

P.E.R.C. NO. 2013-74

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE OPERATED SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2011-177

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts the Hearing Examiner's report and recommended decision and expands the proposed remedy in an unfair practice case filed by the Paterson Education Association against the Paterson State Operated School District. That decision recommended the Commission find that the Paterson State Operated School District violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1) and (3), by reprimanding the Association Vice President for his exercise of protected conduct, and by including language in grievance denials which had the tendency to interfere with the exercise of protected conduct. The Commission rejects the District's exceptions, finding: that the Hearing Examiner may decide the reprimand issue because it was fairly and fully tried despite not being specifically pleaded; that the Hearing Examiner's credibility determinations have ample support in the record; that the language with the tendency to interfere with protected activity (even without proof of actual interference, intimidation, restraint, coercion or motive) is sufficient to violate 5.4a(1) of the Act; and that the Hearing Examiner provided ample support for her decision to not allow six District witnesses to testify for reasons of irrelevance and potential prejudice. The Commission grants the Association's request that the District reproduce the grievance denial letters with the omission of language identified as having a tendency to interfere with protected activity.

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, Robert E. Murray, LLC (Robert E. Murray, of counsel)

For the Charging Party, Bucceri and Pincus, attorneys (Sheldon H. Pincus, of counsel; Albert J. Leonardo, on the brief)

DECISION

On November 1, 2010 an unfair practice charge was filed by the Paterson Education Association (Association). The charge was amended on November 10, 2010. As amended, the charge alleges that the Paterson State Operated School District (District) violated subsections 5.4a(1), and (3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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<sup>1/</sup> After the pre-hearing conference, the Association withdrew a 5.4a(5) charge which is a "refus[al] 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 refusing to process grievances presented by the majority representative."

(Act)<sup>2/</sup> when it interfered with and discriminated against Association Vice President Calvin Harvell for his protected activity. We affirm the Hearing Examiner's report and recommended decision and expand the remedy that she proposed.

#### Procedural History

A Complaint and Notice of Hearing was issued on May 9, 2011. The District filed an Answer on or about May 23. Hearing Examiner Wendy Young conducted hearings on December 8 and January 11, February 22 and March 22, 2012.

On August 17, 2012, the Hearing Examiner issued her report and recommended decision. H.E. No. 2013-5, 39 NJPER 157 (¶50 2012). She found that the District violated 5.4a(1) and (3) of the Act by issuing reprimands to Harvell because of his exercise of protected conduct and by including language in grievance denials which had the tendency to interfere with Harvell's and certain employees' exercise of protected conduct.

On September 26, 2012, after an extension of time, the District filed exceptions to the Hearing Examiner's decision. It argues that the Hearing Examiner erred when she considered a

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<sup>2/</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. . . . "

reprimand issued to Harvell because that reprimand was not included in the charge. It further asserts that Harvell's conduct was not protected. It also contends that the language in the grievance denials did not actually interfere with protected activity. Finally, the District asserts that the Hearing Examiner erred when she did not permit the testimony of six District witnesses.

On September 25, 2012, the Association filed an exception that the remedy should be expanded to expunge the responses to the grievances, or alternatively, to expunge the language in the responses to the grievances that interfered with and chilled the exercise of protected activity. On October 1, 2012 the Association filed a response to the District's exceptions, asserting that the Hearing Examiner properly considered the reprimand, the Hearing Examiner's credibility determinations have ample support in the record and should be accorded deference, and the grievance responses have a tendency to interfere with protected activity, and her decision to exclude witnesses is entitled to deference.

#### Factual History

We adopt and incorporate the Hearing Examiner's findings of fact. H.E. at 8 - 26. We summarize the facts that are relevant to this appeal as follows. Paula Santana has been the Principal of District Public School No. 11 since September 1989. Harvell

has been a Art teacher since 1984 and began working in Public School No. 11 just prior to year 2000. Harvell served as the Association Delegate and/or Third Vice-President during the years related to this case.

