

P.E.R.C. NO. 98-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCHELLE PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-94-404

ROCHELLE PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Rochelle Park Board of Education. The Complaint, based on an unfair practice charge filed by the Rochelle Park Education Association, alleges that the Board violated the New Jersey Employer-Employee Relations Act by withholding the increment of a teacher for the 1994-95 school year allegedly in retaliation for the teacher's Association activities. The Commission finds that under all the circumstances of this case, the Association did not prove by a preponderance of the evidence that the Board violated the Act when it withheld the teacher's increment.

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

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Charging Party.

Appearances:

For the Respondent, Beattie Padovano, attorneys
(Ralph J. Padovano, of counsel)

For the Charging Party, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

DECISION

On June 29, 1994, the Rochelle Park Education Association filed an unfair practice charge against the Rochelle Park Board of Education. The charge alleges that the Board violated the New Jersey Employee-Employer Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3), and (4),^{1/} by withholding the

^{1/} These provisions 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; (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 (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."

increment of teacher Charles Paterno for the 1994-1995 school year. The Association alleges that the withholding was motivated by animus against Paterno for his Association activities and was in retaliation for his filing a grievance challenging his annual evaluation.

On January 18, 1997, a Complaint and Notice of Hearing issued. The Board filed an Answer denying that the withholding was motivated by Paterno's Association activities and his grievance.

On May 17 and 18, June 8, and July 20, 1995, Hearing Examiner Lorraine Tesauro conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On February 5, 1997, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 97-19, 23 NJPER 188 (¶28092 1997). Applying the standards in In re Bridgewater Tp., 95 N.J. 235 (1984) for assessing anti-union discrimination claims, the Hearing Examiner concluded that the Board did not violate N.J.S.A. 34:13A-5.4a(1) and (3) when it withheld Paterno's increment. The Hearing Examiner further concluded that the Board did not violate N.J.S.A. 5.4a(4), as Paterno had not filed an affidavit, petition or complaint or given any information or testimony under the Act.

On March 3, 1997, the Association filed exceptions to the recommended decision. It asserts that it proved that the Board retaliated against Paterno because of his Association activities

and grievance. It asserts that the increment was withheld in retaliation for Paterno's participation in grievances and appearances at Board meetings and that the Hearing Examiner failed to recognize many facts implying "a history of hostility due to Paterno's role as a union leader and an outspoken activist for the rights of himself and others." (Exceptions at 2). The Association also asserts that the superintendent, Patricia Doloughty, and the Board did not decide to withhold Paterno's increment until after he grieved his 1993-1994 annual evaluation.

On March 4, 1997, the Board submitted a letter urging that the recommended decision be adopted. It relied upon its post-hearing brief.

On March 17, 1997, the Board also filed a letter brief in lieu of formal cross-exceptions, responding to the Association's exceptions and reiterating its request that the recommended decision be adopted.^{2/}

We have reviewed the record. The Hearing Examiner's findings of fact are generally accurate. We adopt and incorporate them with certain additions and modifications. We specifically adopt the Hearing Examiner's findings that the withholding was not motivated by anti-union animus. Based on that finding and the entire record, we also adopt the recommendation to dismiss the Complaint.

^{2/} We deny the Board's request for oral argument.

We clarify that Doloughty served as assistant principal from 1987-1988, as principal from 1988 to 1991, and as superintendent/principal from 1991 to 1994 (3T13-3T14). When the hearing began, Doloughty had been superintendent for one year (3T13).

We clarify that Doloughty performed formal classroom observations of Paterno on March 24, 1988 (R-6); October 19, 1988 (CP-24); January 23, 1990 (CP-27); January 20, 1993 (CP-30); and February 14, 1994 (CP-2); and completed annual evaluations of Paterno based on formal and informal evaluations on May 17, 1988 (R-7); April 27, 1989 (CP-25); March 15, 1990 (CP-20); March 18, 1991 (CP-21); March 3, 1993 (CP-19); and March 24, 1994 (CP-4). Doloughty did not observe or evaluate Paterno during the 1991-1992 school year; former principal A.J. (Lex) Greenwood completed Paterno's annual evaluation for that year (3T75; CP-22).

