND ORDER

On June 6 and July 29, 1994, Marianne Murawski filed an unfair practice charge and amended charge against Gloucester County College. The charge, as amended, alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3) and (4), ^{1/} by

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

deciding not to reappoint her to the position of Coordinator of Academic Advisement because she tried to organize the College's coordinators. The charge also alleges that Murawski was removed from the list of the College's adjunct instructors because of her organizing.

On August 5, 1994, a Complaint and Notice of Hearing issued. On August 22, the employer filed an Answer denying that it had retaliated against Murawski.

On January 20, February 1, March 10 and 24, and April 10, 1995, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On December 22, 1995, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 96-10, 22 NJPER 52 (127027 1995). He concluded that the charging party had not proved that hostility towards her organizational efforts motivated the personnel actions. He also found no evidence to support the claimed subsection 5.4(a)(2) and (4) violations.

On February 7, 1996, the charging party filed exceptions. She claims that the Hearing Examiner erred in finding that she had not demonstrated that her organizing efforts were a motivating factor in the College's decisions not to renew her as Coordinator of Academic Advisement and to remove her from the approved adjunct teacher list. On February 22, the College filed an answering brief

supporting the Hearing Examiner's findings of fact and conclusions of law.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 3-49) with these modifications and additions.

We modify finding no. 4 to state that there are no differences between R-15 and J-3 other than their minimum qualifications sections.

We add to finding no. 16 that Kathryn Gover, Assistant to the President for Human Resources and Professional Development, was assigned by College President Richard Jones to handle the request of the Federation of Teachers to represent the coordinators. In this capacity, Gover communicated to David Cosky, Federation President, and Tom McCormack, Federation Negotiations Chair, the College's position regarding the Federation's faculty unit including the coordinators. The College's position was that the coordinators did not belong in the faculty unit but the College would voluntarily include the coordinators in the para-professional unit or would voluntarily recognize the coordinators as a separate unit.

We add to finding no. 21 that when Vanel Perry, Vice President for Instruction, sent John Henzy, Chair of the Liberal Arts Department, a memorandum dated June 15, 1994 (R-4), it was the first time that Perry issued a written interpretation of R-7012 (rule giving preferential treatment to full-time employees to become adjuncts) (CP-16).

The charging party asserts the following facts which are at variance with the Hearing Examiner's findings:

1. The College never claimed that Murawski was insubordinate until after she filed her unfair practice charge.
2. Kathryn Gover participated in the decisions not to renew the charging party as Coordinator of Academic Advisement and to remove her from the adjunct instructor list.
3. Kathryn Gover was present when the union approached the College President about organizing the coordinators.
4. Kathryn Gover was present at the trustees' meeting when the Federation presented its petition to represent the coordinators.
5. Kathryn Gover had the College's labor counsel issue an opinion that R-7012 mandates that Murawski could no longer teach as an adjunct.
6. The charging party was the only instructor qualified to teach music courses she had developed.
7. During 1993-1994, the only change in the charging party's circumstances from 1991-1992 was her union activity.

These allegations are not supported by the record. The Hearing Examiner correctly declined to include them in his decision.

This case centers on allegations that the College retaliated against Murawski because she engaged in union activity. Cases of anti-union retaliation are decided under the standards established by the Supreme Court in In re Bridgewater Tp., 95 N.J. 235 (1984). Under Bridgewater, 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 did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. 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 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 proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

In UMDNJ, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987), we explained that under the Bridgewater standards:

The charging party must prove that an illegal motive contributed to the challenged personnel actions. In determining whether this burden has been met, the trier-of-fact must review the

record as a whole, make credibility determinations, resolve conflicts and draw appropriate inferences.

In applying the Bridgewater standards, the Hearing Examiner did not find direct or circumstantial evidence showing employer hostility to Murawski's organizing. While he found that the College was aware of Murawski's efforts to organize the coordinators, he did not find that these efforts were a factor in the decision to not renew her as Coordinator of Academic Advisement or her removal from the adjunct teacher list. Accordingly, the Hearing Examiner concluded that the charging party had not proved that protected activity was a substantial or motivating factor in these personnel decisions.

The charging party argues that the Hearing Examiner erred in not inferring hostility from the fact that she was never formally disciplined or given a letter of caution; her performance evaluations do not indicate misconduct; she was approved to attend a conference paid for by the College at the same time her supervisor recommended non-renewal; the College did not recognize the Federation as majority representative of the coordinators until 1995; and the College never stated a reason for her non-renewal. Murawski contends that the College's claim of insubordination was pretextual.

The record supports the Hearing Examiner's conclusion that insubordination was the only reason for the charging party's non-reappointment. The record is replete with instances of Murawski

being uncooperative and resisting directives from supervisors. Further, the evidence shows that she had received criticisms, warnings and reprimands and still refused to change her behavior. After reviewing all the evidence, the Hearing Examiner declined to draw an inference of hostility and we have no cause to disturb that determination.

Murawski contends further that the Hearing Examiner failed to recognize the role that Kathryn Gover played in the disputed personnel decisions. This contention rests, in part, on allegations without supporting evidence. In any event, the Hearing Examiner did consider Gover's participation in the process and we see no reason to question the weight he gave to her role.

The charging party also asserts that the Hearing Examiner erred in considering any facts surrounding the civil rights complaint. While the Hearing Examiner does include these facts in his findings, there is no mention of them in his analysis. The Hearing Examiner did not rely on any of the facts relating to the civil rights complaint to conclude that the respondent was not hostile toward the charging party's protected activity. Neither do we.

Murawski charges that the College's use of R-7012 to remove her name from the approved instructor list was a subterfuge. She argues that she was notified of the removal shortly after she filed an unfair practice charge regarding her non-renewal as coordinator. Additionally, Murawski points out that R-7012 had never before been


used to remove a person from the adjunct list and another College administrator, Betty Magjuka, was allowed to teach as an adjunct after she severed full-time employment without filing an application. From this, she urges us to infer hostility to her organizing efforts. For the reasons stated by the Hearing Examiner, however, we decline to draw that inference. We see no reason to disturb the Hearing Examiner's determination that Murawski's union organizing had nothing to do with her removal from the adjunct faculty list.

Consequently, the charging party has not proved that protected activity was a substantial or motivating factor in the decision to not renew her contract as Coordinator of Academic Advisement and her removal from the adjunct teaching list. We dismiss the allegations concerning subsections 5.4(a)(1) and (3). The charging party has not filed exceptions to the Hearing Examiner's decision regarding the 5.4(a)(2) and (4) allegations. We adopt the Hearing Examiner's recommendation to dismiss those allegations.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996

H.E. NO. 96-10

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

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

-and-

Docket No. CI-H-94-78

MARIANNE MURAWSKI,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the Gloucester County College did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by not renewing Marianne Murawski as a full time coordinator, or by removing her from its list of adjunct instructors. The Hearing Examiner found that Murawski was removed from both positions because of her insubordinate and uncooperative job performance, and not because she engaged in protected activity.

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. If no exceptions are filed, the recommended decision shall 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.

H.E. NO. 96-10

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

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

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Appearances:

For the Respondent, Genova, Burns, Trimboli & Vernioia,
attorneys (Stephen E. Trimboli, of counsel)

For the Charging Party, Albertson, Ward & McCaffrey,
attorneys (Thomas H. Ward, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On June 6, 1994, Marianne Murawski ("Charging Party"),
filed an unfair practice charge with the New Jersey Public
Employment Relations Commission, amending it on July 29, 1994,
alleging that Gloucester County College violated subsections
5.4(a)(1), (2), (3) and (4) of the New Jersey Employer-Employee
Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} In a lengthy charge

^{1/} These subsections prohibit public employers, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the
rights guaranteed to them by this act. (2) Dominating or

accompanied by numerous attachments the Charging Party generally alleged that on March 4, 1994, the College terminated her from the position, Coordinator of Academic Advisement, effective June 30, 1994, because she sought to organize unrepresented coordinators employed by the College with the Gloucester County College Federation of Teachers. In her amended charge she alleged that on June 15, 1994 she was removed from the list of approved College adjunct instructors, effective June 30, 1994, because of her attempts to organize unrepresented coordinators. The Charging Party seeks an Order of reinstatement to her positions with full back pay and other benefits.

A Complaint and Notice of Hearing was issued on August 5, 1994. The College filed an Answer with affirmative defenses on August 22, 1994, denying it violated the Act. In its affirmative defenses the College argued that its actions were based upon legitimate business justifications, it would have taken the same action even absent the exercise of protected activity, that the charge was untimely, and that at least some of the charge has been submitted to an alternative dispute resolution forum.

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or 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."

Hearings were held on January 20, February 1, March 10 and 24, and April 10, 1995.^{2/} Both parties filed post-hearing briefs by July 28, 1995.

Based upon the entire record, I make the following:

Findings of Fact

1. Marianne Murawski was hired by the College in September 1990 as Coordinator of Academic Advisement with a contract through June 30, 1991 (C-1B #9, C-1B #10). She was charged with the responsibility for implementing and coordinating an advisement program for students (1T30). The job description for her position (R-15) included that she assist in the "overall advisement process to include student advisement". The eighth listed duty in R-15 stated: "Performs other related duties as assigned." R-15 further showed that the Coordinator reported to the Vice-President of Instruction, who was Vanel Perry, but Murawski also reported to the Vice-President of Student Services, Evelyn Webb, and she considered both Webb and Perry to be her immediate supervisors (1T31).

