

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKEWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-77-165-108
CO-77-267-112

LAKEWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice charge filed by the Education Association, the Commission concludes that the Board of Education violated N.J.S.A. 34:13A-5.4(a)(1) and (3) by declining to reappoint Mr. Mattaliano and Ms. Strojny to their respective coaching positions. Relying upon the Supreme Court's recent decision in Hinfey v. Matawan Regional Board of Education and the Director of the Div. on Civil Rights, N.J. Docket No. A-82 (1978), the Commission rejects the Board's contention that the controversy herein should be resolved before the Commissioner of Education rather than the Public Employment Relations Commission.

The Commission adopts the Hearing Examiner's conclusion that the reasons put forward by the Board to justify its conduct were merely pretextual. Record evidence clearly establishes that both teachers had received excellent evaluations from the Athletic Director and both had successfully processed grievances against the Board. Given the above information and after careful consideration of the briefs, record and the exceptions filed by the Board the Commission is satisfied that the Board's refusal to reappoint Mattaliano and Strojny was motivated at least in part by a desire to discourage the exercise of protected rights.

The Commission orders the Board to cease and desist from discriminating in regard to hire or tenure of employment to discourage its employees in the exercise of protected rights or coercing its employees in the exercise of rights guaranteed by the Act by refusing to rehire employees for coaching positions in retaliation for the filing of grievances; and affirmatively orders the Board to reinstate Mattaliano and Strojny to their coaching positions and to make them whole for any loss of pay they may have suffered; post appropriate notices; and notify the Chairman of the Commission, in writing, of the steps taken to comply with the order. The Commission further orders that each section of the complaint alleging that the Board was engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(4) be dismissed in its entirety.

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-and-

Docket Nos. CO-77-165-108
CO-77-267-112

LAKEWOOD EDUCATION ASSOCIATION,

Charging Party.

Appearances

For the Respondent, Rothstein, Mandell & Strohm, Esqs.
(Mr. Peter R. Strohm, of Counsel)

For the Charging Party, Starkey and Kelly, Esqs.
(Mr. James M. Blaney, of Counsel)

DECISION AND ORDER

Two Unfair Practice Charges were filed with the Public Employment Relations Commission on December 21, 1976 and March 11, 1977 by the Lakewood Education Association (the "Association") against the Lakewood Board of Education (the "Board") alleging unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). In particular, the charges allege unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4) by virtue of the Board's refusal to rehire Bart Mattaliano as varsity girls' basketball coach and Marie Strojny as varsity girls' track and field coach.

Both charges were processed pursuant to the Commission's Rules, and it appearing to the Commission's Director of Unfair Practices that the allegations of the charges, if true, might

constitute unfair practices within the meaning of the Act, Complaints were issued on April 15, 1977 in the matter pertaining to Mr. Mattaliano and on May 3, 1977 in the matter pertaining to Ms. Strojny. On May 3, 1977, in accordance with Section 19:15-1(b) of the Commission's Rules, the two cases were consolidated for both hearing and decision to avoid unnecessary costs or delay.

On June 16, 1977, the Board filed a Notice of Motion and a supporting brief with the Commission seeking dismissal of the instant complaint. The Board asserted that the complaint should be dismissed for three reasons: 1) the Commission lacks jurisdiction of these matters, jurisdiction residing with the Commissioner of Education; 2) the failure to reassign a coach could not constitute an unfair practice because a board has an absolute right to assign or not to assign coaches; and 3) that the agreement between the parties requires teachers to submit any grievances to binding arbitration.

Concluding that the Board's motion was one in the nature of a motion for summary judgment, the Chairman, acting on behalf of the Commission, pursuant to N.J.A.C. 19:14-4.8 and 19:10-4.1, denied the Board's motion in a decision issued on June 23, 1977, In re Lakewood Board of Education, P.E.R.C. No. 77-73, 3 NJPER 313.

Hearings were held on September 15 and September 16, 1977 before Hearing Examiner Charles A. Tadduni, at which both parties were represented and were afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Subsequent to the close of hearing, briefs and joint exhibits were

submitted by both parties. On July 28, 1978, the Hearing Examiner filed with the Commission and served on the parties, his Recommended Report and Decision, H.E. No. 79-8, 4 NJPER 315 (Para. 4158 1978), a copy of which is attached hereto and made a part hereof.

The Hearing Examiner concluded that the Board's conduct in declining to reappoint Mr. Mattaliano as the head coach of the girls' varsity basketball team and in declining to reappoint Ms. Strojny as head coach of the girls' track team was discriminatory and was motivated at least in part by a desire to discourage the exercise of protected rights. Respondent's actions were taken in retaliation for Mattaliano's and Strojny's successful processing of grievances. The rationale offered by the Board for its failure to reassign these two teachers to coaching duties was merely pretextual. For the reasons summarized above and set forth at length in his Report, the Hearing Examiner found Respondent's conduct to be violative of N.J.S.A. 34:13A-5.4(a)(3).

In addition, the Hearing Examiner found that by violating subsection (a)(3) the Board necessarily interfered with, restrained and coerced unit employees in the exercise of their rights protected by the Act and therefore concluded that the Board derivatively violated N.J.S.A. 34:13A-5.4(a)(1). Finding no evidence to support the alleged violations of N.J.S.A. 34:13A-5.4(a)(4), he recommended the dismissal of that aspect of the complaint.

Pursuant to N.J.A.C. 19:14-7.3(a), exceptions to the Hearing Examiner's Report were filed by the Board on August 18, 1978. Thereafter on September 5, 1978, pursuant to N.J.A.C. 19:14-7.3(d),

the Association filed its response to the Board's exceptions. A supplemental letter from the Board was received by the Commission on September 21, 1978 to which the Association filed a response on October 4, 1978.

The Board excepts to the Commission's jurisdiction to hear this matter on two grounds. First, the Board contends that the dispute should more appropriately be resolved before the Commissioner of Education since the non-assignment of coaches is a managerial prerogative. Second, Respondent maintains that the filing of a grievance is not a protected activity under the Act. With respect to the former exception, it is the Commission's position that under the facts of this case it makes little difference whether the assignment of coaching positions is a managerial prerogative or a term and condition of employment since the Association has not alleged a refusal to negotiate in violation of N.J.S.A. 34:13A-5.4(a)(5). While we do not dispute the Board's right to appoint coaches, any decision, even one exclusively confined to educational policy, if made with intent to discriminate against an employee who has exercised protected rights, represents a potential violation of the Act. N.J.S.A. 34:13A-5.4(a)(3) unequivocally states that an employer is prohibited from discriminating in regard to hire or tenure of employment so as to discourage employees from engaging in protected activity. Thus, if an employer exercises its managerial discretion in a manner inconsistent with the Act's underlying protections, as set forth in N.J.S.A. 34:13A-5.3, the Commission is under a statutory obligation to prevent and, if

necessary, remedy any such practice.^{1/} As long as the allegations contained within a charge might, if true, constitute an unfair practice, the Commission is mandated to assert jurisdiction.

To further bolster its contention that the Commission lacks jurisdiction, the Board maintains that the filing of a grievance is not a protected activity. A comprehensive rebuttal to this assertion is contained in the Hearing Examiner's attached Report, which adequately sets forth the Commission's position. Briefly, Article I, paragraph 19 of the New Jersey Constitution, coupled with N.J.S.A. 34:13A-5.3, makes abundantly clear that public employees have a right to present grievances either through their majority representative or where no such majority representative exists, in their individual capacities. By asserting that public employees have no such rights, the Board is in effect declaring that it may retaliate against an employee who files a grievance and thereby effectively inhibit that employee and other employees from availing themselves of the grievance machinery. If public employers were granted such liberties, the prompt resolution of disputes and the promotion of peaceful and harmonious labor relations would be impossible. N.J.S.A. 34:13A-2.

Subsequent to Respondent's initial filing of exceptions, the Supreme Court issued a decision in Hinfey v. Matawan Regional

^{1/} Additionally, Article I, paragraph 19 of the Constitution guarantees to public employees the right to organize and to present grievances. This Act was passed to implement and expand upon these rights. Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970). Moreover, while appointments and promotions may fall within educational policy, the courts have warned respecting such matters that: "Arbitrary action on the part of the board which bears no relationship to educational goals, however, cannot and will not be tolerated." Bd. of Ed. Twp. of North Bergen v. North Bergen Fed. of Teachers, 141 N.J. Super. 97, 104 (App. Div. 1976).

Board of Education and the Dir. of the Div. on Civil Rights,
 N.J. , Docket No. A-82, (1978) wherein the Court ruled that the Division of Civil Rights properly transferred a complaint alleging discrimination in public school curricula to the Commissioner of Education. Based upon this decision, Respondent filed further exceptions with the Commission on September 21, 1978, in which Hinfey, supra, is cited in support of the Board's contention that the Commission should have exercised jurisdiction over the instant matter.

However, contrary to Respondent's reading of Hinfey, supra, it is the Commission's opinion that this case is supportive of our decision to retain jurisdiction. According to the Supreme Court's decision, even where there exists concurrent administrative jurisdiction, it is the responsibility of both agencies to make a comparative analysis of their respective enabling statutes and thereby determine which agency is best equipped to resolve a particular dispute. Various factors, such as administrative competence, legislative intent and regulatory expertise must be figured into this calculation.

Thus, although the Division of Civil Rights has been delegated pervasive authority to remedy acts of discrimination, including those which occur in the state's public schools, the Supreme Court nevertheless held that the controversy therein would be more appropriately adjudicated before the Commissioner of Education, given the educational component of the complaint which could not be disassociated from its discriminatory aspect. Weighing heavily in the Court's Hinfey decision was the Commissioner

of Education's clearly delineated constitutional and statutory responsibilities over unlawful discrimination in the public schools.^{2/} As noted by the Supreme Court, the Commissioner of Education has promulgated comprehensive and detailed rules^{3/} governing the implementation of N.J.S.A. 18A:36-20.^{4/} In fact, the precise discriminatory practices alleged by the Respondent in Hinfey are explicitly covered by various regulatory provisions.^{5/} It was the court's opinion that this exhaustive regulatory scheme guaranteed that the rights of persons aggrieved by discriminatory acts in the public schools would be most satisfactorily vindicated in a hearing before the Commissioner of Education. As the Supreme Court declared:

It is difficult to hypothesize a more complete administrative commitment to the eradication of invidious discrimination in the public schools and in public education than now reflected in the operative statute and implementing regulations governing the Commissioner of Education.

Thus, where a controversy is multi-faceted, that agency which is best able to resolve the matter without creating the risk that important interests may be mishandled or neglected should exercise jurisdiction.^{6/}

^{2/} See N.J.S.A. 18:36-20.

^{3/} See N.J.A.C. 6:4-1.1 et seq.

^{4/} This statute states that "no person in this State shall be discriminated against in admission to, or in obtaining any advantages, privileges or courses of study of the school by reason of race, color, creed, sex or national origin."

^{5/} For example see N.J.A.C. 6:4-1.5; N.J.A.C. 6:4-1.7; N.J.A.C. 6:4-1.8.

^{6/} Consistent with this jurisdictional theory, the Supreme Court held that it was proper for the Division of Civil Rights to retain jurisdiction over that part of the complaint alleging unlawful employment practices.

Based upon the Supreme Court's analysis in Hinfey, as summarized above, the Commission has chosen to exercise jurisdiction over the matter herein, rather than defer to the Commissioner of Education, as urged by Respondent. In contrast to the extensive regulatory framework established by the Commissioner of Education with regard to racially or sexually biased public school curricula, no comparable regulatory mechanism exists for the adjudication or remediation of unfair practices. In fact, there are no statutory or regulatory provisions contained in either N.J.S.A. 18A:1 et seq. or N.J.A.C. 6:1 et seq. which directly address the issue of discrimination due to anti-union animus. To transfer the unfair practice charge herein, and thereby seek to compel the Commissioner of Education to rule upon violations of N.J.S.A. 34:13A-1 et seq., would constitute a serious abdication of statutory authority on our part, and would impose upon the Commissioner of Education an unreasonable and inappropriate burden.