On September 1, 2010, the first day of school, an incident occurred involving Harvell and teachers Tartaglia and Davidoff. During the 2009-2010 school year Tartaglia received notice during the summer to report to School No. 15 for the 2010-2011 year. Because of many personnel changes in the District, Tartaglia was unsure to which school she was assigned. Tartaglia spoke directly to Santana about the transfer. Santana indicated that she wanted to keep Tartaglia at School No. 11 and would speak to the Administration about the matter.

Harvell knew about Tartaglia's potential transfer, and approached her while she was sitting at a lunch table with Davidoff on September 1<sup>st</sup>. Harvell wanted to discuss the situation with Tartaglia privately. Davidoff wanted to know why a private conversation was necessary. Harvell told Davidoff it was a private matter and "none of her business". Harvell and Tartaglia moved to another area, and he explained why he believed Santana had misdirected her into staying at School No. 11. Harvell telephoned someone in the District personnel office who told Tartaglia to report to School No. 15. Santana was not present during Harvell's private discussions with Tartaglia.

On September 8, 2010, Santana issued Harvell the following letter:

Please be advised, that on Wednesday, September 1, 2010 you were in non-compliance with your job description of "Art" Teacher at School No. 11. You "self-appoint" yourself to any situations, concerns, etc. that staff may have. However, when the staff member comes to voice their concern(s) to me; they say they did not ask you for any advice or to intercede on their behalf.

On September 1, 2010 Ms. Tartaglia did not request your assistance; you told Mrs. Davidoff to "Shut up, and mind your business." When I told you that "Mrs. Kellett had asked the building principals to accept any teacher that reported to the building to remain there." However, you took upon yourself to contact Human Resources/Personnel Department and had Mr. Rojas speak with Mrs. Tartaglia. Mrs. Tartaglia had to report to School No. 15 upon your insistence.

Mr. Harvell, you are an "Art" teacher, stay in your job description and that's the only certification you have.

I thank you for your cooperation in the future.

When Santana was asked why she wrote the third paragraph in the September 8 letter she testified that:

Well, Mr. Harvell felt that he was my Vice Principal and that he was not employed as an art teacher, and that's not his domain. And that he was there to assist me with my staff and with things in the building.

And when it came to doing the art, there wasn't anything really being done.

Another situation which involved an exchange with Harvell and Santana involved Melissa Gencarelli, a language arts teacher in School No. 11. On August 17, 2010, Gencarelli received her official classroom assignment for 2010-2011 which assigned her to fifth grade in Room 20. Gencarelli knew that teacher Denise Gibson was also assigned to the fifth grade in Room 20 and realized a conflict existed, because there was only one fifth grade. She also realized that such a move would create a vacancy for seventh and eighth grade. Gencarelli sought Harvell's assistance to find out why she was being moved. Gencarelli expected Harvell to contact the Administration to find out why this was happening and suspected Santana wanted her out of the building.

On September 1, 2010, Harvell and Gencarelli spoke to Santana about the assignment. Santana first told them that Gencarelli would be transferred. Gencarelli wanted to know why she was not given a plan or roll book or other materials usually provided on the first day. In response to Gencarelli's concerns, Santana explained that since two teachers were assigned to fifth grade and the other teacher had more seniority, Gibson would get the plan and roll books for them to share. Santana directed Gencarelli to a sixth grade classroom where she stayed for two to three weeks before she returned to the fifth grade classroom to which she was assigned.

As a result of Gencarelli's problem and a number of assignment issues occurring at School No. 11, Harvell contacted Louis Rojas, the District's Director of Labor Relations. On September 6, 2010, Harvell sent Rojas a lengthy e-mail describing the assignment issues and criticizing Santana for failing to follow certain District assignments and for taking other actions. Rojas responded by e-mail on September 7 telling Harvell he would have Assistant Superintendent Kathy Kellett address his concerns.

