

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF RANOCAS
VALLEY REGIONAL HIGH SCHOOL,

Respondent,

-and-

Docket No. CO-76-118-4

RANOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL TEACHERS' ASSOCIATION,
INC.,

Charging Party.

SYNOPSIS

The Commission in a supplemental decision denies the request of the Board of Education for oral argument in an unfair practice proceeding. The Commission further denies the request for a stay of the Commission's order in this unfair practice proceeding. The Commission notes with regard to the application for a stay that New Jersey Court Rules specifically authorize applications to the Appellate Division for stays of administrative decisions pending appeal.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF RANCOCAS
VALLEY REGIONAL HIGH SCHOOL,

Respondent,

Docket No. CO-76-118-4

- and -

RANCOCAS VALLEY REGIONAL EVENING HIGH
SCHOOL TEACHERS' ASSOCIATION, INC.,

Charging Party.

Appearances:

For the Respondent, Dietz, Allen, Radcliffe
& Sweeney, Esqs.
(John A. Sweeney, Esq.)

For the Charging Party, Joel S. Selikoff, Esqs.

SUPPLEMENTAL DECISION

On January 16, 1979 the Commission rendered its decision in the instant case, affirming the Hearing Examiner's determination that the Respondent had engaged in conduct violative of N.J.S.A. 34:13A-5.4(a)(1) and (3).

By letter dated January 26, 1979 counsel for Respondent wrote to the Commission seeking an explanation as to why the Commission's decision was rendered without honoring his request for oral argument contained in a letter dated November 14, 1978.

Counsel's letter of November 14, 1978, requesting an opportunity for oral argument, which was addressed to the Director of Unfair Practices and Representation, was inadvertently omitted from

the Commission's file.^{1/}

Oral argument before the Commission is discretionary. See N.J.A.C. 19:14-8.2. As noted in our decision in this matter, the parties had five days of hearings before the Hearing Examiner during which time ample opportunity for oral argument was afforded. Had we been aware of the oral argument request at the time our decision was made, we would have been inclined to deny it. No claim of harm or prejudice has been asserted, nor has the Respondent requested reconsideration. It is therefore ORDERED that Respondent's request for oral argument is hereby denied.

Additionally, by letter dated February 13, 1979, counsel for Respondent requested that, because the Board has decided to appeal our decision to the Appellate Division, the Commission stay its order in this matter.^{2/}

We deny that request. Having found a violation of the Act by the Board in refusing to rehire the two individuals because of the assertion by those individuals of rights protected by the Act, we believe that the violation should be remedied as quickly as possible and that we should not stay our decision.

We also note that, pursuant to Galloway Township Board of Education v. Galloway Township Education Ass'n, 78 N.J. 25 (1978), it is appropriate for the Commission to participate in an appeal from its decision, bearing primary responsibility for seeking

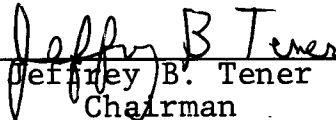
^{1/} The Respondent's Exceptions to the Hearing Examiner's Report were, however, contained in our file and were fully considered by the Commission. Only the transmittal letter itself, containing the request for oral argument, was omitted.

^{2/} As far as we know, no notice of appeal has been filed at this time.

enforcement of its order. While the Commission in no way means to suggest that the Board will not comply with the Decision and Order if it is affirmed on appeal, it is possible that the Commission will become an active party in this appeal. Under these circumstances, it would appear more appropriate for this application for a stay to be directed to the Appellate Division. In this regard the Commission notes that Court Rule 2:9-7 specifically authorizes applications to the Appellate Division for stays of administrative decisions pending appeal.

For these reasons the application for a stay is denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision. None opposed. Commissioners Newbaker and Hipp abstained.

DATED: Trenton, New Jersey
March 8, 1979
ISSUED: March 9, 1979

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

In the Matter of

BOARD OF EDUCATION OF RANCOCAS
VALLEY REGIONAL HIGH SCHOOL,

Respondent,

-and-

Docket No. CO-76-118-4

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL TEACHER'S ASSOCIATION, INC.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends to the Commission that they find that the Rancocas Valley Board of Education committed an unfair practice by failing to rehire Robert Clarke and Edward Boyle for the 1976-1977 academic year. The Hearing Examiner finds that Boyle and Clarke were active in attempting to establish an association for purposes of representing teachers employed in the Evening High School, and it was because of this activity that the Board failed to rehire Boyle and Clarke.