Moreover, it should be noted that whereas the jurisdictional question in Hinfey, supra, involved two agencies with concurrent jurisdiction over the same subject matter, the Legislature has seen fit to confer upon the Commission exclusive power to prevent anyone from engaging in unfair practices.^{7/} However, the

^{7/} N.J.S.A. 34:13A-5.4(c). In a recent decision, Hackensack v. Winner, Sarapuchiello, Krejsa and PERC, ___ N.J. ___, Docket No. A-2546-76, (App. Div. 1976) the Appellate Division held that as a matter of primary jurisdiction, an unfair practice issue should normally be determined by the Public Employment Relations Commission. The Court stated "that the exclusive power provision of N.J.S.A. 34:13A-5.4(c) may evince such legislative intent." Page 30

Commission's decision to retain jurisdiction herein is not completely dependent upon the exclusive jurisdiction language contained in the Act. Even assuming, arguendo, that there exists concurrent jurisdiction, under the analytical model articulated by the Supreme Court in Hinfey for resolving questions of overlapping jurisdiction, the Commission would still, as the agency possessing the requisite expertise and statutory authority, be obligated to pass judgment on the instant matter.

For the reasons articulated above, the Commission rejects the Board's jurisdictional arguments.

Respondent also takes issue with the Hearing Examiner's finding that the Board's nonrenewal of Mattaliano's coaching contract was violative of N.J.S.A. 34:13A-5.4(a)(1) and (3). Respondent maintains that it choose not to retain Mattaliano as coach of the varsity girls' basketball team, not because he had successfully processed grievances concerning military pay credits and pay discrepancies between coaches of boys' and girls' sports, but rather for other entirely legitimate reasons. However, the Commission's inquiry into an alleged 5.4(a)(3) violation does not halt once an employer has asserted claimed justification for its conduct. Rather, in conformity with the standard enunciated in In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977), if the charging party has established a prima facie case, then a determination must be made as to whether the employer's alleged reasons are pretextual, and if not, whether the employer's conduct was still motivated at least in part by a desire to discourage the exercise of protected rights.

The record makes clear that the Board had knowledge of the activities of Mattaliano in processing the above grievances. We are satisfied, as discussed above, that the processing of grievances constitutes protected activity. Mattaliano was described by the Athletic Director as "a very talented coach.../who did/ an exceptional job with the girls' basketball team." (T-2, p. 13) He compiled an outstanding record, won the State Class D Championship, and was voted Ocean County Coach of the Year for girls' basketball in 1975-76. He was favorably evaluated and both the Athletic Director and Superintendent recommended that he be reappointed. It was highly unusual for the Board to fail to accept these recommendations. These factors, plus the sequence of events regarding the grievance and the nonrenewal along with the testimony of several Association witnesses (Cummins and Donnelly) and Board witnesses (Superintendent) Showell and members Gobart and Goldman) as fully set forth in the Hearing Examiner's Report persuade us that the Board acted, at least in part, discriminatorily in not reappointing Mattaliano.

Given that the charging party successfully established a prima facie case and demonstrated that Mattaliano engaged in protected activity of which the Board had knowledge, it was up to Respondent to establish that its business justifications were the motivating factors in not reappointing him.

The main reason offered by the Board in not reappointing Mattaliano was the Board's desire to have a woman coach girls' athletic teams. The Board also stated that several of its members did not want to pay the coach of the girls' basketball team the

higher amount of money it paid to the coach of the boys' basketball team. By hiring a new person to coach they could pay less.

After a careful independent review of the record, the Commission finds itself in agreement with the Hearing Examiner's determination that the rationale offered by the Board was merely pretextual. We have arrived at this conclusion based upon the following evidence adduced at hearing. With regard to the Board's claim that a policy decision was made that females should coach girls' sports, the Hearing Examiner aptly noted that the Board replaced Ms. Strojny with a male as head coach of the girls' track and field team, an act obviously inconsistent with the justification offered by the Board for its conduct vis-a-vis Mattaliano. Furthermore, as to the Board's alleged desire to conserve its monetary resources, the Hearing Examiner astutely pointed out that by hiring a coach on a lower range of the salary ladder the Board could at the most have saved \$625.00. This savings would undoubtedly be short-lived, since upon accumulating the requisite coaching experience, Mr. Mattaliano's replacement would eventually reach the top of the coaches' salary guide. After examining the testimony proffered at hearing, the Commission finds it implausible that Respondent would replace a coach who had compiled an outstanding record with one of unproven ability for the reasons articulated. In addition, it must be emphasized that even assuming the Board's rationale to be legitimate, we are nevertheless persuaded that at least one of the factors which entered into the Board's decision was Mr. Mattaliano's successful prosecution

of the coaches' pay grievance. It is not necessary, as Respondent suggests in its exceptions, that the only motivating factor be Mr. Mattaliano's exercise of protected rights. Rather, as the Commission has made clear on numerous occasions, the discriminatory motive need be only one among the factors influencing the Board's actions.

We reject the argument of the Board that subsequent offers to Mattaliano to coach other sports serve to mitigate his damages. He had received and accepted similar offers prior to his non-reappointment as girls' basketball coach and, presumably, would continue to receive such offers. We view each such offer as separate. The Board cannot overcome its illegal action in refusing to reappoint him as girls' basketball coach by offering to reappoint him to coach other sports he had already been coaching.

Respondent also excepts to the Hearing Examiner's conclusion as to Ms. Strojny. On the one hand the Board maintains that it was not proper for the Hearing Examiner to consider the validity of the Athletic Director's decision and on the other hand that the Hearing Examiner ignored the Athletic Director's testimony with regard to his recommendation that Ms. Strojny's coaching contract not be renewed. The above assertions are not only contradictory, but simply inaccurate. In fact, the Hearing Examiner was legally obligated to determine whether the Board's justifications for its conduct were legitimate and properly did so.^{8/} Not

^{8/} This analysis is required not to substitute the Hearing Examiner's judgment for that of the Board, but rather to determine whether the proffered justification is pretextual. A totally illegitimate business justification would be one indication that the reasons offered are after-the-fact justifications designed to obscure the discriminatory motivation.

only was Respondent unable to articulate any plausible reason for its refusal to reappoint Strojny, but one member of the Board actually admitted that Strojny's grievance filings influenced his decision to vote against her reappointment. Three incidents were cited by the Board in support of its actions with regard to Strojny. First, and perhaps foremost, is what has been referred to by both parties as the "Jacket Incident". Apparently jackets which were to be awarded to the students on Strojny's championship track team arrived in incorrect sizes, style and color. Although the Board relies heavily upon this incident, the record does not support the Respondent's claim that Strojny was responsible for this unfortunate mixup nor is it clear that this occurred before the decision not to reappoint her was made.

Second, the Board maintains that Strojny by-passed the chain of command on two occasions; however, in neither case had a specific procedure been established. For example, what Respondent alleged to be a clear procedure for ascertaining the eligibility of students to compete in interscholastic athletics was correctly found by the Hearing Examiner to be vague and readily subject to misinterpretation. Respondent's final assertion that Strojny by-passed the chain of command when she forwarded her end of season report to each Board member, in addition to the Athletic Director, also lacks merit. There is simply no evidence in the record to indicate that the Lakewood Athletic Department operated on the basis of a tight, police type chain of command. Even assuming, arguendo, the existence of such a chain, Strojny did not disregard her immediate superior, but merely exercised her option to keep the Board informed of her coaching activities as well.

These reasons cited by the Board simply fail to justify the Board's action. Strojny, like Mattaliano, was involved in several grievances (including the grievance involving discrepancies between pay for coaches of boys' and girls' sports). The Board members were aware of these grievances.^{9/} Her evaluation was 4.25 on a 5 point scale and the Athletic Director, who recommended her reappointment,^{10/} stated that she "...has done a commendable job of coaching Girls' Track... I was particularly pleased with the time and effort given to some athletes of obviously lesser ability."^{11/}

Therefore, based upon our thorough review of the entire record, the Commission finds itself in agreement with the Hearing Examiner's factual findings and determines that Respondent's exceptions regarding Ms. Strojny are without merit.

^{9/} The testimony clearly revealed that Board members identified Strojny with "problems" before the Board.

^{10/} He later rescinded this recommendation but this appears to have been after the Board's decision not to reappoint her so this could not have been a factor in the Board's decision.

^{11/} Exhibit C P-5.

ORDER

Accordingly, for the reasons set forth above, it is hereby ordered that the Respondent, Lakewood Board of Education, shall:

1. Cease and desist from:

(a) Discriminating in regard to hire or tenure of employment or any term and condition of employment of any employee to discourage its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act by refusing to rehire employees for coaching positions in retaliation for the filing of grievances.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer to Bart Mattaliano the position of girls' varsity basketball head coach that was unlawfully denied to him on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by him, and to make him whole for any loss of pay he may have suffered as a result of the Board's discriminatory decision not to renew Mattaliano in said position by paying to Bart Mattaliano the additional compensation he would have received for performance as the girls' varsity basketball head coach during the 1976-77 school year (\$2325), the 1977-78 school year

and for each school year hereinafter until he is reinstated as girls' varsity basketball head coach in accordance with this order less any monies earned by Mr. Mattaliano as coach of another sport during the girls' varsity basketball season.

(b) Offer to Marie Strojny the position of girls' track coach that was unlawfully denied to her on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by her, and to make her whole for any loss of pay she may have suffered as a result of the Board's discriminatory decision not to renew Strojny in said position by paying to Marie Strojny the additional compensation she would have received for performance as the girls' track coach during the 1976-77 school year (\$1740), the 1977-78 school year and for each school year hereinafter until she is reinstated as girls' track coach in accordance with this order, less any monies actually earned by Ms. Strojny as coach of another sport during the girls' varsity track season.

(c) Post at the Central Offices of the Lakewood Board of Education copies of the attached notice marked Appendix "A". Copies of such notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive

days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced or covered by any other material.

(d) Notify the Chairman in writing within twenty (20) days of receipt of this Order what steps Respondent has taken to comply herewith.

3. It is further ordered that the section of each Complaint alleging that the Lakewood Board of Education was engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(4) be dismissed in its entirety.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained.

DATED: Trenton, New Jersey
October 23, 1978
ISSUED: October 25, 1978

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT discriminate in regard to hire or tenure of employment or any term and condition of employment of any employee to discourage its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act by refusing to rehire employees for coaching positions in retaliation for the filing of grievances.

WE WILL offer to Bart Mattaliano the position of girls' varsity basketball head coach that was unlawfully denied to him on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by him, and to make him whole for any loss of pay he may have suffered as a result of the Board's discriminatory decision not to renew Mattaliano in said position by paying to Bart Mattaliano the additional compensation he would have received for performance as the girls' varsity basketball head coach during the 1976-77 school year (\$2325), the 1977-78 school year and for each school year hereinafter until he is reinstated as girls' varsity basketball head coach in accordance with this order less any monies earned by Mr. Mattaliano as coach of another sport during the girls' varsity basketball season.

WE WILL offer to Marie Strojny the position of girls' track coach that was unlawfully denied to her on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by her, and to make her whole for any loss of pay she may have suffered as a result of the Board's discriminatory decision not to renew Strojny in said position by paying to Marie Strojny the additional compensation she would have received for performance as the girls' track coach during the 1976-77 school year

(Continued on additional page)

Lakewood Board of Education

(Public Employer)

Dated _____

By _____

(Title)

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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

NOTICE TO ALL EMPLOYEES

(cont'd)

(\$1740), the 1977-78 school year and for each school year hereinafter until she is reinstated as girls' track coach in accordance with this order, less any monies actually earned by Ms. Strojny as coach of another sport during the girls' varsity track season.

