P.E.R.C. NO. 87-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-210-127

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Paterson Board of Education violated the New Jersey Employer-Employee Relations Act when it threatened Paterson Education Association delegates; restricted the use of Association mailboxes and removed two Association members from tutorial assignments. To remedy these violations, the Commission ordered the Board to stop threatening Association delegates; restore full access to teacher mailboxes; restore Association members to their tutorial position with back pay and post a notice of its violations and remedial actions.

P.E.R.C. NO. 87-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-210-127

PATERSON EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Rosenberg & Beam, Esqs.
(Robert G. Rosenberg, of counsel)

For the Charging Party, Klausner, Hunter & Oxfeld, Esqs.
(Nancy Iris Oxfeld, of counsel)

DECISION AND ORDER

I. Procedural History

On February 14, 1985, the Paterson Education Association ("Association") filed an unfair practice charge against the Paterson Board of Education ("Board"). The charge alleges that the Board 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/] through these statements and actions of Joe Clark,

---

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

Footnote Continued on Next Page

principal of Eastside High School: at a January 4, 1985 faculty meeting Clark, in response to a grievance, threatened to get rid of all Association delegates one by one; at a January 7 meeting of delegates Clark called the delegates "racists" and "spineless, gutless bastards;" at a January 7 faculty meeting Clark referred to an Association delegate, Michael Woodland, as "half a black man;" that same day he prohibited delegates from placing Association notices and flyers in teacher mailboxes; at a January 8 meeting with Frances Kubian, a music teacher and Association delegate, and her supervisor, he threatened to get rid of every Association delegate and stated he did not care about the Association's president; on January 8 and 9, he removed two teachers, Michael Woodland and Stanley Krzysik, from a tutorial program because of their Association activities; and during the 1985-86 school year, Clark warned the faculty that "if you grieve, you leave."

On March 25, 1985, the Association amended its charge to allege that on March 14, 1985, at Clark's request, the Board transferred Kubian to an elementary school.

1/ Footnote Continued From Previous Page

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; and (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."

On May 10, 1985, a Complaint and Notice of Hearing issued.

On August 7, 20, 21 and 22, 1985, Hearing Examiner Marc F. Stuart conducted a hearing. At the outset, the Board moved for leave to file an untimely Answer. The Association did not object, and the Hearing Examiner granted the motion.[2/] The parties then examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs by January 22, 1986.

On October 31, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-29, 12 NJPER 857 (¶17333 1986) (copy attached). He concluded that the Board violated the Act when Clark threatened to get rid of the Association delegates one by one; when he restricted the use of Association mailboxes; and when he removed Krzysik and Woodland from tutorial assignments. He credited testimony that Clark had called Association members "racists" and "spineless, gutless bastards" and said that Woodland was "half a black man," but did not find these statements illegal under our Act. He did not credit Kubian's testimony concerning her January 8 meeting with Clark or find her transfer illegal. To remedy the violations found, he recommended requiring the Board to stop threatening to get rid of Association delegates; restore full access

---

2/ This Answer states that Clark's alleged statements were constitutionally protected and did not violate the Act; that the Board was unaware of the notices the Association wished to circulate; that it had no authority to reinstate supplemental teachers and that a cease-and-desist order would be improper since there was no illegal conduct.

to teacher mailboxes; restore Krzysik and Woodland to their tutorial assignments without back pay; and post a notice of its violations and remedial actions.

On December 15, 1986, after an extension of time, the Association filed these exceptions: (1) the Hearing Examiner should have found that Clark's statements were a threat, rather than that they could likely have been interpreted as a threat (finding no. 4, n. 6); (2) the Hearing Examiner should have found that on January 7 Clark told the delegates he was going to get rid of them one by one; (3) the Hearing Examiner should have credited Kubian's testimony about the January 8 meeting; (4) the Hearing Examiner should have determined which statements were made at which meetings (n. 14); (5) the Hearing Examiner should not have stated that some of Clark's statements could "arguably constitute fair comment" (p. 15); that Clark's tendency towards grandiose and dramatic showmanship warrants some leeway in evaluating the threatening nature of the comments he so often makes (n. 17) and that certain comments, even if not violative of the Act, may be actionable elsewhere (n. 17); (6) the Hearing Examiner should not have concluded that Clark's acts were in retaliation for an Association letter rather than grievances (p. 16, n. 19); (7) the Hearing Examiner should have concluded that Clark violated the Act when he called Association delegates "harbingers of doom;" stated delegates were leading the teachers astray; stated he did not care about the contract or the Association and its affiliates; referred

to the "diabolic and devious" things the delegates were doing; and stated that he intended to assure the delegates did not contravene the teachers' wishes; and (8) the Hearing Examiner should have recommended that Krzysik and Woodland receive back pay.[3/]

The Board did not file exceptions or a response to the Association's exceptions.

II. Findings of Fact

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-10) are essentially accurate. We incorporate them here, with these observations in response to the exceptions.

We reject the Association's first exception. The Hearing Examiner found both that Clark made a threat to get rid of the delegates one by one and that the faculty could likely have interpreted this statement as a threat. We accept this conclusion.

The Hearing Examiner accurately noted that the testimony was inconsistent concerning whether this threat was repeated at the January 7 meeting between Clark and the delegates. The charge did not allege that this threat was made at that meeting and the Association's first witness, David Schwartz, did not testify this threat was made then. Three other Association witnesses (Blanchfield, Kott and Woodland) testified it was. Clark and a

---

3/ The Association also requested oral argument. We deny that request.

vice-principal (Lighty) attended this meeting and did not deny the statement was made. Considering all this testimony, we find it was.