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

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

In the Matter of

BOARD OF EDUCATION OF RANCOCAS
VALLEY REGIONAL HIGH SCHOOL,

Respondent,

-and-

Docket No. CO-76-118-4

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL TEACHER'S ASSOCIATION, INC.,

Charging Party.

Appearances:

For the Respondent

Dietz, Allen, Radcliffe & Sweeney, Esqs.
(John A. Sweeney, Esq.)

For the Charging Party

Joel S. Selikoff, Esq.
(Joel S. Selikoff, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On October 29, 1975, the Rancocas Valley Regional Evening High School Teacher's Association, Inc. ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("PERC"), alleging that the Board of Education of Rancocas Valley Regional High School ("Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), as amended, N.J.S.A. 34:13A-1 et seq. Specifically, the Association claims that the Board, through Mr. Bulotovich, violated §5.4(a)(1) by threatening the teachers during the 1974-75 school year, and that the Board also violated §5.4(a)(3) by not issuing contracts of employment for the 1975-76 academic year to Edward Boyle and Robert Clarke. ^{1/}

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

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 9, 1976. Hearings were held before the undersigned on September 23, 1976, December 23, 1976, February 17, 1977, February 18, 1977, and April 19, 1977, ^{2/} at which time all parties were given an opportunity to examine witnesses, to present evidence, to present briefs and argue orally.

The Board operated the Evening Adult High School from September 1969 until the end of the 1975-76 school year, at which time the school ceased operation for reasons unrelated to the issues here. Boyle and Clarke were not renewed for the final academic year of the school's operation and damages sought by the Charging Party are limited to this one year.

Boyle started working at the evening school on September 1, 1969, while Robert Clarke started on September 1, 1972. Both Boyle, a history teacher, and Clarke, an English teacher, worked through the 1974-1975 academic year. Boyle teaches at Northern Burlington County Regional during the day and Clarke teaches at Cherry Hill during the day.

In the spring of 1974, Boyle and Clarke initially began their organizational efforts. Boyle testified that the teachers were concerned at the time about the leadership of the Rancocas Valley School District, which had changed the previous year. "The writing was on the wall that the evening high school was in jeopardy of closing due to the leadership that was being exhibited." ^{3/} William Clark replaced Fred Evans as Superintendent at the start of the 1973-74 academic year and George Bulotovich replaced Tyler Hess as Principal in July 1974.

Boyle contacted George Suleta, a New Jersey Education Association ("NJEA") representative, in the spring of 1974 at a meeting of the Burlington County Education Association, and the two of them discussed the concerns of the Rancocas teachers and whether it was possible to have an association for the evening high school. Boyle then sought a legal opinion from NJEA, and he received a letter (dated June 13, 1976) from Mr. Ruhlman answering his questions. ^{4/}

^{2/} The transcripts from these hearings are designated in chronological order as Volumes I through V.

^{3/} Vol. I, p. 122.

^{4/} Exhibit A-8.

Boyle testified that Clarke, Wisnewski, and himself met up to ten times over the summer of 1974 to discuss organizing an association. ^{5/} (Clarke remembered meeting four or five times ^{6/} and Wisnewski could remember only one specific occasion during the summer - when he happened to run into Boyle and Clarke by accident.) ^{7/} Boyle testified that Clarke drew out a detailed list of what they would do and how and when they would do it, ^{8/} and that he and Clarke tried to match the personnel available with positions in the Association. ^{9/} It was also agreed to have a general meeting of the faculty members.

After the first faculty meeting of the 1974-75 year, which occurred on August 29, 1974, and which was chaired by Bulotovich, Boyle and Clarke ^{10/} asked Bulotovich for permission for the teachers to stay and hold their own meeting. Bulotovich was surprised, but left when Boyle asked him to do so. ^{11/} Boyle chaired the meeting of the teachers. Various concerns of the teachers were discussed, and the teachers voted to associate as the Rancocas Valley Regional Evening High School Teachers Association and to have dues. ^{12/}

A meeting was then held at Grogan's house to hold elections in early September. Clarke and Boyle made all the nominations, and the members elected the following officers: Grogan, President; Wisnewski, Vice-President; Duffy, Secretary, and Brockow, Treasurer. ^{13/} Boyle was appointed as Chief Negotiator and Clarke and DiGiacomo were appointed as building representatives. After this second meeting, the building representatives, plus Boyle, got various teachers to sign the cards to organize for the association.

^{5/} Vol. I, p. 128.

^{6/} Vol. III, p. 9.

^{7/} Vol. IV, p. 19.

^{8/} Vol. II, p. 94.