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

In the Matter of

LAKWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-77-165-108
CO-77-267-112

LAKWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In a Recommended Report and Decision, a Commission Hearing Examiner finds that the Lakewood Board of Education had engaged in unfair practices proscribed by N.J.S.A. 34:13A-5.4(a)(3), by discriminatorily declining to reappoint Bart Mattaliano and Marie Strojny to their former, respective head coaching positions of the girls' varsity basketball team and the girls' track team because of their prosecution of coaching pay grievances. The Hearing Examiner additionally concludes that the Board's violation of N.J.S.A. 34:13A-5.4(a)(3) has necessarily interfered with, restrained or coerced these employees in the exercise of rights protected under the Act and therefore finds that the Board violated N.J.S.A. 34:13A-5.4(a)(1). The Hearing Examiner further finds that those parts of the complaints which allege that the Board violated N.J.S.A. 34:13A-5.4(a)(4) be dismissed.

The Hearing Examiner recommended that the Commission order the Respondent Board to cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment of any employee within the school district to discourage said employees in the exercise of protected rights under the Act; and affirmatively orders the Board to offer Bart Mattaliano and Marie Strojny reinstatement to their former varsity coaching positions, which they were unlawfully denied, without prejudice to any rights or privileges enjoyed by them; to make them whole for any loss of pay they may have suffered as a result of the Board's improper conduct; to post appropriate notices and to notify the Commission, in writing, of the steps taken to comply with the order.

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 conclusions of law.

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

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-and-

LAKEWOOD EDUCATION ASSOCIATION,

Charging Party.

Docket Nos. CO-77-165-108
CO-77-267-112

Appearances:

For the Lakewood Board of Education
Rothstein, Mandell & Strohm, Esqs.
(Peter R. Strohm, of Counsel and on the Brief)

For the Lakewood Education Association
Starkey and Kelly, Esqs.
(James M. Blaney, of Counsel and on the Brief)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On December 21, 1976, and on March 11, 1977, two Unfair Practice Charges (Docket Nos. CO-77-165-108 and CO-77-267-112, the "Charge") were filed with the Public Employment Relations Commission (the "Commission") by the Lakewood Education Association (the "Association") alleging that the Lakewood Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). It is alleged in the Charge that the Board had discriminated against two teachers, Bart L. Mattaliano and Marie A. Strojny, who had been serving as athletic coaches, by not reappointing them to their respective coaching positions because they had filed grievances against the Board. ^{1/}

^{1/} More specifically, the Association asserted in its Charges that the actions of the Board were violative of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4). These subsections prohibit 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; (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

On May 3, 1977, the Charges were ordered consolidated by the Director of Unfair Practices and on that same date, it appearing to the Director that the allegations of the Charges, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued in the above-referred consolidated matters. ^{2/}

On June 16, 1977, the Board filed a Notice of Motion and a supporting brief with the Commission seeking dismissal of the instant complaint. The Board asserted that the complaint should have been dismissed for three reasons: (1) the Commission lacks jurisdiction of these matters, jurisdiction being with the Commissioner of Education; (2) the failure to reassign a coach could not constitute an unfair practice because a board has an absolute right to assign or not to assign coaches; (3) that the agreement between the parties requires teachers to submit any grievances to binding arbitration.

Concluding that the Board's motion was one in the nature of a motion for summary judgment, the Chairman, acting pursuant to N.J.A.C. 19:14-4.8 and 19:10-4.1, denied the Board's motion in a decision issued on June 23, 1977, In re Lakewood Board of Education, P.E.R.C. No. 77-73, 3 NJPER 313. ^{3/}

Pursuant to the Complaint and Notice of Hearing, hearings were held on September 15 and September 16, 1977, in Trenton, New Jersey, at which time all parties were given the opportunity to examine witnesses, to present evidence and to argue orally. Subsequent to the close of hearing, briefs and joint exhibits were submitted by both parties to the instant proceeding by December 14, 1977. Upon the entire record in this proceeding, the Hearing Examiner finds:

(1) The Lakewood Board of Education is a public employer within the meaning of the Employer-Employee Relations Act, as amended, and is subject to its provisions.

^{2/} As the procedural history of this case is somewhat involved, the undersigned has endeavored, in footnotes 2 and 3, to clarify the sequence of events which occurred herein. Two pre-hearing conferences were held concerning this matter, the first occurring on May 19, 1977. Thereafter, on May 25, 1977, the Board sought an Order to Show Cause in Superior Court, Chancery Division, restraining the Association from proceeding before the Commission with the instant matter. On June 14, 1977, the Superior Court denied the Board's motion to enjoin the Association from proceeding before the Commission herein.

^{3/} Following the Commission's denial of the Board's summary judgment motion, the Board appealed the Commission's determination to the Appellate Division and sought a stay of the unfair practice proceeding before the Commission pending the court's decision on the Board's appeal. Further developments in the case necessitated convening a second pre-hearing conference which was held on June 27, 1977. Finally, on July 11, 1977, the Appellate Division denied the Board's request for a stay

(2) The Lakewood Education Association is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

(3) An unfair Practice Charge having been filed with the Commission alleging that the Lakewood Board of Education has engaged or is engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, a question concerning violations of the Act exists and this matter is appropriately before the Commission for determination.^{4/}

MAIN ISSUE

Whether the Board's action in not reappointing Bart Mattaliano and Marie Strojny to their former positions as girls' varsity athletic coaches was violative of N.J.S.A. 34:13A-5.4(a)(1) and (3)? More specifically, was the Board's decision not to reappoint Mr. Mattaliano and Ms. Strojny to their former coaching positions motivated by union animus or a desire to discourage the exercise of protected rights by these employees? Or was the decision based upon sound management judgement that these individuals were not the most suitable individuals available for the jobs?

POSITION OF THE ASSOCIATION

The Association states that Mattaliano and Strojny had been employed by the Lakewood Board of Education as athletic coaches and that they filed grievances against the Board concerning certain alleged inequalities in the compensation paid to coaches of girls' and boys' athletic teams. The Association maintains that resultant from Mattaliano and Strojny filing and winning those grievances, the Board has discharged them from their previously held coaching positions.

The Association notes that prior to the filing and processing of the grievance concerning the coaching pay disparity, Mattaliano and Strojny had filed several other, separate grievances, had been involved in the processing thereof and

(continued)

3/ of the unfair practice proceeding. The undersigned further notes that as by this time, summer had arrived and several of the Board's witnesses were stated to be unavailable to testify at this hearing (then scheduled for July 8, 1977 and July 11, 1977), the Board requested and the Association agreed to an adjournment of the hearings scheduled herein until after the opening of school in September, 1977.

4/ At this point, the undersigned notes that the Board has again raised the issue of the Commission's jurisdiction to hear this matter. As is more fully set forth below (infra at 7) the undersigned has considered the jurisdictional issue raised by the Board and determines that the Commission has jurisdiction over the instant matter.

in fact had won each of those disputes. The Association contends these were all protected activities under the Act. Citing principally the testimony of Board member Arnold Goldman, the Association contends that not only was the Board aware of the coaches' pay grievance filed by Mattaliano and Strojny, but it was also aware of the resultant arbitration award which mandated a pay increase for both Strojny and Mattaliano. ^{5/} Further, the Association contends that the Board was aware of and had discussed these events prior to deciding whether or not to re-appoint Mattaliano and Strojny as varsity coaches.

The Association points to Mattaliano's outstanding coaching record and the positive assessments of his attributes as a coach which he received from the Athletic Director, the Superintendent and various Board members. The Association observes that Strojny's coaching record was also quite good and she had initially received a positive rating from the Athletic Director at the conclusion of her last coaching season in 1976.

Placing particular emphasis upon the timing of the occurrence of various events, the Association notes the close proximity between the Board's discussions of the arbitration award (regarding the coaches' pay grievance) and its decisions not to reappoint Mattaliano and Strojny.

The Association cites the statements of various Board members as a direct indicia of the reasons for the Board's non-reappointment of Mattaliano and Strojny: (1) Mr. Goldman's statement to Marie Strojny that every time he saw her it was about another grievance. (2) Mr. Romanos' statement that "if these coaches want more money, we'll fire them." (3) Ms. Gobart's statement that Strojny was not reappointed due to a series of incidents involving Strojny and the filing of grievances.

The Association further asserts that in designating a male replacement for Marie Strojny, the Board's action was quite inconsistent with its stated reason for replacing Mattaliano— the desire to have a woman coach a girls' athletic team.

^{5/} The coaches' pay grievance was filed on April 13, 1976, by Mattaliano and Strojny. The essence of the grievance was that as head coaches of girls' varsity teams, Mattaliano and Strojny were being paid less than the head coaches of boys' varsity teams. The arbitrator, in a decision issued on September 16, 1976, ruled in favor of Mattaliano and Strojny and thus required that they be compensated the same amount of money as were the head coaches of the corresponding boys' varsity teams.

Finally, the Association claims that the Board's action in not reappointing Mattaliano and Strojny had the effect of discouraging employees from the exercise of their rights protected by the Act. The Association claims that this action was such an "inherently destructive activity" that the actions themselves may be considered evidence of an improper employer motive. In support of this position, the Association adduced testimony from Association President Cummins who stated that several of her constituents had confided to her that they were unwilling to file grievances concerning various problems as a result of what occurred with Mattaliano and Strojny.

The Association requested that the Commission issue a cease and desist order, order the Board to reinstate Mattaliano and Strojny to their formerly held coaching positions, award Mattaliano and Strojny the back pay they would have earned in those positions, but for the Board's illegal acts, and award interest on the back pay amount as the Association contends that the Board purposely sought to delay the matter from going to hearing.

POSITION OF THE BOARD

The Board has maintained that the Commission has no jurisdiction in this matter but that jurisdiction to hear the instant matter lies solely with the Commissioner of Education. The Board argues that as the position of athletic coach is a non-tenured position, the Board has an absolute right to assign or not to assign teachers to those positions. The Board contends that the assignment of teaching personnel is not a term and condition of employment; rather it is an educational policy issue which should neither be negotiated with the Association nor determined by the Commission. Thus the Board argues that because the assignment of teaching personnel is fully within its discretion, the Board's failure to reappoint certain personnel to coaching positions cannot be a violation of the Act. Concluding that there can be no violation of the New Jersey Employer-Employee Relations Act here as a matter of law, the Board argues that the Commission lacks jurisdiction over the instant matter and that such a challenge to Board action belongs before the Commissioner of Education.

The Board argues that the record does not demonstrate a relationship between the non-reassignment of Mattaliano and Strojny and their having previously filed a grievance. The Board states that neither Mattaliano nor Strojny testified that their non-reassignment was the result of their having filed the coaches' pay grievance. Further, the Board argues that nothing in the Act specifically guarantees the right to file grievances; thus, an employer discrimination due to an employee's filing of a

grievance cannot constitute a violation of the Act.

Alluding to the alleged statements attributed to Board member Romano, the Board contends that even assuming the alleged statements were made by Romano, the evidence shows that such statements carried little weight with the rest of the Board. The Board also notes that those witnesses who had attended Board meetings, when asked whether Mattaliano's grievance had influenced the Board in its decision not to reassign Mattaliano, all responded negatively. While acknowledging Mattaliano's excellence as a coach, the Board maintains that the primary reason for not reassigning him as coach was the Board's desire to have women coaching girls' teams.

The Board states that Strojny was perceived as a "problem" within the district. It is claimed that Board members disliked her attitude and administrators had "professional differences of opinion" with her. Indeed, these professional differences -- disagreements concerning how Strojny handled certain matters -- are alleged by the Board to have led Athletic Director LaRue to withdraw his rather positive recommendation of Strojny for reassignment as girls' varsity track coach.

