

P.E.R.C. NO. 93-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of,

JACKSON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-88

JACKSON ASSOCIATION OF NON-CERTIFIED
SUPERVISORS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Jackson Association of Non-Certified Supervisors against the Jackson Township Board of Education. The Charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by eliminating the positions of two employees in retaliation for their organizing the Association or for some other protected activity. The Commission adopts the Hearing Examiner's analysis that the Association had not proved any hostility to the employees' protected activity.

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Charging Party.

Appearances:

For the Respondent, Carroll & Weiss, attorneys (Russell
Weiss, Jr., of counsel)

For the Charging Party, Wayne J. Oppito, attorney

DECISION AND ORDER

On October 18, 1990, the Jackson Association of
Non-Certified Supervisors filed an unfair practice charge against
the Jackson 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 subsections 5.4(a)(1),
(2), (3), (5) and (7),^{1/} by eliminating the positions of two

^{1/} 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. (2) Dominating or interfering with the formation, existence
or administration of any employee organization. (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. (7) Violating any of the rules and regulations
established by the commission."

employees' in retaliation for their organizing the Association or for some other protected activity.

On January 29, 1991, a Complaint and Notice of Hearing issued. On February 25, the Board filed its Answer admitting that it had eliminated the positions but denying that it had violated the Act.

On July 1, 1992, Hearing Examiner Stuart Reichman conducted a hearing.^{2/} The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On January 8, 1993, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 93-15, 19 NJPER 98 (¶24045 1993). He found that the Association had failed to establish that the Board was hostile to either employee's exercise of protected rights.

On January 22, 1993, the Association filed exceptions to the Hearing Examiner's conclusions. The Association also attached its post-hearing brief. On February 1, the Board filed a reply urging adoption of the recommended decision.

We have reviewed the record. The Hearing Examiner's undisputed findings of fact (H.E. at 3-12) are accurate. We incorporate them here.

This claim of anti-union discrimination is governed by the standards set out in In re Bridgewater Tp., 95 N.J. 235 (1984).


^{2/} The parties agreed to postpone the hearing pending the outcome of individual claims before the New Jersey Division on Civil Rights and the Equal Employment Opportunity Commission.

Applying those standards, the Hearing Examiner found that the Association had not proved any hostility to the employees' protected activity and so he recommended dismissing the Complaint. We adopt the Hearing Examiner's analysis, substantially for the reasons stated in his decision, and dismiss the subsection 5.4(a)(3) allegation. We also agree with the Hearing Examiner that there is no evidence that the Board violated subsections 5.4(a)(1), (2), (5) or (7) of the Act. We dismiss those allegations as well.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting and Wenzler voted in favor of this decision. None opposed. Commissioners Smith and Bertolino abstained. Commissioner Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: April 29, 1993
Trenton, New Jersey
ISSUED: April 30, 1993

H.E. NO. 93-15

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

In the Matter of

JACKSON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-88

JACKSON ASSOCIATION OF NON-CERTIFIED
SUPERVISORS,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Jackson Township Board of Education did not eliminate the Facilities Manager and Custodial Supervisor positions in retaliation against the employees serving in those titles exercising rights protected by the New Jersey Employer-Employee Relations Act. The Hearing Examiner found that the Association failed to establish that the Board was hostile against either employee's exercise of their 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.

H.E. NO. 93-15

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

In the Matter of

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Respondent,

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Docket No. CO-H-91-88

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SUPERVISORS,

Charging Party.

Appearances:

For the Respondent, Carrol & Weiss, attorneys
(Russell Weiss, Jr., of counsel)

For the Charging Party, Wayne J. Oppito, attorney

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

On October 18, 1990, the Jackson Association of Non-Certified Supervisors (Association) filed an unfair practice charge (C-2)^{1/} with the Public Employment Relations Commission (Commission) against the Jackson Township Board of Education (Board). The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act (ACT), N.J.S.A. 34:13A-1 et

^{1/} Exhibits received in evidence marked as "C" refer to Commission exhibits and those marked "R" refer to Respondent's exhibits. Transcript citation T1 refers to the transcript developed on July 1, 1992 at page 1.

seq., specifically sections 5.4(a)(1), (2), (3), (5) and (7),^{2/} by retaliating against two employees who were instrumental in organizing the collective negotiations unit now represented by the Association or for engaging in other activity protected by the Act.

