



A-8

STATE OF NEW JERSEY

In the Matter of Gerard Costella, *et al.*
Newark Housing Authority

(CONSOLIDATED)

CSC DKT. NO. 2010-4005
OAL DKT. NO. CSV 09080-10

PERC DKT. NO. CO-2010-487
OAL DKT. NO. PRC 05659-14
(ON REMAND OF PRC 02872-11)

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: NOVEMBER 20, 2015 BW

The appeals of Gerard Costella, Joseph DeSantis, Raymond Ramos, Manuel Rodriguez and Walter Young, Newark Housing Authority, of the good faith of their layoffs effective July 26, 2010, for reasons of economy and efficiency, was heard by Administrative Law Judge Richard McGill, who rendered his initial decision on September 3, 2015. Exceptions were filed on behalf of the appellants.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 18, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in laying off the appellants for reasons of economy and efficiency was justified. The Commission therefore affirms that action and dismisses the appeals of Gerard Costella, Joseph DeSantis, Raymond Ramos, Manuel Rodriguez and Walter Young.

Re: Stanley Cimpric, *et al.*

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
NOVEMBER 18, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a solid horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF NEWARK HOUSING
AUTHORITY LAYOFF – 2010.**

OAL DKT. NO. CSV 09080-10
AGENCY DKT. NO. 2010-4005

**IN THE MATTER OF NEWARK HOUSING
AUTHORITY,**

Respondent,
and

SKILLED TRADES ASSOCIATION, INC.,
Charging Party.

OAL DKT. NO. PRC 05659-14
P.E.R.C. DKT. NO. CO-2010-487
(Remand of OAL DKT. NO. PRC
02872-11)

(CONSOLIDATED)

Arnold Shep Cohen, Esq., for Skilled Trades Association, Inc., Gerard Costella,
Joseph DeSantis, Raymond Ramos, Manuel Rodriguez and Walter Young
(Oxford, Cohen, attorneys)

Samuel M. Manigault, Esq., for Newark Housing Authority

Record Closed: September 3, 2015

Decided: September 3, 2015

BEFORE **RICHARD McGILL**, ALJ:

This matter is a remand of a proceeding involving an unfair practice charge filed by the Skilled Trades Association, Inc. ("STA") with the Public Employment Relations

Commission, alleging that the Newark Housing Authority (“NHA”) laid off STA members in retaliation for vigorous advocacy by the STA and in an attempt to eliminate the STA. The STA further alleges that the NHA took certain actions in regard to the bumping rights of STA Vice President Raymond Ramos for anti-union reasons. The Public Employment Relations Commission issued an Order (“Remand Order”) remanding the case for consideration of six specific issues based upon the standards established by our Supreme Court in In re Bridgewater Township, 95 N.J. 235 (1984).

This Initial Decision on remand is intended to supplement the Initial Decision dated February 25, 2014 (“2014 Initial Decision”). The layoff and the action in regard to bumping rights will be considered together with respect to the six issues.

As set forth in the Remand Order, the first issue is whether the STA was involved in protected activity. There is no real dispute as to this issue, and I **FIND** that the STA filed a number of grievances and unfair practice charges against the NHA as detailed on pages forty-six to forty-eight of the 2014 Initial Decision. It follows that the STA was involved protected activity.

The second issue is whether the NHA was aware of the protected activity. It is undisputed, and I **FIND** that the NHA was well aware of the grievances and unfair practice charges filed by the STA. It follow that the NHA was aware of the protected activity.

The third issue is whether the NHA was hostile to the protected activity, and the fourth issue is whether the STA proved by a preponderance of the evidence that the protected activity was a motivating factor in the layoff and title change. These two issues were discussed together in the 2014 Initial Decision, and on page fifty-eight, the finding was made that “anti-union animus was not a substantial or motivating factor in the layoff of STA members in 2010” There was no explicit finding, however, as to whether the NHA was hostile to the protected activity. In accordance with the Remand Order, these issues will now be treated separately.

STA's contentions to the effect that the NHA was hostile to protected conduct are discussed on pages fifty-two to fifty-eight of the 2014 Initial Decision. Each allegation was discussed separately and found to be without merit. Under the circumstances, I **FIND** that the NHA was not hostile to the protected activity in question.

The fourth issue is whether the STA proved by a preponderance of the evidence that the protected activity was a motivating factor in the layoff and the title change. This issue was discussed at length in the 2014 Initial Decision. Repeating language from page fifty-eight of the Initial Decision, I **FIND** that anti-union animus was not a substantial or motivating factor in the layoff of STA members in 2010. Additionally, based upon findings on page fifty and discussion on page fifty-seven of the 2014 Initial Decision, I **FIND** that anti-union animus was not a substantial or motivating factor in the title change for Stanley Cimpric.

The determination as to the fourth issue could be the end of the matter, and it would be unnecessary for the NHA to establish an affirmative defense, because the STA did not prevail on the issue of motivation. In fact, the 2014 Initial Decision did not continue beyond the determination in regard to the motivation issue. In order to fully comply with the Remand Order, the issues in regard to the employer's affirmative defense will be considered herein.

The fifth issue is whether the NHA submitted evidence of a legitimate business justification for the layoff and the title change. The testimony of Ms. Bryant concerning reduced funding from HUD and the reasons for considering STA members for layoffs is summarized on pages thirty-five and thirty-six of the 2014 Initial Decision. Additionally, the testimony of Ms. Bryant on page thirty-six of the 2014 Initial Decision indicates that Mr. Cimpric's title was changed to accurately reflect his actual work as a welder. The NHA did not want to lose its only welder to a layoff.

Ms. Abrahams' testimony concerning her consideration of different options for layoffs is summarized on pages forty-one and forty-two of the 2014 Initial Decision. Ms. Abrahams also testified as to the reasons for the change in Mr. Cimpric's title. Ms.

Abrahams knew that Mr. Cimpric actually worked as a welder despite his title as a carpenter, and she needed to have a welder on the NHA staff. It follows that the NHA submitted evidence of a legitimate business justification for the layoff and the title change.

The final issue is whether the NHA proved by a preponderance of the evidence on the entire record that the adverse actions would have taken place absent the protected conduct. The NHA's witnesses did not expressly address this issue at the hearing, as their position was that the motivation for the layoff related exclusively to funding concerns. Nonetheless, having accepted the testimony of the NHA's witnesses as true, the inference is warranted that the NHA would have gone ahead with the layoff and the title change irrespective of protected conduct by STA members. Therefore, I **FIND** that the layoff and title change would have taken place irrespective of the protected conduct.

In view of the above, I **CONCLUDE** that the determinations required by the Remand Order have been made. Accordingly, it is **ORDERED** that the matter be returned to the Public Employment Relations Commission.

I hereby **FILE** my initial decision with the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** and the **CIVIL SERVICE COMMISSION** for consideration in accordance with the procedures set forth in the Order of Consolidation and Predominant Interest.

In a manner consistent with the terms of said Order, this recommended decision may be adopted, modified or rejected by the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, which by law is authorized to make a final decision in this matter. If the Public Employment Relations Commission does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

In a manner consistent with the terms of said Order, this recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429**, marked "Attention: Exceptions" and with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Sept. 3, 2015
DATE

Richard McGill
RICHARD MCGILL, ALJ

Date Received at Agency:

Sept. 3, 2015
Aurora Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:

SEP - 4 2015

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF NEWARK HOUSING
AUTHORITY LAYOFF – 2010.**

OAL DKT. NO. CSV 09080-10
AGENCY DKT. NO. 2010-4005

**IN THE MATTER OF NEWARK HOUSING
AUTHORITY,**
Respondent,
and
SKILLED TRADES ASSOCIATION, INC.,
Charging Party.

OAL DKT. NO. PRC 02872-11
P.E.R.C. DKT. NO. CO-2010-487

(CONSOLIDATED)

Arnold Shep Cohen, Esq., for Skilled Trades Association, Inc., Gerard Costella,
Joseph DeSantis, Raymond Ramos, Manuel Rodriguez and Walter Young
(Oxford, Cohen, attorneys)

Samuel M. Manigault, Esq., for Newark Housing Authority

Record Closed: February 1, 2013

Decided: February 25, 2014

BEFORE **RICHARD McGILL, ALJ:**

This consolidated proceeding concerns two matters related to a layoff in June 2010 by the Newark Housing Authority (NHA). One proceeding is an appeal to the Civil

Service Commission by several employees including Gerard Costella, Joseph DeSantis, Raymond Ramos, Manuel Rodriguez and Walter Young (appellants), who lost their jobs as a result of the layoff. The other proceeding is an unfair practice charge filed by the Skilled Trades Association, Inc. (STA) with the Public Employment Relations Commission, alleging that the layoff was done in retaliation for vigorous advocacy by the STA on behalf of its members and in an attempt to eliminate the STA. Further, the STA alleges that the NHA took certain actions in relation to the bumping rights of Raymond Ramos, who is the vice president of STA, for anti-union reasons.

PROCEDURAL HISTORY

By letter dated June 7, 2010, the five above-mentioned employees appealed their layoffs to the Civil Service Commission. The matter was transmitted to the Office of Administrative Law on August 24, 2010, for determination as a contested case.

On September 27, 2010, the STA filed an Amended Unfair Practice Charge with the Public Employment Relations Commission. On December 13, 2010, the STA and the appellants filed a motion for consolidation of the two above-mentioned matters and a determination for predominant interest. The motion was granted by Order dated February 8, 2011, and the unfair practice charge was transmitted to the Office of Administrative Law on March 11, 2011, for determination as a contested case.

Hearings were conducted on nine dates from January 30, 2012, to November 29, 2012, at the Office of Administrative Law in Newark, New Jersey. The record closed on February 1, 2013, upon receipt of written summations.

ISSUES

With respect to the Civil Service appeal, the issue is whether the appointing authority acted in good faith with respect to appellants' layoffs. Appellants maintain that NHA's actions were motivated by reasons other than economy and efficiency.

Specifically, appellants contend that NHA's actions were motivated by anti-union animus.

In regard to the alleged unfair practice charge, the first issue is whether protected conduct was a substantial or motivating factor in the adverse action. Specifically, the STA maintains that the union and in particular its president, Gerard Costella, fought for the rights of its members through grievances and unfair practice charges and that the NHA laid off members of the STA in retaliation for the vigorous advocacy. There is also a question as to whether the NHA took certain actions in regard to another employee to interfere with the bumping rights of STA Vice President Raymond Ramos and cause him to be laid off. If the STA is successful with respect to the first issue, the second question is whether the NHA has proven by a preponderance of the evidence that the action was taken for legitimate business reasons and not in retaliation for the protected activity. NHA contends that the layoffs were necessary for budgetary reasons.

BACKGROUND FACTS

The background facts set forth the general course of events and provide a context for the testimony of the witnesses. Based upon the evidence presented at the hearing, the following is **FOUND AS FACT**.

In September 1992, the Public Employment Relations Commission certified the STA to represent a collective negotiations unit consisting of all skilled trades maintenance personnel in the NHA's Maintenance Department, excluding employees in the Rehabilitation Department covered by the Craft-Outside agreement. After its certification, the STA negotiated its first contract, which further defined the unit as permanent skilled trades maintenance personnel including elevator mechanics, boilermakers, carpenters, electricians, masons, painters, plumbers, roofers, oil burner mechanics, resilient floor repairmen, steamfitters and asbestos workers.

The Essex County Building and Construction Trades Council (ECBT) represented "outside crafts" employees. These individuals belonged to member trade unions in the ECBT and were hired for temporary work through a union hiring hall. The ECBT also had a contract with the NHA. As set forth in the 1989-93 Contract, the agreement applied to all rehabilitation work on residential structures. "Rehabilitation" was defined to include all work including demolition, repair and alteration, on any existing structure which is intended for predominantly residential use. Prior to 1992, the ECBT also represented the inside-crafts unit, which thereafter was represented by the STA.

The STA's unit consisted of Civil Service certified, regular employees. The term "permanent" referred to positions certified through Civil Service as opposed to temporary employees hired for a limited purpose such as ECBT unit members. Originally, the difference between the two units could readily be identified by their department. The outside crafts people worked for the Rehabilitation Department, while the STA members worked in the Maintenance Department. Thereafter, the NHA eliminated the separate Maintenance and Rehabilitation Departments, and the two functions were mixed together.

The remaining distinction was that the STA represented permanent Civil Service employees. On May 27, 1997, the NHA withdrew from the Civil Service system. The effect of this action was that the individuals who were employed by the NHA at the time and had permanent status retained their Civil Service protections, while newly hired individuals had only contractual protections. As a result of these changes, there was a loss of clarity as to the distinction between the work to be assigned to the STA as opposed to other unions.

Beginning in 2006, a new management team was installed at the NHA. These individuals included Keith Kinard as the Executive Director, Janet Abrahams as the Chief of Operations and Sibyl Bryant as the Chief Human Resources Officer.

As of June 2010, the STA had a total of forty-three members. Gerard Costella was the president of the STA; Raymond Ramos was the vice president; Sunderdat Sookram was the secretary; Abdus Akbar was a trustee of the STA, the sergeant at arms and the administrative officer; and Kurt Blanchard was a shop steward. The membership was comprised of thirteen carpenters, four electricians, one electronic technician, three elevator mechanics, three masons, four oil burner service mechanics, five painters, five plumbers, one roofer, two senior electronic technicians, one supervising plumber and one individual whose title was changed from carpenter to welder.

