P.E.R.C. NO. 2016-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH WARREN REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION,	OAL Dkt. Nos. EDU 14001-13 EDU 16637-13
Respondent,	
-and-	Agency Dkt. Nos. 215-9/13 215-10/13
JAMES A. BRIDGE,	PERC Dkt. Nos. CI-2013-059 CI-2013-060
Charging Party.	CI-2013-061

SYNOPSIS

The Public Employment Relations Commission adopts the Special ALJ's recommended decisions granting the Board's motion to dismiss two of Bridge's unfair practice charges and, separately, sustaining the other. The charges allege that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4(a)(1), when: (1) the Superintendent issued verbal and written warnings to Bridge regarding a flyer he had distributed in school to Association members protesting his ouster as Association President and threatening legal action; (2) the Principal conducted an affirmative action (AA) investigation of Bridge because he republished an anti-Semitic comment made by another teacher about the Superintendent at an Association meeting; (3) the Principal conducted a second AA investigation of Bridge based upon his political activities within the Association in an effort by the Board to curry favor with a faction of the Association sympathetic to the Superintendent. The Commission finds that, with respect to the first and third charges noted above, Bridge failed during his case-in-chief to establish that he was engaged in protected activity and the record demonstrates that Bridge's communications were unrelated to any matter of public concern. With respect to the second charge noted above, the Commission finds that Bridge was engaged in protected activity and the record demonstrates that although the Board's investigation was justified, its decision to withhold Bridge's increment was not justified and must be restored.

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, Fogarty & Hara, Esqs., attorneys (Stephen R. Fogarty, of counsel and on the brief; Amy E. Canning, on the brief)

Charging Party, James A. Bridge, pro se

DECISION

On June 14, 2013, James A. Bridge (Bridge) filed three unfair practice charges against the North Warren Regional School District Board of Education (Board), alleging that the Board violated section 5.4a(1)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). Specifically:

-under CI-2013-059, Bridge alleges that the Board violated the Act when Superintendent of Schools Dr. Brian Fogelson (Superintendent or Fogelson) issued verbal and written warnings to Bridge regarding a flyer he had distributed in school to Association members

1/ This provision prohibits 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."

> protesting Bridge's ouster as Association President and threatening legal action;
>
> -under CI-2013-060, Bridge alleges that the Board violated the Act when Principal Louis Melchor (Principal or Melchor), in his capacity as affirmative action officer (AAO), conducted an affirmative action (AA) investigation of Bridge because he republished at an Association meeting an anti-Semitic comment made by another teacher about the Superintendent; and
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> -under CI-2013-061, Bridge alleges that the Board violated the Act when Melchor conducted a second AA investigation of Bridge based upon Bridge's political activities within the Association in an effort by the Board to curry favor with a faction of the Association sympathetic to the Superintendent.

On January 30, 2014, the Director of Unfair Practices consolidated the three unfair practice charges, issued a Complaint with respect to Bridge's 5.4a(1) allegations, and assigned the matter to a Hearing Examiner. On February 3, 2014, the Board submitted its statement of position as its answer to the unfair practice charges.

On March 20, 2014, Administrative Law Judge (ALJ) Irene Jones granted the Board's motion to consolidate these unfair practice charges with two related petitions before the Commissioner of Education. On April 10, 2014, the Commission Chair and the Commissioner of Education issued a Joint Order consolidating the unfair practice charges and the education petitions before Commission Hearing Examiner Wendy L. Young as a Special ALJ. See N.J.S.A. 52:14F-6(b).

On February 25 and 26, 2015, hearings were conducted. At the conclusion of Bridge's case-in-chief, the Board made a motion to dismiss the unfair practice charges. On June 25, 2015, the Special ALJ issued a Report and Recommended Decision [June 25, 2015 Decision] concluding that:

> -the Board's motion to dismiss CI-2013-059 should be granted based upon the finding that Bridge's activities (i.e., passing out a flyer to teachers at school or leaving it on their desks before the start of the workday as well as verbal statements to staff on school premises during school hours, both of which pertained to Bridge's removal as Association President and possible legal action) were not protected under the Act;
>
> -the Board's motion to dismiss CI-2013-060 should be denied because the admissions made by the Board in its statement of position, viewed most favorably to Bridge, could support the conclusion that the Board withheld Bridge's salary increments on account of his communication to union members at an Association meeting, and further, that it could not be determined at that juncture whether the Board had a legitimate and substantial business justification for its action; and
>
> -the Board's motion to dismiss CI-2013-061 should be granted based upon the finding that the Board's actions (i.e., investigating employee complaints that Bridge had created a hostile work environment by making offensive sex-based comments at school and directing him to cease that conduct) did not demonstrate a tendency to interfere with Bridge's exercise of any rights guaranteed under the Act (i.e., Bridge did not have a right to create a hostile work environment for female colleagues by making sexist comments or for co-workers by threatening legal action).

On November 18, 2015, an additional day of hearing was conducted with respect to CI-2013-060. On April 8, 2016, the Special ALJ issued a Report and Recommended Decision [April 8, 2016 Decision] concluding that the Board violated section 5.4a(1) of the Act when it disciplined Bridge for disseminating an email at an Association meeting containing a discriminatory statement about the Superintendent made by the Association Vice President. She found that Bridge was engaged in protected activity when he presented the email to the membership at the meeting in order to defend his presidency and disclose the bigotry and, therefore, unsuitability of the Vice President to serve as Bridge's replacement. In addition, the Special ALJ found that the Board's asserted business justification (i.e., that the disclosure of the bigotry of another union officer at an Association meeting caused substantial disruption to the school district) did not outweigh Bridge's right under the Act to communicate freely with unit members regarding the choice of an Association President.

This matter now comes before the Commission on exceptions to the Recommended Decisions filed by the Board and Bridge, respectively, on April 21, 2016. The Board filed opposition to Bridge's exceptions on April 28. Bridge filed opposition to the Board's exceptions on April 30.

We have reviewed the record. We adopt and incorporate the Special ALJ's findings of fact, which are supported by the record. We offer a brief summary of the essential facts.

FACTS

The North Warren Regional Education Association (Association) is the majority representative for teaching staff members and other non-supervisory/confidential employees employed by the Board. The Board and the Association were parties to a collective negotiations agreement (CNA) in effect from July 1, 2012 through June 30, 2014.

Bridge is a tenured teacher who has been employed by the Board since the 2004-2005 school year. In 2012, Bridge was elected Association President.

During an Association meeting on April 15, 2013, Association member and school district Substance Abuse Counselor/Anti-Bullying Coordinator Tina Ritchie (Ritchie) made a claim that Bridge caused her job to be threatened when, at a March 14, 2013 Board meeting, Bridge suggested that a heightened drug intervention policy was necessary. Ritchie convinced a majority of those present at the Association meeting to process her motion to remove Bridge as President for gross negligence.

During a subsequent Association meeting on April 24, 2013, Ritchie's motion was considered by the approximately 50 members in attendance. Bridge argued that Association Vice President

Patty Jarvis (Jarvis), who was being considered as his replacement, was unfit to lead the Association based upon an April 13, 2013 email exchange with Bridge in which Jarvis referred to the Superintendent as "a real kike through and through." Although Bridge passed out at least one copy of the email to attendees during the meeting, he did not distribute the email before or after the meeting, he did not report anything to school district administrators, and he did not speak to Jarvis regarding the contents of the email despite the fact that Bridge found it offensive because his wife and her family are Jewish.

Ultimately, upon the recommendation of the Executive Committee, Bridge was removed as Association President and Jarvis was appointed Acting Association President on April 24, 2013.

