

P.E.R.C. NO. 2004-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLORHAM PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2003-225

FLORHAM PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Florham Park Board of Education violated the New Jersey Employer-Employee Relations Act when its superintendent issued two memoranda criticizing and retaliating against the Florham Park Education Association president in his role as a teacher for a telephone message he left in his role as Association president.

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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Docket No. CO-H-2003-225

FLORHAM PARK EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Simon, Edelstein, Celso & Kessler,
attorneys (Nicholas Celso, of counsel)

For the Charging Party, Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On May 7, 2004, the Florham Park Board of Education filed exceptions to a Hearing Examiner's report and recommendations. The Hearing Examiner found that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3),^{1/} when its Superintendent, Fred R. Ferrone, issued two memoranda criticizing and retaliating against

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

Association President Jeff Gruenwald in his role as a teacher for a telephone message he left in his role as Association president. The Hearing Examiner concluded that a small portion of one memorandum and the entire second memorandum violated the Act and should be withdrawn from Board files. He further concluded that the Board should post a notice of its violation.

The unfair practice charge was filed by the Florham Park Education Association on March 5, 2003. On May 22, a Complaint and Notice of Hearing issued. On June 3, the Board filed its Answer asserting, in part, that Gruenwald's message did not constitute protected activity, and that Ferrone had no reason to believe that Gruenwald left the message in his capacity as Association President. The Board also claimed that it acted for legitimate business reasons.

On August 6 and 7 and September 26, 2003, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On April 23, 2004, the Hearing Examiner issued his report and recommendations. H.E. No. 2004-15, 30 NJPER 163 (¶64 2004).

On May 7, 2004, the Board filed exceptions. The Association did not file exceptions or an answering brief.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact, including his credibility

determinations (H.E. at 3-30). We agree with him that the memoranda violated the Act. We now summarize the key events and respond to the Board's factual exceptions.

On February 11, 2003, the Association's representative council directed Gruenwald to contact Ferrone by telephone to express the Association's indignation and deep concerns over what it viewed as the Board's lack of preparation for a teachers' workshop to be held on February 18. On February 12, Gruenwald called Ferrone's office; he was told that Ferrone was not available. Gruenwald told Ferrone's secretary that he was calling for the Association and that he had a message regarding the workshop. He related the Association's concerns and asked the secretary to recount the entire message to Ferrone.

The secretary told Ferrone that she had taken the message from Gruenwald. Ferrone was startled by the message and asked the secretary to type it. Her typed version states:

Telephone call from Jeff Gruenwald on 2/12/03 at 8:50 AM.

1. Staff Development Day on 2/18 - The staff is extremely indignant because of the "lack-luster" workshops. District had a year to prepare and it seems that it is "thrown together" at the last minute. If staff dared to go into the classroom as unprepared and poorly planned, teachers would get poor evaluations. District has high expectations-why shouldn't staff have same for professional development workshops. Staff extremely disgusted over this. There are so many good things out there.

He understands that staff will get six hours credit for this workshop.

2. RMS - He understands a number of staff members are presenting. How many hours do they get for preparation of their presentation? Time spent prior to their presentation.

Ferrone did not understand what Gruenwald meant by the message, but he did not return his call to ask for clarification.

On February 12, 2003, Ferrone issued a four-page memorandum to Gruenwald and sent copies of the summary of Gruenwald's call and his memorandum to Board members.^{2/} The Hearing Examiner found that the underlined sentence in the section on Technology was included in retaliation for Gruenwald's telephone call. That section states:

The Ridgedale Middle School staff will be receiving training regarding technology. My response is a simple "ditto." Yes, the same answers are true - inclusive of you asking that we provide training during work hours. You even suggest that we use an in-service day for the need to have staff trained.

Concern: Again, I assume your comments are based on the district using local resources to present the in-service program. Are you suggesting that we spend money to send staff out of district or train after school via faculty meetings? Are you saying that the staff is insulted that we are continuing our efforts in technological staff development activities, since you must believe the staff is well trained? I will send the principal and Mr. Christ into your room to assess how

^{2/} Differences in testimony about the date and delivery of the workshop memorandum are immaterial.

proficient you are to determine the validity of the accusations made via your phone message.

The Hearing Examiner discredited Ferrone's testimony that, although the Gruenwald's message refers to the staff at least three times, Ferrone nevertheless believed that Gruenwald was representing himself as an individual and not the staff. Ferrone did not place his memorandum in Gruenwald's personnel file, but he did send it to all Board members as part of their weekly packet.

Gruenwald is a social studies teacher, but his classroom is often filled with arts and crafts projects. In September 2002, a night custodian told Business Administrator John Csatlos that Gruenwald's classroom floor had debris and markings and would have to be cleaned and stripped again. Csatlos sent a letter to the building principal, with a copy to Ferrone. Csatlos wrote that the classroom was an atrocity and had been trashed. He directed that the floor be stripped and sealed again.

On February 11, 2003, the day before Gruenwald left the telephone message, Csatlos spoke to the Board's insurance carrier about an upcoming inspection. Csatlos sent Ferrone a memorandum indicating that the inspection was scheduled for March 3-5, 2003.

On February 14, 2003, two days after receiving the message, Ferrone saw Gruenwald's classroom. The floor had crayon, marker, ink and paint marks. Ferrone directed the principal to have

Gruenwald's floor cleaned. Ferrone also sent a memorandum to the principal, with a copy to all Board members and Csatlos entitled "Building Health/Safety." The memorandum states:

As per my previous conversation, the classrooms must be kept in a safe and healthy manner to protect students, and in general, all occupants. Mr. Gruenwald's room is presently in a condition rated "unacceptable."

Please take the time to visit the classroom. Observe the filthy floor (dirt, paint/markers, crayons, etc). Observe the cardboard poles, paper hanging from the walls, the lack of work exhibited around the room, and a desk that is absolutely a mess. This is not the first time I have observed the room in a substandard condition. (The condition of the room could also cause an air quality problem)

I am asking that on Friday, February 21, 2003, Tom Mangan strip and wax the floor. Mr. Gruenwald must move from classroom to classroom (not music room). I also expect that the continued misuse of school property and time be cited in his evaluation.

The Hearing Examiner found that the cleanliness of Gruenwald's classroom floor was not a new issue and that the February 14 memorandum was sent in reaction to Gruenwald's February 12 telephone message. The Hearing Examiner discredited Ferrone's explanation for sending the memorandum and concluded that the memorandum was intended, in part, to intimidate Gruenwald.^{3/}

^{3/} The Hearing Examiner rejected Ferrone's explanation for sending that memorandum. Given Gruenwald's history of having a "dirty" classroom floor; the timing of this
(continued...)

The Hearing Examiner found that the underlined sentence of the February 12 memorandum violated 5.4a(1) and (3) of the Act because it threatened Gruenwald in his capacity as a teacher for his leaving the telephone message on the Association's behalf and discriminated against him for that activity.^{4/} The Hearing Examiner also found that Ferrone's February 14 memorandum violated the Act because it directed the principal to cite Gruenwald for misuse of school property in his upcoming evaluation in retaliation for his telephone message. The Hearing Examiner concluded that, but for the message, Ferrone would not have issued the memorandum and sent it to all Board members. The Hearing Examiner recommended an order rescinding the underlined sentence in the memorandum about the Staff Development Workshop and the entire memorandum about the condition of the classroom floor.

3/ (...continued) memorandum (just after the telephone call), and the fact that copies of the memorandum were sent to Board members, we accept the Hearing Examiner's inference that the memorandum was motivated by hostility to Gruenwald for leaving the telephone message.

4/ The Hearing Examiner found that the reference to assessing Gruenwald's technological proficiency was made in retaliation for Gruenwald's telephone message. The Board contends that Ferrone was simply advising Gruenwald that he would investigate Gruenwald's concern that a workshop on technology was not needed. The Hearing Examiner did not credit Ferrone's explanation. We will not disturb a credibility determination absent compelling reasons.

N.J.S.A. 34:13A-5.4a(1) and (3) protect the right of public employees to engage in activity on behalf of labor organizations without fear of retaliation. "When an employee is engaged in protected activity, the employee and the employer are equals advocating respective positions[;] one is not the subordinate of the other." Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502, 503 (¶12223 1981). When an employee's conduct as a union representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the representative's employment. Ibid. Applying Black Horse Pike, we conclude that the Board violated the Act when Superintendent Ferrone issued two memoranda criticizing and retaliating against Association President Gruenwald in his role as a teacher for the telephone message he left in his role as Association president.

The superintendent issued two memoranda in response to Gruenwald's telephone message. One included a sentence threatening to send supervisors into his classroom to assess his technological proficiency. The other informed supervisors and Board members that Gruenwald's classroom had an unacceptably filthy floor, and that his continued misuse of school property and time should be cited in his evaluation. Both these memoranda went over the line drawn in Black Horse Pike because they

impermissibly criticized and punished Gruenwald as a teacher for his role as a union representative.

The Board argues that because Gruenwald's telephone call concerned matters of managerial prerogative, it was unprotected activity. We disagree. Public employees and their representatives have a statutory right to grieve employer policies and administrative decisions concerning matters that involve employment conditions even if they are not mandatorily negotiable or subject to binding arbitration. N.J.S.A. 34:13A-5.3; Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311 (1979) (grievance procedure with advisory arbitration over applicability of managerial prerogatives is itself a term and condition of employment). Similarly, union representatives have a protected right to telephone management representatives to express the concerns of unit members about their work, even on matters that are not mandatorily negotiable. No facts suggest that Gruenwald's call was hostile or belligerent or warrants finding that the call was outside the Act's protection. Contrast State of New Jersey, P.E.R.C. No. 2001-52, 27 NJPER 177 (¶32057 2001) (union representative's yelling at supervisor not protected activity).