During her first year of employment Murawski was generally responsible for making sure advisors were trained, she needed to hear about the different College academic programs, and she was required to participate in orientation, graduation and advisement activities (1T30, J-1, J-2, R-15). She did not engage in union

^{2/} The transcripts from the hearing will be referred to as: January 20, 1T; February 1, 2T; March 10, 3T; March 24, 4T; April 10, 5T.

activities that first year (1T35-1T36), and since the advisement program had not been implemented at that point she did no student advising that year.

In March 1991 Murawski was reappointed to her position for another year effective from July 1, 1991 through June 30, 1992 (C-1B #11, C-1B #12). During the 1991-92 academic year the advisement program was implemented. That resulted in a change in Murawski's responsibilities, but not a change in her job description (1T36). On July 5, 1991 Murawski was evaluated by Webb for her 1990-91 performance, and received a good evaluation (J-1).

2. In August 1989 the College adopted Rules 7012 and 7013. Rule-7012 (CP-16) is entitled: Teaching Assignments for Full-time Professional Staff, and requires the College to include on its list of available adjunct faculty, those full time professional employees who do not hold faculty rank.^{3/}

Rule 7012 was intended to give preferential treatment to full time employees to become adjuncts. The College believed it was

3/ The first paragraph of CP-16 provides:

The names of qualified full-time professional staff available for teaching positions are to be placed on the List of Persons Available for Teaching Assignments and lists submitted, together with properly completed applications, to the Board of Trustees for approval prior to assignment. Staff members who are full-time College employees but do not hold faculty rank must be included on the List.

The remaining two paragraphs of CP-16 involve reimbursement and degree requirements for adjuncts, the number of teaching assignments during the work day, and that the employees work week would be modified to include the teaching assignment.

more beneficial to have full time employees serve as adjuncts, particularly because they had greater access to College facilities, resources and information (3T114). Anyone serving as an adjunct instructor needs prior approval (3T115), but there is a less formal review and application process for full time employees seeking to become adjuncts. All others must formally apply and undergo a more rigorous review (3T119-3T120, 4T86).

Both full time College employees and all other people fill out the same application for adjunct positions, but full-time employees are automatically added to the adjunct list if otherwise qualified to teach (2T159, 2T169-2T170).

Rule 7013 (CP-17) is entitled: A Supervisor's Guide for Determining Appropriate Disciplinary/Adverse Actions. It includes procedures for the issuance of discipline which may include removal/termination. It also included a list of factors to consider in selecting penalties.^{4/}

4/ Relevant factors in CP-17 included:

- the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously, for gain or was frequently repeated.
- the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position
- the employee's past disciplinary record

Footnote Continued on Next Page

3. Murawski began teaching as an adjunct faculty member, consistent with Rule-7012 (CP-16), in September 1991, teaching both Critical Thinking, and Music Appreciation (1T41). On February 3, 1992 she received her Notice of Appointment to teach a course in Critical Thinking in the 1992 Spring semester (C-1B #14). In March 1992 Murawski was renewed in her Coordinator position for the 1992-93 academic year (C-1B #15; C-1B #16).

On July 14, 1992 Webb evaluated Murawski for her Coordinator position for the 1991-92 year, again giving her a good

4/ Footnote Continued From Previous Page

- the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability
- the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties
- consistency of the penalty with those imposed upon other employees for the same or similar offenses
- the notoriety of the offense or its impact upon the reputation of the College
- the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question
- potential for the employee's rehabilitation
- mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter
- the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others

evaluation (J-2). In the Supervisory Comment Section of J-2, however, Webb noted that Murawski "needs to focus on increasing knowledge and broadening experience in the field of academic advising."

On September 22, 1992, Murawski received her Notice of Appointment as an adjunct faculty instructor to teach two courses in the Fall 1992 semester, Critical Thinking, and Music Appreciation (C-1B #17).

In the Fall of 1992, Murawski asked other coordinators if they were interested in being represented by a union, and she sought advice from David Cosky and Tom McCormack, officers in the Gloucester County College Federation of Teachers that represented a unit of teachers and a separate unit of para-professionals, on how to organize coordinators (1T44). There was no showing that Webb, Perry or any other College administrator was aware of Murawski's inquiries at that time. Murawski did not engage in any other protected activity during her second year of employment (1T37, 1T40).

4. Sometime prior to 1993 the College partially reorganized the line of authority in the Student Services Division. It created the title of Director of Student Development, Advising and Registration, and revised the organizational chart to reflect that the Coordinator of Academic Advisement (Murawski's title), and other coordinator titles, report directly to the Director of Student Development, Advising and Registration, and the Director, in turn,

report directly to Webb (CP-10). The job description for the Coordinator of Academic Advisement was changed to be consistent with the new organizational structure, reflecting that the Coordinator report to the Director of Student Development, Advising and Registration (J-3). There were no other differences between R-15 and J-3.

The change in the Student Services structure was implemented in January 1993. Prior to January, the College had hired Penny Britt as Director of Student Development, Advising and Registration, and she became Murawski's direct supervisor by January, 1993 (1T47).

Britt had been employed by Cumberland County College for several years as Director of Student Support Services, and had been active in union organizing while at Cumberland (4T143, 4T146). In her Director position at Gloucester, Britt is included in a negotiations unit represented by the IUE (4T144-4T145).

5. The relationship between Britt and Murawski was rocky from the very first. Their personalities clashed. Britt wanted all of the professional employees she supervised, including Murawski and other coordinators, to participate in student advising during the various registration time periods (4T150). On January 4, 1993 Britt told Murawski she expected her to participate in advising students which is consistent with J-3. Murawski resisted, saying that was not something she had done in the past, and that she did not perceive that as part of her responsibilities (4T149). Murawski

interpreted Britt's remarks as rude and embarrassing, and said she felt "hostility" (R-1).^{5/}

On January 5, 1993, Britt interrupted a conversation Murawski was having with Webb's secretary to ask Murawski whether she had advised any students that day. Murawski "felt hostility" and thought Britt had been rude (R-1). Murawski defined hostility. She said:

What I mean by hostile? She [Britt] would berate me. Humiliate me in front of my colleagues. If I was meeting with someone, she would always interrupt. And it wasn't an interruption that would be pleasant. You know, excuse me, I need to see you for a moment. It was always with an irritated tone. As though I shouldn't be talking to anyone. That I should just be in my office. And things of that. 1T51.

On January 7, 1993, Britt interrupted a conversation between Murawski and Cosky to discuss an advising brochure (R-1). Murawski and Cosky were discussing union activities (1T51), but there was no showing that Britt knew what they were discussing, overheard what they said, or even knew that Cosky was a union official.

During her first week of reporting to Britt, Murawski was already having a conflict with her over student advisement (1T133). But Murawski acknowledged, and I so find, that from the very first, Britt was directing Murawski to become personally involved in

^{5/} Exhibit R-1 is a lengthy document prepared by Murawski for Webb on May 24, 1993, listing numerous exchanges that occurred between her and Britt during the first half of 1993.

advising students (1T134-1T135). Murawski resisted that assignment. She disputed whether she should be required to advise students (1T135), arguing it had not previously been included in her job duties (1T134).

Despite Britt's directive that Murawski perform student advising, Murawski, from the beginning in January 1993, engaged in a course of conduct to avoid performing advisement duties. Although Murawski denied resisting such assignments and said she provided advisement as requested (1T135), I credit Britt's testimony that when it actually came time to perform such assignments, Murawski often could not be found, sometimes appearing on the scene very late in the advisement process (4T153). During January 1993, Britt often had to find Murawski and remind her of her obligation to be involved in the advisement process (4T153).^{6/}

^{6/} Having observed testimony from both Murawski and Britt it became obvious to me that they neither liked, nor trusted one another. Their personalities and style of work did not mesh. That distrust began and persisted well before Britt became aware that Murawski was involved in protected activity.

As witnesses both women were cordial and cooperative on direct examination, but often uncooperative and nonresponsive on cross-examination. Britt's testimony, however, was supported by the series of events that comprise the facts in this case.

Thus, while Murawski testified she provided advisement as requested and did not resist such assignments, at best, that was merely her perception of her own conduct. But Murawski did not dispute Britt's testimony that when it came time to perform advisement duties she often was not there, and Britt had to coax her to perform such assignments. As will be developed infra, Murawski frequently offered explanations as to why she was not available for advising at a particular time, but that did not dispute Britt's testimony. Generally, I found Britt's testimony more reliable than Murawski's and credit her here.

On January 15, 1993, Murawski was not on campus, but while observing Murawski's secretary, Britt noticed she was typing Murawski's class notes for her Music Appreciation course (4T154, R-9). Britt felt that was an inappropriate use of the clerical staff, she directed the secretary to discontinue the work, and she collected the material (4T155). On or about January 19, 1993, Britt returned the materials to Murawski telling her it was an inappropriate task and indicating it should not happen again (4T156). On January 20, 1993, Britt sent Murawski a memorandum regarding the matter (R-9) reiterating what she had told her earlier.

On January 26, 1993, Britt instructed Murawski to take a greater leadership role in the management of student orientation and registration programs (R-1). On January 27, 1993, Britt distributed a work schedule to the employees she supervised (R-33), showing their work hours for the 1993 Spring semester. Murawski was scheduled to work on Fridays from 8:00 a.m.-4:00 p.m. in her Coordinator title. Britt subsequently learned, however, that Murawski was teaching one of her adjunct courses early Friday morning without her approval (5T76).