^{9/} Vol. II, p. 96. Also see Vol. II, p. 87 and Vol. I, pp. 126 and 127.

^{10/} Vol. III, p. 8.

^{11/} Vol. IV, p. 13; Vol. I, p. 18.

^{12/} Exhibit A-1.

^{13/} But see Vol. I, p. 133. Boyle and Brockow were elected Secretary - Treasurer.

Grogan sent a letter dated November 5, 1976, to the Board, stating that the teachers wanted to organize and were seeking collective bargaining. ^{14/} This letter listed Boyle as Chief Negotiator and also listed Brockow and Wisniewski as part of the Negotiating Committee. The Board then sent Grogan a letter dated November 11, 1974, stating that it would review the request for collective negotiations at its next meeting. The Board denied this request by a letter dated November 22, 1976. ^{15/} After the Board refused to recognize the Association, the Association held a meeting and decided to wait until Chapter 123 of the Public Employer-Employee Relations Act became effective before taking further action.

The Association filed a representation petition with PERC on January 12, 1975, seeking certification as the exclusive representative for the purposes of collective negotiations. A PERC Hearing Officer issued his report and recommendations on March 9, 1976, and an Executive Director's decision, E.D. No. 76-39, was issued on May 27, 1976, adopting the Hearing Officer's report and recommendations. It was held that the Rancocas Valley Regional Evening High School Teacher's Association did not represent an appropriate unit. The most appropriate unit was one of both day school and evening school professional employees.

On June 3, 1975, a list of teaching positions for the 1975-76 evening school was posted, stating that all applications had to be received no later than June 16, 1975. Since this had not been done in past years, the evening school teachers became upset. In the past, teachers would receive contracts in May or June for the following school year. ^{16/} Boyle viewed the change in staffing procedure as being prejudicial to a possible election, ^{17/} and he told Suleta that this was an attempt by the administration of Rancocas Valley to dilute the union. ^{18/} Robert Clarke went to talk to Bulotovich about the posting, because Bulotovich had told Clarke the previous week that there was no problem and that everyone at the evening school would be back. ^{19/} Boyle joined Clarke and Bulotovich said he was not at liberty to say why the positions were posted; he was not allowed to divulge whether there would be interviews for these positions either. ^{20/}

^{14/} Exhibit A-2.

^{15/} Exhibit A-3.

^{16/} See Exhibit A-4.

^{17/} Vol. I, p. 159.

^{18/} Vol. I, pp. 148 and 242.

^{19/} Vol. II, p. 111.

^{20/} Vol. II, p. 112.

The Association then held a meeting at Grogan's house, at which it decided to post a letter informing the day teachers that it was involved in a "fair play" dispute. ^{21/} Boyle testified that the wording of the letter was a group effort. ^{22/} Suleta called Superintendent Clark (not to be confused with Robert Clarke) concerning the posting of the positions and the persistent rumor that everyone was going to be fired. Suleta said he was told that the Board wanted more involvement from the day teachers with the evening school and that no one would be fired. ^{23/} Suleta testified that, before he called Superintendent Clark, he expected there would be non-renewals, but afterwards he had the understanding that everyone would be back for the 1975-76 school year. ^{24/} He also said the Superintendent was concerned with A-6 and the tape recorder incident. ^{25/}

Superintendent Clark testified that he told Suleta no one would be fired before the present contract expired, but that he couldn't give any assurances beyond that time since some teachers might not return due to financing, program changes, and reassignments. ^{26/}

On June 9, 1975, which is after the Association's flyer (A-6) had been posted, Grogan, Hess, Bulotovich and Superintendent Clark had a meeting in Clark's office concerning the Association's flyer. Grogan testified that Clark asked if Boyle was behind it - Grogan assumed he was referring to the use of fair play in the letter. ^{27/} Grogan later testified that Superintendent Clark was hinting around that Boyle had something to do with it and that Clark did not ask that specific question. ^{28/} Grogan was not a highly credible witness. At one point he said he was changing his testimony, ^{29/} at another point he said, "Well, I was in error again," ^{30/} and he also admitted being in error at another point. ^{31/}

^{21/} Exhibit A-6.

^{22/} Vol. II, pp. 41 and 108; Vol. I, p. 157.

^{23/} Vol. IV, p. 44.

^{24/} Vol. III, p. 52.

^{25/} Vol. III, p. 44.

^{26/} Vol. V, p. 150.

^{27/} Vol. I, p. 44.

^{28/} Vol. I, p. 79. See Vol. I, p. 99.

^{29/} Vol. I, p. 111.