The ratings categories for the 1991-1992 annual evaluation of Paterno by A.J. Greenwood were Superior, Very Good, Good, Fair, and Unacceptable. In the 36 performance areas rated, Paterno received ratings of Superior in five areas, Very Good in twenty-eight areas, and Good in three areas. (CP-22)

We add that on February 10, 1992, Paterno spoke at a Board meeting. The minutes state:

Mr. Paterno read a prepared statement on behalf of the RPEA regarding the elimination of the Home Ec. and Industrial Arts Programs and a request that this decision be reconsidered by the Board. Mr. Paterno boldly stated that in his opinion the real issue wasn't the lack of money but rather

the real issue was the Board's priorities. He stated that the money is there and that the Board was hiding behind the dollar sign.... Mr. Paterno reiterated his point that there was money available and the cuts were just the Board's priorities. [CP-13; 3T104]

Doloughty testified that she had never seen these minutes and that she assumed that the word "boldly" was inserted by the Board Secretary, who prepares the minutes (3T104).

We clarify Paterno's participation in presenting two Association grievances. In October 1991, Paterno participated in presenting a grievance (CP-16) concerning the payment of a volleyball stipend; he was a co-chair of the grievance committee at that time (2T60). Doloughty denied the grievance at the superintendent/principal level, but the parties settled the grievance in April 1992 (3T66; CP-16). In October 1992, Paterno participated in presenting a grievance (CP-15) concerning student contact time; he was a grievance committee member at that time (2T64). Doloughty denied the grievance at her level (3T68) and an arbitrator denied the grievance on March 12, 1993 (3T69; CP-15).

We add that Paterno spoke at a Board budget hearing and special meeting on March 9, 1992. The minutes state: "Mr. Paterno asked how much the computer program will cost and where is it in the budget." (CP-14; 3T102).

We add that Doloughty wrote a letter to Paterno dated February 9, 1993. The letter concerned Paterno's discussion of "many topics unrelated to math instruction" during a math class the day before. The letter stated:

I want to make it perfectly clear that discussion related to your personal life is not appropriate for the classroom. Discussion related to how women dress is not appropriate for the classroom. Discussion related to how Mr. Boyle dresses is not appropriate for the classroom.... As you will recall from your last annual evaluation, I suggested that you stop sending students to the office to request copies of dittos. This practice is to stop immediately. Copies of dittos are to be made on the copying machine in the faculty room during your preparation time.... Immediate improvement in the effective use of instructional time is required. [CP-17]

We add that Doloughty's annual evaluation of Paterno for the 1992-1993 school year (CP-19) rated Paterno in 36 performance areas. The ratings categories were Superior, Very Good, Good, Fair, and Unacceptable. Paterno's teaching performance was rated Superior in one area, Very Good in eight areas, Good in eleven areas, Fair in eleven areas, and Unacceptable in five areas, including the area of "Effectively uses instructional time" (CP-19).

At the bottom of the 1992-1993 evaluation form, Doloughty wrote: "Will do a subsequent evaluation at a later date" (CP-19; 3T84). Doloughty testified that Paterno could be an outstanding teacher, and that she informed him in the post evaluation conference that she would do a subsequent evaluation (not a replacement evaluation) if she saw "sustained and consistent improvement" in the areas cited (3T84; 3T100). Doloughty testified that she contemplated withholding Paterno's increment after the 1992-1993 annual evaluation, but decided to give him the

opportunity to improve because he seemed open to suggestions during the post-evaluation conference (3T98; 3T144).

Doloughty did not complete any additional formal evaluations or observations of Paterno for the 1992-1993 school year. In informal observations, Doloughty saw some improvement, but it was inconsistent (3T85). Paterno was granted an increment for the 1993-1994 school year (3T99).

We add that Doloughty's 1993-1994 annual evaluation of Paterno (CP-4) contained the following ratings categories: Outstanding, Successful, Needs Improvement, and Unacceptable. In the twenty-two performance areas rated, Paterno was rated Outstanding in one area, Successful in eleven areas, Needs Improvement in nine areas, and Unacceptable in "Effective use of instructional time." The evaluation form did not contain a space for indicating whether the evaluator recommended that an increment be granted or withheld.

We add that by memorandum (CP-5) dated March 31, 1994, Doloughty advised Paterno that his contract status for the 1994-1995 school year would be at Step 15 - MA+30, "[s]alary to be determined as per the negotiated agreement between the RPEA/RPBOE." Step 15 is the top step of the teachers' salary guide. Paterno had been at the top step for several years (2T31). This memorandum (CP-5) did not indicate to Paterno what the dollar amount of his 1994-1995 salary would be, or whether he would receive an increment.