First Affirmative Action Investigation

On April 25, 2013, Jarvis and Ritchie met with Principal Melchor, who also served as the school district's AAO, in order to disclose the contents and circumstances surrounding Jarvis' email. In accordance with the Board's AA policy, Melchor initiated an investigation and asked Jarvis to submit a written statement summarizing what she had told him. Melchor then informed the Superintendent about the contents of Jarvis' email, gave him a grievance form upon which to write a statement, and took notes of Fogelson's responses to interview questions. As part of his investigation, Melchor also interviewed Ritchie,

Bridge, and two other witnesses. Ultimately, Melchor concluded that the contents of Jarvis' email had a negative effect on Fogelson, both personally and in the workplace, and was a violation of Title VII of the Civil Rights Act of 1964. He forwarded his conclusions to the Board's attorney in order to determine to what extent Jarvis had violated school district policies and what disciplinary actions should be taken.[2/]

Melchor was also concerned about the extent to which Bridge's disclosure of Jarvis' email negatively impacted the work environment and initiated an AA investigation concerning Bridge. As part of his investigation, Melchor interviewed Bridge again, but now as a participant accused of publishing a discriminatory statement to the detriment of the Superintendent. No other witnesses were interviewed; Melchor relied on the interviews he had conducted during the AA investigation of Jarvis. Ultimately, Melchor concluded that Bridge had perpetuated the discriminatory nature of Jarvis' email and caused emotional distress to Fogelson and disruption to the school environment. As a result of his findings, Melchor recommended that the Board place a copy of the AA investigation report in Bridge's personnel file, order Bridge to attend a Board-approved workshop dealing with sensitivity to

2/ As noted by the Special ALJ, there is no evidence in the record as to whether Jarvis was disciplined as a result of this AA investigation.

discrimination, and withhold Bridge's salary increment for the 2013-2014 school year.

The Board adopted Melchor's recommendations at a Board meeting on July 15, 2013. By letter dated July 25, 2013, the Board Secretary notified Bridge of the Board action. On September 4, 2013, Bridge filed a petition with the Commissioner of Education seeking the restoration of his increments and the removal of the AA report from his file, among other relief.

Second Affirmative Action Investigation

On April 26, 2013, Bridge put a letter to the Association's Executive Council in council members' school mailboxes. Bridge included Ritchie even though she was not on the Executive Council because he believed that her false charges against him resulted in his removal as Association President. In the letter, Bridge claimed that the Executive Council's actions were inappropriate and gave the Executive Council a two-week deadline to reinstate him as Association President before he pursued legal action.

On May 3, 2013 before the beginning of school and as students were arriving, Bridge distributed a flyer to teaching staff members in addition to placing several flyers on teacher's desks and under classroom doors. In the flyer, Bridge warned that his removal from office might lead to legal action and noted the two-week deadline he had given the Executive Council.

On May 6, 2013, after having been approached by several staff members who raised concerns about Bridge's verbal and written statements as well as his actions since being removed as Association President, Superintendent Fogelson met with Bridge, Melchor, Association Representative Chris Jones (Jones), and Business Administrator/Board Secretary Christina Sharkey (Sharkey). During the meeting, Fogelson related the staff concerns regarding Bridge's recent actions and directed Bridge to stop such activities or be subjected to a suspension with pay and a psychiatric examination. After the meeting, Jones told Bridge that he needed to pay attention and be concerned about what Fogelson had told him.

On May 8, 2013, Ritchie, Karen Black (Black), and Don Biery (Biery) sent Melchor a memo entitled "Hostile Work Environment" that triggered a second AA investigation. All three staff members[3/] complained about Bridge's behavior, which they described as many incidents of bullying, intimidation, and harassment of faculty members via email, in person, and in hallways and other areas of the school. Melchor interviewed and took statements from each complainant and from three other individuals who also filed complaints of hostile work environment

3/ Black and Biery were also members of the Association's Executive Council.

pertaining to Bridge, namely Cali Roberts (Roberts), Sandy Toronzi (Toronzi), and Colleen DellaBella (DellaBella).

Melchor also interviewed Bridge as part of his investigation into the AA complaints. In response to Melchor's inquiry regarding whether there were additional witnesses who should be interviewed on Bridge's behalf, Bridge noted several staff members that he felt would corroborate that he was not guilty of the acts asserted by the complainants. Melchor interviewed and took statements from each of these individuals. In all, Melchor interviewed 17 out of 117 staff members as part of his AA investigation.

In a letter dated August 12, 2013, Melchor notified Bridge of the results of his AA investigation. Melchor determined that the allegations against Bridge were substantiated by the evidence and demonstrated conduct towards staff members that was severe and pervasive enough under the Board's "Healthy Workplace Environment" policy to create a hostile work environment. As a result of his investigation findings, Melchor recommended that the Board place a copy of the AA investigation in Bridge's personnel file and order Bridge to attend a Board-approved workshop dealing specifically with the "Healthy Workplace Environment" policy.

Bridge initially informed Melchor that he intended to appeal Melchor's decision to the Board. However, he did not request an

appearance before the Board. Instead on October 18, 2013, he filed a second petition with the Commissioner of Education seeking to have the second AA report expunged from his personnel file, among other relief.

STANDARD OF REVIEW

With respect to the Special ALJ's findings of fact, we cannot review same de novo. Instead, our review is guided and constrained by the standards of review set forth in N.J.S.A. 52:14B-10(c).[4/] Under that statute, we may not reject or modify any findings of fact as to issues of lay witness credibility unless we first determine from our review of the record that the

4/ N.J.S.A. 52:14B-10(c) provides, in pertinent part:

> The head of the agency, upon a review of the record submitted by the [hearing officer], shall adopt, reject or modify the recommended report and decision...after receipt of such recommendations. In reviewing the decision... , the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head 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. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, credible evidence. See also, New Jersey Div. of Youth and Family Services v. D.M.B., 375 N.J. Super. 141, 144 (App. Div. 2005)(deference due factfinder's "feel of the case" based on seeing/hearing witnesses); Cavalieri v. PERS Bd. of Trustees, 368 N.J. Super. 527, 537 (App. Div. 2004).

Our case law is in accord. It is for the trier of fact to evaluate and weigh contradictory testimony. Absent compelling contrary evidence, we will not substitute our reading of the transcripts for a Special ALJ's first-hand observations and judgments. See Ridgefield Bd. of Ed., P.E.R.C. No. 2013-75, 39 NJPER 488 (¶154 2013); Warren Hills Reg. Bd. of Ed. and Warren Hills Reg. H.S. Ed. Ass'n, P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd 2005 N.J. Super. Unpub. LEXIS 78, 32 NJPER 8 (¶2 App. Div. 2005), certif. den. 186 N.J. 609 (2006).

When a respondent moves for dismissal at the end of the charging party's case, the Hearing Examiner must accept as true all the evidence supporting the charging party's position and must give the charging party the benefit of all reasonable inferences. UMDNJ-Rutgers Medical, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987)(citing Bexiga v. Havir Mfg. Co., 60 N.J. 402, 409 (1972); Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969); New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5 NJPER 197 (¶10112 1978)). The Hearing Examiner must then deny the motion if there

is a scintilla of evidence to prove a violation. UMDNJ-Rutgers Medical.

N.J.S.A. 34:13A-5.3 guarantees public employees the right to engage in union activity including organizing, making their concerns known to their employer, and negotiating collectively. It further provides that a majority representative of public employees shall be entitled to act for and represent the interest of public employees.

Public employers are prohibited from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." N.J.S.A. 34:13A-5.4a(1). An employer violates this subsection if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. UMDNJ-Rugters; see also, 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). The charging party need not prove an illegal motive. UMDNJ-Rutgers. Accord, Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983). The tendency to interfere is sufficient. Mine Hill Tp.

ANALYSIS

Bridge's Exceptions

General Exceptions

Bridge has filed three general exceptions related to the Special ALJ's dismissal of his unfair practice charges.

> (1) Bridge maintains that the Special ALJ inaccurately found that he admitted making sexist comments.

However, our review of the record clearly indicates that Bridge admitted uttering the following phrases while in the presence of other Board employees:

> -"That's such a girl thing to attack someone in an email without coming face to face." (1T117:2 thru 1T127:23; 1T137:15 thru 1T146:19)[5/]; (CP-8 at 2)[6/].
>
> -"It's a girl thing to write a nasty email, but not to come directly to me, and air the problem." (1T117:2 thru 1T127:23; 1T137:15 thru 1T146:19); (CP-8 at 2).
>
> -"It's a medical fact that women are more cold than men, it is a physiological difference, you can Google it." (CP-8 at 2).