We accept the Hearing Examiner's determination not to credit Kubian's testimony concerning whether Clark repeated this statement at her January 8 meeting.[4/] We add that her testimony concerning her misconduct and reprimands was not forthright.

The Association alleges that the Hearing Examiner refused to decide which statements were made at which meetings. We disagree: the findings of fact precisely link statements to meetings, except when the witnesses themselves were unsure what was said when.

III. Liability Issues

The Complaint centers on a series of meetings between January 4 and 8, 1985 at which principal Clark allegedly threatened delegates and teachers and on three alleged acts of reprisal after those meetings -- the removals of Woodland and Krzysik from tutorial assignments and the transfer of Kubian. The Hearing Examiner quite properly concentrated on these meetings and personnel actions. We will do the same. We are not assessing the principal's performance or the delegates' representation in general.

The Hearing Examiner observed (n. 14) that the critical point was that Clark made and repeated the statements alleged

---

4/ We do not, however, draw an inference against either the Association or the Board for not calling Kubian's supervisor to testify.

and the critical question was whether these statements were actionable. He declined to parse every statement which may have been made at each meeting. We agree with this approach: our task is to review the evidence to determine if the Complaint's allegations of illegal threats and reprisals have been proved by a preponderance of the evidence. This can best be done by looking at the events of January 4 through January 8, 1985 as a whole.

The Association pleaded and proved this series of events. On January 4, 1985 Clark, upset by what he thought was a class action grievance, called a faculty meeting and threatened to get rid of the Association's delegates one by one. On January 7, the Association attempted to circulate a letter from its president explaining that the grievance was not a class action. Clark halted distribution of this letter and ordered the delegates to a 1:30 p.m. meeting where he called them "racists" and "spineless, gutless bastards." Immediately afterward, Clark called a faculty meeting where he again denounced the delegates' integrity, repeated he would get rid of each one, and called one delegate "half a black man." These statements obviously had the tendency to interfere with the rights of employees to file grievances and support the Association and thus violated subsection 5.4(a)(1).

The Hearing Examiner, concentrating on the threat to get rid of each delegate, hesitated (n. 17) about determining whether the accusations of racism and bastardy violated our Act instead of some other source of law. We have no hesitancy: these statements,

read in their context, were part of the attempt to weaken the Association's support and interfere with its activities.[5/]

The Association objects to the statement (n. 17) that Clark's "grandiose and dramatic showmanship" warrants "some leeway in the evaluation of the threatening nature of the comments he so frequently makes." We agree with the Hearing Examiner that we must review statements in their entire context, but we also agree with the Association that, viewed in context and as a whole, Clark's statements were threatening and impermissible.

The Association excepts to the conclusion that Clark's acts of reprisal were in retaliation for the president's letter rather than the Association's grievance. We make the same distinction between statements and acts the Hearing Examiner made: Clark's statements at the meetings on January 4 and 7 were actionable under subsection 5.4(a)(1) while Clark's reprisals in revoking tutorial assignments were actionable under subsections 5.4(a)(1) and (3). We add, however, that the chain of events must be viewed as a whole and that the grievance probably contributed to the revocations.

5/ Clark made other attacks on the delegates at these meetings: he called them "harbingers of doom," accused them of leading teachers astray and said he did not care about the Association, its affiliates or its contract. The charge did not mention these statements or seek an independent finding of liability on each statement. We repeat our focus on the overall context of meetings and statements rather than the individual nature and legality of each statement. Thus, we find that these statements, in context, help prove Clark's attempt to interfere with Association activities, but we do not determine whether each statement, standing alone, would be actionable.

In sum, we hold that Clark's threats at the January 4 and two January 7 meetings violated subsection 5.4(a)(1); Clark's order to stop circulating the president's letter and to secure prior approval of future communications violated subsections 5.4(a)(1) and (3),[6/] and Clark violated subsections 5.4(a)(1) and (3) by removing Krzysik and Woodland from their tutorial assignments because of their activity as delegates.[7/]

IV. Remedial Issues

The Board has not filed any exceptions to the recommended remedial order and the Association questions only one portion: the lack of back pay for Woodland and Krzysik. We agree that a backpay order is necessary to effectuate the Act's purposes. N.J.S.A. 34:13A-5.4(f); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., 78 N.J. 1 (1978). We adopt the recommended order in all other respects.

6/ In light of this finding of liability and absent any pleading alleging a violation of subsection 5.4(a)(5), we do not consider whether that subsection was violated as well. Old Bridge Bd. of Ed., P.E.R.C. No. 87-51, 12 NJPER 844 (¶17324 1986). We also do not consider the contention that Clark violated subsection 5.4(a)(5) by inquiring about who originated grievances and insisting that some grievances be reprocessed. The charge did not allege a violation of this subsection or the underlying facts.

7/ We dismiss the other allegations.

ORDER

The Respondent Board is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by threatening delegates at meetings in retaliation for their protected activities.

2. Discriminating in regard to hire or tenure of employment or any term and condition of employment, to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by restricting the use of teachers' mailboxes in retaliation for the exercise of protected activities.

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, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by removing teachers from the supplemental teaching program in retaliation for their activity as Association delegates.

B. Take this affirmative action:

1. Post in all places were notices to employees are customarily posted, copies of the attached notice marked as appendix "A." Copies of such notice on forms provided by the Commission shall be posted immediately upon receipt thereof, and after being

signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Responsible steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

2. Restore the use of the teachers' mailboxes for the dissemination of Association information, without the necessity of prior approval.

