

P.E.R.C. NO. 98-130

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-139

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Neptune Township Board of Education. The Complaint alleges that the Board violated the New Jersey Employer-Employee Relations Act when it abolished the position of teacher programmer held by Neptune Township Education Association President Lucille Alfano and other employees in retaliation against Alfano for her Association activity and when it unilaterally reassigned teacher programmer duties to non-unit employees. The Commission finds that the superintendent's ultimate recommendation to eliminate the teacher programmer positions appears to have been made independently of the anti-union sentiments expressed by certain Board members. The decision to study the district organization arose from an independent State review team. The final recommendations to eliminate the teacher programmer positions came from the independent consultant and the superintendent, neither of whom was motivated by anti-union animus.

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

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Charging Party.

Appearances:

For the Respondent, Hundley, Parry & Hopkins, attorneys  
(James T. Hundley, of counsel)

For the Charging Party, Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

DECISION

On October 21, 1992, the Neptune Township Education Association filed an unfair practice charge against the Neptune Township Board of Education. The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),<sup>1/</sup> when it

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

abolished the position of teacher programmer held by Association President Lucille Alfano and other employees in retaliation against Alfano for her Association activity and when it unilaterally reassigned teacher programmer duties to non-unit employees.

On March 16, 1993, a Complaint and Notice of Hearing issued. Between September 14, 1993 and November 4, 1994, Hearing Examiner Stuart Reichman conducted a 15 day hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On December 19, 1996, the Hearing Examiner issued his report. H.E. No. 97-15, 23 NJPER 85 (¶28050 1997). He concluded that the employer violated N.J.S.A. 34:13A-5.4a(3) and, derivatively, 5.4a(1) by eliminating seven teacher programmer positions to retaliate against Alfano for her Association activity. As a remedy, the Hearing Examiner recommended that the Board be ordered to stop its violations; post a notice to employees; and offer teacher programmer positions to those current staff members who had held any of the seven stipended positions that were eliminated. He also recommended that each affected teacher receive back pay for lost teacher programmer stipends from the 1992-1993 school year until the Board reinstates them as teacher programmers or such reinstatement offers are declined.

On January 13, 1997, after extensions of time, the Board filed exceptions to the Hearing Examiner's conclusion that it

violated 5.4a(1) and (3).<sup>2/</sup> On January 28 and February 5, respectively, the Association filed a response and the Board filed a reply.<sup>3/</sup>

The Board asserts that the Hearing Examiner erred by determining that the Association had met its burden of proving that the Board was hostile to Alfano's Association activity and that such hostility motivated the elimination of the seven teacher programmer positions. It also excepts to the Hearing Examiner's conclusion that it would not have eliminated the stipended positions absent Alfano's protected activity. Finally, it asserts that ordering it to offer teacher programmer positions to those teachers whose positions were eliminated would disrupt its educational program and result in having employees with overlapping duties.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (23 NJPER at 85-98) with these clarifications and additions. With respect to findings 33 and 34, Board member Gil Brooks made contentious comments to Alfano during both the 1990-1991 and the 1991-1992 school years concerning the money Alfano's Association activity was costing the Board. Brooks' attitude represented a marked change from prior years when he would routinely visit Alfano at the Association's office to seek

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<sup>2/</sup> We deny the Board's request for oral argument.

<sup>3/</sup> Neither party has excepted to the conclusion that 5.4a(5) was not violated. Absent exceptions, we dismiss that allegation.

clarification about issues the Association was pursuing (2T47 to 2T50). With respect to finding 35, Dominick Loperfido objected to Alfano's being involved in litigation against the Board while receiving a salary as a teacher. He raised the objection before and after he became a Board member in January 1992 and before and after the Board voted to eliminate the teacher programmer positions. (2T60-2T61).

Allegations of retaliatory employer actions are reviewed under the standards established in In re Bridgewater Tp., 95 N.J. 235 (1984). No violation 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 evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present any 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 that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

As a special needs district, Neptune is subject to examination by a Special Review Team. That team specifically recommended that the district assess the roles and responsibilities of supervisory personnel and reassess the current organization of the elementary schools and the district's Quality Integrated Education program ("QIE"). The QIE was implemented in 1977. The teacher programmer positions had been created as part of the QIE and their role had evolved over the years to include different duties in different schools. The superintendent believed that the focus of the positions had evolved from student instruction to program administration. This was precipitated by a restructuring in 1986 after the director of basic skills left the district, thereby creating a vacuum in the management of the QIE program.

As a result of the Review Team's recommendations, the Board hired a consulting firm to study the district's administrative/supervisory structure. In the end, the consultant recommended eliminating the teacher programmer positions as part of its overall recommendations. The Board then adopted the superintendent's reorganization plan based in part upon the consultant's report. The Hearing Examiner found, and we accept his

finding, that the consultant's recommendations were based solely on educational considerations and were not tainted by anti-union animus. We also accept the Hearing Examiner's decision not to draw any negative inference from Board member or members' questioning the status of teacher programmers with the consultant. Thus, we agree with the Hearing Examiner that problems with the QIE program and the resulting consultant's report constituted a lawful motive for the decision to eliminate teacher programmers.

We disagree, however, with the Hearing Examiner's separate determination that the Association proved that anti-union animus was another motive for that action. The record establishes that the superintendent and Board members were aware of Alfano's Association activity and that a few Board members exhibited hostility towards her actions.<sup>4/</sup> Nevertheless, based on our review of the entire record, we reject the Hearing Examiner's conclusion that the Association proved that this hostility motivated the entire Board's decision to eliminate the teacher programmer positions. We recognize that the Board was found to have violated the Act in an earlier unfair practice case when the superintendent publicly released salary guides that had not been transmitted to the Association. But that case did not involve allegations of

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<sup>4/</sup> Two of these individuals were on the Board when it adopted the recommendations of the consultant and superintendent to eliminate the teacher programmer positions. A third individual was on the Board when the consultant began his study, but not when the Board reviewed the results of that study.

anti-union animus or a repeated disregard for the collective negotiations process. We found that the superintendent may not have understood how to apply a previous settlement agreement addressing the distribution of information. Neptune Tp. Bd. of Ed., P.E.R.C. No. 94-79, 20 NJPER 76 (¶25033 1994), aff'd 21 NJPER 24 (¶26014 App. Div. 1994). We do not believe that anti-union animus should be inferred from that earlier Board violation. That inference was an important component of the Hearing Examiner's conclusion that the Board had an illegal motive.

Left with only the evidence of hostile comments about Alfano's protected activity, we cannot conclude that the Association proved that hostility to that activity motivated the decision to eliminate teacher programmers. There were simply too many independent factors that contributed to that decision and those independent factors outweigh any inference that we might have drawn had the decision been one that flowed directly from the actions of those hostile Board members.

Although the relationship between Alfano and the superintendent had changed and perhaps deteriorated in recent years, neither the record nor the Hearing Examiner suggests that the superintendent harbored anti-union feelings or that such feelings motivated the decision to eliminate the teacher programmer positions. The Hearing Examiner found that neither the superintendent nor any Board members directed the consultant to concoct a report justifying the elimination of the teacher



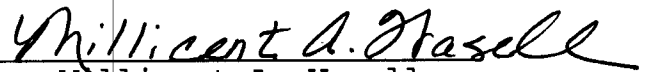
programmer positions. We accept that finding. Although at least one Board member recommended to the consultant that the programmer positions be eliminated, nothing in the record suggests that the recommendation carried any more weight than any other recommendation, some of which were rejected by the consultant. The superintendent's ultimate recommendation to eliminate the teacher programmer positions appears to have been made independently of the anti-union sentiments expressed by certain Board members. The decision to study the district organization arose from the independent State review team. The final recommendations to eliminate the teacher programmer positions came from the independent consultant and the superintendent, neither of whom was motivated by anti-union animus.

Absent sufficient proof that protected activity motivated the decision to eliminate the teacher programmer positions, we dismiss those allegations.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Boose abstained from consideration.

DATED: March 26, 1998  
Trenton, New Jersey  
ISSUED: March 27, 1998

H.E. NO. 97-15

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

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-139

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Neptune Township Board of Education violated Section 5.4(a)(3) and, derivatively, (1) of the New Jersey Employer-Employee Relations Act when it eliminated the position of teacher programmer in retaliation against the Association president's exercise of protected rights. The Hearing Examiner found this case to be one containing "dual motives", however, he found that the Board failed to prove by a preponderance of the evidence on the entire record that its decision to eliminate the teacher programmer position would have taken place absent the exercise of protected rights.

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

H.E. NO. 97-15

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

In the Matter of

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Appearances:

For the Respondent,  
Hundley, Parry & Hopkins, attorneys  
(James T. Hundley, of counsel)

For the Charging Party,  
Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

**HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION**

On October 21, 1992, the Neptune Township Education Association ("Association" or "Charging Party") filed an unfair practice charge (C-2) with the Public Employment Relations Commission ("Commission") against the Neptune Township Board of Education ("Board" or "Respondent").<sup>1/</sup> The Association alleges

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<sup>1/</sup> Exhibits received in evidence marked as "C" refer to Commission exhibits, those marked "CP" refer to Charging Party exhibits and those marked "R" refer to Respondent

that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically sections 5.4(a) (1), (3) and (5)<sup>2/</sup> by abolishing the position of teacher programmer in retaliation against Association President Lucille Alfano's exercise of rights protected by the Act. The Association further alleges that the Board illegally reassigned teacher programmer duties, in part, to non-unit employees and to other unit employees without entering into prior negotiations with the Association.

On March 16, 1993, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On April 1, 1993, the Board filed its answer (C-3) generally denying that its actions violated the Act. Hearings were conducted on September

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1/ Footnote Continued From Previous Page

exhibits. Transcript citations 1T1 refer to the transcript developed on September 14, 1993, at page 1. 2T, 3T, 4T, 5T, 6T, 7T, 8T, 9T, 10T, 11T, 12T, 13T, 14T and 15T refer to the transcripts developed on September 30, 1993, March 8, April 6, April 26, April 27, May 10, May 11, May 12, May 24, May 25, October 25, October 26, November 1, and November 3, 1994, respectively.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

14, September 30, 1993, March 8, April 16, April 26, May 10, May 11, May 12, May 24, May 25, October 25, November 1, and November 3, 1994 at the Commission's offices in Trenton, New Jersey. The parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. At the conclusion of the hearing, the parties waived oral argument and established a briefing schedule. Briefs were filed by October 27, 1995.

Upon the entire record, I make the following:

**FINDINGS OF FACT**

1. The parties stipulated that the Board was a public employer, the Association was a public employee representative and Lucille Alfano was a public employee within the meaning of the Act at all times relevant to this charge (1T8-1T9).

2. The Quality Integrated Education Program ("QIE") was implemented within the Neptune Township School District in September, 1977 in grades 2 through 5. The QIE program is designed to alleviate racial isolation within the District's elementary schools while at the same time provide a quality education to its students. The program represents a five dimensional voluntary magnet school concept. The program is geared to meet individual student needs in the areas of self respect, acceptance of differences, basic skills improvement,

enrichment activities, environmental studies, and cultural and career awareness through the introduction of diversified and innovative teaching methods, strategies and experiences that will enable each child to succeed in an integrated environment. The basic skills enrichment component of QIE is designed to emphasize instruction in reading and mathematics. To meet this goal, the physical environment includes regular classroom instruction as well as instruction in individual reading and math labs. The labs are run by certified teachers and educational aides. The project LAUNCH (Learning Academics Under New Curriculum Horizons) is housed at the Gables and Green Grove Elementary Schools and is designed to provide instruction for above average students. The emphasis focuses on a strong academically enriched program. Students are assigned to individual classrooms where teachers provide enrichment opportunities and resources.