We also decline the Board's invitation to infer that Gruenwald knew, or should have known, that his statements were false, and that his activity was therefore not protected. After

arguing that questions at the hearing about the truth or falsity of statements in Gruenwald's message were time-consuming and irrelevant to the Association's claim that the Superintendent's memoranda violated the Act, the Association's attorney stipulated that everything Gruenwald said was wrong and that all of the teachers were wrong to criticize the workshop. The stipulation did not address whether Gruenwald or the Association members knew at the time that they were wrong.

We conclude that the underlined sentence in Ferrone's February 12 memorandum threatens retaliation for Gruenwald's Association activity. Accordingly, we adopt the Hearing Examiner's conclusion that it violated 5.4a(1).^{5/}

Under all the circumstances of this case, we adopt the Hearing Examiner's credibility determination that the memorandum was issued primarily in response to Gruenwald's telephone call just two days before. We note that the administration may have had legitimate concerns about the condition of Gruenwald's classroom, but it took no adverse action for several years. We conclude that the memorandum interfered with Gruenwald's right to act as an Association representative by punishing him as an employee for that representation and therefore violated 5.4a(1) and a(3). We also note that any legitimate need Ferrone might

^{5/} Given the identical remedy, we need not decide whether the memorandum also violated 5.4a(3).

have had to direct that Gruenwald's classroom be cleaned could have been met without sending a copy of a memorandum to all Board members.

We also adopt the Hearing Examiner's recommendation that the Board rescind the retaliatory aspects of the memoranda and post a notice of its violation. The Board's exceptions to the Hearing Examiner's remedy are predicated on its belief that the Act was not violated. Having found a violation, we need not consider those exceptions.

ORDER

The Florham Park 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 Superintendent Fred R. Ferrone's issuance of a memorandum to Jeff Gruenwald on February 12, 2003 with copies to all Board members that contained a threat that Gruenwald's classroom proficiency would be assessed; and by issuing a memorandum concerning Gruenwald on February 14, 2003, with copies to all Board members, that contained a directive to the principal to adversely evaluate Gruenwald.

(2) Discriminating in regard to hire or tenure of employment or any terms and conditions to encourage or discourage employees in the exercise of the rights guaranteed them by the

Act, particularly by Superintendent Ferrone's issuing a memorandum concerning Jeff Gruenwald on February 14, 2003, with copies to all Board members, that contained a directive to the principal to adversely evaluate Gruenwald.

B. Take this action:

1. Withdraw from all Board files and records the original and any copies of the memorandum of February 12, 2003 from Ferrone to Gruenwald and reissue that document minus the underlined language at the end of the RMS-Technology section.

2. Withdraw from all Board files and records the original and any copies of the memorandum of February 14, 2003 from Ferrone to Principal Altmire.

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.

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

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Sandman and Watkins voted in favor of this decision. None opposed. Commissioner Mastriani abstained.

DATED: June 24, 2004
Trenton, New Jersey
ISSUED: June 25, 2004



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 New Jersey Employer-Employee Relations Act, particularly by Superintendent Fred R. Ferrone's issuance of a memorandum to Jeff Gruenwald on February 12, 2003 with copies to all Board members that contained a threat that Gruenwald's classroom proficiency would be assessed; and by issuing a memorandum concerning Gruenwald on February 14, 2003, with copies to all Board members, that contained a directive to the principal to adversely evaluate Gruenwald.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any terms and conditions to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by Superintendent Ferrone's issuing a memorandum concerning Jeff Gruenwald on February 14, 2003, with copies to all Board members, that contained a directive to the principal to adversely evaluate Gruenwald.

WE WILL withdraw from all Board files and records the original and any copies of the memorandum of February 12, 2003 from Ferrone to Gruenwald and reissue that document minus the underlined language at the end of the RMS-Technology section.

WE WILL withdraw from all Board files and records the original and any copies of the memorandum of February 14, 2003 from Ferrone to Principal Altmire.

CO-H-2003-225

Docket No.

FLORHAM PARK BOARD OF EDUCATION

(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 2004-15

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

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FLORHAM PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2003-225

FLORHAM PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Florham Park Board of Education violated the New Jersey Employer-Employee Relations Act by issuing certain memoranda threatening the Association president in his role as a teacher for an action he took in his role as union president. The Hearing Examiner found the Board's actions violated Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), as well as the principals in Brigewater Tp., 95 N.J. 235 (1984).

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

H.E. NO. 2004-15

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

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Respondent,

-and-

Docket No. CO-H-2003-225

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Charging Party.

Appearances:

For the Respondent,
Simon, Edelstein, Celso & Kessler, attorneys
(Nicholas Celso, of counsel)

For the Charging Party,
Oxford Cohen, attorneys
(Sanford R. Oxford, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 5, 2003, the Florham Park Education Association (Association) filed an unfair practice charge (C-1)^{1/} against the Florham Park Board of Education (Board). The charge alleges that the Board violated the New Jersey Employer-Employee Relations

^{1/} "C" refers to Commission exhibits received into evidence at the hearing in the instant matter. "CP" and "R" refer to Charging Party's exhibits and Respondent's exhibits, respectively, received into evidence at the hearing. The transcript of the respective days of hearing are referred to as "1T", "2T", and "3T".

Act, N.J.S.A. 34:13A-1 et seq., specifically, 5.4a(1) and (3)^{2/} when Board Superintendent Dr. Fred R. Ferrone harassed and reprimanded Association President Jeff Gruenwald in retaliation for a telephone message Gruenwald made to Ferrone on behalf of the Association.

On May 22, 2003, a Complaint and Notice of Hearing issued (C-1). On June 3, 2003, the Board filed its Answer, (C-2), denying it violated the Act and setting forth several affirmative defenses. The Board claims that Gruenwald's communication to Ferrone did not constitute protected activity and that Ferrone had no reason to believe that the message was left by Gruenwald in his capacity as Association President or at the direction of or on behalf of the Association. Further, the Board claims any actions it subsequently took were taken for legitimate business reasons and would have been taken even if Gruenwald had not left a telephone message.

A hearing was held on August 6 and 7, and September 26, 2003. The parties filed post-hearing briefs by December 5, 2003. Based on the record in this matter, I make the following:

^{2/} These subsections prohibit public employers, their representatives of 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."

FINDINGS OF FACT

1. Jeff Gruenwald has been a teacher for the Board for 26 years and currently teaches fifth grade at Briarwood School. He is also President of the Association, a post he has held for the past eight years (1T8-1T9, 1T76).

2. Dr. Fred R. Ferrone is Superintendent of Schools for the District and has held that position since June 1992. Between the last week of September through the third week of December 2002, Ferrone served as both Superintendent and interim building principal at the Briarwood School (1T65-1T66, 1T74-1T75).

Ferrone deals with Gruenwald in his capacity as Association President, primarily; the frequency of their contact varies, depending on the events occurring at the schools. Sometimes, contact between them is several times per week, other times as infrequent as once every two weeks. In his capacity as interim building principal, Ferrone has also dealt with Gruenwald as a teacher concerning scheduling and classroom projects (1T28-1T29, 1T62, 1T78, 3T69). Prior to Ferrone's service as interim principal, he and Gruenwald had never spoken regarding Gruenwald's teaching responsibilities. Over the years, Gruenwald invited Ferrone to his classroom for select programs, but Ferrone never attended (1T28-1T29, 3T69-3T70).

3. Gruenwald served on the Association's negotiations team in the last negotiations between the Board and the Association.

The Board's negotiations team included Board President Kevin DeCoursey (1T40-1T41).

THE FEBRUARY 18, 2003 WORKSHOP DAY

4. The Board has an active interest in staff development. It was an issue in the last negotiations, particularly how to achieve the State-mandated 100 hours of professional development for teachers. The Board formed a committee and an action plan in order to accomplish this State goal (1T142-1T144, 3T41-3T43, 3T46-3T47).

During negotiations, approximately three years ago, the Board proposed adding two additional workdays to the teachers' calendar; these days would be used for staff development. Teacher workshops would be conducted which would generate hours towards the State 100 hour requirement (1T9-1T10, 1T42, 3T41).

The Association and the Board then negotiated over when these two extra days should occur. The days considered as possible workshop days included Martin Luther King Day, the two days after Labor Day and one day in October, but no agreement was reached. Thus, in May-June 2002, the Board set the workshop days; one was set for February 18, 2003. The Association was not amenable to that date and proposed an alternate date; the Board however, would not agree to the alternative date (1T9-1T10, 1T47-1T50, 1T55-1T57).

Thereafter, at a November 2002-December 2002 liaison meeting, the February 18, 2003 workshop was discussed between the Superintendent, the Board and the Association. At that point, the Association knew that February 18, 2003, would definitely be a workshop day for teachers (1T9-1T10, 1T47-1T50, 1T55-1T57).

Neither the Memorandum of Agreement nor the final contract between the parties specifically address the substance of the workshops; they simply list the teachers' work calendar as being 187 days. In the negotiations, the parties simply agreed there would be workshops (1T42-1T43).