On January 29, 1991, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On February 25, 1991, the Respondent filed an Answer (C-3) denying that it retaliated against any employees exercising protected rights. On February 26, 1991, a prehearing conference was conducted. The parties agreed that the scheduled hearing date should be adjourned indefinitely pending the outcome of individual claims filed with the New Jersey Division on Civil Rights and the Equal Employment Opportunity Commission. Subsequent to the disposition of those matters, a hearing in the above-captioned matter was ultimately scheduled for July 1, 1992, at the Commission's offices in Trenton, New Jersey. The parties were afforded the opportunity to examine

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

and cross-examine witnesses, present relevant evidence and argue orally. The parties waived oral argument and filed post-hearing briefs on or before September 29, 1992, in accordance with extensions granted.

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The parties stipulated that the Board is a public employer and the Association is a public employee representative within the meaning of the Act. I find that at all times relevant to this unfair practice charge Sebastian Gangemi and Albert Somma are employees within the meaning of the Act.

2. Since July 15, 1979, Gangemi has been employed by the Board in the title Facilities Manager (T13-T15; J-2). Somma has been employed by the Board since December, 1968, and since 1973, has served in the title custodial supervisor (T56-T57; J-3). Somma directly supervised approximately 60 employees. Gangemi supervised approximately eleven maintenance employees, his secretary, and Somma (T47; T57). Gangemi and Somma possessed HERA certifications which qualified them to inspect and monitor buildings for asbestos (T27; T58). Gangemi has always received an excellent job performance evaluation (T16).

3. Supervisors employed by the Board were categorized as either certified or non-certified. Certified supervisors, those

having academic responsibilities, were represented in a collective negotiations unit for many years. The non-certified supervisors titles include facilities manager (Gangemi), custodial supervisor (Somma), as well as transportation supervisor, assistant transportation supervisor, night mechanic supervisor, attendance coordinator and cafeteria manager (T19-T20).

4. During 1989, the non-certified supervisors sent a letter to the president of the employee organization representing the certified supervisors asking to be included in the certified supervisors' collective negotiations unit. The president of the certified supervisors association declined the non-certified supervisors' request for admission and suggested that they form their own unit (T18-T19; T59). During the fall, 1989, the non-certified supervisors formed the Association to represent them in a collective negotiations unit (T20; T36). Superintendent Dominic Cotugno learned of the Association in early 1990 (T71). He did not oppose the non-certified supervisors' proposed unit, and recommended that the Board voluntarily recognize the Association as the majority representative of the non-certified supervisors (T71-T72). Gangemi served as acting Association president (T22). Negotiations promptly commenced and continued for approximately six

months (T20; T39).^{3/} While Somma was among the other non-certified supervisors who initially participated in discussions over the formation of the Association and agreed to join same, he was not active in the formation of the Association, nor was he involved in the negotiations process (T60-T61).

5. Only the Association's and the Board's representatives met jointly in actual collective negotiations. At no time did any other unit member meet to negotiate with Board representatives (T20; T38-T39; T71). Association members, including Gangemi, were kept "in limbo" regarding the progress of negotiations (T20). Association members were not aware that a collective agreement had been agreed upon until the day it was placed on the Board's agenda for ratification (T38). An agreement was reached which contained the same economic program which was previously negotiated for the certified supervisors unit (T71). The agreement was ratified by the Board on July 17, 1990 (T21; T111).

6. With the exception of the negotiations for the collective agreement which occurred in the manner described above, between the time of its inception and July 17, 1990, the Association

^{3/} Gangemi testified that negotiations started in the fall, 1989. I find that negotiations started in early 1990. It is uncontested that the collective agreement which resulted from the negotiations was concluded in late June and ratified in July, 1990. It is also uncontested that the negotiations process took approximately six months. Since it is unlikely that negotiations would begin prior to the Board's recognition of the unit which appears to have occurred in early 1990, I conclude that negotiations also began in early 1990.

did not interface with the Board or its representatives regarding labor relations matters. Between the time the Association was recognized and July 17, 1990, it never filed a grievance.

