

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP  
BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-77-13

ASSOCIATION OF PARSIPPANY SUPERVISORS,  
ADMINISTRATORS AND COORDINATORS,

Petitioner.

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In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP  
BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-77-24

ASSOCIATION OF PARSIPPANY SCHOOL  
ADMINISTRATORS,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification of Public Employee Representative filed by the Association of Parsippany Supervisors, Administrators and Coordinators seeking a proposed unit comprised of certain Board of Education administrative employees. The Director also dismisses that portion of a Board filed Clarification of Unit Petition seeking the inclusion of the employees petitioned-for by APSAC in an existing negotiations unit of administrators represented by the Association of Parsippany School Administrators. Additionally, the Director clarifies the APSA unit to exclude the Director of Secondary Education and Director of Elementary Education.

The Director, in agreement with the findings and recommendations of a Commission Hearing Officer, concludes that the APSAC Petition, seeking a separate unit limited to presently unrepresented administrators, must be dismissed since the most appropriate unit for representation purposes would consist of a unit comprised of all Board of Education administrators. The Director

denies the Board's contention that the unrepresented administrators should be placed in the already existing APSA unit of administrators, by virtue of community of interest principles, because the record evidence does not establish that a clarification of APSA's unit is appropriate. The Director sets forth in his decision the appropriate mechanism by which representation of non-represented administrators may be accomplished.

Regarding the Directors of Secondary and Elementary Education, the Director finds, in agreement with the Hearing Officer's recommendation, that these directors have duties which create a substantial potential conflict of interest with other APSA unit members and should be excluded from APSA's collective negotiations unit.

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BOARD OF EDUCATION,

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Docket No. RO-77-13

ASSOCIATION OF PARSIPPANY SUPERVISORS,  
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In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP  
BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. CU-77-24

ASSOCIATION OF PARSIPPANY SCHOOL  
ADMINISTRATORS,

Employee Representative.

Appearances:

For the Public Employer,  
Murray, Meagher & Granello, Esqs.  
(Robert J. Hrebek, of Counsel)

For the Association of Parsippany Supervisors,  
Administrators and Coordinators  
Greenberg & Mellk, Esqs.  
(Arnold M. Mellk, of Counsel)

For the Association of Parsippany School Administrators  
Harper & O'Brien, Esqs.  
(John J. Harper, of Counsel)

DECISION

On August 10, 1976, a Petition for Certification of Public  
Employee Representative was filed with the Public Employment Rela-

tions Commission (the "Commission") by the Association of Parsippany Supervisors, Administrators and Coordinators ("APSAC") seeking certification as the exclusive representative for collective negotiations of a unit of certain non-represented administrative employees of the Parsippany-Troy Hills Township Board of Education (the "Board"). On October 19, 1976, the Board filed a Clarification of Unit Petition seeking clarification of the composition of an already existing unit of its employees represented by the Association of Parsippany School Administrators ("APSA"). The Board's Petition primarily related to the employees petitioned for by APSAC. The instant proceedings were consolidated by an Order dated February 10, 1977, on which date a Notice of Hearing was issued, and a hearing was held on May 26 and 27, 1977, before Hearing Officer James F. Schwerin. All parties were provided with the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Post-hearing briefs and reply briefs were submitted by all parties.

As noted by the Hearing Officer, both Petitions were amended subsequent to the commencement of hearing. In its final form the APSAC Petition sought a unit consisting of coordinators, administrative assistants, and supervisors. <sup>1/</sup> The Board's clarification Petition seeks to have the APSA unit <sup>2/</sup> expanded by the in-

1/ Specifically, the titles sought are: reading program coordinator; coordinator of technology for children; coordinator of community and adult education; transportation coordinator; coordinator of special services; administrative assistant; supervisor of building and grounds; supervisor of word processing; clerical and financial supervisor.

2/ The contract between the Board and APSA describes the unit as including Principals, Assistant Principals and Directors.

clusion of the employees sought by APSAC. The Board also seeks clarification of the APSA unit to exclude the Director of Secondary Education and the Director of Elementary Education.