5. The Association representative council consists of the elected leadership of the Association; specifically, two vice-presidents, two secretaries, one treasurer and a building representative from each of the three buildings in the District. The representative council generally meets monthly; however, if an emergency arises, it meets more often (1T12). Any member of the Association can attend a representative council meeting, but it is closed to everyone else (1T51).

Written notification of the next scheduled representative council meeting is given at the end of each meeting. It is included in the minutes of the meeting which are then distributed to Association members. Then, as a reminder, Association President Gruenwald telephones each building representative about

3-4 days prior to the scheduled council meeting (1T46, 1T52, 1T66-1T67; CP-1, CP-6).

At its January 2003 meeting, the representative council discussed the upcoming February 18, 2003 workshop. The minutes of the January meeting reflect that Association members believed that nothing had been planned for them regarding that workshop (1T68; CP-6§G). The January meeting concluded with scheduling the next regular representative council meeting for February 11, 2003 (1T46, 1T66-1T67; CP-6).

6. The Association did not hear anything further about the February 18, 2003 workshop until February 7, 2003 (1T10). Then, three Association members at Ridgedale School asked Association representatives if they would be compensated, i.e., paid and credited hours, for any technology workshop the Board required. The Association learned from Ridgedale Principal Majeski that these three individuals would be compensated both monetarily and in terms of credit hours for the workshop (1T10-1T11, 1T16).

7. The February 18, 2003, workshop was next discussed at the February 11, 2003 representative council meeting, which was attended by 13-14 of the 17 representative council members (1T11-1T12; CP-1). The workshop arose in the context that Association members were concerned that while the workshop was only one week away, Ridgedale staff, who were required to attend the workshop, had just received notice the day before about its content. The

staff had not been involved in planning and organizing the workshop and it appeared to Association representatives that the workshop had been hurriedly prepared. Association members were indignant over their lack of involvement in the workshop, specifically, the fact that the Board had not asked for their input in planning and organizing the workshop, contrary to what the Association had anticipated as a result of the negotiations between the parties (1T13-1T14; CP-1).

GRUENWALD'S TELEPHONE MESSAGE AND FERRONE'S RESPONSE

8. As a result of the discussion at the February 11, 2003 meeting regarding the upcoming workshop, the representative council directed Gruenwald to contact Superintendent Ferrone by telephone, and express the Association's indignation and deep concerns over what it viewed was an ill-prepared, poorly organized workshop (1T14-1T15, 1T52, 1T57; CP-1). Thus, at approximately 8:50 a.m. on February 12, 2003, Gruenwald called Ferrone's office and asked Ferrone's confidential secretary, Jane Fata, if Ferrone was in; she advised he was unavailable. Although Ferrone had arrived at his office prior to 8:50 a.m., Ferrone did not take Gruenwald's call, because, according to Ferrone, Gruenwald did not ask for him (1T57-1T58, 1T107).

Gruenwald then told Fata, who was a friend of Gruenwald's and who had been an Association member until she became Ferrone's secretary in January 2003, that he was calling for the

Association and that he had a message regarding the February 18, 2003 workshop. Gruenwald frequently deals with Fata regarding Association business because Ferrone is difficult to reach (1T58). Gruenwald told Fata the issues and concerns that had been raised at the prior night's council meeting, including the fact that it appeared that the workshop had been hurriedly thrown together. Gruenwald also noted that if Association members planned their classroom activities in the same way, they would receive poor evaluations. Gruenwald asked in his message how many credit hours teachers would receive for the workshop. Finally, Gruenwald relayed the comments Association members had made at the representative council meeting that the staff was "extremely indignant" regarding the workshops. Gruenwald asked Fata to recount the entire message to Ferrone (1T15-1T17, 1T24, 1T52, 1T54, 1T55, 1T57-1T59, 1T86-1T89, 3T71).

9. Fata then immediately went into Ferrone's office and told him she had taken a telephone message from Gruenwald. According to Ferrone, Fata looked "startled." He asked what the message was; Fata gave Ferrone the message she had written (1T87-1T88, 1T117-1T118).

Ferrone was startled but not offended by the message. He viewed Gruenwald as "bizarre" and did not understand what he meant by his message, especially in light of what had occurred

regarding staff development. He then asked Fata to type the message, which she did (1T88, 1T136; CP-3). That message states:

Telephone call from Jeff Gruenwald on 2/12/03
at 8:50 AM.

1. Staff Development Day on 2/18 - The staff is extremely indignant because of the "lack-luster" workshops. District had a year to prepare and it seems that it is "thrown together" at the last minute. If staff dared to go into the classroom as unprepared and poorly planned, teachers would get poor evaluations. District has high expectations-why shouldn't staff have same for professional development workshops. Staff extremely disgusted over this. There are so many good things out there.

He understands that staff will get six hours credit for this workshop.

2. RMS - He understands a number of staff members are presenting. How many hours do they get for preparation of their presentation? Time spent prior to their presentation.
[CP-2]

10. At hearing the Association offered to stipulate that in retrospect, the substance of CP-2 was wrong, notwithstanding the accuracy of the message itself; that Association members were wrong when they informed Gruenwald at the February 11, 2003 representative council meeting that the upcoming workshop was ill-prepared; and that the February 18, 2003 workshop was actually perfectly prepared and that Ferrone did a great job. It further offered to stipulate that teachers were wrong when they said that Ferrone did not prepare the proper service aids, that

teachers were wrong when they said the schedule was an issue, but that those were still the issues raised at the representative council meeting and it went to Ferrone on those wrong factual patterns. The Board accepted those stipulations (1T84-1T86).

11. Ferrone did not call Gruenwald back in response to his message, nor ask to meet him and discuss the issues raised in his message (1T17). Upon reading CP-2, Ferrone felt that there were numerous issues that needed clarifying, thus, on Friday, February 14, 2003, he issued a four-page memo, CP-3, to Gruenwald which was hand delivered by a District maintenance worker, at the end of the school day (1T17-1T18, 1T60, 1T89). Due to its length, CP-3 is attached to this decision as Exhibit A. Ferrone provided the Board with both CP-2 and CP-3.

Ferrone's purpose for issuing CP-3 was to clarify the issues and events that led up to the Staff Development Program that was planned for February 18, 2003 (1T89, 1T118-1T119, 1T137). Ferrone and Gruenwald had previously interacted regarding the topics addressed in CP-2 and CP-3; Ferrone had spoken to him regarding staff training and workshops while serving as interim building principal (1T89-1T93, 1T118-1T119).

12. Prior to receipt of CP-3, Gruenwald had had a good working relationship with Ferrone in his role as Association president; he felt he could freely speak with Ferrone. However, after Gruenwald received CP-3, his conversations with Ferrone

became limited and took place in the presence of others, because he no longer felt comfortable meeting with Ferrone privately (1T28, 1T2-1T63, 1T79). Gruenwald had never previously received a memo like CP-3 from Ferrone. Rather, they had discussed issues informally and had, in fact, previously discussed how the District's Staff Development Committee had not had much responsibility in helping to organize and select workshops (1T18-1T19).

13. Gruenwald read CP-3 immediately upon receiving it. He became upset, stunned and angered by its content. The date, time (3:00 p.m. the Friday before the start of a holiday weekend) and method of delivery were unexpected. Gruenwald felt the memo attacked him personally as a fifth grade teacher, despite the fact that his message to Ferrone was in his capacity as Association president with concerns raised by the Association membership (1T19-1T21, 1T60).

14. Ferrone, however, claimed he did not believe Gruenwald had left his message with Fata on behalf of the Association or in his capacity as Association president; rather he said he believed the message was from Gruenwald himself, despite the fact Gruenwald referred to "the staff" throughout the message. Ferrone claims he reached his conclusion upon reading CP-2 and speaking to Fata, since Fata told Ferrone that when Gruenwald called he said "this is Jeff Gruenwald" (1T93-1T94, 1T137-1T138).

Nevertheless, Ferrone addressed Gruenwald as "Association President" in his response, CP-3, but claims it was not his intent to address him in that capacity (1T94, 1T110-1T112).

Additionally, even though CP-2 refers to "the staff" at least three times throughout, Ferrone, nevertheless, believed that Gruenwald was representing himself as an individual and not the entire staff (1T94, 1T107-1T112). Ferrone testified that if Gruenwald had, in fact, been representing the staff, he would have said that he was calling on behalf of the Association and that he needed to talk to Ferrone (1T107-1T109).

Upon receipt of CP-2, Board member John McFarlane discussed it with Ferrone because it seemed curious to him that the Association was questioning the amount of time and effort that the Board had put into its professional development plan. McFarlane had never received from Ferrone any other message that he had received from staff, such as CP-2 (3T19, 3T24). After reviewing CP-2, McFarlane believed that Gruenwald was speaking on behalf of the entire staff and not merely on behalf of himself (3T24-3T25). I agree with McFarlane's interpretation of CP-2.

Ferrone never called Gruenwald or any Association member to ask if Gruenwald was representing the staff, the leadership of the Association or himself with respect to his comments in CP-2 (1T109-1T112, 1T120, 1T122). Nor did he ever ask Gruenwald what he meant by the message, despite the fact that it raised issues

that needed clarification (1T22, 1T109, 1T112). I do not credit Ferrone's explanation. I do not credit his testimony that he did not "intend" to address Gruenwald as Association President in CP-3. I believe he knew Gruenwald called on behalf of the "staff" and that he wrote to Gruenwald as president because he knew he (Gruenwald) had operated in that capacity. I find Gruenwald left his message with Fata in furtherance of his duties on behalf of the Association.