The People/Place component of QIE is housed at the Green Grove School and is designed to promote cultural and career awareness among second through fifth grade students. The Project Media component of the QIE focuses on ethnic diversity in the arts and promotes awareness of the fine arts for students in grades 3 through 5. The Environmental Science component is housed at the Somerfield School and promotes awareness and appreciation of nature (CP-5).

Each magnet school contains one of the special programs developed pursuant to QIE. Parents are given the choice to send

their child to one of the magnet schools to take advantage of a special program. It is assumed that this will result in a more racially balanced student population. At the time QIE was implemented, then Superintendent, Victor Christie, developed a job description for the teacher programmer position, to be assigned to the magnet schools to serve as co-teacher and collaborator with the existing program classroom teachers. Christie established teacher programmers because he was concerned that the school principals would not be able to dedicate sufficient time to ensure the management and delivery of services of the new QIE programs housed at the various magnet schools (7T118).

3. In 1990, the Quality Education Act ("QEA") was enacted. The Respondent was designated as a "special needs" district under QEA making it eligible to receive additional school funding from the State. The State Department of Education, Urban Education Division, assigned monitors to the special needs districts to evaluate each district regarding educational goals, objectives and expenditures. Upon designation as a special needs district, Respondent was advised that an External Review Team, comprised of individuals selected by the Department of Education, would visit the District and assess educational programs, school facilities, parent relationships, organizational relationships and funding issues. The External Review Team would issue a report containing recommendations to improve service delivery to students. The report was intended to establish a profile of

strengths and weaknesses of the District and provide a blue print for educational reform. The External Review Team visited the District from October 1 through 4, 1990. On or about November 11, 1990, the External Review Team issued its report and recommendations (CP-2; CP-3). Among the recommendations contained in the External Review Team's report was the following:

Guidance services should be increased at the elementary level. There is a need for home contacts as well as individual pupil counselling.

The QEA mandated that local boards of education develop annual Educational Improvement Plans ("EIP") in response to the External Review Team's recommendations.

4. EIPs must be approved by the local board of education, county superintendent and the Urban Education Division of the Department of Education. A district's plans and recommendations and all of the funding and budgeting concerning any aspect of the EIP must be interfaced with the master school budget. The annual EIPs are reviewed by the Urban Education Division monitors and compared with the External Review Team's report in order to determine the district's progress in accomplishing the objectives related in their report. The district developed a District Action Plan which does not address every element contained in an EIP but represents a manageable and achievable listing of items which can realistically interface with the master school budget (R-1).

5. Lucille Alfano has been a teacher programmer since May, 1977. Until the teacher programmer position was abolished in June,



1992, Alfano was assigned to the LAUNCH program at the Green Grove School. Alfano provided resource assistance to classroom teachers by participating in enrichment programs. Alfano provided students in grades 1 through 5 with a French language and culture experience. Additionally, Alfano was involved in the laboratory enrichment and library skills enrichment components of the LAUNCH program. Alfano was also involved in arranging field trips and organizing many school based club programs that were offered to both LAUNCH and non-LAUNCH students at the Green Grove School. She arranged for the presentation of guest speakers. Alfano ordered numerous films shown to LAUNCH students throughout the school year. Alfano was provided with a budget and, in conjunction with the classroom teachers, identified the supplies needed. She prepared and submitted the supply orders. As materials were received, Alfano distributed them to the various teachers (CP-5; CP-7; CP-8).

6. Alfano played an important role in the selection and deselection process for students within the LAUNCH program. Students enter the LAUNCH program in first grade. Each year, approximately twenty-three students are selected to fill the first grade LAUNCH class. As teacher programmer, Alfano would distribute forms to all elementary school teachers to complete for every child regarding a recommendation as to whether the student should be placed in a regular classroom setting, the LAUNCH program for academically advanced students or basic skills. Alfano would compile and review the forms. Forms would be submitted and reviewed

for students in grades 2 through 5 to determine whether students in those grades, respectively, should be admitted to fill the vacancies existing in the LAUNCH program. Alfano would address any of the concerns raised as the result of information contained on the forms which might indicate a need for retesting or reevaluation. Alfano might conduct some retesting. Alfano or Laura Lewis, another teacher programmer at the Green Grove School between 1988 and 1991, would contact parents of students identified as eligible for the LAUNCH program. During the process, the school principal or a supervisor would meet with the teacher programmers to review identified students. Due to time constraints, the principal's or supervisor's input into the selection process was limited. The teacher programmers used specific written guidelines to select and identify eligible students. Occasionally, the principal or supervisor participated in the final selection decision, however, usually the teacher programmers (Alfano and Lewis), based on the teacher's recommendation, guideline application and parent consultation, made the final decision regarding the inclusion of a student into the LAUNCH program (4T110; 6T18-6T20; 15T132).

7. Students who are no longer benefiting from the LAUNCH program were deselected and returned to their home schools. The teacher programmers were involved in the deselection process. Deselection from the LAUNCH program was usually initiated by the classroom teacher. Alfano was the teacher programmer who handled LAUNCH deselections. When a student was identified for deselection,

Alfano would contact and discuss the situation with the parent. Parent disagreement with deselection was very rare and the principal rarely became involved with the deselection process other than to sign forms and perhaps attend the final deselection meeting with the teacher, parent and teacher programmer (4T112-4T113; 15T111; 15T129-15T130).

8. Other teacher programmer duties included basic skills and English as a second language testing; teaching enrichment classes for basic skill students in mathematics, computers and reading; gathering required instructional materials and meeting with basic skills students in small groups to provide additional instruction.

9. Teacher programmer Robin Platt-Lacey, assigned to the Ridge Avenue School, conducted pre-kindergarten handicapped testing and wrote grant applications. As coordinator of the reading program at Ridge Avenue, Platt-Lacey ensured that teachers had the materials they needed at the time they needed them. Platt-Lacey completed order forms for both the basic skills and non-basic skills teachers and submitted them to the principal or basic skills supervisor, as appropriate.

10. As the teacher programmer in the Gables School, Laura Lewis worked half time in the LAUNCH program and half time in basic skills. Because the Gables School was within close walking distance to the middle school, Lewis was instrumental in creating a special art enrichment program. LAUNCH students from Gables would go to the

middle school for an art enrichment program using middle school facilities. Lewis helped Gables School LAUNCH students present plays by arranging for costumes and props and scheduling rehearsal times and locations. No similar art enrichment or drama programs existed at the Green Grove School.

11. In 1986, the basic skills program was restructured providing for a supervisor of instruction to be in charge (6T88). After 1986, the teacher programmer in the Gables School was, defacto, viewed as running the basic skills program in the building (6T88). Over the ten years that Ray Misner taught basic skills at the Gables School, he found different teacher programmers performing different duties based on their individual personalities and strengths. Teacher programmer duties evolved along with the Title 1 program. Teacher programmers took on greater responsibilities as more paperwork was required by the Title 1 program (6T91).

12. Sharon Saunders was a basic skills teacher programmer at the Shark River Hills School. Saunders, with the principal, participated in basic skills student selection from among all District elementary schools. Saunders also taught classes and prepared lessons for enrichment labs that were offered every Friday for all Shark River Hill students in grades 1 through 5 in the area of mathematics, language arts or reading. She prepared materials used by supervisors for report preparation and prepared information regarding the district's California Achievement Testing. Saunders oversaw the collection and finalization of test data used by

supervisors to prepare the year end evaluation report as part of QIE. Saunders taught and/or prepared lessons in computers and mathematics.

13. Teacher programmers neither supervised nor evaluated other teachers involved in the LAUNCH or basic skills programs. Teacher programmers were not involved in the hiring process.

14. The job goal set forth in the teacher programmer job description (CP-29) stated the following:

To serve as a resource person to the building principal by providing district-wide and school-based program improvement and curriculum development activities as determined by yearly assessment and evaluation of school, program and student needs.

The job description listed ten performance responsibilities.

1. Teaches classes by assignment of building principal as provided under Board approved teacher job description.
2. Serves as a resource person in developing planning activities for school professional staff.
3. Serves as a resource person in conducting goal setting, needs assessment, program/school development and evaluation.
4. Serves as a school-based resource person for educational information concerning grants, applications and state/federal aid.
5. Serves as a resource person in planning instruction programs.
6. Serves as a resource person in developing school priorities for curriculum development.
7. Serves as a resource person in determining school and individual in-service professional development activities.

8. Serves as a resource person in preparing grants, reports and applications as determined by school needs.

9. Serves on educational committees as determined by district, program or school needs.

10. Assumes educational duties and assignments that may be determined by the superintendent of schools or building principal.

15. The teacher programmers believed that the duties which they performed were in conformance with the job description. For example, selection and deselection duties were performed in relation to paragraph 10 of the job description (5T44). Arranging field trips was done pursuant to paragraph 5 (5T47). Distributing materials was done pursuant to paragraph 10 (5T50).

16. Michael Lake succeeded Victor Christie as Superintendent. Lake recognized that most of the duties performed by teacher programmers were in compliance with the job description. However, he also believed that certain duties performed by programmers exceeded the job description's boundaries. Lake reached this conclusion on the basis of information contained in the Guidelines report,<sup>3/</sup> and his own observations as superintendent (14T87). Lake did not consult with the principals regarding whether teacher programmers were performing duties which exceeded their job description (14T88). Some of the job duties performed by teacher programmers which Lake felt exceeded the job description were

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<sup>3/</sup> I will discuss the Guidelines report in greater detail below.

arranging and scheduling field trips, ordering supplies and textbooks, processing purchase orders and making budget allocations (9T38; 14T88). Lake also believed that teacher programmers were exceeding the job description based on their role in selecting and deselecting students for the LAUNCH and basic skills programs (9T38; 14T88). Lake felt that teacher programmers were defining the term "resource person" as being the coordinator or supervisor of a program. School principals were being "left out of the loop" (14T88). Lake, testifying in concert with basic skills teacher Ray Misner, believed that the teacher programmer position evolved from one predominantly focused on student instruction to one focused on program administration. This was precipitated by a restructuring in 1986 when the Director of Basic Skills left the District creating a vacuum in the management of the program (9T39-9T40; 10T38).

17. On June 30, 1992, the teacher programmer title was eliminated. The elimination of the teacher programmer title resulted in the elimination, reduction or modification of many of the functions performed by teacher programmers. The club program was eliminated. At the Green Grove School clubs provided an opportunity for LAUNCH and non-LAUNCH students to interact. The elimination of clubs ended this opportunity for Green Grove students to interact. In September or October, 1992, Magnet School Coordinator Saunders met with LAUNCH teachers to discuss the elimination of clubs. Saunders discovered that clubs operated differently at different schools. At one of the schools, clubs only

met twice a year (13T35). Saunders determined that teachers were not greatly concerned over the elimination of clubs and recommended to the superintendent that clubs not be reinstated (13T35).

18. French instruction was eliminated at the Green Grove School. Alfano provided a half hour per week in grades 1 through 4 and 45 minutes twice per week in grade 5. French instruction at the Green Grove School was replaced by Spanish instructions for all LAUNCH students pursuant to elementary Spanish guidelines that were developed in January, 1993 (R-43). In grades 1 and 2, twenty five minutes of Spanish was provided once per week; grades 3 and 4, twenty five minutes of Spanish was provided twice per week; and in grade 5, thirty minutes of Spanish is provided twice per week (13T32). Spanish was selected because Spanish instruction was provided at the middle and high schools, whereas French was not.

19. The film program was also eliminated for LAUNCH students at the Green Grove and Gables Schools. Fewer resource people came into the classes and fewer field trips were undertaken because teacher programmers were not present to make those arrangements. At the Gables School, LAUNCH students still present plays, however, the productions are less elaborate and there are fewer of them without the teacher programmer's assistance. The art enrichment program at the Gables school has been eliminated.

20. In basic skills, with the elimination of the teacher programmers, teachers are now required to do all of the non-regular student testing which the teacher programmers previously conducted.



As a result of the elimination of teacher programmers, in order to adhere to required testing timetables, basic skills teachers have had to cancel classes.