Britt had scheduled her first staff meeting with her new staff for January 29, 1993. It had been scheduled and announced to her staff prior thereto (4T158). The meeting began on time, but Murawski arrived late (4T158). Britt explained to her staff that she wanted everyone to arrive on time for these meetings (4T159).

6. Prior to February 4, 1993, Murawski had sent several memos to Britt with copies to Webb regarding her (Murawski's) relationship with Britt (4T103-4T104,4T161-4T162). On February 4 Britt told Murawski she should not have sent copies of a memo regarding academic advisor training sessions to Webb and Perry (R-1, 4T160). On February 5, 1995, Murawski was reappointed as an adjunct instructor to teach two courses in the 1993 Spring semester (C-1B#18).

In R-1, Murawski wrote that on February 19, 1993 she learned for the first time that she was coordinating mailing for contacting students regarding late registration during "clean-up weeks". She wrote that she had not been instructed to do that work. Britt testified, however, that she had discussed this matter with Murawski, and Murawski knew she was responsible for coordinating the mailings (4T163-4T164). I credit Britt's testimony.^{7/}

On February 25, 1993, Britt had a discussion with Murawski and employee Joan Frampton. Murawski and Frampton had apparently coordinated student orientation in the Fall 1992, and were again discussing orientation plans (4T167-4T168). Murawski wrote in R-1 that on February 25 Britt instructed her and Frampton not to talk to

^{7/} Murawski did not specifically testify regarding the February 19 incident or contradict Britt's testimony thereon. The statements Murawski wrote in R-1 regarding February 19 were not subject to cross examination and, therefore, could not be relied upon to overcome Britt's uncontradicted testimony.

one another without her permission, that she (Britt) was the boss, and that Murawski could not do anything without her approval. Murawski concluded her February 25 narrative in R-1 with the following underlined sentence. "I am now certain that my job is in jeopardy". The remarks attributed to Britt, if made, occurred prior to Britt being aware of Murawski's protected activity (4T169). Britt testified, denying she made the remarks attributed to her by Murawski (4T168). Britt explained that she only asked Murawski and Frampton not to proceed further in orientation matters because of some changes that might be made (4T168-4T169). I credit her testimony.^{8/}

7. On or about March 1, 1993, Britt asked Murawski to review a memorandum she (Murawski) had drafted (R-3) regarding academic advisement assumptions. Murawski's statement about "Morale" in R-3 provides:

MORALE - Looking over my assumptions from last year, my first statement on morale was: "Morale is at an all-time low." I can honestly state that morale is even lower this year especially in Student Services. It is reaching a crisis level. There are several members of the staff being treated for stress and depression. We are extremely understaffed and overworked. Morale must be addressed.

^{8/} Murawski testified that Britt told her she "...should not have contact with Mrs. Frampton involving any process of my job in terms of working with her in scheduling or putting schedules out...", but admitted that Britt just wanted the communication to go through her (1T137). Britt did not deny there was a conversation, she merely did not want Murawski and Frampton to be proceeding on their own. Murawski's testimony on the subject was not significantly dissimilar from Britts, and since Murawski did not specifically testify in support of the remarks she made in R-1, I cannot rely on R-1 to contradict Britt's testimony.

Also on or about March 1, 1993 Britt had a discussion with Murawski about the memos that had been sent to Webb. Murawski noted in R-1 that when she left that meeting she felt belittled, berated and humiliated. She concluded her statement in R-1 with the following sentence:

"My job is in jeopardy."

On March 2, 1993, Webb called for and conducted a meeting with Murawski and Britt regarding the memos Murawski had been sending.^{9/} Webb asked Murawski why the memos had been sent to her. There was no response. Britt asked the same question and Murawski responded it was for "information". Webb asked what she was supposed to infer from the memos but Murawski did not respond (4T105). The three individuals then reviewed all of the memos during which Murawski explained that some of her responsibilities had changed, that she was unsure of her job duties, and that Britt was not allowing her to perform her duties (4T106).

Webb also reviewed with Murawski her "Morale" statement in R-3. Webb questioned whether that statement was an appropriate topic for the assumptions memo (R-3). She asked Murawski why she had made that assumption, Murawski did not respond. Webb did not get the same impression about Morale from talking to other employees (4T106-4T107).

^{9/} In R-1 Murawski wrote that the meeting with Webb and Britt occurred on March 1, 1993. But both Webb and Britt testified it occurred on March 2nd (4T105, 4T173), R-10 supports their testimony, and I credit it here.

Webb then wanted to resolve any confusion about Murawski's duties. Webb assumed the responsibility for Murawski's confusion, but personally reviewed Murawski's responsibilities with her, including that she was responsible for student advisement (4T109). Murawski admitted that at that meeting Webb and Britt defined her job to include student advising (1T154).

At the close of the meeting, Webb asked both Britt and Murawski to submit to her their written expectations of their positions, including a list of their duties (4T110).

On March 5, 1993, Murawski was notified that on March 3rd the Board of Directors had approved her reappointment to the coordinator position (C-1B#19).

On March 10, 1993, Britt sent Murawski a memorandum (R-10) regarding Murawski's job responsibilities. Britt indicated that Murawski should submit to her (Britt) a plan for providing advisement to students as a group. Britt also reviewed other matters and asked Murawski to include her in resolving issues or seeking information.

That same day Murawski sent her "Expectations" to Webb (R-16). They were a list of things Murawski wanted or needed, and Webb felt they were not appropriate terms for expectations given their previous discussions. Webb again reminded Murawski of her responsibility to perform student advisement activities (4T112).

On March 30, 1993, Britt had a conversation with Murawski regarding her lack of active participation in group advisement.

While Murawski attended group advisement sessions she often only acted as an observer, not a participator. Britt directed her to be more active and assume a leadership role (4T174-4T178).

8. On April 1, 1993, Britt asked Murawski whether there was any remaining confusion regarding her duties. Murawski gave her the impression she was now clear regarding her responsibilities (4T188-4T189). On April 2, 1993, Murawski was sent her official offer of reappointment to her coordinator position for 1993-94 (C-1B#20).

Britt and Murawski had a meeting on April 20, 1993 regarding a particular matter (See R-1). Murawski testified on direct examination that when she was about to leave Britt's office, Britt said:

...[O]h by the way, I hear congratulations are in order. I hear you've gotten in the union. (1T50)

Murawski testified on cross-examination that Britt also said:

She told me that she thinks it is great.
[joining the union] She has worked with unions
for 15 years and has never had a grievance. She
said that she treats all employees the same.
(1T175).

Murawski told Britt that there had been times in College history when strikes nearly occurred, and that she could not cross a picket line if required to do so, and that Britt allegedly responded:

...it seems ridiculous to join over maybe having
to cross a picket line. (1T175).

Murawski did not know how Britt learned of her union involvement, and claimed that Britt made the congratulations remarks in a sarcastic way (1T50).

In her journal entry of that same day (R-6), Murawski wrote the same account of Britt's alleged remarks as she testified on cross-examination, except, the journal also included the following sentences.

She [Britt] told me that she does not understand why I feel the need to join the union. After-all, you get the same benefits and increases as the union members. (R-6)

But there was nothing in R-6 suggesting Britt's remarks were made in a sarcastic tone.

Britt testified that she did congratulate Murawski on the coordinators joining the union (4T190, 5T50), but she vigorously denied speaking in a sarcastic tone (4T190). Britt testified that she was enthusiastic about the coordinators joining the union, and that she thought it was a good thing (4T190).

On both direct and cross-examination, Britt was asked if she told Murawski that it was ridiculous to join a union, she said "absolutely not" (4T190, 5T49). On cross-examination, Britt was also asked whether she told Murawski that she saw no benefit in the coordinators group joining the union. She again said, "absolutely not." She was also asked if she told Murawski they [employees] were getting equal benefits not being in the union, she said she did not, and she denied asking Murawski why she was joining the union (5T50, 5T49).

On cross-examination Britt testified she said congratulations to Murawski about joining the union, but also testified she recalled more, and offered to explain, but Charging Party's counsel did not elicit the testimony (5T50).

Although I found that both Murawski and Britt were less reliable witnesses on cross-examination than they were on direct, on balance, I found Britt to be the more reliable witness. Her version of the events was more consistent, often supported by documents, and more plausible than Murawski's. That does not mean, however, that I credit all of Britt's testimony.

First, I do not credit Murawski's testimony that Britt's congratulatory remarks were made in a sarcastic way. There was no indication in R-1 that Britt made sarcastic remarks on April 20. Murawski's journal entry in R-6 was allegedly prepared the day of the event, but there was also no indication there that Britt's remarks were sarcastic. Murawski admitted that Britt told her she (Britt) thought the coordinators joining the union was great, and I find it inconsistent, indeed not believable, that Britt could have made that remark, and the congratulatory remark, at the same time and yet been sarcastic.

Second, I credit Britt's testimony on cross-examination in response to questions asked about her April 20 remarks. Britt's responses were quick, responsive and determined. Murawski did not testify that Britt told her she did not understand why she needed to join the union and that she would receive the same benefits as union

members, that came from Murawski's journal, R-6. But there were no statements/allegations in Murawski's journal that Britt told her that she saw no benefit for that group joining the union, nor did Murawski say that Britt asked her the reasons why she was joining the union. Britt offered to tell Charging Party's counsel what she said to Murawski, but it was not pursued.