The Board argues that the Association has failed to show two important elements in its case: (1) the involvement of Mattaliano and Strojny in "union activities," and (2) that the Board was motivated by some prohibited reason in not renewing Mattaliano and Strojny as varsity coaches

Finally, the Board contends that the testimony concerning what effects the Mattaliano and Strojny non-renewals had on the labor relations situation in Lakewood was not clear.

DISCUSSION AND ANALYSIS

The Commission has adopted a two-fold standard for application in charges alleging employer discriminatory conduct violative of N.J.S.A. 34:13A-5.4(a)(3). In In re Haddonfield Board of Education, P.E.R.C. No. 77-36, 2 NJPER 71 (1977), the Commission stated that a violation of subsection (a)(3) will be found where it is determined that a public employer's discriminatory acts were motivated in whole or in part by a desire to encourage or discourage an employee in the exercise of rights guaranteed by the Act or had the effect of encouraging or discouraging employees in the exercise of such rights. In further explanation of the two-fold standard, the Commission stated that the application of the standard will normally involve two essential elements: (1) There must be proof that the employee was exercising the rights

guaranteed to him or her by the Act, or that the employer believed said employee was exercising such rights, and (2) there must be proof that the public employer had knowledge, either actual or implied, of such activity.

The undersigned shall first address the jurisdictional issue raised by the Board.^{6/} After careful consideration of the arguments set forth by the Board and the record as a whole, the undersigned must reject the Board's contention that the Commission lacks jurisdiction over the instant matter.

N.J.S.A. 34:13A-5.4(c) states, in part:

"The Commission shall have power to prevent anyone from engaging in any unfair practice listed in subsections A and B above."

Subsection (c) clearly gives the Commission jurisdiction over all unfair practice matters, as specified -- to issue a complaint and notice of hearing on unfair practice charges, to conduct hearings thereon, to state findings of fact and conclusions of law, and to issue appropriate orders therein. N.J.S.A. 34:13A-5.4(a)(3) prohibits discriminatory conduct by a public employer which interferes with employees' exercise of rights protected by the Act.

The essence of the charge is that Mattliano and Strojny were not reappointed as varsity coaches because they had filed a grievance concerning coaches' pay with the Board. These allegations, if true, appear to constitute violations within the meaning of 5.4(a)(3) and are matters over which the Commission has jurisdiction

6/ The undersigned notes that the Board initially raised the issue of the Commission's jurisdiction over the instant matter in the motion for summary judgement discussed above (supra at 2). Ruling upon the jurisdictional issue in a decision denying the Board's motion for summary judgement, (see In re Lakewood Board of Education P.E.R.C. No. 77-73 page 3, supra at 2) the Chairman of the Commission stated:

"First, with respect to jurisdiction, the gravamen of the charge is that the two teachers were not reappointed as coaches because they successfully prosecuted several grievances before the Board. If these charges are true, then the Board may have violated the Act. That is not to say that the Commissioner of Education may not have jurisdiction over aspects of this matter as well. However, the power of the Commission to prevent and remedy unfair practices such as alleged herein is undeniable. See N.J.S.A. 34:13A-5.4(c)."

On the first day of hearing in the instant matter, the Board made a motion to dismiss this case based upon the Commission's lack of jurisdiction. The Hearing Examiner at that time denied the Board's motion. The Board again raised the issue of jurisdiction in its post-hearing brief. While the undersigned is somewhat uncertain about whether it is necessary or appropriate for him to again rule upon the issue of jurisdiction given the fact that the Commission has already considered and ruled upon the issue in its denial of the Board's summary judgement motion, nevertheless, in order to clarify the issue within the overall context of this case, the undersigned has again considered and ruled upon the issue of jurisdiction.

pursuant to 5.4(c). While the undersigned acknowledges that the Commissioner of Education may also have jurisdiction concerning various aspects of the circumstances herein, that cannot displace the authority of this Commission to adjudicate allegations of violations of the New Jersey Employer-Employee Relations Act and to remedy violations where found.

Continuing with its argument, the Board further claims that it has an absolute right to assign teaching personnel. The undersigned notes that the Board's authority to assign teachers as coaches is not disputed herein. However, the next two steps in the Board's argument -- (1) that no violation of the Act could occur as a result of the Board's exercise of such an absolute right, and (2) that if in fact improprieties exist with regard to the Board's exercise of its right to assign teachers to coaching positions that they should necessarily and exclusively be raised before the Commissioner of Education -- are rejected.

It is by this time abundantly clear that the personnel assignment decisions of a board of education are not made in a vacuum. Such decisions, while they are within a Board's discretion, plainly relate to and affect terms and conditions of employment. If, for example, coaching assignment determinations were made by the Board for reasons proscribed by the Act -- as has been alleged by the Association herein -- such conduct would clearly be violative of subsection 5.4(a)(3). Accordingly, this latter aspect of the Board's argument is rejected.

(1) Mattaliano's Protected Activities
Under the Act

Bart Mattaliano has been employed by the Lakewood Board of Education as a physical education teacher in the middle school since September 1974. Previous to his coming to Lakewood, Mattaliano taught and coached in the City of Bayonne. Mattaliano began coaching the girls varsity basketball team during the season commencing in winter 1974-1975. Although he functioned as the head coach of that team, his designation was "Assistant to Boys' Varsity Basketball Coach." He was compensated as an assistant coach. The team's record for that season was 12 wins and six losses. The following year (1975-76) Mattaliano both functioned and was designated as the head coach of the girls' varsity basketball team. ^{1/} For the winter 1975-76 season, the team's record was 21 wins and three losses and the team won the Class D State Championship.

^{1/} The title change occurred as the result of a grievance which had been filed by Marie Strojny. A more complete discussion of this grievance is set forth infra at 21.

Mattaliano was involved in two separate grievances filed with the Lakewood Board of Education. The first grievance concerned the Board's failure to give military pay credits to certain teachers. Subsequent to the issuance by the Commissioner of Education of Alfonsetti v. Lakewood Board of Education, 1975 SLD 297, the Association President filed a grievance on behalf of six teachers--one of whom was Mattaliano--claiming that they were entitled to receive, and were not receiving, pay credits on the salary scale for their military service. The grievance went through the grievance procedure through the Board level and just before reaching the arbitration step, the matter was settled. As a result of this grievance, Mattaliano was moved forward on the pay scale to a higher level of pay and received an amount of money in back payments.

Mattaliano was also involved in a grievance concerning compensation of athletic coaches. In this grievance, it was claimed, inter alia, that two head coaches of two separate varsity-level girls' teams (Mattaliano for basketball and Strojny for track) were not being paid appropriate amounts under the contract. The grievance was filed by the Association on April 13, 1976, on behalf of Mattaliano and Strojny. This matter proceeded all the way through the contractual grievance procedure and was presented to an arbitrator on June 9, 1976 and July 7, 1976. The arbitrator's award was issued on September 16, 1976.^{8/} The arbitrator found in favor of the Association and the award provided that Mattaliano be compensated \$2175 as Head Coach, Girls' Basketball (an increase of approximately \$675 or 45%) and that Strojny be compensated \$1625 as Head Coach, Girls' Track (an increase of \$215 or 15%).

The Board argues that public employees have no specific statutorily protected right to file a grievance. The Hearing Examiner rejects this proposition.

In In re Dover Township Board of Education, P.E.R.C. No. 77-43, 3 NJPER 81 (1977), the Commission found that the Board violated the Act by refusing to process grievances presented by the education association on behalf of employees represented by the association. In reaching this determination, the Commission concluded that public employees are guaranteed the right to present grievances through representatives of their own choosing. The Commission stated: "The New Jersey Constitution states that it is the right of persons in public employment

^{8/} See Exhibit CP-4. See also T-1, pp. 19, 65, 109 and 153.

to present proposals to their employers and to make known their grievances 'through representatives of their own choosing' [N.J. Const. (1947), art. I, para. 9]."^{9/}
The Commission concluded that the Act had implemented the concepts contained in this constitutional provision,

"through the use of majority representatives selected by employees in an appropriate unit. Our Supreme Court, in Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970), concluded that the purpose of the Act was to secure employees collectively in the various divisions and agencies of government the right to organize and to select representatives to present their proposals and grievances."^{10/}

^{9/} In re Dover Township Board of Education, P.E.R.C. No. 77-43, pp. 9-10, 3 NJPER 81 (1977).

^{10/} Id. The undersigned also notes that the New Jersey Employer-Employee Relations Act--specifically N.J.S.A. 34:14A-5.3--is replete with references to public employees' rights, inter alia, to form, join, and assist any employee organization and to negotiate collectively regarding grievances and terms and conditions of employment. Section 5.3 states:

When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedure shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedure may provide for binding arbitration as a means for resolving disputes. Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement." (emphasis added).

Finally, the Commission, in its Dover decision, examined the nature of the collective negotiations process. After citing N.J.S.A. 34:13A-5.3 and 5.4(a)(5), the Commission stated:

"These various sections of the Act reflect an awareness of the fact that collective negotiations is a continuous process which does not end with the negotiation of the agreement and its reduction to writing. The courts and administrative agencies in both the public and private sectors have determined that the adjustment of grievances is an integral part of that process." ^{11/}

In a later Commission decision, In re Laurel Springs Board of Education, P.E.R.C. No. 78-4, 3 NJPER 228 (1977), the Commission determined that in view of the totality of the Board's conduct toward the charging party that the Laurel Springs Board had violated N.J.S.A. 34:13A-5.4(a)(1). The Commission commented upon conduct of the charging party which was asserted to be "protected activity." The Commission stated:

"While the gravamen of the issue as it developed in the community focused on the transfer of Ms. Becken specifically, it also included the right of all teachers to prior notice before a transfer and other rights with regard to such transfers. Moreover, the letters written by Ms. Becken to the Board, which were admitted into evidence, base her claim on rights allegedly derived from the collective negotiations agreement as she understood it. To the extent that she was pressing a claim under the contract, her dispute amounted to a contractual grievance or a disagreement over the proper interpretation of the agreement and thus constituted protected activity." ^{12/}
(emphasis added).

From the foregoing discussion, it is abundantly clear that the filing, prosecution and other participation in the processing of grievances constitutes protected activities under the Act.

(2) The Board's Knowledge of Mattaliano's Protected Activities

The Association filed the coaches' pay grievance on Mattaliano's behalf in April 1976. The matter was processed and, in accordance with the parties' con-

^{11/} In re Dover Township Board of Education, P.E.R.C. No. 77-43, pp. 10-11, supra at 9.

^{12/} In re Laurel Springs Board of Education, P.E.R.C. No. 78-4, p. 5, 3 NJPER 228 (1977).

tractual grievance procedure, was submitted to Superintendent Milton Showell. ^{13/}
The Superintendent denied the grievance and the matter went to the Board for hearing. The Board also denied the grievance and thereupon the matter was submitted to binding arbitration. The arbitration hearing lasted two days (June 9 and July 17, 1976). The Association presented its case on the first day of hearing and Bart Mattaliano and Marie Strojny both testified at that time. On that day, the hearing was attended by Association President Audrey Cummins, N.J.E.A. UniServ Representative Harry Donnelly, Board member Matthew Romano, Superintendent Showell and Athletic Director William LaRue. ^{14/}

The arbitrator's award was issued on September 15, 1976. In his testimony herein, Board member Arnold Goldman testified that Mr. LaRue had briefed the Board about the arbitrator's award and the Board discussed said award at a meeting held in early October 1976. Immediately thereafter, the Board discussed the Mattaliano and Strojny reappointments as varsity coaches. ^{15/}

On the day following the first day of the arbitration hearing, Mattaliano testified that LaRue spoke with him concerning the accuracy of his testimony. Goldman also testified that LaRue had spoken to the Board about the veracity of Mattaliano's testimony. ^{16/} Both Board members Goldman and Gobart testified that the Board knew of the coaches' pay grievance and the resultant arbitration award before making the decision upon the reappointment of Mattaliano and Strojny as varsity coaches. ^{17/}

The undersigned thus concludes that the Board and the administration were aware of the coaches' pay grievance filed on behalf of Mattaliano and Strojny.