The Hearing Officer issued his Report and Recommendations on January 11, 1978. A copy is annexed hereto and made a part hereof. The undersigned granted a request by APSAC for an extension of time in which to file exceptions and on March 1, 1978, APSAC filed such exceptions.

The Hearing Officer recommended that APSAC's Petition, and that portion of the Board's Petition relating to the employees petitioned for by APSAC, be dismissed; and that the Directors of Secondary Education and Elementary Education be excluded from the APSA unit effective at the end of the currently existing contract.

APSAC takes exception to the Hearing Officer's finding that its petitioned-for unit is not the most appropriate unit and the recommended dismissal of its Petition. APSAC takes further exception to the Hearing Officer's recommendation of dismissal as to those aspects of the Board's Clarification of Unit Petition which seeks to add these non-represented administrators to the existing APSA unit. APSAC, without conceding that its petitioned-for unit is not the most appropriate unit, contends that once the Hearing Officer found that the most appropriate unit should include the non-represented administrators within the existing APSA unit, the Commission should either (1) accept the Board's Clarification of Unit Petition to include the titles previously not included, or (2) direct an election among the non-represented administrators

which would provide them with the opportunity to choose inclusion in the existing APSA unit.

The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and on the facts in this case finds and determines as follows:

1. The Parsippany-Troy Hills Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., as amended (the "Act"), is the employer of the employees involved herein, and is subject to the Act's provisions.

2. Association of Parsippany Supervisors, Administrators and Coordinators and Association of Parsippany School Administrators are employee organizations within the meaning of the Act and are subject to its provisions.

3. Petitions for Certification of Public Employee Representative and Clarification of Unit having been filed with the Commission, and there existing a question concerning the representation of employees as well as a question concerning the composition of a collective negotiations unit, the matters are properly before the undersigned.

4. The Hearing Officer found that the positions of Director of Secondary Education and Director of Elementary Education entailed such duties as to create a substantial potential conflict of interest with other members of the APSA unit so as to make inclusion in the APSA unit inappropriate. Specifically, the record shows that those duties include responsibility in the area

of adjusting grievances of unit members and evaluating the job performances of unit members. Having reviewed the record evidence, and particularly noting the absence of any exceptions to the Hearing Officer's findings as to the exclusion of these titles from the unit, the undersigned adopts the findings of the Hearing Officer and his recommendation that the Directors of Secondary Education and Elementary Education be excluded from the unit at the termination of the existing agreement. <sup>3/</sup>

5. The Hearing Officer recommended that the portion of the Board's Clarification of Unit Petition which seeks to include the non-represented administrator titles in the existing APSA unit be dismissed. This recommendation was based upon the application of the standards set out in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977). These standards establish that it is normally inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of a negotiations unit except as to: a change in circumstances surrounding the duties of a job title; the creation of a new title; the creation of a new operation or facility which raises an issue as to the placement of employees who function similarly to currently represented employees; or to exclude employees from an existing unit based upon conflict of interest or status as a managerial executive, confidential employee, or a supervisor in a non-supervisory unit. <sup>4/</sup>

<sup>3/</sup> See In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977). The undersigned observes that the aforementioned agreement expired on June 30, 1978.

<sup>4/</sup> Clearview, supra, D.R. No. 78-2 at pp. 10-11.

The record in the instant matter does not establish any of the above criteria relative to the employees sought to be added to the existing APSA unit through the Clarification of Unit Petition. The basis for the requested clarification of unit rests solely upon the assertion that an overall community of interest exists among the petitioned-for employees and the currently represented employees. The APSA unit was recognized by the Board in 1969 or 1970 and the unit has consisted basically of the same personnel since that time. <sup>5/</sup> The Commission's decision, In re Camden Board of Education, P.E.R.C. No. 76-50, 2 NJPER 228 (1976), aff'g and modifying E.D. No. 76-32, 2 NJPER 123 (1976), as well as the aforementioned Clearview decision clearly establish that community of interest considerations do not alone provide the requisite basis for clarification of a negotiations unit. <sup>6/</sup>

6. Regarding APSAC's certification Petition, the Hearing Officer recommended that the most appropriate unit of employees for collective negotiations is one unit including the employees currently represented by APSA and those employees sought to be represented via the APSAC Petition. This recommendation was based

<sup>5/</sup> Some of the employees, who are now titled "directors" were previously called coordinators.