Third, I credit Britt's testimony that she did not tell Murawski that it was ridiculous to join the union. Murawski never said Britt made such a remark. Murawski only said that Britt said "it seems ridiculous to join [the union] over maybe having to cross a picket line (1T175, R-6). Given Britt's occasional flip responses on cross-examination, I think it is entirely possible she may have made that remark, and if so, I find it was a reflection of their relationship, but not at all based upon union animus.

On April 23, 1993, three group advisement sessions were held, two in the morning (at 8:30 and 9:30, respectively), and one in the afternoon. Murawski was expected to participate in all three sessions. She failed to attend the morning sessions (4T182), and only attended part of the afternoon session (4T185-4T187).

When Murawski did not arrive for the 8:30 a.m. morning session Britt, at 9:30, found Murawski in her office talking to another employee. Britt asked Murawski to attend the second session. By 10:15 Murawski still had not appeared, and Britt again directed Murawski to participate in advisement, but by then the second session was concluding (4T182-4T184, R-11).

Murawski came to the afternoon advisement session, but soon became engaged in a conversation with another employee. Britt asked her to return to the session, but Murawski never did. Five minutes later Britt found Murawski on the telephone in her office (4T185-4T187).

Murawski in R-1 wrote down her version of the events of April 23rd, which did not contradict Britt's testimony that Murawski failed to perform advisement that day. I credit Britt's narrative of the events of that day. Murawski merely offered an explanation for what she was doing.

On April 26, 1993, Britt sent Murawski a memorandum criticizing her regarding the events of April 23 (R-11). The last paragraph of R-11 provided:

Marianne, I continue to be concerned about your lack of enthusiasm in which you have approached the concept of Group Advisement. We discussed your role in the process many times. You appear to have little interest in providing support toward coordinating and assisting in the Group sessions. This is exhibited in your not showing up at Group as well as coming late to some previous sessions. As we have concluded through the Student Development team, we are moving more and more toward the group format. If we are to accomplish the goals set for the team, your total cooperation is required. If for some reason you are unable to fulfill those responsibilities, I encourage to share that with me. If you do not share, I will assume you will carry out your job in a responsible manner.

With respect to that paragraph Murawski wrote in R-1:

I feel that this paragraph is attempting to goat me into being insubordinate and demeaning to me in that it shows a lack of understanding of the

requirements of my position. Mrs. Britt is attempting to impose her perceptions of what I should be doing on me without first examining the requirements of my position and reviewing her concerns with me, thus not providing me with guidance as to the direction she is trying to move the department.

In her April 28, 1993 entry in R-1, Murawski explained that on that day Britt told her she (Britt) would be the sole supervisor of the clerical staff,^{10/} that Murawski needed to be more available to answer questions from the academic advisors, and that she should attend a meeting on April 30 concerning at-risk students. Murawski concluded her April 28 entry in R-1 with the following paragraph:

The situations stated above are further examples of Mrs. Britt's inability to perceive the duties and responsibilities of my position as Coordinator ...and other assignments in the College community. This causes me a great consternation, frustration, and anxieties resulting in undue stress and pressure in the performance of my duties.

In her April 30, 1993 entry in R-1, Murawski explained how she was perceived as being in charge of the Department in Britt's absence. She concluded her April 30 entry with the following paragraph:

During counseling sessions with individuals I have sought out for advice, I have shown them copies of the memos from Mrs. Britt dated April 20 and 26, 1993. [The April 26 memo is R-11].

^{10/} From which I infer that Murawski was doing some clerical supervision but would not in the future.

These individuals had stated "she is clearly building a case to get rid of you". I do not understand why Mrs. Britt wishes to have me fired. This concern is causing me a great deal of anxiety and frustration resulting in my need to seek medical treatment.

9. In May 1993, Federation President Cosky gave Murawski seven unsigned documents (see CP-1) which were letters of interest for the coordinators to sign if they wanted to be members of the Federation. Those letters were not signed and returned to Cosky until after September 1993 (1T52-1T55). There was no evidence that Britt, Webb or any other College official knew Murawski had those letters, or was having them signed.

On May 7, 1993, Murawski said she received a memo from Webb regarding a meeting scheduled for May 11, 1993. Murawski in R-1 said that memo "rekindles the fears and anxieties related to possible termination."

On May 9, 1993, Britt observed Murawski enter a group advisement session, sit in a secluded location and not get involved with, or respond to the group. Britt, therefore, directed Murawski to take an active and productive role in advisement sessions (4T191-4T192).

On May 18, 1993, Murawski told Webb that things were not better (presumably between her and Britt) and Webb told her she would do whatever was necessary to resolve it (presumably the problems between Britt and Murawski) (R-1).

On May 19, 1993, Britt told Murawski that when they meet, a secretary will take notes and submit a copy to each of them (R-1).

Later, Murawski and Britt spoke about the Departments flex-time schedule. Murawski had originally agreed to a four day work week. When she changed her mind Britt informed her it was too late. Murawski abruptly broke off that discussion and was gone from the Department from 45 minutes to an hour. When she returned Britt questioned where she went, and why she had not used the appointment book to designate her whereabouts (4T193-4T197, R-1).

On May 20, 1993, Britt again spoke to Murawski about leaving the Department early, and also accused her of assuming too much power for her position (R-1). Murawski, in R-1, concluded her reaction to that discussion saying:

The restrictions Mrs. Britt is placing upon me are obstructions to my effectiveness in carrying out the duties of my position.

That afternoon Murawski informed Britt that she wanted to meet with Webb regarding her working conditions. The meeting was held later that day.

Murawski told Webb that Britt was keeping her from performing her duties, was hostile to her, and was harassing her (4T114-4T115). Student advisement was discussed because Murawski had said that advisement was not part of her job. Webb reminded Murawski that it was (4T115). Murawski said nothing about union activities, and did not complain that she was being harassed because she was trying to organize the coordinators (4T115-4T116). There was still no showing that Britt or Webb knew Murawski was attempting to organize the coordinators.

Webb asked Murawski to document what she meant by "harassment". Murawski prepared R-1 in response which was given to Webb on May 24, 1993. There was no allegation in R-1 claiming that any of the events were related to Murawski's exercise of protected activity.

On May 21, 1993, Murawski filed a "Complaint/Grievance Form" with the College (R-21) alleging sex discrimination (2T41). That grievance was subsequently amended to include race discrimination (1T130). The grievance was filed pursuant to the College grievance procedure that existed for the benefit of unorganized employees. Such grievances are investigated and sent to a hearing before a committee if necessary (3T86). Murawski said part of the allegedly on-going harassment came from the sex discrimination charge (2T42). She did not mention union activity or allege she was retaliated against because of her union activity (3T64-3T65).

10. On June 7, 1993, Murawski was offered an adjunct position to teach Music Appreciation for the summer of 1993 (C-1B#21).

On June 14, 1993, Webb, in response to R-1, conducted a meeting with Murawski, Britt, Almarie Jones, the Affirmative Action Officer, and a secretary who was taking notes, to clarify issues, to review concerns lodged against Britt, and to attempt to resolve the problems between Britt and Murawski (4T118). Murawski was asked to discuss the allegations she lodged against Britt. Murawski

explained, at least in part, that Britt was restricting her movement, and assigning her duties not in her job description such as advising students (4T120). Webb told Murawski advising was in her job description (4T120-4T121). Murawski made no reference to her union activities, nor did she allege that Britt was retaliating against her because of her union activity (3T75).

On June 22, 1993, Murawski met with Almarie Jones regarding the discrimination complaint she filed. Jones took notes at the meeting then prepared R-23, the details of their discussion. Murawski said she was being treated differently from others because she is female. Murawski did not think it would be possible to work with Britt, or that their differences could be resolved.

Murawski did not mention union activity or retaliation for union activity at that meeting (3T82). The type of harassment that Murawski said she encountered allegedly due to her union activity was the same type of harassment she told Jones was the basis for her sex discrimination complaint (3T83). I find no basis for Murawski's claim at that point that she was being harassed because of her union activity. At the end of that meeting Murawski told Jones she had filed a complaint with the New Jersey Division on Civil Rights (R-23).

11. On July 13, 1993, Murawski and Britt met to review Murawski's performance appraisal (evaluation) (J-4) that Britt prepared. There were several critical remarks in J-4. Britt noted that Murawski was not receptive to change which impacted on her

flexibility in handling multiple assignments; her timeliness in providing information was an issue; Murawski had difficulty using problem solving skills, she attempted to solve problems above her supervisor which caused problems to escalate; her decision making would benefit from more open communication with her supervisor; she has difficulty communicating with her supervisor; she is not a self-starter and requires specific directives; and, she is reluctant to accept extra or new assignments.

Britt did not consider J-4 to be a negative evaluation (4T212), but she placed the above remarks in J-4 based on the on-going resistance she was receiving from Murawski in the performance of her job responsibilities (4T210).

On July 19, 1993, Webb conducted another meeting with Britt and Murawski as a follow-up to the June 14th meeting. The purpose of the meeting was to discuss Murawski's complaints against Britt, and attempt to resolve their differences. But, at the beginning of the meeting, Murawski read a prepared statement that if she felt the meeting was not productive she did not have to participate or answer questions (4T121-4T122). Murawski indicated that she had been advised not to answer any questions, and she did not otherwise participate in the meeting (2T46-2T47).