5/ Transcript references for the February 25, 2015 hearing are denoted by "1T." Transcript references for the February 26, 2015 hearing are denoted by "2T." Transcript references for the November 18, 2015 hearing are denoted by "3T."

6/ References to exhibits admitted into evidence by the parties are denoted as "CP-1" followed by the page number for the Charging Party and "R-1" followed by the page number for the Respondent. References to exhibits admitted into evidence by stipulation are denoted as "A-1" followed by the page number for Agency.

-"Broads" as a reference to women. (1T158:25 thru 1T160:12).

The test for determining whether a hostile workplace exists based upon acts of sexual harassment is whether "the complained-of conduct (1) would not have occurred but for the employee's gender; and it was (2) severe or pervasive enough to make a (3) reasonable woman believe that (4) the conditions of employment are altered and the working environment is hostile or abusive." Cutler v. Dorn, 196 N.J. 419, 430-431 (2008)(citing Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 603-604 (1993)). Several female Board employees (i.e., Ritchie, Black, Roberts, DellaBella) filed complaints regarding the "sexist" nature of comments (CP-1; CP-3; CP-11; CP-13; CP-24 thru CP-27) that Bridge admitted uttering. Although the Board did "not have a duty to monitor private communications of [its] employees," it did "have a duty to take effective measures to stop co-employee harassment when [it knew] or [had] reason to know that such harassment [was] part of a pattern of harassment that [was] taking place in the workplace and in settings that are related to the workplace." Blakey v. Continental Airlines, 164 N.J. 38, 62 (2000).

Accordingly, Bridge's belief that his comments were inoffensive, private, humorous, made within the context of union business, and/or not sexist is immaterial. We reject this exception.

> (2) Bridge maintains that "the harassment claim should have fallen of its own weight (or lack thereof)" based upon Bridge's denial of the allegations, Melchor's failure to compile a complete/accurate record of his investigation, and the Board's failure to call any of the witnesses to testify that Bridge made intimidating, harassing, or bullying statements.
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> (3) Bridge maintains that in contrast to the Special ALJ's findings of fact regarding the second AA investigation:
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> -Melchor was not thorough in interviewing witnesses;
>
> -the AA investigation was not fair;
>
> -Bridge should not be required to exhaust his hearing rights before the Board because that would have been futile;
>
> -the employer's motives were mixed and part of the mixed motivation was retaliation against Bridge for the exercise of free speech rights; and
>
> -Bridge did not admit to making sexist comments.[7/]

Although the Commission has permitted public employees latitude in terms of offensive speech and conduct in the context of union-related activities, conduct that is beyond the bounds of propriety is not protected activity under the Act. Moreover, acting as an employee representative does not insulate an employee from reprimand for objectionable behavior. An employer has a legitimate and substantial business justification in

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7/ This exception is duplicative of Bridge's first general exception that was addressed above.

administering and enforcing its affirmative action plan. See State of New Jersey (Trenton State College), H.E. No. 90-48, 16 NJPER 337 (¶21139 1990), adopted P.E.R.C. No. 91-1, 16 NJPER 419 (¶21175 1990); see also, Jersey City Educ. Ass'n v. Jersey City Bd. of Educ., 218 N.J. Super. 177, 187-188 (App. Div. 1987); City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶15017 1983); City of Hackensack, P.E.R.C. No. 78-74, 4 NJPER 215 (¶4107 1978).

As the charging party, Bridge had the burden of proving the allegations set forth in his unfair practice charges by a preponderance of the evidence. See N.J.A.C. 19:14-6.8. While he may have denied the allegations related to the AA complaints during his direct testimony (1T33:19 thru 1T113:23), he also admitted evidence substantiating the fact that AA complaints were filed against him by Board employees (CP-1; CP-3; CP-7; CP-11; CP-24), that related AA investigations were conducted by the Board (CP-2; CP-6 thru CP-8; CP-12 thru CP-23; CP-25 thru CP-27), and that these complaints formed the sole basis for conversations with the Superintendent and the Principal/AAO together with the consequences imposed (2T22:8 thru 2T23:3). Given the burden of proof, it was incumbent upon Bridge - not the Board - to offer evidence and/or to call any witnesses deemed necessary during his case-in-chief in order to sustain the unfair practice charges (e.g., prove deficiencies or unfairness in Melchor's investigations (1T61:18 thru 1T63:25; 1T106:6 thru 1T113:23),

call into question the credibility of witnesses whose complaints/statements had been admitted into evidence by Bridge (1T106:6 thru 1T113:23), or demonstrate that the Board's motives were mixed). He failed to do so.[8/] We reject these exceptions.

We find nothing in the record demonstrating that the Special ALJ's findings of fact were arbitrary, capricious or unreasonable, and we decline to substitute our reading of the transcripts for the Special ALJ's first-hand observations and judgments. See New Jersey Div. of Youth and Family Services v. D.M.B., 375 N.J. Super. 141, 144 (App. Div. 2005); Ridgefield Bd. of Ed., P.E.R.C. No. 2013-75, 39 NJPER 488 (¶154 2013).

CI-2013-059 Exceptions

Bridge has filed four exceptions that he specifically relates to the Special ALJ's dismissal of unfair practice charge docket CI-2013-059.

> (1) Bridge maintains that he is entitled to engage in union activity and that the Board cannot side with one faction in a union.
>
> (2) Bridge maintains that none of the individuals complaining about him suffered any employer interference with their union activities.
>
> (3) Bridge maintains that there is no evidence of any actual or threatened

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8/ Bridge has provided no reference, and we find nothing in the record, indicating that the Special ALJ's unfair practice report and recommended decisions were made based upon Bridge's failure to exhaust administrative remedies with the Board. See N.J.A.C. 19:14-7.3(b).

> disruption of any employer function by Bridge passing out a flyer.

The record clearly demonstrates that Bridge disseminated two pieces of written communication at school during, or just before, classes began stating that there was "evidence of malice and conspiracy" by the Association Executive Council (CP-5 at 2), that he would "pursue justice in recovering [his] position [as Association President] and seeking recovery of damages" (CP-5 at 2), and that he might "take . . . legal action" if his demands were not met (CP-4). (1T146:20 thru 1T150:20; 1T165:14 thru 1T174:11) The record also demonstrates that based upon complaints of intimidation and harassment that the school administration received from Board employees upon receipt of Bridge's communications, the Superintendent met with Bridge and warned him to cease and desist. (CP-1; CP-3; CP-6; CP-12; CP-13; 1T174:15 thru 1T184:23; 2T5:20 thru 2T14:19)

The Commission has held that labor unions are private organizations and internal disputes regarding the right to hold office should be litigated in the courts and do not constitute an unfair practice. State of New Jersey, D.U.P. No. 2000-3, 25 NJPER 390 (¶30167 1999)(citing City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982)). The Commission will only exercise jurisdiction over internal union matters where rights protected by N.J.S.A. 34:13A-5.3 are implicated. Id.(citing West New York Supervisors Ass'n and John Santa Maria, P.E.R.C. No. 89-

60, 15 NJPER 21 (¶20007 1988), aff'd 235 N.J. Super. 123 (App. Div. 1989)). In this regard, an employer must differentiate between an employee's status as a union representative and his/her status as an employee. See Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981). As noted above, conduct that is beyond the bounds of propriety is not protected activity under the Act and the Commission has drawn a line between giving leeway for adversarial/impulsive behavior in negotiations/grievance meetings and conduct which threatens workplace discipline, order, and respect. See State of New Jersey (Trenton State College), H.E. No. 90-48, 16 NJPER 337 (¶21139 1990), adopted P.E.R.C. No. 91-1, 16 NJPER 419 (¶21175 1990; State of New Jersey, Dept. of Treasury (Glover), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001); State of New Jersey, Dept. of Human Services (Garlanger), P.E.R.C. No. 2001-52, 27 NJPER 167 (¶132057 2001). And, as stated above, an employer has a legitimate and substantial business justification in administering and enforcing its affirmative action plan. See Jersey City Educ. Ass'n, supra, 218 N.J. Super. at 187-188.