Shortly after receiving Rojas' response, Harvell met with Kellett and explained the issues and the problems with Santana. Kellett came to School No. 11 and resolved several issues but not Gencarelli's situation. On September 26, 2010, Harvell sent Kellett an e-mail recognizing some progress but criticizing Santana for acting contrary to District directions and policy. The e-mail alerted Kellett to Gencarelli's situation, noting that Santana refused to assign her a classroom. Harvell discussed Gencarelli's situation with Kellett again, but the District took no further actions to change Gencarelli's situation, and she remained co-teaching fifth grade for the 2010-2011 school year.

Gencarelli testified that on several occasions, in front of both teachers and students, and often with a screaming voice, Santana said "remember, Ms. Gencarelli, you're not the teacher". On cross-examination Santana was asked if she told Gencarelli that Gencarelli was not the primary teacher in the fifth grade,



and that Gencarelli was not going to get the grade and record books because she was not the primary teacher. Santana responded "that is incorrect". The Hearing Examiner did not credit Santana's response. Santana previously testified that she gave those books to the more senior teacher who she considered the lead teacher, and she knew Gencarelli was not happy with the result. The Hearing Examiner found that it appeared consistent with Santana's handling of the situation that she would remind Gencarelli that she was not the lead teacher in the fifth grade.

As a result of her assignment and the comments made by Santana, Gencarelli did not feel Santana welcomed any further discussions about her situation and she turned to Harvell for assistance. After discussing the matter with Harvell, Gencarelli authorized him to file a grievance on her behalf.

On October 5, 2010, Harvell filed a grievance with Santana on behalf of Gencarelli alleging several contract violations. The grievance noted violations of contract and law stating that:

. . . on September 1, 2010 contrary to documentation approved by the State appointed Superintendent you [Santana] refused to notify Ms. Gencarelli of her class, subject and room assignment or provide her with a schedule, a planbook, a rollbook and other materials required for teaching.

The grievance sought access to information, resources and materials Gencarelli needed for effective teaching.

Santana issued her response to the grievance to Harvell on October 13, 2010. She said the District made the assignment and she was following procedure. She disputed Gencarelli's allegation that she was denied access to anything at the school. Santana claimed she suffered no harm. Santana concluded her remarks to Harvell stating:

Again, Mr. Harvell, allow your colleagues to voice themselves and don't "self-appoint" yourself to their situation. Let them communicate on their own.

Santana testified that the reason for that statement to Harvell was that she had already had a conversation with Gencarelli about the matter and she thought the issue was resolved. The Hearing Examiner did not credit Santana's testimony because Santana did have a conversation with Gencarelli over her assignment and the plan and record books, and knew Gencarelli was unhappy with the results. The Hearing Examiner found that Santana did not appear to be a naive witness or school principal and also that she was reminding Gencarelli she was not the lead teacher in the classroom. The Hearing Examiner found that Santana wrote the statement to Harvell in an effort to stop him from taking action on behalf of employees in the unit.

Another incident which led to Harvell filing a grievance on behalf of a an Association member involved teacher Carmen Benjamin who has been employed by the District for 14 years as a

social studies teacher. Beginning in year 2000, she requested an accommodation to teach on the first floor, because she cannot go up and down stairs due to a medical condition. In 2009, Benjamin requested Harvell's assistance in getting the accommodation from Santana. Benjamin also sought assistance from Assistant Superintendent Barrios. Social studies for the upper grades is usually taught on the third floor in School No. 11 but, after getting assistance from Harvell and the Administration, Benjamin was granted the accommodation for the 2009-2010 school year.

At the end of the 2009-2010 school year, Santana requested Benjamin's transfer to another school for the 2010-2011 year because she did not believe she could provide Benjamin her accommodation. But during the summer of 2010, Benjamin received notice from the District that she would be teaching social studies to the upper level classes in School No. 11. On the first day of school, however, Santana told Benjamin she would be teaching first grade. Benjamin taught first grade for about two weeks, and, then, on September 15 or 16, 2010, Santana directed Benjamin to teach social studies to the upper grades on the third floor. Benjamin told Santana that she could not go up to the third floor and would seek the District's involvement if necessary. Santana told her to go to the District's Human Resource Department at that point. Santana denied telling Benjamin to go to the Human Resource Department. The Hearing

Examiner credited Benjamin's testimony, finding Santana's recollection of events unreliable.