<sup>6/</sup> No party has argued circumstances, and the record facts do not establish circumstances, which would otherwise be a proper basis for clarification as set forth in Clearview. The undersigned observes that the record demonstrates that a considerable number of the instant administrative titles have been in existence for several years without being included in the APSA unit. While it is possible that some of the titles may have been in existence only for a recent period prior to the filing of the CU Petition, under these circumstances the undersigned determines that the issues relating to these titles properly present questions concerning the representation of employees.



upon a determination that a community of interest exists among all those employees and in light of the Commission policy favoring broad-based units, confirmed by the Supreme Court in In re State of New Jersey and Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974).

The record clearly establishes a pattern of consultation and coordination between the employees included in the APSA unit and the employees petitioned-for by APSAC in the performance of their job functions. Furthermore, the record shows that there are no supervisory functions performed by members of one group relative to members of the other group. There is a difference between the groups as to the method of determination of salaries; however, the other terms and conditions of employment are similar. The salary determinations concerning the employees petitioned-for by APSAC are made through a Management by Objectives ("MBO") system while the employees in the APSA unit collectively negotiate salaries. APSA unit members are certified and tenured while the employees petitioned-for by APSAC are not; however, this differentiation is not sufficient to outweigh the clear pattern of interaction and cooperative effort between members of the two groups in the performance of their job functions.

The record supports the Hearing Officer's finding that all of the employees at issue are part of an administrative team which clearly evidences the existence of a community of interest among the overall group of administrators. Therefore, the undersigned agrees with the Hearing Officer that the most appropriate unit would include the currently represented employees and the petitioned-for employees.

The APSAC Petition for Certification of Public Employee Representative (Docket No. RO-77-13) seeks to establish a unit for collective negotiations which is a subsection of the most appropriate unit. Therefore, the Petition is dismissed. <sup>7/</sup>

7. APSAC, in its exceptions to the Hearing Officer's Report and Recommendations, contends that if the Commission finds that the unit petitioned for by APSAC is not the most appropriate unit and if the clarification of unit procedure is found to be improper, an election providing for the option of addition to the existing APSA unit should be ordered among the employees petitioned for by APSAC. The undersigned does not at this time find merit in APSAC's contention. Currently, there is no petition before the Commission that seeks to accomplish such a result. Furthermore, if it is APSAC's contention that the instant Petition for Certification of Public Employee Representative should be considered to seek such a result, the undersigned notes that the Petition filed by APSAC does not reflect that a substantial number of public employees wish to be represented for purposes of collective negotiations by APSA, nor does APSAC's Petition indicate that APSA desires to be certified as a majority representative of these employees.

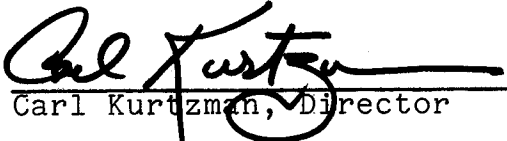
Finally, the undersigned notes that several procedures are available to add the employees petitioned for herein to the existing APSA unit in order to accomplish representation for collective negotiations of these employees within the most appropriate unit structure. APSA may request recognition from the Board on

<sup>7/</sup> In re State of New Jersey and Professional Association of New Jersey Department of Education, supra; In re Camden Board of Education, supra.

behalf of the inclusion of these employees in its collective negotiations unit. Failing recognition, APSA may, at the appropriate time for the filing of a Petition for Certification of Public Employee Representative, petition for the inclusion of the employees here involved in the most appropriate unit. <sup>8/</sup> In the event that APSA fails to petition for such an inclusion, APSAC, or any other employee organization, may petition anew for the unrepresented employees; and, the undersigned advises that such petition will be considered in the context of that portion of the Supreme Court's decision in In re State of New Jersey and Professional Association of Department of Education, supra, which indicates that a later determination may be made, under circumstances then existing, which might allow for the authorization of a unit of less than the total body. <sup>9/</sup>

8. Accordingly, for the reasons stated above, the undersigned dismisses APSAC's Petition (Docket No. RO-77-13). That portion of the Board's Petition (CU-77-24) seeking to add the employees petitioned for by APSAC into the APSA unit is dismissed. APSA's collective negotiations unit is clarified to exclude the Director of Secondary Education and the Director of Elementary Education.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: September 8, 1978  
Trenton, New Jersey

<sup>8/</sup> The undersigned notes that at such time any employee representative may file such a Petition for the most appropriate collective negotiations unit.