^{13/} See, T-1, pp. 152-3. See Exhibit J2, Article III.

^{14/} See, T-1, pp. 20, 68.

^{15/} See T-1, pp. 44-48, 57. Further testimony given by Cummins, Donnelly, LaRue and Gobart confirmed Goldman's testimony. See T-1, pp. 67-68; T-2, pp. 52, 88.

^{16/} T-1, pp. 29, 44. In this regard the undersigned notes that a grievance was filed concerning the veracity issue but was resolved and withdrawn before reaching the arbitration stage.

^{17/} See T-1, p. 57; T-2, p. 88.

and of their participation in the processing of same. ^{18/}

(3) The Board's Discriminatory Motivation

The undersigned has utilized several principal measures in considering the discriminatory motivation aspect of this case: the overall circumstances surrounding the instant charge, the statements made by various Board members and administrators, the time and sequence of the salient events herein, and the various reasons stated by the Board in justification of its conduct.

The testimony and other record evidence in this matter indicates unequivocally that Bart Mattaliano was not merely a good coach or even a very good coach--the record herein reveals that, without question in anyone's mind, Mattaliano was an outstanding coach. William LaRue, the Athletic Director, testified that while Mattaliano did have a problem dealing with female officials, he was clearly "a very talented coach...[who did] an exceptional job with the girls' basketball team." ^{19/}

LaRue testified that Mattaliano, when first hired as girls' varsity basketball head coach, replaced a coach whom the Board felt was not doing a competent job. LaRue testified that Mattaliano had turned the girls' basketball program around. ^{20/} Indeed he had. In the first season he coached the team (1974-75) the team's record was 12 wins, 6 losses; in the following season (1975-76) Mattaliano coached the team to a 21 win-3 loss record and the team won the State Class D Championships. Mattaliano was voted Ocean County Coach-of-the-Year for girls' basketball.

At the end of the 1975-76 basketball season, as is the standard procedure, LaRue evaluated Mattaliano's coaching performance. The "Interscholastic Athletic Coaches' Evaluation Record" for Mattaliano was quite good: on a rating scale of 1 to 5 (5 being the highest rating), Mattaliano's ratings over 12 separate items averaged over 4. Further, LaRue commented that "Overall, Mr. Mattaliano has done an excellent job of coaching with a group of girls who at times were difficult to work with," and LaRue recommended that Mattaliano be reappointed for the 1976-77 season. ^{21/} LaRue subsequently again recommended to the Board that Mattaliano be

^{18/} The undersigned also concludes that at least one Board member and the Superintendent were aware of the military pay grievance and closely identified Mattaliano with that grievance. See T-1, pp. 18, 106-108.

^{19/} T-2, p. 13.

^{20/} The undersigned also notes that Mattaliano--an outstanding coach with a very successful record--was replaced by a teacher with very limited, if any, prior coaching experience and unproved coaching abilities. T-1, pp. 149-52; T-2, p. 10.

^{21/} See Exhibit CP-3.

reappointed as girls' varsity basketball head coach.

Milton Showell, the Superintendent, testified that he too had recommended to the Board that Mattaliano be reappointed to his coaching position. Further, Showell testified that a favorable evaluation at the end of a coaches' season may be interpreted as a formal notification of rehiring for the following year. ^{22/} It would thus appear that the Coach's Evaluation Record is not a mere form or insignificant step in the reappointment decision process--rather, it appears to be the operational step in that process.

The undersigned further concludes that the Board's disagreement with and reversal of recommendations of the Superintendent and the Athletic Director is not the usual practice--in fact, it is highly unusual. ^{23/}

The sequence of various occurrences connected with Mattaliano's non-renewal are worthy of note.

Showell testified that the Board usually sought to consider and appoint coaches for the fall and winter sports seasons prior to the start of school in September. When asked why Mattaliano's coaching contract was not submitted to the Board and considered prior to the start of school, Showell indicates he was under-

^{22/} T-1, pp. 155-161. The Association charged that the Board failed to notify Mattaliano and Strojny of their status as coaches pursuant to the requirement set forth in the contract between the Board and the Association. Article XI of the contract states that coaches shall have notification of their coaching status at the close of their respective sport. Mattaliano and Strojny each testified that they were not informed by the Board of their coaching status for the following year until long after the close of their respective sport's seasons. However, it is uncontroverted in the record that Mattaliano and Strojny each promptly received a Coaching Evaluation Record at the end of their respective sport's seasons. Showell asserted that the Evaluation Record was a formal document, was generally followed by the Board and was utilized to comply with the notification requirement set forth in Article XI of the parties' Agreement. Based upon the foregoing, the undersigned would conclude that the Evaluation Record normally constituted compliance with the contract's notice requirement. However, in the instant matter, the Board reversed the initial coaching status notification reported to Mattaliano and Strojny and effected this reversal long after the close of the applicable sport's season. Accordingly, the undersigned concludes that the Board failed to comply with the contractual notice provision. Such conduct by the Board may constitute a violation of subsection (a)(5) of the Act; however, it was never alleged that the Board had violated subsection (a)(5). But in the context of the instant matter, these contractual violations are viewed by the undersigned as one indicator of the Board's discriminatory motivation in dealing with both Mattaliano and Strojny.

^{23/} T-2, pp. 110-120. The undersigned notes that the only instance which the Board was able to cite in which the administration recommended one way on a coaching candidate and the Board went the opposite way involved an individual who was the focus of a great controversy. The grievance aside, this was clearly not the case with regard to Mattaliano.

tain. Further, when asked if the reason that Mattaliano's contract was not considered prior to the September opening of school was because the Board was waiting for the arbitrator's ruling to issue first, Showell hedges and answers around the question --he finally stated that, "that [waiting for the arbitrator's decision to issue] was not the prime factor..." ^{24/}

Mattaliano concluded the 1975-76 basketball season and received his Coaches' Evaluation from LaRue in March 1976. In April 1976, the Association filed the coaches' pay grievance from which Mattaliano stood to gain significantly. The grievance went through the grievance procedure and ended in binding arbitration. The arbitration hearings were held in June and July 1976, and the arbitrator's award issued on September 15, 1976.

The Board was informed of the grievance arbitration award at a Board meeting held in early October 1976. ^{25/} At that meeting, Mr. LaRue presented and discussed the arbitrator's award with the Board. ^{26/} The record reveals that the Board discussed the grievance arbitration award during that October meeting at considerable length and almost immediately thereafter decided not to reappoint Mattaliano as girls' varsity basketball head coach. ^{27/}

There is testimony in the record concerning various statements made by Board members and the considerations weighed by the Board in reaching a decision on whether Mattaliano was to be reappointed as a coach.

Board member Matthew Romano attended the arbitration hearings concerning the coaches' pay grievance. Both Audrey Cummins and Harry Donnelly have testified that at the arbitration hearing, Mr. Romano was overheard stating that "If these coaches want any more money, we'll fire them...get rid of them." ^{28/} This testimony was corroborated by Superintendent Showell. ^{29/}

While the undersigned notes that it was testified that Mr. Romano's "emotional outbursts" would not often persuade the Board, the undersigned also notes

^{24/} T-1, pp. 167-68.

^{25/} From the record, the undersigned is not entirely certain if this early October meeting was held immediately prior to the Board's regular public meeting or if this was a Board conference or work session.

^{26/} T-1, p. 44; T-2, p. 54.

^{27/} T-1, pp. 43-48, 144; T-2, pp. 54, 112.

^{28/} T-1, pp. 69, 111. The undersigned notes that at the time when the unfair practice hearings were held herein, Mr. Romano was deceased. The Association had earlier requested subpoenas from the undersigned for both Board members Romano and Goldman.

^{29/} T-1, pp. 143-47.

that he was portrayed by all who spoke of him during these hearings as vociferous and forceful in communicating his opinions. ^{30/} Further, Showell testified that Romano was the one who "stood out" in advocating that Mattaliano not be reappointed due to the successful grievance and arbitration in which he had been involved. ^{31/} Showell also testified that Romano had mentioned "many times" that the coaches' pay matter had gone to arbitration and that Mattaliano won said arbitration. ^{32/}

Board member Gobart's testimony was consistent with the foregoing discussion concerning Romano's views and his position regarding this matter. Further, Gobart's testimony extends part of Romano's view--that the Board should not pay Mattaliano and Strojny (who coached girls' sports teams) the same compensation as was being paid to the head coaches of boys' teams--to other Board members, albeit in a less offensive form. Gobart stated that in general two views prevailed on the Board concerning the Mattaliano non-renewal: (1) that a woman should coach the girls' basketball team and (2) that the Board should not pay the girls' varsity basketball head coach the same amount as they paid Mr. Nastase (the boys' varsity basketball head coach). Gobart indicated that Board member Zweben stated there were "other reasons" for not renewing Mattaliano; however, these "other" reasons were never identified. ^{33/}

Board member Goldman testified that at the early October 1976 Board meeting, the Board's discussions of the grievance arbitration award and the renewal of Mattaliano as girls' varsity basketball head coach were interrelated. Goldman stated that both the Mattaliano and Strojny renewals were treated at that meeting, although they were dealt with separately. Goldman indicated that during the Board's

^{30/} T-1, pp. 48-49, 137-38, 146. T-2, p. 86. See also, note 29.

^{31/} T-1, p. 146.

^{32/} T-1, p. 145.

^{33/} The undersigned notes that Mr. LaRue's testimony concerning the events at the arbitration hearing conflicts in part with the testimony of Cummins, Donnelly and Showell. In evaluating this conflict, the undersigned was impressed with the quality of the testimony on this topic from Cummins, Donnelly, and particularly Showell. LaRue, on the other hand, answered one question on this issue at the end of his direct testimony and stated that he did not remember hearing Romano make the statements attributed to him by Cummins and Donnelly. Thereafter, when the Association's counsel sought to cross-examine upon this matter, Mr. LaRue became quite hostile and recalcitrant. In his later testimony, several internal inconsistencies surfaced. In considering the overall testimony of all four witnesses who addressed this topic (events at the arbitration hearing), the Hearing Examiner credits the testimony of Cummins, Donnelly and Showell on said topic.

discussion concerning Mattaliano's non-renewal certain Board members and administrators stated that Mattaliano had overreached himself, that he wanted too much money and that he had lied while testifying at the arbitration hearing. Goldman stated that he suggested during this Board discussion that Mattaliano was being treated unfairly by the Board, that the Board should just simply "live with." the arbitrator's award and that the Board should not try to change it at that point. In commenting upon the likely effects of Mr. Romano and his advocated opinions upon the Mattaliano-Strojny renewal decisions, Mr. Goldman indicated that he felt that the Board members were strong individuals and were not likely to be swayed from their own opinions. However, he further indicated that he did not know why most Board members voted against Mattaliano and he conceded that Romano may have affected the opinion of some Board members.

The undersigned also notes that when asked if any other Board members also held opinions similar to Mr. Romano's, Showell did not directly answer the question. Rather, at two distinct points in his testimony, he skirted the issue by suggesting that some Board members wanted a woman to coach girls and that that (wanting a woman coach) appeared to be one of the main reasons for not reappointing Mattaliano. ^{34/}

(4) The Board's Reasons as to Why Mattaliano Was Not Reappointed

There is testimony in the record indicating that the central factor in the Board's decision not to reappoint Mattaliano as the girls' varsity basketball head coach was the Board's desire to have women coach girls' athletic teams. Thus, Showell testified that "one of the predominant reasons...(in the Board's decision not to reappoint Mattaliano)...appeared to be the fact that they wanted... a female to coach...a girls' basketball team." ^{35/} The testimony given by Gobart and LaRue was consistent with Showell's testimony on this matter. Gobart testified that four Board members, including herself, held this sentiment. Mr. LaRue testified that in his opinion, in general he would favor having women coach girls' athletic teams. The reasons he cited in support of this were that a woman coach could provide somewhat better locker-room supervision and might have better rapport with the girls on the

^{34/} T-1, pp. 135, 138, 166, 167.