After her conversation with Santana and before leaving the school, Benjamin contacted Harvell and asked for his assistance in the matter. Harvell and Benjamin first met with Santana in the first floor hallway but moved into or next to a teachers lounge. Harvell began the discussion asking Santana to grant Benjamin's accommodation. Santana characterized the meeting at first as being a nice, calm discussion, but she insisted there was nothing she could do based upon directives from the Administration. Harvell suggested they did not need to involve Central Administration.

Harvell had copies of Benjamin's doctor's notes in his hand and while facing Santana he raised them up with one hand to show Santana and pointed to them with his other hand. Santana testified that Harvell raised the documents right in front of her face, waving the documents in front of her face and touching her nose in the process. Santana said she felt intimidated by Harvell's actions. Harvell denied putting the documents into Santana's face. Benjamin testified that Harvell held the document in one hand and pointed to and/or touched them with his other hand. She said Harvell never put the documents into Santana's face, and she said Harvell did not touch Santana.

The Hearing Examiner credited Harvell and Benjamin, finding that although they testified about one month apart they testified consistently. Santana on direct examination said nothing about being touched by the documents and actually held up a piece of paper as an example about four inches from her face. But on cross-examination Santana, for the first time, said she was touched by the papers. Her subsequent reprimand of Harvell said he shoved the papers "in front of my face", it did not say he touched her face. The Hearing Examiner found that Santana's testimony was unreliable.

On September 16, 2010, Santana issued Harvell the following reprimand regarding their exchange concerning Benjamin:

Please be advised, I was appalled when we were having a "calm" discussion in the First Floor Teacher's Lounge in the presence of Ms. Carmen Benjamin, and you took her physician's notes and shoved them in front of my face. Remember, you are an "Art" teacher, you answer to me, I don't answer to you. I find your conduct unbecoming, disrespectful and will not tolerate it.

Please maintain your self-control and don't allow your emotions to take over.

I expect a change in your behavior.

I thank you.

Harvell denied being disrespectful to Santana, he said he spoke to her in a calm voice but acknowledged pleading with her to deal with the issue themselves. Harvell even acknowledged

that Santana's tone was not elevated, and he agreed they were having a "calm discussion". The Hearing Examiner credited Harvell's explanation and find he was neither disrespectful to Santana, nor did he shove the papers into her face.

Since the discussion between Harvell and Santana did not resolve Benjamin's situation, Santana directed her to "swipe out" of School No. 11 and go speak to Assistant Superintendent Kellett about the matter. Kellett resolved the issue directing Santana to allow Benjamin to teach social studies to the upper level classes on the first floor.

On October 4, 2010, Harvell filed a grievance with Santana on behalf of Benjamin, who fully supported the Association's assistance and involvement in resolving her issues. On October 12, Santana sent Harvell a letter stating that she takes directives from Central Office not from an Association Representative, that Benjamin was told to submit doctor notes to the Administration and she denied directing Benjamin to swipe out. Santana concluded with the following remark:

Mr. Harvell remain in your position which is "Art" teacher at School No. 11. Do not "self-appoint" yourself to situations that your colleagues would rather handle themselves.

The Hearing Examiner found that no evidence was presented to suggest that Benjamin wanted to handle her situation herself.

Quite the contrary, Benjamin testified she wanted the Association's and Harvell's assistance.