21. The elimination of the teacher programmers assigned to basic skills has resulted in the elimination of small group instruction which was engaged in primarily by teacher programmers to reinforce the lesson or provide enrichment. In the Shark River Hills School, teacher programmers planned special math or reading laboratories which would be presented each Friday to both basic skills and non-basic skills students for the purpose of enriching the skills presented by the teachers during that week's instruction. That program was discontinued along with other planned computer literacy activities as the result of the elimination of teacher programmers. Teacher programmers were helpful in scheduling basic skills classes at the beginning of the school year and assisted with completion of required paperwork. The elimination of teacher programmers required basic skills teachers to become responsible for the submission of paperwork resulting in the cancellation of basic skills classes in October and November of each school year.

22. Alfano has been president of the Association since October, 1984. Alfano also serves as grievance chairperson and is personally involved with the processing of most grievances at the lower stages of the grievance procedure and all grievances at the higher levels. Alfano has personally processed dozens of grievances

on behalf of Association members (CP-28). Alfano has filed Department of Education appeals and PERC unfair practices on behalf of the Association. Alfano has served as the chairperson of the Association's negotiations team for all of the negotiations which occurred during her tenure as president. As Association president, Alfano is in contact with the Board and its administrators regarding issues pertaining to terms and conditions of employment.

23. Teacher programmer schedules contained a great deal of flexibility in terms of the scheduling of their instructional activities. This flexibility allowed Alfano to be available to her membership either by phone or in person in most instances throughout the school day.

24. Alfano testified regarding her relationship with Lake. Alfano claimed that her relationship with Lake began to deteriorate in the 1990-1991 school year. Alfano stated that as of the 1990-1991 school year, Lake began to refuse to meet with her, as he had previously, regarding grievances and other matters dealing with personnel and labor relations issues. Alfano also believed her relationship with Lake suffered as the result of disputes between Lake and the Association concerning the manner in which action should be taken against students who assaulted teachers.

25. NJEA UniServ Representative John Malloy observed that grievances reaching Lake were generally rejected and moved to the next step of the grievance procedure without benefit of discussion (7T10). Alternatively, Lake might send the grievance to committee

for further study. While Malloy characterized Alfano's and Lake's relationship as deteriorating, Malloy interacted with Lake only about twice a month. Malloy's own relationship with Lake remains cordial and has been unchanged since Malloy was assigned to the Neptune School District in 1988.

26. Lake admits changing the manner in which he handled grievance processing. On January 28, 1991, Assistant Superintendent for Curriculum and Instruction Moore was involved in an automobile accident (R-19; 9T6). From the date of the accident, Moore remained on a sick leave of absence until his retirement on June 30, 1992. Lake assumed all of Moore's duties. Assistant Superintendent Terrell did not have the training or experience in personnel matters at the time of Moore's accident to take on responsibilities relating to personnel issues. Consequently, Lake reevaluated his time management and reprioritized his duties as superintendent. Lake relied more heavily on the documentation he received from the school principal and Alfano. He looked to the Board's labor negotiator and labor attorney to evaluate, adjudicate and prepare strategies pertaining to grievance processing and resolution. The collective agreement (CP-1) does not require the superintendent to conduct a hearing or meet with the Association prior to rendering a written decision on a grievance.

27. Prior to Moore's injury, Lake, as assistant superintendent and later as superintendent, met more frequently with the Association, to resolve grievances. Alfano interpreted Lake's

refusal to meet with her as a personal affront and as an effort by Lake to refuse to recognize the Association as the employee's representative. Nonetheless, Lake's determination to handle grievances "on the papers" resulted in a deteriorating relationship from Alfano's perspective.

28. At the beginning of school year 1990-1991, the parties had not reached a settlement for a successor collective agreement. Lake participated in the negotiations on behalf of the Board. The Association and Alfano perceived Lake's role in the negotiations as not assisting in the resolution of the successor agreement (7T9). On October 4, 1991, the Association conducted a vote of no confidence pertaining to Lake. Subsequently, Alfano perceived further deterioration in her relationship with Lake.

29. Lake was not the first superintendent for which the Association conducted a no confidence vote. The Association voted no confidence in Lake's predecessor superintendent, Victor Christie. Lake was also aware of other employee organizations in Monmouth County which conducted no confidence votes regarding their respective superintendents. Lake offered no remarks to anyone regarding the vote. In response to one or two Board members who asked Lake about the vote, Lake indicated that he was disappointed that he was perceived as blocking negotiations. As superintendent, Lake has experienced other instances where he had been criticized by various groups and was not angered by the no confidence vote (10T75-10T76).

30. The parties collective agreement expired on June 30, 1991. As noted above, the parties were engaged in successor collective negotiations beyond that expiration date. During the course of negotiations, Board negotiations chairperson Michael Fornino mailed and delivered information regarding the Board's health benefits position to Association Treasurer Riordan. Fornino also approached Association member Dinallo in a Foodtown and gave her Board documents regarding its health benefits position and engaged in a discussion concerning the Board's health benefits position (1T110-1T111). Fornino also went to Association member Linda Moore's home to give her the Board's health benefits proposal. Fornino told Moore that Alfano was holding up a settlement because she would not consider the Board's proposal (2T52). Fornino's actions prompted the Association to file an unfair practice charge against the Board for dealing directly with Association members rather than Association representatives designated to engage in collective negotiations with the Board.<sup>4/</sup> On November 25, 1991, the parties entered into a settlement agreement which included the following statement:

The parties further agree that positions taken in negotiations and documents exchanged by negotiators should not and shall not be discussed or interpreted by the negotiators outside the established negotiations forum to any members of the other party; e.g. members of the Board's negotiations team should not communicate with

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<sup>4/</sup> I take administrative notice of docket no. CO-92-82, the unfair practice charge mentioned above.

individual Association members concerning matters in negotiations.

31. Fornino made public statements during Board meetings to the effect that Alfano was costing the Board money because she would not allow teachers to volunteer their time to work on certain programs. Fornino stated that Alfano's refusal to allow teachers to volunteer has required the Board to cut various programs (2T53-2T54). During a September, 1991 Board meeting, Fornino commented to Association members Reiman and Peshkin-Taylor that the ongoing negotiations were similar to the holocaust in that Alfano was leading members into the ovens (2T53). However, in April 1992, when the Board voted to eliminate teacher programmers, Fornino was no longer a Board member and did not participate in that vote (10T15).

32. I take administrative notice of Neptune Township Board of Education, P.E.R.C. No. 94-79, 20 NJPER 76 (¶25033 1994), aff'd 21 NJPER 24 (¶26014 App. Div. 1994). Facts contained in the Commission's decision state that on November 25, 1991, the same day that the parties settled the Fornino unfair practice charge (CO-92-82), the parties met with a factfinder and settled all salary guides relating to the negotiations except for the teachers' guides. The parties agreed to submit to the factfinder their proposals for the teachers guides. On December 17, 1991, the factfinder issued a "post fact-finding conciliation award." The factfinder determined that:

1. The 1991-92 salary schedules shall be as proposed...by the...Association.
2. The NTEA shall have the option of accepting instead the 1991-92 schedules as proposed by the...Board.
3. That the salary guide format for the 1992-94 shall be as proposed by the...Board.
4. The parties can endeavor to agree upon a slightly different dollar distribution for 1992-93 or 1993-94, but within the Board proposed format.

If agreement cannot be had as to a different distribution but within the same Board proposed format within ten school days after the Christmas recess, then the 1992-94 guides as proposed by the Board on December 3, 1991 will be implemented.

Both parties developed new guides. At a public Board meeting held on January 15, 1992, the superintendent distributed a negotiations status report on behalf of the Board which included the consultant's modified salary guides. Those guides had not previously been transmitted to the Association. The Commission found that the Board committed an unfair practice when it distributed its modified salary guides on January 15, 1992. The Commission noted, however, the following:

There may have been some misunderstandings on the part of Board representatives. The superintendent may not have understood that the November 25 settlement agreement applied beyond the facts of the unfair practice charge it resolved, and he may not have known that the guides he released to the public on January 15 had not previously been released to the Association. The consultant may not have been aware of the settlement agreement setting some of the ground rules for negotiations. Nevertheless, the Board had an obligation to coordinate the

actions of its agents in negotiations and ultimately must take responsibility for their actions. [20 NJPER at 77.]

33. In school year 1990-1991, during the course of successor negotiations, Board member Gil Brooks asked Alfano why she was costing the Board so much money by always taking the Board to court. Brooks repeated similar comments during school year 1991-1992, and accused Alfano of being the cause of hostility between the parties resulting from the negotiations (2T49).

34. At the close of the 1991-1992 school year, Alfano met Brooks at his wife's retirement party from the Neptune School District. Brooks told Alfano that it was time for her to leave the Association presidency because she had been costing the Board so much money. Alfano responded by inviting Brooks to come to the Association office to review the matters which were proceeding to court and other pending problems (2T49-2T50).

35. In January, 1992, Dominick Loperfido was appointed to the Board. Prior to his appointment, Loperfido attended Board meetings and raised concerns regarding Board expenditures. Loperfido questioned why the Board was employing Alfano as Association president and paying her a full teacher's salary while she appeared to be working on a full-time basis filing grievances. As a Board member, Loperfido expressed the position that the Board should not be paying Alfano a salary to litigate cases against it or to take the Board to court and cost it money (2T61).



36. As a special needs district, Neptune is subject to the provisions of N.J.S.A. 18A:7D-32, which provides for the appointment of an External Review Team to examine the conditions in each district. The duties of the External Review Team are set forth, in relevant part, in the statute as follows:

In conjunction with the Department of Education, the team shall examine all aspects of the district's operations including but not limited to, education, governance, management and finance. The team shall report its findings and conclusions, including recommendations to be utilized by the district in the preparation of an education improvement plan and recommendations as to the technical assistance which the district will require in order to effectively implement the improvement plan, to the commissioner. The commissioner shall direct the district to respond to the report of the External Review Team in establishing an educational improvement plan. The plan shall be submitted to and approved by the commissioner. The commissioner shall assure that the local district's budget provides resources necessary to implement the approved plan, including the necessary technical assistance.

37. The External Review Team's report contained seven areas of investigation and twenty eight recommendations (CP-3). The EIPs show the Board's annual efforts to act upon the External Review Team's recommendations (R-20; R-21; R-22).

38. In the "organization" section of the External Review Team's report (CP-3), the team made the following finding:

It was reported that, administratively, there is inconsistency in the delegation of work assignments. Roles and responsibilities of supervisors are unclear and extensive, appear to overlap disciplines and department structures, and frequently change from year to year.

The district has had in place since 1975 an elementary organization called the QIE project (quality integrated education) which has resulted in each elementary school being designated as a magnet school for basic skills, cultural enrichment, environmental science or gifted/talented programs. The primary purpose of the magnet school design is to achieve desegregation. While the QIE project has achieved its purpose and provided some high interest and high quality programs, some teachers and administrators have indicated that the time has come to reassess the strengths and weaknesses of the magnet school concept as it currently exists. [CP-3 at p.6.]

39. The External Review Team's report included the following recommendations concerning the District's organization:

B.2 The district should assess the roles and responsibilities of supervisory personnel to avoid overlapping of work assignments and to assure that the scope of responsibility is manageable.

B.3 The district should reassess the current organization of the elementary schools to determine if an alternative model would better meet the educational needs of students at the elementary level while maintaining racial balance throughout the district. The district should consult with the Office of Equal Educational Opportunity. [CP-3 at p.7.]

40. On January 23, 1991, Lake wrote to the New Jersey School Boards Association seeking technical assistance in responding to the External Review Team's recommendations. On February 21, 1991, the New Jersey School Boards Association responded to Lake's request by forwarding a list of recommended consultants to perform an administrative organizational study (R-2).