The layoff initiated in June 2010 covered thirteen individuals including nine carpenters, two electricians and two painters. Among the carpenters were Gerard Costella, Raymond Ramos and Kurt Blanchard. Abdus Akbar was one of the electricians who were laid off. The other individuals impacted by the layoff were carpenters Manuel Rodriguez, Joseph DeSantis, Pedro DaSilva, Walter Young, Rafael Artacho and Miguel Gonzalez; electrician Jose Veloso; and painters Kyle Foushee and Jerome Muhammad.

SUMMARY OF EVIDENCE

The STA called twenty witnesses, and the NHA presented three witnesses. Their testimony is summarized as follows:

Gerard Costella

Gerard Costella testified that he was hired by the NHA in 1981 to a non-permanent position. On May 23, 1993, Mr. Costella was placed in a permanent position with the title of carpenter. He remained in the same position, until he was laid off in 2010. The notice of layoff was dated June 9, 2010. He worked until June 30, 2010, and was paid through July 26, 2010.

Mr. Costella is a member of the STA, and he became the president of the union in October 2009, after serving as vice president for seven or eight years. Mr. Costella continues to function as president of the union. The duties of the president and the vice president are to negotiate the union contract, to make sure that the NHA provides a safe work environment and to file grievances.

Thirteen STA members were laid off. In order of date of hire within specific titles, they were carpenters Manuel Rodriguez, Raymond Ramos, Joseph DeSantis, Gerard Costella, Pedro DaSilva, Walter Young, Rafael Artacho, Miguel Gonzalez and Kurt Blachard; electricians Jose Veloso and Abdus Akbur; and painters Kyle Foushee and Jerome Muhammad.

According to the contract between the NHA and the STA for the period from April 1, 2007, to March 31, 2011, the NHA recognizes the STA as the exclusive bargaining representative concerning the terms and conditions of employment of permanent skilled trade maintenance personnel employed by the NHA including elevator mechanics, boilermakers, carpenters, electricians, masons, painters, plumbers, welders, roofers, oil burner mechanics, resilient floor repairmen, steamfitters and asbestos workers. Mr. Costella described the type of work performed by workers in various titles.

The NHA had projects at forty-eight sites. The workers were assigned to jobs at various sites, and a supervisor decided the priority to be given to various assignments.

With the elimination of the maintenance and rehabilitation departments, the STA and ECBT workers were all doing the same work in occupied and unoccupied apartments and in common areas. The ECBT workers were hired as fill-ins for the STA members and were fired at will. The ECBT workers were always the first to be laid off. The ECBT workers were normally employed for fifty-nine days, were laid off for a day or so and were then immediately returned to work.

Mr. Costella worked alongside ECBT workers during his entire career. Mr. Costella presented various attendance sheets showing that STA and ECBT employees worked together at the same site. These sheets also contained the names of members of Local 617, which is a union that represented laborers, secretaries and office personnel. These workers could do minimal trade work. STA members did maintenance work and partial and entire renovations.

Mr. Costella provided documentation of various complaints, grievances and unfair practice charges made by the STA. In or about 2006, the STA filed an Unfair Practice Charge alleging that STA work was being given to others. This matter was resolved by an agreement in 2009. In 2007, the STA filed a grievance in regard to asbestos, and the matter was resolved by a settlement in 2008. In 2009, Mr. Costella wrote to Executive Director Keith Kinard complaining that the NHA had not implemented the settlement.

In 2007, the STA filed an Unfair Practice Charge alleging that the NHA would not provide personnel records that the STA needed to identify new members. The NHA agreed to provide the information, but subsequently the STA complained that it had not received all of the records.

On August 2, 2007, the STA filed a complaint about a supervisor. On September 23, 2008, the STA filed a grievance alleging that the NHA was employing mechanics in STA titles on a "temporary basis" despite the fact that they were working on a regular basis and exceeding the fifty-nine days of employment. On April 14, 2009, the STA filed a grievance alleging that the NHA was improperly excluding employees from the bargaining unit.

In 2009, the STA filed a grievance in regard to scope of work. This grievance was resolved by an agreement in January 2010. In November 2009, the STA and the NHA resolved a grievance in regard to a worker's pay.

From January to March 2010, Mr. Costella e-mailed complaints to the NHA concerning other workers doing STA work. On January 29, 2010, the STA filed an Unfair Practice Charge, alleging that the NHA had not complied with prior agreements. On May 25, 2010, the STA filed a grievance concerning subcontracting of STA work.

Mr. Costella described various communications from management. During a meeting, Chief of Operations Janet Abrahams stated that the NHA was going to asset-based management. Whatever work was done at a site would be charged thereto. This would apply to high-rise and low-rise buildings and to occupied and unoccupied apartments.

A letter from the Executive Director for winter 2009-2010 states that the NHA received more than \$50 million in additional federal resources in 2009. These funds were being put to use to rehabilitate existing buildings and to develop new housing. The NHA renovated over 700 occupied units and over 400 long-term vacant units. The NHA also renovated the lobbies and community rooms at fifteen senior buildings.

At a meeting on March 10, 2010, Supervisor LaMark Tillery told the STA members that Chief of Operations Abrahams was not pleased with their production and that there could be layoffs. According to Mr. Costella, the workers were always busy, and there was no merit to the charge of lack of production.

In addition to Mr. Tillery, Supervisor Jim Chavous warned Mr. Costella about the layoff. The supervisor of boilers told Mr. Costella that he was getting in over his head and that Ms. Abrahams was unhappy with the union activity. In fact, the layoffs happened in accordance with the warnings.

Mr. Costella acknowledged that as of July 2010, four older, larger complexes were being torn down. Mr. Costella stated, however, that NHA still had 6,000 to 7,000 units.

A newsletter from winter 2010 contained a quote from Ms. Abrahams, who stated in part as follows: "There were people who had been here 20 years or more, who hadn't learned anything new. They felt Newark Housing Authority was where they would retire. But asset management changed that assumption."

Rafael Artacho

Rafael Artacho began his employment with the NHA in 1989 and worked as a carpenter, until he was laid off in July 2010. Mr. Artacho was employed by the NHA, when the STA was formed in 1990. After the Rehabilitation Department was eliminated, the work was done by employees from inside and outside unions. As a carpenter, Mr. Artacho worked on walls, cabinets, windows, doors, drop ceilings and tile. Mr. Artacho worked all over the city in occupied and unoccupied apartments and in common areas. He continued to work in occupied and unoccupied apartments in 2010. Mr. Artacho worked with employees from outside unions in all areas doing the same work with the same supervisors. There was always plenty of work available.

Miguel Gonzalez

Miguel Gonzalez worked continuously with the NHA from September 9, 1997, until he was laid off in July 2010. Mr. Gonzalez was a member of the STA. As a carpenter, Mr. Gonzalez worked on counters, floors, doors and cabinets in occupied and unoccupied apartments and also in common areas. Mr. Gonzalez worked side by side with workers from the outside trade unions. The STA members and the employees from the outside unions did the same work under the same supervisors.

Kurt Blanchard

Kurt Blanchard was hired by the NHA in 1998, and he worked as a carpenter. He was a member of the STA and a shop steward, but he was not part of the Civil Service system. Mr. Blanchard worked continuously for the NHA, until he was laid off in

June or July 2010. As a carpenter, Mr. Blanchard worked on floors, tile, cabinets and doors in occupied and unoccupied apartments.

Jim Chavous was Mr. Blanchard's supervisor for two years. Supervisor Chavous assigned Mr. Blanchard to specific sites, and he worked a day here and a day there. Most permanent employees were assigned to this crew.

From 2009 to the layoff, Mr. Blanchard was assigned to Central Maintenance. Mr. Blanchard performed different tasks at various sites which have their own supervisors. The types of buildings included high-rise structures and townhouses.

Mr. Blanchard worked one day with Mr. Tillery, who had his own crew comprised mostly of outside carpenters along with a few STA members. The employees from outside unions and STA members worked together. Mr. Blanchard never knew Mr. Tillery's crew to do maintenance.

Mr. Blanchard worked side by side with employees from outside unions both with Mr. Chavous's crew and while assigned to Central Maintenance. Mr. Blanchard worked with teams of inside and outside trades doing apartment turnover operations (ATOs), which prepared vacant apartments for occupancy.

The years from 2006 to 2010 were a period of transition. After Keith Kinard became the Executive Director in 2006, there was a significant number of layoffs including clerical workers, Building Maintenance Workers (BMWs) and Building Maintenance Repairers (BMRs). No STA members were laid off at that time. By 2010, approximately fifty percent of the employees had been laid off.

On May 6, 2008, Mr. Blanchard attended a meeting chaired by Ms. Abrahams at the Newark Public Library with all STA members. Ms. Abrahams informed the employees that the NHA would convert to a system of asset-based management. Ms. Abrahams posed a question why some types of employees were always successful

while others were not. Ms. Abrahams wanted to hear about ways to improve the operation. Abdus Akbar, an STA member, responded that the problem was lack of appropriate supervision and materials.

While Mr. Blanchard was assigned to a project known as Hyatt Court, there was no such thing as no work. Mr. Blanchard acknowledged that as the NHA began to shut down units at Hyatt Court, there was no work at those units which were closed down.

Raymond Ramos

Raymond Ramos testified that after he took the Civil Service test, he was hired by the NHA in November 1992 as a carpenter. Mr. Ramos is a member of the STA, and he held the positions of recording secretary and treasurer, before he became the vice president. Mr. Ramos received a notice of layoff similar to the one sent to Mr. Costella. Mr. Ramos last worked on June 30, 2010, but he continues to function as the vice president of the STA.

From 1992 to 2010, Mr. Ramos performed maintenance in occupied apartments, ATOs in unoccupied apartments and rehabilitation work. He also worked in common areas such as lobbies and hallways. The crews included a mix of STA members and outside trades. The workers from the outside trades included carpenters, painters, plumbers, masons and electricians. If an apartment was completely gutted, the work was considered rehabilitation. If anything was salvageable, the work was maintenance.

The ECBT workers were employed "as needed" by the NHA. In all his years with the NHA, Mr. Ramos worked interchangeably with members of the ECBT. The ECBT workers were non-permanent employees who could be laid off at any time.

Prior to the layoffs, Mr. Ramos worked with outside trades at one site in February, March and April 2010. Mr. Ramos then worked on ATOs at another site with another NHA employee. Finally, Mr. Ramos worked at a site where outside trades were

present doing the same work. The ECBT workers continued to be employed after the NHA laid off the STA members from the same titles. There was no savings in money to the NHA by using ECBT workers.

In 2006, Keith Kinard became Executive Director of the NHA. At the time, the NHA had approximately 1,000 employees. Numerous employees were laid off in 2006 and 2007. The STA was not impacted by layoffs during the first four years of Executive Director Kinard's tenure. By early 2010, no STA members had been laid off despite the large number of layoffs. From June to July 2010, fourteen out of forty-three STA members were laid off.

Mr. Ramos testified that Janet Abrahams joined the NHA in 2006. In 2007, Ms. Abrahams was unhappy with the STA for no reason. Mr. Ramos stated that situations arose where STA members had no materials and could not continue with their work. The workers were told to leave and find work elsewhere, despite the fact that they could be reprimanded for leaving the site.

On May 6, 2008, Ms. Abrahams held a meeting with the members of the STA at the Newark Public Library. Ms. Abrahams mentioned asset-based management which would require each site to pay for its own services. Ms. Abrahams expressed her dissatisfaction with the STA's performance and said that only the elevator crew was operating efficiently. Electrician Abdus Akbar responded that the elevator mechanics were efficient because the supervisor was from their own trade. By comparison, the supervisors of the other workers were not from the same trade.

Mr. Ramos testified as to several warnings that he received from other NHA employees prior to the layoffs. Peter Santos is a BMR with the NHA. According to Mr. Ramos, Mr. Santos said that he heard from Ms. Abrahams' chauffeur, Juan Pagan, that she would be going after Gerard Costella and other STA officials. Mr. Ramos telephoned Mr. Costella, who stated that he heard the same thing.

Mr. Santos then telephoned Mr. Pagan in the presence of Mr. Ramos. Based upon a conversation which Mr. Pagan heard between Ms. Abrahams and another individual, Mr. Pagan said to back off from the asbestos issue or there would be layoffs.

Mr. Santos telephoned Mr. Pagan a second time in Mr. Ramos's presence and asked who would be laid off. Mr. Pagan said that they were going after union officials including Gerard Costella, Raymond Ramos, Abdus Akbar and Kurt Blanchard. Mr. Santos said that a lot of STA members would be laid off.

Andre McNair is the supervisor of boiler operations. In 2009, Mr. McNair told Mr. Ramos that Mr. Costella should back off and that it was counterproductive to file grievances. Mr. McNair said that Ms. Abrahams was upset with Mr. Costella for pursuing grievances on out-of-title work.

In 2010, Mr. Ramos had a conversation with Supervisor Jim Chavous, who said that Ms. Abrahams was unhappy with Mr. Costella pursuing grievances. Mr. Chavous told Mr. Ramos that Mr. Costella should back off or otherwise he and a lot of other workers might lose their jobs.

Mr. Ramos was questioned on cross-examination about various projects which have been closed partially or completely. Stella Wright was a twelve-story high-rise project which required a lot of maintenance and rehabilitation work. It was replaced by townhouses. Baxter Terrace had 800 units in older three-story walk-up buildings. As of June 2010, sections were closed off, but there were still people living in approximately half of the units.

Felix Fuld had 500 units which were replaced by a smaller number of townhouses at scattered sites. Mr. Ramos acknowledged that there was less work at those sites, but he stated that the STA workers were already overwhelmed. Three other projects including Hyatt Court, Seth Boyden and Stephen Crane were at least partially vacant.