15. Gruenwald viewed certain statements in CP-3 as extremely threatening to his job security; specifically, the fact that in paragraph four Ferrone raised questions about his technology achievements and indicated that he intended to direct the District technology coordinator and building principal to come into Gruenwald's classroom and assess his work in technology and computers (1T26, 1T60-1T63). That portion of CP-3 §4 provides:

Concern: Again, I assume your comments are based on the district using local resources to present the in-service program. Are you suggesting that we spend money to send staff out of district or train after school via faculty meetings? Are you saying that the staff is insulted that we are continuing our efforts in technological staff development activities, since you must believe the staff is well trained? (I will send the principal and Mr. Christ into your room to assess how proficient you are to determine the validity of the accusations made via your phone message.)

To Gruenwald's knowledge, no one else in the District had received such a notice (1T26-1T27, 1T138-1T139). Further, Ferrone had never complained about Gruenwald's computer and technology abilities during the time he served as building principal at Gruenwald's school (1T69-1T70).

Ferrone testified that he included the statement about assessing Gruenwald's technological proficiency in CP-3 in response to Gruenwald's comment in CP-2 that middle school teachers needed more staff development on technology (1T137). I do not credit that explanation. I believe at that point Ferrone was simply trying to criticize Gruenwald because Gruenwald, as Association President had criticized him.

Gruenwald, further, disagrees with Ferrone's assessment in paragraph 5 of CP-3, where he characterizes Gruenwald's behavior in leaving the CP-2 message as "unprofessional and aggressive". According to Gruenwald, he would have had no reason to speak to Fata in an aggressive manner, as she is a long-time friend and colleague, and former Association member (1T27, 1T59). I credit Gruenwald's testimony that he did not speak to Fata in an "aggressive" or "unprofessional" manner. But I do not believe that Ferrone's use of those words in CP-3 to define CP-2 meant he thought Gruenwald was aggressive or unprofessional to Fata. I believe Ferrone meant that Gruenwald's message was aggressive and unprofessional.

16. Gruenwald was especially angered by CP-3 because he felt that through it, Ferrone had severely compromised his (Gruenwald's) ability to perform his duties as Association president. Gruenwald interpreted CP-3 to mean that, while as Association president he can state Association concerns to Ferrone, he must fear that those concerns will be translated into a personal attack against him and his professionalism as a teacher. He was also concerned that other Association members may hesitate to deal with Ferrone or the Board on Association issues, for fear that they may also be verbally attacked (1T21-1T22). Nevertheless, Gruenwald did not attempt to contact Ferrone to discuss CP-3 with him (1T60-1T62).

Ferrone testified he never considered that his memo may have a chilling effect on Association matters (1T136-1T138). He claimed he did not intend to interfere with Association business in sending CP-3 (1T101, 1T131). I only partially credit Ferrone's testimony. I believe he may not have considered whether the wording of his response in CP-3 had a chilling effect on Gruenwald or Association rights, but I do not credit his testimony that he did not intend at least the limited portion of CP-3 §4 to interfere with Gruenwald's protected rights. Ferrone testified that the reason he told Gruenwald in CP-3 §4 that he would send the principal and Mr. Christ into his (Gruenwald's) room to assess his proficiency was because he thought he was

personally responding to Gruenwald (meaning not as union president) and wanted him to know that all staff, including him, would be assessed (1T138). I consider that testimony an admission that he was personally warning Gruenwald his teaching performance would be assessed. Since I previously found that Ferrone knew Gruenwald's CP-2 message was on behalf of the "staff" and, therefore, in furtherance of his duties as union president; it was protected conduct. Thus, I believe the personal warning to Gruenwald as a teacher was intended as retaliation for CP-2, therefore constituting intentional interference with Gruenwald's protected rights.

17. Ferrone did not place CP-3 in Gruenwald's personnel file because he did not consider it a reprimand or any other form of discipline (1T61, 1T93-1T95, 1T112-1T113). However, he did provide CP-2 and CP-3 to every Board member as part of their regular weekly Board packet (1T61, 1T113, 1T119-1T120, 1T144, 3T17-3T18, 3T34-3T35). Ferrone had called Board President DeCoursey and informed him that Gruenwald had left him a message to which he intended to respond. DeCoursey directed Ferrone to send all Board members a copy of his response along with Gruenwald's original message, since the matter involved staff development--an issue Board members were directly involved and interested in (1T144; 3T33-3T34, 3T49- 3T51). Although staff

development was a priority for DeCoursey, he never called Gruenwald to discuss his message (3T53).

THE CONDITION OF GRUENWALD'S CLASSROOM

18. Board President Kevin DeCoursey has observed Gruenwald's classroom several times over the last few years, both in his capacity as Board president and as a parent of District students. DeCoursey characterizes Gruenwald's classroom as "different", because it contains several arts and crafts projects (3T36-3T38).

Board member John McFarlane has also observed Gruenwald's classroom, over the years, both in his capacity as a Board member and a parent of District students. From these visits, McFarlane formed the impression that the classroom looked more like an art room than a social studies room, since it contained ongoing projects and students' work on the walls (3T9-3T11).

At a September 2000 back-to-school-night, McFarlane observed Gruenwald's classroom and concluded that the room did not appear to be appropriate for a social studies class. Specifically, he thought it was messy and disorganized and that it looked like the floor had not been cleaned over the summer. He told Ferrone about his observations; Ferrone said he would look into it and then speak to the principal (3T8-3T10, 3T28). McFarlane's son was assigned to Gruenwald's class that school year for a portion of the school day. Despite his negative observations of

Gruenwald's classroom, however, McFarlane did not request that his son be assigned to another teacher (3T30-3T31).

According to DeCoursey and Ferrone, over the last 2-3 years they have received complaints from other Board members and from parents regarding the condition of Gruenwald's classroom (1T98-1T99, 3T38). Upon receipt of a complaint, DeCoursey tells the complainants that they should first speak to the teacher (Gruenwald) about it; if the matter is not resolved at that level, then they should speak to the principal; if it is still unresolved, then speak to the Superintendent. Finally, if it is still not resolved at that level, he advises them to bring the complaint to the Board (3T38-3T40, 3T61-3T62).

Two to three years ago, at a facilities committee meeting, McFarlane and Ferrone heard comments regarding the condition of Gruenwald's classroom; specifically that the windows were covered with construction paper so that no natural light could come into the classroom and no one could see in. The matter was raised as a safety/welfare issue, not an educational issue (1T99, 1T125-1T127, 1T144-1T145, 3T13-3T14, 3T31). The committee told Ferrone to speak to the principal to determine whether it was appropriate for the windows to be covered (3T14).

Ferrone had previously observed Gruenwald's room in a condition causing him (Ferrone) and the business administrator to

issue verbal directives (but not to Gruenwald) to have it cleaned (1T140-1T142, 1T145).

19. The District's practice is to thoroughly clean each classroom during the summer. The floors are stripped, wet-mopped and then sealed (1T148-1T150). That practice was followed in the summer of 2002, including Gruenwald's room.

Shortly thereafter, in September 2002, night custodian, Mr. Honickle, called John Csatlos, who serves as Business Administrator, Board Secretary and Director of Facilities, regarding the condition of the floor in Gruenwald's classroom. Honickle informed Csatlos that there were markings on the floor and debris around, and that in his opinion, the floor would have to be cleaned and stripped again. Csatlos then personally observed the classroom, specifically the markings on the floor (1T151-1T152). He was upset with the condition of the room, knowing how thoroughly and recently it had been cleaned (1T152-1T153).

As a result, on September 18, 2002, Csatlos sent a letter to Building Principal Frank Altmire, with a copy to Ferrone, regarding the condition of Gruenwald's classroom (1T152-1T153; R-2). In the letter, Csaltos refers to Gruenwald's classroom as an "atrocitcy" and that it had been "trashed." He used this language because the custodial staff had just thoroughly cleaned the room during the summer, and now it appeared to be all for naught. He

wrote that the floor was covered with by-products of a recent art project and that the room appearing to be a safety hazard (1T153-1T154, 1T164-1T165, 1T174-1T175; R-2). The letter states:

Please note that the custodial staff of the district spent many hours over the summer removing each and every piece of furniture from the classrooms and cleaned each classroom in an effort to provide a sanitary and safe educational environment for the children of Florham Park. Having said this I need to make you aware that I try to inspect our facilities every week to keep abreast of situations that may compromise our custodial efforts to maintain this level of cleanliness.

I was made aware of and observed tonight, September 18, 2002, the atrocity that is the floor in the classroom assigned to Mr. Gruenwald. Specifically the floor is covered with the byproduct of a recent art project. The floor of this classroom was stripped, sealed and waxed with a 6-step process over the summer only to have it "trashed" in a two-week period.

The contents of this classroom will be removed on Friday, September 27, 2002, to have the process repeated. I would appreciate this communicated to Mr. Gruenwald and would also appreciate any assurance you can provide that efforts will be made on everyone's part to help maintain our facilities.

Please notify me or the Superintendent of Schools should there be any reason why this cooperative effort cannot be achieved. The district will at that time have to contemplate alternative room assignments and or placements.

[R-2]

Altmire told Gruenwald that he was concerned about the mess on the floor; Gruenwald explained that it was simply magic marker that had been used in a project (1T36-1T37, 1T70). Csatlos then directed Altmire to have the floor refinished (R-2).