Despite the fact that it was his burden to do so during both his case-in-chief and again here in his exceptions, Bridge has failed to produce/reference any evidence demonstrating that the Board sided with a faction within the Association or that any of the individuals who complained about Bridge's conduct were

engaged in union activity that the Board interfered with at any time. See N.J.A.C. 19:14-6.8; N.J.A.C. 19:14-7.3(b). Oppositely, there is evidence that Bridge's conduct (i.e., passing out written communications at school) was disruptive and/or materially interfered with school operations given the complaints filed by Board employees. Accordingly, although Bridge did not lose his First Amendment right to free speech upon entering the school, he surrendered those rights when Board employees felt threatened and filed harassment complaints related to written materials that Bridge distributed at school pertaining to his removal as Association President and alleging that Bridge made offensive sex-based comments. See Tinker v. Des Moines, 393 U.S. 503 (1969); Reid v. Barrett, 467 F.Supp. 124, 127 (D.N.J. 1979). We reject these exceptions.

> (4) Bridge maintains that the Special ALJ erred when relying on Tinker v. Des Moines, 393 U.S. 503 (1969) because it is wrong to infantilize Bridge or other public school employees by reducing their free speech rights to those suitable for school children. Bridge also argues that employers must remain neutral with respect to intra-union disputes, that it was wrong to conclude that no protected union activity can occur outside the context of a union meeting, and that there was no showing that an overbroad restriction on employee speech was enforced in a neutral way.

Bridge's exception to the Special ALJ's citation to Tinker, which was referenced as a counterpoint, is antithetical to Bridge's position that the Board illegally interfered with his

free speech rights. In reversing the lower court and ruling in favor of students' free speech rights in Tinker, the Supreme Court found that the record did not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities by students wearing black armbands to school. In particular, the Supreme Court stated:

> First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.
>
> [Tinker, 393 U.S. at 506.]

In fact, the Commission has cited Tinker on other occasions to stand for the proposition that "public employees do not lose their Constitutional protections when they enter the workplace." City of Trenton and PBA Local 11, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den. P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131 1979), aff'd in pt., rev'd in pt. NJPER Supp.2d 84 (¶65 App. Div. 1980). However, an employer's ability to regulate an employee's disruptive speech is similar to an employer's ability to regulate a student's disruptive speech:

> Teachers retain a First Amendment right to comment on matters of public interest in connection with the operation of the public schools in which they work. A natural corollary to one's right to freedom of expression is the right to take reasonable

> and necessary steps to convey one's ideas or comments. When exercised on campus, however, the scope of protection to be afforded communicative interests must be ascertained in light of the special characteristics of the school environment.
>
> [Reid v. Barrett, 467 F.Supp. 124, 127 (D.N.J. 1979)(citing Tinker, 393 U.S. at 506).]

In this case, the record clearly demonstrates that Bridge disseminated two pieces of written communication at school related to his ouster as Association President (CP-4; CP-5; 1T146:20 thru 1T150:20; 1T165:14 thru 1T174:11) which led to complaints of intimidation and harassment by Board employees and ultimately resulted in the Superintendent meeting with Bridge in order to warn him to cease and desist. (CP-1; CP-3; CP-6; CP-12; CP-13; 1T174:15 thru 1T184:23; 2T5:20 thru 2T14:19) We find that the Special ALJ accurately cited Tinker in order to demonstrate that teachers and students do not lose their free speech rights when they enter school, but that those rights may be regulated if there are facts that lead to a reasonable forecast of, or actual disruption in, school operations. We reject this exception.

Again, we find nothing in the record demonstrating that the Special ALJ's findings of fact were arbitrary, capricious or unreasonable based upon the admitted evidence, and we decline to substitute our reading of the transcripts for the Special ALJ's first-hand observations and judgments. See New Jersey Div. of

Youth and Family Services v. D.M.B. and Ridgefield Bd. of Ed., supra.

CI-2013-061 Exceptions

Bridge has filed nine exceptions that he specifically relates to the Special ALJ's dismissal of unfair practice charge docket CI-2013-061.

> (1) Bridge takes exception to the conclusion that his six political opponents within the union are empowered to create "a heckler's veto that overrides the 77% who disagree."
>
> (2) Bridge takes exception to the finding that "Melchor interviewed all of the individuals recommended by Bridge."
>
> (3) Bridge takes exception to the finding that the "AA investigation was triggered solely because of complaints."
>
> (8) Bridge takes exception to the Special ALJ's recommendation dismissing this unfair practice charge, maintaining that the evidence does not support the factual findings underpinning her decision.[9/]

While he may have denied the allegations related to the AA complaints during his direct testimony (1T33:19 thru 1T113:23), Bridge admitted evidence substantiating the fact that AA complaints were filed against him by Board employees Ritchie, Black, Biery, Roberts, Toronzi, and DellaBella (CP-1; CP-3; CP-7;

9/ Although it remains applicable for Bridge's CI-2013-061 exceptions, we will not repeat the legal standards regarding hostile work environment claims and protected activity set forth above in response to Bridge's general and CI-2013-059 exceptions.

CP-11; CP-24), that related AA investigations involving fifteen interviews[10/] were conducted by the Board (CP-2; CP-6 thru CP-8; CP-12 thru CP-23; CP-25 thru CP-27), and that these complaints formed the sole basis for conversations with the Superintendent and the Principal/AAO together with the consequences imposed (2T22:8 thru 2T23:3).

More specifically, the six complainants expressed the following to Melchor when they were interviewed during AA investigations:

> -Ritchie - "she tries to avoid [Bridge] because you do not know what he is going to say and react"; "[Bridge] is very confrontational and very loud and she does not want to be alone when [Bridge] is around"; "female staff feel intimidated by [Bridge]"; "there are places she avoids because she does not feel safe in areas [Bridge] is in" (CP-25).
>
> -Black - "chose not to go into the faculty room whenever [Bridge] was in there"; "[Bridge] made derogatory statements about her as a person as well as the female gender"; "felt threatened by . . . [Bridge's written correspondence] because of [his] past comments and conversations . . .[and because Bridge] placed correspondence in public spaces where adults who are substitutes may see it"; "[Bridge] tends to use the emotional

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10/ Of the fifteen interviews conducted, six were specifically requested with Board employees recommended by Bridge in support of his position. (CP-8 at 3). Although Bridge referenced individuals who may have been present in the faculty room during one incident, there is nothing in the record indicating that Bridge specifically requested that any of these Board employees be interviewed or that such request was denied. (CP-8 at 2).

or psychological way of intimidation"; "in the faculty room, [Bridge] sits in a specific chair and glares at you when you walk in the door"; "just wants [Bridge] to stop making her feel uncomfortable"; "staff has approached her saying that they just cannot deal with [Bridge] rather than saying anybody is afraid of what [Bridge] would do" (CP-13).

-Biery - "he had concerns regarding safety because [he didn't] know what [Bridge] [was] going to do next"; "things have calmed down since the initial report was made and [Bridge] was not pushing people like he used to"; "staff [were] questioning what [Bridge] will do next and wondering how his actions will translate to the classroom"; "statements that [Bridge] has put out in public split the building in two and [Bridge] raised issues that should not have been aired in a public setting"; "it is not a healthy environment to work in" (CP-12).

-Roberts - "[Bridge] wrote an email insulting her"; "[Bridge] went on a rant about [her] in the faculty room during period one . . . [and Roberts] decided to cancel the meeting with [Bridge] because she felt uncomfortable and was fearful of [Bridge]"; "[Bridge] is hostile towards people who do not agree with him"; "staff is fearful and [Bridge] is a person who needs help because he cannot control himself" (CP-26).

-Toronzi - "[Bridge's] approach was intimidating and territorial . . . [and Bridge] engaged in an unprofessional exchange towards her"; "she deliberately stays away from [Bridge]"; "[Bridge] just wants to argue and he complicates issues"; "[Bridge] wants to intimidate and harass people"; "[Bridge] is synonymous with intimidation and he has caused the staff to separate" (CP-15).

-DellaBella - "their conversation got louder and louder and [Bridge] then stated that 'Her response was a typical woman's response, a man would have never said that'"; "[Bridge]

> has referred to women as 'broads' in the faculty room"; "she was concerned about [Bridge] being stable"; "[Bridge] has issues . . . and is extreme" (R-2).