^{35/} T-1, p. 138.

team. ^{36/}

Ms. Gobart also indicated that some Board members had been concerned about paying Mr. Nastase's salary for a girls' coach. In paraphrasing and--as she indicated, editing--Mr. Romano's stated opinion on the Mattaliano renewal, Ms. Gobart testified that Romano simply felt that in no way should the girls' coach be paid what the boys' coach was getting. Further, Goldman, Showell and Gobart each indicated that they did not think the Board's failure to reappoint Mattaliano was due to Mattaliano's filing of the coaches' pay grievance against the Board.

While the undersigned recognizes the Board's managerial prerogative to choose its coaches and that the Board could have properly utilized the woman-should-coach-girls reason in making its coaching position decisions, the undersigned is constrained to reject this reason inasmuch as the Hearing Examiner finds it to be pretextual. The undersigned notes that the Board hired Bart Mattaliano in 1974 as girls' varsity basketball head coach and reappointed him to that position in 1975. In 1976, despite an outstanding performance as a coach, after Mattaliano had been involved in the successful prosecution of the coaches' pay grievance, the Board did not renew Mattaliano as girls' varsity coach. While the Board indicates that its chief reason in not renewing Mattaliano was a desire to have women coach girls, the Board's conduct is clearly inconsistent with its stated reason: at the same time they were replacing Mattaliano with a woman, they were replacing Marie Strojny, the girls' track coach, with a man. The record does not indicate that a concerted effort or any effort was made to recruit a female coach for the basketball position; rather, it appears that when the vote was taken on Mattaliano in October 1976, it was simply a decision not to rehire him and nothing more.

A second reason was raised by the Board concerning why it did not reappoint Mattaliano to the basketball position--that the Board did not want to pay Mattaliano, as coach of a girls' team, the same amount of money as it was paying the boys' varsity basketball head coach.

Initially, it is noted that the Board certainly may seek to hire one qualified individual over another qualified person because it can hire the first individual for less money than it can hire the second. That the Board may utilize

^{36/} LaRue also stated that the American Association of Health and Physical Education (AAHPE) felt that where possible "a girl should coach girls' sports." T-2, p. 9. On cross-examination, however, LaRue admitted that he had no AAHPE documentation with him and was uncertain about whether he had any AAHPE documents in his office which specifically stated this opinion.

such a reason is not disputed; whether it utilized that reason herein to any significant degree is another matter.

The undersigned finds that the net effects of this factor upon the Board's overall decision not to renew Mattaliano were minimal. First, the undersigned notes that the savings effected by the Board's decision not to renew Mattaliano were not great and would be short of duration. Pursuant to the results of the coaches' title and the coaches' pay grievances and pursuant to the Coaches Salary Guide set forth in the parties' 1975-76 Agreement (Exhibit J2) it appears that the savings to the Board in appointing a less experienced coach than Mattaliano to the girls' varsity basketball head coaching position would be approximately \$445-\$675, depending upon the experience of the person hired. It must further be noted that the savings would be short-lived, as upon accumulating the requisite coaching experience, the individual who replaced Mattaliano would eventually reach the top of the coaches' salary guide; thus, in time the Board would be required to pay Mattaliano's replacement in the girls' varsity basketball head coach position the same amount of money as was then being paid to the boys' varsity head coach.

It is also noted, as Board member Goldman indicated in his testimony that, by replacing Mattaliano, the Board was in effect altering or circumventing the arbitration award. Through this avoidance, the Board was infringing upon Mattaliano's statutory rights to adjust contractual disputes "freely and without fear of penalty or reprisal." Thus, the undersigned has largely discounted the effects of this factor upon the Board's overall decision not to renew Mattaliano. Clearly, more is at stake here than an economic decision to pay Mattaliano \$2100 or a replacement \$1700. To view this matter as a management decision by the Board to save \$400 or \$500 is myopic. A broader perspective is required--one which does not lose sight of the fact that after successfully prosecuting the coaches' pay grievance, Mattaliano was not renewed as the girls' varsity basketball coach.

The undersigned is not convinced that the Board failed to renew Mattaliano because it wanted a woman to coach girls. Neither is the undersigned convinced that Mattaliano's non-renewal was due solely, or even largely, to the Board's desire to reduce its coaching salary expense. Rather, the undersigned is convinced that the successful prosecution of the coaches' pay grievance in which Mattaliano was involved, which resulted in a favorable arbitration award for Mattaliano, was the

tion of their rights under the Act, a situation clearly repugnant to the intent and purposes of the Act.

(5) Strojny's Protected Activities

Marie Strojny has been employed as a physical education teacher by the Lakewood Board of Education since 1971. She coached the girls' track team from the time she came to Lakewood in 1971 through 1976. Prior to 1971, Strojny had taught for five years and had coached a variety of sports teams, including track. For the 1975-76 season, the Lakewood girls' track team, coached by Strojny, had a 7 win-2 loss record and won the State Group II Championship. ^{37/}

Strojny was involved in several grievances filed against the Board. She has had other contacts and communications with the Board about several other matters. ^{38/} The first grievance in which she was involved concerned the Board's failure to post a notice of a coaching vacancy. She testified that after the boys' track team coach took a sabbatical leave, the Board decreed that all of track and field (boys and girls) would be under one head coach. The Board then appointed another coach to the then-vacant track head coaching position. ^{39/} Strojny testified that, as this was a coaching position opening and as she felt qualified for the position, there should have been a posting and she should have been given the opportunity to apply for said position. Strojny testified that as a result of this grievance, the job was subsequently posted and that she had herself prepared the notice at the direction of LaRue. Gobart did not completely agree with this version. However, Gobart's testimony was vague and confused on this topic. Goldman testified that he felt that this grievance was totally without merit. However, other than feeling the grievance was frivolous or that Strojny had not "won" the grievance, neither Goldman nor Gobart offered any factual contradiction to Strojny's testimony; accordingly, the undersigned has credited Strojny's testimony concerning the posting grievance.

The second grievance which Strojny filed with the Board concerned the title designation of head coach. The Board resolved to drop the title of head coach

^{37/} The yearly records of the girls' varsity track team was as follows: 1971-72, 5 wins-5 losses; 1972-73, 1 win-8 losses; 1973-74, 0 wins-9 losses; 1974-75, 7 wins-2 losses; 1975-76, 7 wins-2 losses.

^{38/} These other matters are discussed at various points below.

^{39/} The undersigned notes that both the 1975-76 Agreement and the 1976-77 Agreement between the parties provides for the posting of vacancies. See Exhibits J-1 and J-2. Article 12. Section B.

basic reason for his non-renewal. And even assuming arguendo that the reasons proffered by the Board for Mattaliano's non-renewal did play a part in the Board's decision concerning Mattaliano, the undersigned finds that the successful prosecution of the coaches' pay grievance was at least one of the factors--and not a negligible one--in the Board's decision.

Several factors emerge herein as paramount. Initially, the record shows that Mattaliano was an excellent coach. The sequence of events surrounding Mattaliano's non-renewal strongly mitigates in favor of finding that Mattaliano's involvement in the successful prosecution of the coaches' pay grievance was a key element in the Board's decision to not reappoint him to the basketball coaching position. The Board waited for the arbitration award before making its renewal decision. The statements and testimony of various Board members concerning the Mattaliano renewal issue provide further support for the Association's contentions. Board member Romano forcefully argued that Mattaliano should not be renewed. Romano argued that coaches of girls' teams should not be compensated as much as coaches of boys' teams and he forcefully and often brought to the Board's attention--during the time that the Board was considering Mattaliano's renewal--that Mattaliano had filed and won a grievance against the Board which mandated that the Board had to pay Mattaliano the same amount as they paid the boys' varsity basketball coach. Clearly, the Board's consideration of such arguments during its deliberations was inappropriate; Goldman at that time commented to the Board more than once that the Board was being unfair with Mattaliano. The undersigned concludes that the Board did not reject Romano's arguments; rather, it embraced them. It is further concluded in this regard that in declining to renew Mattaliano, several Board members simply did not want to pay Mattaliano the higher salary mandated by the arbitration award. However, by deciding not to rehire Mattaliano so as to avoid paying the coaching salary to which he was entitled after the prosecution of the coaching pay grievance, the Board was in effect circumventing the grievance process and was thus undermining the whole notion of grievance processing. Although he prevailed in the grievance and was awarded the higher pay, Mattaliano lost the coaching position--clearly, he won the battle but lost the war. Insofar as grievant Mattaliano is concerned, the Board reversed the arbitration award. The net effects of this quid-pro-quo are devastating; it will undoubtedly have a "chilling effect" upon unit members' asser-

for all women's sports teams; thereafter, the girls' coaches were all designated as assistant coaches. In this grievance, Strojny contended that since the head coaches of girls' teams performed the same job as did the head coaches for boys' teams, the title designation should be the same. As a result of this grievance, the head coach title was restored for girls' teams.

The final grievance in which Strojny was involved concerned the pay disparity between coaches of girls' and boys' athletic teams, discussed above. ^{40/} The results of this grievance essentially mandate that the coaches of girls' teams be paid an amount equivalent to that paid to coaches of boys' teams.

(6) The Board's Knowledge of Strojny's Protected Activities

In his testimony, Goldman stated that during the 1975-76 year he was aware of several grievances which had been filed by Strojny and that the Board had discussed Strojny on several occasions. Ms. Gobart's testimony also indicates that during renewal discussions concerning Strojny, there was certainly an awareness among Board members that Strojny had filed several grievances against the Board. Board member Goldman testified that the Board considered the posting grievance "two years ago"--approximately September 1975--and that in his opinion it was a meritless grievance. ^{41/} Ms. Gobart speaks of her recollections about the posting grievance, albeit vaguely, in her testimony. ^{42/}

Ms. Gobart recalled the title grievance filed by Strojny and in fact thought that the title grievance was the same as the coaching pay disparity grievance. Showell too recalled the title grievance and noted that he had denied that grievance at the Superintendent's level in the grievance procedure.

Finally, the undersigned notes Goldman's statement to Strojny--when she was asked to appear before the Board in October 1976--that everytime he saw Strojny, it was about another grievance. ^{43/} Clearly, as his statements indicate and as

^{40/} See discussion, supra, at 9.

^{41/} T-1, pp. 52-54.

^{42/} T-2, pp. 90, 108.

^{43/} T-1, p. 42.

was acknowledged in his testimony, Goldman was aware of the Strojny grievances prior to the time of the Board's consideration of Strojny's renewal as girls' track coach. Further, Athletic Director LaRue testified that he made a report to the Board concerning the arbitrator's award on the coaches' pay grievance shortly after the issuance of the award. Finally, Goldman testified that all Board members were aware of the Mattaliano-Strojny grievances prior to the Board's decision not to reassign them to their respective coaching positions. ^{44/} Based upon the foregoing discussion and the entire record, the undersigned concludes that the Board of Education and the administration had knowledge of Strojny's grievance activities.

(7) The Board's Discriminatory Motivation

Marie Strojny coached the girls' track team in Lakewood for five successive years (1971-1976). The team's performance during this time declined initially and then improved dramatically in the last two years that she coached. From the record, it appears that Strojny was a fairly good coach--in late June 1976, LaRue completed Strojny's Coaches' Evaluation Record. On a rating scale of 1 to 5 (5 being the highest), Strojny's rating over 12 separate items averaged over 4.25. LaRue also commented that "Ms. Strojny has done a commendable job of coaching Girls Track; while it is true that she was blessed with several exceptional athletes, I was particularly impressed and pleased with the time and effort given to some athletes of obviously lesser ability...." LaRue further stated that although there were some deficiencies concerning safety procedures early in the season, after discussion there was "noticeable improvement." ^{45/} LaRue recommended that Strojny be rehired.