Murawski did not raise her union activities at that meeting; did not allege anti-union retaliation; and, did not allege that this meeting was intended to harass her because she was engaged in union activities (4T122). The person advising Murawski not to answer questions was a personal friend, not her attorney (2T47).

An advisement session was scheduled to occur from 2:00 p.m. thru 3:30 p.m. on July 22, 1993 to coincide with walk-in registration. Murawski was expected to participate in that advisement session (4T199-4T200, 4T202).

During the morning hours of July 22nd, Britt and Murawski talked to one another, but Murawski did not tell Britt that she would be late for the afternoon session, or that she had scheduled an afternoon meeting with someone (4T201-4T202). Murawski's lunch period that day was scheduled to be from 1:00 - 2:00 p.m. (4T200).

At approximately 1:00 p.m. that day Britt found the following note from Murawski in her (Britt's) mailbox (R-28, CP-15):

I have a 1:30 meeting. I will be back as soon as possible to help with walk-in.

Murawski was already gone to lunch when Britt discovered R-28 (5T33). Murawski did not indicate who her 1:30 meeting was with; what the subject of the meeting would be; how long the meeting would be; or, that she would not be available for the 2:00 p.m. advisement session (4T200-4T201).

When Britt first saw R-28 she did not check her Department's appointment calendar because Murawski was still at lunch. But when Murawski was late for the 2:00 p.m. session Britt checked the calendar and no appointment was listed for Murawski at 1:30 p.m. that day (5T34-5T35).

Murawski returned at approximately 2:30 p.m. (4T202). Britt told Murawski she had been expected at the advisement session

at 2:00 p.m., and directed her to immediately become involved. Murawski said "I'll get right to it", but she didn't. She checked her mailbox and went into her office. Britt followed and asked Murawski if she was going to get involved in the process, and why she wasn't there earlier. Murawski said an emergency had arisen, but when Britt asked about the emergency, Murawski said she would not comment further without a witness (4T203). Murawski did not tell Britt who the meeting was with, what it was about, or the nature of the emergency at that time (4T204).

Several days later Murawski, after the fact, noted in the July 22nd appointment calendar (CP-18) that she had a 1:30 meeting that day, and told Britt the meeting had been with Dr. Randall (5T35-5T36). 11/

On July 29, 1993, Britt issued Murawski the following memorandum (R-13) regarding the events of July 22:

On July 22, 1993 I gave you a specific directive to provide academic advisement during the regularly scheduled advisement periods (see attached memo). You chose to ignore that directive and instead pursued a meeting on your own. Please note, you have been advised. This

11/ I credit Britt's testimony about the events of July 22, 1993. Her testimony made sense, it held together under cross-examination, it was consistent with Britt's memo of July 29 concerning the incident (R-13), and Murawski did not contradict the scenario that Britt explained. Murawski testified that she had noted her 1:30 meeting on CP-18 prior to the time of the meeting (5T97), but I do not credit that testimony. Britt had a very clear recollection of the events of that day, and but for CP-18, Murawski did not contradict any of it. I found Britt's explanation to be plausible, and credit it here.

cannot happen again. Your support in providing academic advisement is necessary. I welcome your feedback if I can provide further clarification.

On July 29, 1993, an advisement session was scheduled from 2:00 p.m. to 3:30 p.m. and Murawski was expected to participate (1T192). Murawski admitted having advance notice of the session (1T193), but, once again, she was one-half hour late for the session (1T192). Britt had to remind Murawski to be involved in the advisement process (4T205-4T206).^{12/}

Britt did not recall whether she checked the appointment calendar for July 29 (CP-19) which shows that Murawski may have had a 1:30 meeting with Almarie Jones that day (5T39-5T40), but Jones did not have the authority to countermand Britt's directive to Murawski that she participate in group advising. Murawski claimed she left a note in Britt's mailbox notifying her about the meeting, but she did not produce the note (1T193). Lacking support, I cannot credit Murawski's testimony.^{13/}

^{12/} Murawski testified that Britt did not remind her to make herself available for advisement (1T192). I do not credit that testimony. Throughout 1993 Britt consistently reminded Murawski to be available for and participate in advisement. It is more plausible that Britt did the same thing during this incident, and her memo to Murawski issued later that same day (R-12) supports that finding. I therefore credit Britt's testimony.

^{13/} Murawski testified she had a copy of the alleged note for July 29, but she did not produce it at this hearing, and did not provide such a note during discovery (1T193). Consequently, I do not credit her testimony that such a note exists (perhaps she is confused with R-28, CP-15).

Later on July 29, Britt issued Murawski a stern memo (R-12) regarding the events of that day. R-12 provides:

As per previous memorandums, I have directed you to provide academic advisement. As you are aware, today, July 29th, advisement began at 2:00 p.m. You ignored your responsibility until 2:30 p.m. At that time I had to verbally remind you that you were supposed to be providing advisement. Your response to me was, "I KNOW".

Your deliberate disregard of your advisement responsibilities cannot continue. In addition to providing advisement, it is also anticipated that you will begin the process on time.

12. On or about August 11, 1993, Murawski apparently sent Webb a memorandum entitled "Subject: Harassment from Penny Britt" wherein she "implored" Webb to address the situation (see R-18). Webb responded by memorandum of August 17, 1993 (R-18), noting that Murawski's request was incongruent with her refusal to answer questions at the July 19 meeting intended to address the alleged harassment by Britt. Webb in R-18 further explained:

Please be assured, however, that I am very much interested in addressing work-related concerns and any performance aspect of the harassment claims you have filed against your supervisor. Any resolution to this situation, therefore, must have the full cooperation from both of you to enable us to clarify the nature of the dispute and propose strategies to improve communications and working relationships.

and concluded the memorandum by inviting Murawski to meet with her on August 23, 1993 to further discuss the matter.

On August 18, 1993, Britt sent Murawski a memorandum (R-30) in response to Murawski's request to be absent from the September 2,

1993 evening registration. Britt rejected the request and clearly required Murawski to be present on September 2nd.

On August 23, 1993, Webb met with Murawski to review her relationship with Britt. Murawski gave Webb documents concerning Britt's rejection of her request to be off on September 2nd. Murawski considered the rejection ongoing harassment by Britt, and wanted Webb to overturn Britt's decision. Webb refused. During that meeting Murawski did not refer to her union activity or allege Britt's decision was based on union animus (4T124-4T127).

13. After Murawski filed her sex and race discrimination grievance against Britt in May 1993, the matter was scheduled for a hearing on September 1, 1993. Murawski attempted to withdraw the grievance in August 1993 allegedly because Britt was retaliating against her (3T87). Almarie Jones, who was responsible for processing the grievance, rejected Murawski's request to cancel the hearing. She explained that the nature of the alleged discrimination, and the alleged retaliation, made it necessary for her to hear the matter (3T88).

Jones chaired the committee hearing regarding the matter. The Committee included three other professional employees (3T86). Murawski had been asked to produce a witness list, and identified 44 people (1T130-1T131; 3T87). Murawski appeared at the hearing, explained that she had been advised by counsel not to participate in the hearing, and did not further participate (1T131; 3T87-3T88). The Committee heard from 39 witnesses and ultimately concluded that there was no evidence of discrimination (3T88, 3T90).

In early September 1993 Britt prepared the annual objectives and goals for Murawski (R-29), which included the objective that she "Provide academic advisement during peak periods" (4T214-4T216; R-29, p.72). After Britt gave Murawski a copy of R-29, Murawski, on September 20, 1993, gave Britt a handwritten memo (R-5), objecting to performing advisement duties. Murawski, in pertinent part, wrote in R-5:

I disagree with providing advisement services. I was not hired and have not been considered an adviser. When I have advised in the past, it has been during emergency situations, ...Please reconsider.

On September 27, 1993, the College approved Murawski as an adjunct instructor to teach two courses in the 1993 Fall semester (C-1B #22).

14. On or about October 1, 1993, Murawski told Britt that she would be serving as the designee for Dr. Randall, Chair of the Math, Science and Technology Department, on Monday evenings throughout the semester to handle student walk-ins requesting information about registration and referrals in that Department (4T220-4T221; R-31). On October 4, 1993, Britt sent Murawski a memo (R-31) directing her not to accept that assignment. In R-31, Britt said in pertinent part:

...it is inappropriate for you to accept an assignment or serve as a substitute from other departments or administrative staff.

Britt explained that Murawski was expected to keep office hours on Monday night in her own Department (4T220). Dr. Randall had not consulted Britt about the assignment, and Britt informed Murawski that it was inappropriate for her to accept tasks from other administrators without her approval (4T221). Britt concluded R-31 saying:

In the future, I expect that you will not accept unauthorized assignments.

On October 20, 1993, Cosky sent a memo (C-1A #2) to the six coordinators (including Murawski) interested in organizing with the Federation, notifying them he had scheduled a meeting for October 26 to meet with them to discuss their concerns about organizing. The memo was addressed to the different coordinator positions without using their names, and there was no showing the College was aware of the memo or the meeting.

Earlier in the year Britt had asked her staff to use the centralized appointment calendar, and to fill in the specific locations where they could be found when away from their office (4T223). On October 27, 1993, Britt prepared a memo for Murawski (R-17) criticizing her for either not using the calendar, or using it incorrectly (4T222-4T225; R-17). Britt had previously spoken to Murawski about the proper use of the calendar, but Murawski did not consistently comply (4T225).