Gruenwald did not receive a copy of R-2. His subsequent evaluation was not changed or modified because of Csatlos' perception of the condition of his classroom in September 2002 (1T176, 1T184). This was the only time the condition of his classroom floor had been brought to Gruenwald's attention (1T36, 1T63).

As a result of R-2, senior custodian Tom Mangan, at the cost of overtime pay to the District, again cleaned, stripped and waxed Gruenwald's classroom floor (1T154-1T156; R-3). No other classrooms in September 2002 were in need of such recleaning (1T156). No comments were offered at any open Board meeting or private session from October 2002 through January 2003 about the condition of Gruenwald's classroom floor.

20. On February 11, 2003, Csatlos spoke with the Board's insurance carrier regarding an upcoming inspection by the carrier. Csatlos sent Ferrone a memo documenting the conversation and indicating the inspection was scheduled for March 3-5, 2003 (1T156-1T158; R-4). R-4 provides as follows:

Mr. Keith Skeba from NJSBAIG regarding a safety/environmental health building walk-through contacted me today. I have scheduled the walk-through for Monday, March 3, 2003

through Wednesday March 5, 2003. I will be accompanying him as well as Mr. Montgomery and/or Mr. Decrescenzo. The walkthrough is designed to report on necessary recommendations to ensure risk of workers' compensation and student accident claims remain low as they pertain to building safety and environmental health.

During the inspection process, a checklist of requirements for school buildings, and particularly each classroom, is used. The District checklist specifies that floors are to be stripped and waxed in the summertime only (1T161-1T162; R-6).

21. On February 14, 2003, Ferrone saw Gruenwald's classroom, while in the building to meet with Building Principal Altmire. He and Altmire saw Gruenwald's tile floor covered with black, blue and red marks from markers, crayons, ink and paint. Ferrone stated to Altmire, "My God, this is a mess." Ferrone and Altmire then inspected the other classrooms; their floors were clean compared to Gruenwald's, with very few marks (1T96-1T98, 1T123, 1T165).

As a result, Ferrone directed Altmire to have Gruenwald's floor cleaned, since he believed it was unsightly and unsafe. He was also aware that the District's insurance carrier was soon coming to inspect the classrooms (1T139-1T141). Thus, on February 14, 2003, Ferrone sent a memo to Altmire (CP-4), with a copy to all Board members and Csatlos, entitled "Building Health/Safety." In it, Ferrone describes why he believed the condition of Gruenwald's classroom was "unacceptable". He also

asked that custodian Mangan strip and wax Gruenwald's floor. Ferrone closes the memo directing Altmire to negatively cite Gruenwald's evaluation (1T99-1T100, 1T139-1T141, 1T162-1T163, 1T184; CP-4). CP-4 in its entirety provides as follows:

As per my previous conversation, the classrooms must be kept in a safe and healthy manner to protect students, and in general, all occupants. Mr. Gruenwald's room is presently in a condition rated "unacceptable."

Please take the time to visit the classroom. Observe the filthy floor (dirt, paint/markers, crayons, etc). Observe the cardboard poles, paper hanging from the walls, the lack of work exhibited around the room, and a desk that is absolutely a mess. This is not the first time I have observed the room in a substandard condition. (The condition of the room could also cause an air quality problem)

I am asking that on Friday, February 21, 2003, Tom Mangan strip and wax the floor. Mr. Gruenwald must move from classroom to classroom (not music room). I also expect that the continued misuse of school property and time be cited in his evaluation.
[CP-4]

Upon receipt of CP-4, Csatlos went to inspect Gruenwald's room. He observed different color markings on the floor made by pencil and crayon; not the type of marks simply made by the friction of chairs on the floor. Like Ferrone, Csatlos considered the room to be a safety hazard (1T163-1T165).

On cross-examination, Ferrone was asked why CP-4 was the first time he had put the condition of Gruenwald's floor in

writing and with a copy to the Board (1T140). His answer did not fully respond to the question. Ferrone said he thought the floor was unsafe and should be cleaned, he knew State monitoring was approaching and insurance adjustors were coming "in any day" to look at the building. He wanted the floor clean and wanted Altmire to tell Casatlos to get it clean. He also said "in the past the Board has gotten on the case . . . they have to clear it up" (1T141).

I credit Ferrone that he thought Gruenwald's floor needed cleaning and he wanted it done before the monitoring and insurance review were performed, but the insurance review was not happening "in any day"; it was scheduled for March 3-5, 2003. The cleanliness of Gruenwald's floor was not a new issue. Ferrone could have just sent Altmire a memo to have it cleaned. But he did more than that, he also instructed Altmire to cite Gruenwald in his evaluation. That directive came just two days after Gruenwald left his CP-2 message. I find that CP-4, with the evaluation remark, was not coincidentally sent on February 14, it was sent then and with that wording in reaction to CP-2.

Ferrone's attested explanation for sending CP-4 to the Board is specious. It makes no sense if Ferrone merely wanted to tell Altmire and Casatlos to get the floor cleaned. It makes perfect sense if Ferrone wanted to intimidate Gruenwald. I find the latter. The issuance of CP-4 on February 14 was related to CP-2

and to the issuance of CP-3 on February 12. I find Ferrone sent CP-4 to the Board because of his continued anger over Gruenwald's CP-2 message which was also sent to the Board just two days earlier.

22. Gruenwald had never previously directly heard from Ferrone that the condition of his classroom was unacceptable, even during the period September 2002 - January 2003, when Ferrone served as interim building principal at Gruenwald's school (1T30, 1T63, 1T69-1T70). Nor had Gruenwald ever received a written memo before regarding the condition of his classroom and, in fact, he was not copied on CP-4 (1T184, 3T33).

CP-4 is the only written directive Ferrone has given to have a custodian strip and wax a classroom floor. Csatlos has previously given directives to building principals and custodians to strip and wax floors, but has never given a copy of any of these directives to Board members, like Ferrone did with CP-4. Csatlos is not aware of any other teacher's floor requiring restripping and rewaxing during the course of the school year (1T181-1T182, 1T187-1T188).

Gruenwald acknowledged at hearing that his classroom floor was "dirty" on February 14, 2003. He explained that on that day, 110 students had been in his classroom for social studies instruction. Further, a Valentine's Day party had occurred, which resulted in cups, juice bottles and bits of food being left

around. The room also contained student projects under construction on the topic of "explorers", which included replicas of ships, life-sized models of explorers, and maps of the old world and new world. These projects constituted "the paper hanging off the walls" cited in Ferrone's memo, CP-4 (1T30-1T35).

Gruenwald has been constructing these types of projects with his fifth grade students for the past ten years. These projects involve an interdisciplinary approach to education. Gruenwald includes language arts, communications arts, public speaking and artistic components in these projects. For example, when Gruenwald teaches a unit on Native American studies, he divides his class into four groups, with each group constructing life-size tepees and further replicating the culture of a different tribe (1T33; 3T67-3T69).

Gruenwald acknowledged that in completing these projects, marker sometimes gets on the floor. However, he thought the dirt and marks Ferrone referred to in CP-4 were predominantly tracked in by students and caused by the movement of desk chairs. The chairs sometimes left marks because they were designed for use on carpeted floors, and Gruenwald's floor was not carpeted (1T34-1T35). Gruenwald thought that numerous other classroom floors contained the same black marks but that Ferrone apparently did not see them (1T35, 1T65).

23. Prior to the issuance of CP-4, Gruenwald had never been informed that his projects emphasized arts and crafts too much and social studies too little. Further, he had never received a criticism or complaint about the condition of his classroom or the inappropriateness of the projects in any evaluations or observations performed on him. He has, however, received comments on his observations and evaluations that his approach, while a little different, is highly effective (1T33, 3T70-3T71).

In fact, in Spring 2003, Gruenwald sent Ferrone a copy of student work that had been performed in a coordinated effort with other classes; Ferrone responded with a memo to Gruenwald and the other teachers involved praising them. Further, Ferrone, by a March 27, 2003 memo (CP-5), praised Gruenwald on his work on the explorers project that had actually contributed to the "filthy" classroom he cited in CP-4 (1T29, 1T39, 1T129-1T130).

24. According to Ferrone, he did not issue CP-4 in retaliation for Gruenwald's phone message. He claims CP-4 was not meant to interfere with Association activity and was not related to it (1T101). I do not credit those remarks.

Ferrone testified that he wrote in CP-4 that he "expects the continued misuse of school property and time to be cited in his [Gruenwald's] evaluation," because he learned that Gruenwald was completing these construction projects during class time, when he was supposed to be teaching the social studies curriculum

(1T128). Ferrone thought this amounted to an inappropriate use of school time which he could no longer allow (1T140). But neither Gruenwald's interim evaluation nor his final year end evaluation referred to misuse of property or time (1T37-1T38, 1T128).

I do not credit Ferrone's explanation that he thought Gruenwald was misusing school property or time. Gruenwald has been doing these same projects during the school day for years with the Board's knowledge and without any criticism. Gruenwald had never previously been told by any administrator that he was guilty of any misuse of school property and time. While this finding is not intended to suggest that Ferrone could not conclude that Gruenwald's floor was unacceptable, I find that was not the motivating reason for issuing CP-4. The motivation was retaliation for CP-2.

25. Upon receiving CP-4, Gruenwald asked several custodians, including Ed DeCrescenzo and Rick Montgomery, to observe the marks on his classroom floor and determine whether they could be removed. The custodians indicated that the marks were mostly from the chairs, along with some pencil marks. They believed some of the marks could be removed through washing, but they were not certain (3T65-3T66, 3T72-3T73).