^{30/} Vol. I, p. 77.

^{31/} Vol. 1, p. 73.

There also was the incident involving the tape recorder around this time. Brockow testified that R. Clarke was asked to speak to Bulotovich in behalf of those concerned about being retained. R. Clarke reported back that Bulotovich said school was going to continue and everybody was going to be rehired. Word then got out that their jobs were going to be posted, which started a rumor that they would all be fired. ^{32/} Several teachers then decided to talk to Bulotovich again, and Brockow brought along a tape recorder. Brockow said he placed the machine right on the floor at Bulotovich's feet, erroneously assuming that Bulotovich had seen it. When the conversation was over, Brockow said, "Thank you very much, George" into the machine, at which point Bulotovich got very angry, threatened Brockow physically, but then quickly cooled down. ^{33/}

Bulotovich claimed he was having a meeting with Hess and Pratt when Clarke and Boyle barged in and started questioning him. Bulotovich admitted he may have become a little emotional or red-faced at the time; he said he then got up, walked out of the office, and saw Brockow with a tape recorder, at which point he lost his temper. ^{34/} Bulotovich's version seems more credible, for it is hard to believe that Brockow could have walked into the office, plugged in the tape recorder, and then placed it at Bulotovich's feet without Bulotovich's noticing. The only other person who testified concerning this incident was Superintendent Clark, who saw Bulotovich later that night. ^{35/} In any event, both DiGiacomo and Hess resigned from the Association almost immediately afterwards. ^{36/}

In August 1975, both Boyle and Clarke received letters of nonrenewal for the 1975-76 school year. ^{37/} This will be discussed in greater detail below.

The Association claims that several members of the administration - Eckman, Margiotta, Fausto, and particularly Bulotovich - all made statements at some point during the 1974-75 year that certain teachers would be fired or non-renewed because of their organizing effort. Teachers testifying to this included Boyle, Brockow, R. Clarke, Grogan and Wisnewski.

Grogan testified about a meeting or conversation in September 1974 in Bulotovich's office involving Bulotovich, Wisnewski, R. Clarke and himself. The

^{32/} Vol. V, p. 27.

^{33/} Vol. V, pp. 29 and 46.

^{34/} Vol. V, pp. 70 and 71.

^{35/} Vol. V, pp. 112 and 113.

^{36/} Vol. V, pp. 30 and 74.

^{37/} Exhibit A-7.

subject was union activities, and Bulotovich said they'd better cool themselves as far as their activities were concerned or there wouldn't be school the following year. ^{38/} Wisnewski claimed that Bulotovich said the Board was aware of their organizing efforts and that it would be in their best interests to cease these activities. ^{39/} Bulotovich was told that he shouldn't get involved. ^{40/} Grogan also testified about a conversation between the same people, plus a few other teachers, during the first week of December in the cafeteria. Bulotovich and the Association members would be out of jobs if they continued their efforts. ^{41/} Clarke and Wisnewski's testimony supported Grogan's. ^{42/}

Wisnewski also testified that Bulotovich approached him one evening in January while he was on his way to class; Bulotovich said the pressure was on and the organizing activities should be stopped, for there might be serious consequences if they were continued. ^{43/}

Brockow testified that he had a conversation with Bulotovich in Bulotovich's office one day in October 1974. Bulotovich said he had to fire Boyle and Brockow for the 1975-76 year because of their organizing activities. ^{44/} Hess, the principal of the day school, had told Bulotovich that Brockow was not to come back the following year; Brockow was, however, offered a contract on September 2, 1975. ^{45/} Brockow had told Bulotovich in September that he did not intend to come back for the 1975-76 year, so he didn't care if he was going to be fired or not. ^{46/} However, when a rumor started going around that he would be fired, Brockow told Bulotovich that he had been willing to quit but that he did not want to be fired; the rumor had upset and embarrassed him. ^{47/} Also, before Bulotovich went to California in the summer of 1975, he told Bulotovich that if he was going to be interviewed, he wanted to be interviewed before he left.

^{38/} Vol. I, p. 54.

^{39/} Vol. IV, p. 6.

^{40/} Vol. I, p. 55; Vol. IV, p. 7.

^{41/} Vol. I, pp. 56-57.

^{42/} Vol. III, p. 16; Vol. IV, p. 8.

^{43/} Vol. IV, pp. 9-11.

^{44/} Vol. V, pp. 3-4.

^{45/} Vp; / V, pp. 8-9.

^{46/} Vol. V, p. 5.

^{47/} Vol. V, pp. 51-52.