In early November 1993, Cosky, and Federation Negotiations Chair, Tom McCormack, met with College President Richard Jones,

informed him of their interest in representing the coordinators, and asked him if he would agree to include the coordinators in their unit of professors. Jones declined (3T24-3T25). There was no showing that Murawski's name was mentioned during that meeting.

15. On November 9, 1993, Cosky wrote a letter to President Jones (C-1A#3), and a separate letter to Board of Trustees Chair, Kenneth DiMuzio (CP-2), formally notifying them of the Federation's interest in representing the coordinator positions in its unit. Cosky formally informed President Jones that the Federation intended to ask the Board to recognize it as the majority representative of the coordinators, and in CP-2 Cosky asked the Board for recognition, and requested the matter be placed on the Board's December agenda (2T182-2T183). Neither Murawski's name nor her specific title were used in either letter.

Also on November 9, 1993, but unrelated to CP-2 and C-1A#3, Britt gave Murawski a memo (R-7) which was Britt's follow-up recommendations to Murawski's July performance appraisal, J-4. Britt noted ways Murawski could improve responding to her job responsibilities; recommended she keep her supervisor informed of where she is and what she's doing; and, recommended she be present-and assume a leadership role-at all advisement sessions. Under "Interpersonal Relations" Britt noted:

You are unwilling to communicate verbally or in writing with supervisor. There is an apparent lack of cooperation and tactfulness in dealing with supervisor.

Britt emphasized Murawski needed to improve her communications with her. Britt completed R-7 by scheduling a meeting with Murawski to review that document.

On November 11, 1993 another advisement session was held and Murawski was expected to participate. Although Murawski attended the session, Britt observed that she did not take an active role in the process, nor did she interact with the students. Britt, once again, told Murawski she was expected to take an active role in the advisement process (4T231).

On November 17, 1993, Britt met with Murawski intending to review the performance appraisal recommendations in R-7. Britt was interested in obtaining Murawski's comments on ways to advance her performance (see R-32 at Note 15). At that point Murawski read the following prepared statement:

I have been advised not to answer any questions.
I have been advised not to make any statements
(R-32, 1T170-1T171).^{14/}

Murawski did not explain the rationale behind her statement, and did not allege Britt was acting out of union animus (4T229).

Britt, nevertheless, reviewed the goals and objectives she had relating to Murawski's professional development, and indicated her willingness to discuss those matters with her. Britt invited

^{14/} Murawski testified that she made those statements, but denied reading from a prepared statement (1T171). I do not credit Murawski's denial. In R-32, prepared six days after the November 17 meeting, Britt wrote that Murawski read from a prepared statement. I found R-32, and Britt, more reliable.

Murawski to interrupt her if she wanted to make a statement, but Murawski made no other statements (4T229-4T230).

Murawski admitted she refused to answer Britt's questions; she did not believe Britt was acting out of union animus at that time; and recognized that Britt might legitimately consider her refusal to answer questions to be insubordination (1T172-1T174).

On November 23, 1993, Britt sent Murawski a memo (R-32) criticizing her for not placing her November 17 statement in writing to her, and reminding her that she would still be held accountable for her job performance.^{15/}

15/ R-32 provides:

On November 17, 1993, you and I met to review the follow-up recommendations/development opportunities developed at the conclusion of the 1992-93 performance appraisal. At the onset of that meeting, I elaborated as to why the meeting was convened (refer to memorandum November 9, 1993). The primary purpose was to review recommendations toward your job performance development.

As we were about to proceed with the aforementioned process, you were asked how you felt about the format for the meeting. Additionally, I shared with you my desire to get feedback from you relative to ways to advance your performance. At that juncture you proceeded to read from a prepared statement you were holding. "I have been advised not to answer any questions. I have been advised not to make any statements." Of course I was quite surprised to hear this in that your written statement on your performance appraisal indicated that you sought guidance for further job performance development.

On November 17, 1993 you were asked by me to put the aforementioned prepared statement in writing to me relative the fact that you were unwilling to participate in the follow-up evaluation process. While you indicated you would, to date you have not responded to this request. In as much as you have refused to take part in your own job development opportunities, you will still be held accountable relative to your job performance.

16. At the Board of Trustee meeting on December 1, 1993, the Federation presented its petition asking the Board to recognize coordinators as part of their negotiations unit (C-1A#4; 2T184; 3T26). The Federation was asked to address the issue and McCormack explained that the coordinators should be part of the teachers (professors) unit because they had more in common with that group than any other (3T26). McCormack did not indicate which coordinator was attempting to organize the group, nor did he suggest there was primarily one individual leading the organizing effort (3T26-3T27). The Board vice chair, Dr. Apetz, asked "who was requesting this", then said, "I want to know who is responsible for bringing this to us" (3T27). McCormack responded:

I said that all of the coordinators, okay, have acted collectively in this, okay, because of what they felt was their obvious need for representation. I expressed that we didn't go union shopping, we didn't go looking for individuals to join our union, that they had come to us, okay, and in that capacity we were representing that position. (3T28)

No other questions were asked, and the Board took no action at that time (3T28). There was no evidence that Murawski's name was mentioned at that Board meeting and no showing the Board was aware of Murawski's involvement. No Board member ever asked Britt if she knew who was organizing the coordinators, or suggested that she retaliate against Murawski because of her union activities (4T237).

After that meeting McCormack told Murawski about Apetz's question, telling her he thought the Board was "looking for who"

(3T29). Murawski testified that based upon her discussion with McCormack, "that was the first time I was aware that the Board was anti-union" (1T173). I credit Murawski's testimony to mean that that was the first time she thought the Board was anti-union, but that does not constitute evidence that the Board was anti-union.^{16/}

On December 3 and 15, 1995, group advisement sessions were held and Murawski was expected to participate. Murawski came to the December 3rd session, but worked on documents she had brought with her, never getting up to interact with students (4T235). Students interrupted her seeking advice, but she did not appear to help. Britt told her it was inappropriate to bring other work to advisement sessions, and directed her to assertively interact with students (4T236).

On or about December 13, 1993, the College was served with a copy of Murawski's complaint against it filed with the New Jersey Division on Civil Rights, and the Equal Employment Opportunity Commission alleging gender and race discrimination (R-8).

^{16/} Murawski also testified that after CP-2 was presented to the Board in November (and presumably after the December 1st Board meeting) her work environment with Britt continued to grow hostile (1T76). That may be accurate, but I do not find a nexus between Cosky's submission of CP-2, and McCormack's presentation to the Board on December 1, with the increased hostility between Britt and Murawski. Their relationship had a life of its own, and there was no showing that Britt was aware of what was being presented to the Board, or that she knew that Murawski had been the most active coordinator seeking representation.

At the December 15th advisement session Murawski did not assert herself or interact with students during the entire session (4T237).

Kathryn Gover, Assistant to the President for Human Resources and Professional Development, knew of Murawski's interest in organizing coordinators before the December Board meeting (4T35), but was not at the meeting, and did not learn about Apetz's question to McCormack until March 1994 (4T27). Sometime after the meeting Gover asked Cosky if he knew the reason behind the coordinators wanting representation (2T185; 4T34). The record did not reflect a response. In late December, Gover had a discussion with Britt about the coordinators efforts to organize. Gover told Britt there was an ongoing effort and that Murawski was one of the coordinators who would have been represented by this group (4T47-4T48). Britt responded that that was fine, and made no negative remarks (4T48). There was no showing Gover made negative remarks about Murawski's union activity.

17. On February 8, 1994, Britt conducted a post evaluation/development opportunity meeting with Murawski, intended to review her job performance and Britt's recommendations in R-7 (2T54-2T55; 4T238; R-19). Secretary, Bernice Kretz was present and took notes of the meeting which were subsequently compiled as R-19 (2T53-2T55; 4T238, R-8).

Britt began by noting the purpose of the meeting, and then asked Murawski:

...what do you think or feel about where you've moved as related to performance since the last time we sat to engage in a dialogue relative to your job performance. (R-19).

Murawski responded:

I have been advised to answer no further questions. (R-19; 2T56).

Britt followed with another question:

...does that mean you will answer no questions--provide no comments or any feedback relative to your job performance at this time? (R-19)

Murawski responded:

I have been advised not to make any further statements. (R-19, 2T56).

Murawski refused to answer any other questions and gave no further explanation to Britt (4T241).

After Murawski made her statements Britt, nevertheless, proceeded to review Murawski's performance. She told Murawski a number of responsibilities needed to be met. Britt explained, for example, that she 1) expected Murawski to become consistently and actively involved in the advisement process without being prompted; 2) expected Murawski to cease accepting responsibilities from other department heads without first seeking and receiving Britt's authorization; and 3) expected Murawski to obtain Britt's authorization prior to accepting and scheduling adjunct teaching classes during the work day. Britt said:

...you are reminded that you cannot make up and dictate your work schedule without supervisory authorization. (R-19)

Britt concluded the meeting by referring to Murawski's insubordination and lack of cooperation (4T240). She said:

All of the above are but a few examples of the limited cooperation and insubordinate behavior you continue to exhibit in the workplace. It continues to be a concern that you are not responsive nor willing to communicate relative to ways you can better perform your job responsibilities. Your current performance and responsiveness to the job decline while you insist that you will not discuss. I will continue to work towards assisting you in developing professionally in your current role as coordinator of Academic Advisement. It is important that you understand that in order for this to be meaningful, it will require your participation. (R-19) 17/

On February 11, 1991, Murawski was offered another adjunct teaching position to teach two courses in the Spring of 1994 (C-1B#23).