Mr. Ramos accompanied Mr. Costella to meetings with Ms. Abrahams. The STA filed numerous grievances. Mr. Ramos heard Ms. Abrahams criticize the positions taken by the STA on grievances on numerous occasions. The identity of STA officers could be determined from the union's letterhead.

By letter dated June 29, 2010, the Civil Service Commission notified Mr. Ramos that he had been granted a seniority displacement right to the title of Carpenter held by Stanley Cimpric. Mr. Ramos sent a letter claiming his displacement rights. According to Mr. Cimpric's employee profile, he began his employment with the NHA as a welder on May 21, 1990, and was terminated on September 4, 1991. Mr. Cimpric then held the position of carpenter from August 25, 1992, until he resigned effective February 26, 1993. Mr. Cimpric began his current employment with the NHA on May 24, 1993, as a carpenter.

Mr. Ramos stated that in 2005 he was cutting countertops. One employee works in the shop, and another does the installation. At the time, Mr. Cimpric was doing the same type of work. When they worked together, Mr. Cimpric did carpentry work. Mr. Cimpric never held himself out as a welder as opposed to a carpenter.

Prior to 2009, Mr. Ramos and Mr. Cimpric worked together for months at a time. Mr. Cimpric did minor welding, but Mr. Ramos never saw him do any fabrications. Mr. Cimpric was not always assigned to the NHA's welding truck. Mr. Cimpric did welding work in 2009 and 2010.

After Mr. Ramos received notice that he had seniority rights over Mr. Cimpric as a carpenter, the NHA changed Mr. Cimpric's title from carpenter to welder. This occurred in July 2010.

Peter Santos

Peter Santos has worked for the NHA for twenty-one years, and he is now a BMR and a member of Local 617. Mr. Santos received no training to be a BMR, but he does minor electrical, painting, carpentry, maintenance and plumbing work. At times, he has worked on ATOs.

There were significant layoffs in 2006. At the start of 2006, the NHA had approximately 1,000 employees. The NHA now has fewer than 500 employees.

Mr. Santos knows Raymond Ramos and Juan Pagan. In the spring of 2010, Mr. Santos knew of the STA layoffs, but he did not recall any conversation with Mr. Ramos or Mr. Pagan.

Abdus Akbar

Abdus Akbar began his employment with the NHA in May 2002 as an electrical instructor. Mr. Akbar taught BMRs, BMWs and others to do minor electrical work. For example, Mr. Akbar taught them how to remove a light fixture and install a new one. After the training program was phased out in 2003 or 2004, Mr. Akbar became an electrician with the NHA. Mr. Akbar worked for the NHA from 2002, until he lost his job as the result of a layoff in June 2010.

Mr. Akbar is a member of the STA, and he has held various positions with the union including sergeant at arms, trustee and administrative officer. As a trustee, Mr. Akbar met with Mr. Costella and Mr. Ramos.

The workers were assigned to crews. The supervisors of the crews included LaMark Tillery, Jim Chavous, Nitin Patel and Bobby Jacobs. All crews did the same type of work. It was common for STA members to work with individuals from the

outside trades under the same supervisor. Both ATOs and rehabilitation projects involved work in unoccupied units.

Mr. Akbar reviewed a number of work orders. In some instances, Mr. Akbar worked on crews with workers from outside trades renovating common areas. Mr. Akbar's role was to retrofit the electrical fixtures. In other instances, Mr. Akbar worked in occupied or unoccupied units with members of the outside trades. If there was no occupied unit that required work, Mr. Akbar did rehabilitation or he worked in common areas. All work out of Central Maintenance had to have a work order to justify the worker's time. Mr. Akbar acknowledged that the NHA had the contractual right to subcontract work performed by members of the STA.

From 2006 to 2009, the NHA laid off approximately fifty percent of its employees. The workers from the outside trades were laid off first. Workers from Local 617 were also laid off as well as other employees. During this time, no STA members were laid off. Mr. Akbar was under the impression that the outside workers go first, but he acknowledged that there were no written documents which said that outside trades would be laid off first. Mr. Akbar also acknowledged that closures of units or entire buildings would mean less maintenance work.

In 2009 and 2010, Mr. Akbar worked with Mr. Tillery's crew modernizing unoccupied units to make them available for rental. At times, Mr. Akbar would receive a work order to deal with an emergency.

Janet Abrahams began to work for the NHA in 2006. On May 6, 2008, Ms. Abrahams held a meeting at the Newark Public Library. After discussing various policies, Ms. Abrahams praised the elevator crew and asked why other workers were not as successful thereby revealing her dissatisfaction with some members of the STA. Mr. Akbar responded that the supervisor of the elevator crew is an elevator mechanic. Mr. Akbar went on to give examples of difficulties that occur when the supervisor has no idea about the technical aspects of the trade. For example, a supervisor who is not

from the same trade may order the wrong materials. Mr. Akbar asked how workers can be effective when the supervisor does not know the trade.

Mr. Akbar and other leaders of the STA were concerned about the union's dwindling membership, which had fallen from over 100 to under fifty. The STA was not getting new members for several reasons. In Mr. Akbar's view, the NHA was giving STA work to outside trades and contractors. In addition, if a person worked longer than fifty-nine days, he was supposed to become a member of the STA. In practice, the NHA would lay off a worker after fifty-nine days and then rehire him a few days later. As a result, individuals from outside trades worked for the NHA for years without becoming members of the STA. Mr. Akbar acknowledged that he was not aware of decisions by the Public Employment Relations Commission related to the STA's scope of work.

Mr. Akbar acknowledged that as a member of the STA, he is guaranteed his salary, paid vacation, sick time, holidays and health benefits. Mr. Akbar thinks that the ECBT had an agreement similar to that of the STA.

The NHA was not responsive to the STA's concerns. Janet Abrahams, Sibyl Bryant and Keith Kinard avoided the union and did not respond to communications.

The last meeting with Ms. Abrahams occurred in spring 2010. Mr. Akbar went to the meeting with Mr. Costella, who expressed concern that the NHA was not letting anyone else join the STA. Nothing was said about layoffs.

Michael Marotta

Michael Marotta began his employment with the NHA in May 1993 as a mason. He works with cement, cinder blocks and ceramic tiles. The STA now has three masons, and none has been laid off in the last five years.

In occupied apartments, Mr. Marotta fixed walls to get them ready for painters and did ceramic work. Mr. Marotta also worked in common areas and did ATOs in unoccupied units. Over most of his nineteen years with the NHA, Mr. Marotta worked on a team with outside masons particularly in common areas doing the same work.

For the last year and a half, Mr. Marotta was assigned to Central Maintenance, and his work was citywide. Mr. Marotta worked in occupied and unoccupied units and in common areas with another STA mason. When a tenant requests a repair, a work order is created by management or sometimes by a mason. Mr. Marotta keeps a copy of his work orders. Mr. Marotta worked on Mr. Tillery's crew for two days. Mr. Marotta never heard of a rehabilitation crew.

Mr. Marotta acknowledged that some projects are completely or partially closed, but he stated that the units that are still there require more work. Mr. Marotta did not know the extent to which closed units have been replaced with new ones.

Mr. Marotta was present at the meeting on May 6, 2008, at the Newark Public Library. Mr. Marotta was not laid off.

David Mauro

David Mauro began his employment with the NHA on December 31, 1990, and worked as a carpenter. He worked both inside and outside on windows, doors, tiles, walls, locks, ceilings, roofing, siding and trim. Mr. Mauro worked in occupied apartments and in common areas. Mr. Mauro also worked on ATOs in unoccupied apartments. Both STA members and outside trades did the same work.

Mr. Mauro worked with outside trades on roofing years ago. Prior to his assignment to Central Maintenance, Mr. Mauro worked at various sites. No outside trades were assigned to specific sites.

For the last eight or nine years, Mr. Mauro was assigned to Central Maintenance. Mr. Mauro received a referral, which was a complaint from a tenant or a manager. At Central Maintenance Mr. Mauro always did work orders, and he did not work with outside trades. Mr. Mauro did not know whether outside trades were working out of Central Maintenance.

Mr. Tillery has a crew that does renovation work. Mr. Mauro worked on Mr. Tillery's crew when it was first created. Mr. Mauro is not aware of the composition of Supervisor Tillery's crew.

Mr. Mauro acknowledged that some projects have been eliminated in the last three or four years and that this means less work. Mr. Mauro was not laid off.

Marvin Bowman

Marvin Bowman began his employment with the NHA in 1996, and he is now a BMR and a member of Local 617. His work includes painting, tiles, cabinets, doors, electrical and plumbing.

Mr. Bowman is familiar with the STA and the outside trades. Mr. Bowman observed the STA members and the outside trades doing the same work at various facilities in mixed teams. The outside trades are readily distinguishable, because they do not wear uniforms.

Mr. Bowman has complained to his supervisors at times about doing work out of title. Mr. Bowman stated that he has been doing the work of electricians, plumbers, masons, painters, and carpenters while being paid less. He has worked in occupied and unoccupied apartments and done renovation work.

Mr. Bowman acknowledged that various projects have been partially or completely closed and that there will be less work at those sites. Mr. Bowman stated that there was still a lot of work and that the NHA has built more housing.

Mark Mercado

Mark Mercado is employed by the NHA as a plumber/pipe fitter, and he was made permanent in May 1993. His work includes all phases of plumbing and heating. Mr. Mercado is a member of the STA. In June 2010, no plumbers were laid off, and none has been laid off to the present.

Mr. Mercado has worked in occupied and unoccupied apartments and in common areas. His work includes both maintenance and ATOs at various projects. When it is necessary to open a wall, Mr. Mercado works with carpenters and masons both from the STA and the outside trades. Mr. Mercado has worked with members of the outside trades on rehabilitation of occupied units. The STA members and the outside trades work on the same assignments. Prior to his current assignment, Mr. Mercado worked on teams with inside and outside trades. In the past, Mr. Mercado worked on Mr. Tillery's crew for three or four years doing rehabilitation and renovation mostly in unoccupied units with teams of STA members and outside trades.

In Central Maintenance, work orders are created when referrals are received from various sites. A work order contains a written job description and is used to account for a worker's time and for material. For a given job, each trade has a work order.

Mr. Mercado was present for a meeting at the Newark Public Library held by Ms. Abrahams, who stated that the NHA was going to site-based management. Workers who did not cooperate would be laid off. Mr. Mercado commented that workers need material in a timely manner to be efficient, but he did not receive a response.

Mr. Mercado acknowledged that various large projects have been partially or completely closed. The units that have been added are mostly townhouses.

Cleave Reid

Cleave Reid was hired by the NHA on December 12, 1988, as an electrician. Mr. Reid is a member of the STA, and he is still employed by the NHA as an electrician. His duties involve repairs of electrical problems.

In the past, Mr. Reid worked in occupied and unoccupied apartments and in common areas. Mr. Reid was part of an apartment renovation team under Supervisor Jim Chavous. During an ATO, Mr. Reid's responsibility was to change all of the light fixtures. Mr. Reid had the same duties in a renovation, which is the same as rehabilitation. At the time, outside trades were doing the same work. Prior thereto, Mr. Reid worked for Mr. Tillery on rehabilitations with outside trades and STA members on the same crew. Mr. Reid has not been part of Supervisor Tillery's crew for twelve years.

After Mr. Reid was transferred to Central Maintenance, his assignments were citywide rather than at one site. Mr. Reid normally worked alone, but sometimes a maintenance worker from the site was present to assist him. Mr. Reid's current work in occupied units does not involve outside trades.

Mr. Reid acknowledged that when there was no work, he still got paid. In contrast, outside trades were not paid, if there was no work. Mr. Reid acknowledged that some projects have been partially or completely closed and that some work was eliminated.

Mr. Reid worked with outside trades over the years. If there was a layoff, the outside trades workers went first. The layoff in 2010 was different in that the STA members were laid off, and the outside trades workers continued to work.

William Figueroa

William Figueroa has been employed by the NHA for ten years as a boiler technician. As a boiler technician, Mr. Figueroa services heating and hot water equipment. Mr. Figueroa is a member of the STA, but he was not laid off.

Mr. Figueroa works with plumbers or other boiler technicians. There are three boiler technicians who are members of the STA. Mr. Figueroa does not work with outside trades. No boiler technicians were laid off as part of the 2010 layoffs.

Jose Veloso

Jose Veloso was hired by the NHA in 1995, and he worked as an electrician, until he was laid off in 2010. Mr. Veloso was a member of the STA.

Mr. Veloso worked in both occupied and unoccupied apartments and in common areas typically with a team that included plumbers, carpenters and masons. Mr. Veloso worked with STA members and outside trades. The work in occupied apartments was usually done by STA members, while the work in unoccupied apartments and common areas was more likely done by outside trades.

Mr. Veloso was present at a meeting with Janet Abrahams on May 6, 2008, at the Newark Public Library. Ms. Abrahams said that the elevator mechanics perform their function well but that other workers take too long to do their jobs.

When cutbacks occurred in prior years, the outside trades workers were the first to go. In 2003, BMWs and BMRs were laid off. In 2010, the STA members were the first to be laid off. Mr. Veloso acknowledged that various projects have closed and that they require no maintenance.

Archie Jackson

Archie Jackson worked for the NHA as a plumber from July 1990, until he retired on June 30, 2010, and he was a member of the STA. As of 2005, Mr. Jackson was one of three plumbers in the STA.