7. For years prior to the formation of the non-certified unit, the Board had been criticized for maintaining a top-heavy administration (T73). Cotugno agreed that there were too many administrators in the central office and not enough in the various school buildings (T73). In April, 1989, a school board election was conducted. The reorganization of the administration was a campaign issue and discussed in the local newspapers during the campaign period (T37; T74-T75). Dane Wells, and other Board members elected in April, 1989, supported the idea of reorganizing the administration by trimming positions (T37; T74). On May 15, 1990, Board President Connor appointed herself and Board members Cotrell and Wells to a committee to study the administrative structure of the school district and determine the feasibility of making changes that might enhance efficiency (T75; R-3). The establishment of the committee was reported by the local press (T75). At Cotugno's suggestion the committee met with the employees serving in the various administrative positions during the course of its investigation (T75; R-1). In or about June, 1990, Gangemi received a memorandum regarding the reorganization (T28). Gangemi was interviewed by the committee members and questioned regarding his job duties. The committee members advised him during the interview that they were reviewing the administrative organizational structure

to determine whether they could consolidate positions (T28-T29). Prior to July 17, 1990, Gangemi was never told that his particular position would be eliminated (T23-T24). Somma was also interviewed by the committee and asked similar questions (T64-T65). Likewise, Somma was not told during the interview that his particular position would be eliminated (T65).) Prior to the issuance of its report, the committee met with Cotugno to discuss its findings (T107-T108).

8. On July 17, 1990, the committee met with the full Board in executive session to deliver its report and discuss its findings and recommendations. Later that evening, the report was discussed at an open Board meeting and adopted (T79; T107-T108; R-3). The committee recommended that one Assistant Superintendent position be eliminated, leaving two Assistant Superintendents; the Board Secretary/Business Manager position be replaced by a State certified Business Administrator; the data processing manager position be replaced by a position which would include responsibilities for the district's data processing needs and computer instruction for students; the facilities manager and custodial supervisor titles be eliminated and replaced with a single position responsible for the functions of both titles; and the expansion of responsibilities for supervisors of instruction (T80-T81; R-3). Cotugno agreed with the committee's recommendation to eliminate the titles of facilities manager and custodial supervisor in favor of a single combined title on the grounds that districts of similar size employed only one person in a combined

title (T79). Accordingly, by Board action on July 17, 1990, the positions of facilities manager, custodial supervisor and supervisor of computers were eliminated (T16, T58; T108-T109). Although Gangemi attended the July 17, 1990 Board meeting, he was officially notified that his position would be eliminated on July 18, 1990, by letter from Board Secretary Rosalie Gangemi (T24; T82; R-4).^{4/} The Board gave Gangemi 60 days notice of termination. Gangemi left the Board's employ approximately one month after his receipt of R-4 (T52). Gangemi was earning approximately \$45,500 per year at the time that he left employment (T27). Somma earned approximately \$34,000 per year when he left the custodial supervisor position (T62).

9. Shortly after Gangemi learned that his position would be eliminated, he spoke with Cotugno. He told Cotugno that the position elimination was not a nice thing to do (T24). Gangemi testified that Cotugno admitted that he could have stopped the termination (T24). Gangemi stated that Cotugno said that his job performance was not the problem, rather, it was him, personally (T25).^{5/} During their conversation, Gangemi accused Cotugno of maintaining a vendetta against him and also alleged that certain Board members, including Wells, did not like him and his wife. Neither the Association nor Gangemi's involvement with it was

^{4/} Rosalie Gangemi is Sebastian Gangemi's wife (T24).

^{5/} In Cotugno's subsequent testimony, he did not rebut Gangemi's statements regarding this conversation.

discussed during the conversation (T78). Gangemi interpreted Cotugno's statement that "it wasn't the job it was him" to mean that he would not be given an opportunity to be considered for the newly created supervisor of maintenance and custodial services job because (1) Cotugno maintained a vendetta against him, (2) politics and (3) Gangemi served as Acting Association President (T26-T27; T42).