26. Thereafter, at the end of the school day on February 20, 2003, Gruenwald asked night custodian Roy Holley Jr. what he

believed caused the marks and whether they could be removed by washing with water. Holley responded that if the marks were simply lead and scuff marks, they could probably be removed with water. He also indicated that if he had the opportunity later, he would try and remove them. At around 4 p.m., Gruenwald observed Holley attempting to remove the marks; Holley indicated to Gruenwald that some of them had come up. Gruenwald then left his classroom for the day (3T66-3T67).

27. The next morning, DeCrescenzo, as previously directed by CP-4, went to Gruenwald's classroom to strip and wax the floor. The other custodian assigned to this task was out sick, however, so the assignment could not be completed at that time. But DeCrescenzo noticed that Gruenwald's room had been wet-mopped the night before by the night custodian, contrary to usual practice. DeCrescenzo also observed that the floor had not only the usual scuff marks, but also unique markings from magic markers and crayons. DeCrescenzo had never seen a classroom floor in as bad a condition as Gruenwald's, and he has seen every classroom floor in the District (2T203-2T207, 3T74-3T76).

Ferrone then directed Csatlos to inspect Gruenwald's floor. He concluded that it had not been cleaned properly, and directed that Gruenwald's floor be recleaned the following Friday; custodian Magnan was paid overtime to complete the task (1T36,

1T102-1T105, 1T165-1T172, 1T178, 1T182-1T183, 2T202-2T203, 3T67, 3T76-3T77; R-7, R-8, R-9).

Csatlos was upset that Gruenwald, who lacked authority over Holley, had directed Holley to clean his classroom floor the evening of February 20, 2003, when Holley had not yet finished his assigned work. Csatlos issued a February 21, 2003 memo to Ferrone, regarding the matter (3T76-3T79; R-10).

ANALYSIS

This case is about whether the Board's language in CP-3 and CP-4, and its raising the condition of Gruenwald's floor in February 2003, were done in retaliation for Gruenwald's leaving the message in CP-2. If that was the reason for those letters and for raising and addressing the condition of Gruenwald's classroom floor at that time it violated the Act. If the Board proves it would have taken those actions at that time even absent Gruenwald's CP-2 message it has not violated the Act. This case is not about whether Gruenwald did or did not have an exceptionally dirty classroom floor (he did); nor is it about whether the Board has the right to require Gruenwald (or any other teacher) to keep the floor acceptably clean and discipline him (or them) for ignoring such a requirement (it does).

There are two legal rights to consider. First, whether the Board's actions tended to interfere with Gruenwald's protected

rights (5.4a(1)), and second, whether the Board discriminated against Gruenwald for exercising those rights (5.4a(3)).

An employer independently violates subsection 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification.

Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. Rather, the standard is whether the employer's comments/actions had "the tendency" to interfere with an employees protected rights and lacked a legitimate and substantial business justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); N.J. Sports and Exposition Auth., P.E.R.C. No. 5 NJPER 550, 551 (Note 1) (¶10285 1979); Commercial Twp. Bd. Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983). See also, Middletown Twp., P.E.R.C. No. 84-100, 10 NJPER 173 (¶15085 1984); Mine Hill Twp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Jackson Twp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988).

In N.J. College of Medicine and Dentistry, the Commission explained:

In determining . . . whether particular actions tend to interfere with, restrain or

coerce a[n] . . . employee . . . we will consider the totality of evidence proffered during the course of a hearing and the competing interests of the public employer and the employee organization and/or affected individuals. [emphasis added]. Id. at 422-423.

More recently, the Commission in Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20 (¶30007 1998), explained how the a(1) standard works:

[W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees. . . . If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act. [citation omitted]
25 NJPER at 21.

The a(1) standard balances the right of a public employee acting as an employee representative to criticize a public employer, and the right of a public employer to criticize employee representatives for their comments or actions in their role as an employee representative without violating the Act. To avoid a 5.4a(1) violation, a public employer must not criticize employee representatives or take action against them as employees for actions they (the employee representatives) took in the exercise of protected activity. The Commission explained these "free speech rights" in Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), holding in pertinent part:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, . . . the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer. See, In re Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979) and City of Hackensack, P.E.R.C. No. 78-30, 4 NJPER 21 (¶14001 1977).

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be appropriate and even legal action, . . . may be initiated to halt or remedy the other's actions. However, . . . where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment.

[7 NJPER at 503]

* * *

A balance must be struck between conflicting rights: the employer's right to free speech, against the employees' or employee organization's right to be free from coercion, restraint or interference when exercising protected rights. County of

Mercer, P.E.R.C. No. NJPER 589 (¶16207 1985); State of New Jersey, D.U.P. No. 92-25, 18 NJPER 327 (¶23142 1992).

The Commission further explained in Black Horse Pike:

The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity.

[7 NJPER at 504]

The a(3) standard differs from the a(1) standard. The a(3) standard requires a finding of improper motive. That standard was established by the Court in In re Bridgewater Tp., 95 N.J. 235 (1984).

The Court held that no violation of 5.4a(3) will be found unless the charging party has proved, by a preponderance of the evidence, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and was hostile toward the exercise of the protected activity. Id. at 246. If the employer does not present evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis.

Sometimes, however, the record demonstrates that both a motive unlawful under our Act and another motive contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs about the employer's motives are for the hearing examiner and then the Commission to resolve.

The decision on whether a charging party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

Having considered the above facts and legal standards I find the Board violated both 5.4a(1) and (3) of the Act by some of Ferrone's actions and certain language in CP-3 and CP-4.

Gruenwald's Protected Conduct

The Board argues that in leaving his telephone message, CP-2, Gruenwald was not engaged in protected conduct because he only introduced himself to Fata by name and did not say he was calling as union president; the message concerned in-service training which is a managerial prerogative; and, relying upon State of N.J., P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001); and City of Hackensack, P.E.R.C. No. 78-14, 4 NJPER 214 (¶4107 1978), argued the message lost any protection it may have had because it was needlessly aggressive, hostile and belligerent. Those arguments lack merit.

Ferrone knew that Gruenwald had been Association president for over eight years on the date he delivered his telephone message. It was clear to me that Gruenwald was not calling regarding his own teaching performance, negative observation or evaluation, or with complaints about how he was treated; Ferrone should have assumed that Gruenwald was calling regarding union business. Even if it was not obvious to Ferrone that Gruenwald had called about an Association concern, it should have been obvious once Ferrone heard the message, and especially after he read CP-2. It begins with reference to the staff; it concerned staff development day and workshops, all words or phrases suggesting concerted actions, and not individual issues only concerning Gruenwald. The word "staff" is used six times in the

body of the message, an exceptionally clear indication that the message was not limited to Gruenwald.

The single sentence in the middle of the message resolves any doubt. It says:

He [referring to Gruenwald] understands that staff will get six hours credit for this workshop.

If the message were intended to reflect Gruenwald's personal position he would more likely have said:

He understands that he will get six hours credit for this workshop.

Ferrone sent a copy of CP-2 to every Board member, an appropriate act when the Board is criticized by the Association President.

Board Member McFarlane understood Gruenwald's message concerned the entire staff and Ferrone addressed his response to Gruenwald in CP-3 as "FPEA President". Based upon the above discussion and facts Ferrone's testimony that he did not believe Gruenwald was calling on behalf of the Association was not believable.

CP-2 was no less a protected, concerted act because it concerned a managerial prerogative or because the Association subsequently stipulated the criticism in it was wrong. Compare, Maple Shade Bd. of Ed., P.E.R.C. No. 97-67, 23 NJPER 30 (¶18201 1996); State of New Jersey (Trenton State College), 13 NJPER 720 (¶18269 1987), affirming H.E. No. 87-74, 13 NJPER 570 (¶18209

1987). Neither Gruenwald nor the Association were seeking to negotiate over the issue, Gruenwald was merely directed to criticize the Board over what the Association thought was its (the Board's) failure to prepare for the workshop. That criticism constitutes a free speech right protected by Black Horse Pike. The Association's acknowledgment at hearing that it was wrong about the criticism does not compromise its free speech protection.

I disagree with the Board that CP-2 was "hostile" or "belligerent". Although it was intended to criticize the Board for what the Association thought was an ill-prepared workshop, it contained no threats, no demands, no personal attacks, no inappropriate language. It was merely an expression of the staff's displeasure, i.e., their disgust, over what they (wrongly) believed was a lack of preparation for the February 18 workshop, hardly conduct or words of an aggressive, hostile or belligerent nature. But see, N.J. Dept. of Treasury, P.E.R.C. No. 2001-51, 27 NJPER 167, 173-174 (¶32056 2001), Middletown Bd. Ed., P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), aff'd ___ N.J. Super. ___ (App. Div. 1996), certif. den. and notice of app. disp., 149 N.J. 35 (1997) (language or actions that may be outside the free speech protection). In comparison to the criticism and tone of CP-3, the content of CP-2 seems relatively

mild and well within the protections provided by Black Horse Pike.

Ferrone's Response

Having found that CP-2 was protected conduct and in furtherance of Gruenwald's Association duties and that Ferrone knew or should have known Gruenwald was acting on behalf of others, Ferrone had the right to respond to CP-2 and criticize Gruenwald in his role as Association President for issuing CP-2, as long as he did not "cross the line" and criticize Gruenwald in his role as a teacher. Although almost all of CP-3 does not "cross the line" delineated by Black Horse Pike, I agree with the Association that one portion of Ferrone's reply improperly criticizes Gruenwald in his role as employee.