Mr. Jackson normally worked alone completing repairs in occupied units, getting unoccupied apartments ready for occupancy, installing hot water heaters and handling emergencies. In the summer, Mr. Jackson performed preventative maintenance, and in the winter, he made sure the residents had heat.

High-rise buildings had a main boiler for steam heat. In contrast, scattered sites had their own heat and hot water heaters. During the winter, most of Mr. Jackson's work was at the scattered sites.

Mr. Jackson sometimes worked with outside trades on ATOs and in occupied apartments. Mr. Jackson also worked with outside trades in common areas. Some ATOs need more repairs than others. In some instances, a unit needed only minor repairs, while others needed total rehabilitation.

From 2005 to 2010, Mr. Jackson reported to Andre McNair, who was the Chief of Boiler Operations, with responsibility for heating and hot water systems. Mr. Jackson received assignments from Supervisor McNair and worked alone or as a part of a team. A team would consist of two plumbers, if a second person was required for a job. The other plumber could be a member of the STA or outside trades. When the other plumber was from outside trades, they would do the same work. Mr. Jackson worked with outside trades on a regular basis mainly on ATOs in unoccupied apartments.

The outside trades members would work fifty-nine days, get laid off, stay out of work one day and return a few days later. Nonetheless, they worked practically

continuously. In contrast, the STA members were guaranteed pay, benefits, vacation time, sick time and holidays.

Mr. Jackson attended a meeting on May 6, 2008, at the Newark Public Library. Chief of Operations Janet Abrahams made favorable comments about the elevator mechanics, but she was critical of the other trades. Abdul Akbar said that the elevator mechanics had a good supervisor, who was a former elevator mechanic. In contrast, the other supervisors were not competent to head their teams. There was no discussion about anyone losing a job.

In early 2010, Supervisor McNair told Mr. Jackson more than once that Mr. Costella did not know what he was doing and that he would get the union members in trouble because he was acting too aggressively. Mr. Jackson reported this comment to Mr. Costella.

Mr. Jackson never worked for Mr. Tillery, whose work involved rehabilitation and renovation. Prior to 2010, the outside trades were laid off rather than STA members.

Kyle Foushee

In 1996, Kyle Foushee was hired by the NHA as a painter. Mr. Foushee was a member of the STA, and he continued to work for the NHA, until he was laid off on June 30, 2010.

In addition to painting, Mr. Foushee helped run a crew. Mr. Foushee ordered and received materials and assigned jobs. During the last five years before the layoff, Mr. Foushee's supervisor was Bobby Jacobs. Mr. Foushee worked in occupied and unoccupied units and in common areas. An ATO of an unoccupied apartment can be a renovation or a rehabilitation job. Mr. Foushee worked with or supervised teams of masons, painters, carpenters, electricians and laborers. Outside trades did the same work as STA members in all areas.

Before he was hired in 1996, Mr. Foushee worked for the NHA as a member of the outside trades for six years. After going through an apprenticeship to get a union card, Mr. Foushee came into the union hall in 1990. Mr. Foushee was laid off two or three times during those years, and then he was recalled. If there was no work, Mr. Foushee did not get paid, but he worked almost every day except for a few layoffs from 1990 to 1996. When Mr. Foushee became permanent with the NHA, his job duties did not change in any way. In 1996, the outside union members got laid off first.

Mr. Foushee recalled a meeting at the Newark Public Library with Janet Abrahams. Ms. Abrahams complained about work being done by unqualified individuals.

Sunderdat Sookram

Sunderdat Sookram was hired by the NHA on December 31, 1990, as a carpenter, and he continues to work in that capacity. He is a member of the STA and its secretary.

As a carpenter, Mr. Sookram worked on cabinets, tiles, sheetrock and framing. For a period of fourteen months, Mr. Sookram helped to supervise workers. Mr. Sookram inspected apartments, assigned workers and ordered materials.

Over the years, Mr. Sookram had various assignments with several supervisors at different projects. From 1993 to 1995, Mr. Sookram worked on ATOs under the supervision of Mr. Tillery. Again in 2008 to 2009, Mr. Sookram worked under the supervision of Mr. Tillery on ATOs in empty apartments and in common areas such as hallways and community rooms. Mr. Sookram helped supervise workers under Mr. Tillery for fourteen months approximately three years prior to the hearing. Prior thereto, Mr. Sookram worked in empty apartments with outside trades under the supervision of Mr. Jim Chavous.

Later, Mr. Sookram worked in occupied units under the supervision of Mr. Bobby Jacobs. At the time, Mr. Sookram did not work on rehabilitation. In contrast to maintenance, an ATO could involve rehabilitation.

Mr. Sookram worked on a crew under the supervision of Mr. Nitin Patel in Central Maintenance. There were no outside trades people in this crew. Mr. Tillery is now in charge of rehabilitation.

Mr. Sookram worked with outside trades in all areas and did the same work. The same was true for all trades. The outside trades did the same work as STA members. When Mr. Sookram worked under the supervision of Mr. Tillery, STA members and outside trades did the same work.

Mr. Sookram acknowledged that the number of workers fluctuates depending upon need. Inside employees work forty hours per week and are guaranteed pay. Outside workers could be let go at any time. If there is no work, there is no pay. Outside contractors are not members of the STA or the ECBT.

Joseph DeSantis

Joseph DeSantis was employed by the NHA as a carpenter from November 23, 1992, until he was laid off on June 30, 2010. Mr. DeSantis was a member of the STA, which came into existence in 1992, and he had Civil Service status.

As a carpenter, Mr. DeSantis hung doors, replaced glass and sheetrock and installed locks, mirrors and cabinets as apartment maintenance. When he worked with plumbers, Mr. DeSantis installed floors and tiles. Mr. DeSantis worked mainly in townhouses as opposed to high-rises. In townhouses, Mr. DeSantis worked on front doors, handrails and interior doors, and he rebuilt closets and showers. For ten years, Mr. DeSantis was assigned to townhouses, but he also did some renovation work in empty apartments. For Mr. DeSantis, the work was primarily routine maintenance as

opposed to major renovation. When Mr. DeSantis did routine maintenance, he normally worked by himself. ATOs in empty apartments involved rehabilitation and modernization. The majority of work on ATOs was done by outside trades.

The outside trade workers were from the ECBT and included painters, plumbers and carpenters among others. These workers did not wear uniforms. Mr. DeSantis estimated that over the years he worked with outside tradesmen approximately eighty percent of the time. Mr. DeSantis testified that members of the STA and the outside trades worked together on routine maintenance and apartment renovations, but he later acknowledged that the STA was responsible mainly for maintenance, while the outside trades primarily did renovations of empty apartments. Mr. DeSantis worked with outside trades throughout his employment.

The outside trade workers would work for fifty-nine days, and then Mr. DeSantis would not see them for a time. Then they would come back possibly at another site. Otherwise, the NHA had to offer the worker permanent employment.

For the last four years of his employment, Mr. DeSantis worked for Supervisor Jim Chavous. Mr. DeSantis still worked with outside trade workers.

A work order could be generated as the result of a request by a tenant, or management could issue a work order because of a safety violation such as a defective handrail or broken glass. In any case, the work could be done by NHA employees or outside trades.

Mr. Tillery has a crew that does ATOs in empty apartments. Mr. DeSantis never worked with Mr. Tillery's crew doing rehabilitation work.

Mr. DeSantis acknowledged that once he became permanent, he received paid vacation and sick days, holidays, pension and medical benefits. Mr. DeSantis also

acknowledged that various projects have been partially or totally closed and that the result is less maintenance work.

Francisco Perez

Francisco Perez was hired by the NHA in 1999 as a boiler mechanic, and he worked there until 2011. His duties were to maintain the boilers for heating and hot water and to repair and replace equipment. When pipes were stolen, Mr. Perez disconnected the units so that the plumbers could do their work. Mr. Perez worked in occupied and unoccupied townhouses. In larger buildings, the boilers were in the basement. Mr. Perez reported to Supervisor Andre McNair.

For approximately two years from 2009 to 2010, Mr. Perez worked with a plumber from an outside union. The plumber installed piping for hot water units. Mr. Perez worked with outside tradesmen on multiple occasions.

On the day of a union meeting, Supervisor McNair made a comment about the STA. Mr. McNair said that it was a waste of time to go to union meetings because the STA was not going to do anything. Mr. McNair also told Mr. Perez not to worry, because the layoff would not affect the boiler operation. In fact, no one from boiler operations was affected by the layoff.

Michael Waltz

Prior to becoming a permanent employee, Michael Waltz worked for the NHA as a plumber on and off for fifteen years from 1987 to 2002. At the time, Mr. Waltz was a member of the ECBT. Mr. Waltz was a permanent employee of the NHA from 2002 to 2003 in the positions of plumber and oil burner mechanic. During those years, Mr. Waltz was a member of the STA.

After retiring from the NHA, Mr. Waltz returned as a per diem worker. After working for a year on a per diem basis, Mr. Waltz was laid off. During this time, Mr. Waltz was a member of Plumbers Local 24.

Mr. Waltz performed the same duties as an outside trades worker, a permanent employee of the NHA and member of the STA, and a per diem employee. As a plumber, Mr. Waltz performed repairs and installations. As an oil burner mechanic, Mr. Waltz installed and repaired boilers and hot water heaters. Mr. Waltz never did rehabilitation; he always did maintenance work.

There was no difference between work as an outside plumber and an employee of the NHA. As an outside tradesman, Mr. Waltz worked with both permanent and outside employees. Mr. Waltz worked about fifty days and then was laid off. Otherwise, the NHA would have to make him a permanent employee. There were two men on some jobs and one on others. When there were two men, the other could be a permanent employee or an outside tradesman, depending upon the available workers. As an outside tradesman, Mr. Waltz got his work order from a supervisor or a manager at the site. There was no difference in the way that he got assignments whether he was a permanent employee or an outside tradesman. While Mr. Waltz was a permanent employee, he worked with both permanent and outside tradesmen.

As a permanent employee, Mr. Waltz received guaranteed pay. As an outside tradesman and a per diem, Mr. Waltz had no guaranteed pay, no vacation or sick leave and no health benefits. Mr. Waltz acknowledged that various projects have closed partially or completely and that this results in less work.

LaMark Tillery

Respondent's first witness was LaMark Tillery, who began his employment with the NHA in 1984 as a maintenance supervisor. In 1994, Mr. Tillery advanced to the position of Project Coordinator of Construction. After six or seven years, he became

Chief of Construction Compliance, and in 2006, he was placed in charge of Construction Management Compliance.

As a maintenance supervisor, Mr. Tillery supervised BMWs and other employees. At the time, the NHA had forty maintenance supervisors for as many properties. Over a period of time, Mr. Tillery was the maintenance supervisor at several of those properties. In the 1980s, all of the workers were members of the ECBT. The STA was created in 1992 and represented trades workers employed full-time by the NHA. The outside workers were represented by the ECBT. The STA members did maintenance work, and the outside trades did heavier renovation work.

As a Project Coordinator of Construction, Mr. Tillery oversaw outside trades workers doing renovation work strictly in unoccupied units, hallways and other common areas. At times, STA members worked on Mr. Tillery's crew. Mr. Tillery was not responsible for maintenance, and his crews did not do any work in occupied apartments. Central Maintenance was responsible for maintenance in occupied apartments and small scale renovation. Some outside trades members did maintenance work.

Mr. Tillery had essentially the same responsibilities, when his title was changed to Chief of Construction Compliance. Approximately ninety-five percent of the thirty to eighty employees under Mr. Tillery's supervision came from outside unions. A significant change in this time frame related to the closure of older, larger projects and their replacement with townhouses. Mr. Tillery mentioned approximately six high-rise projects, each with multiple buildings, which were partially or totally closed, and some have been torn down. The high-rises had craft people assigned to each site. The older high-rise projects required a greater amount of maintenance than the newer buildings. The townhouses, which are scattered around the city, have two stories, no elevators and no common areas except outside. The townhouses consist of six connected units in one building and are made of wood as opposed to concrete.

In or about 2006, a new management team arrived at the NHA. Mr. Tillery mentioned a number of new administrators including Executive Director Keith Kinard, Chief of Operations Janet Abrahams and Chief of Human Resources Sibyl Bryant. At the direction of the United States Department of Housing and Urban Development (HUD), the new administrators introduced site-based management, also known as asset-based management. Under this system, each site develops its own budget, collects rent and controls spending. This means that there must be money in the site's budget to pay bills sent by Central Maintenance for repairs. Central Maintenance receives its funds from work requested by individual sites.

Mr. Tillery has essentially the same duties in his current position as head of Construction Management Compliance. The process of replacing the older housing stock continued during this period of time. Mr. Tillery described four multi-building projects as three-story walk-ups. These projects were over fifty years old and have been partially or completely closed, and some are no longer in existence. The intention is to close the remaining buildings. These closings have reduced the need for maintenance.

Mr. Tillery's work has always involved renovation, which is also known as rehabilitation or modernization and typically involves gutting the whole apartment. His crews do ATOs, which would involve vacant apartments. His crews do not do any maintenance or repairs, which are generated off of work orders. In recent years, maintenance work has been handled by Central Maintenance, which may also do some ATOs. The amount of work required for an ATO varies from one unit to another. Maintenance is done only by inside workers.

Over the years, renovation work has been done primarily, but not exclusively, by outside trades. When STA members worked on one of Mr. Tillery's crews, they did the same work as outside trade workers, but they would number three or four at most out of a crew of forty to fifty workers. Renovations involve replacement as opposed to repair.

Rehabilitation requires a higher level of skill than maintenance. According to Mr. Tillery, the outside trades have a higher level of skill than the STA members. Further, his work requires the higher level of skill of the outside trades. The outside trades have the skills to do new construction. The STA members do not have this level of skill.