41. In November, 1991, the Board appointed Guidelines Incorporated to conduct a study of the District's administrative/supervisory structure. Robert Savitt ("Savitt"), President of Guidelines Incorporated, served as project chairman and coordinator of the study. In its proposal, Guidelines agreed to:

Carry out a study designed for the Neptune Township, New Jersey, school district regarding:

Assessment of the Neptune Township School District administrative/supervisory/staff and submission of personnel recommendations for the most effective and economical organizational structure of the school district. [R-4]

42. In a memorandum dated November 19, 1991, Lake advised the Association that the Board had engaged Guidelines to conduct an administrative/supervisory structure study (CP-11). The memorandum contained a calendar of activities.

43. On November 21, 1991, Savitt sent Lake a memorandum requesting resource material for the study (R-5). Among the numerous resource materials requested, Savitt sought the District's table of organization.

44. On November 25, 1991, Savitt sent the Board a memorandum asking the members to complete a questionnaire to be submitted to him at a planning meeting on December 2, 1991 (R-6).

The memorandum stated:

As important background for our study, we would like your ideas on the strengths, as well as the priority needs of the school district. We welcome any suggestions you would like to make regarding the present administrative/supervisory

structure existing in your school district, and any recommendations you have for future structure.

Savitt requested such information as standard procedure prior to beginning any study. Information obtained from the Board's questionnaire helps Guidelines ascertain the major questions which the Board expects the study to answer. The Board flags strong areas and priority needs (8T17-8T18). Savitt included the paragraph quoted immediately above in his memoranda to administrators and supervisors scheduled to meet with him on December 9, 1991 and to the Association (R-7; R-9).

45. On December 5, 1991, Savitt sent Alfano, in her role as Association President, a memorandum indicating his desire to meet with her in order to obtain the Association's perspective regarding the strengths and needs of the school system (CP-12). Savitt proposed to meet with Alfano and the Association's executive committee on January 7, 1992, in order to obtain their input. Attached to CP-12 was a questionnaire which Savitt requested the Association to complete and return. Also attached was a table of organization showing teacher programmers reporting to building principals and vice principals.

46. On December 10, 1991, Lake advised Alfano that Susan Savitt, Robert Savitt's daughter and member of the consulting team, wished to meet with her to discuss her role as a school based professional resource person; teacher programmer (CP-13). Lake advised Alfano that the teacher programmers had been included in the

Board's study agenda. Lake requested that Alfano, in her role as a teacher programmer, meet with Susan Savitt on January 7, 1992.

47. On December 2, 1991, Savitt met with the Board of Education. On December 11, 1991, Savitt sent the Board and Lake a memorandum confirming that:

On December 2, a productive meeting was held with the Board of Education.

Written and oral input was provided by the Board relative to strengths and needs of the Neptune System, identification of major questions the Board wants answered in the report, and constructive ideas for administrative/supervisory changes. [R-10]

48. Attached to R-8, the planning session agenda for the December 2, 1991 meeting between Savitt and the Board, is a document entitled "Summary of Board of Education Input, Neptune Administrative/Supervisory Study." The Summary of Board of Education Input was compiled as the result of the December 2 meeting and prepared after its conclusion (8T25-8T26). In a subsection entitled "Questions for Report to Consider", the following questions were listed:

1. Why do chairpersons oversee departments in areas they know nothing about?
2. Do we need two assistant superintendents and are there other areas where we are top heavy in administration?
3. How can the Board get more input into the operation of the schools?
4. How can we avoid overlaps in various positions?

5. How can we strengthen accountability of staff to supervisors, and is there a clear-cut chain of command being followed?
6. Are job descriptions being carried out and are job expectations reasonable?
7. Does the district have an unusual number of classified students, and is the district effectively staffed to provide for the needs of those students?
8. Does the district require a full-time athletic director?
9. How do you balance the need for a district-wide curriculum and quality with site-based management?
10. Why are our teachers given favorable evaluations, yet students are testing poorly on state-wide tests?
11. Is there really the need to have general supervisors, programmers, chairpersons, principals, and vice principals?

In the subsection entitled "Suggested Administrative Structure Changes" the following comments were made:

1. Why are people in some administrative positions paid a differential as well as given release time from teaching?
2. English, math and science departments should have department heads, thus allowing the assistant superintendent for curriculum position to be eliminated.
3. Establish K-12 curriculum directors.
4. The principals should be held accountable for holding staff accountable in improving instruction.
5. Establish assistant superintendent for finance and operation in place of the Board secretary/business administrator.

6. Establish position of director of special services, curriculum and personnel.
7. Utilize department chairpersons as K-12 supervisors.
8. The central administrative structure should reflect Board committee structure-operations, curriculum and personnel.
9. Organize administrative structure to obtain site-based management.
10. Attempt to renegotiate present restrictions in current contracts.
11. Eliminate teacher programmers.
12. Have department chairpersons oversee only one department.
13. Have principals directly accountable to the superintendent.
14. Administrative structure should be adjusted to focus on improving and updating facilities.
15. Consider eliminating or condensing general supervisor positions.
16. Review grant funded programs to determine whether they should continue after grant monies are withdrawn.

49. The Summary of Board of Education Input sheet was prepared before Savitt conducted a January 6, 1992 meeting with the Board (R-13). Savitt delivered the summary to the Board during that meeting (8T114). Four or five questionnaire forms were returned to Savitt by Board members at the December 2, 1991 planning meeting (8T115; R-6). The Summary of Board of Education Input was compiled from the returned Board questionnaire forms (8T111). For an item to be listed on the summary sheet, it needed to appear on any one of the Board questionnaires submitted to Savitt (8T112).

50. As noted above, on November 21, 1991, Savitt requested resource material, including the table of organization, from the Board (R-5). On November 25, 1991, Savitt issued a memorandum to administrators and supervisors scheduling a meeting for various times during December 9, 1991 (R-7). Since Savitt was able to schedule meetings with principals, supervisors, assistant superintendents, department chairpersons and the school business administrator by November 25, 1991, I find that to know of those positions, Guidelines had to have received the table of organization by that date. Savitt used the table of organization as a framework for the study (8T18). Savitt requested that the table of organization be provided to him as early as possible so he could use it to identify the positions from which he would seek information (8T86). However, Savitt's initial review of the table of organization did not identify teacher programmers as falling within the parameters of the study. It was not until after Savitt received the Board's questionnaires that he focused on teacher programmers as part of the study (11T26-11T27). I find that as project coordinator, Savitt assigned Susan Savitt to review the teacher programmer position. Susan Savitt discharged her responsibility to investigate teacher programmer duties independently after receiving that assignment. Neither Lake nor any Board member orally directed Savitt to concoct a report justifying the elimination of the teacher programmer position (8T55-8T56). Lake told Savitt that Guidelines should use the table of organization as the basis to identify titles



to be included in the study. Lake did not direct Savitt to the teacher programmer position specifically, he merely referred Savitt to the table of organization (8T66-8T67).

51. On January 7, 1992, Susan Savitt met with the teacher programmers to discuss their job duties. During the meeting, she distributed questionnaires and requested that they be returned by January 13, 1992 (R-15).<sup>5/</sup> Susan Savitt used the questionnaires, teacher programmers' comments and job descriptions as data for the compilation of her report (12T8-12T9). The meeting between Susan Savitt and the teacher programmers lasted approximately one hour. While at the beginning of the meeting, teacher programmers exhibited some hesitation to share information, as the meeting progressed, the teacher programmers were forthcoming (12T13). Seven teacher programmers attended the meeting. During the meeting, Alfano told Susan Savitt that she was president of the Association and a teacher programmer. Prior to that time, Susan Savitt did not know that the Association president was a teacher programmer (12T39).

52. Susan Savitt's findings showed that teacher programmers' functions varied greatly among assigned schools. Programmers did whatever principals wanted them to do (12T30-12T31). While teacher programmers did not have evaluative authority, Susan Savitt found that they made decisions regarding the direction of remedial programs and engaged in what she termed

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<sup>5/</sup> R-15 indicates a date of January 7, 1991. In fact, the date is January 7, 1992.

"shared decision making" or team teaching. In that regard, Susan Savitt concluded that teacher programmers were engaged in quasi-supervisory functions (12T29-12T30). Susan Savitt relied upon comments made by programmers during the January 7 interview and questionnaires indicating that programmers coordinate various activities as evidence that teacher programmers functioned as quasi-administrators (CP-44; CP-45; 12T46-12T68).

53. Susan Savitt found that supervision of the remedial reading program and special education was fragmented. She found that supervisors in charge of multiple departments were not certified in every area for which they were responsible. Consequently, in furtherance of her assignment to design a structure that would use personnel effectively and efficiently, Susan Savitt recommended the creation of a magnet school coordinator position. The magnet school coordinator would be in charge of the magnet school program and constitute a more focused, goal oriented job. Susan Savitt felt that the Board needed specific people responsible for specific areas. She felt that teacher programmer duties were based on the needs at each particular school and, consequently, unfocused. Susan Savitt recommended the elimination of the teacher programmer position. However, she did not suggest which position would pick up the duties previously assigned to the teacher programmers (12T38-12T39).

54. Susan Savitt also recommended the establishment of a special assignment teacher position. A special assignment teacher

is an individual assigned to a project for a limit of one school year to accomplish a clearly identified goal. A special assignment teacher could perform duties that were previously assigned to teacher programmers (12T15).

55. Susan Savitt was neither advised nor directed by the Board, its administration or anyone at Guidelines to recommend the elimination of the teacher programmer position. Her recommendation to eliminate the teacher programmer position was her own (12T16).

56. On February 17, 1992, Guidelines issued the "Final Report Assessment of Administrative/Supervisory Structure" (CP-15). The report contained numerous recommendations. Among others, the Guidelines report made the following recommendations:

1. Continue the assistant superintendent, curriculum and instruction position.
2. Eliminate the assistant superintendent for personnel position and create a coordinator of personnel services.
3. Continue the business administrator/board secretary position with the following changes:
  - a. Abolish the position of director of transportation/school facilities.
  - b. Establish the position of assistant school business administrator (certificated).
  - c. Eliminate the position of assistant board secretary (non-certificated).
  - d. Authorize confidential status to the secretary to business administrator/board secretary position.
  - e. The coordinator of bookkeeper position should be expanded to be in charge of the payroll/bookkeeping department.

4. Eliminate the position of supervisor of special services and establish the position of director of special services. Modify the existing supervisor of special services position to work in a line responsibility to the director of special services.
5. Increase the number of K-12 supervisors from 4 to 5.
6. Establish a director of remedial education position.
7. Continue the administrator of athletic/co-curricular position and add to it the responsibilities of the part-time position of athletic director. Eliminate the part-time athletic director position.
8. Maintain the current structure of one building principal in each building and three vice principal positions (one in the middle school and two in the high school).
9. Eliminate four department chairpersons at the high school and three at the middle school. Continue one department chairperson at the high school and the middle school, respectively, in the guidance department. Expand the middle school guidance department chairperson positions to eleven months.
10. Establish a teacher coordinator position (four at the high school and three at the middle school). This position would be a supplementary responsibility for teachers who would carry a full-time teaching load and receive an additional stipend as teacher coordinator.
11. Eliminate the head nurse position.
12. Establish a coordinator of magnet school program position.
13. Eliminate the teacher programmer position.
14. Establish three special assignment teacher positions (one elementary, one middle school and one high school). The teacher on special assignment would be released from teaching duties

for a one year period of time to work toward a specific goal determined at the district level with input from building administration and teaching staff.

15. Hire additional clerical staff and provide new office and word processing equipment.

16. Insure that all math teachers at the middle school are certified in mathematics.

17. Add one psychologist and one social worker to establish full-time child study teams in the high school and the middle school and one full-time child study team to be shared by all elementary schools. Employ a child study team during the summer.