The record clearly indicates that the relationship between Strojny and the Board was "strained." In fact, in its brief, the Board referred to certain Board members' personal feelings toward Strojny and stated, "they did not think very much of her." ^{46/}

On about December 15, 1976, Strojny received in her school mailbox a notice of a coaching vacancy from the Keansburg school district. The record established that it was put there by LaRue and that he did not notify any other Lakewood teachers of the vacancy.

^{44/} T-1, pp. 50-56, 57.

^{45/} See Exhibit CP-5.

^{46/} See brief of the Lakewood Board of Education, p. 12.

Finally, the undersigned notes with interest the impact of two of the three Strojny grievances about which various witnesses testified. The head coach title grievance resulted in the Board's denominating the top coach of a girls' athletic team by the same title designation as it did the top coach of a boys' athletic team--thus, for example, Mattaliano was titled head coach for girls' varsity basketball just as Nastase was titled head coach for boys' varsity basketball. The final outcome of Strojny's other grievance--the equal coaches' pay grievance--was that the Board was obligated to pay Mattaliano and Strojny, inter alia, as head coaches of girls' athletic teams, at the same rate as they paid the head coaches of boys' athletic teams. This result was clearly not palatable to several Board members.

Again, the undersigned finds it useful to review the sequence of events surrounding Strojny's non-renewal. The testimony shows that the 1975-76 track season ended in mid-June 1976. Strojny's end-of-season report was submitted on June 18, 1976, and she received her Coaches' Evaluation from LaRue toward the end of June 1976. The "Jacket Incident" had its beginnings at about this time. ^{47/}

On September 16, 1976, the arbitration award was issued concerning the coaches' pay grievance. The Board was briefed concerning the arbitration award and discussed its ramifications at a meeting in early October 1976 (probably on October 5, 1976). Board member Goldman testified that Mattaliano and Strojny were treated as two separate cases, although their non-renewals were considered at the same Board session--late September or early October. ^{48/} Gail Gobart testified that at an early October Board meeting she recalled the Board's being told of a ruling on pay concerning Strojny (only) and that she had previously been aware of a Strojny grievance relating to pay. ^{49/} Mr. Showell stated that he recalled Mattaliano's non-renewal being discussed at a Board meeting on October 5, 1976, but that to his recollection, Strojny was not then discussed. Showell hedged somewhat when he was pressed about his recollection of the October 5, 1976, meeting. In addition to being contrary to Goldman's and Gobart's testimony on this issue, the

^{47/} The Jacket Incident, discussed more fully infra at 29, was a confusing and controversial matter concerning jackets for the Championship Girls' Track Team, in which Strojny became involved.

^{48/} T-1, p. 52.

^{49/} T-2, pp. 92, 98.

sequence of events surrounding Strojny's non-renewal and the Board's decisions concerning it also belies Showell's recollection of the October 5, 1976 meeting.

Strojny was instructed to attend a Board session on October 18, 1978, to discuss the Jacket Incident with the Board. Showell testified that it was at this point that the Board decided it no longer wanted her as girls' track coach and that some (and at that point still unspecified) form of discipline would be imposed later. It appears to the undersigned that instructing a teacher to appear before the full Board is not something which is lightly undertaken; thus, it would seem that the Board would have discussed such a move prior to having Strojny come to the October 18th meeting. It is also noted that a letter was procured by some representative of the Board from Leonard Emkin, the owner of the trophy shop from which the track team jackets had been ordered. This letter, dated October 13, 1976, coincidentally and conveniently directed the blame for the track jacket problem at Strojny. If the letter was proffered on October 13, 1976, then surely someone connected with the Board had decided upon the need for such a letter prior to that time. These events and the testimony concerning the issue of when the Board discussed Strojny's non-renewal all point to a consideration by the Board far in advance of October 18, 1976. Accordingly, based upon the record herein, the undersigned concludes that both the Mattaliano and Strojny non-renewals were duly considered at the October 5, 1976, meeting of the Board. ^{50/}

Several other events also occurred in connection with the Strojny non-renewal. On November 10, 1976, Strojny sent a letter to the New Jersey State Interscholastic Athletic Association (hereinafter "NJSIAA") inquiring about the Association's rules concerning how acceptance of gifts by student athletes would affect their eligibility to compete in interscholastic sports. One November 29, 1976, the NJSIAA responded to Strojny's inquiry. Between November 10 and November 29, 1976, LaRue apparently received a call from the NJSIAA about Strojny's letter.

On December 3, 1976, Showell sent Strojny a letter of reprimand concerning the Jacket Incident. On December 9, 1976, LaRue sent Strojny a letter stating that he was withdrawing his recommendation of her as the girls' track coach. LaRue also

^{50/} The undersigned notes that the testimony indicates that while the Board was considering the Strojny reappointment, the members were aware of the grievances that had been filed by Strojny. See T-2, p. 88.

sent Strojny, on December 15, 1976, a notice of vacancy for a coaching position in another school district. Finally, after the girls' track coaching position was posted, Strojny reapplied therefor sometime prior to January 26, 1977.

There is testimony in the record attributing certain statements, made about and to Strojny, by various Board members. As was discussed above. Board member Romano attended the coaching pay arbitration hearing in July 1976, wherein he was overheard by several persons stating that, "If these coaches (referring to Mattaliano and Strojny) want more money, we'll fire them...get rid of them." ^{51/} Further, subsequent to the coaches' pay arbitration award, there developed a strong sentiment among Board members against paying girls' athletic coaches the same amount as was paid to their counterparts in the boys' athletic program. The strongest proponent of that viewpoint was Matthew Romano. ^{52/}

When Strojny appeared before the Board, as instructed, on October 18, 1976, Board member Goldman stated to her, "...everytime I see you before us, you are always involved in a grievance." ^{53/} In his testimony concerning his vote not to reassign Strojny as girls' track coach, Goldman stated Strojny's grievance filings were "one of the factors" which influenced his decision. Goldman lumped together the grievances filed by Strojny (the posting grievance, the head coach title grievance and the coaches' pay grievance) with the Jacket Incident as "problems" vis-a-vis Strojny. In reviewing these "problems," Goldman asserted that the Jacket Incident was Strojny's fault and that at least one of Strojny's grievances, based upon his own investigation of the matter, was "meritless." Goldman further indicated that the fact that Strojny filed a grievance did not influence his opinion; rather, it was the nature of the grievance and the facts involved. When asked if the coaches' pay grievance combined with the other grievances which Strojny filed against the Board influenced his decision on her renewal, he stated, "I can't divorce the others." When asked point-blank if not for the grievances would he have voted to reassign Strojny as girls' track coach--he dodged the question.

Gobart's testimony concerning Strojny was of a similar nature. Gobart stated that Strojny "...seemed to be the source of a problem for the school district." Gobart stated that it was not "...the filing of the grievance per se that

^{51/} T-1, pp. 69, 111, 143-47.

^{52/} See discussion supra at 15.

^{53/} T-1, pp. 42, 91, 87, 113.

affected anybody on the Board as far as a vote is concerned (to renew Strojny). It was the information derived from those grievance hearings." ^{54/} Gobart also testified that she felt that Strojny should not be reappointed as girls' track coach "...due to a series of incidents involving Miss Strojny and the filing of grievances." ^{55/}

(8) The Board's Reasons as to Why Strojny Was Not Reappointed

The Board has pointed to several reasons for Strojny's non-renewal as girls' track coach. The Board specifically notes two reasons: Strojny's involvement in (1) the Jacket Incident and her "general attitude" when before the Board and (2) that Strojny was not recommended to the Board for renewal by the administration. ^{56/} The administration, personified herein by Athletic Director LaRue, also cited two reasons for not recommending Strojny: (1) the Jacket Incident and (2) Strojny's circumventing the chain of command.

The undersigned notes that LaRue gave Strojny a highly favorable recommendation at the conclusion of the 1975-76 track season. On December 9, 1976, citing the above-referred factors, he withdrew this recommendation.

LaRue notes that Strojny twice went around the "chain of command." The first time this occurred was in June 1976 when Strojny sent her end-of-season report to LaRue and to each Board member. LaRue testified that to his knowledge this was not standard procedure. LaRue indicated that he viewed Strojny's report as critical of him.

It is apparent that there was some friction between Strojny and LaRue. Strojny testified that she felt her professional thoughts and opinions were not

^{54/} T-2, pp. 89-90.

^{55/} T-2, pp. 83, 107-8.

^{56/} Board member Gobart indicated that the Board's non-renewal of Strojny was consistent with the administration's (LaRue) decision not to recommend her to the Board for the girls' track coaching position. In his testimony, LaRue stated that he had rescinded his earlier recommendation to the Board for Strojny's renewal. However, the undersigned notes that LaRue's withdrawal of his recommendation did not occur until mid-December 1976. Accordingly, as indicated above, the undersigned believes that by this time the Board's determination not to renew Strojny was already made. Thus, LaRue's withdrawal of his recommendation, coming as it did after the Board's determination of non-renewal, is viewed as being of little significance.

given serious consideration by LaRue ^{57/} and that the girls' track team was not given due recognition for its accomplishments by the Department. LaRue's testimony in no way contradicted Strojny's assertions--from his testimony it may be concluded that LaRue did not quite place girls' athletics on an equal footing with boys' athletics. While his holding such a viewpoint and the asserted lack of consideration accorded Strojny's professional opinions may not justify going around the chain of command, the undersigned makes several collateral observations on this issue. First, there is no clear indication that the Lakewood Athletic Department operated on the basis of a tight, police department-type chain of command. Thus, going around it must be kept in proper perspective. Second, Strojny did not go around the chain of command; LaRue received his copy of the report; the Board received another. Third and most important--this event occurred in late June 1976. It is unclear from the testimony exactly when LaRue received the season report vis-a-vis the time that he gave Strojny the highly positive coaches' evaluation. It is possible that LaRue's evaluation came after the report. If that is the case, it would clearly tend to diminish the importance which LaRue now wishes to attach to this incident. Further in this vein, the undersigned finds that there is nothing in the record which indicates that LaRue ever took any action as a result of Strojny's sending the report to the Board--there is no indication that he spoke to Strojny, criticized her or in any other way acknowledged to Strojny his dissatisfaction with this action. Again, this does not enhance LaRue's current view of the importance of this incident.

LaRue cites another instance of Strojny's circumventing the chain of command. Sometime during the fall of 1976, a matter developed concerning whether or not one of Strojny's athletes could accept a gift or award from a magazine and still retain her eligibility to compete in interscholastic athletics. Seeking to clarify this situation for the student, Strojny wrote a letter dated November 10, 1976, to the New Jersey State Interscholastic Athletic Association requesting advice. The NJSIAA responded to Strojny's request by letter dated November 29, 1976, and advised against acceptance of the award. A carbon copy of the letter was sent to

^{57/} This testimony by Strojny is consistent with her earlier testimony concerning LaRue's reactions to her professional opinions. In 1974, Strojny submitted a memo to LaRue which indicated that several pieces of the equipment utilized by the girls' gymnastics team were unsafe. LaRue indicated in his testimony that he inspected the equipment and found it satisfactory. Thereafter, an accident did occur on the equipment, but it was not serious.

LaRue, who testified that an NJSIAA official had earlier telephoned LaRue about the situation described in Strojny's letter.

LaRue asserts that by writing directly to the NJSIAA, Strojny had circumvented the proper chain of command. He states that this was not standard procedure and that standard procedure called for all eligibility questions to go through him. LaRue finally testified that he believed Strojny knew the proper procedure to follow in such circumstances. However, upon cross-examination LaRue vacillated when asked if any policy statement or instructions concerning these procedures had ever been conveyed in writing to Lakewood coaches. At a coaches' meeting, LaRue once discussed various procedures; the discussion about eligibility dealt only with academic eligibility. Further, LaRue stated that he did not believe that Strojny had ever been told of such a policy.