The maintenance crews are made up entirely of in-house workers with no outside trades. If an unoccupied apartment needs major repairs, it is referred for renovation.

It takes one or two days to fill a position with an outside trades worker. If funds or supplies are not available, an outside trades person can be let go with no notice or obligation by the NHA. Likewise, if an outside worker's skills are not up to standards, he can be let go on a moment's notice. Outside trades receive two holidays per year but no sick or vacation days, pension or health benefits. An outside trades person can be laid off on Friday and return on Monday or Tuesday. Outside trades do not receive a hearing or any other procedures prior to termination. In contrast, various procedures are required to layoff an inside trades worker.

Mr. Tillery acknowledged that two or three years ago, particularly in 2009, several STA members worked with outside trades on his renovation crew. These workers included Gerard Costella, Abdus Akbar, Sunderdat Sookram and others. At the time, the only option would have been a layoff. More recently, Mr. Tillery's crew has been composed entirely of outside trades with no STA members.

Funding for projects comes entirely from the government and ebbs and flows over time. The NHA applies to HUD for grants, which are awarded on an as-needed basis. If a worker in a particular trade is needed for a project, Mr. Tillery calls the outside trades. If there is no grant, there is no work. Mr. Tillery now has two crews comprised of forty outside workers. The renovation work currently consists largely of merging two studio apartments to create a single one-bedroom apartment.

There is now a clear division with Mr. Tillery's crew doing all renovation with outside trades and no maintenance. In contrast, all maintenance is done by Central Maintenance with STA members.

If Mr. Tillery needs welding, he calls Central Maintenance, which sends Stanley Cimpric, whose work is limited to welding. Mr. Cimpric is the only person who does welding for Mr. Tillery. Outside trades have not done any welding for Mr. Tillery. Mr. Tillery does not know Mr. Cimpric's job title.

Sibyl H. Bryant

Sibyl H. Bryant testified that she began her employment with the NHA in April 2007 and that her title is Chief Human Resources Officer. Ms. Bryant's duties include hiring, employee relations and benefits.

Ms. Bryant was hired during a transitional period which involved extensive layoffs due to reductions in funding from HUD. Prior to Ms. Bryant's hiring, the NHA had approximately 1,000 employees. During the transitional period, approximately half of the NHA's employees including both white collar and blue collar workers were laid off. Ms. Bryant described groups of employees who were laid off. Her own department was reduced from eighteen employees in April 2007 to five currently. The work did not go away, but each employee had greater responsibility. There were additional layoffs in 2008 due to reductions in funding from HUD. No STA members were laid off in 2006 or 2007 or at any other time prior to June 2010.

Ms. Bryant explained that prior to the implementation of site-based management, various functions were managed from a central location. After the implementation of site-based management, each site managed its own funds and decided on the work to be done. Each site had to cover the costs of its work. If a site was not meeting its projections, it would have to cut back on its maintenance expense.

Ms. Bryant further explained the types of work performed by various unions. The STA mainly performed maintenance work in occupied units. The BMRs performed light maintenance and repairs that required less skill. The BMRs were widely used by the NHA. The outside trades were represented by the ECBT and worked on rehabilitation and modernization. According to the ECBT contract, their scope of work was rehabilitation.

The ECBT members were at-will employees, and they could be let go within one day. Unlike the STA members whose benefits were approximately forty percent additional remuneration above their salary, the ECBT members did not receive holidays, vacation days, health benefits or pensions. ECBT workers are often laid off, and their numbers are currently down. Some ECBT employees continued to work after the layoff of the STA members in June 2010.

In 1992, the STA filed a petition with the Public Employment Relations Commission seeking Certification of Public Employee Representative of all skilled trades maintenance personnel in the Maintenance Department of the NHA. The petition was approved with inclusion of all skilled trades maintenance personnel in the Maintenance Department of the NHA and exclusion of employees in the Rehabilitation Department and Craft-Outside agreement among others. There has been no change since that time.

Ms. Bryant spoke with Mr. Costella about asbestos at one project in 2007. Mr. Costella was concerned about the safety of workers and tenants. Ms. Bryant also spoke with Mr. Costella about other grievances. The STA filed very few grievances in comparison to Local 617. Aside from the STA, there was no claim of anti-union animus.

Ms. Bryant discussed several grievances filed by the STA. In 2008 and 2009, the STA filed grievances which alleged that the NHA was employing workers on a temporary basis, i.e., for no more than fifty-nine days, and sometimes exceeding the

fifty-nine days without including them in the STA bargaining unit. The STA sought inclusion of these individuals in the bargaining unit, payment of union dues and contractual benefits for the employees. The dispute was resolved in January 2010 with a settlement agreement that provided that the STA would have the right to solicit the ECBT employees to agree to contribute voluntarily by checkoff of \$10 per pay period to the STA.

In 2010, the NHA received more reductions in funding from HUD. The implication was that there would be more layoffs. Ms. Bryant met with Chief of Operations Janet Abrahams in regard to budgetary concerns and reduced funding. They discussed site-based management and noted that the STA was not meeting its quota. The STA had not been impacted by previous layoffs. The decision was made that Ms. Abrahams would meet with the crew chiefs including Nitin Patel, Bobby Jacobs, LaMark Tillery, Jim Chavous and Andre McNair, all of whom had STA workers, to discuss staffing needs.

After consulting the crew chiefs, Ms. Abrahams met again with Ms. Bryant and gave her the number of STA members to be laid off from each title on the basis of seniority. Ms. Bryant was not aware of the reason for the number of employees to be laid off. Ms. Bryant was given the task of identifying the specific individuals to be laid off. There was no discussion of the union status of the individuals. The layoff was to be done on the basis of seniority. Ms. Bryant did not compare the salaries and benefits of the ECBT in relation to the STA.

Ms. Bryant used a seniority list to identify the least senior employees in each title. The least senior individuals would be laid off with the exception that non-Civil Service employees went first. The NHA was not in the Civil Service system since May 1997. Employees hired thereafter were considered non-Civil Service. Employees hired before May 1997 retained Civil Services status so long as there was no break in service.

Ms. Bryant reviewed the files of the various employees to determine their Civil Service status and seniority. Ms. Bryant developed a layoff list and gave it to Ms. Abrahams.

Ms. Bryant submitted a standard plan to the Civil Service Commission providing for notice to the affected employees and an opportunity to contest the action. The plan provided that non-Civil Service employees would be laid off first. The plan was approved by the Civil Service Commission, and Ms. Bryant sent the appropriate notices to the affected employees.

The plan called for the layoff of Stanley Cimpric whose title was carpenter. Ms. Abrahams noticed that Mr. Cimpric's title should be welder rather than carpenter. Ms. Bryant did not know how Ms. Abrahams knew that Mr. Cimpric's title should be welder. Ms. Bryant was told that despite his title as carpenter, Mr. Cimpric did only welding. As a result, Ms. Bryant submitted a request for a change of title for Mr. Cimpric to welder. This request was approved.

The change in title for Mr. Cimpric had a direct impact on Raymond Ramos, who was a carpenter and STA union officer. Based on the original plan, Mr. Ramos had the right to Mr. Cimpric's position based on seniority. The change in Mr. Cimpric's title to welder meant that Mr. Ramos would be laid off. Ms. Bryant resubmitted the plan with Mr. Cimpric removed and Mr. Ramos added to the list of individuals to be laid off. After the layoff, there was a continued need for welding. There were no other modifications to the list.

Janet Abrahams

Janet Abrahams began her employment with the NHA in October 2006 as the Chief of Operations, and she has continued in that position to the present. Ms. Abrahams is responsible for the operations of the NHA, which had approximately 7,000 housing units. Five other chiefs included the Chief Human Resources Officer, the Chief

Financial Officer, the Chief of Assets and Preservation, the General Counsel and the Chief Administrative Officer.

As of October 2006 when Ms. Abrahams was hired, the NHA was considered to be a financially and operationally troubled agency under HUD guidelines. As a result, the NHA entered into a memorandum of understanding with HUD. In accordance with the memorandum of understanding, if the NHA did not meet various milestones, it would go into receivership. That would mean that HUD would take over the housing authority, and members of NHA's management would lose their jobs.

Previously, the central office controlled everything including funding. HUD required a restructuring to site-based management, which was also known as asset-based management. Under this system, all funding would go to a site. As a result, each site had new areas of responsibility. Each site had to do its own budgeting and contracting. This meant that each site had to pay the salaries of its own positions and balance its budget. This conversion was taking place as Ms. Abrahams began her new job.

Ms. Abrahams mentioned several unions with members employed by the NHA. Local 617 represented BMWs, BMRs and clerical staff. Local 202 represented supervisors and security guards. Local 32 represented managers and maintenance supervisors. Local 68 represented boiler, heating and air workers. Local 74 represented managerial staff.

The STA represented carpenters, plumbers, electricians, masons and other trades workers who were permanently employed by the NHA and performed maintenance work in occupied units. The ECBT represented the same trades, but their tradesmen performed different work. The ECBT tradesmen did rehabilitation work in unoccupied units and worked in lobbies, community rooms and management offices, and they also completed ATOs.

As a result of site-based management, the site's positions included BMWs, management staff and other employees. All employees except the STA members were decentralized. With the exception of the elevator mechanics, the STA members were not assigned to separate projects, because the sites could not afford them. The STA members were assigned to Central Maintenance, and their time was billed on a fee-for-service model. The STA members performed regular maintenance work. All of the STA members were within the area of responsibility of Ms. Abrahams as opposed to other Chiefs.

The ECBT workers were also centralized, but their pay came out of the modernization budget. The funds for modernization came from grants from HUD. For a time in or about 2007, some STA members worked on modernization. When they did so, their time was charged to the modernization budget. Ms. Abrahams allowed this arrangement, until she was told by the NHA's attorney that she should not have them working together. Ms. Abrahams was not aware of any STA members still working on modernization.

Beginning prior to Ms. Abrahams' arrival and continuing thereafter, there were several significant layoffs which reduced NHA's staff by approximately fifty percent. Layoffs in 2006 and 2007 impacted the various unions to different extents. Local 617 was affected to the greatest extent in regard to numbers of employees. Local 202 was not affected in 2006 or 2007, but in 2008 or 2009, all sixty security guards were laid off, when the NHA privatized the function of securing lobbies. There were layoffs from Local 32, but none was in Ms. Abrahams' office. Local 68 had three or four people, but they were not affected by the layoffs. Local 74 was affected to some extent by the first wave of layoffs. In contrast, the STA was not affected from 2006 through 2009. The ECBT members were temporary workers so they were just sent home when they were not needed. They worked only on an as-needed basis. As a result of the layoffs, the deficit at the NHA decreased tremendously, and the NHA was able to reach milestones under the agreement of understanding with HUD.

After October 2006, the NHA continued to close older projects. In 2009, the NHA closed Baxter Terrace, which was a three-story walk-up with 565 units. The residents were relocated, and the NHA demolished the buildings. The maintenance and repairs at those buildings had been done by BMRs, BMWs and members of the STA. The NHA is now leasing Phase I of new housing in which the NHA is a partner. A management company will manage the property. There will be less need for maintenance on the new property, and none of it will be done by the NHA.

Seth Boyden was an older, three-story walk-up with 530 units in twelve buildings that required a large amount of maintenance. The property is closed, and there is no need for maintenance that was previously done by the STA.

Felix Fuld was a three-story walk-up with 300 units. The property is currently closed, and the NHA has approved demolition.

Hyatt Court is a project with more than 400 units of which 135 have been demolished. The NHA plans to relocate the tenants and demolish the other units. The result will be less need for maintenance.

The net effect of the closings and new construction will be that the NHA will have approximately 6,000 units. Approximately 400 units will be managed by private firms, leaving the NHA responsible for 5,600. This will mean less maintenance work for the NHA and therefore for the STA.

Ms. Abrahams discussed several grievances and unfair practice charges filed by the STA. In early 2007, Mr. Costella's predecessor as president of the STA, Robert Fiore, raised a concern during a meeting with Ms. Abrahams about asbestos in the tile in a building. Mr. Costella was present but did not speak at the meeting. The supervisor stopped work to protect the safety of the workers and residents, and tests were performed on the tiles. The tests revealed that there was asbestos in the tile, but it was not considered to be a problem at the level that was present. Ms. Abrahams said

that she had no animosity against the union as a result of the complaints. There were no layoffs in 2007 or 2008 as the result of complaints from the STA.

The bulk of union complaints came from Local 617, and Local 32 produced more than the STA. No retaliatory measures were taken against Local 32 or Local 617.

In or about May 2009, the NHA and the STA reached an agreement to resolve an unfair practice charge in which the STA alleged that the NHA had been assigning work historically performed by STA members to other in-house employees including supervisory employees, superintendents, managers, BMWs or BMRs, who were members of other unions. Ms. Abrahams was familiar with the agreement, and she tried to make a clear delineation of work.

The STA filed a grievance related to the scope of its work as opposed to the ECBT and sought representation of the outside trades. The dispute was resolved by a Settlement Agreement dated January 25, 2010. As set forth therein, the STA did not become the bargaining agent for the outside craft workers, and the parties maintained the status quo with regard to the scope of work.

With the implementation of site-based management, Ms. Abrahams held a meeting to explain that the STA members would be assigned to a central location which would have a budget that included salaries, benefits and minimal supplies for STA members. To cover these expenses, the time of the STA members would be billed out to sites based on a referral system. In effect, the STA members had to earn their salaries based on billings for referrals.