Brockow further testified that when Bulotovich would walk into the coffee shop, the teachers that didn't want to get involved with any problems would leave, while those who weren't afraid to speak their peace would stay. Brockow was certain that Bulotovich thought Boyle and Clarke were the ringleaders. 48/

Boyle testified that, in September 1974 at the bottom of the stairwell while he was on his way back to class, Bulotovich stopped him and told him to wise up; Bulotovich was taking heat from the Superintendent and the Board of Education, and there would be no evening high school if the Association continued to organize. Boyle told Bulotovich to stay out of it. 49/ There was a subsequent conversation on the same topic in the spring of 1975 at the same place, and again Bulotovich told Boyle to "cool" the union activity because he was getting heat from the Superintendent about it. 50/ Only Boyle and Bulotovich were present both times.

Boyle further testified that Bulotovich was acting as a middle man between Superintendent Clark and the teachers. Three teachers - Clarke, Grogan and Wisnewski - told Boyle that Superintendent Clark told Bulotovich to tell everybody that if they didn't cool it, the night school would be shut down. 51/ However, none of the other teachers testified that Superintendent Clark told Bulotovich this.

Boyle also claimed that Janet Eckman, Assistant Director of Adult School (Bulotovich is the Director), personally told him in the hallway in October 1974 that he would be non-renewed because of the Association activity. 52/ Boyle later said his recollection had been refreshed by Clarke and that Eckman was the Vice-Principal of the Evening School (Bulotovich was Principal). 53/ Bulotovich identified Eckman as the Vice-Principal at a faculty meeting in September 1974 and said she would be in charge when he wasn't there. 54/ Also, Boyle first claimed that he didn't know if Eckman had any authority to effectively recommend hiring of personnel, 55/ but after said his recollection had changed and that in his opinion she had such authority. 56/

48/ Vol. V, p. 56.

49/ Vol. I, pp. 151-152. See Vol. II, pp. 66-67.

50/ Vol. I, p. 153; Vol. II, p. 68.

51/ Vol. II, pp. 69-72. In Vol. II, p. 114, he also said Brockow told him.

52/ Vol. I, pp. 164-169.

53/ Vol. II, pp. 18-19.

54/ Vol. II, pp. 73-74.

55/ Vol. I, p. 166.

56/ Vol. II, pp. 76-77.

Boyle then claimed that he spoke with Nick Margiotta, Director of Adult Basic Education, on numerous occasions, and that Margiotta told him in January 1975 "they are going to fire you." ^{57/} Margiotta did not have any responsibilities in a supervisory function in the evening high school ^{58/} and Boyle did not know what the extent of his authority was. ^{59/} Because of these conversations, Boyle formed the opinion that he and Clarke would be fired because of their union activities. ^{60/} Boyle, however, seemed to lack candor and openness as a witness. Rather, he was argumentative and tense.

Brockow also testified that Vincent Fausto told him in the spring of 1975 - April, May or June - that Wisnewski and Grogan would be back for the 1975-76 year, Boyle and Clarke would be fired, and he (Brockow) was the swing man. ^{61/} Fausto had just had a meeting with Superintendent Clark before he talked to Brockow. ^{62/} However, when it was pointed out to Brockow that Fausto had left the system in February 1975, Brockow said the conversation must have occurred before then, rather than in the spring. ^{63/} Brockow told Boyle what Fausto had said. ^{64/}

Clarke's testimony largely corroborated Boyle's, Wisnewski's and Grogan's. He stated that he had been friendly with Bulotovich and very often before classes started he would sit in Bulotovich's office and chat for ten or fifteen minutes.

In mid to late September during one of these conversations Bulotovich stated that because they were friendly he was passing on information that the Board had given Superintendent Clark word to stop these organizational activities and intimated that I ought to stay away and he termed Boyle and Brockow as radicals. In addition to testifying about the same incident as Grogan and Wisnewski (see above) Clarke's testimony covered some eight or ten incidents where he would meet Bulotovich privately and Bulotovich would make some comment about the

^{57/} Vol. I, pp. 161 and 176.

^{58/} Vol. I, p. 172.

^{59/} Vol. I, p. 173.

^{60/} Vol. I, p. 154.

^{61/} Vol. V, pp. 13-14.

^{62/} Vol. V, p. 54.

^{63/} Vol. V, p. 55.

^{64/} Vol. I, p. 178.

organization. On one occasion he stated, "You guys are ruining the school and you're going to get us all fired. Once he said that the Board is serious about this. "Do you know they're anti-union?" Around Christmastime Clarke claimed that Bulotovich warned him that the Board had given Superintendent Clark orders to stop these activities and Clark gave the same orders to Bulotovich. On a few occasions Bulotovich said you fellows are going to be fired.