The nine additional Board employees who were interviewed by Melchor generally confirmed the concerns expressed by the complainants or expressed reservations about Bridge's conduct. (CP-14; CP-16 thru CP-23) Further, in both documentary evidence and testimony, Bridge admitted uttering many of the statements and engaging in much of the conduct about which Board employees had complained. (CP-8; 1T117:2 thru 1T127:23; 1T137:15 thru 1T146:19; 1T151:1 thru 1T158:24; 1T158:25 thru 1T160:12)

The Special ALJ specifically considered, and rejected, Bridge's contentions that the AA investigation was unfair or flawed because "77% of those interviewed claimed to feel no hostility from [Bridge] and did not feel unsafe," that Melchor did not "interview all of the individuals recommended by Bridge," or that the "AA investigation was [not] triggered solely because of complaints." See June 25, 2015 Decision at 48-53. We find that the record supports the Special ALJ's conclusions.

In that regard, six complainants expressed concerns that their work environment was hostile due to Bridge's conduct. Nine other witnesses who were interviewed, including the six specifically requested by Bridge, gave statements demonstrating – at best – mixed feelings about Bridge's conduct. Taken as a whole, a majority of the fifteen individuals interviewed by

Melchor generally corroborated the charges filed by the complainants. There is nothing in the record indicating that Melchor failed to interview any individual requested by Bridge or that the Board initiated any AA investigation for reasons other than compliance with Board policy after AA complaints were filed.

As stated above in connection with our discussion of Bridge's general exceptions (at page 16), it was incumbent upon him, as the party bearing the burden of proof, to offer testimony or other evidence during his case-in-chief in support of his allegations in CO-2013-061, but he failed to do so. For example, there is no record evidence that Melchor initiated the AA investigation for any reason other than staff complaints regarding Bridge's activities, or that Melchor otherwise skewed his investigation to support the complaining staff over Bridge, or that Melchor failed to interview persons Bridge had asked Melchor to interview as part of the investigation.

The Commission notes Bridge's argument that "the analysis uncovers retaliatory conduct that threatens fundamental rights." In Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235, 246 (1984), the New Jersey Supreme Court established the standard for determining whether an employer's action violates 5.4a(3) of the Act:

> Under Bridgewater, no violation will be found unless the Charging Party has proven, 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 protected rights.
>
> [Warren Hills Reg. Bd. of Educ., H.E. No. 2005-2, 30 NJPER 298 (¶105 2004).]

However, Bridge did not file a 5.4a(3)[11/] unfair practice charge. Nor did he demonstrate that protected conduct was a substantial or motivating factor in any adverse action taken by the Board during his case-in-chief. We reject these exceptions.

> (4) Bridge takes exception to the Special ALJ's finding that Bridge's activities during school hours (i.e., passing out a flyer on school premises and making statements to staff on school premises) regarding his removal as Association President and possible legal action were not protected under the Act.[12/]
>
> (5) Bridge takes exception to the Special ALJ's reliance on Tinker v. Des Moines, 393 U.S. 503 (1969), claiming that his free speech rights as an employee are beyond what a student would have and that recent Supreme

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11/ This provision prohibits public employers and their representatives or agents from discriminating in regard to any term or condition of employment to encourage or discourage employees from exercising their rights under the Act.

12/ This exception is duplicative of Bridge's general exceptions (1 thru 3) and his exceptions to CI-2013-059 (1 thru 3) that were addressed above.

> Court cases demonstrate that his free speech rights were violated.[13/]
>
> (6) Bridge takes exception to the Special ALJ's finding that Bridge's free speech rights are limited to what takes place at a union meeting.
>
> (7) Bridge takes exception to the Special ALJ's finding that Bridge had no right under the Act to create a hostile work environment for female colleagues by making sexist comments or for co-workers by intimidation and threats of legal action.
>
> (9) Bridge takes exception with the following:
>
> -that he was required to engage in the futile gesture of appealing to the local Board;[14/]
>
> -that the evidence before the Special ALJ proved that the harassment investigation against Bridge was fair;[15/] and
>
> -that Bridge's free speech rights were not abridged.

Bridge has provided no reference, and we find nothing in the record, indicating that the Special ALJ found that Bridge's free speech rights "are limited to what takes place at a union meeting." See N.J.A.C. 19:14-7.3(b). To the contrary, the Special ALJ noted that:

13/ This exception is duplicative of Bridge's fourth exception to CI-2013-059 that was addressed above.

14/ This exception is duplicative of Bridge's third general exception that was addressed above.

15/ This exception is duplicative of Bridge's third general exception that was addressed above.

> -"[p]rotected activity has been defined as conduct in connection with collective negotiations, grievance processing, contract interpretation or administration, or other related activity on behalf of a union or individual" (June 25, 2015 Decision at 38-39);
>
> -"[in] addressing issues of free speech, . . . an employer must be careful to differentiate between the employee's status as a union representative and his status as an employee of the employer" when "criticizing an employee representative" (Id. at 40-41);
>
> -"[e]mployee representatives engaged with employers in protected activities are equals, but not all speech or conduct by an employee representative acting on behalf of the union is speech entitled to the Act's protection" as "[c]ourts have drawn a line between giving leeway for adversarial/impulsive behavior in negotiations or grievance meetings and conduct which threatens workplace discipline, order and respect" (Ibid.);
>
> -"[p]ublic employee's right of free speech communication with co-workers is not unfettered" and "in labor-management cases . . . is balanced against the obligation of the public employer to deliver its governmental responsibilities" which, "[i]n a school setting, . . . encompass first and foremost the delivery of education to students" (Id. at 42-43).

Moreover, Bridge has failed to cite any case standing for the proposition that he "had a right under the Act to create a hostile work environment for female colleagues by making sexist comments or for co-workers by intimidation and threats of legal action." See N.J.A.C. 19:14-7.3(b). No such right exists under our Act.

Generally, the Special ALJ found that although the Commission has permitted public employees latitude in terms of offensive speech and conduct in the context of union-related activities, conduct that is beyond the bounds of propriety is not protected activity under the Act and acting as an employee representative does not insulate an employee from discipline for objectionable behavior or from an affirmative action investigation. Further, the Special ALJ found that an employer has a legitimate and substantial business justification in administering and enforcing its affirmative action plan.

More specifically, the Special ALJ found, and we agree, that Bridge was not engaged in protected activity when he distributed the flyer at school given that his complaint over his ouster from union office and his threat to take legal action to compel his reinstatement to office constituted a purely internal union dispute, not an unfair practice. Further, there is evidence to support the Special ALJ's finding that Bridge's actions threatened workplace discipline and order based upon the complaints filed by Board employees and the materials compiled during the AA investigation. See June 25, 2015 Decision at 42-44. Oppositely, there is no evidence that Bridge's actions implicated a matter of public concern and accordingly, his First Amendment right to free speech. Id.

Similarly, with respect to the comments made and the climate created by Bridge at school forming the basis for AA complaints filed by Ritchie, Black, Biery, Roberts, Toronzi, and DellaBella, the Special ALJ found that employers have a managerial prerogative and legal obligation to implement an affirmative action plan and to investigate complaints of discrimination and hostile work environment. Moreover, she noted that an employee's subjective belief that his/her comments are inoffensive is irrelevant given the objective legal standard for determining whether a hostile work environment exists. We agree with the Special ALJ that Melchor's AA investigation and resulting Board action against Bridge served to halt prohibited speech and behavior in the workplace and did not infringe on rights protected under the Act. Again, there is evidence to support the Special ALJ's finding that the AA investigation was the result of AA complaints filed by Board employees. See June 25, 2015 Decision at 51-53. Oppositely, there is no evidence that Bridge's conduct implicated a matter of public concern. Id.

Although unnecessary, we may consider Bridge's constitutional claim that his free speech rights were abridged as part of exercising our exclusive unfair practice jurisdiction in this case. PERC is "competent to pass upon constitutional issues germane to proceedings before [it]. . ." and its "delegated authority is broad enough to enable it to apply laws other than

that which it administers, and should be construed 'so as to permit the fullest accomplishment of the legislative intent.'" Hunterdon Central H.S. Bd. of Educ. v. Hunterdon Central H.S. Teach. Ass'n, P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981)(citing Plainfield Bd. of Educ. v. Plainfield Ed. Ass'n, 144 N.J. Super. 521, 524 (App. Div. 1976)).