The Association claims that in CP-3 Gruenwald was personally attacked, intimidated and embarrassed, compromising his ability to do his job as Association president. It claims language used in each section of the letter was meant as a personal attack.

CP-3 was written to address five sections, Goals, Need, District Expectations, RMS-Technology and In-Service Day. A paragraph or sentence introduced the section, followed by a discussion entitled "Concern" in which Ferrone apparently addressed what he believed to be was Gruenwald's criticism. The Goals or first section noted as a priority that the staff would receive training regarding the "Model of Supervision" as approved

by the Board. In the "Concern" response in that section Ferrone wrote:

As president of the FPEA, your comments are bizarre. Don't you communicate with the staff or the committee representatives? Aren't you listening to the building principal during faculty meetings when the topics are discussed?

The first sentence of that response clearly shows that it is addressed to Gruenwald in his role as FPEA president. Ferrone calls Gruenwald's comments--referring to CP-2--bizarre, and propounds rhetorical questions. Nothing in Ferrone's response, however, attacks or threatens Gruenwald in his role as a teacher. Just like Gruenwald's remarks in CP-2 which proved not to be accurate, Ferrone's response may be intemperate or inaccurate, but were made to Gruenwald in his role as Association president and were no less protected by Black Horse Pike than Gruenwald's remarks in CP-2.

In the second or "Need" section of CP-3, Ferrone alluded to prior conversations he and Gruenwald had regarding the need for additional staff training in the "Model of Supervision" at the Briarwood School. In the "Concern" response, Ferrone wrote:

You have failed, or neglected to become aware, of your own concerns. You may also be presenting an obstacle for the district to train staff on good teaching practices and supervisory requirements based on your present attitude toward the district's goals and needs to improve instruction.

That response criticizes Gruenwald, and chastises him (Gruenwald) for his criticism in CP-2, but is directly related to the conversations between Gruenwald and Ferrone alluded to in the "Need" description at which time Gruenwald was operating in his capacity as Association president. Since I have already found that Gruenwald's message in CP-2 was done in his official capacity as Association president, then Ferrone's criticism of that response, was equally protected. Nothing in that "Concern" criticized or threatened Gruenwald in his role as a teacher.

The third section of CP-3, entitled "District Expectations", refers to remarks Gruenwald made at public board meetings suggesting the Board provide training in "supervising practices". In the "Concern" portion of that section Ferrone tells Gruenwald he doesn't know what he is talking about; he (Ferrone) refers to Gruenwald's tone of anger and disgust in CP-2; he notes that the District has been working on the supervisory model the last two years; that it (presumably the workshop) was not thrown together the last minute; and concludes that teachers he spoke to did not know what he (Gruenwald) was talking about.

Nothing in Ferrone's "Concern" remarks in that section are related to Gruenwald's teaching performance or threaten him as a teacher. Ferrone's remarks are all traceable back to his (Ferrone's) perception of Gruenwald's message in CP-2. Since

Gruenwald gave the message as president, Ferrone was entitled to criticize him in that role.

The fourth section of CP-3, entitled "RMS-Technology", concerned giving technology training to staff at Ridgedale Middle School. Ferrone begins his "Concern" response suggesting the District would use local resources to present the in-service program; then poses two rhetorical questions to Gruenwald both of which concern staff training and do not refer to Gruenwald's own teaching performance. But the "Concern" response ends with the following sentence which was in parentheses:

I will send the principal and Mr. Christ into your room to assess how proficient you are to determine the validity of the accusations made via your phone message.

The first three sentences of Ferrone's response were protected by Black Horse Pike, the last sentence was not. In the last sentence Ferrone linked Gruenwald's CP-2 message--which was protected conduct he engaged in as Association president--with an inspection of his classroom by the principal and Mr. Christ. That sentence intended to threaten Gruenwald's teaching performance for having left his CP-2 message. It is precisely the type of conduct found illegal under Black Horse Pike, because Ferrone used his power as the employer to threaten Gruenwald's teaching performance when Ferrone was angry over CP-2 which was given by Gruenwald as Association president.

That sentence violated 5.4a(1) because it had the tendency to interfere with Gruenwald's protected conduct--leaving messages as Association president--and there was no legitimate business justification to link Gruenwald's teaching performance--the condition of his classroom floor--with the message he left about in-service training. It also violated 5.4a(3) of the Act because it discriminated against Gruenwald because of the exercise of protected conduct.

In his response to the "Concern" part of the fifth section of CP-3, entitled "In-Service Day", Ferrone referred to Gruenwald's lack of knowledge and his unprofessional and aggressive manner apparently referring to CP-2; suggested he closed his ears to the District's effort to improve teaching and supervision; said he (Ferrone) was appalled that he (Gruenwald) made such remarks--referring to CP-2; and concluded with the following:

I find your style of creating rumors, not communicating with all FPEA members, and negative attitude toward administration is not in the best interest of the Florham Park Public Schools.

I find Ferrone's remarks in the "Concern" portion of the In-Service Day section were within the protections provided by Black Horse Pike. Nothing in them referred to Gruenwald's teaching performance. Gruenwald, understandably may believe he was being personally attacked by those remarks and felt intimidated by

them, but all of those remarks by Ferrone--whether accurate or not--were in response to Gruenwald's remarks in CP-2. Ferrone's reference to Gruenwald's lack of knowledge, creating rumors and not communicating with FPEA members appears to refer to the inaccuracy of Gruenwald's message which was admitted at hearing. Having found that Gruenwald delivered the CP-2 message in his role as Association president, Ferrone was protected in criticizing Gruenwald for his (Ferrone's) perception of the tone, terminology and inaccuracy Gruenwald used in delivering that message. But for the last sentence of section four of CP-2, and the fact that it was submitted to Board members with that sentence, the balance of CP-3 was protected conduct.

Gruenwald's Classroom - February 2003

The evidence shows that Gruenwald's classroom floor was consistently marked-up because it was used to complete social study construction projects. Gruenwald had never been reprimanded or adversely evaluated because of the condition of his floor. But on February 14, 2003, just two days after Gruenwald left his CP-2 message to Ferrone, Ferrone issued CP-4, telling Principal Altmire to cite Gruenwald's "misuse of school property" in his upcoming evaluation.

I do not defend the condition of Gruenwald's classroom floor, nor suggest the Board acted inappropriately in having it cleaned. But I do not believe Ferrone would have issued CP-4,

particularly on February 14, including the directive to Altmire to cite the matter in Gruenwald's evaluation, were it not for Gruenwald's CP-2 message on February 12. None of Gruenwald's evaluations or observations over his career with the District have cited the condition of his classroom as being unacceptable or as constituting a health or safety hazard. He had never previously been charged or cited for misuse of school property.

I find the timing of CP-4, only two days after Gruenwald engaged in protected activity with CP-2, to be evidence of hostility. Timing is an important factor from which hostility or animus may be inferred. Essex Cty. Sheriff's Dept., P.E.R.C. No. 88-75, 14 NJPER 185, 192 (¶19071 1988); Dennis Tp. Bd. Ed., P.E.R.C. No. 86-69, 12 NJPER 16, 18 (¶17005 1985).

While the Board claims it had problems with the condition of Gruenwald's classroom for years and in particular on February 14, 2003, it never previously issued a memo like CP-4. Indeed, Gruenwald has been constructing the type of projects causing the "unacceptable" classroom cited by Ferrone in CP-4 for 10 years, without receiving any negative comments or reaction. In fact, he has received positive feed back about his projects over the years, including a complimentary memo by Ferrone, CP-5.

CP-2 angered Ferrone because it implied he had not adequately prepared for the teacher workshop. That anger came out in CP-3 later on February 12 when Ferrone loudly criticized

Gruenwald, and had not abated by February 14. If CP-4 was intended to only criticize Gruenwald for his role as a teacher why send the memo to all the Board members? I believe it was sent to them because Ferrone wanted to criticize Gruenwald's performance, besmirch his reputation, in retaliation for Gruenwald's (unfounded) criticism in CP-2, and Ferrone wanted the Board to see that Gruenwald did not perform adequately.

Based upon the above I find the issuance of CP-4 discriminated against Gruenwald because of his exercise of protected activity--issuing CP-2--thereby violating 5.4a(3) of the Act.

In support of its position that CP-3 and CP-4 did not violate the Act, the Board argues that Gruenwald was not disciplined regarding these matters, nothing was placed in his personnel file, no increment was withheld and no fine or monetary penalty was imposed, and it also relied on Irvington Bd. of Ed., H.E. No. 2001-11, 27 NJPER 105 (¶32041 Final Decision 2001).

In Irvington, a school principal's memorandum criticizing the union building representative did not constitute discipline and much of the criticism was protected under Black Horse Pike.

While the Board correctly notes it did not engage in the actions listed above, its issuance of CP-4, and inclusion in CP-3 that Mr. Christ would assess Gruenwald's proficiency, were unlawful because they were in reaction to Gruenwald's exercise of

protected conduct. The balancing principles cited in Irvington were also applied in this case with respect to CP-3. But for the threat that Mr. Christ would be sent to assess Gruenwald, I found that CP-3 was a protected response to Gruenwald's CP-2 message. But CP-4, criticism of Gruenwald as a teacher, was not protected because it was primarily in response to CP-2, which was criticism by Gruenwald in his role as Association president.