Eckman, Margiotta and Fausto did not testify, ^{65/} but Bulotovich and Clark did. Bulotovich admitted he was aware of organizing efforts in the spring of 1974, and such efforts were perfectly all right as far as he was concerned. ^{66/} Bulotovich was also aware that there was going to be an Association meeting on August 29, 1974. ^{67/} However, he claimed that he didn't know who the officers were or to what detail or degree the Association was organized. ^{68/}

Bulotovich claimed that he would occasionally see Boyle, Wisniewski, Brockow or Duffy outside of their classes, and that he would tell them to cool it and get back into class. ^{69/} Bulotovich said he may have given his opinion on whether or not certain people would be returning the following year, ^{70/} and he may have talked to the teachers about when they were going to hold their meetings, ^{71/} but he did not make any reference to their organizational efforts. ^{72/} He claimed he didn't say anything to anyone in the fall of 1974 about the Association's efforts to organize, ^{73/} and he couldn't recall any specific discussions concerning their efforts to organize. ^{74/} Bulotovich admitted he talked to Superintendent Clark about the organizational activities when he first learned of them, but neither he nor Clark talked to the Board about it. ^{75/} Bulotovich denied that he ever told anyone that they would be fired because of their organizational activities. ^{76/}

^{65/} See In re Application of Howard Savings Bank, 143 N.J. Super. 1 (App. Div. 1976).

^{66/} Vol. V, p. 62.

^{67/} Vol. V, p. 66.

^{68/} Vol. V, p. 82.

^{69/} Vol. V, p. 68.

^{70/} Vol. V, pp. 76-77.

^{71/} Vol. V, p. 86.

^{72/} Vol. V, p. 88.

^{73/} Vol. V, p. 80.

^{74/} Vol. V, p. 82.

^{75/} Vol. V, pp. 78 and 106.

^{76/} Vol. V, p. 82.

Bulotovich claimed that if he said anything about the organization, it was probably his opinion; ^{77/} at times during 1974-75 he did voice his opinion to the teaching staff concerning organizational activities. ^{78/} When asked if he recalled any specific discussions about organizational efforts during 1974-75 in the cafeteria with him as a participant, Bulotovich said he was "the brunt of some jokes in reference or built around organizational carryings on, we would kid around." ^{79/}

The alleged violations basically come down to a credibility issue. On the one hand there is the testimony of R. Clarke, Grogan, Boyle, Brockow and Wisnewski, while on the other hand, there is Bulotovich's testimony. As stated above, Grogan twice admitted that he had been in error and at a third point changed his testimony; and Boyle's demeanor leaves some question in the undersigned's mind. Also as stated above, Brockow's version of the tape recorder incident is less credible than Bulotovich's version, and Brockow had to change his testimony when he learned that Fausto had left in February 1975. Wisnewski and Clarke's testimony appeared credible.

Although the testimony of three of the five teachers was less than credible in spots, each teacher's testimony supported the others in regards to the time, place and content of the conversations with Bulotovich, including the threats which Bulotovich allegedly made. Although Bulotovich denied making any threats, his testimony on this point is also not completely credible. At one point he claimed he didn't say anything to the teachers about their efforts to organize and couldn't recall discussions concerning their efforts, ^{80/} but he later admitted that he may have given his opinion concerning their organizational activities, ^{81/} and that they joked and kidded around about "organizational carryings on." "I am telling you in what context those conversations (in the cafeteria concerning organizational efforts) might have been carried on." ^{82/} It should also be pointed out that Eckman, Fausto and Margiotta all worked in the same office complex as Bulotovich.

^{77/} Vol. V, p. 67, line 77. See Vol. V, p. 69, line 11.

^{78/} Vol. V, p. 94.

^{79/} Vol. V, p. 97. See especially lines 21 and 22

^{80/} Vol. V, p. 80+.

^{81/} Vol. V, p. 94.

^{82/} Vol. V, p. 95.

The undersigned finds that Bulotovich had conversations with the teachers concerning their organizational activities and that he threatened their jobs if they continued their activities. Bulotovich's conduct as agent for the Board definitely interfered with, restrained or coerced the teachers in the exercise of their guaranteed rights, for his conduct was intended to force the teachers to stop organizing. See, In the Matter of North Warren Regional Board of Education, P.E.R.C. 79-9, 4 NJPER ___ (1978). It is recommended that the Commission find a violation of §(a)(1).