10. The vendetta referred to an incident where Gangemi and Cotugno disagreed over a policy concerning the building use by local groups not associated with the Board (T44; T95-T97). It had been Board policy to charge a fee to outside groups wishing to use school facilities to recover the cost of additional expenses incurred by keeping the building open (T45; T95). Sometime during Cotugno's first year of employment with the Board,^{6/} a former Board member who was running a theatre group sought to use a school building (T45; T96-T97). Prior to the former Board member's request to use the building, the Board had hired five custodians to regularly work on weekends (T95). Cotugno changed the Board policy requiring all groups to pay a fee for the use of a school facility, since custodians were already available on weekends and the Board would incur no additional expenses by keeping the building open (T95-T97). Gangemi strenuously disagreed with this policy change and expressed his point of view to Cotugno in front of other people (T45; T97). Neither Gangemi nor his wife were on good terms with

^{6/} Cotugno began employment with the Board in August, 1987 (T70).

this particular former Board member who requested to use the school building (T96). Gangemi believes that since the time of that incident, Cotugno continued to harbor bad feelings toward him and was out to "get him" (T44).

11. Gangemi also cited "politics" as a reason for his position being eliminated. In April, 1989, Board members Wells and Wood requested the County Prosecutor to conduct an investigation into Gangemi, his wife, and Assistant Superintendent of Support Services Sciarappa for obtaining free gifts from Board contractors (T46). The investigation revealed no wrongdoing (T56). Gangemi contends that the investigation was called for by Wells and Wood for political reasons.

12. Gangemi also believes that his position was eliminated because he served as Acting Association President (T42). Gangemi asserts that while Cotugno acknowledged the existence of the other employee organizations representing various Board employees, he refused to acknowledge the existence of the Association. However, Gangemi concedes that Cotugno never refused to meet with him when asked (T42-T43).

13. Cotugno told Gangemi and Somma to apply for the supervisor of maintenance and custodial services position (T110). Gangemi never submitted an application to be considered for the new position (T43). Gangemi believed that he was precluded from applying for the job because of the nepotism policy adopted six or seven months prior to his termination (T43). Gangemi held this

understanding notwithstanding that (1) he was never advised by any Board member or administrator that he was precluded from applying for the job under the policy, and (2) the policy contained an exception for existing employees (T43-T44). Gangemi decided that since he had been terminated he was no longer an "existing employee" within the meaning of the policy and, therefore, ineligible to take advantage of the exception which it contained (T44). Gangemi never sought an interpretation of the policy.

14. Somma did apply and was interviewed for the supervisor of maintenance and custodial services position (T69). Somma indicated that he did not believe one person could do both the custodial and maintenance jobs properly and would not accept the position for a \$40,000 salary (T69). On August 16, 1990, Raymond Bricker applied for the supervisor of maintenance and custodial services position (R-6). Bricker and others were interviewed for the position during the latter part of August, 1990 (T89; R-8A, B, C). Bricker was hired and took the position at a starting salary of \$40,000 (T55).

15. On September 4, 1990, Somma was advised that he was not selected for the supervisor of maintenance and custodial services position (T91; R-9A). On September 6, 1990, Somma was advised that as the result of the elimination of his custodial supervisor position, he would bump back to his previous head custodian position (T62; T91; R-9B). The employee organization representing custodians filed a grievance claiming that Somma should

return as an entry-level custodian rather than bump the employee then serving in the head custodian position (T92). The administration took the position that Somma's seniority and tenure appropriately resulted in his moving into the head custodian position. Ultimately, the custodians' union acquiesced to the Board's position and Somma bumped into the head custodian job (T93). Somma's salary was reduced from \$34,000 to approximately \$26,000 (R-9B). The salary of the employee who Somma bumped was reduced by \$800; the amount of the annual premium paid to employees serving in head custodian titles (T63).

