

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2005-073

CAMDEN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Camden Board of Education violated the New Jersey Employer-Employee Relations Act by threatening to transfer a Camden Education Association representative for speaking out about terms and conditions of employment at a public Board meeting; threatening Association representatives if they continued their alignment in Association activities; threatening and reprimanding an Association representative for asking unit employees about terms and conditions of employment; ordering the removal of Association bulletin board postings; discouraging an Association representative performing Association-sponsored poll monitoring during lunch period; and recommending the transfer of two Association representatives based in part on documents they authored to protest terms and conditions of employment. The Commission orders the Board to cease and desist from reprimanding an Association representative for checking on a unit employee regarding a term and condition of employment; reprimanding an Association representative in her year-end performance evaluation for engaging in union activities; and transferring two Association representative from Davis Elementary School to other schools. The Board is ordered to remove reprimands from performance reports and personnel files, relocate the bulletin board postings, transfers the teachers back to the Davis Elementary School, and post a notice of its violations. The Commission adopts a Hearing Examiner's recommendation dismissing the allegations involving a third Association representative.

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

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Appearances:

For the Respondent, Sumners George, PC, attorneys  
(Harold George, of Counsel)

For the Charging Party, Selikoff & Cohen, attorneys  
(Keith Waldman, of Counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Examiner's report and recommended decision. H.E. No. 2006-10, 32 NJPER 208 (¶91 2006). The Hearing Examiner found that the Camden Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3),<sup>1/</sup> by transferring two building representatives of the Camden Education Association in retaliation for their Association

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<sup>1/</sup> 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.

activities. The Hearing Examiner dismissed an allegation as to a third representative.

The case began on September 22, 2004 when the Association filed an unfair practice charge against the Board. The charge alleges that the Board violated the Act by approving the transfers of teachers Karen Borrelli, Raeshell Carter and Patricia Nicgorski from the H.H. Davis Elementary School to three other schools because, as building representatives, they counseled Association members on grievances and employment conditions and engaged in other protected activities, and because Davis School principal Tina Rose Yuli was hostile to their activities and recommended the transfers.

On March 1, 2005, a Complaint and Notice of Hearing issued. On March 15, the Board filed an Answer admitting some allegations and denying others, but denying that it violated the Act.

On June 14 and 15 and August 1, 2005, Hearing Examiner Jonathan Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On June 21, 2006, the Hearing Examiner issued his report and recommendations. He applied the standards in In re Bridgewater Tp., 95 N.J. 235 (1984), for determining whether an employer has illegally retaliated against an employee for activity protected by the Act. Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence

on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. However, even if a charging party has met this burden, an 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.

The Hearing Examiner made numerous findings about the representatives' Association activity and Yuli's hostility. Borrelli and Nicgorski investigated and processed grievances; attended School Leadership Committee (SLC), Board, Association, and Davis School meetings; represented employees before the Davis School principal and vice-principal; wore buttons advocating solidarity; and wrote memoranda to Board representatives protesting employment conditions. Carter filed numerous grievances against Yuli, attended Association meetings, and assisted as a poll watcher in an Association-Board "teacher of the year" election, eliciting Yuli's disapproval. Yuli criticized Nicgorski's union activity in a year-end evaluation; summoned building representatives to her office to tell them that they were no longer in control of the building and accused them of hurting the children; and then recommended the transfers of eleven teachers, the first of whom were Nicgorski, Borrelli and Carter. Yuli criticized Borrelli for wearing an Association button. The next day, Yuli recommended the transfers of five

staff members to another building, the first of whom were again Borrelli, Nicgorski and Carter. Yuli issued a reprimand to Nicgorski stating that she could represent employees only when they came to her and that she was prohibited from seeking out contract violations. Yuli reprimanded Carter for insubordination and recommended a transfer because of her "uncooperative attitude." The Hearing Examiner also found that an assistant superintendent told Borrelli that in light of her complaints, she should consider transferring; Yuli reprimanded Nicgorski for conducting an "unauthorized" Association meeting even though it had administration approval; Yuli ordered the removal of Association bulletin board postings; Yuli crumpled and threw to the ground an Association memorandum, stating "I don't do memos"; and the superintendent presented Borelli's and Nicgorski's Association writings to the Board as justification for their transfers.