On February 14, 1994, Britt met with Murawski and gave her a copy of the minutes from the meeting of February 8 (R-19) with a cover letter that ended with the following sentence:

If you would like to meet in order to further discuss evaluation development opportunities, do not hesitate to see me.

17/ On cross-examination Murawski testified that Britt did not describe her performance as "limited cooperation and insubordinate behavior". She said Britt made that part up (2T58). I do not credit that testimony. Murawski was generally uncooperative during that phase of cross-examination and I did not find her to be a credible witness.

After that meeting Britt approached Kathryn Gover regarding Murawski's unwillingness to speak or respond to questions, and informed her she (Britt) might recommend Murawski for non-reappointment because there had been no improvement. Gover gave her a time frame for making a recommendation (4T244-4T245).

On February 16, 1994, Murawski submitted a request to attend an out of state conference in April which Britt approved on February 18, 1994 (CP-21A). Murawski's attendance at the conference cost the College \$414 (CP-21B) (5T54-5T56).

On February 17, 1994, Gover met with Murawski and told her that the College would not permit employees to continuously be disrespectful and uncooperative (4T43, 4T51). Murawski had not previously been formally disciplined or suspended by the College, or received a formal letter of reprimand (4T53).

After February 14, 1994, Britt did not note any improvement in Murawski's performance. Thus, just after February 17, 1994, she submitted a formal recommendation to Webb not to renew Murawski in her coordinator position based upon her unacceptable job performance, insubordination, and lack of cooperation. Webb approved the recommendation (4T54, 4T57); 4T245).

On February 24, 1994, Britt and Gover met with Murawski. Gover informed her that Britt had recommended her non-renewal and Webb had agreed. Gover explained that the recommendation would be presented to the Board of Trustees, and she gave Murawski a letter (J-5) formally notifying her of the recommendation (1T82-1T84). J-5

further explained that the Board would meet on March 2, 1994, and consider the recommendation in a closed session unless Murawski requested the right to address the Board in an open session. Neither Gover nor Britt ever gave Murawski the reasons for the recommendation (1T83; 4T58-4T59).

On February 25, 1994, Murawski wrote a letter to Kenneth DiMuzio, Chair of the Board of Trustees (R-8), concerning the non-renewal recommendation. She considered whether it was union or gender/race discrimination and concluded it was the latter (1T180). She wrote in pertinent part:

I believe that this recommendation...is an act of retaliation/reprisal against me for filing a complaint of gender and race discrimination....
(R-8).

Murawski concluded R-8 by asking DiMuzio to intervene and resolve the "dispute".

On February 28, 1994, Murawski sent a memorandum to Gover (CP-4) requesting that the March 2nd Board meeting regarding her employment be held in open session. She also noted her intent to address the Board. By the time Murawski prepared CP-4 she felt her non-renewal resulted from her union activities (1T87).

18. The Board of Directors held an open session on March 2, 1994, and took information regarding the recommendation not to renew Murawski. Murawski, Cosky and McCormack attended the meeting (1T88). Murawski read from a prepared statement (CP-5) which was entered into the Board's record. Murawski said in CP-5 that she

thought the non-renewal recommendation was retaliation for two reasons: first, her union activity; second, her gender/race discrimination charges. The Board also accepted a letter in support of Murawski's renewal from Professor Geraldine Martin (CP-6).

Murawski and McCormack asked for the reason(s) she was not being renewed, but none were given (1T93). The Board did not openly discuss the matter, but voted unanimously to accept the non-renewal recommendation (1T94).

On March 4, 1994, College President Jones sent Murawski a letter (J-6) formally notifying her that the Board had approved the non-renewal recommendation, that her employment contract would no be renewed, and that her last day of employment would be June 30, 1994.

19. On April 7, 1994, Murawski presented John Henzy, Chair of the Liberal Arts Department, with proposals to establish two new music courses (CP-13A, CP-13B). Murawski designed and developed those courses, Music No. 110 and Music No. 111, and Henzy approved them on April 7 (2T76). Music 110 was to be taught in the Fall 1994, and Music 111 was scheduled to be taught in Spring 1995 (2T77). Henzy had approved Murawski as instructor for Music 110 despite knowing she had not been reappointed as a coordinator (2T77).

Vanel Perry, Vice President for Instruction, was responsible for approving courses and responsible for the adjunct faculty program (3T102-3T103). On April 18, 1994, Perry approved the inclusion of Music 110 and 111 into the College catalog (CP-13A, CP-13B). When Perry signed CP-13A and B he knew Murawski had not

been renewed in her coordinator position but did not know whether she was interested in continuing as an adjunct (3T129). His approval of those courses was not an approval of the instructor (3T121). Thus, at the time he signed the documents he did not notify Murawski she could not be an adjunct (3T129).

The College course catalog for the Fall 1994 semester (CP-8) was prepared in the Spring of 1994. It listed Murawski as teaching three courses, Music 101, Music 110 and Philosophy 150 (Critical Thinking). Murawski was scheduled to teach those courses as an adjunct instructor (1T106). Perry had not reviewed CP-8 before it issued (3T120-3T121).

Course catalogues are intended to inform students of the courses available to them. The College reserves the right to change the course, the instructor, or the dates of the course. Course catalogues are not an acknowledgment that the instructor will teach the course (2T160-2T162).

20. Kathryn Gover, President Jones Assistant, was aware of the College adjunct policy and CP-16 (Rule-7012). In May 1994 an employee informed her that Murawski was scheduled to teach as an adjunct instructor after June 30, 1994, the date of her separation from the College as a full time employee (4T65). Gover believed that Murawski could not remain on the adjunct list after June 30th because her placement on that list originally resulted from her full time position (4T20). Gover knew, however, that Murawski could reapply to teach as an adjunct (4T88-4T89).

Having learned that Murawski was scheduled to teach as an adjunct after June 30th, Gover, in May, notified Perry so he could decide what, if any, action needed to be taken (4T66, 4T69-4T71). But Gover did not make a recommendation at that time (4T71).

Subsequent to his discussion with Gover, Perry, later in May, met with John Henzy, Chair of the Department in which Murawski was scheduled to teach. He advised him that Murawski's adjunct approval had been based on her full time status, and since she would not be a full-time employee after June 30, she could not be an approved adjunct on the basis of her full-time status after that date. Therefore, he told Henzy that Murawski should not be scheduled to teach after that date (2T148-2T149, 3T116-3T117). Britt played no role in the process leading to Murawski's removal from the adjunct list (4T245-4T246).

Perry did not tell Henzy he had a problem with Murawski's adjunct teaching performance. The only reason he expressed for deleting Murawski from the adjunct list was that she would no longer be a full time employee (2T167). Henzy asked Perry to put his explanation in writing. Perry agreed (3T117, 2T150).

21. On June 2, 1994, Murawski was sent her notice of appointment form letter to teach one course as an adjunct for the first summer session (CP-7). The first summer session was a five week session beginning in May but ending in June 1994 before Murawski completed her regular coordinator employment contract (3T116-3T117).

On June 15, 1994, Perry, in response to Henzy's request, provided Henzy with a memorandum (R-4) explaining why Murawski was not eligible for continuing as an adjunct after June 30, 1994. In R-4 Perry explained that Murawski had been placed on the adjunct list pursuant to R-7012, and that since her full-time employment was ending on June 30, 1994, she could not be eligible for teaching assignments pursuant to that Rule after that date.^{18/}

Perry also spoke to Henry Ryder, Associate Professor of Economics, about Murawski's adjunct status. Perry told him that Murawski was not being retained as an adjunct because of R-7012 which applied to full time employees (2T218). In its post-hearing brief Charging Party said that Perry also told Ryder that a new application "i.e. a copy of Petitioners [Murawski's] file would not make any difference". That statement is misleading and inaccurate. Ryder actually testified that he asked Perry "why can't she be

^{18/} When Perry and Henzy spoke in May about Murawski's adjunct position Perry explained that Murawski could not continue as an adjunct based upon the loss of her full-time position. On direct examination Henzy testified that when he met with Perry on June 15, presumably to receive R-4, Perry said Murawski's name was being removed from the adjunct list based upon the advice of the College's solicitor (2T150). Henzy was then asked if Perry elaborated on the solicitor's advice, and he responded that they did discuss R-7012 (2T150-2T151). Later, on cross-examination, Henzy said the only reason Perry gave for Murawski being deleted from the adjunct list was because she was no longer going to be a full time employee (2T167). I found no inconsistency between what Henzy and Perry said. The conversation with Perry about the solicitor's advice centered around R-7012. Thus, I presume the solicitor's advice was Murawski should be deleted from the adjunct list because she was only placed on it pursuant to R-7012. That is consistent with what Perry told Henzy.

retained as an adjunct as a non full-time employee", and that Perry responded, "He indicated that was not an option." (2T218). Even crediting Ryder's testimony I find that Perry's response did not mean Murawski could not file a new application to be considered as a non-employee adjunct. Perry's response that it was not an option meant he could not retain Murawski on the list because she was on the list pursuant to R-7012, and with her termination as a full-time employee she was not entitled to be retained on the list as a non-employee adjunct without reapplying. Murawski would have had to file a new application, but never did.