16. Security guard Robert Slattery and Board member Wells are friends and members of the same political party (T23; T40). In or about April, 1989, Slattery told Gangemi that Gangemi would not continue in his position after Wells became a member of the Board (T40). Other than indicating that Gangemi would lose his position, Slattery gave no reason for such action (T41). Sometime during early 1990, Slattery told Gangemi that Gangemi would remain in his position for only several more months, which Gangemi calculated to be in or about July, 1990 (T22). Slattery did not indicate the reason why Gangemi would not retain his position (T23). Slattery also told Security Guard Rogers that Gangemi would not continue in his position after July, 1990 (T23). In February, 1990, Rogers told Gangemi that he had a bet with Slattery that Gangemi would not continue in his position after July, 1990 (T23). Other than Slattery's comment to Rogers about Gangemi's position, Rogers did not express any reason why Gangemi would lose his position (T23).

ANALYSIS

The New Jersey Supreme Court has set forth the standard for determining whether an employer's action violates subsection 5.4(a)(3) of the Act in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). In order to determine whether an employer has illegally discriminated against employees in retaliation for participation in protected activity,

...the employee must make a prima facie showing sufficient to support the inference that the protected union conduct was a motivating factor or a substantial factor in the employer's decision. Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action. [Citation deleted.] Once that prima facie case is established, however, the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity. [Bridgewater at 224.]

Thus, 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 activity. Id. at 246.

In this case, there is no direct evidence of anti-union motivation. Consequently, the Charging Party must rely on

circumstantial evidence to show that protected conduct was a substantial or motivating factor in Gangemi's and Somma's treatment. Timing is an important factor in assessing motivation. City of Margate, H.E. No. 87-46, 13 NJPER 149 (¶18067 1987), adopted P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986); Dennis Tp. Bd. of Ed., P.E.R.C. No. 86-69, 12 NJPER 16 (¶17005 1985). The Association notes that the actions affecting Gangemi and Somma occurred shortly after the unit came into existence and negotiations commenced.

Somma and Gangemi participated in the initial meetings called for the purpose of organizing the Association. In that regard, Somma and Gangemi were engaged in protected activity within the meaning of the Act. However, Somma's protected activity was limited to his participation in those initial organizing meetings and nothing more. I find that the Board was never aware of Somma's organizing activities on behalf of the Association.

Gangemi served as acting Association President. Although Gangemi did not sit with the Board's representative at the negotiations table, nor did the Association file any grievances, an initial demand upon the Board to recognize the Association was made in early 1990. Additionally, while Gangemi contends that Cotugno never acknowledged the Association as he did the other employee organizations representing Board employees, Cotugno and Gangemi met regarding Association matters whenever Gangemi requested. Since the

Association had been recently formed, it is likely that some of the conversations between Cotugno and Gangemi related to Association matters. Therefore, I find that the Board, through Cotugno, was aware of Gangemi's activities on behalf of the Association.

Nevertheless, I find that the Board was not hostile toward Gangemi's or Somma's exercise of protected activity. Neither the Board nor Cotugno opposed the formation of the Association, and, upon demand by the Association, the Board voluntarily recognized it as the majority representative of the non-certified supervisors. Collective negotiations conducted by the parties resulted in agreement to the same economic program as provided to certified supervisors.^{1/} The Association had filed no grievances since the Board recognized it, and there is no evidence of confrontations between Association representatives and the Board or its administrative staff.

Cotugno specifically invited Somma and Gangemi to apply for the newly created Supervisor of Maintenance and Custodial Services position. Somma applied and was interviewed for the job. Somma

^{1/} The Association asserts that the negotiations between the parties contained a great deal of friction and difficulty. This contention is not supported by the facts. Neither Gangemi, Somma, nor any other Association member was present at the negotiations table. Association members were apprised of the status of negotiations only through second-hand reports from the Association's professional negotiator. Gangemi concedes that he and the other Association members were kept "in limbo" regarding the progress of the negotiations. In fact, Acting President Gangemi was not aware that a collective agreement had been achieved until the day it was placed on the Board agenda for ratification.

indicated that he did not believe one person could properly perform both the custodial and maintenance components of the job. Moreover, Somma indicated that he would not accept the position for a \$40,000 salary. The Board fought for Somma's right to bump into his previously held head custodian position rather than capitulate to the custodian union's demand that Somma be considered an entry level employee. Gangemi, without discussing the Board's newly adopted nepotism policy with any Board member or administrator, and notwithstanding the fact that Cotugno suggested that he apply, unilaterally decided that he was precluded from applying for the supervisor of maintenance and custodial services position. He never submitted an application to be considered for the job.