Ms. Abrahams received financial results for various areas on a monthly basis, and she had to justify any deficit. In reviewing financial reports, Ms. Abrahams noticed that there was a rising deficit for the Central Maintenance cost center, which included both STA and ECBT members. The ECBT workers were in the Central Maintenance cost center, but they were paid from grants for modernization. Ms. Abrahams moved

the boiler operators from Central Maintenance to site budgets to reduce the deficit, but she could not move other STA members, because the various sites could not support a full-time individual from a particular trade.

The BMRs did some carpentry, plumbing, roofing and electrical work, but for work beyond their capability, a referral had to be made to Central Maintenance. If a referral was made to Central Maintenance, a work order was issued to an STA member. From the hours at the site and the hourly rate, Central Maintenance billed the property. From a review of the referrals, Ms. Abrahams could determine the number of STA workers needed in Central Maintenance.

Ms. Abrahams considered both ECBT and STA members for layoffs. The ECBT members worked in vacant units, lobbies and community rooms. The ECBT members did not work on referrals, and their time was not billed to sites and paid from rent. There were instances of ECBT work being given to the STA but none of the STA work being given to ECBT tradesmen. ATOs were the work of the ECBT workers. The number of ECBT workers fluctuates between fifteen and thirty. Ms. Abrahams did a cost benefit analysis and determined that the cost of work by an ECBT tradesmen was eighty-five cents on the dollar for an STA member. Additionally, when the amount of work decreased, an ECBT worker could be let go with no benefits. The amount of work also fluctuated for STA members, but the NHA kept the same number of employees and paid benefits.

LaMark Tillery had a crew composed of workers from various trades doing rehabilitation and vacancy reduction. For a time, members of the STA were working on Mr. Tillery's crew due to a lack of other work. Ms. Abrahams discontinued this practice because the STA members were doing ECBT work. Mr. Tillery's crew is now composed entirely of ECBT workers.

Ms. Abrahams conferred with the leaders of the various crews to identify positions that could be eliminated. After a meeting with crew leaders, Ms. Abrahams

determined that she could reduce the number of STA workers in various titles. Ms. Abrahams put together a document which identified the number of employees in each title to be laid off, and she forwarded it to Ms. Bryant in Human Resources for implementation. Ms. Abrahams' decision was to layoff fourteen STA members.

Ms. Bryant had to look at seniority and any other considerations to identify the specific individuals to be laid off. Ms. Bryant came back with a spreadsheet that identified the specific individuals who would be laid off.

When Ms. Abrahams received the initial assessment by Ms. Bryant, Ms. Abrahams noticed that Stanley Cimpric was on the layoff list. Ms. Abrahams was concerned because Mr. Cimpric was listed as a carpenter. Ms. Abrahams was familiar with Mr. Cimpric's work, and she knew that he worked as a welder and not as a carpenter. Ms. Abrahams needed to have a welder on the NHA staff. Gerard Costella and Ray Ramos did not do welding work.

The staffing was sufficient after the last layoffs, but a new assessment became necessary due to the closing of more units and the fact that the NHA had a deficit. The decision to lay off employees was based on the staffing needs of the NHA. After the notices were sent out, approximately nine employees were let go right away with pay due to concern about sabotage by disgruntled employees. After the layoff, the NHA did not have to pay salaries, benefits or union dues for these employees. The result was a savings of more than \$1 million.

In accordance with the STA contract, the NHA always had the right to subcontract work. For example, the NHA did not have the equipment that was necessary for all types of plumbing problems. When the NHA did not have the necessary equipment, the work was contracted out. Pursuant to this authority, Ms. Abrahams privatized painting such that most of the work was done by a contractor, which was less costly for the NHA due to the heavy benefits package of its employees.

The contract covered cyclical painting of occupied residential units every three to five years and ATOs. Any painting by an STA member was the result of a referral.

In November 2010, the NHA received 600 referrals related to plumbing as a result of an inspection. The NHA needed additional workers to supplement the STA plumbers on staff and brought in ECBT tradesmen based on the ECBT contract. Despite recognizing that this work involved maintenance repairs, the NHA treated the ECBT workers as contractors. The repairs were made within fifty-nine days. No one was hired to replace the STA members who were laid off. Ms. Abrahams did not recall whether any plumbers were laid off, but it may be noted that none of the STA members who were laid off was a plumber.

FACTS

Based upon the evidence presented at the hearing, I **FIND** as follows. Prior to 1992, all of NHA's trades workers were assigned to its Maintenance Department or its Rehabilitation Department and were represented by unions which were members of the ECBT. In 1992, the STA was certified to represent all skilled trades maintenance personnel in NHA's Maintenance Department. Employees in the Rehabilitation Department were excluded from STA's representation, and they were covered by the craft-outside agreement. Thereafter, the NHA eliminated the Maintenance and Rehabilitation Departments, thereby removing the main distinction between STA and ECBT employees. As a result, the STA defined its role as representing tradesmen who were Civil Service, regular employees at the NHA. In May 1997, the NHA withdrew from Civil Service, again eliminating the distinction between STA and ECBT employees. Without a clear distinction, STA members and ECBT tradesmen worked interchangeably at various work sites and projects under the same supervisors for a decade or longer. Meanwhile, BMRs were performing repairs which required less skill than those done by the STA. These circumstances led to ongoing disputes between the STA and ECBT and between the STA and the BMRs and other employees

concerning whether various work assignments should be given to their respective unions.

In or about 2006, four significant transitions were taking place at the NHA. One significant transition related to intervention by HUD. The NHA was considered to be a financially and operationally troubled agency by HUD. As a result, the NHA entered into a memorandum of understanding with HUD. In accordance with the memorandum of understanding, if the NHA did not meet various milestones, it would go into receivership, which would mean that HUD would take over the housing authority and members of NHA's management would lose their jobs.

HUD required a restructuring to site-based management, which was also known as asset-based management. Under this system all funding would go to a site. As a result, each site had new areas of responsibility such as managing its own budget and contracting. This meant that each site had to pay the salaries of its own positions and balance its budget.

Under site-based management, most employees were assigned to a particular site, but with a few exceptions, STA members were assigned to Central Maintenance, because an individual site could not afford a full-time STA tradesman. When a site needed maintenance that was beyond the skill level of the BMRs, the site had to make a referral to Central Maintenance for the work to be done by an STA member. The site was then charged for the work done by the STA member in response to the referral. The payments from the referrals were supposed to cover the costs of the STA members in Central Maintenance. On May 6, 2008, Ms. Abrahams held a meeting with STA members at the Newark Public Library. Ms. Abrahams informed the employees that the NHA would convert to a system of asset-based management.

Another significant transition related to a new management team which was installed at the NHA beginning in 2006. Keith Kinard became the Executive Director in 2006, Janet Abrahams became the Chief of Operations in October 2006, and Sibyl H.

Bryant became the Chief Human Resources Officer in April 2007. In addition, the NHA had four other employees at the same level including the Chief Financial Officer, the Chief of Assets and Preservation, the General Counsel and the Chief Administrative Officer.

Another important transition concerned the replacement of older projects with new housing. In general the transition involved the closure of older, larger projects and their replacement with townhouses. Approximately six high-rise projects, each with multiple buildings, were partially or completely closed, and some were demolished. The new townhouses have two stories, no elevators and no interior common areas. The older high-rise projects required a greater amount of maintenance than the newer townhouses. The process continued with the replacement of approximately four multi-building projects described as three-story walk-ups. These projects were over fifty years older and required a large amount of maintenance. The newer townhouses require less maintenance.

The net effect of the closures and replacements was a reduction in the number of housing units from approximately 7,000 to 6,000. In addition, a private management company is now responsible for maintenance on 400 units. As a result, the NHA is now responsible for maintenance on 5,600 units, representing a twenty percent reduction from 7,000. Additionally, the 5,600 units include more new townhouses and fewer older units. The newer units require less maintenance. In overall effect, the NHA's current housing stock requires less maintenance for two reasons. First, there are fewer units. Second, the townhouses require less maintenance than the older units.

While these transitions were taking place, the NHA substantially reduced the number of its employees. The NHA laid off workers in 2006, 2007, 2008 and 2009. Prior to the layoffs, the NHA had approximately 1,000 employees. The NHA reduced the number of its employees by approximately fifty percent by layoffs and other means. The main reason for the layoffs was reduced funding from HUD. During this time, no STA members were laid off.

The STA filed a number of grievances and unfair practice charges against the NHA. Disputes arose concerning the alleged assignment of STA work to in-house personnel from other unions. The STA presented an Agreement for Resolution of Dispute in a case before the Public Employment Relations Commission entitled In the Matter of Newark Housing Authority, Respondent, and Newark Skilled Trades Association, Charging Party, Docket No. CO-2006-165. The parties entered into the settlement in 2009, but the docket number suggests that the unfair practice charge was filed in 2006. The agreement defines in considerable detail the types of work that will or will not be assigned to workers from the STA or other in-house unions.

A grievance filed by OPEIU Local 32, which represents Project Maintenance Superintendents and Maintenance Supervisors, reflects on the assignment of STA work. An Opinion and Award in In the Matter of the Arbitration Between Housing Authority for the City of Newark, Employer, and OPEIU Local 32, Union, Case No. 05-0761, dated December 18, 2006, determined that the assignment by the NHA of painting duties to supervisory personnel violated the terms of the pertinent collective bargaining agreement and job description and sustained the grievance. The Opinion and Award mentions that painters are represented by the skilled trades.

On April 10, 2007, the STA filed a grievance because employees in a particular building were required to work with asbestos. The NHA and the STA agreed to a partial settlement on January 14, 2008. The Draft Consent Agreement provided for training at a minimum of once annually in the handling and recognition of asbestos, the use of a licensed professional in the handling and removal of asbestos in certain situations and medical screening for employees who believe that they have been exposed to asbestos. On June 18, 2008, the parties finalized the settlement with more specificity as to the three previously mentioned provisions plus the creation of a Health and Safety Committee, which will meet at least annually. The STA would participate as a member of the Committee. By letter dated November 19, 2009, Gerard Costella wrote to Director Keith Kinard, noting the lack of implementation of the settlement.

Another dispute involved ECBT workers who allegedly worked more than fifty-nine days but were not made permanent employees. The STA leadership believed that there were individuals who fell into this category but did not have a way to identify them without access to NHA personnel records. On October 23, 2007, the STA filed an Unfair Practice Charge with the Public Employment Relations Commission, alleging that the NHA refused to produce personnel records specifying new hires and as a result the STA could not identify new bargaining unit members, provide them with representation or collect union dues or shop fees. A letter dated January 23, 2008, from NHA's attorney to the Public Employment Relations Commission advised that the NHA had agreed to provide a monthly listing of all new hires from the ECBT in addition to listing all new hires within the STA bargaining unit. The letter indicates that the NHA was providing the available hiring information concerning ECBT workers between November 2006 and December 2007 to the STA. Subsequent correspondence indicates that the parties reached a settlement but that as of December 12, 2008, the STA had not received any additional information subsequent to the NHA's January 23, 2008 letter.

Meanwhile, on September 23, 2008, the STA filed a grievance for not including individuals who exceeded fifty-nine days of employment in the bargaining unit. On April 14, 2009, the STA filed another grievance for essentially the same reason. This dispute was resolved by a Settlement Agreement dated January 25, 2010. The Agreement gave the STA the right to solicit ECBT employees to voluntarily agree to contribute by checkoff of \$10 per pay period to the STA.

The STA also had disputes with the NHA concerning specific individuals. By letter dated August 2, 2007, the STA through its attorney complained about the Acting Chief of Maintenance with concerns about safety issues and a highly demoralized workforce. There was also a grievance concerning an STA member. As reflected in a letter dated November 2, 2009, from the STA's attorney, the grievance was resolved with an agreement providing that the employee will receive holiday pay and accrued vacation pay and that union dues will be paid to the STA.

The disputes between the STA and the NHA continued in 2010. On January 20, 2010, Gerard Costella sent a fax to the NHA stating that Marvin Bowman, who was not an STA member, was given an order to complete an assignment that was not within his job description or the work of the bargaining unit. In an undated fax to the NHA, Mr. Costella advised that BMRs were doing trades work. In a fax dated March 4, 2010, to the NHA, Mr. Costella stated that BMRs were doing a complete ATO.

In an attempt to prevent these types of disputes from occurring and to comply with guidance from NHA's attorney that STA members and ECBT tradesmen should not be working together, Ms. Abrahams tried to create a clear delineation of work. Specifically, STA members would perform maintenance in residential units, while ECBT workers would complete ATOs and work in common areas. The division of work in relation to in-house personnel would be controlled by the Agreement finalized in May 2009.

On January 29, 2010, the STA filed an Unfair Practice Charge with the Public Employment Relations Commissions, alleging that for anti-union reasons the NHA failed to comply with the settlements regarding the monthly list of new hires, the safety concerns related to asbestos, the in-house personnel performing STA bargaining unit work and the holiday pay and other relief for an individual employee. The Charge further alleged that Director Kinard has ignored Gerard Costella, who does not receive any response to his inquires. On May 25, 2010, the STA filed a grievance regarding painting contractors and others performing STA bargaining unit work.

The STA presented testimony concerning comments by managerial and supervisory personnel. During the meeting on May 6, 2008, Ms. Abrahams praised the elevator crew and asked why other workers were not as successful. Electrician Abdus Akbar responded that the supervisor of the elevator crew was an elevator mechanic. Mr. Akbar explained that a supervisor who is not from the same trade may order the wrong material, and he asked how workers can be effective when the supervisor does not know the trade.