We add that by letter dated May 2, 1994, Doloughty advised Paterno that she would recommend to the Board that Paterno's employment and adjustment increments be withheld for the 1994-1995 school year (CP-9). Doloughty listed her reasons as Paterno's lack of improvement in the performance areas communicated to him by letter on February 9, 1993 (CP-17) and by the 1993 and 1994 annual evaluations (CP-19; CP-4); ineffective use of instructional time; unimproved student assessment practices and procedures; and lack of student achievement on standardized math tests. Upon arriving at Paterno's classroom to deliver this letter to him, Doloughty found the two doors to the classroom locked while Paterno conducted class (3T107; 3T110). Principal Joseph T. Boyle witnessed that the doors were locked (4T66). Paterno acknowledged that the doors were locked, but testified that he did not lock them (2T89).

Bridgewater's standards for assessing discrimination claims govern this case. In order to prove discrimination against an employee for protected activity, a charging party must prove that protected activity was a substantial or motivating factor in the adverse personnel action. Id. at 246. This may be done by direct evidence or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of protected rights. Ibid.


Under all the circumstances of this case, we agree with the Hearing Examiner that the Association did not prove by a preponderance of the evidence that the Board violated the Act when it withheld Paterno's increment. While Paterno engaged in protected activity and Doloughty and the Board knew of such activity, the Association did not prove that hostility towards Paterno because of his protected activity was a "substantial or motivating factor" in the decision to withhold his increment. The Hearing Examiner credited Doloughty's testimony that the withholding was based on an evaluation of Paterno's teaching performance and we have no basis to overturn that assessment.

We also dismiss the subsection 5.4a(4) allegation. No evidence shows that Paterno had "signed or filed an affidavit, petition or complaint or given any information or testimony under the Act." See generally Randolph Tp. Bd. of Ed., P.E.R.C. No. 82-119, 8 NJPER 365 (¶13167 1982).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997

H.E. NO. 97-19

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

In the Matter of

ROCHELLE PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-94-404

ROCHELLE PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the Rochelle Park Board of Education did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by withholding the increment of Charles Paterno. The Hearing Examiner found that Paterno was an active union member, the employer was not hostile toward the exercise of his protected Association activities and those activities were not a substantial and motivating factor in the Board's decision to withhold the increment.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 97-19

STATE OF NEW JERSEY
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Appearances:

For the Respondent, Beattie Padovano, attorneys
(Ralph J. Padovano, of counsel)

For the Charging Party, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An unfair practice charge was filed with the Public Employment Relations Commission ("Commission"), on June 29, 1994, by the Rochelle Park Education Association ("Charging Party" or "Association"), alleging that the Rochelle Park Board of Education ("Respondent" or "Board"), has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended N.J.S.A. 34:13A-1 et seq. ("Act"), in that the Board improperly withheld the annual salary increment of one of its teachers, Charles Paterno, for the 1994-1995 school year. The Association alleges that the Board's denial of the increment was

motivated by anti-union animus and thus violated subsections 5.4(a)(1), (3) and (4) of the Act.^{1/}

A Complaint and Notice of Hearing (C-1) was issued on January 18, 1995.^{2/} On January 27, 1995, the Board filed its Answer contending that the withholding of the increment was unrelated to the individual employee's protected activity. A hearing was held on May 17, 18, June 8 and July 20, 1995, at which time the parties examined witnesses, presented relevant evidence and argued orally. The Charging Party filed a post-hearing brief on or about September 27, 1995, and the Respondent filed a reply brief on October 19, 1995.^{3/}

On the entire record, I make the following:

FINDINGS OF FACT

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- ^{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. (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."
- ^{2/} "C" refers to Commission exhibits; "J" refers to joint exhibits; "CP" refers to Charging Party's exhibits; and "R" refers to Respondent's exhibits.
- ^{3/} The Charging Party chose not to file a reply brief in response to the Respondent's reply brief and requested that the record be closed.

1. The Rochelle Park Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Rochelle Park Education Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Board and Association had a collective negotiations agreement (J-1) effective from 1993 to 1995. Article III is the grievance procedure.

4. Charles Paterno has been employed by the Board as a teacher since 1966 (1T10).^{4/} During this time, Paterno also served as interim principal, vice president of the Association and negotiations chair. From 1990 to 1994, he was grievance chair and co-chair (1T80-1T81).

5. On October 22, 1991, Paterno filed a grievance concerning a volleyball stipend (CP-16; 1T82, 1T83-1T85) and on October 8, 1992, he filed a grievance seeking resolution of the Board's increase in student contact time (CP-15; 1T87). Paterno actively participated in resolving these grievances.

^{4/} "1T" refers to the transcript from May 17, 1995; "2T" refers to the transcript from May 18, 1995; "3T" refers to the transcript from June 8, 1995; and "4T" refers to the transcript from July 20, 1995, and they are referenced as follows: Paterno's employment since 1966, 1T10; vice president/negotiations chair 1T80; and Association's grievance chair 1T80 and 1T81.