The Association argues that hostility can be ascribed to the Board because of a "vendetta" Cotugno had against Gangemi. Gangemi claims that the vendetta was because he disagreed with Cotugno concerning a policy change which would then allow groups unaffiliated with the Board to use school facilities for free if no additional expense would be incurred by the Board. But that incident occurred sometime during Cotugno's first year of employment with the Board. Cotugno was hired in August, 1987. Gangemi was given notice of termination in mid-July, 1990. Thus, the incident took place at least two years prior to Gangemi's termination. I find that the incident was too remote in time to constitute the grounds for such alleged hostility by Cotugno. Further, the underlying incident which formed the basis for what Gangemi contends

was Cotugno's vendetta was wholly unrelated to Gangemi's participation in protected activity.

Gangemi also claims that he was terminated because of "politics." In April, 1989, Board members Wells and Wood asked the County prosecutor to conduct an investigation into Gangemi, his wife, and Assistant Superintendent of Support Services Sciarappa. The prosecutor looked into whether the above-named individuals obtained free gifts from Board contractors. I find that the Board members' request to the County prosecutor does not represent hostility by the Board against Gangemi for his participation in protected activity. The Board members called for the investigation at least six months before the non-certified supervisors began holding organizational meetings to form the Association, and nine months before the Association asked the Board to recognize it as majority representative. The Board members' call for the investigation focused not only on Gangemi but also his wife and Sciarappa. The investigation was unrelated to Gangemi's exercise of protected rights.

In April, 1989, Security Guard Slattery told Gangemi that Gangemi would not continue in his position after Wells became a member of the Board. The Association contends that Slattery's foreknowledge that Gangemi would not continue in his facilities manager position establishes hostility. I disagree. Slattery's comments were made in April, 1989, at least six months prior to Gangemi's participating in activity protected by the Act. Slattery

never told Gangemi that he would be terminated, nor did he give Gangemi any reason as to why he would be removed from his position. Slattery and Wells were friends and members of the same political party. At that time, it was well known through newspaper articles that Wells supported a structural reorganization of the Board's administrative positions. Even assuming that Slattery possessed information given to him by Wells that Gangemi's position would be affected by any reorganization, the disclosure of such information by Wells to Slattery does not establish a nexus between Gangemi's participation in protected activity and hostility on the Board's part towards his exercise of such rights.

Accordingly, for all of the reasons set forth above, I find that the Charging Party has failed to establish that the Board was hostile toward either Somma's or Gangemi's participation in protected activity. Thus, Somma's and Gangemi's protected conduct was not a motivating or substantial factor in the Board's actions. Consequently, I find that the Board did not violate section 5.4(a)(3) of the Act when it eliminated Somma's and Gangemi's positions.

The Association also alleges that the Board violated sections 5.4(a)(1), (2), (5), and (7) of the Act. However, the Association has introduced no evidence showing that the Board has interfered with, restrained or coerced Somma or Gangemi in the exercise of the rights guaranteed to them by the Act; dominated or interfered with the formation, existence or administration of the

Association; refused to negotiate in good faith with the Association concerning terms and conditions of employment of employees in that unit, or refused to process grievances presented by the Association; or violated any of the rules and regulations established by the Commission.


Accordingly, on the basis of the entire record and the analysis set forth above, I make the following:

CONCLUSIONS OF LAW

The Jackson Township Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) or (7) by eliminating the custodial supervisor and facilities manager positions.

RECOMMENDATIONS

I recommend that the Commission **ORDER** that the Complaint be dismissed.



Stuart Reichman
Hearing Examiner

Dated: January 8, 1993
Trenton, New Jersey