In Pickering v. Bd. of Educ., 391 U.S. 563 (1968), the U.S. Supreme Court analyzed the degree to which the speech of public employees may be constitutionally regulated within the bounds of the First and Fourteenth Amendment. The Supreme Court noted that "[t]he problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Id. at 568. Ultimately, the Supreme Court held that "absent proof of false statements knowingly or recklessly made by" a school teacher, he/she could not be dismissed for making erroneous public statements upon issues which were current subjects of public attention. Id. at 574; see also, Garcetti v. Ceballos, 547 U.S. 410 (2006).

The New Jersey Supreme Court found that Pickering and its progeny remain the "standard . . . for determining when conduct-related speech in public-sector employment is constitutionally

protected." Karins v. City of Atlantic City, 152 N.J. 532, 548 (1998). Specifically:

> The threshold question in applying the Pickering balancing test is whether the employee's speech may be "fairly characterized as constituting speech on a matter of public concern." . . . "[W]hen employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment."
>
> Once the public interest prong of the Pickering standard has been satisfied, then a court must balance the employee's interest in free speech against the "government's interest in the effective and efficient fulfillment of its responsibilities to the public." . . . [A]n employer should not be forced "to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action."
>
> Thus, a two-part balancing test has evolved from Pickering. . . . First, can the employee's speech be fairly characterized as relating to a matter of public concern? . . . Second, is there a governmental interest, as an employer, in the effective and efficient fulfillment of its responsibilities to the public through its employees? . . .
>
> To summarize, when private expression is involved, the Pickering . . . balancing test looks not only to the content of the speech, but also the "manner, time, and place in which it is delivered."
>
> [Karins, 152 N.J. at 549-551 (citations omitted)]

We find that after applying the Pickering balancing test to the facts here, the balance rests on the side of the Board. The written communications that Bridge distributed at school regarding his ouster as Association President and threatening legal action are unrelated to any matter of political, social, or other concern to the community – they wholly relate to an internal union dispute involving Bridge's pursuit of reinstatement as Association President and possible legal action against the Association in furtherance of that aim. Similarly, the comments made and the climate created by Bridge at school forming the basis for the AA complaints made by Ritchie, Black, Biery, Roberts, Toronzi, and DellaBella are also unrelated to any matter of political, social, or other concern to the community – they wholly relate to a panoply of communications and interactions that a significant number of Board employees found offensive. Accordingly, Bridge fails to meet the threshold necessary to reach the second part of the Pickering test and his challenge must fail. We reject these exceptions.

Once again, we find nothing in the record demonstrating that the Special ALJ's findings of fact were arbitrary, capricious or unreasonable based upon the evidence that was admitted, and we decline to substitute our reading of the transcripts for the Special ALJ's first-hand observations and judgments.

The Board's Exceptions

CI-2013-060 Exceptions

The Board has filed five exceptions related to the Special ALJ's dismissal of unfair practice charge docket CI-2013-060.

> (1) The Board maintains that the Special ALJ erred when finding that the record demonstrated a prima facie violation of the Act at the close of Bridge's case-in-chief.

Among other things, the record includes Bridge's unfair practice charge and the Board's responsive pleading. See N.J.A.C. 19:14-7.2. In its statement of position in lieu of answer, the Board stated:

> Dr. Fogelson filed [an AA] Complaint on April 25, 2013, stating that "Mrs. Patricia Douglas-Jarvis referred to me as a 'Kike' [and] I was also informed that Mr. Bridge may have distributed copies of this e-mail at the [Association] meeting."
>
> . . . .
>
> [T]he AAO found Bridge's actions to be motivated by his own political gain, i.e. maintaining the position of Association President, at the expense of the Superintendent's right to work in a healthy environment.
>
> . . . .
>
> [T]he AAO's determination . . . included a recommendation that Bridge's salary increment be withheld for the 2013-2014 school year. Following the filing of the Charges, the Board conducted an affirmative action hearing and determined (1) to sustain the decision of the AAO and (2) to withhold Bridge's employment and adjustment increments for the 2013-2014 school year.

[A-2 at 2-5.]

Bridge had the burden of proving by a preponderance of the evidence that the Board interfered with his rights under the Act by initiating an AAO investigation and/or by withholding his increment based upon his republication of an anti-Semitic epithet at an Association meeting. See N.J.A.C. 19:14-6.8; State of New Jersey (Dept. of Corrections), P.E.R.C. No. 97-145, 23 NJPER 388 (¶28176 1997); Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988). However, the Board's statement in lieu of answer confirmed Bridge's allegations that his increment was withheld due to his republication of the Jarvis email at the Association meeting, which the Special ALJ correctly determined was protected activity and a prima facia violation of 5.4a(1). We reject this exception.

> (2) The Board maintains that the Special ALJ erred when finding that Bridge's dissemination of Jarvis' email was protected activity.

In its brief (at 12, 15), the Board concedes that "unions have an uncompromising right to choose their own leaders without interference from an employer" and that Bridge had "[a] protected right to express concern regarding Jarvis' bigotry and leadership qualifications . . . [and] to advocate for his own leadership position." The Board's position, however, is that Bridge's conduct "went well beyond a reasonable discussion regarding his

concerns, or even an impassioned plea to remain the union president." (Brief at 12-13, 15) Further, it contends:

> Bridge convened a meeting, stood in front of the membership, dramatically brandished an extremely upsetting and divisive e-mail, and then summarily walked out of the room without engaging in any follow-up dialogue. . . . [Accordingly,] the manner in which Bridge sought to "expose" Jarvis' caused his conduct to lose its protected status.
>
> [Brief at 15.]

However, the record indicates that Bridge's conduct was limited to basic commentary regarding Jarvis' fitness to be Association President and circulation of demonstrative proof of his position in the form of Jarvis' email. Ritchie testified that Bridge discussed the reasons why he felt he should not be removed from office and mentioned that Ritchie had told him that he was "grossly negligent." (3T146:14 thru 3T147:3) Ritchie described Bridge's distribution of a piece of paper that contained highlight marks and an email and testified that Bridge said, "Ms. Ritchie called me grossly negligent, but this is gross negligence." (3T147:3 thru 3T149:24) After the email had been circulated, Ritchie testified that Bridge said he was finished and walked out of the room. (3T149:24 thru 3T150:17) Melchor's investigation generally corroborated Ritchie's description. (3T61:1 thru 3T61:6) This conduct falls within the umbrella of protected activity as conceded by the Board.

Moreover, the cases cited by the Board in support of its position are inapposite to this matter. First, in Union County Prosecutor's Office, P.E.R.C. No. 84-38, 9 NJPER 646 (¶14280 1983), the Commission found that the PBA failed to establish that the Prosecutor's Office interfered with a protected activity when the PBA President was disciplined for placing "county employees outside the Prosecutor's Office in an embarrassing and compromising predicament by accusing the Prosecutor of covering up an accident . . . and asking [an employee] to help in [an] investigation." The facts here are wholly distinguishable, as Bridge did not conduct an investigation or enlist the services of any outside employee, nor did he make any accusations related to the Board.[16/]

Second, in Berkley Tp., P.E.R.C. No. 86-13, 11 NJPER 461 (¶16164 1985), the Commission affirmed a Hearing Officer's decision in which he found that a police officer's manner and method of presentation at a Council budget meeting (i.e., speaking for an hour, hollering statements that were out of order, unorthodox and irrational behavior, approaching the microphone in a tone of anger, verbally chastising members) rendered his activity unprotected because it exceeded the bounds

16/ Contrary to the Board's description of Union County Prosecutor's Office, we did not "make clear" there that the disciplined detective had a "right" to investigate the matter that was the subject of his inquiry.

of propriety. The facts of that case are distinguishable, as Bridge spoke for a short time in a calm manner about the qualifications of a prospective Association leader and the distribution of an email corroborating his position.