57. The rationale stated in the Savitt report for the elimination of the teacher programmer position was as follows:

There is one teacher programmer assigned to each elementary school, and one shared between the middle and high school. District job description states that the teacher programmer coordinates 'school based educational services and activities as determined by the building principal.' Teacher programmers' responsibilities vary greatly from school to school. In some cases, they serve as quasi assistant principals with responsibilities deviating from day to day, depending on the needs of the building principals. The teacher programmers appear to be dedicated, knowledgeable teachers, but present use does not appear consistent in each building and varies from established job descriptions.  
[CP-15]

58. The Savitt report never addressed the issue of which position(s) would pick up the teacher programmers' duties. Savitt suggested during testimony that supervisors could absorb some of the in-service training and curriculum development responsibilities that programmers performed (11T65-11T66). Savitt suggested that the

coordinator of the magnet school program might pick up the programmers instructional responsibilities but not perform actual teaching duties (11T69-11T70). Savitt suggested that the proposed special assignment teacher could pick up some of the instructional duties (11T72). It was also suggested that the classroom teacher would now meet with students individually as teacher programmers had done (11T74). Enrichment programs might be conducted by the building principal (11T77). However, Savitt conceded that the Guidelines report did not detail who or how a particular function previously performed by teacher programmers would be accomplished after the elimination of the position (11T76-11T77). Savitt noted that every modification suggested in the Guidelines report was not drafted in the context of how it would affect or relate to teacher programmers (11T80). While Savitt stated that teacher programmers were going beyond the duties set forth in their job descriptions, he could not cite a single duty which the teacher programmer performed that was not reflected in the job description (11T84).

59. On April 22, 1992, Lake submitted his reorganization plan, phase I, to the Board for school year 1992-1993. Lake developed phase I of the reorganization plan relying upon the Guidelines report, QEA External Review Team's report, meetings and other data. Lake's phase I reorganization plan for 1992-1993 was adopted by the Board in its entirety and contained the following recommendations:

1. Transfer assistant superintendent of schools, curriculum and instruction, to inactive status, medical, effective May 1, 1992.<sup>6/</sup>
  2. Transfer James Terrell to assistant superintendent of schools curriculum and instruction, effective May 1, 1992.
  3. Abolish seven teacher programmer positions for 1992-1993 school year effective June 30, 1992.
  4. Abolish one assistant athletic director position for 1992-1993 school year effective June 30, 1992.
  5. Abolish position of director of transportation/school facilities effective June 30, 1992.
  6. Establish position of assistant school business administrator and require New Jersey School Business Administrator certificate effective July 1, 1992.
  7. Establish position of systems manager effective July 1, 1992.
  8. Create position of coordinator of magnet school programs and require supervisors certificate effective July 1, 1992.
  9. Classify the secretary to the school business administrator as a confidential position and post effective July 1, 1992.
  10. Abolish position of part-time school physician.
  11. Create two to four elementary guidance positions by September 1, 1992.
60. Lake summarized his proposal as follows:

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<sup>6/</sup> This recommendation related to Assistant Superintendent Moore.

Phase 1 of the reorganization for supervisory and support staff will provide the school district with an opportunity to address a number of recommendations made by Guidelines Incorporated and provide a period of time for legal review of the seniority and tenure implications in the "recasting" of the table of organization and revisions of job descriptions for the supervisory structure envisioned by Guidelines Incorporated.

The superintendent of schools will develop a Phase II proposal to be presented to the Board of Education based upon continuing assistance of school administration district-wide and attorney Hundley before the start of the 1992-1993 school year.<sup>7/</sup> [CP-9]

61. Savitt's presence in the District increased Lake's consciousness regarding the role of supervisors and principals. Lake concluded that teacher programmers evolved into quasi-assistant principals or quasi-administrators and were performing functions which were never envisioned for teacher programmers when the position was established approximately 15 years ago. He believed these functions should be performed by the principal. He found that the teacher programmer position took on a role of its own according to the needs of the school in which the programmer was assigned and the programmer's own personality. Principals came to rely on teacher programmers to run programs like assistant principals (14T76).

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<sup>7/</sup> Due to ongoing litigation resulting from the implementation of Phase I of the reorganization plan, Phase II has not been developed.



62. Lake found that principals, supervisors and other administrators did not have a good grasp of the QIE program, generally, and what was occurring within the program, specifically. When Lake had a question regarding the QIE program, he was referred to a teacher programmer (9T24-9T25). Parents expressed concerns about differences in the way the LAUNCH program was operated at the Gables and Green Grove Schools. For example, at the Green Grove School a teacher programmer was exclusively assigned to the five LAUNCH teachers whereas at the Gables School the teacher programmer divided her time between the LAUNCH and the basic skills programs (9T25). Parents also commented on the French language experience offered at Green Grove, but that no similar program was provided at Gables (9T25-9T26). Lake noted the lack of uniformity between the LAUNCH programs at the Gables and Green Grove Schools (9T26). The LAUNCH program began to look like a school within a school and Lake had the feeling that the principals were very remote from the QIE program (9T29).

63. Lake also received complaints from non-LAUNCH teachers that the LAUNCH teachers received more resources and, in the case of the Green Grove School, were going on more field trips (9T29).<sup>8/</sup> Lake was concerned that the QIE program lacked continuity, planning, scope and sequence of activities (9T30).

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<sup>8/</sup> LAUNCH and non-LAUNCH students at the Gables School went on field trips together.

64. When the QIE program began, Ms. Jones was named coordinator, QIE program, and subsequently supervisor of QIE. She served in that position for 7 to 10 years and supervised the Magnet School Program. Jones retired in 1986. General supervisors were assigned portions of Jones' responsibilities and these aspects of the QIE program were added to the supervisors' other responsibilities. As noted above, the lack of a specific individual to oversee the QIE program created a void filled largely by teacher programmers (9T17-9T19; 9T29-9T30). However, Lake conceded that whatever administrative duties teacher programmers performed were not specifically assigned by district administrators (CP-22; 10T37). Lake compared the job descriptions of teacher programmers with that of principal, vice principal, supervisor of curriculum and instruction and Jones' job description and found overlap (9T36-9T37). On the basis of the Savitt report and his years of service in the District as supervisor, assistant superintendent and superintendent, Lake decided to recommend the elimination of the teacher programmer position as part of his reorganization plan (14T72-14T73). Lake intended the abolition of the teacher programmer position to be part of a design to enhance the educational opportunities of students in other areas of the school system (14T72).

65. Savitt included the teacher programmer position in the study primarily because that position was shown on the table of organization provided to Guidelines (CP-12; R-6; 8T18; 8T124). The

student personnel and special education services positions shown on the table of organization did not exist in school year 1991-1992, the time when the chart was sent to Savitt (7T110).

66. Alfano saw the organizational chart supplied to Savitt for the first time when she received a copy of CP-12 on or about December 5, 1991. On January 7, 1992, Alfano met with Robert and Susan Savitt at different times. During each of those meetings, she told the Savitts that the organizational chart was wrong. She told them that teacher programmers should not be included on a table of organization showing administrative and supervisory personnel. Further, she indicated to them that teacher programmers had no supervisory responsibilities and, therefore, should not be shown on the same line as department chairpersons. Alfano told the Savitts that teacher programmers did not perform administrative duties. She told Robert Savitt that the table of organization supplied to him was not the one in effect (8T65). Alfano pointed out that the assistant superintendent for curriculum and instruction (Moore's position) and the assistant board secretary/office manager were vacant (5T83).

67. Lake provided the organizational chart and a copy of the Directory and Organization Pamphlet for 1991-1992 to Savitt for the purpose of acquainting Savitt with the District's organizational structure (10T32-10T33; R-37). The organizational chart which Lake sent to Savitt was prepared by Lake's predecessor, Superintendent Dunshee, between 1987 and 1989 (10T112-10T113). The Board maintains

the organizational chart in its governance manual (10T107). The governance manual is a two volume set of school district rules and regulations adopted annually by the Board (15T52). Lake testified that he sent Savitt the latest copy of the organizational chart which was contained in his copy of the governance manual (10T31-10T32). A copy of the organizational chart used by Savitt is attached to CP-12. An organizational chart similar in composition to CP-12 was admitted into evidence as CP-48. In the upper right hand corner of CP-48 is a file code. File codes are shown on documents entered into the governance manual (15T52). CP-48 was copied from the governance manual at the time of the hearing in this matter. Organizational charts used by Guidelines in its study do not show file codes on the document (R-6; R-7; R-9; CP-12).

68. The Association introduced organizational charts from other copies of the governance manual located at various places throughout the district. The Association has a copy of the governance manual. The Association first received its copy of the governance manual in 1988 (15T121-15T122). Periodically, governance manuals are recalled by the central office for updating. To the best of Alfano's knowledge, the Association's governance manual is current (15T98-15T101). A copy of the organizational chart contained in the Association's copy of the governance manual was admitted into evidence as CP-51. Alfano cannot recall a time when the Association's copy of the governance manual contained a copy of the organizational chart which differed from CP-51 (15T121-15T122).

Alfano is not aware of any organizational chart which differs from that reflected in CP-51 (15T102). CP-51 contains a file code in the upper right hand corner. CP-51 does not show teacher programmers on the chart. The Association also submitted copies of the organizational chart from the middle school and the Shark River Hills School as CP-52 and CP-53, respectively. CP-52 and CP-53 are identical to CP-51. Alfano called the assistant superintendent for curriculum and instruction's office which maintains the superintendent's copy of the governance manual. Alfano asked the assistant superintendent's secretary to send her a copy of the organizational chart contained in the office copy of the superintendent's governance manual (15T107-15T108). That copy of the organizational chart was admitted into evidence as CP-54. CP-54 is identical to CP-51, CP-52 and CP-53. CP-51 through CP-54 differs from CP-48 in that CP-48 includes teacher programmers and department chairpersons on the chart whereas CP-51 through CP-54 do not. Additionally, CP-51 through CP-54 contain a note which reads "Note: Please review this document to determine if it reflects current district operations." CP-48 does not contain the "note". Lake speculated that the "note" appears to indicate that CP-51 through CP-54 were distributed as drafts, seeking responses (15T147).

69. The External Review Team's report noted a need for enhanced delivery of guidance services. The report recommended increased guidance services provided to "at-risk" students in the high school and the delivery of increased guidance services at the

elementary school. At the time the External Review Team's report was issued, there was one guidance counselor servicing five elementary schools containing 1,800 students. For some time, Lake had identified a need for enhanced guidance services and wanted to increase the level of services provided to the District's students. Neither Lake nor the Board raised guidance issues with Savitt. During the course of Savitt's investigation, comments were made to him regarding a need for guidance services to be provided during the summer in an effort to reduce the backlog experienced by the child study team. While guidance services were beyond the scope of the Savitt report, and Savitt did not focus on that issue, he did recommend the hiring of additional staff to bolster child study team services and recommended that the child study team and guidance chairpersons work during the summer.

70. As part of the reorganization plan, phase I, Lake recommended and the Board approved the hiring of four new elementary guidance counselors and one special needs counselor for the high school. He found that socioeconomic conditions had changed in the District resulting in more single parent families, foster students and more frequent incidences of student fighting resulting in disciplinary suspensions. Lake concluded that resources needed to be directed toward early intervention at the kindergarten through 5th grade levels by guidance staff (15T62-15T63). Lake considered the decision to hire the additional guidance staff and eliminate the teacher programmers as educational and not financial decisions

(15T64-15T65). Nor was the elimination of teacher programmers related to the decision to create additional guidance staff positions (15T84).

71. Alfano was certified in guidance and applied for the newly created guidance positions (3T101-3T102). Alfano believed that these non-classroom positions would provide her with the scheduling flexibility which she sought in order to fulfill her representative responsibilities for the Association as she had as a teacher programmer (3T103). Alfano had no prior experience as a guidance counselor (5T70).