Another situation which involved Harvell filing a grievance involved Daria Canta who has been a teacher at School No. 11 for eight years. On or about July 28, 2010, Canta received a letter from Santana assigning her to third grade for the 2010-2011 school year. Subsequently, on or about August 17, Canta received a letter from Superintendent Evans assigning her to grades one and two to teach math for the upcoming year. Prior to the beginning of school, Canta asked Santana which assignment she should follow. Santana directed her to teach third grade. On cross-examination Santana was asked if she told Canta to teach third grade, and Santana claims she told Canta she would get back to her on that issue once she met with the Administration about the reorganization. The Hearing Examiner did not credit Santana's testimony on that point because Santana acknowledged she knew Canta moved into the third grade classroom and that the custodian assisted in the move and found that since she is a forceful principal with strong control of her school it is not believable that a teacher would be moving from one classroom to another without Santana's permission. Canta taught third grade for about one week when Santana notified her she needed to teach second grade as Assistant Superintendent Kellett had directed. Canta didn't object to the reassignment at that point. When

Santana told Canta she had to teach second grade, the directive was immediate and Canta had no time to move her materials from the third grade to the second grade classroom. Santana told Canta "we will move your things again into room 2", but Canta remained in the second grade room for the remainder of the year and was never able to move all of her materials out of the third grade room.

Canta was unhappy about her situation. She felt inconvenienced "teaching out of two rooms" and considered it unfair that Santana had placed her in that situation. As a result, Canta asked Harvell for his assistance to deal with the matter. Canta authorized Harvell to file a grievance on her behalf. Canta did not object to Harvell's involvement, and never told Santana that she wanted to try to work it out with Santana alone, without Harvell's assistance.

On October 14, 2010, Harvell filed a grievance with Santana on Canta's behalf alleging contract violations for directing her to immediately move from third to second grade. The grievance sought action to remedy Canta's situation (CP-17).

Santana responded on October 29, 2010, noting as follows:

Again, Mr. Harvell, when you "self-appoint" yourself to protect their rights you create trials and tribulations for everyone - - especially your colleagues.



Canta was upset with Santana's remarks which prompted her to respond in writing. On November 2, 2010, Cantá responded by stating that she filed her grievance because of the lack of cooperation and respect from Santana regarding her teaching assignment and classroom moves.

### Analysis

The legal question before us is whether the Hearing Examiner was correct in finding that the District violated both N.J.S.A. 34:13A-5.4a(1) and (3) by Santana's issuance of the September 8, 2010 and September 16 reprimands to Harvell and through the language used by Santana in the grievance denial letters dated October 12, 13 and 29, 2010.

Initially, we note that when an Association representative interacts with a supervisor or other representative of management while pursuing protected activity, the two are considered to be on an equal footing. See Middletown Tp. Bd. of Ed. and Middletown Tp. Ed. Ass'n, P.E.R.C. No. 96-45, 22 NJPER 31, 33 (¶27016 1995), aff'd 23 NJPER 53 (¶28036 App. Div. 1996), certif. den. and notice of app. disp., 149 N.J. 35 (1997), where we explained, citing Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981):

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.

An employer independently violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks and legitimate and substantial business justification. Orange Bd. Of Ed., P.E.R.C. No. 94-124, \_\_ NJPER \_\_ 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp.

In re Tp. of Bridgewater, 95 N.J. 235 (1984), set out the legal standard for determining whether an employer's action violates 5.4a(3) of the Act. The charging party must prove, 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.

The District's first exception is that the Hearing Examiner should not have considered whether the issuance of September 8,

2010 reprimand violated the Act because it was not specifically referenced in either the initial unfair practice charge or amended charge. We reject this exception. Hearing Examiners may decide an issue, even if it has not been specifically pleaded, if the issue has been fairly and fully tried. Commercial Tp. Bd. Of Ed. And Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983). Both Harvell and Santana testified regarding this reprimand, and it was moved into evidence. The District also asserts that it refers to events that exceed the six-month time limitation for unfair practice charges. N.J.S.A. 34:13A-5.4 (c). Although the reprimand refers generally in the first paragraph to "situations" where Santana believed Harvell "self-appointed" himself, the focus of the reprimand is on the September 1, 2010 incident which took place between Harvell and Tartaglia, which is timely given that the charge was filed on November 1, 2010 and amended on November 20, 2010.