The Association further claims that Boyle and Clarke were non-renewed for the 1975-76 year because of their organizational activities. It relies primarily upon Bulotovich's conduct throughout the 1974-75 school year and the fact that the procedure for re-employment was changed for the 1975-76 year. Bulotovich admitted that after June 4, 1975, and the tape recording incident, he probably made a recommendation to Superintendent Clark or the Board of Education that Boyle and Clarke not be rehired for the 1975-76 year. ^{83/} The Board relied upon several arguments to justify the non-renewal of Boyle and Clarke: (1) Other people active in the Association were rehired, (2) other people who were not members of (active in) the Association were also non-renewed, (3) preference was given to day teachers for evening school positions, (4) enrollment problems, and (5) funding problems. Each of these arguments will be discussed in turn.

The Board argued that all the members of the Association were renewed for the 1975-76 school year except Boyle and Clarke. However, Boyle and Clarke were the most active members of the Association. Grogan, the president, considered himself an active organizer only to a degree - with no overt actions; ^{84/} he said Boyle and Clarke were the prime movers in the organization. ^{85/} Wisnewski, the vice-president, said he was merely there in case he was needed; he occasionally talked to some teachers when Clarke couldn't. ^{86/} Brockow, the secretary/treasurer, said he played almost no role in helping to organize the Association; and he talked to only two or three people about joining the organization. ^{87/} Superintendent

^{83/} Vol. V, p. 84.

^{84/} Vol. I, p. 110.

^{85/} Vol. I, p. 114.

^{86/} Vol. III, p. 35.

^{87/} Vol. V, p. 15.

Clark claimed that he was unaware at the time the staffing decisions were made that Boyle and Clarke were the prime movers in the Association. ^{88/}

Although Bulotovich couldn't remember anyone being non-renewed at the end of 1974-75 besides Boyle and Clarke, ^{89/} Clark claimed that four letters of non-renewal were sent out - Mrs. Thomas and Mrs. Hoffer also received such letters. ^{90/} However, Thomas stopped teaching during the middle of the 1974-75 year because of a lack of enrollment for her course; she was not an active teaching staff member for at least the second half of the year. ^{91/} Clark claimed that Hoffer, a typing teacher, was non-renewed since the typing program was discontinued due to enrollment and a cut back in the program; ^{92/} actually, Hoffer may have verbally tendered her resignation during the spring of 1975. ^{93/}

The last three arguments of the Board are interrelated. Since the enrollment dropped from 1974-75 to 1975-76, ^{94/} and since there was an 8% reduction in its budget, ^{95/} the number of teachers that the Board needed and could afford also decreased. Since some teachers had to be laid off, the Board decided to give preference to its day teachers. Both Mrs. Thomas' and Mrs. Hoffer's programs were discontinued; Boyle's and Clarke's programs shall now be examined.

Boyle and Wisnewski taught history in 1974-75, and Clarke, Grogan, Brockow, and Duffy taught English in 1974-75. Due to enrollment and funding problems, one English position had to be eliminated in 1975-76. Grogan was transferred from English to history, and he and Wisnewski taught history in 1975-76. Both Wisnewski and Grogan taught history during the day at Rancocas, while Boyle did not. This left three English teachers with three positions available, but Mr. Vasta, who taught English during the day at Rancocas but had not previously taught at the evening school, was hired to teach English at night during the 1975-76 year. Clarke was the only English teacher who did not teach at Rancocas during the day. Superintendent Clark, Bulotovich and Hess decided that Vasta was the most qualified

^{88/} Vol. V, p. 156.

^{89/} Vol. V, p. 102.

^{90/} Vol. V, p. 126.

^{91/} Vol. V, p. 130.

^{92/} Vol. V, p. 133.

^{93/} Vol. V, p. 132.

^{94/} The drop was approximately from 250 to 160 (Vol. V, p. 124).