3. Restore Michael Woodland to the tutorial teaching program, effective immediately, with back pay, together with interest pursuant to R. 4:42-11, for the period of January 9, 1985 to present.

4. Restore Stanley Krzysik to the tutorial teaching program, effective immediately, with back pay, together with interest pursuant to R. 4:42-11, for the period of January 8, 1985 to present.

5. Notify the Chairman of the Commission, within twenty (20) days of receipt, what steps the Respondent has taken to comply herewith.

C. The other allegations are dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987

APPENDIX "A"

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 cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by threatening delegates at meetings in retaliation for their protected activities.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment, to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by restricting the use of teachers' mailboxes in retaliation for the exercise of protected activities.

WE WILL cease and desist from 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, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by removing teachers from the supplemental teaching program in retaliation for their activity as Association delegates.

WE WILL restore the use of the teachers' mailboxes for the dissemination of Association information, without the necessity of prior approval.

WE WILL restore Michael Woodland to the tutorial teaching program, effective immediately, with back pay, together with interest pursuant to R. 4:42-11, for the period of January 9, 1985 to present.

WE WILL restore Stanley Krzysik to the tutorial teaching program, effective immediately, with back pay, together with interest pursuant to R. 4:42-11, for the period of January 8, 1985 to present.

Docket No. CO-85-210-127 PATERSON BOARD OF EDUCATION
(Public Employer)

Dated _____ By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 87-29

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

In the Matter of

PATERSON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-210-127

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner finds that the Board violated 5.4(a)(1) when it threatened to "get rid of" PEA delegates "one by one" in retaliation for the exercise of protected activities; and; (a)(3) and, derivatively, (a)(1) and (a)(5) when it limited the right of the PEA to utilize the teachers' mailboxes for the dissemination of PEA information in retaliation for the assertion of a contractual right and; (a)(3) and derivatively, (a)(1) when it removed Stanley Krzysik and Michael Woodland from the Supplemental Teaching Program in retaliation for their assertion of one or more contractual rights.

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.

H.E. NO. 87-29

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

In the Matter of

PATERSON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-210-127

PATERSON EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Rosenberg & Beam, Esqs.
(Robert G. Rosenberg of Counsel)

For the Charging Party
Oxfeld, Cohen & Blunda, Esqs.
(Nancy Iris Oxfeld of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

The Paterson Education Association ("PEA" or "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission on February 14, 1985, containing various allegations, all pertaining to alleged violations committed by Joe Clark, Principal of Eastside High School, Paterson, New Jersey. Specifically, the charge alleges that Clark violated the Act by 1) the use of intimidating language and threats to PEA delegates; 2) the denial of access to teachers' mailboxes for the dissemination of PEA information by PEA delegates; 3) the removal of PEA delegates from

the supplemental teaching program in retaliation for protected activities; and 4) the use of intimidation tactics with regard to PEA grievances. The Association asserted that this conduct violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (4) of the Act.[1/]

It appearing that the allegations of the unfair practice charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 10, 1985. Following the commencement of the hearing, and without objection, the Paterson Board of Education ("Board") filed an Answer, generally denying all alleged violations (C-2).[2/]

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 an 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." Charging Party did not allege an §(a)(5) violation in any of its prehearing papers, including its Charge; however, throughout its post-hearing brief, the Charging Party alleges §(a)(1), (2), (3) and (5) violations only. §(a)(5) prohibits an employer's refusal to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusal to process grievances presented by the majority representative.

2/ "CP" refers to Charging Party's exhibits; "R" refers to Respondent's Exhibits; "C" refers to Commission exhibits; "J" refers to joint exhibits.

An evidentiary hearing, at which the parties were given an opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally, was conducted on August 7, 20, 21 and 22, 1985.

Following the granting of mutual requests for extensions of time, the Association filed a post-hearing brief on January 13, 1986, and the Respondent filed post-hearing summations on January 22, 1986.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT[3/]

1. The Paterson Board of Education is a public employer within the meaning of the Act (TA 12).[4/]

2. The Paterson Education Association is a public employee representative within the meaning of the Act (TA 12).[5/]

3/ During the course of these lengthy proceedings, both the PEA and the Board made many allegations against one another. However, in order to limit the length of this report I have attempted to limit detail where the allegations were not necessarily actionable, or where they were merely responsive to other allegations, and within the realm of fair comment in a labor-management relations context.

4/ Transcript designations are as follows: "TA" refers to the transcript dated August 7, 1985; "TB" refers to the transcript dated August 20, 1985; "TC" refers to the transcript dated August 21, 1985; "TD" refers to the transcript dated August 22, 1985.

5/ Although these stipulations are contained at TA 12, the official court reporter's transcription of these facts is unintelligible.

3. Joe Clark is Principal of Eastside H.S., Paterson, N.J. (TB 29). Kevin Blanchfield, Stanley Krzysik, David Kott, Michael Woodland, David Schwartz and Fran Kubian are PEA delegates at Eastside H.S. (TA 15, 17, 27, 83; TB 6). Peter A. Terri is President of the PEA (TA 87-88).

4. On January 4, 1985, Joe Clark called a general faculty meeting at which he referred to a "class action grievance" filed by certain PEA delegates. Clark referred to the delegates as "harbingers of doom." Clark threatened to get rid of the PEA delegates one by one,[6/] claiming that the delegates were leading the teachers astray. He indicated that he did not care about the contract, the PEA, the NJEA or the NEA (TA 85-86, 129; TB 39, 95, TD 36).