The Hearing Examiner concluded that the Association had proved that the three teachers' protected activity was a substantial or motivating factor in the decision to transfer them out of Davis School. As to Carter, however, he found that the Board had proved that it would have transferred her even absent her protected activities. The Hearing Examiner recommended that the Board be ordered to transfer Nicgorski and Borrelli back to Davis School, remove a March 2004 reprimand and June 2004

performance report from Nicgorski's personnel file, return Association bulletin board postings to their first floor location at Davis, and post a notice of its violations.

On July 11, 2006, the Board filed nine numbered exceptions. On July 13, the Association filed an answering brief responding to each exception and stating that it was not filing any cross-exceptions.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (32 NJPER at 208-220). Although the Board has not excepted to any of the Hearing Examiner's findings of fact, it has disputed certain facts in the context of its exceptions to the Hearing Examiner's legal analysis. We will fully consider those nine exceptions.

1. Building representative Nicgorski testified that Yuli said that she could not be objective about representative Borrelli, that Nicgorski and Borrelli were "aligned," and that "if [their] alignment continued, [they] would find themselves in trouble." Yuli testified that she did not recall making those statements, but the Hearing Examiner credited Nicgorski's testimony, noting that Yuli had once distinguished not recalling from a denial. The Board asserts that the Hearing Examiner misinterpreted the facts and that Yuli was referring to the teachers' cooperative teaching, not their protected activity; but it has not presented any record support for its interpretation of

Yuli's statement and we agree with the Hearing Examiner that there is no basis for that interpretation.

2. Nicgorski and Borrelli were members of the district's SLC. The SLC is comprised of elected and designated education professionals, local community members, and parents of children attending selected Camden public schools, including Davis Elementary School. The SLC is responsible in part for managing the schools, pursuant to State Department of Education regulations. The Hearing Examiner found that memoranda produced and statements issued by Nicgorski or Borrelli under the aegis of the SLC are "protected" under the Act, at least to the extent they refer to unit employees' terms and conditions of employment. The Board asserts that those activities are not protected because the SLC is a separate entity from the Association. We need not decide that all aspects of SLC participation are protected under the Act to conclude that advocating on behalf of fellow teachers concerning employment conditions is protected, whether at a Board meeting, an SLC meeting, or in communications with the administration. See, e.g., City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987) (PERC Act protects collective action in varied forums to improve terms and conditions of employment); West Deptford Tp. Bd. of Ed., P.E.R.C. No. 99-68, 25 NJPER 99 (¶30043 1999) (filing health and safety complaint with State agency protected activity under PERC Act); City of Hackensack,

P.E.R.C. No. 78-71, 4 NJPER 190 (¶4096 1978), aff'd NJPER Supp.2d 58 (¶39 App. Div. 1979) (communication to elected official is protected activity).

3. In her June 2004 year-end evaluation of Nicgorski, Yuli wrote that Nicgorski "engaged in union activities that hindered and interfered with her professional growth and focus on overall student academic achievement." The Association's president asked that Yuli reconsider the report because it unacceptably made mention of union activity. Yuli completed another report, deleting the offending sentence, with the understanding that she would replace the original. The original was not replaced and Yuli testified that she did not know why. The Board contends that the Hearing Examiner erred in finding that Yuli displayed anti-union animus when the original evaluation was not removed from Nicgorski's file. We reject this exception. The Hearing Examiner found that the original assessment showed animus. He did not find that the failure to remove it did so as well.

4. Yuli recommended the transfers of Borrelli, Nicgorski and Carter. All three recommendations were tainted by hostility to their protected activity. As to Borrelli and Nicgorski, the Board did not prove that it would have transferred them absent that hostility. The Board asserts that Yuli recommended all three transfers because she believed they were needed to benefit the school and that there was no animus in her conduct. We



reject this exception. The Hearing Examiner comprehensively examined the evidence, made credibility determinations, and thoughtfully concluded that the building representatives' Association activities, not any lack of cooperation on instructional issues, motivated the transfer recommendations.