Next, in City of Elizabeth and FMBA, Branch No. 9 and Garry, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd NJPER Supp.2d 141 (¶125 App. Div. 1984), the Commission found that a fire director had a legitimate right to demand the removal of misleading signs and that although they had been posted by the union president, the posting was not protected activity given the erroneous nature of the information. That case, too, is distinguishable, as Bridge did not distribute any misleading or erroneous information to the Board, its employees, or the Association.

We reject this exception.

> (3) The Board maintains that the Special ALJ's findings of fact and determinations of credibility are not supported by sufficient, competent and credible evidence in the record. Specifically, the Board contends:
>
> -the Special ALJ arbitrarily discounted the testimony of Ritchie which demonstrated that the Board had a substantial business justification for the discipline imposed on Bridge; and
>
> -the Special ALJ arbitrarily minimized extensive testimony regarding the impact of Bridge's conduct.
>
> (4) The Board maintains that the Special ALJ's arbitrary and unsupported findings of

> fact resulted in an erroneous conclusion of law regarding the substantial disruption caused by Bridge's conduct.

Preliminarily, we address issues raised regarding the Special ALJ's findings of fact.

We agree with the Board that the Special ALJ erroneously stated that Ritchie was not tenured.[17/] During the last day of hearing, Ritchie testified that she had been employed by the Board for 9 years, since 2007. (3T144:1-4) Based on that testimony, we find it more likely than not that Ritchie was tenured by virtue of N.J.S.A. 18A:28-5(a), providing that teaching staff members hired before the 2012-2013 school year earn tenure after three years of service.

We also agree with the Board that there was conflicting testimony as to whether Ritchie told the Association that her job was threatened by Bridge's comments to the Board about the district's drug intervention program and that the Special ALJ did not explicitly resolve that discrepancy. In that regard, Bridge testified that at an Association meeting, Ritchie "made a claim" that Bridge "had caused her job to be threatened" and sought a motion to remove him from office for "gross negligence in throwing her job into jeopardy." (1T40:8-18). Ritchie, on the other hand, testified that she "made a motion that [the union]

17/ The Special ALJ may have relied upon language in CP-25, Melchor's memorialization of his AA investigation interview with Ritchie, which referred to "a non-tenured employee."

remove Bridge ... based on comments that Bridge was making about our drug problem" and that Bridge was "grossly negligent" because he "never consulted with [Ritchie] once or with any administrator once about what we were doing with our alleged drug problem." (3T167:20 thru 3T169:15). Ritchie also testified that her job was not threatened by anyone (3T169:17 thru 3T170:9), and the parties stipulated that neither the Superintendent nor the Principal threatened Ritchie's job (2T214:1 thru 215:18).

Regardless, there is no dispute that Ritchie was in fact the individual who initiated the motion seeking to remove Bridge as Association President. Whether or not she felt that her job had been threatened is ultimately inconsequential given that she harbored sufficient animus toward Bridge to admittedly seek his removal as Association President. Accordingly, we agree with the Special ALJ's statement that Ritchie was an "unreliable witness" concerning the consequences of the disclosure of the disparaging email by Jarvis, which consequences Ritchie attributed to Bridge.

The Board also contends that the Special ALJ's findings of fact are inaccurate because Ritchie was more reliable/credible than Bridge; the testimony of Ritchie, Melchor, and Flaxman was discounted/minimized; discounting the percentage of teaching staff members present at the union meeting minimized the impact of Bridge's distribution of Jarvis' email. Despite the factual concerns regarding Ritchie's tenure and whether she felt

threatened, and despite the Board's assertion that she was more credible than Bridge, we do not find sufficient compelling contrary evidence to substitute our reading of the transcripts for the Special ALJ's first-hand observations, judgments, and/or characterizations of witness testimony. See Ridgefield Bd. of Ed., P.E.R.C. No. 2013-75, 39 NJPER 488 (¶154 2013); Warren Hills Reg. Bd. of Ed. and Warren Hills Reg. H.S. Ed. Ass'n, P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd 2005 N.J. Super. Unpub. LEXIS 78, 32 NJPER 8 (¶2 App. Div. 2005), certif. den. 186 N.J. 609 (2006).

The Special ALJ acknowledged the testimony of Ritchie, Melchor, and Flaxman in her findings of fact. Specifically:

> -Ritchie's testimony that Bridge "had caused the 'substantial disruption' in the school" (April 8, 2016 Decision at 9; 3T163:18-24) and her conclusion that the email "had a very negative impact on the workplace" (Id. at 13; 3T46:18 thru 3T47:8); Ritchie feeling "very upset after the Association meeting at which Bridge revealed the Jarvis email" (Ibid.; 3T46:4-17); Ritchie's description of "staff members coming to her office in her role as a student assistance counselor" (Ibid.; 3T46:18 thru 3T47:19).
>
> -Melchor's conclusion that "Jarvis' statement based on religion and ethnicity had a negative effect on Fogelson personally and on the workplace" (April 8, 2016 Decision at 15; R-16; 3T64:22 thru 3T65:9); Melchor's concern "about the extent to which the disclosure by Bridge of the Jarvis email negatively impacted the school work environment" (Ibid.; R-17; 3T65:15 thru 3T66:15); Melchor's conclusion that "the statement Bridge republished during the April 24 Association

> meeting perpetuated the discriminatory nature of the original Jarvis email communication causing distress to Fogelson and also causing a negative effect on Fogelson's work environment" (Id. at 17; R-20; 3T83:18 thru 3T86:10); Melchor's conclusion that Bridge's conduct "disrupted the greater school community" based upon "staff talking to each other about what happened, the time it took away from [Melchor's] duties as principal . . . as well as the time it took for the Superintendent to deal with his own emotional upset as well as the concerns of the staff" (Id.; 3T98:17 thru 3T100:19); Melchor's admission that "there were approximately 140 staff in the District . . . but [that] he only had first-hand knowledge of the four or five people he interviewed as witnesses in the AA investigation against Jarvis who were upset about the email or complained to him about the disruption in the workplace" (Id. at 17-18; 3T101:4 thru 3T102:4).
>
> -Flaxman feeling "so distressed by the decision of the membership to elect Jarvis to the presidency despite her anti-Semitic email comment . . . that she resigned her union membership" (April 8, 2016 Decision at 7; 3T137:14 thru 3T139:14); Flaxman's testimony that she "met with Fogelson expressing her support for him and her distress that he was the target of discrimination" in addition to "her feeling . . . that she was working in a hostile work environment . . . because she did not know which one of her colleagues she could trust" (Ibid.); Flaxman's understanding as to "why Bridge . . . wanted to bring the email communication to the attention of the membership at the union meeting" (Ibid.; 3T135:21 thru 3T136:14).

Based upon a review of the witness testimony noted above, the Commission is satisfied that the Special ALJ's findings of facts are not arbitrary, capricious or unreasonable and are supported

by sufficient, competent, credible evidence. See New Jersey Div. of Youth and Family Services; Cavalieri v. PERS Bd. of Trustees.

The Special ALJ also acknowledged the percentage of teaching staff members present at the union meeting in her findings of fact. Specifically:

> -the Special ALJ noted that "[a]t the April 24 Association meeting, Ritchie's motion was considered by the approximately 50 members in attendance which was less than half the membership" (April 8, 2016 Decision at 5; 1T41:1-7).[18/]

Whether there was in fact more or less than half the membership in attendance is of no moment given that the Special ALJ's findings of fact acknowledge Melchor's conclusion - and the Board's position - that Bridge's conduct caused a substantial disruption to the school community.

Secondarily, we address issues raised regarding the Special ALJ's conclusions of law. Specifically, the Board maintains that it has satisfied its obligation to prove that the disruption to its delivery of governmental services justified the discipline imposed on Bridge.