5. As a result of statements made by Clark at the January 4, 1985, faculty meeting regarding a PEA "class action grievance," on January 7, the PEA disseminated, by way of the teachers' mailboxes, a memorandum dated January 4 ("PEA letter"), to all teachers concerning the facts relevant to that grievance and the nature of the grievance (CP-1). As a result of this dissemination, Clark stated that no PEA material was to be placed in mailboxes

---

6/ Clark admitted using this language, but suggested that it was more in the way of an invitation to leave Eastside H.S., than a threat. I find that the statement was made, and based on the entire testimony in these proceedings as well as Clark's position as Principal and his sometime extreme reactions and tendency toward rigid control, I find that the statement could likely have been interpreted as a threat to its audience.

without his express authorization. Thereafter, Clark extended the use of the mailboxes to PEA delegates for PEA information, only upon approval of the principal (CP-2). The collective negotiations agreement between the Board and the Association provides in Article 5:5 that "The Association shall have the right to use the interschool mail facilities and school mailboxes. All such material shall be in professional taste." (J-1). Prior to this time the PEA had never needed authorization to place material in teachers' mailboxes, although a "courtesy" copy of material distributed through the mailboxes would always be given to the administration[7/] (TA 25, 95, 118; TB 72).

6. On January 7, 1985, Clark called a meeting of PEA delegates. At that meeting Clark referred to the PEA delegates as "racist," "gutless," "spineless" and "bastards."[8/] Clark further referred to one of the PEA delegates, Michael Woodland, as "half a black man."[9/]. Clark testified the purpose of the January 7th

---

7/ There appears to be some inconsistency in the record as to what the policy was prior to this time or whether there was, in fact, any set policy (See TB 70-71, 90-94). I find that to the extent that there was a policy, it did not require the prior approval of an administrator, but was more in the nature of a voluntary accomodation.

8/ This allegation is substantially corroborated by Clark himself, with the exception that he stated he did not recall using the term "racist." However, Clark did not actually deny the use of the term. Thus, on balance I credit the collective testimony of the PEA delegates on this point.

9/ Clark admits the statement, but claims it was made about one Tom Jenkins (TB 43). I reject Clark's explanation because I

Footnote Continued on Next Page

delegates meeting was to reach out to the delegates in an attempt to resolve the differences that existed between the delegates and the school administration[10/] (TA 17-18, 21, 96, 121-122; TB 8, 9, 35-36, 42-43, 62, 63; TD 44).

7. Following his meeting with the delegates on January 7, 1985, Clark called a meeting of the entire Eastside faculty. At this meeting Clark attributed the "PEA letter" to a few of the delegates who were trying to harass Eastside's principal. He indicated that the delegates were all white males not reflective of the school body, and that he'd get rid of them one by one. He further indicated he'd get revenge on the PEA, that the delegates were gutless, cowards, spineless, bastards and racists, and according to the PEA witnesses, he again indicated that Michael Woodland was half a black man. Clark testified that he called the faculty meeting of January 7, 1985, to encourage staff to work together in harmony with the principal and not to position

---

9/ Footnote Continued From Previous Page

find that he made the statement at the January 7 delegates meeting, as well as at other times, and Woodland was the only black man at the January 7 delegates meeting (TA 123). Moreover, I find Clark's statement, that he did not even know Woodland was a delegate, not to be credible in light of Woodland's attendance at the January 7 delegates meeting. Additionally, I find Clark's explanation of how the remark came to be made about Tom Jenkins, to be less than credible (See TB 65-66).

10/ The testimony from the PEA witnesses is not consistent as to whether Clark indicated at this meeting that he'd get the PEA delegates one by one (TA 122-123; TB 8).

themselves with individuals who were divisive. Clark indicated that Krzysik, Kott, and Blanchfield were the individuals he was referring to. In Clark's own testimony, however, he stated the person he referred to as half a black man was Tom Jenkins and not Michael Woodland.[11/]

Thereafter, various witnesses on behalf of the Board basically testified either that they did not believe Clark made the remarks attributed to him; that they could not recall having heard Clark make those remarks; or that they could not recall the meeting.[12/] Balancing the collective and consistent testimony from various PEA delegates against the Clark testimony which I find to be somewhat selective in its interpretation of various statements and events, and taking into consideration the generally inconclusive testimony from the other Board witnesses, I conclude Clark's comments to the faculty at the general meeting on January 7, 1985 included the substance of the remarks attributed to him by the PEA. (TA 20-22, 72, 97-98, 123, 133; TB 73-74; TC 23, 32, 48, 129, 131, 135-136, 143-144, 149, 205).

11/ See footnote #9, page 5.

12/ All of the alleged retaliatory conduct forming the subject of this charge comes from one individual, Joe Clark. Throughout the course of the hearing various Board witnesses testified either that Clark did not make the statements attributed to him or far more frequently, that they did not believe he did so that they could not recall him doing so, or that they could not recall the events at all. I have not made credibility determinations of testimony from secondary witnesses where Clark himself has not denied the conduct attributed to him. However, where Clark has expressly denied such conduct or statements, I have made credibility determinations.