6. Patricia Doloughty, the Board's superintendent, is one level of the grievance procedure, and, has denied or forwarded some of the grievances Paterno initiated (CP-15, CP-16, J-1).

7. Doloughty conducts annual teacher observations and evaluations. Doloughty conducted observations of Paterno on October 19, 1988; April 27, 1989; March 15, 1990 and March 18, 1991 (CP-24, CP-25, CP-20, and CP-21).

8. More recently, on February 17, 1994, Doloughty observed Paterno and on March 24, 1994, submitted her written evaluation (CP-2, CP-4). The evaluation form requires the superintendent to rate Paterno on 22 (twenty-two) criteria, divided into three categories: instructional strategies and teaching techniques; classroom organization and management; and professional relationships, achievements and traits (CP-4, pg. 1). Of the 22 (twenty-two) criteria, Doloughty rated Paterno as "needing improvement" in 9 (nine) and "unacceptable" in one (CP-4). Further, Doloughty wrote:

Classroom instructional time needs to be used more effectively. A variety of learning activities need to be incorporated in math lessons which actively engage students in learning.
(CP-4, pg. 2)

9. Doloughty's comments criticized Paterno's early release of students, his using instructional time for discussions unrelated to the subject; and recommended that he use preparation time for lesson planning and grading of assessments (CP-4). Performance

areas needing improvement were identified as: "classroom instructional time needs to be used more effectively; and a variety of learning activities need to be incorporated in math lessons which actively engage students in learning" (CP-4).

10. On April 8, 1994, Paterno received Doloughty's written evaluation and responded in writing, charging that the evaluation was a "gross misrepresentation of his professional abilities as an educator" (CP-4). Paterno notified Doloughty that he was invoking the grievance procedure (1T46-1T48).^{5/} On April 15, 1994, the Association filed a grievance over the evaluation contending that Doloughty applied the observation/evaluation policy in unfair manner (CP-6).

11. On May 2, 1994, Doloughty sent Paterno a letter recommending to the Board that the "increment be withheld for the 1994-95 school year and salary remain the same as it is for 1993-94 school year" (CP-9). Paterno's pay status in the collective bargaining agreement was at "step 15 MA+ 30" on the teachers' salary guide (J-1).

12. On May 16, 1994, the Board notified Paterno by letter that an "action was taken to withhold the adjustment increment for 1994-95 school year and accordingly the remuneration for 1994-95 would be the same as 1993-94" (CP-12). The letter further states that the "action was taken for the reasons included in Mrs.

^{5/} Doloughty acknowledged Paterno notified her that he would file a grievance (4T40).

Doloughy's letter to Mr. Paterno of May 2, 1994" and found that "Mr. Paterno's actions create a safety hazard by locking classroom doors during a teaching session and making inappropriate comments to students regarding administrative personnel; and creating inappropriate educational atmosphere for the students." (CP-12)

13. On April 19, 1994, the superintendent denied Paterno's grievance, and it proceeded to the Board (CP-23).

Analysis

The Association contends that Paterno was evaluated negatively and denied his 1994-95 increment in retaliation for his having been active in filing and prosecuting grievances against the Board and superintendent, including the grievance he filed objecting to his bad evaluation. The Board denies that anti-union animus was a motive for its denial of Paterno's advancement on the salary guide in 1994-95 and asserts that its decision was based on Paterno's last evaluation. I agree with the Board.

Under In re Tp. of Bridgewater, 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

The Court in Bridgewater found that the mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or substantial reason for the employer's actions. 95 N.J. at 242.

As to the first part of the Bridgewater test, it is undisputed that Paterno engaged in protected activity by initiating grievances, serving on the negotiating committee, serving as co-chair or chairperson of the grievance committee, and participating in the general functions of the Association. The Commission has held on many occasions that the filing of grievances is a protected activity. Pine Hill Board of Education, P.E.R.C. No. 86-126, 12 NJPER 434, 437 (17161 1986).

It is also undisputed that the Board and superintendent were aware of Paterno's activities on the Association's behalf. The record contains many examples of Paterno's involvement in the filing of grievances as early as 1988, wherein there is direct correspondence between Paterno and Doloughty, and evidence that Doloughty evaluated Paterno during her term as Superintendent and Principal (CP-17; CP-19). Therefore, I find that the Association has established the elements of protected activity and knowledge.

The Association alleges that it was not until the grievance reached the Board level that Paterno was notified that his 1994-95 increment was going to be withheld. The Board argues that the evaluation of April 8, 1994, served as notice of the Superintendent's intention to withhold the increment. Subsequently, on June 24, 1994, the Association filed this charge.