Finally, both the Board and LaRue cite the Jacket Incident, described below, as a reason for Strojny's non-renewal as girls' track coach. Upon the completion of the successful 1975-76 season by the girls' track team, the Board decided to award jackets to team members. Board member Romano, Assistant Superintendent Sherman, LaRue and Strojny met several times and exchanged correspondence throughout the summer concerning the arrangements for the jackets. After four months, when the jackets finally did arrive, generally everything was wrong--wrong sizes, wrong style, wrong material, wrong insignias, etc. There was some public reaction to the problem at a Board meeting. It was, as LaRue stated, an upsetting situation to the Board, the administration, students, parents and Strojny. It was also apparently a bit embarrassing. Thereafter, what evolved was that Strojny was charged with the fault for the foul-up. Goldman stated he felt that Strojny had mishandled the situation. LaRue stated he felt Strojny was at fault because she had ordered the jackets.

The undersigned finds that the testimony concerning the Jacket Incident is either conclusionary or confusing.

Initially, LaRue stated that he felt the jacket problem was Strojny's fault because she had ordered the jackets; LaRue stated he did not order the jackets. However, later in his testimony, LaRue asserted that he did place an order for the jackets. Exhibit R-5 indicates that LaRue did place the initial order for the jackets and thereafter Strojny had changed the sizes.

Superintendent Showell testified that there was a considerable amount of uncertainty and negative feelings surrounding this matter. LaRue, on the other hand, asserted that he was not at all uncertain about the occurrence; he stated that he knew how many jackets to order (20) and for whom they were ordered. Clearly, the misunderstandings and mistakes involved in this matter transcended these two issues. Further, LaRue later acknowledged that there was some uncertainty concerning the number of jackets to be ordered.

Exhibit R-5 does indeed indicate that Strojny had changed the sizes of some jackets, but that is as far as it goes. The record does not show whether these changes made by Strojny led to more jackets being missized, fewer being missized or no change in the number of missized jackets. Finally, it must be noted that the size factor was merely one of about a half-dozen problems associated with the jackets.

The undersigned finds that few definitive conclusions may be drawn from the record evidence concerning the track jacket occurrence. Clearly, Strojny was involved therein, but so were a Board member, the Assistant Superintendent, and the Athletic Director. Strojny changed the sizes on some of the jackets. When they arrived, the jackets were wrong on several counts, not just size. The Board was not happy with the entire episode and was dissatisfied with Strojny's role therein. However, Strojny's role in this matter was never made entirely clear; neither was it indicated on what set of facts the Board relied to draw its conclusion that Strojny was at primary fault in the jacket matter.

The Board has proffered the jacket incident as a major factor in its decision not to renew Strojny as track coach. However, the Board has not shown a clear linkage through which Strojny may be faulted with the jacket problem. While the absence of such a linkage in this record is not dispositive of whether the Board in fact relied significantly upon the jacket incident in deciding Strojny's non-renewal, it is a factor to be given some consideration by the Hearing Examiner in evaluating the Board's position.

The undersigned is not impressed with the quality and quantity of the evidence concerning the jacket incident. While the Board may have given some consideration to this factor, the undersigned is convinced, as indicated in the discussion of the timing of various events surrounding Strojny's non-renewal, that the

Board's mind was already made up at this point; thus, the jacket problem was simply adding fuel to a fire that had already started--the Board now had more of a reason to not renew Strojny.

Moreover, even assuming that the Board's decision not to renew Strojny was not fully made until after the jacket incident was considered, that in no way detracts from the fact that the Board had considered Strojny's grievance filings in its decisional process. From the testimony it is clear that the Board was aware of Strojny's grievance involvement and that factors emanating from her grievance involvement entered into the Board's determination not to reappoint Strojny as girls' track coach. Goldman's statement to Strojny at the outset of her October 1976 appearance before the Board appears indicative of the Board's attitude toward Strojny and her grievances before the Board--"What? You again with another grievance?" Romano's statement, directed at Strojny during the grievance hearing, similarly indicates a "grievance-inspired" hostility.

Goldman and Gobart both indicate that the Board viewed Strojny with concern as she was "always" before them with a "problem." At least some of these problems were grievances. Further, Goldman and Gobart stated that it was not the grievance filings per se which caused them to vote against Strojny's renewal; rather, they cited various general factors connected with the filings which occurred during the processing of the grievances.

The simple physical act of "filing" a grievance is the prelude to a more complex and often difficult process. Certain Board members determined not to renew Strojny, at least in part, because of her participation in the processing of those matters--her poor attitude before the Board and the meritless nature of her grievances. Basing their determination on conduct associated with the prosecution of her grievances was no less destructive of Strojny's rights under the Act than if they determined not to renew her simply because she filed a grievance against the Board.

The Hearing Examiner draws a further conclusion in his evaluation of the record. Given the circumstances present herein, the undersigned finds it highly unlikely that the Board would have failed to renew Strojny absent their consideration of Strojny's grievance involvements. That is, taking a quantum measure of the Board's decision on Strojny's non-renewal, Strojny's several grievance entanglements constituted a prominent and integral portion of that decision.

CONCLUSION OF LAW

The undersigned, on the basis of the foregoing and the record as a whole, concludes that the Association has met its burden of proving by a preponderance of the evidence that the Board's conduct in declining to reappoint Mattaliano as the head coach of the girls' varsity basketball team and in declining to reappoint Strojny as the head coach of the girls' track team was discriminatory and was motivated at least in part by a desire to discourage the exercise of rights protected by the Act, and, therefore, was violative of N.J.S.A. 34:13A-5.4(a)(3).

The undersigned further concludes that the Board's violation of subsection (a)(3) has necessarily interfered with, restrained and coerced unit employees in the exercise of their rights protected by the Act and therefore finds that the Board violated N.J.S.A. 34:13A-5.4(a)(1).

Evidence was not offered concerning the Board's alleged violation of N.J.S.A. 34:13A-5.4(a)(4) and accordingly it shall be recommended that the allegations of violations of that subsection of the Act contained in both charges be dismissed.

REMEDY

The undersigned shall recommend that Mattaliano and Strojny be reinstated to the positions which they were unlawfully denied and that they be made whole for any loss of pay which they suffered as a result of the Board's discriminatory conduct.

The record reveals that for school year 1976-77, Mattaliano would have received \$2325 as girls' varsity basketball head coach. There is no evidence in the record as to how much Mattaliano would have received for this position in 1977-78.

The undersigned notes that an offer to coach another sport, boys' freshman soccer, was made to Mattaliano for the 1977-78 school year. At that point in time Mattaliano, of course, already knew he had not been reappointed as girls' varsity basketball coach; the Board, on the other hand, was then aware of Mattaliano's unfair practice charge. Mattaliano refused to accept this coaching position. The undersigned concludes that no reduction or mitigation of the below-specified monetary award is warranted in the instant circumstances. The undersigned observes that during the previous year (1976-77), Mattaliano had coached the boys' freshman soccer team in

the fall. During the previous two winters (1974-75 and 1975-76), Mattaliano coached girls' varsity basketball. The two positions are separate and distinct; had there been no discriminatory conduct toward Mattaliano, he might have chosen to coach both teams in 1976-77 and 1977-78 or, as his testimony indicates, he at least would have chosen to coach girls' varsity basketball. The coaching position offered to Mattaliano (boys' freshman soccer) differed substantially from the one that he was discriminatorily denied. The position offered and declined by Mattaliano was to coach a boys' team in a different sport, at a different level (freshman versus varsity), during a different season (fall versus winter) and for significantly less compensation. The undersigned concludes that after having been discriminatorily denied the position of girls' varsity basketball head coach, Mattaliano was not obligated to accept a position so different from the one unlawfully denied to him in order to mitigate the losses he suffered through that discrimination. He did not ask for an amount of money damages which included potential fall season coaching compensation; accordingly, his asked-for damages--resultant from his denied opportunity to coach girls' varsity basketball--should not be lessened by the amount of money he would have earned had he coached the boys' freshman soccer team. Mattaliano has coached no other sports since his non-renewal as basketball coach.

The record reveals that for school year 1976-77, Strojny would have received \$1740 as girls' track coach. There is no evidence in the record as to how much Strojny would have received for this position in 1977-78.

ORDER

Accordingly, for the reasons set forth above, it is hereby ordered that the Respondent, Lakewood Board of Education, shall

1) Cease and desist from:

a) Discriminating in regard to hire or tenure of employment or any term and condition of employment of any employee to discourage its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act that includes the right to form, join and assist any employee organization without fear of penalty or reprisal.

b) In any other manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act.

2) Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

a) Offer to Bart Mattaliano the position of girls' varsity basketball head coach that was unlawfully denied to him on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by him, and to make him whole for any loss of pay he may have suffered as a result of the Board's discriminatory decision not to renew Mattaliano in said position by paying to Bart Mattaliano the additional compensation he would have received for performance as the girls' varsity basketball head coach during the 1976-77 school year (\$2325), the 1977-78 school year (that amount was not specified in this record) and for each school year hereinafter until he is reinstated as girls' varsity basketball head coach in accordance with this order.

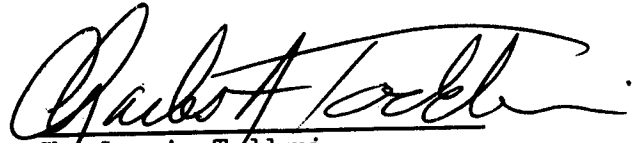
b) Offer to Marie Strojny the position of girls' track coach that was unlawfully denied to her on or about October 5, 1976, without prejudice to any rights or privileges enjoyed by her, and to make her whole for any loss of pay she may have suffered as a result of the Board's discriminatory decision not to renew Strojny in said position by paying to Marie Strojny the additional compensation she would have received for performance as the girls' track coach during the 1976-77 school year (\$1740), the 1977-78 school year (that amount was not specified in this record) and for each school year hereinafter until she is reinstated as girls' track coach in accordance with this order.

c) Post at the Central Offices of the Lakewood Board of Education copies of the attached notice marked Appendix "A." Copies of such notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced or covered by any other material.

d) Notify the Commission in writing within twenty (20) days of receipt of this Order what steps Respondent has taken to comply herewith.

3) It is further recommended that the Commission order the section of each Complaint alleging that the Lakewood Board of Education was engaged in viola-

tions arising under N.J.S.A. 34:13A-5.4(a)(4) be dismissed in its entirety.

A handwritten signature in cursive script, appearing to read "Charles A. Tadduni".

Charles A. Tadduni
Hearing Examiner

DATED: July 28, 1978
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT discriminate in regard to hire or tenure of employment or any term and condition of employment of any employee to discourage our employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act that includes the right to form, join and assist any employee organization without fear of penalty or reprisal.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act.

WE WILL offer Bart Mattaliano reinstatement to the position of girls' varsity basketball head coach that was unlawfully denied to him on October 5, 1976, without any prejudice to the rights or privileges enjoyed by him.

WE WILL make Bart Mattaliano whole for any loss of pay he may have suffered by paying him a sum of money which he would have received as girls' varsity basketball head coach for school years 1976-77, 1977-78, and for each school year hereinafter until he is reinstated as girls' varsity basketball head coach.

WE WILL offer Marie Strojny reinstatement to the position of girls' track coach that was unlawfully denied to her on October 5, 1976, without any prejudice to the rights or privileges enjoyed by her.

WE WILL make Marie Strojny whole for any loss of pay she may have suffered by paying her a sum of money which she would have received as girls' track coach for school years 1976-77, 1977-78, and for each school year hereinafter until she is reinstated as girls' track coach.

LAKWOOD BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780