8. On January 8, 1985, a meeting was held between Joe Clark, Fran Kubian, a music teacher at Eastside High School and a PEA delegate, and Angela Giella, Supervisor of Music, City of Paterson. Kubian testified that Clark indicated he was going to "get every single" PEA delegate. Clark denied making this statement. Upon cross-examination, Kubian admitted having been given warnings and reprimands by Clark for tardiness, failure to follow proper procedures in permitting a newspaper photographer into the school to photograph certain of her students, and her refusal to relinquish the school auditorium for a program organized by the school's administration. Based upon the finding of various instances of discipline imposed by Clark upon Kubian for activities bearing no relationship to PEA business, Kubian's own testimony in which she voluntarily indicated her general disapproval of Clark (TA 70), the Association's failure to provide corroborating testimony from Angela Giella, the only other person in attendance at the June 8 meeting, and Clark's own denial of the remarks attributed to him during the meeting, I do not credit the Kubian testimony in this regard, and I find that the Association has not met its burden in establishing that Clark stated, at the January 8, 1985 meeting, that he was going to "get every single" PEA delegate (TA 28, 31-34, 40-43, 46-47, 63, 67; TB 45; TC 178-179).

9. Both Krzysik and Woodland had been appointed by Clark to provide supplemental instruction to students. Teachers providing this instruction are paid $12 to $15 an hour and work with an

individual student approximately three times per week for up to three hours per week. Krzysik began providing supplemental instruction at the beginning of October, 1984, and Woodland began just before Christmas, 1984. On January 8, 1985, one day after the incident regarding the PEA dissemination of information through the teachers' mailboxes, Krzysik received a note in his mailbox from Clark dated January 7, 1985 (CP-3), stating that "[e]ffective immediately you will be removed from the supplemental program." Clark stated, at the hearing in this matter, that Krzysik was removed on January 8, because of his refusal to come to school at 8:15 a.m. to assist with overcrowding problems (TB 80-81). On February 26, 1985, Clark restored Krzysik to the program as a reward for his excellent control of the hallways. However, subsequently on March 15, 1985, Krzysik was again removed by Clark from the program because he failed to report to hall duty at 8:15 a.m. Teachers are required by contract to report for work no earlier than 8:25 a.m. (J-1, Article 7:1-2.2, 4.1, TA 134-135, 138-139; TB 9-10; CP-3).

On January 9, 1985, two days after the dissemination of the PEA letter Woodland received a note in his mailbox from Clark stating "The supplemental program has been redesigned. Subsequently your services will no longer be required." Clark never offered Woodland any further explanation for his removal from the program (TB 12). In his testimony, Clark stated that Woodland was added to the program because of his teaching deficiencies in a large group setting, and the possibility that he could provide more effective

instruction in a small group setting. Clark also testified, somewhat inconsistently, that he believed Woodland needed to devote all of his time to teaching his classes, and could not afford to spend time in the supplemental program. Clark further testified that Woodland's performance in the supplemental program was superior to his performance in a large group setting (TB 12, 41, 78-80). Finally, Clark testified that Krzysik and Woodland were not removed from the supplemental program for any reason involving their status as PEA delegates, and that in fact, other staff members were removed from the supplemental program who were not PEA delegates (TB 49, 81-82). However, on cross examination Clark testified that the only one he could recall was Vanessa James, who was dropped from the program because "[s]he could not get in on time" (TB 82).[13/]

LEGAL ANALYSIS

January 4, 1985 Faculty Meeting; January 7, 1985 Delegates Meeting; January 7, 1985 Faculty Meeting[14/]

13/ Clark's response was to the question - "And was that because she could not come in early?" Thus, I assume his answer actually referred to her inability to come in early, rather than on time, and, as such, I do not believe it can be interpreted as either a legitimate basis for the personnel action taken, or as a mitigating factor in my findings on the Krzysik and Woodland removals.

14/ There is some confusion in the record as to what statements Clark made at what meetings, although there is basic agreement as to the statements themselves. The consensus of witness

Footnote Continued on Next Page

In its post-hearing brief, Charging Party asserts that the Board, through the actions of its agent Joe Clark, violated §(1), (2), (3) and (5)[15/] by referring to PEA delegates as "gutless," "spineless," "racist" and "bastards;" by indicating that he was going to get the delegates "one by one;" by suggesting that the delegates were attempting to mislead the teachers; by stating that he did not care about the contract, the PEA, the NJEA or the NEA, and by other such statements contained in the record.

In NLRB v Corning Glass Works, 204 F.2nd 422 (1st Cir. 1953), 32 LRRM 2136 (1953), the Court interpreted the free speech provision of the National Labor Relations Act as follows:

> ...[T]he constitution of the United States protects an employer with respect to the oral expression of his views on labor matters provided his expressions fall short of restraint or coercion [citation omitted]... §8(c) of the Act...protects an employer with respect to like expressions in written, printed, graphic or visual form, provided his expressions contain "no threat of reprisal or force or promise of benefit." [32 LRRM at 2139]

14/ Footnote Continued From Previous Page

testimony is that Clark made each of the statements, alleged by the PEA at each of the meetings. I have already made findings as to which statements were made; however, due to the inconsistency over the time and place of some of the statements, I shall concentrate on the statements themselves to determine if they are actionable, without attempting to assign them to specific meetings.

15/ See footnote #1, page 2.