18/ We note that Melchor testified that the Board employs up to 134-140 staff members, including approximately 94 teaching staff. (3T100:20 thru 3T101:3) Ritchie testified that the April 24 Association meeting had one of the largest turnouts and that she believed a majority of union membership was in attendance. She specified that a majority of union membership was "probably 50 or 60 teachers." (3T147:20 thru 3T148:2)

We find that the Special ALJ did in fact consider all of the evidence presented regarding the disruption to the school community[19/] (April 8, 2016 Decision at 7-18, 22-30; June 25, 2015 Decision at 10-12, 34-37) caused by Bridge's commentary regarding Jarvis' fitness to be Association President, and distribution of Jarvis' email, at the union meeting (3T61:1 thru 3T61:6; 3T146:14 thru 3T150:17). We find that the Board mistakenly conflates Bridge's commentary regarding, and revelation of, Jarvis' email with Jarvis' authoring of its contents as well as her reporting the email to Melchor as the basis for teacher discussion, counseling, and emotional response (i.e., teacher response likely would have been negligible if Bridge had commented on and revealed an email authored by Jarvis containing neutral contents).

With respect to the Board's assertion that Bridge's conduct impacted "its obligation to provide a thorough and efficient education to all students" and "to foster a learning environment that is free from all forms of prejudice" (Board's Brief at 54, 58), we agree with the Special ALJ's finding that other than Ritchie's unreliable testimony, "[n]o other witness testified that classroom performance of any other teacher or the delivery of educational services was impacted by Bridge's revealing

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19/ We will not repeat, but incorporate by reference here, the findings of fact noted above pertaining to Ritchie, Melchor, and Flaxman.

Jarvis' bigotry" (April 8, 2016 Dec. at 29). Further, there was no evidence presented to suggest that Bridge hindered the investigation or Board action pertaining to Jarvis' anti-Semitic remark.

With respect to the Board's assertion that Bridge's conduct impacted "the orderly operations of the District by impeding the ability of the District's Student Assistance Coordinator to perform her day-to-day responsibilities" and impacted Fogelson's ability to function effectively and efficiently (Board's Brief at 55, 57), we agree with Special ALJ's finding that "[neither] Melchor's doing his job as AAO [n]or Ritchie's counseling" nor Fogelson's embarrassment "[provide] sufficient business justifications outweighing Bridge's protected rights" even if they go beyond the typical duties performed by these individuals (April 8, 2016 Decision at 24, 30). Further, there is no evidence to suggest that Fogelson would have been any less embarrassed had Bridge reported the Jarvis email to Melchor, which in his June 6, 2013 letter to Bridge, Melchor suggested Bridge should have done.

While acknowledging the Board's concerns regarding disruption to the school community (i.e., "Bridge's actions spilled over into the workplace and caused a disruption in the school community at large") (April 8, 2016 Decision at 8-13, 22-23), we agree with the Special ALJ's conclusion that given the

facts of this case and the limited evidence of disruption, Bridge's protected activity outweighed the Board's concerns. Specifically:

> . . .[T]he Board's reasoning would bar any communication at an Association meeting about the bigotry of a union officer, thus depriving the membership of an informed choice concerning its representation.
>
> . . .
>
> Even if Bridge's motive was in part or largely political in defending his Association Presidency by discrediting his opponent for union office, this goes to the heart of what Bridge as a union official should do during a union campaign, namely to disclose any information he felt was related to the character, fitness and qualifications of Jarvis for the Association Presidency or any union office. Under 5.4a(1) Bridge had a right to assist a labor organization in this manner.
>
> Moreover, the availability of the Board's affirmative action policy as an alternative remedy for handling Jarvis' discriminatory statement does not co-opt Bridge's right to freely communicate Jarvis' bigotry to members at the Association meeting. To preclude Bridge from pursuing this matter before the membership would deprive him and the members of the opportunity to make an informed decision and would otherwise undermine their a(1) right to form and assist a labor organization.
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> [April 8, 2016 Decision at 23-25.]

We reject these exceptions.

> (5) The Board maintains that the Special ALJ arbitrarily found that the imposition of discipline on Bridge violated the Act but

> that the investigation itself was appropriate.

Initially, the Board argues that it is internally inconsistent for the Special ALJ to find that it was permissible to investigate Bridge's conduct at a union meeting while also finding that it was impermissible to recommend discipline for this conduct because it was protected activity. However, the Board cites no authority in support of its position.

We agree with the Special ALJ's assessment of this issue. Whether or not the Board was justified in its decision to investigate Bridge is irrelevant because the investigation itself did not interfere with Bridge's protected rights. The Commission has found that public employers have a legal obligation to conduct narrowly tailored investigations pertaining to complaints of a hostile work environment, harassment and physical threats during union meetings. City of Hoboken, H.E. No. 2016-15, 42 NJPER 421 (¶115 2016) aff'd P.E.R.C. No. 2016-79, __ NJPER __ (¶____ 2016); see also, Rockaway Tp. Bd. of Ed., D.U.P. No. 2014-6, 40 NJPER 293 (¶112 2013). The Board's obligation in this regard, however, did not act to diminish Bridge's rights under the Act. See Board's Brief at 12, 15. Accordingly, although the results of the investigation may have led Melchor to believe that a recommendation to discipline Bridge was appropriate, we find that the facts in this case demonstrate that the Board's

justification is insufficient to supplant Bridge's protected activity.

Specifically, given the Board's concessions (Board's Brief at 12, 15) and our rejection of the Board's second exception above, it follows that the imposition of discipline for Bridge's protected activity (i.e., commentary and distribution of Jarvis' email during an Association meeting) was a violation of 5.4a(1). While we disagree with the Board's position that Bridge's conduct lost its protected status because the manner of his presentation "went well beyond a reasonable discussion regarding his concerns" (Id. at 12-13, 15), Commission and New Jersey case law illustrate that this determination is fact-sensitive and dependent upon the circumstances presented. See, e.g., Union County Prosecutor's Office; Berkley Tp.; City of Elizabeth and FMBA, Branch No. 9 and Garry.

The Board also argues that the Special ALJ's attempts to distinguish Hillsborough Tp. and Hillsborough PBA Local No. 205, P.E.R.C. No. 2000-82, 26 NJPER 207 (¶31085 2000), rev'd 27 NJPER 266 (¶32095 App. Div. 2001) are unavailing. In Hillsborough Tp., the PBA President drafted a letter to a neighboring police union apologizing for a situation wherein a police officer's mother had been given a ticket, therein implying that families of police officers should be given preferential treatment based upon a police "honor code." The Commission found that the Township's

internal affairs investigation into the matter did not violate the Act but determined that disciplining the PBA President for sending the letter violated 5.4a(1) and (3). The Appellate Division reversed the Commission, finding that there was no evidence that the Township singled out the PBA President for discipline or that other union members shared responsibility with the PBA President for the objectionable language in the letter.

We find the facts of this matter distinguishable, as Bridge did not draft, and bore no responsibility for, the objectionable language in Jarvis' email. Moreover, Bridge's disclosure of Jarvis' email only occurred within the context of a local union meeting during which the qualifications of Association leadership were being discussed. Although Hillsborough Tp. presented facts that sufficiently justified the Township's investigation and resulting discipline, we agree with the Hearing Examiner's ultimate conclusion that the facts of this case demonstrate that the Board's position, taken to its logical conclusion, would inhibit the distribution of tangible evidence of a union leader's bigotry at a union meeting and deprive union members of an informed choice regarding their membership.

We reject this exception.

ORDER

The North Warren Regional School District Board of Education is 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 disciplining James A. Bridge for disseminating an email containing a discriminatory statement about the Superintendent at an Association meeting thereby disclosing the lack of qualifications of a fellow officer to replace him as President and, thus, defending his presidency.

B. Take the following affirmative action:

1. Remove all copies of the findings and conclusions from AAO Melchor's affirmative action report as to Bridge from Bridge's personnel file.

2. Restore Bridge's salary increment for the 2013-2014 school year.

3. 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.

4. Notify the Chair of the Commission within twenty (20) days of receipt of this decision what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni, Boudreau and Wall were not present.

ISSUED: June 30, 2016

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 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 disciplining James A. Bridge for disseminating an email containing a discriminatory statement about the Superintendent at an Association meeting thereby disclosing the lack of qualifications of a fellow officer to replace him as President and, thus, defending his presidency.

WE WILL remove all copies of the findings and conclusions from AAO Melchor's affirmative action report as to Bridge from Bridge's personnel file.

WE WILL restore James A. Bridge's salary increment for the 2013-2014 school year.

Docket No. CI-2013-059, -060 & -061

North Warren Regional School District 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, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372