72. On July 21, 1992, Alfano met in a group interview for the elementary guidance counselor position. The group of interviewers consisted of Supervisor of Special Services Thompson, Assistant Superintendent Terrell, Elementary School Principals Sweeney and Edelson and Superintendent Lake. Each of the interviewers completed an interview report (R-38H, R-38I, R-38J, R-38K, R-38L). No one on the interview team recommended that Alfano be offered the elementary guidance counselor position (10T51-10T53; R-38H through R-38L).<sup>9/</sup>

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<sup>9/</sup> Sweeney's interview report was inconclusive (R-38K). She did not mark the report to show whether the applicant should or should not be hired. She marked "definitely above average" in the "overall" category which asked for Sweeney's interview impression. The available ratings in the overall category are definitely unsatisfactory, substandard, average, definitely above average, and outstanding.

73. Alfano also applied and was interviewed for the special needs counselor position located at the high school. The interview team consisted of Thompson and Supervisor of Curriculum and Instruction Hewitt. The interview team interviewed six applicants, asking each applicant the same questions (13T10; R-38T). Neither Thompson nor Hewitt recommended Alfano for the special needs counselor position (10T55; 10T57; 13T11-13T12; R-38X; R-38Y). The candidate who was top rated by the interview team was recommended to the Board to fill the position and hired (10T55; R-38N; R-38P; R-38Q).

74. In August, 1992, a final elementary guidance counselor position opened at the Gables School. Alfano applied. The interview committee was comprised of Thompson, Hewitt and Gables School Principal Marshall (R-38AC). The committee interviewed seven candidates. Marshall did not invite Alfano to interview with the Committee because her July 21, 1992 interview for elementary guidance counselor was unsuccessful (R-38A).

75. Alfano applied for the newly created substance awareness counselor position. Although the position was advertised and Alfano thought interviews occurred, no interviews were, in fact,

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9/ Footnote Continued From Previous Page

Sweeney's only comment under the "type of work for which applicant appears best qualified" category states: "Applicant has the qualifications for the job and experience working with parents." Sweeney was Alfano's principal at the Green Grove School.



conducted. The position was never filled because the federal government reduced its funding level for the position from 75% to 25%. Lake decided not to establish the substance awareness counselor position (10T60-10T61).

76. The June 30, 1992 elimination of the teacher programmer position was not the first time the District acted to eliminate teacher programmers. In April, 1991, teacher programmers were advised that they would not be offered renewal contracts for the 1991-1992 school year due to fiscal exigencies. The District implemented a reduction in force effecting teacher programmers and other positions which resulted in teacher programmers bumping into classroom teacher positions causing seven less senior teachers to leave the District (9T60; 14T105-14T106).

77. Neptune became a special needs district under QEA in school year 1991-1992 (14T100). That same school year, the State imposed a generalized funding reduction in education on a state-wide basis. As a special needs district, Neptune's state funding, nonetheless, increased over the 1990-1991 school year, however, not the magnitude expected (14T101-14T102). The State Department of Education notified Neptune that it was making \$25 million available state-wide in supplementary school aide. To obtain the aid, a school district had to file an application showing that it was a special needs district which experienced staff reductions and wanted the money to implement major educational reforms and/or enhance educational services (9T64; 14T104). The supplementary aid was available for only school year 1991-1992 (9T68).

78. Lake drafted the application for supplemental state aid (R-29). Lake stated the following:

The Neptune Township Board of Education is desirous of seeking funds to facilitate the following objectives for the 1991-1992 school year.

1. Reinstate 1990-1991 educational programs and services eliminated from the budget for the 1991-1992 school year.
2. Implement a portion of the Special Needs District Educational Improvement Plan.
3. Implement major educational reforms.

In the "consequence if not funded" section of Lake's application, he stated the following:

The Neptune Township School District is confronted with an overwhelming educational and fiscal challenge for the 1991-1992 school year. The Neptune School District is a unique urban system that has been monitored on two separate occasions and has level I status. If the State Department of Education does not come to the assistance of the Neptune Township School District, the integrity of the educational programs of the District will be seriously damaged. It is requested of the Neptune Township Board of Education that our Special Needs status be considered as the Commissioner of Education prioritizes the projects for funding under the supplemental state aid QEA provision.

The application sought, among other things, the reinstatement of the teacher programmer positions.

79. On August 30, 1991, the District was advised that it was awarded \$1,207,297 in supplemental state funding, which included \$379,426 to rehire seven teacher programmers for school year

1991-1992 (CP-49). The balance of the money was directed toward funding other programs.

80. On January 29, 1992, the Board approved its educational improvement plan for 1992-1993 (R-21). In the "narrative summary" included in R-21, it states:

The Neptune Board of Education made application for QEA supplemental funding during the Spring of 1991. The Board of Education received notification from the State Department of Education that they received \$1.2 million of supplemental funding to implement parts of its quality education act improvement plan for the 1991-1992 school year and to reinstate a number of educational programs that were eliminated due to budgetary constraints during the formation of the 1991-1992 school budget. The goal of the school district will be to carefully analyze the impact of the \$1.2 million in supplemental funding has had on a number of new educational initiatives that were undertaken during the 1991-1992 school year and to recommend to the Board of Education that said initiatives will be continued for the 1992-1993 school year and be funded under local QEA funding. It should be noted that the 1991-1992 supplemental funding provided for full day kindergarten programming, alternate school educational services middle school/high school, teacher/programmer services, paraprofessional services, and the improvement of the school facilities at the Ridge Avenue Elementary School. It should also be noted that overall the initiatives undertaken during the school year were greatly enhanced by the infusion of QEA supplemental funding and to that end the challenge will be to reallocate local Board of Education funds to continue the valuable programs initiated during the 1991-1992 school year.

The report went on to state the following:

The 1992-1993 educational plan will provide professional expertise and local school funding to enhance the curriculum base of the elementary schools in the reading and mathematics area,

continuation of the full day kindergarten program district-wide, increasing the number of pre-school educational classes by one section district-wide, improving parental access to the planning and management activities of the school system, strengthen the site based planning activities of the district, and to continue the alternate educational program for disaffected youth at the middle school and high school levels and increase staff and parent in-service opportunities.

Thus, while R-21 indicates that the supplemental funding allowed for the continuation of teacher programmer services, it made no mention of continuing such services for the 1992-1993 school year.

81. Pursuant to the provisions of the Quality Education Act, staff from the Department of Education, Division of Urban Education, again visited the district from April 2 to April 10, 1992, to verify the implementation of the 1991-1992 educational improvement plan. On June 11, 1992, Judith Lawrence, Director, Division of Urban Education, State Department of Education, sent Lake a letter detailing the results of the verification visit (R-30). The letter defined certain terms as follows:

Findings: Conclusions reached, as a result of the verification visit, regarding the implementation of the approved objective.

Recommendations: The course of action required of the District to ensure the implementation of an approved objective, activity and/or fiscal allocation.

Suggestions: Comments put forth to enhance the quality of the program, to challenge the District towards further improvement; District response is not required.

In the section pertaining to the rehiring of teacher programmers for the 1991-1992 school year, R-30 stated the following:

Findings: Seven teacher programmers were rehired. Their responsibilities include peer coaching, curriculum support and program management, much in line with the master teacher concept.

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Suggestion: The District should continue to support efforts involving peer coaching, curriculum support and program management in order to minimize the isolation of teachers in classrooms.

I find that the "Suggestion" stated in R-30 directly relates to teacher programmers.

82. When the Board decided to eliminate teacher programmers in June, 1992, it sent no correspondence to the Department of Education advising of its action. The Board is not required under the QEA or otherwise to notify the Department of Education of its decision to abolish any position or program. The 1992-1993 EIP (R-21) did not indicate that the Board eliminated teacher programmers (10T103; 14T116; 14T118-14T120).

83. On July 16, 1992, Lake sent Alfano a letter stating:

Please be advised that as per our meeting of June 3, 1992, a full explanation was provided in the matter of the abolishment of unit positions. The rationale for the Board of Education's action is one that has a strong educational and financial justification based upon the challenges we face in meeting the educational needs of our pupils.

[CP-23]

84. In conducting his study, it was not one of Savitt's objectives to identify cost reductions for the Board (8T46). The Guidelines report showed a \$300,000 savings resulting from the elimination of teacher programmers (CP-15). Savitt arrived at that amount by using teacher programmer salaries and including stipends and benefits (8T47). No explanation was proffered concerning the reason why Savitt's figure differed from the \$379,426 amount ascribed to teacher programmers in the District's receipt of supplementary aid in school year 1991-1992 (CP-49). Savitt did not attempt to identify the actual dollar savings which the Board would realize from the elimination of the teacher programmer position after exercising bumping rights (11T86-11T89). The prospect that the District might save money played no role in Susan Savitt's decision to recommend the elimination of teacher programmers (12T46).

85. When teacher programmers were eliminated at the end of school year 1990-1991 for budgetary reasons, employees serving in the teacher programmer position exercised their seniority rights to bump into positions held by less senior employees, ultimately resulting in the elimination of seven teachers. The record contains no evidence that when teacher programmers were eliminated pursuant to the June, 1992 reorganization plan, phase I, that similar bumping occurred. The evidence indicates that the only savings realized by the Board from the abolishment of the teacher programmer position resulted from the elimination of their stipends (3T57). Under the

collective agreement, teacher programmers would receive a \$1,667 stipend in school year 1992-1993 (CP-1). The elimination of seven teacher programmers saved the Board \$11,669 in school year 1992-1993 and \$12,544 for school year 1993-1994.<sup>10/</sup>

86. The Board had a finite amount of money in the budget. By eliminating teacher programmers those dollars could be directed in a different direction (14T69-14T70). At the same time that the teacher programmers were eliminated, the District moved from a half day to a full day kindergarten program requiring the addition of five or six teachers (7T75), expanded the pre-school program from 30 to 90 students requiring the addition of two teachers (7T75); purchased new textbooks costing \$200,000 (7T81), hired two teachers for an in-school suspension program at the high school and middle school (7T82); instituted an alternative education program resulting in the hiring of two teachers at the high school and the middle school (7T83-7T84), and instituted various other programs. While everything was considered in the formulation of the overall District budget, the elimination of the teacher programmers was not financially motivated, nor did it result in any significant economic savings to the District (15T84-15T87).

87. On April 29, 1992, shortly after the Board approved the elimination of the teacher programmer positions, Lake sent the

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<sup>10/</sup> The \$12,544 is based upon an assumption that seven teacher programmers would have been employed for a full school year in 1993-1994. The collective agreement shows a stipend of \$1,792 for school year 1993-1994 (CP-1).

teacher programmers a letter asking them to advise him of any teaching or school assignment preference they might have for school year 1992-1993 (R-34). Lewis, Knight and Platt-Lacey responded to Lake with preferences. The Board accommodated their requests (9T83-9T84). While Alfano applied for the newly-created guidance positions, she never specifically responded to R-34 (15T89-15T90).

88. After the elimination of the teacher programmer position, the employees were reassigned to other positions in the District. Bullock was reassigned to a self-contained classroom in the Somerfield School. Platt-Lacey was reassigned to teach basic skills at the Ridge Avenue School. Saunders applied for and was selected to fill the magnet school coordinator position.<sup>11/</sup> Knight was reassigned to teach basic skills at the Somerfield School (5T39-5T41).

89. The Board must approve teacher transfers between buildings (14T95). Lake recommended that Alfano be transferred to the middle school for school year 1992-1993. Prior to becoming a teacher programmer, Alfano taught language arts at the 5th and 6th grade levels. Lake knew that Alfano never taught 7th or 8th grade in the District (14T92-14T94). The decision to assign Alfano to teach language arts in the middle school was made by the middle school principal and did not require Lake's personal approval

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<sup>11/</sup> Alfano did not apply for the magnet school coordinator position because she is not certified as an administrator or supervisor (5T41).



(14T94-14T95). Alfano's middle school schedule consisted of five consecutive periods of language arts beginning at first period. This schedule allowed for Alfano's lunch, preparation and duty periods to be clustered at the end of the day (10T18). Under her schedule, Alfano is available between 1:00 and 2:00 p.m. to conduct Association business (3T78; 5T65).