The District's second exception asserts that the Hearing Examiner's credibility determinations were not supported by the record with regard with regard to the September 15, 2010 incident between Harvell, Benjamin and Santana. The District asserts that due to the small size of the room in which the incident took place, and the fact that Santana is senior in age, short in stature and must use an oxygen tank and that Harvell is younger

and a vigorous Association leader, the testimony of all the witnesses considered together supports that Harvell thrust the papers into Santana's face with a degree of violent action and was therefore not protected activity. The Hearing Examiner found that Harvell was not disrespectful or unprofessional toward Sanatana during the incident and that he did not intentionally touch her with the notes and/or wave or shove them at her. We may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. N.J.S.A. 52:14B-10(c). The Hearing examiner made judgments based on observations of demeanor of the witnesses at hearing. She found Santana's testimony to not be credible because on direct examination she said nothing about being touched by the documents and held up a piece of paper as an example about four inches from her face. But on cross-examination, she said for the first time she was touched by the papers. We also note that in her subsequent reprimand she said he shoved the papers "in front of my face". The Hearing Examiner credited Harvell's and Benjamin's testimony as being consistent. The Hearing Examiner's credibility determinations have ample support in the record, and certainly are not arbitrary, capricious or unreasonable.

The District's third exception is that the Hearing Examiner erred in finding that 5.4a(1) of the Act was violated by the language Santana used in the October 12, 13 and 29th grievance denials with regard to Harvell "self-appointing" himself. The Hearing Examiner found that Santana's remarks that Harvell "self-appoints" himself and that he stay in his job description were evidence of her hostility toward him because of his protected conduct. We agree and note that Santana's testimony that "Mr. Harvell felt that he was my vice principal" also supports a finding of hostility toward his protected conduct. The District argues that there is no evidence in the record that Harvell's protected activity was chilled in any way as a result of the language used. We stress that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp. The language used in the grievance denials referring to Harvell "self-appointing" himself on its face has a tendency to interfere with protected activity. As an Association representative, Mr. Harvell is in a position to intercede on behalf of Association members. Santana's reference to him self-appointing himself in the three grievance denial letters can be reasonably interpreted as an attempt to quell his advocacy.

The District's fourth exception is that the Hearing Examiner erred when she did not permit the testimony of three school

administrators and three corroborative witnesses. We reject this exception. Hearing Examiners are afforded a wide range of discretion regarding the conduct of the hearing. N.J.A.C. 19:14-6.3. In this instance, she denied the District's request to produce the witnesses. The Association objected in part because the names had not been produced during discovery. After hearing the District's proffer for the testimony, the Hearing Examiner expressed concern whether the testimony would have probative value. She ultimately denied the request finding that the witnesses who were going to testify about events occurring six months before and over one year after the operative events in the Association's charge as well as under different circumstances was irrelevant, not probative, potentially prejudicial; and would necessitate undue consumption of time. She provided ample support for her decision not to allow the testimony of the witnesses.

Finally, given the above findings, we grant the Association's request to expand the remedy ordered by the Hearing Examiner. We find that the October 12, 13 and 29<sup>th</sup>, 2010 grievance denial letters should be reproduced with the language omitted that has been identified in this decision as having the tendency to interfere with the exercise of Harvell's protected activity under the Act. The reproduced letters shall be clearly marked "Revised" and placed in Harvell's file and any other file

in which the letters appeared. The original copies of the letters shall remain in the files.

ORDER

The Hearing Examiners's report and recommended decision is affirmed. Further, the remedy proposed by the Hearing Examiner is expanded as follows:

1. The District shall reproduce the October 12, 13 and 29th, 2010 grievance denial letters to omit the language in each of the letters that has been identified in this decision as having the tendency to interfere with the exercise of Harvell's protected activity under the Act. The reproduced letters shall be clearly marked "Revised" and placed in Harvell's file and any other file in which the letters appeared. The original copies of the letters shall remain in the files.

2. Should any dispute arise over whether the District has complied with this Order, we may implement compliance and enforcement procedures pursuant to N.J.A.C. 19:14-10.1 et seq.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: April 25, 2013

Trenton, New Jersey