The U.S. Supreme Court adopted that same language in the NLRB v Gissel Packing Co., 395 U.S. 575, 618, 71 LRRM 2481 (1969), when it said:

> "...[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal, or force or promise of benefit." [71 LRRM at 2497]

Although this specific language in section 8(c) in the NLRA is not present in our Act, the Commission, through the adoption of two hearing examiners' recommendations, has adopted the 8(c) standard in New Jersey.[16/] City of Camden, P.E.R.C. 82-103, 8 NJPER 309 (¶ 13137 1982) adopting H.E. No. 82-34, 8 NJPER 181 (¶ 13078 1982); Rutgers, The State University, P.E.R.C. No. 83-136, 9 NJPER 276 (¶ 14127 1983), adopting H.E. No. 83-26, 9 NJPER 177 (¶ 14083 1983)(both finding no violation in the absence of any threat of reprisal or promise of benefit).

16/ See, Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970), and Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1 (1978), to support the adoption of the NLRA, as a model utilized by New Jersey. In Galloway the N.J. Supreme Court reasoned that our Act was based upon the NLRA and, accordingly,

> "...[T]he absence of specific phraseology in a statute may...be attributable to a legislative determination that more general language is sufficient to include a particular matter within the purview of the statute without the necessity of further elaboration. [78 N.J. at 15]

In Black Horse Pike Regional Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502, (¶12223 1981), the Commission held:

> A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However,...the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer [citations omitted].
>
> When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be appropriate and even legal action, as threatened here, may be initiated to halt or remedy the other's actions. However, as in this case, where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment.
>
> * * *
>
> The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity. [7 NJPER at 503-504; citations omitted].

Even in the absence of the actual implementation of any act of reprisal, however, "[w]hen the employer, its representative or agent threatens an employee with dismissal in a deliberate attempt

to restrain the employee's participation in protected activity, subsection 5.4(a)(1) is violated, and this is so regardless of whether the threatened employee is actually intimidated. Commercial Township Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶ 13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83). Thus, it is the tendency of an employer's conduct to interfere with the exercise of employee rights that is the controlling element of a subsection 5.4(a)(1) violation, City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶ 4096 1978), aff'd App. Div. Dkt. No. A-3562-77 (3/5/79), and where an employer's action interferes with concerted activity but does not involve an actual act of reprisal, it may be challenged only under subsection (a)(1). R. Gorman, Basic Text on Labor Law, at 337 (1976).

In Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶ 17197 1986), the Commission held that where the Township, through the actions of its agent the Mayor, threatened retaliation and introduced an ordinance to reduce the number of sergeants in the police department, and where no legitimate and substantial business justification was offered therefor; and, where this action followed a threat by the mayor during contract negotiations that if the PBA went to arbitration the police department would suffer cuts in the budget, a finding of an (a)(1) violation was appropriate. However, no (a)(3) violation could be found as alleged, since these threats were never carried out. Township of Mine Hill, supra.

In the instant case, Clark's statements about the PEA and its delegates in their capacity as union officials, although dramatic, could arguably constitute fair comment.17/ However, his promise to get the delegates "one by one" suggests the threat of reprisal, for no other reason than the exercise of protected rights. It constitutes an (a)(1) violation within the meaning of this Commission's decisions in Commercial Township Bd. of Ed., supra, and Township of Mine Hill, supra. However, since no acts of reprisal were ever taken I find that the Board did not commit an (a)(3) violation. See, R. Gorman, Basic Text on Labor Law, supra.

Commission cases dealing with (a)(2) claims generally involve organizational rights or the actions of an employee with a conflict of interest caused by his membership in a union and his position as an agent of an employer. Union County Regional Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976); Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶ 12118 1981); Camden County Board of Chosen Freeholders, P.E.R.C. No. 83-113, 9 NJPER 156 (¶ 14074 1983). While motive is not an element of an (a)(2) offense, there must be a showing that the acts complained of actually interfered with or dominated the formation,

---

17/ The line between fair comment and threat is often a fine one. Here, however, the record establishes Clark's tendency toward grandiose and dramatic showmanship; and, thus, he should be given some leeway in the evaluation of the threatening nature of the comments he so frequently makes. Furthermore, certain comments, although not necessarily violative of the Act, may be actionable in other civil proceedings.

existence or administration of the employee organization. Cf., Charles J. Morris (editor), The Developing Labor Law; The Board, The Courts and the National Labor Relations Act (B.N.A. 2nd ed. 1983), p. 279, citing Garment Workers (Bernard Altman Texas Corp.) v. NLRB, 366 U.S. 731 (1961). Apart from findings of interference with individuals' protected rights, I find no evidence of actual interference with or domination of the employee organization as a whole.[18/]

Furthermore, Clark's statements as they are imputed to the Board, do not constitute any basis for the finding of an (a)(4)[19/] or an (a)(5) violation.

Restriction on the Use of Teachers' Mailboxes

The collective negotiations agreement provides, in Article 5:5:

18/ The Charging Party presented some evidence of the Administration's questioning of selection procedures for delegates, and of the PEA's procedures in the filing of a class-action grievance, but it does not rise to the level of actual domination or interference with an employee organization (See e.g., TB 69-70, 75-77).

19/ I reject the Charging Party's claim that Clark's acts of reprisal were in retaliation for the PEA's grievance. Instead, I find that they were in retaliation for the delegate's part in the dissemination of the PEA letter following the January 4, 1985 faculty meeting. As such I believe them to be §(a)(3) and (1) violations, and not §(a)(4) violations (see Legal Analysis section, infra).

> The Association shall have the right to use the interschool mail facilities and school mailboxes. All such mailed material shall be in professional taste. [J-1, p. 9.]

The testimony establishes that although administrators were always given a "courtesy" copy of any materials disseminated by the PEA through the teachers' mailboxes, it was not a requirement to obtain prior approval from the administration before disseminating PEA information.