5. In March 2004, Nicgorski observed an instructional assistant supervising students without a certificated employee present. Yuli screamed at Nicgorski that it was not her business, that she is not a supervisor, and that she was not to ask Association members any questions. Later, Yuli issued a reprimand to Nicgorski stating that as a building representative, she is to represent staff in disciplinary conferences or when Yuli violates the contract. She continued that Nicgorski could represent employees only when they came to her and that she was prohibited from seeking out contract violations. The Board asserts that Nicgorski took on a supervisory role that was not within her job duties. The Hearing Examiner correctly found that the Board's view of a union representative's role is too narrow. He also correctly noted that Yuli had not explained the basis for the reprimand's allegations that Nicgorski's union activities had interfered with her "professional growth" or her "focus on overall student academic achievement." We reject the Board's exception.

6. On March 18, 2004, Yuli summoned all Association representatives to her office. Yuli screamed, "You reps are not in control [of the building] anymore" and "You're hurting the children." The next day, Yuli wrote a memorandum strongly recommending that eleven Davis School teachers be transferred. Nicgorski, Borrelli and Carter were the first three listed. The Board asserts that Yuli did not recommend Carter's transfer because she was associated with Nicgorski and Borrelli. In light of the Hearing Examiner's recommendation to dismiss the allegation concerning Carter, we need not consider this exception further. We note, however, that on May 14, 2004, Yuli wrote a letter to an assistant superintendent characterizing Carter's unfounded grievances as examples of the "uncooperative attitude" warranting Carter's transfer out of Davis School.

7. On April 26, 2004, Yuli reprimanded Nicgorski for conducting an unauthorized Association meeting four days earlier. The Board asserts that the reprimand was not a result of anti-union animus because the meeting took place one-half hour before the end of the school day. We reject this exception. The Hearing Examiner found that Association meetings had previously commenced at that same time, with administration consent, and that another administrator had approved the meeting. The Hearing Examiner also noted that on that same date, Yuli unilaterally and without notice or explanation ordered the removal of the

Association's bulletin board postings from their first floor location to a third floor office. We accept the Hearing Examiner's conclusion that Yuli had a combative posture towards the Association in the second half of that school year.

8. The Board objects to the Hearing Examiner's conclusion that it did not prove that it would have transferred Nicgorski absent her protected activities. It asserts that Nicgorski was insubordinate because she scheduled an Association meeting during school hours and "took on a supervisory capacity which her job description did not include." We have previously addressed the contentions concerning the Association meeting and the Board's narrow view of a representative's role. Accordingly, we reject the assertions that those incidents prove that Nicgorski was insubordinate and that the Board would have transferred her absent her activities as a building representative.

9. The Board objects to the Hearing Examiner's conclusion that it did not prove that it would have transferred Borrelli absent her Association activities. It asserts that Borrelli was insubordinate for two reasons: (1) she did not make clear in her request to attend the Special Olympics State games that none of the attending students were from the Davis school; and (2) after Yuli cancelled a Valentine's Day dance scheduled during instructional hours, Borrelli did not wait for Yuli to make the announcement and instead made the announcement herself, thus

prompting students to write letters to Yuli protesting the cancellation. The Hearing Examiner found that at the time of their occurrences, neither matter appeared egregious to the Board. The trip was permitted and the Board paid Borrelli to chaperone and coach the team; and Borrelli's announcement of the cancellation of the dance merely preceded Yuli's. The Hearing Examiner concluded that even if the Board considered both instances in earnest, their overall weight was much less than the weight of evidence of anti-union animus. We reject this exception because the Board has not shown that these reasons, either separately or together, would in fact have led to Borrelli's transfer if Yuli had not been hostile to Borrelli's Association activities. See Jackson Tp. Bd. of Ed., P.E.R.C. No. 2006-12, 31 NJPER 281 (¶110 2005), and cases cited therein (employer does not have right to exercise managerial prerogative for anti-union reasons); Rutgers, The State Univ., P.E.R.C. No. 2001-38, 27 NJPER 91 (¶32034 2001) (employer did not meet burden of proving that it would have taken adverse personnel action absent its hostility to the employee's protected activity).<sup>2/</sup>

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<sup>2/</sup> In the conclusion to its brief, the Board argues that since three or four months elapsed between the last protected activity and the transfers in August, it would be unreasonable to believe that the transfers were motivated solely by protected activity. However, the Board has not shown that it regularly transfers teachers in the middle of a school year rather than waiting until a new school year begins. In addition, Bridgewater does not require that an  
(continued...)