^{95/} Vol. V, p. 108.

one for the position and that the educational recommendation would be for Vasta. ^{96/}
 On the face of it, it appears that the Board merely gave special consideration to
 its day teachers in hiring for the evening school. ^{97/}

Clark testified that it was a long-standing thing on the part of the
 Board that the day school staff would be given first preference as to any posi-
 tions available in the evening school; at the same time, he also testified that
 positions had been posted in the past. ^{98/} Later, however, he admitted there
 had never been a posting of such positions prior to June 1975 to his knowledge. ^{99/}
 He also claimed that Grogan replaced Boyle not because of a policy preferring day
 school staff over others, but because it was an educational decision and recom-
 mendation to the Board. ^{100/} As stated above, an educational recommendation was
 also made for Mr. Vasta. Other outside staff also taught at the evening high
 school. ^{101/} It appears that the decision to non-renew Boyle and Clarke was not
 made on the basis of giving preference to day school staff. Superintendent Clark
 claimed that neither the Association nor the tape recording incident played any
 part in the decision to non-renew Boyle and Clarke. ^{102/} However, Bulotovich
 admitted that he made a recommendation after the tape recording incident that
 Boyle and Clarke be non-renewed; and Bulotovich, Clark, and Hess made an educa-
 tional recommendation for Vasta instead of Clarke ^{103/} and for Grogan instead of
 Boyle. ^{104/}

In In re City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977),
 reversed on other grounds Appellate Division, Docket No. A-2546-76, petition for
 cert. filed by respondents, and In re Haddonfield, P.E.R.C. No. 77-36, 2 NJPER 71
 (1977), the Commission adopted a twofold standard for determining whether a viola-
 tion of N.J.S.A. 34:13A-5.4(a)(3) exists. A violation of §(a)(3) should be found
 if an employer's discriminatory acts were motivated in whole or in part by a de-
 sire to discourage an employee in the exercise of rights guaranteed by the Act or

^{96/} Vol. V, p. 135.

^{97/} See Vol. V, p. 155.

^{98/} Vol. V, p. 120. See Vol. V, p. 148; Vol. V, p. 158, line 23+.

^{99/} Vol. V, p. 145.

^{100/} Vol. V, p. 147.

^{101/} Vol. V, p. 149.

^{102/} Vol. V, p. 127.

^{103/} Vol. V, p. 135.

^{104/} Vol. V, p. 147.

had the effect of discouraging employees in the exercise of those rights. Application of the standard normally involves a preliminary showing of two essential elements: employee was exercising rights or employer believed he was doing so, and employer had either actual or implied knowledge of such activity. Boyle and Clarke were definitely exercising rights guaranteed to them by the Act; Bulotovich, Clark and Hess had actual knowledge of such activities, and the Board had at least implied knowledge.

In spite of the sometimes questionable credibility of the Association witnesses, the undersigned cannot accept as mere coincidence that the only two teachers in the school who were non-renewed, and who incidentally were veteran teachers, were the prime movers of the Association. This is particularly so in light of the numerous threats and warnings of Bulotovich, who certainly acted as the Board's agent. The conclusion is inescapable, when R. Clarke and Boyle would not abandon their Association activities the Board in retaliation failed to renew their contracts. It is thus recommended that the Commission find that the Board violated §(a)(3) by non-renewing Boyle and Clarke.

Recommended Order

Accordingly, for the reasons set forth above, it is hereby recommended that the Commission issue an order that the Respondent shall

1. cease and desist from

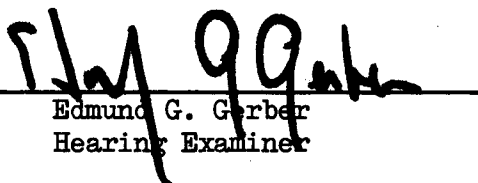
(a) interfering with, restraining or coercing employees in the exercise of their rights to form, join and assist an employee organization by threatening its employees with discharge if they participate in protected activities;

(b) 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 to form, join and assist an employee organization by failing to grant employment contracts to employees who have engaged in protected activities.

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

(a) Reimburse Edward Boyle and Robert Clarke the equivalent of the salaries they would have earned as teachers in the Evening High School during

the 1975-76 academic year had they been awarded contracts by the Board of Education of Rancocas Valley Regional High School, less any monies they may have actually earned on those evenings when they would have otherwise been in the employ of the Board of Education of Rancocas Valley Regional High School.


Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
October 5, 1978

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights to form, join and assist an employee organization by threatening our employees with discharge if they participate in protected activities.

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage our employees in the exercise of the rights to form, join and assist an employee organization by failing to grant employment contracts to our employees who have engaged in protected activities.

WE WILL reimburse Edward Boyle and Robert Clarke the equivalent of the salaries they would have earned as teachers in the Evening High School during the 1975-76 academic year had they been awarded contracts by the Board of Education of Rancocas Valley Regional High School, less any monies they may have actually earned on those evenings when they would have otherwise been in the employ of the Board of Education of Rancocas Valley Regional High School.

BOARD OF EDUCATION OF RANCOCAS VALLEY REG. HIGH SCHOOL
(Public Employer)

Dated _____

By _____
(Title)

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

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