On January 4, 1985, Peter A. Terri, President of the Paterson Education Association, distributed a letter (CP-1) explaining the Association's position with respect to a recently filed grievance, which according to witness testimony, was in response to Clark's comments at the January 4, faculty meeting. Thereafter, Joe Clark issued the following memorandum to all PEA delegates:

> Please be advised that all legitimate PEA flyers may be put in the mailboxes of teachers only upon approval by the principal.
>
> It should be duly noted that all appropriate information to be disseminated will be quickly approved. [CP-2.]

Since Clark imposed an additional requirement upon PEA officials wishing to disseminate information through the teachers' mailbox system, I find a unilateral alteration in terms and conditions of employment resulting in an §(a)(5) violation. See e.g., NJSA 34:13A-5.3, New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84, 85 (¶ 4040 1978), motion for reconsideration denied, P.E.R.C. No. 78-56, 4 NJPER 156 (¶ 4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79), holding that:

> [The] unilateral alteration of an existing term and condition of employment during the term of an agreement constitute[s] an unfair practice complete in itself. [4 NJPER at 85].

Under Black Horse Pike, supra, an employee organization is accorded the same right of fair comment which accrues to an employer. Thus, I disagree with the Board's position that CP-1 was somehow inappropriate, and therefore, apparently not a "legitimate PEA flyer." However, even if it were not appropriate, I do not believe the across-the-board restriction imposed by Clark can be defended in the face of terms and conditions of employment to the contrary. Thus, I would not disturb my recommended finding of an (a)(5) violation on this basis.

Additionally, I find Clark's interference with the use of the teachers' mailbox system to constitute discrimination in regard to a term and condition of employment, which term and condition resulted from collective negotiations between the parties under §5.3 of the Act. As such, the collectively negotiated right to use the mailboxes is a right guaranteed by the Act, and Clark's interference with it, taking into account his knowledge of the delegates protected activities, his blatant hostility toward them (see discussion on pages 20-22, infra) and his lack of any valid business justification[20/] for his actions constitutes an §(a)(3) and,

---

20/ Clark offered no clear explanation for his action other than to suggest that the "PEA letter" was not a "legitimate" PEA

Footnote Continued on Next Page

derivatively, (a)(1) violation. Bridgewater Twp., 95 N.J. 235 (1984).[21/]

Removal of Krzysik and Woodland From the Supplemental Instruction Program

The Charging Party alleges that both Krzysik and Woodland were removed from the Supplemental Instruction Program[22/] on

---

20/ Footnote Continued From Previous Page

flyer or that it was somehow designed to undermine Clark's own progress in other areas. I do not believe that this proffer rises to the level of a business justification and; thus, I do not believe this case to be one of dual motive. See, Bridgewater Twp., 95 N.J. 235 (1984). Instead, I find Clark's proffer to be pretextual; and, therefore, inadequate to establish that the same action would have been taken in the absence of the protected activity. See, Wright Line, 251 NLRB 1083 (1980). Furthermore, I find that Clark's action was in retaliation for the dissemination of the "PEA letter" and not for the filing of a grievance. Thus, to the extent that such could form the basis of an (a)(4) violation, I find none to be present here.

21/ To the extent that Clark's restriction of the PEA's use of the teachers' mailboxes can be viewed as a matter of pure contract interpretation, which would otherwise be relegated to the parties' dispute resolution mechanism under State of New Jersey, Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶ 15191 1984), I would note that it has been presented to me in the context of a continuing pattern of anti-union activities, many of which are violative of the Act. Therefore, I recommend that it be dealt with in this context, rather than being isolated and dealt with according to the rationale expressed by the Commission in Human Services, supra.

22/ The Board does not dispute that Krzysik's and Woodland's participation in the supplemental teaching programs constitutes a term and condition of their employment.

January 8 and January 9, 1985, respectively, in retaliation for the PEA's filing of a grievance and the PEA delegates' part in the dissemination of the January 4, 1985 "PEA letter". Additionally, I found that Krzysik was restored to the program on February 26, 1985, only to be removed again on March 15, 1985, because he failed to report to hall duty at 8:15 a.m. rather than at 8:25 a.m., as required under the parties collective negotiations agreement.

In Bridgewater, supra, the Court ruled in a dual motive case that a prima facie case can be established by showing (1) the employee was engaged in protected activity, (2) the employer knew of this activity, and (3) the employer was hostile toward the exercise of the protected rights. The charging party must make a showing sufficient to support the inference that the protected conduct was a motivating or substantial factor in the employer's action. Assuming the charging party is able to establish a prima facie case, the employer may come forward with proof tending to establish a proper business justification for its action (i.e., that the action would have taken place even in the absence of the protected activity). Assuming the employer is able to assert a valid business justification, and in the absence of a finding that the adverse personnel action would not have occurred but for the protected activity, no violation will be found.

Here, the record and the factual findings that I have made reveal that both Krzysik and Woodland were PBA delegates, and as such were actively engaged in protected activities. That Clark,

through his various statements and actions knew of these activities, and that he exhibited some overt hostility toward the exercise of these protected rights.[23/] Thus, the charging party has established a prima facie showing of an (a)(1) and (3) violation.