90. Alfano's class schedule was modeled after Kevin Cofield's schedule (R-35; R-36). Cofield was Alfano's predecessor Association president (10T21). Lake reviewed Cofield's middle school class schedule before formulating Alfano's (10T22). The only difference between Cofield's and Alfano's class schedules is that Cofield was assigned a homeroom, Alfano was not (10T24-10T25).

91. As a teacher programmer, Alfano's teaching schedule was nearly completely flexible. She was assigned to only 12 or 13 classes per week compared with 25 classes per week as a language arts teacher in the middle school. Further, as a teacher programmer, Alfano did not have her own students, but went into other teachers classrooms on those occasions when she worked with students. As a teacher programmer, when Alfano was scheduled for class and a matter arose for which she was called upon to attend on behalf of the Association, the classroom assignment was routinely cancelled (3T77). To leave the school, Alfano was only required to inform building administration that she had to conduct Association business; no other permission for release was needed (3T99-3T100). Consequently, Alfano was, in effect, always available throughout the

school day to engage in Association activity. Also, Alfano had a great deal of access to the telephone (3T77).

92. When Alfano was assigned to teach language arts in the middle school, she had a daily, individualized responsibility to teach students assigned to her classes. No other teachers were available to cover her language arts classes and she no longer enjoyed the flexibility which came along with not having fixed classroom assignments (3T78).

93. Article V, paragraph I, Association Rights and Privileges (CP-1), states the following:

Two persons from the school system designated by the Association, one of whom may be the president, annually shall be released from their non-teaching assignments to work on Association school related business. These persons shall submit a request annually to the superintendent and upon his approval, they shall be granted the necessary release time to function as liaisons to the superintendent, and to work on contract administration.

Under no circumstances shall this time be used to interfere with the normal routine and function of the schools, nor shall there be any additional cost incurred to the Board of Education.

The superintendent will be notified of the designees, in writing, no later than June 1 of the year preceding their functioning in the position.

On May 14, 1992, Lake advised Alfano that the Association's request for her to be designated as one of the employees under Article V, paragraph I, was granted (CP-34).

94. Henry Nonnenberg, Association second vice president, substituted for Alfano if she was not available. Nonnenberg handled grievances and other problems on a district-wide basis, however, focused on issues arising in the high school (7T50-7T51). Nonnenberg did not experience problems contacting Alfano while she served as a teacher programmer (7T52). With Alfano serving as a classroom teacher, on those occasions when Nonnenberg wished to reach her, he has had to leave a message with the building secretary and wait for Alfano to call him back. Nonnenberg has been hesitant to proceed on matters without first consulting with Alfano. Since Alfano has been assigned as a classroom teacher, no specific emergencies have arisen where Nonnenberg has had to reach Alfano but was unable to do so (7T52).

95. After the elimination of teacher programmers, duties which they performed were distributed among other employees. Teacher programmer duties pertaining to the selection and/or deselection of students for the LAUNCH and basic skills programs were assigned to the magnet schools coordinator. Also, teacher programmer responsibilities to collect and disseminate test score data for LAUNCH and basic skills students, interviewing and communicating with parents, meeting with classroom teachers to design enrichment programs, arrange field trips, order supplies, conduct the spelling bee, produce the monthly parents calendar, bring in resource people and gather enrichment information, have all been assigned to the magnet schools coordinator (3T58-3T65). At the

Ridge Avenue School, teacher programmer duties involving English as a second language, basic skills, grant writing, grant oversight and student placement were taken over by the principal (3T65-3T66). At the Green Grove School, the principal rather than the teacher programmer completed the basic skills assessment forms (3T66). Department chairpersons at the middle school and high school took over teacher programmer responsibilities involving test coordination and scheduling (3T66-3T67; 5T55). Neither the magnet schools coordinator, principal nor department chairperson title is included in the collective negotiations unit represented by the Association (3T58). The Board never sought to negotiate with the Association concerning the reassignment of work previously performed by teacher programmers to non-unit personnel (3T67).

96. Some teacher programmer duties were picked up by other employees included within the collective negotiations unit represented by the Association. Guidance counselors were required to fill out forms showing student test scores for advanced and basic skills programs. Previously, teacher programmers prepared these forms (3T69). After the elimination of teacher programmers, guidance counselors picked up duties involving the collection and dissemination of student selection forms for magnet schools, and distributing, collecting, organizing and grading the California Achievement Test forms (3T69-3T70; 5T55-5T56). Teachers are now responsible for organizing their own field trips. Secretaries may be called upon to contact bus companies to arrange field trip

transportation (3T70-3T71). Self-esteem and student achievement awards are now given by teachers rather than teacher programmers (3T71). After the elimination of teacher programmers, basic skills teachers must complete paperwork, provide small group and individual student instruction to the extent given, administer basic skills tests to new students, prepare student assessment forms, prepare the individual student inventory profile and prepare update, conference and progress reports (3T72). Teachers, rather than teacher programmers, must find and arrange for enrichment speakers to address their class on special topics (3T73).

97. Alfano did not know whether the teacher programmer duties assigned to other unit employees fell within those employees' job descriptions. Duties regarding form preparation and phone calls relating to the arrangement of field trips assigned to secretaries fell within the secretaries' job description. None of the work performed by unit employees after the elimination of teacher programmers was done outside of the normal contractual work day. The Association filed no grievances regarding work reassigned to unit employees after the elimination of teacher programmers (5T55-5T60).

#### ANALYSIS

The New Jersey Supreme Court has set forth the standard for determining whether an employer's action violates section 5.4(a)(3)

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

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

There is no direct evidence that Alfano's protected activity was a substantial or motivating factor in the Board's

determination to eliminate the teacher programmer position. Consequently, the Charging Party must rely on circumstantial evidence.

Alfano was Association president and filed numerous grievances on behalf of herself, other individual employees and the Association. Alfano has met with Board administrators, including the superintendent, to discuss grievances and negotiate settlements. Alfano is actively involved in the grievances presented in arbitration and has attended arbitration hearings. Alfano has also served as the Association's negotiations chairperson. Alfano is well known to the Board as an aggressive Association advocate. Clearly, Alfano was engaged in protected activity and the employer knew of this activity.

Board members Brooks, Fornino and Loperfido made comments to Alfano directly related to her participation in protected activity. It is significant that these comments did not merely indicate disagreement with positions of the Association, but were directly targeted at Alfano's actions as Association president. During successor negotiations for the 1991 collective agreement, Fornino negotiated directly with members of the Association. Less than two months after the parties entered into a settlement agreement resolving the unfair practice charge filed by the Association resulting from Fornino's actions, the Board again engaged in direct dealing with unit members by disseminating salary guides to employees and members of the public during a Board meeting

before it provided the Association with a copy of its proposal. I find that the Board members' comments to Alfano and the Board's commission of an unfair practice so shortly after entering into a settlement agreement on a related issue constitutes a sufficient basis to infer the existence of an environment which was hostile toward the exercise of protected rights, specifically, Alfano's.<sup>12/</sup> Consequently, I find that the Association has proven that protected activity was a substantial or motivating factor in the Board's decision to eliminate the teacher programmer position.

The primary reason asserted by the Board for the elimination of the teacher programmer position was because of problems identified with the Magnet School Program. Some of these problems were perceived by the External Review Team during its October, 1990 visit to the District. A recommendation contained in the November, 1990 External Review Team's report suggested that the District review its organizational structure, specifically including its supervisory assignments, and also review the magnet school concept.

Superintendent Lake was also aware of problems within the Magnet School Program. Parents expressed concerns to Lake regarding

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<sup>12/</sup> I recognize that Fornino was no longer a Board member in April, 1992, when the Board voted to eliminate the teacher programmer position. However, Fornino was a Board member at the time he made his comments to Alfano and when Guidelines was retained to study the Board's administrative/supervisory structure. Fornino was a Board member when Savitt met with the Board on December 2, 1991, for the purpose of gathering Board input.



differences in the LAUNCH program at the Green Grove and Gables Schools. Further, Lake found that when he raised questions to principals, supervisors or other administrators regarding the QIE program he was referred to a teacher programmer. Lake concluded that those employees with the oversight responsibilities of the QIE program did not have an adequate grasp of the program's operations. Lake's independent concerns with problems identified in the QIE program coupled with the recommendations contained in External Review Team's report, prompted him to obtain Board authorization to retain a private consultant to study the district's administrative/supervisory organization. The Board retained Guidelines Incorporated to conduct the study of its organizational structure.

The manner in which teacher programmers were included in the Guidelines study is suspect. Some time between November 21 and November 25, 1991, Savitt received resource material from the Board of Education which included a table of organization. Savitt used this resource material, especially the table of organization, to identify the parameters of the study. By November 25, 1991, Savitt identified positions to be studied and sent a memorandum to principals, supervisors, assistant superintendents, the department chairpersons and the school business administrator requesting that they meet at various times during December 9, 1991. By not inviting the teacher programmers to meet, Savitt's initial review of the table of organization did not identify teacher programmers as falling within the parameters of the study.

Savitt met with the Board of Education on December 2, 1991. One of the purposes of this early meeting with the Board was to obtain the Board's input regarding major questions which the Board expected the study to answer. The Board provided Savitt with the input he sought. Included among the Board's responses were questions regarding whether there was a need to continue teacher programmers and certain other positions. One of the many suggested administrative structural changes made to Savitt by the Board was the elimination of teacher programmers. The Board's questioning the continuation of teacher programmers was done in concert with similar questions concerning a broad range of Board titles and programs. Thus, while I draw no negative inferences from the Board questioning the status of teacher programmers with the consultant, it is clear that Guidelines first focused on teacher programmers as a result of the December 2, 1991 meeting and from the fact that teacher programmers were included on the table of organization.

Of the many tables of organization included in the record, it is unclear which, if any, was the one in affect during school year 1991-1992. What is clear, however, is that the table of organization sent to Savitt was not a copy of the official Board document. Savitt's organizational chart did not contain a file code in the upper right hand corner which, as made clear by the testimony, was required in order to constitute an official Board document. Savitt's copy of the organizational chart showed teacher programmers reporting to principals. Another organizational chart,

CP-48, also showed teacher programmers reporting to the principal. However, copies of the organizational chart submitted by the Association as CP-51, CP-52, CP-53 and CP-54 show file codes in the upper right hand corner yet do not show teacher programmers as even being included on the chart. As the result of a "note" typed across the top of CP-51 through CP-54, Lake speculated that those copies were merely drafts. However, the Board never satisfactorily explained why CP-48 differed from the copy of the organizational chart provided to Savitt or from CP-51 through CP-54.

Nevertheless, subject to the information supplied by the Board, the evidence shows that the Guidelines report was a credible, independent study of the District's organizational structure. Although the Board provided Savitt with information designed to guide him to include teacher programmers in the study, neither the Board, the superintendent nor any administrator ordered Savitt or any of the other consultants employed by Guidelines to issue a recommendation calling for the elimination of teacher programmers.

Although Susan Savitt was told to review teacher programmers as part of the study, her recommendations were independently formulated and not tainted by any Board perspective. Susan Savitt found that teacher programmers made decisions regarding the direction of remedial programs. They performed duties involving program coordination which resulted in their functioning as quasi-administrators. Also, Susan Savitt found that teacher programmer assignments varied among the schools causing their jobs

to be unfocused and fragmented. Susan Savitt's findings comported with Lake's concerns about the differences found in the LAUNCH program. Thus, it was argued by the Board that by resolving the problems identified by Lake and referenced in the Guidelines report, a higher level of educational services could be delivered to the students in a more efficient manner.