On June 16, 1994, Henzy informed Murawski of Perry's decision. Murawski was unwilling to accept the explanation in R-4 as the reason she was being removed as an adjunct (1T149). But she was aware of the process a non-employee must use to become an adjunct, and Murawski did not submit an application asking to be considered an adjunct as a non-employee (1T149-1T151).

On June 23, 1994, Murawski sent a memorandum to Perry (CP-9) regarding her removal from the adjunct list. She concluded the memo saying:

I have not been informed of any board action regarding this change. Please advise.

Murawski's employment with the College, both as a coordinator and as an adjunct, ceased by June 30, 1994. She never requested she be considered as an outside adjunct (1T151, 3T122).

22. Betty Magjuka had been employed by the College as a full time administrator for 12 years. During at least the later years she also taught classes as a member of the adjunct faculty based upon her full time employment. On July 28, 1994 she sent a memorandum to Perry (R-25), informing him of her resignation from her full time position, but requesting she be considered for adjunct teaching positions and for other part-time employment (3T122).

Perry asked Henzy to consider Magjuka as an adjunct instructor based upon her request. She was not so employed in the Fall of 1994, but was employed as an outside adjunct in the Spring 1995 (3T123). Perry had a discussion with Henzy about having Magjuka file an application to do adjunct teaching as a non-employee. When Perry asked Henzy about her application Henzy said he had made a mistake, and would process an application (3T123-3T124). Magjuka's application to be an outside adjunct was submitted on February 21, 1995 (J-7).

Murawski did not submit a request that she be considered as an outside adjunct, or for other part-time employment (3T122).

23. In early 1995, the College recognized the Federation as the majority representative of the coordinator positions in a para-professional unit (3T46).

ANALYSIS

The Charging Party's case primarily concerns its 5.4(a)(3) allegations, that the College violated the Act by not renewing

Murawski in the coordinator position, and by removing her from the adjunct list. But the evidence did not support those allegations.

The New Jersey Supreme Court created a test to be applied in analyzing whether a charging party in a 5.4(a)(3) case has met its burden of proof. In Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984), the Court held that no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that conduct protected by the Act was a substantial or motivating factor in the adverse action. This may be done by direct or circumstantial evidence showing 1) that the employee engaged in activity protected by the Act, 2) that the employer knew of this activity, and 3) that the employer was hostile toward the exercise of the protected activity. Id. at 246.

If a charging party satisfies those tests, then the burden shifts to the employer to prove that the adverse action would have occurred for lawful reasons even absent the protected conduct. Id. at 242. The burden will not shift to the employer, however, unless the charging party proves that anti-union animus was a motivating or substantial reason for the employer's actions.

The Charging Party easily established the first element, and to a degree the second, but failed to establish the third Bridgewater element. Thus, the burden never shifted to the College. Murawski's efforts to organize coordinators was protected conduct. By April 1993 Britt was aware that Murawski was involved in protected conduct, and Gover was aware of the same by November

1993. Although the record did not specifically establish that Vice President Perry, President Jones, or the Board of Directors were aware of Murawski's protected conduct, for this analysis I will assume the Charging Party satisfied the second Bridgewater element.

The primary focus of the case then is whether the College, i.e., Britt and/or Gover, were hostile toward Murawski's exercise of protected activity. To decide that, I must determine Britt's motive for recommending Murawski's non-renewal in the coordinator position, and Gover's and/or Perry's motive for removing her name from the adjunct list.

The Coordinator Position

The key to the Charging Party's allegation that she was non-renewed due to her protected activity were the remarks and tone attributed to Britt during her conversation with Murawski on April 20, 1993. The Charging Party argued that Britt made the union congratulatory remarks to Murawski in a sarcastic manner, which it believes establishes hostility. I reject that argument. I credited Britt's recollection of that discussion. Her remarks were not made in a sarcastic manner, they were made in good faith, and were not motivated by hostility. I believe that Britt's remarks were intended to reach out to Murawski hoping to improve what was already a weak relationship. Britt did not exhibit anti-union behavior.

Having made that finding the Charging Party's case can fall at this point. There was no other evidence that Britt made any

other remarks, or made any writings, negatively referring to Murawski's protected activity from which hostility could be inferred. Rather, the evidence shows the natural progression of the deteriorating work relationship between Britt and Murawski which had nothing to do with protected activity.

Britt's recommendation to non-renew Murawski was made nearly eleven months after the April 20th conversation. During those months Britt had issued Murawski numerous directives and warnings to improve her advisement responsibilities (R-11, R-12, R-13), and offered her several chances to discuss their relationship (7/19/93; 11/17/93; 2/8/94) which Murawski rejected.

In its post-hearing brief the Charging Party argued that the College's stated basis for the non-renewal was pretextual. It gave several reasons from which it sought to persuade me to infer hostility. It argued that Britt did not refer to insubordination in J-4, Murawski's July 1993 evaluation; that Murawski was never disciplined despite the College's assertion that she was insubordinate; that the College gave no reasons for the non-renewal; that Britt approved Murawski's attendance at a seminar; and, that the College did not recognize the Federation as the coordinators majority representative until 1995. That argument, and those reasons, lack merit. The Charging Party obviously avoids considering the numerous warnings and reprimands Murawski received during 1993, and seeks to persuade me to disregard the same. I won't.

The Commission in Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987), held that the decision on whether a charging party has proved the Bridgewater elements is based upon consideration of all the evidence presented at hearing, as well as the credibility determinations and inferences drawn by the hearing examiner. Having done that here I find the evidence overwhelmingly shows that the only motive for Britt's non-renewal recommendation was Murawski's insubordinate behavior.

While J-4 may not contain the word "insubordinate", it does contain several criticisms of Murawski's work behavior. Britt did not formally discipline Murawski, but she did consistently issue both written and oral warnings and reprimands to her particularly for failing to timely attend--and actively participate in--advisement sessions. The College was under no obligation to list the reasons for the non-renewal, and the Charging Party's argument that Murawski's seminar attendance and the 1995 recognition of the Federation were somehow indicative of hostility, were meritless.

Murawski resisted taking Britt's supervision from the start. She consistently sought to go around or over Britt's authority despite Britt's insistence that she work through her first. Murawski acted as if she were entitled to set the rules for her own job. She was not. She deliberately, consistently and flagrantly disobeyed Britt's specific directives that she timely and actively participate in advisement. Murawski refused to discuss her

behavior with her supervisors on several occasions and admitted that behavior could be interpreted as insubordination.

I find that Murawski was an intentionally insubordinate employee. Britt gave her every reasonable opportunity to correct that behavior. When Murawski failed to demonstrate a willingness to change, Britt properly recommended non-renewal. Protected activity was not at all a factor in that recommendation.

The Adjunct Position

The Charging Party's case regarding the adjunct list is based upon its argument that R-7012 did not require Murawski's name be deleted from the list. The Charging Party, therefore, concluded that the College's reason for removing Murawski from the list was pretextual, and was really based upon her exercise of protected activity.

While I agree with the Charging Party that R-7012 does not require Murawski's removal from the adjunct list, I reject its argument that the College removed her name therefrom because of her union activity. There was no nexus between Murawski's protected activity and the adjunct list.

The Charging Party's main protagonist in its scenario of the events leading to Murawski's non-renewal was Britt, but Britt had no role in Murawski's removal from the adjunct list. Gover knew of Murawski's protected activity and mentioned that to Britt, and she had a role in Murawski's removal from the list, but there is

insufficient evidence on the record from which to infer that she was hostile to Murawski due to that activity. Similarly, there was no showing that Perry actually knew of Murawski's activity, but even if he did, there is no evidence from which to infer he was hostile towards that activity.

The problem with Perry's explanation for removing Murawski from the list, however, was that he only cited R-7012 as the reason. While I find that the College was entitled to interpret R-7012 to justify Murawski's removal from the list, that was more a matter of convenience than a reflection of the real reason. I believe the College removed Murawski from the adjunct list primarily because having non-renewed her from a full-time position due to insubordination, they did not want her employed at the College under any circumstances. Murawski's union activity had nothing to do with the College's decision, and the evidence relating to Magjuka was immaterial in this case. Consequently, the 5.4(a)(3) allegation must be dismissed.

The 5.4(a)(2) Allegation

Since there was no evidence the College interfered with the efforts to organize coordinators, that allegation must also be dismissed.

The 5.4(a)(4) Allegation

Although Murawski's name was removed from the adjunct list shortly after this charge was filed, that alone is not proof the College violated the Act. The evidence shows that Gover and Perry had discussed Murawski's name being on the list, and that Perry told Henzy that Murawski's name would be deleted from the list, well before Murawski filed the charge. Thus, there is no basis to support a 5.4(a)(4) allegation.

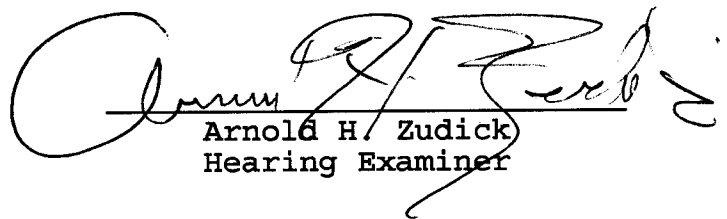
Accordingly, based upon the above facts and analysis, I make the following:

Conclusion of Law

The College did not violate the Act by non-renewing Marianne Murawski, or by removing her name from the adjunct list.

Recommendation

I recommend the complaint be dismissed.


Arnold H. Zudick
Hearing Examiner

Dated: December 22, 1995
Trenton, New Jersey