Clark offered a business justification for the Woodland removal based upon Woodland's teaching performance in both large and small groups.[24/] However, Clark's explanation that Woodland was given the position as a result of his teaching deficiencies in large groups, was continued in the position for a period of approximately only two to three weeks, most of which was during the Christmas recess, and was finally removed from the program such a short time later for virtually the same reasons given for his having been placed in the program (i.e., his deficiencies in a large group setting), and all this despite testimony from Clark indicating that Woodland's performance in the supplemental program was superior to his performance in a large group setting, strains credulity. (TB 12,

---

23/ See Findings of Fact section, generally, for evidence of instances of contemporaneous hostility toward protected activities. Additionally, the issue of suspicious timing goes to proving the element of hostility toward protected activity in the prima facie case. See e.g., Downe Township Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 9 (¶ 17002 1985).

24/ Clark also testified, somewhat less definatively than in the case of Krzysik, that Woodland was removed from the supplemental program for his failure to report for hall duty at 8:15 a.m. (TB 42). I did not credit this explanation, but to the extent that Clark asserts it, I would suggest the same recommended disposition as in the case of the Krzysik removal (See discussion infra).

41-42, 78-79, 80). Thus, I conclude that the Board has failed to establish that Woodland would have been removed from the supplemental program on January 9, 1985, in the absence of his protected activity, and I find violations of §(a)(3) and, derivatively, (a)(1) of the Act.

With regard to Clark's removal of Krzysik on two occasions, I find Krzysik, as a PEA delegate, was engaged in protected activities; that Clark knew of these activities; and, by the same reasoning expressed previously, that he was hostile to these protected rights. Thus, Krzysik's protected activities formed a substantial or motivating factor in Clark's decision.

Clark stated that Krzysik was removed from the supplemental teaching program on January 8, and March 15, 1985, for his refusal to begin his workday at 8:15 a.m. Since the collectively negotiated contract required employees to report for work no earlier than 8:25 a.m., I find this to be inadequate and pretextual[25/] as a basis for Krzysik's two removals from the supplemental teaching program, and I conclude he would not have been removed in the absence of his assertion of rights under the contract. Thus, I conclude that Krzysik's removals form a second basis for the finding of a violation of §§(a)(3) and, derivatively, (1) of the Act.

Upon the foregoing, and upon the entire record in this case the Hearing Examiner makes the following:

25/ See e.g., Ridgefield Park Board of Education, P.E.R.C. No. 84-120, 10 NJPER 266 (¶ 15130 1984). See also, Wright Line, 251 NLRB 1083, (1980).

CONCLUSIONS OF LAW

1. Respondent Board violated N.J.S.A. 34:13A-5.4(a)(1) of the Act when, through its agent Joe Clark, it threatened to get rid of PEA delegates, "one by one," in retaliation for their exercise of protected rights.

2. Respondent Board violated N.J.S.A. 34:13A-5.4(a)(3) and, derivatively, (a)(1), and (a)(5) when it restricted the use of teachers mailboxes for the distribution of legitimate PEA material, as the result of the dissemination of the January 4, 1985, "PEA letter."

3. The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(3) and, derivatively, (a)(1) by its removal of Stanley Krzysik on January 8, and March 15, 1985, and Michael Woodland on January 9, 1985, from the Supplemental Teaching Program, in retaliation for their participation as PEA delegates, in the dissemination of the January 4, 1985, "PEA letter," and because one or both of them refused to report to work prior to the time set by contract.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by threatening to "get rid of" employees in retaliation for their exercise of protected activities.

2. Discriminating in regard to hire or tenure of employment or any term and condition of employment, to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, and refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, by unilaterally restricting the use of teachers' mailboxes in retaliation for the exercise of protected activities, and apart from the retaliatory aspect of this action, implementing a unilateral change in negotiated terms and conditions of employment.

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, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by the removal of teachers from the supplemental teaching program in retaliation for their participation, as PEA delegates, in the dissemination of the January 4, 1985 "PEA letter," and because one or both of them refused to report to work prior to the time set by contract.

B. That the Respondent Board take the following affirmative action:

1. Post in all places were notices to employees are customarily posted, copies of the attached notice marked as appendix "A." Copies of such notice on forms three provided by the Commission shall be posted immediately upon receipt thereof, and after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Responsible steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

2. Restore the use of the teachers' mailboxes for the dissemination of PEA information, without the necessity of prior approval.

3. Restore Stanley Krzysik and Michael Woodland to the supplemental teaching program, effective immediately, without back pay.

4. Notify the Chairman of the Commission, within twenty (20) days of receipt, what steps the Respondent has taken to comply herewith.

C. That the §§5.4(a)(2) and (4) allegations be dismissed in their entirety.

Marc F. Stuart
Hearing Examiner

Dated: October 31, 1986
Trenton, New Jersey

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 cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by threatening to "get rid of" employees in retaliation for their exercise of protected activities.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment, to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, and refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, by unilaterally restricting the use of teachers' mailboxes in retaliation for the exercise of protected activities, and apart from the retaliatory aspect of this action, implementing a unilateral change in negotiated terms and conditions of employment.

WE WILL cease and desist from 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, and interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, by the removal of teachers from the supplemental teaching program in retaliation for their participation, as PEA delegates, in the dissemination of the January 4, 1985 "PEA letter," and because one or both of them refused to report to work prior to the time set by contract.

WE WILL restore the use of the teachers' mailboxes for the dissemination of PEA information, without the necessity of prior approval.

WE WILL restore Stanley Krzysik and Michael Woodland to the supplemental teaching program, effective immediately, without back pay.

Docket No. CO-85-210-127 PATERSON BOARD OF EDUCATION

(Public Employer)

Dated_____ By_____

(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.