Four STA members testified as to warnings that they received from supervisors. That testimony is accepted as true with respect to the fact that the supervisors made the statements. Raymond Ramos also testified that Peter Santos said that Juan Pagan said that Janet Abrahams said that she was going after Gerard Costella and other STA officials. Mr. Santos testified that he did not recall any conversation with Mr. Ramos or Mr. Pagan. The testimony of Mr. Ramos was triple hearsay and is not considered to be reliable.

One warning came from Mr. Tillery. At a meeting on March 10, 2010, Mr. Tillery told the STA members that Ms. Abrahams was not pleased with their production and that there could be layoffs. Mr. Chavous also warned Mr. Costella about layoffs. Supervisor McNair told Mr. Costella that he was getting in over his head and that Ms. Abrahams was unhappy with the union activity.

In 2009, Supervisor McNair told Mr. Ramos that Mr. Costella should back off and that it was counterproductive to file grievances. Supervisor McNair also said that Ms. Abrahams was upset with Mr. Costella for pursuing grievances on out-of-title work. In 2010, Supervisor Chavous told Mr. Ramos that Ms. Abrahams was unhappy with Mr. Costella pursuing grievances and that Mr. Costella should back off or other workers might lose their jobs.

Supervisor McNair told STA member Archie Jackson more than once that Mr. Costella did not know what he was doing and that he would get the union members in trouble because he was acting too aggressively. Supervisor McNair also told STA member Francisco Perez that it was a waste of time to go to union meetings because the STA was not going to do anything. Supervisor McNair also told Mr. Perez not to worry because the layoffs would not affect the boiler operation.

In 2010, the NHA faced another reduction in funding from HUD and needed to reduce costs. Since the STA was not covering its costs with billings for referrals and it had not had any prior layoffs, Ms. Abrahams decided to explore the possibility of laying

off STA members to close the gap. Ms. Abrahams checked with crew supervisors to see if they could get along with fewer workers. The supervisors included Nitin Patel, Bobby Jacobs, Jim Chavous, Andre McNair and LaMark Tillery.

In response to Ms. Abrahams' request, the supervisors gave the number of workers who were not needed by title. The totals came to nine carpenters, two electricians and two painters. Ms. Abrahams gave the number of employees from each title to Ms. Bryant to identify particular individuals. After Ms. Bryant developed a list, Ms. Abrahams noticed that Stanley Cimpric was on the list as a carpenter. Ms. Abrahams knew that Mr. Cimpric actually worked as a welder, and she did not want to lose NHA's only welder. As a result, Mr. Cimpric's title was changed to welder, and he was taken off the list of employees to be laid off.

Notices of layoff dated June 9, 2010, were sent to the affected employees. The last day of work was June 30, 2010, and the layoff became effective July 26, 2010. The employees who were laid off included carpenters Gerard Costella, who had Civil Service status and was president of the STA; Raymond Ramos, who had Civil Service status and was vice president of the STA; Manuel Rodriguez Rivera, who had Civil Service status; Joseph DeSantis, who had Civil Service status; Walter Young, who had Civil Service status; Pedro DaSilva; Rafael Artacho; Miguel Gonzalez; and Kurt Blanchard, who was a shop steward for the STA. The employees who were laid off also included electricians Abdus Akbar, who held several positions with the STA, and Jose Veloso. Two painters were laid off including Kyle Foushee and Jerome Muhammad.

The effect of the layoff was to save approximately \$1 million annually. Except to the extent that the STA members were assigned to Mr. Tillery's rehabilitation crew, they were not replaced with ECBT workers.

The NHA entered into contracts for painting. Pursuant to the contract between the NHA and the STA, the NHA has the right to subcontract work. As the result of an

inspection, the NHA received approximately 600 plumbing referrals in November 2010. The referrals were handled by extra workers from the ECBT. No STA plumbers were laid off, and none was not brought back to handle the referrals.

LAW AND ANALYSIS

A. Unfair Practice Charge

The applicable statute is N.J.S.A. 34:13A-5.4, which provides in pertinent part as follows:

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

The test for evaluation of charges of unfair labor practices in retaliation for the exercise of protected union activity is set forth in In re Bridgewater Township, 95 N.J. 235 (1984). The charging party must establish that the protected activity was “a substantial, i.e., a motivating factor” in the employer’s disputed action. Id. at 244. Once this is accomplished, the employer may establish as an affirmative defense that the action occurred for legitimate business reasons and not in retaliation for the protected activity. Ibid.

The NHA produced the testimony of Sibyl H. Bryant and Janet Abrahams, who explained explicitly the reasons for the layoffs of the STA members in June 2010. Ms. Bryant and Ms. Abrahams were credible witnesses, and their testimony was cogent and readily believable. Under the circumstances, their testimony is accepted as true. After the NHA had reduced its staff by approximately fifty percent from 2006 to 2009 as a result of cuts in funding, Ms. Bryant and Ms. Abrahams became aware of an additional reduction from HUD for 2010. Ms. Abrahams considered the STA because its receipts from referrals were not covering its costs, there was a general reduction in the amount of maintenance due to changes in the NHA's housing stock and it had not had any previous layoffs. Ms. Abrahams conferred with crew supervisors to identify positions that could be eliminated. The crew supervisors identified by job title the positions that could be eliminated, and Ms. Abrahams decided to layoff employees from these positions. Ms. Bryant was then given the task of identifying the specific individuals who would be laid off on the basis of seniority and Civil Service status.

The STA's main contention is that its vigorous advocacy on behalf of its members was a protected activity and it was a substantial or motivating factor for the layoff. Stated differently, the STA contends that the NHA implemented the layoff in retaliation for the STA's vigorous advocacy on behalf of its members. The STA's multiple arguments in support of its main contention may be grouped as follows: (1) various grievances and unfair practice charges filed by the STA motivated the NHA to take retaliatory action; (2) the NHA targeted STA officials and permanent STA members with Civil Service or contractual protection; (3) implicit in the reference to permanent STA members is the contention that the NHA should first have laid off temporary ECBT workers from the same trades; and (4) several NHA employees made statements that demonstrated anti-union animus.

The STA's argument concerning the ECBT workers will be considered first. The STA contends that the ECBT workers are really just fill-ins and that they should be laid off first under any circumstances. The contention that the ECBT workers are really just fill-ins, who perform the same work as STA members, is not accurate.

In May 1992, the Public Employment Relations Commission certified the STA to represent all skilled trades maintenance personnel employed by the NHA in its Maintenance Department. The first contract between the NHA and the STA further defined the unit as permanent skilled trades maintenance personnel employed by the NHA. The approval of the STA specifically excluded "employees covered under the Rehabilitation Department and Craft-Outside agreement." By contract between the NHA and the ECBT, the scope of work includes all rehabilitation work on residential structures by the noted trades. Thus, in theory the STA and the ECBT always had separate scopes of work.

With the passage of time, the distinction became blurred first due to the elimination of the NHA's Maintenance and Rehabilitation Departments and then by the NHA's withdrawal from Civil Service. This led to a situation where STA members and ECBT workers were used to some extent interchangeably. Subsequently, the NHA adopted site-based management, which lended itself to identification of maintenance work and created a fiscal significance thereto. Additionally, in order to avoid disputes between unions as to scope of work, the NHA delineated more clearly the responsibilities of various employees. The net effect was that the ECBT workers were assigned to ATOs and work in common areas, while the STA was largely limited to work in occupied residential units. Despite the fact that a few STA members were still assigned to Mr. Tillery's rehabilitation crew, the ECBT workers had their own scope of work in practice as well as theory. Under the circumstances, the STA members have no right to work which constitutes rehabilitation. It follows that the there is no merit to STA's argument that the ECBT workers should be laid off first under any circumstances.

The STA maintains that the work of the laid off STA members continued to be performed by ECBT workers. A review of the testimony of STA members who were not laid off as of June 2010 and also of Mr. Tillery reveals that this contention is without merit. Michael Marotta testified that in recent years he worked in occupied units with another STA mason. David Mauro testified that for the last eight or nine years, he was

assigned to Central Maintenance. During this time, Mr. Mauro did not work with outside trades. Cleave Reid testified that after he was assigned to Central Maintenance, he worked alone in occupied units or with a maintenance worker from the site. He does not work with outside trades. Sunderdat Sookram testified that his most recent assignment was a crew under the supervision of Mr. Nitin Patel in Central Maintenance. There were no outside trades people in this crew. Mr. Tillery testified that maintenance crews are now made up entirely of in-house workers with no outside trades. The decision to employ ECBT workers to deal with the 600 plumbing referrals in November 2010 can only be regarded as an aberration which could not readily have been corrected due to the fact that no STA plumbers had been laid off. The rehabilitation crew is comprised of outside tradesmen with no STA members. Thus, the testimony by Mr. Tillery and the STA members who were not laid off indicates that ECBT workers are not performing maintenance work which is within the STA's scope of work.

The STA contends that the NHA did not produce any data that showed that it saved money as a result of the layoff. While the NHA did not produce data in regard to savings, Ms. Abrahams testified, and it was so found, that the layoffs of the STA members produced savings of more than \$1 million.

The STA's main argument is that the layoff was done in retaliation for its vigorous advocacy on behalf of its members. This argument is unpersuasive for several reasons. First, the grievances and unfair practice charges filed by the STA do not appear to have sufficient weightiness or significance, especially in light of the seemingly innocuous settlements, to cause the layoff of thirteen employees. One of the more significant disputes was an unfair practice charge concerning an allegation that the NHA assigned STA work to in-house personnel from other unions. This dispute was resolved by an Agreement which simply defined in some detail the types of work that will or will not be assigned to the workers from the STA or other in-house unions.

The STA filed a grievance because employees were required to work with asbestos in a particular building. The parties agreed to a settlement which required the

NHA to provide training in regard to asbestos, to use licensed professionals to handle and remove asbestos in certain situations, to offer medical screening to employees who believe they have been exposed to asbestos, and to create a Health and Safety Committee with the STA as a member.

Another dispute concerned ECBT workers who, according to the STA, should have been made permanent employees. The STA filed an unfair practice charge alleging that the NHA refused to produce personnel records so that the STA could identify new bargaining unit members. This dispute was resolved with an agreement by the NHA to provide the pertinent lists of employees.

The STA also filed two grievances in regard to this situation. This dispute was resolved with an Agreement that gave the STA the right to solicit ECBT workers to voluntarily agree to contribute by checkoff of \$10 per pay period to the STA.

The disputes about the scope of work with the various unions are readily understandable in view of the absence of clear delineations, and the STA's concern about asbestos seems completely reasonable. The terms of the settlements do not seem to be particularly burdensome from the perspective of NHA. While unresolved disputes continued in 2010, the situation seems to offer little reason for retaliation by the NHA.

Second, the timing of an employer's action is a factor in determining whether it constituted retaliation, e.g., Jalil v. Avdel Corp., 873 F.2d 701, 708 (3rd Cir. 1989) (discharge two days after employee filed complaint justifies inference of retaliatory motive); Momah v. Albert Einstein Medical Center, 978 F.Supp. 621, 633 (E.D.Pa. 1997), aff'd, 229 F.3d 1138 (3rd Cir. 2000) (two months from criticism to discharge makes out prima facie case of retaliatory discharge); Young v. Hobart West Group, 385 N.J. Super. 448, 467 (App. Div. 2005) (termination four months after complaint was not so "unusually suggestive" as to establish causal link); Shaner v. Synthes (USA), 204 F.3d 494, 507 (3rd Cir. 2000) (termination approximately one and a half years after filing

of charge does not support finding of retaliatory harassment). Here, the layoff notices dated June 9, 2010, were issued well after most of the disputes were initiated and settled and four months after the unfair practice charge filed in January 2010. All of those actions by the STA were too remote in time to suggest retaliation. The grievance filed on May 25, 2010, in regard to painting does not seem to be serious enough to cause a retaliatory layoff.

Finally, the STA engaged in its advocacy during the period from 2006 to 2009, when the NHA eliminated approximately fifty percent of its employees through layoffs or other means. Yet during this time, no STA members were laid off. In all probability, the NHA would have laid off STA members sooner, if it was motivated by the filing of grievances or unfair practice charges by the STA. All of these circumstances indicate that the layoff was not done as retaliation for vigorous advocacy by the STA.

The STA contends that the NHA targeted STA officials and then permanent STA employees with either Civil Service or contractual protection. With respect to officers, the STA's president, vice president, treasurer and a shop steward were laid off, leaving only the secretary, who had a high level of seniority. The seniority list indicates that of the twelve trades mentioned, only five had more than three employees. There were thirteen carpenters, four electricians, four oil burner service mechanics, five painters and five plumbers of whom one retired on June 30, 2010. The layoff included nine carpenters reducing the total from that thirteen to four. Three of the STA officers who were laid off were carpenters. On its face, the layoff creates a more equal balance among the trades, and the STA offered no evidence that there was a need for a larger number of carpenters.

The STA maintains that its members who have Civil Service status have been targeted by the NHA. The STA did not identify all members with Civil Service status, but an approximation of the total number can be derived due to the fact that NHA withdrew therefrom in May 1997. Based upon a seniority list, which includes the date on which the individual was hired by the NHA, it may be determined that as of June 10,

2010, twenty-nine of forty-three STA members had been hired by May 1997, equaling sixty-seven percent. Using this same method, eight of the thirteen employees who were laid off had Civil Service status, equaling sixty-two percent. Thus, it does not appear that employees with Civil Service status were laid off disproportionately.