Lake realized that the functions performed by teacher programmers had evolved over the years and were not those which were envisioned when the job was created fifteen years ago. The Guidelines report lent objective support to the determination to eliminate teacher programmers. I find that the facts concerning the problems existing in the QIE program constitute a legitimate non-pretextual basis for the Board's determination to reorganize that program. Consequently, the record in this case demonstrates that both motives unlawful under our Act and other lawful motives contributed to the decision to eliminate teacher programmers. Thus, this being a "dual motive" case, the outcome rests upon whether the Board can prove, by a preponderance of the evidence on the entire record, that the decision to eliminate teacher programmers would have taken place absent the protected conduct.

Lake testified that funds obtained from any source, no matter how little, were used to formulate the District-wide budget. However, it is clear that the elimination of teacher programmers resulted in only minimal savings. Further, Lake testified, and the Board concedes in its post hearing brief at page 18, that the

Board's reorganization plan which included the elimination of teacher programmers "...was not implemented to affect any economic savings."

In April, 1991, the Board moved to eliminate teacher programmers due to budget constraints. I do not infer from the April, 1991 Board action, that teacher programmers were considered readily expendable by the Board. There is no evidence to support this view. Moreover, upon the announcement by the State Department of Education that supplementary aide was being made available to special needs districts, the Board immediately acted to obtain funding to reinstate teacher programmers. Nearly a third of the supplementary funds provided to the Board by the Department of Education was to support the reinstatement of the teacher programmers. The Board told the Department of Education that if it did not come to its financial assistance "...the integrity of the educational programs of the District will be seriously damaged." The Board was motivated to apply for supplementary aid in the first instance in order to enhance its educational services.

While some of the problems associated with the QIE program were resolved after the Board instituted its reorganizational plan, phase I, I do not conclude that the Board achieved its goal to deliver a higher level of educational services. The elimination of teacher programmers has resulted in the elimination of student clubs in the Green Grove School, the extensive film program, resource speakers, the art enrichment program and other activities conducted

by teacher programmers. Student field trips and play productions were greatly reduced. Additionally, the elimination of teacher programmers had a negative impact on the basic skills program. Basic skills teachers were called upon to conduct student testing, complete required paperwork and develop class schedules resulting in less time available for student instruction. Basic skills teachers cancelled classes in order to complete functions previously performed by teacher programmers. Small group and individual student instruction, computer literacy activities and math and reading laboratories were also significantly reduced or eliminated.

The 1992-1993 educational improvement plan (R-21) recognized that the 1991-1992 supplemental funding provided to the District allowed for the continuation of teacher programmer services, among other things. The report goes on to indicate that the 1992-1993 educational plan provided for "...professional expertise and local school funding to enhance the curriculum base..." of a variety of ongoing programs. The educational improvement plan made no mention of continuing teacher programmer services beyond the 1991-1992 school year. However, the educational improvement plan was adopted on January 29, 1992, some three weeks prior to the issuance of Guidelines report and approximately three months before Lake submitted his reorganization plan, phase I, to the Board for its consideration.

The Savitt report contained numerous recommendations. The reorganization plan, phase I, contained only eleven recommendations,

two of which merely involved transfers concerning the assistant superintendent, curriculum and instruction, and some other minor personnel actions. While I am not suggesting that the Board is required to adopt all or any of the consultants recommendations, the number and nature of recommendations which the Board has adopted is a consideration in my determination of whether the teacher programmers would have been eliminated absent any protected conduct. The Board's decision to not implement Guidelines' recommendations such as increasing the number of K-12 supervisors, eliminating department chairpersons and creating teacher coordinator positions, establishing special assignment teachers, or adding a psychologist and a social worker to the child study team and extending the team's work year into the summer, clearly runs counter to the Board's assertion that its actions were designed to deliver a higher level of educational services.

I have recognized that problems existed in the QIE program resulting from the lack of uniformity in the services rendered by individual teacher programmers. Lake believed that the lack of uniformity evolved from the void that was created when Jones left the District in 1986. In 1992, pursuant to Lake's recommended reorganization plan, the Board moved to correct the problem by establishing the magnet schools coordinator position which mimicked Jones' duties. Since teacher programmers were merely responding to the vacuum created by Jones' departure, and since financial considerations were not a factor in the elimination of teacher

programmers, the Board proffered no explanation concerning why it did not simply recreate Jones' supervisory position and direct that person to unify the LAUNCH program and reestablish control over the teacher programmer duties and activities at the various schools.

Based on the evidence contained in the record, and by balancing the Board's actions against its expressed goals, I find that the Board has not proved by a preponderance of the evidence that teacher programmers would have been eliminated absent Alfano's protected conduct. The table of organization provided to Guidelines is suspect and the multiplicity of organizational charts was never explained. The Board pointed Guidelines toward the teacher programmer position to ensure its inclusion in the study. The Board indicated in its application for supplementary aide that teacher programmers were an integral part of its delivery of educational services to the students, yet never attempted to correct some of the problems identified in the magnet school program by means less drastic than eliminating the title. Overall, the level of educational services delivered to students in the LAUNCH and basic skills programs was not enhanced. The financial savings derived from the elimination of teacher programmers was not crucial to the implementation of the other programs instituted by the Board during school year 1992-1993. The Board would not have been prevented from expanding the guidance program, starting full-day kindergarten, enhancing its alternative education program, etc., by retaining the teacher programmer position. Further, the 1992-1993 EIP, approved



by the Board before the Guidelines report was issued, already foretold of the elimination of teacher programmers. By eliminating teacher programmers in retaliation against Alfano's exercise of rights guaranteed by the Act, the Board has violated Section 5.4(a)(3) and, derivatively, (1).

The Association alleges that the Board violated section 5.4(a)(5) of the Act when it assigned certain work previously performed by teacher programmers to unit personnel to effectuate economic savings. The Association contends that some of the duties performed by teacher programmers prior to their elimination were assigned to unit employees who were not paid any stipend or were paid a stipend less than that paid to teacher programmers.

The Commission has consistently held that "management has a non-negotiable prerogative to make assignments within a negotiations unit based on its assessment of employee qualifications." Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663, 664 (¶14287 1983). See also State of New Jersey (Montclair State College), D.U.P. No. 87-2, 12 NJPER 575 (¶17217 1986); Essex County College, P.E.R.C. No. 83-78, 9 NJPER 49 (¶14024 1982); Perth Amboy Board of Education, P.E.R.C. No. 83-36, 8 NJPER 573 (¶13264 1982); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982); Tp. of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982). The record contains no evidence that teacher programmer duties which were assigned to other unit employees fell outside of the respective employees' job descriptions. None of the work performed by unit employees after

the elimination of teacher programmers was done outside of the normal contractual work day. Consequently, I find that the Board did not violate the Act when it reassigned duties previously performed by teacher programmers to other unit employees.

The Association alleged that the Board violated section 5.4(a)(5) of the Act when it transferred work previously performed by teacher programmers to non-unit personnel such as principals, department chairs and other supervisors. In Hudson County, I.R. No. 97-6, 22 NJPER 383, 384 (¶27204 1996), the Commission Designee stated the following:

In City of Jersey City and Jersey City POBA and Jersey City PSOA, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), [app. and motion for stay pending App. Div. Dkt. No. A-6290-95T2], the Commission analyzed the state of the law regarding preservation of work. This issue involves questions of negotiability that have been carefully analyzed under the balancing test set forth by the Supreme Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982). When the employer is merely revamping personnel assignments and the same amount of work is being performed, negotiations over preserving unit work would not, in general, significantly interfere with any governmental policy determinations.

There have been situations, however, where an employer has exercised its managerial right to reorganize the way it delivers government services and, as a consequence, could transfer job duties to non-unit employees without incurring a negotiations obligation. See e.g., Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (Employer had managerial prerogative to consolidate police and fire dispatching functions and employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (Board had prerogative to reorganize supervisory structure for custodial employees with

consequence that some unit work was shifted outside negotiations unit); see also Nutley Tp., P.E.R.C. No. 86-26, 11 NJPER 560 (¶16195 1985) (Under particular circumstances and in absence of exceptions, assignment of school crossing guards rather than police officer to traffic safety unit did not constitute an unfair practice).

In the instant matter, while I have found that the reorganization eliminating teacher programmers was motivated by union animus, the assignment of duties to non-unit employees was the direct result of the change in the organizational structure. Consequently, the Board incurred no negotiations obligation when, pursuant to the effectuation of the reorganization, it assigned some of the duties previously performed by teacher programmers to non-unit personnel.

Accordingly, based upon the entire record and above analysis, I make the following:

#### CONCLUSIONS OF LAW

1. The Board violated Section 5.4(a)(3) and, derivatively, (1) when it eliminated teacher programmer positions in retaliation against Lucille Alfano's exercise of her rights protected by the Act.
2. The Board did not violate Section 5.4(a)(5) when it assigned duties formerly performed by teacher programmers to other employees included in the collective negotiations unit represented by the Association.

3. The Board did not violate Section 5.4(a)(5) when it assigned duties formerly performed by teacher programmers to other employees whose titles are not included in the collective negotiations unit represented by the Association.

RECOMMENDED ORDER

I recommend that the Commission **ORDER:**

I. That the Board cease and desist from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by eliminating the teacher programmer position in retaliation against Lucille Alfano's exercise of her rights protected by the Act.

B. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by eliminating the teacher programmer position in retaliation against Lucille Alfano's exercise of her rights protected by the Act.

II. That the Board take the following affirmative action:

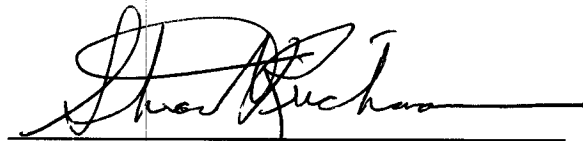
A. Survey the currently employed former teacher programmers regarding whether they wish to be reinstated into a teacher programmer position. Those employees indicating that they wish to be reinstated into a teacher programmer position shall be assigned to such position beginning with the next full school year.

B. The teacher programmers who were reassigned in June, 1992, pursuant to Board action, shall be paid the stipend as reflected in the collective agreement (CP-1) for school years 1992-1993 and 1993-1994. Former teacher programmers shall be paid a stipend for each school year subsequent to the 1993-1994 school year or until they are reinstated or refuse the offer of reinstatement into a teacher programmer position either in the amount reflected for teacher programmers in a successor collective agreement or, if no stipend is contained in such successor agreement, in the amount provided for school year 1993-1994. Former teacher programmers which left the Board's employ subsequent to June 30, 1992, shall receive a pro rata stipend payment up to the time of their departure.

C. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon their receipt thereof and after being signed by the respondent's authorized representative, shall be 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.

D. Notify the acting chair of the Commission within twenty (20) days of receipt what steps the respondent has taken to comply herewith.

The remaining allegations of the complaint are dismissed.

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

Stuart Reichman  
Hearing Examiner

Dated: December 19, 1996  
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,

H.E. NO. 97-15

### We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by eliminating the teacher programmer position in retaliation against Lucille Alfano engaging in protected activity.

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by eliminating the teacher programmer position in retaliation against Lucille Alfano engaging in protected activity.

WE WILL immediately survey the currently employed former teacher programmers regarding whether they wish to be reinstated into a teacher programmer position. Those employees indicating that they wish to be reinstated into a teacher programmer position shall be assigned to such position beginning with the next full school year.

WE WILL pay to the teacher programmers who were reassigned out of that position in June, 1992, the stipend as reflected in the 1991-1994 collective agreement for school years 1992-1993 and 1993-1994. Former teacher programmers shall be paid a stipend for each school year subsequent to the 1993-1994 school year or until they are reinstated or refuse the offer of reinstatement in a teacher programmer position either in the amount reflected for teacher programmers in a successor collective agreement or, if no stipend is contained in such successor agreement, in the amount provided for school year 1993-1994. Former teacher programmers which left the Board's employ subsequent to June 30, 1992, shall receive a pro rata stipend payment up to the time of their departure.

Docket No. CO-H-93-139

Neptune Township 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, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"