Remedy

In addition to a cease and desist order and the posting of a notice, I recommend:

1) that the original and any copies of CP-3 be removed from all Board files or records and be replaced with the exact document minus the bracketed sentence at the end of the RMS-Technology issue and,

2) that CP-4 and any copies be removed from all Board files or records and not be used in evaluating Gruenwald's performance.

Conclusions of Law

1. The Board violated 5.4a(1) and (3) of the Act by issuing CP-3 with the bracketed language at the end of the RMS-Technology section, and by issuing CP-4.

2. The Board did not violate 5.4a(1) or (3) of the Act by the remainder of the language in CP-3.

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Board 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 Superintendent Ferrone issuing memorandums which contained language which intimidated, threatened and coerced FPEA President Gruenwald for engaging in protected activity.

2. Engaging in conduct which has the tendency to interfere with, restrain or coerce its employees from engaging in conduct protected by the Act, particularly by, Superintendent Ferrone's issuance of a memorandum to Gruenwald on February 12, 2003 (CP-3) with copies to all Board members which contained a threat that Gruenwald's classroom proficiency would be assessed; and by issuing a memorandum concerning Gruenwald on February 14, 2003 (CP-4) with copies to all Board members which contained a directive to the principal to adversely evaluate Gruenwald because of his exercise of protected activity.

3. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by Superintendent Ferrone including a threat in a memorandum criticizing Gruenwald for his exercise of protected activity and by Ferrone's directive

to Principal Altmire to adversely evaluate Gruenwald in retaliation for remarks he made in the exercise of protected conduct.

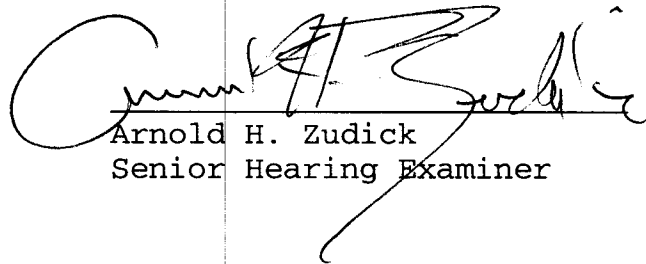
B. That the Board take the following action:

1. Withdraw from all Board files and records the original and any copies of the memorandum of February 12, 2003 from Ferrone to Gruenwald (CP-3) and reissue that document minus the bracketed language at the end of the RMS-Technology section.

2. Withdraw from all Board files and records the original and any copies of the memorandum of February 14, 2003 from Ferrone to Principal Altmire (CP-4).

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



Arnold H. Zudick
Senior Hearing Examiner

Dated: April 23, 2004
Trenton, New Jersey



RECOMMENDED



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 Superintendent Ferrone issuing memorandums which contained language which intimidated, threatened and coerced FPEA President Gruenwald for engaging in protected activity.

WE WILL cease and desist from engaging in conduct which has the tendency to interfere with, restrain or coerce its employees from engaging in conduct protected by the Act, particularly by Superintendent Ferrone's issuance of a memorandum to Gruenwald on February 12, 2003 (CP-3) with copies to all Board members which contained a threat that Gruenwald's classroom proficiency would be assessed; and by issuing a memorandum concerning Gruenwald on February 14, 2003 (CP-4) with copies to all Board members which contained a directive to the principal to adversely evaluate Gruenwald because of his exercise of protected activity.

WE WILL cease and desist from discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by Superintendent Ferrone including a threat in a memorandum criticizing Gruenwald for his exercise of protected activity and by Ferrone's directive to Principal Altmire to adversely evaluate Gruenwald in retaliation for remarks he made in the exercise of protected conduct.

WE WILL withdraw from all Board files and records the original and any copies of the memorandum of February 12, 2003 from Ferrone to Gruenwald (CP-3) and reissue that document minus the bracketed language at the end of the RMS-Technology section.

WE WILL withdraw from all Board files and records the original and any copies of the memorandum of February 14, 2003 from Ferrone to Principal Altmire (CP-4).

WE WILL NOT threaten, intimidate and discriminate against FPEA President Gruenwald for his criticism of the Superintendent or the Board, and its actions in the exercise of his duties as President of the Association.

Docket No. CO-H-2003-225

Florham Park 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

EXHIBIT A

FLORHAM PARK SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT

MEMO TO: Mr. Jeff Gruenwald, FPEA President
FROM: Dr. Fred R. Ferrone
DATE: February 12, 2003
RE: STAFF DEVELOPMENT WORKSHOP - February 18, 2003

I received your phone message on February 12, 2003, as attached, regarding the in-service day program scheduled for February 18, 2003. Based on your comments, I find it necessary to respond to your unprofessional message toward the Professional Development Committee members and school administration. The following comments are to assure you that the staff development program is in line with Board of Education goals and based on district needs:

1. Goals

The K-5 staff will receive additional training regarding the Model of Supervision, as approved by the Board of Education. The district's committee on professional development has also included this topic as the main priority of staff training and articulation in fulfilling the requirement of the Department of Education. The committee has elected members of the FPEA serving to prepare and recommend staff development.

Concern: As president of the FPEA, your comments are bizzare. Don't you communicate with the staff or the committee representatives? Aren't you listening to the building principal during faculty meetings when the topics are discussed?

2. Need

Previous conversations with you regarding the Briarwood School staff training in this area led me to also support the need for additional training regarding the Model of Supervision. Specifically, you told me that Dr. Babo did not discuss and train the staff in using the new system for teacher evaluation. You told me that the staff needs more training, as you have heard that the Ridgedale Middle School teachers were receiving advanced training from Mr. Majeski.

Concern: You have failed, or neglected to become aware, of your own concerns. You may also be presenting an obstacle for the district to train staff on good teaching practices and supervisory requirements based on your present attitude toward the district's goals and needs to improve instruction.

3. District Expectations

At public board meetings you have questioned the district's supervising practices, as well as the statement, "the district expects excellence." You have suggested to the board and administration that we provide training in this area.

Concern: It appears that you don't know what you are talking about. The principals have placed the policies and process of supervision in your teacher's handbook. The principals discuss this at faculty meetings. Last year all staff received a copy of the new Model of Supervision.

I understand the position you take publicly when defending a staff member regarding a non-renewal. You have publicly stated "all teachers are excellent." You respond as the FPEA president. Your response, however, regarding the staff development day of February 18th has a tone of anger and disgust. You state the staff is "indignant." (Anger aroused by one that is unjust, mean, or unworthy.) Your accusations are directed at all the Professional Development Committee and school administration. Let's face it, we will be talking about what is good teaching, characteristics of a good lesson, professionalism, expectations, professional growth, and the process employed to implement our supervisory model. We have been working on the process for two years. Is this a disgusting topic?

Mr. Gruenwald, where have you been? This was not thrown together at the last minute. It is also not being used to intimidate any teacher who may be fearful that we will discuss what is professional behavior and what is not. What is time on task, what is not? When to use art work in a classroom, when not to waste students' time and taxpayers money. (I certainly would like to know who is indignant about the "lack luster" in-service program. Obviously, I will ask staff members. Presently, the teachers I spoke to do not know what you are talking about.)

4. RMS - Technology

The Ridgedale Middle School staff will be receiving training regarding technology. My response is a simple "ditto." Yes, the same answers are true - inclusive of you asking that we provide training during work hours. You even suggest that we use an in-service day for the need to have staff trained.

Concern: Again, I assume your comments are based on the district using local resources to present the in-service program. Are you suggesting that we spend money to send staff out of district or train after school via faculty meetings? Are you saying that the staff is insulted that we are continuing our efforts in technological staff development activities, since you must believe the staff is well trained? (I will send the principal and Mr. Christ into your room to assess how proficient you are to determine the validity of the accusations made via your phone message.)

5. In-Service Day

Your comment that there are so many good things/stuff out there is absolutely true.

Mr. Jeff Gruenwald
Page 3
February 12, 2003

Concern: The Board of Education had already approved for the staff and the Supervision Committee to be trained by Educational Training Center over the past two years. The program is becoming a model across the nation, as originally presented by the Association of Supervision and Curriculum Development. Yes, the program is considered as "one of the good things out there."

Once again, your lack of knowledge has caused you to respond in an unprofessional and aggressive manner. There is no excuse for such behavior.

You also apparently forgot that you have been requesting the board to change the in-service day to June 16, 2003. In fact, you said the FPEA wanted the day off and would be willing to come in on June 16th. I told you that June 16th would be a good day to have staff prepare for the move of grade levels to different schools in September, 2003. I said my support was there. This situation brought us up to the December, 2002 board meeting. At this time (December), you changed your mind and said that the FPEA was looking forward to the February 18th in-service day. I gave the verbal report to the board and Mr. DeCoursey, Board President, also advised the board that he tried several times to reach you, but you never returned his calls. Certainly, the district did not schedule a consultant to speak to the staff at a cost of \$3,000 to \$5,000 since we were not sure the day was going to be an in-service day.

Mr. Gruenwald, I certainly am not happy to hear that for the past two to three years you have chosen to close your ears to the district's effort to improve teaching and supervision, which is a district goal. I'm appalled that you make such remarks, when on previous occasions I thought our conversations were directed toward a commitment of teamwork. I have always made the effort; however, I find your style of creating rumors, not communicating with all FPEA members, and negative attitude toward administration is not in the best interest of the Florham Park Public Schools.

mjf

Attachment

c. Board of Education
Building Principals
Ms. J. Gilligan, Chairperson of Professional Development Committee