Having fully considered and rejected the Board's exceptions, we adopt the Hearing Examiner's recommendations. We note that the Board has not excepted to the portions of the proposed order addressing the removal of Nicgorski's reprimand and performance report or the relocation of the bulletin board postings. Nor has it challenged the portions of the recommended cease and desist order not addressed in its exceptions. Accordingly, we adopt those recommendations.

ORDER

The Camden Board of Education, its representatives or agents, are ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by threatening to transfer Camden Education Association representative Karen Borrelli for speaking out about terms and conditions of employment at a public Board meeting; threatening Association representatives if they continued their alignment in Association activities; threatening and reprimanding Association representative Patricia Nicgorski for asking unit employees about terms and conditions of employment; ordering the removal of Association bulletin board postings from their first

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2/ (...continued)  
illegal personnel action be motivated solely by protected activity.

floor location and their relocation to a third floor office; discouraging Association representative Raeshell Carter from performing Association-sponsored poll monitoring during her lunch period; and recommending the transfer of Association representatives Nicgorski and Borrelli based in part on documents they authored to protest terms and conditions of employment.

2. 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 the Act, particularly by reprimanding Association representative Nicgorski for checking on a unit employee regarding a term and condition of employment; reprimanding Association representative Nicgorski in her year-end performance evaluation for engaging in union activities; transferring Association representative Nicgorski from Davis Elementary School to another school; and transferring Association representative Borrelli from Davis Elementary School to another school.

B. Take this action:

1. Remove the March 26, 2004 reprimand and June 4, 2004 performance report from Patricia Nicgorski's personnel file.

2. Relocate Association bulletin board postings from the third floor of Davis Elementary School to their first floor location on and before April 26, 2004.

3. Transfer Patricia Nicgorski to Davis Elementary School to the position in which she was employed before August 10, 2004.

4. Transfer Karen Borrelli to Davis Elementary School to the position in which she was employed before August 10, 2004.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

6. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: September 28, 2006

Trenton, New Jersey



**NOTICE TO 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, our representatives or agents will cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by threatening to transfer Camden Education Association representative Karen Borrelli for speaking out about terms and conditions of employment at a public Board meeting; threatening Association representatives if they continued their alignment in Association activities; threatening and reprimanding Association representative Patricia Nicgorski for asking unit employees about terms and conditions of employment; ordering the removal of Association bulletin board postings from their first floor location and their relocation to a third floor office; discouraging Association representative Raeshell Carter from performing Association-sponsored poll monitoring during her lunch period; and recommending the transfer of Association representatives Nicgorski and Borrelli based in part on documents they authored to protest 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 the Act, particularly by reprimanding Association representative Nicgorski for checking on a unit employee regarding a term and condition of employment; reprimanding Association representative Nicgorski in her year-end performance evaluation for engaging in union activities; transferring Association representative Nicgorski from Davis Elementary School to another school; and transferring Association representative Borrelli from Davis Elementary School to another school.

WE WILL remove the March 26, 2004 reprimand and June 4, 2004 performance report from Patricia Nicgorski's personnel file.

WE WILL relocate Association bulletin board postings from the third floor of Davis Elementary School to the first floor location on and before April 26, 2004.

WE WILL transfer Patricia Nicgorski to Davis Elementary School to the position in which she was employed before August 10, 2004.

WE WILL transfer Karen Borrelli to Davis Elementary School to the position in which she was employed before August 10, 2004.

Docket No. CO-2005-073

CAMDEN BOARD OF EDUCATION  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

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 Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372



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