The STA argues that Stanley Cimpric's title was changed from carpenter to welder so that STA Vice President Raymond Ramos would be laid off. The difficulty with this argument is that the NHA offered a credible explanation for the change of Mr. Cimpric's title. Ms. Abrahams realized that the layoff of Mr. Cimpric would result in the loss of the NHA's only welder. A review of Mr. Cimpric's work log for the period from June 1, 2009, to June 30, 2010, indicates that he worked almost exclusively as a welder. Under the circumstances, STA's argument that the NHA changed Mr. Cimpric's title in order to target Mr. Ramos for a layoff is unpersuasive.

The STA contends that various NHA employees made comments that are significant in two respects. First, some comments manifest anti-union animus. Second, others show that the NHA was targeting various individuals from the STA.

At a meeting on May 6, 2008, at the Newark Public Library, Ms. Abrahams asked why other workers were not as successful as the elevator crew. STA members interpreted this question as a criticism of other STA workers and an indication of anti-union animus. This interpretation is unreasonable, as the comment was only a question that appears to have been asked out of a good faith concern about an NHA matter. In fact, STA officer Abdus Akbar responded that the elevator crew was successful, because its supervisor was from the same trade. The fact that the STA officer provided an explanation rather than a denial indicates that Ms. Abrahams had a legitimate concern.

At a meeting on March 10, 2010, Mr. Tillery told STA members that Ms. Abrahams was not pleased with their production and that there could be layoffs. It is not clear exactly when Ms. Abrahams asked the supervisors to identify by title the

number of STA members who were not needed, but Mr. Tillery may well have known that layoffs of STA members were under consideration. The comments of Mr. Tillery appear to be a warning given in good faith as to the possibility of layoffs and do not manifest anti-union animus on the part of Mr. Tillery or Ms. Abrahams.

Supervisor Chavous warned Mr. Costella about layoffs and told Mr. Ramos that Ms. Abrahams was unhappy with Mr. Costella pursuing grievances and that Mr. Costella should back off or other workers might lose their jobs. Similarly, Supervisor McNair told Mr. Ramos that Mr. Costella should back off and that it was counterproductive to file grievances. Supervisor McNair also said that Ms. Abrahams was upset with Mr. Costella for filing grievances in regard to out-of-title work. Supervisor McNair told Mr. Costella that he was in over his head and that Ms. Abrahams was unhappy with the union activity. Additionally, Supervisor McNair made statements to STA members to the effect that Mr. Costella did not know what he was doing and that he could get union members in trouble because he was acting too aggressively.

These statements are indicative of the perceptions of Supervisors Chavous and McNair, but since these individuals were not called as witnesses in this proceeding, there is no way to determine the basis for their impressions. Further, these individuals certainly knew of the possibility of layoffs, but there is no indication that they were aware of the funding situation. In any event, these statements by Supervisor Chavous and Supervisor McNair are overborne by the testimony of Ms. Abrahams and Ms. Bryant as to the actual motivation for the layoffs. Under the circumstances, the arguments of the STA are not persuasive that the NHA targeted STA officials or permanent STA members with Civil Service or contractual protection for layoff or that the NHA's action was the result of anti-union animus.

Having accepted the NHA's explanation for the layoffs and having rejected the STA's contentions, I **FIND** that anti-union animus was not a substantial or motivating factor in the layoff of STA members in 2010 and that the layoff was the result of

legitimate business reasons including reductions in funding by HUD, receipts from referrals that were not covering STA's costs, the general reduction in the amount of maintenance due to changes in the NHA's housing stock and the fact that the STA had not had any previous layoffs.

B. Layoff Appeals

An appointing authority may institute a layoff of a permanent employee for economy, efficiency or other related reasons. N.J.S.A. 11A:8-1a; N.J.A.C. 4A:8-1.1(a). A permanent employee who is laid off has the right to appeal the good faith of such layoff to the Civil Service Commission. N.J.S.A. 11A:8-4. A good faith appeal is based on a claim that the appointing authority laid off the employee for reasons other than economy and efficiency. N.J.A.C. 4A:8-2.6(a)1. The burden of proof is on the employee. N.J.A.C. 4A:8-2.6(c).

The action by the appointing authority receives a presumption of good faith, and the burden is on the employee to show bad faith. Greco v. Smith, 40 N.J. Super. 182, 189 (App. Div. 1956); Schnipper v. North Bergen Tp., 13 N.J. Super. 11, 15 (App. Div. 1951). The question is whether the design in adopting the plan was to accomplish economy or, on the contrary, to effect the removal of a public employee, protected by Civil Service, without following the statutory procedure for removal. Greco v. Smith, 140 N.J. Super. at 189; Schnipper v. North Bergen Tp., 13 N.J. Super. at 15. Where the action is taken for the former reason, it is of no consequence that considerations other than economy played some part in the action. Greco v. Smith, 40 N.J. Super. at 189-90; Schnipper v. North Bergen Tp., 13 N.J. Super. at 15.

Here, as found above, the layoff was a response to a reduction in funding. Ms. Abrahams considered the STA members for layoff because the STA members were not producing sufficient revenues from referrals to cover their costs, there was less maintenance work mainly due to changes in the NHA's housing stock and the STA had not had any prior layoffs. Moreover, the STA's contentions that they were laid off due

to anti-union animus are unpersuasive for the reasons set forth above. It follows that appellants have failed to prove by a preponderance of the evidence that the layoff was instituted for reasons other than economy and efficiency. Based upon the above, I **FIND** that the layoffs of STA members in 2010 were done for reasons of economy and efficiency.

CONCLUSION

Based upon the above, I **CONCLUDE** that the unfair practice charge and the layoff appeal are without merit. Accordingly, it is **ORDERED** that:

1. The unfair practice charge is dismissed.
2. The layoff appeal is dismissed.

I hereby **FILE** my initial decision with the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** and the **CIVIL SERVICE COMMISSION** for consideration in accordance with the procedures set forth in the Order of Consolidation and Predominant Interest.

In a manner consistent with the terms of said Order, this recommended decision may be adopted, modified or rejected by the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, which by law is authorized to make a final decision in this matter. If the Public Employment Relations Commission does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

In a manner consistent with the terms of said Order, this recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five (45) days and unless such

time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 West State Street, PO Box 429, Trenton, New Jersey 08625-0429**, marked "Attention: Exceptions" and with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

FEB. 25, 2014
DATE

Richard McGill
RICHARD MCGILL, ALJ

Date Received at Agency:

Date Mailed to Parties: **FEB 26 2014**
ljb

Laura Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESS LIST

For appellants/STA:

Gerard Costella
Rafael Artacho
Miguel Gonzalez
Kurt Blanchard
Raymond Ramos
Peter Santos
Abdus Akbar
Michael Marotta
David Mauro
Marvin Bowman
Mark Mercado
Cleave Reid
William Figueroa
Jose Veloso
Archie Jackson
Kyle Foushee
Sunderdat Sookram
Joseph DeSantis
Francisco Perez
Michael Waltz

For respondent:

LaMark Tillery
Sibyl H. Bryant
Janet Abrahams

EXHIBIT LIST

- P-1 Letter dated June 14, 2010, from Sibyl H. Bryant to Gerard Costella
- P-2 Notice dated June 9, 2010, from Sibyl H. Bryant to Gerard Costella
- P-3 List – Original Layoff – July 2010
- P-4 Agreement between Housing Authority of City of Newark and Skilled Trades Association, Inc. (Non Supervising Unit), April 1, 2007 through March 31, 2011
- P-5 Certification of Attendance dated July 5, 2009
- P-6 Attendance “2009” list for MOD CREW 4298A
- P-7 Attendance list
- P-8 List of NHA sites with addresses
- P-9 Settlement Agreement dated January 25, 2010
- P-10 Agreement for Resolution of Dispute dated March 13, 2009, and May 7, 2009
- P-11 PLM Bulk Asbestos Report dated March 31, 2007, from AmeriSci New York
- P-12 Letter dated April 10, 2007, from Arnold S. Cohen, Esq. to Robert Jacobs
- P-13 Letter dated June 23, 2008, from Arnold Shep Cohen to Samuel Manigault
- P-14 Letter dated August 2, 2007, from Arnold Shep Cohen, Esq., to Sibyl Bryant
- P-15 Letter dated November 19, 2009, from Gerard Costella to Keith Kinard
- P-16 Draft Contract Agreement
- P-17 Unfair Practice Charge dated October 27, 2007
- P-18 Letter dated January 23, 2008, from Samuel M. Manigault to Public Employment Relations Commission
- P-19 Employee Report by Union Code dated June 1, 2010
- P-20 Letter dated October 3, 2008, from Arnold Shep Cohen to Sibyl Bryant
- P-21 Letter dated December 12, 2008, from Arnold Shep Cohen to Samuel Manigault
- P-22 Fax dated January 20, 2010, from Gerard Costella to Samuel Manigault
- P-23 Undated facsimile transmittal sheet from Gerard Costella to Samuel Manigault
- P-24 Facsimile transmittal sheet dated March 4, 2010, from Gerard Costella to Samuel Manigault
- P-25 Amended Unfair Practice Charge dated January 29, 2010
- P-26 Letter dated November 2, 2009, from Arnold Shep Cohen to Samuel Manigault, Esq.
- P-27 Letter dated May 25, 2010, from Arnold Shep Cohen to Samuel Manigault, Esq.

- P-28 NCHM News- Winter 2010
- P-29 Letter from the Executive Director, Winter 2009-2010
- P-30 Opinion and Award, I/M/O Housing Authority of the City of Newark, OPEIU Local 32, December 18, 2006
- P-31 Eligible/Failure Roster for title of carpenter
- P-32 Job Specification – Carpenter
- P-33 Job Specification – Welder
- P-34 Request for Personnel Action – Stanley Cimpric
- P-35 Work Log for Stanley Cimpric
- P-36 Individual Notice of Layoff or Demotion dated June 9, 2010, to Raymond Ramos
- P-37 Letter dated June 29, 2010, from Joe Hill, Jr. to Raymond Ramos
- P-38 Summary of work done by STA in 2010
- P-39 Photocopy of four photographs
- P-40 Newark Housing Authority Work Order # 1022526 dated February 2, 2010
- P-41 Newark Housing Authority Work Order # 1022526 dated January 8, 2010
- P-42 Newark Housing Authority Work Order # 968886 dated December 23, 2008
- P-43 Newark Housing Authority Work Order dated December 18, 2008
- P-44 Newark Housing Authority Work Order # 965502 dated December 18, 2008
- P-45 Newark Housing Authority Work Order # 965502 dated December 1, 2008
- P-46 Newark Housing Authority Work Order # 963789 dated November 19, 2008
- P-47 Newark Housing Authority Work Order # 961405 dated November 6, 2008
- P-48 Newark Housing Authority Work Order # 963510 dated November 17, 2008
- P-49 Newark Housing Authority Work Order # 962863 dated November 14, 2008
- P-50 Newark Housing Authority Work Order # 961639 dated November 17, 2008
- P-51 Newark Housing Authority Work Order # 960255 dated October 29, 2008
- P-52 Newark Housing Authority Work Order # 960255 dated October 29, 2008
- P-53 Newark Housing Authority Work Order # 959720 dated October 27, 2008
- P-54 Newark Housing Authority Work Order # 960688 dated October 30, 2008
- P-55 Newark Housing Authority Work Order # 968887 dated December 18, 2008
- P-56 Newark Housing Authority Work Order # 968892 dated December 18, 2008
- P-57 Newark Housing Authority Work Order # 969135 dated December 22, 2008
- P-58 Newark Housing Authority Work Order # 969135 dated December 23, 2008
- P-59 Newark Housing Authority Work Order # 970012 dated December 29, 2008

- P-60 Newark Housing Authority Work Order # 970260 dated December 31, 2008
- P-61 Newark Housing Authority Work Order # 970211 dated December 30, 2008
- P-62 Newark Housing Authority Work Order # 954691 dated September 19, 2008
- P-63 Newark Housing Authority Work Order # 959094 dated October 22, 2008
- P-64 Newark Housing Authority Work Order # 959104 dated October 22, 2008
- P-65 Newark Housing Authority Work Order # 959083 dated October 22, 2008
- P-66 Newark Housing Authority Work Order # 959096 dated October 22, 2008
- P-67 Newark Housing Authority Work Order # 957937 dated October 16, 2008
- P-68 Newark Housing Authority Work Order # 955140 dated September 23, 2008
- P-69 Fax transmittal dated September 23, 2008, with attachment
- P-70 Request for Material Form dated October 9, 2008
- P-71 Request for Material Form dated October 9, 2008
- P-72 Notice of mandatory meeting on May 6, 2008, at Newark Public Library
- P-73 Fax transmittal dated December 4, 2009
- P-74 Attendance Sheet – Hyatt Court – Week of December 7, 2009 to December 13, 2009
- P-75 Interoffice Memorandum dated November 9, 2010, from Sibyl H. Bryant to Janet Abrahams

- R-1 Grievance Form dated September 28, 2008
- R-2 Grievance From dated April 14, 2009
- R-3 I/M/O Newark Housing Authority, Skilled Trades Association, Inc. and Construction Trades Council, 18 NJPER P 23219. September 17, 1992
- R-4 Request for Personnel Action – Raymond Ramos
- R-5 Agreement between Housing Authority of City of Newark and Essex County Building and Construction Trades Council for April 1, 2007 through March 31, 2010
- R-6 Job Description – Building Maintenance Repairer

- J-1 I/M/O Newark Housing Authority, Skilled Trades Association and Essex County Building Trades Council, Public Employee Reporter (New Jersey Edition) 26082, March 1, 1995