The Association alleges that the Board did not decide to withhold Paterno's increment until after it learned about the April 15, 1995 grievance. Although it is true that the Superintendent knew of the grievance on or about April 8, 1995, on this fact alone, I do not infer hostility or retaliation. There are no other indicators that Doloughty was hostile to the Association or Paterno.

There is also a requirement in Bridgewater that the employer demonstrate hostility toward the exercise of the protected activity. Throughout this record there is no evidence of hostility nor anti-union behavior. Although the record was replete with letters from the superintendent and from interim superintendents

making reference to certain discussions or criticism of Paterno's classroom behavior and the overall effect of this behavior on the children, there is no evidence that the Board was hostile to Paterno in these observations and evaluations, nor did the Board criticize Paterno for any of his Association-related activities (CP-19, CP-17, CP-22, CP-21). The Association has not met its burden of proving, by a preponderance of the evidence, that the Board retaliated nor exercised any hostile behavior against Paterno for fulfilling his Association obligations.

Having found no evidence of hostility toward Paterno's protected activity, there can be no nexus between the hostility and the increment denial. Accordingly, I need not consider the evidence that the Board would have withheld Paterno's increment for a legitimate business reason. However, based on the evidence that was proffered, I would find that the Board based its decision on the performance evaluations.^{6/} The record contains several evaluations of Paterno dating back to 1988. A consistent thread throughout these evaluations was that Paterno's teaching methods were "in need of improvement" with specific examples of inadequacies. For example, in CP-19, an evaluation dated March 24, 1993, the evaluation reads, in part:

^{6/} By making this finding, I do not judge whether the Board correctly evaluated Paterno, but merely that it based its decision on the record evaluations and not anti-union animus. Outside the issue of discrimination for protected activity or disciplinary increment withholding, the issue of whether the Board properly evaluated Paterno is a matter within the jurisdiction of the Commissioner of Education.

Performance areas needing improvement: lesson plans; ...students are not to be sent to the office to have the secretaries xerox worksheets; ...students are not responsible for grading tests; ...instructional time must be used more effectively. Numerous discussions unrelated to the curriculum of the subject intended for an instructional period take place in your classroom and the following inappropriate classroom and student management occurrences must never occur again:

- A. Inappropriate discussions with students and/or classes related to personal matters.
- B. Behavioral management techniques which include humiliating or belittling students verbally and putting students in corners.

All of these evaluations demonstrate a consistent pattern in Paterno's teaching methods. It is apparent that the Board took steps to have Paterno modify certain teaching practices.

The Charging Party failed to present substantial evidence supporting the allegation that anti-union animus was a motivating force or a substantial reason for its withholding of Paterno's 1994-95 increment as required by N.J.S.A. 34:13A-5.4(a)(3) and (1), and Bridgewater.

Finally, no evidence was presented to support the allegation that the Board violated subsection 5.4(a)(4). No facts were proffered showing that Paterno had "signed or filed an affidavit petitioner complaint or given any information or testimony

under the Act." Accordingly, I recommend that the Commission dismiss that part of the charge.^{7/}

Upon the entire record in this case, I make the following:

Conclusions of Law

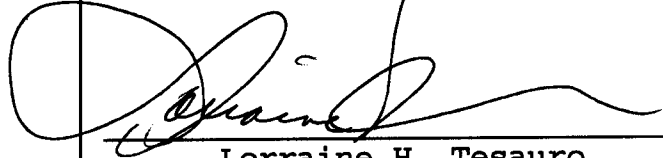
1. The Rochelle Park Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3), when, on May 16, 1994, it decided to withhold Charles Paterno's 1994-95 increment.

2. The Board did not violate N.J.S.A. 34:13A-5.4(a)(4) in that Mr. Paterno was not discharged or otherwise discriminated against because he had signed or filed an affidavit, petition or complaint or given any information or testimony under this Act.

^{7/} The Association argues that its 5.4(a)(4) claim is colorable under the decision in Hunterdon Cty. and CWA, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986), P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd NJPER Supp.2d 189 (¶168 1988), 116 N.J. 322 (1989). I disagree. That case differs from this one factually; there, unlike here, employees had filed unfair practice charges and given testimony under the Act. Hunterdon does not apply to the circumstances of this case.

Recommendations

I recommend the Commission dismiss the charge in its entirety.

A handwritten signature in black ink, appearing to read "Lorraine H. Tesauro", written over a horizontal line.

Lorraine H. Tesauro
Hearing Examiner

Dated: February 5, 1997
Trenton, New Jersey