<sup>9/</sup> In re State of New Jersey and Professional Ass'n. of New Jersey Department of Education, supra, at p. 253.

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF THE  
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Docket No. RO-77-13

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In the Matter of

PARSIPPANY-TROY HILLS BOARD OF  
EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. CU-77-24

ASSOCIATION OF PARSIPPANY SCHOOL  
ADMINISTRATORS,

Employee Representative.

SYNOPSIS

A Commission Hearing Officer recommends dismissal of an RO petition for a residual unit of administrators finding that the most appropriate unit would be one including all administrators eligible for collective representation. He further recommends dismissal of the portion of an employer-filed CU petition seeking to have the persons petitioned for in the RO proceeding placed into the existing administrators unit. The Hearing Officer finds this attempted use of a CU petition to be improper in light of the standards laid down by the Director of Representation in his Clearview decision, D.R. 78-2, 3 NJPER 248 (1977).

The Hearing Officer recommends that the Directors of Secondary and Elementary Education be excluded from the existing unit due to a substantial potential conflict of interest arising from their evaluation and grievance procedure duties. However, he recommends that the exclusion be effective only at the termination of the existing contract, again citing Clearview.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Employee Representative.

Appearances:

For the Public Employer, Murray, Meagher & Granello, Esqs.  
(Robert J. Hrebek, of Counsel)

For the Association of Parsippany Supervisors, Administrators and  
Coordinators, Greenberg & Mellk, Esqs.  
(Arnold M. Mellk, of Counsel)

For the Association of Parsippany School Administrators, Harper & O'Brien,  
Esqs. (John J. Harper, of Counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On August 10, 1976, the Association of Parsippany Supervisors, Administrators and Coordinators ("APSAC") filed a petition with the Public Employment Relations Commission (the "Commission") seeking certification as exclusive representative for negotiations of a unit of employees of the Parsippany-Troy Hills Township Board of Education (the "Board"). On October 19, 1976, the

Board filed a clarification of unit petition seeking clarification of the composition of an existing unit of its employees represented by the Association of Parsippany School Administrators ("APSA"). The cases were consolidated by an Order dated February 10, 1977, on which date a Notice of Hearing was issued, and a hearing was held before the undersigned Commission Hearing Officer on May 26 and 27, 1977, in Newark. All parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Briefs and reply briefs were submitted by all parties.

Both petitions were amended subsequent to the commencement of hearing. In its final form the APSAC petition sought a unit consisting of coordinators, administrative assistants, and supervisors. <sup>1/</sup> The clarification petition seeks to have the APSA unit <sup>2/</sup> expanded by the inclusion of the people sought by APSAC, and at the same time seeks clarification of the APSA unit to exclude the Director of Secondary Education and the Director of Elementary Education.

Upon the entire record herein, the Hearing Officer finds:

1. The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.

2. APSAC and APSA are employee organizations within the meaning of the Act and are subject to its provisions.

3. Petitions for Certification of Public Employee Representative and Clarification of Unit having been filed with the Commission, and there

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<sup>1/</sup> Specifically, the titles sought are: reading program coordinator; coordinator of technology for children; coordinator of community and adult education; transportation coordinator; coordinator of special services; administrative assistant; supervisor of building and grounds; supervisor of word processing; clerical and financial supervisor.

<sup>2/</sup> The contract between the Board and APSA describes the unit as including Principals, Assistant Principals and Directors.

being a dispute as to the proper unit placement of the employees at issue, the consolidated matters are properly before the Hearing Officer for a Report and Recommendation.

The APSA unit has been in existence as a unit recognized by the Board since 1969 or 1970 and has consisted of basically the same personnel ever since except that some of the people now called Directors were formerly called coordinators. There have been a series of contracts between the Board and APSA, the most recent for the period July 1, 1976-June 30, 1978, containing the unit description noted in footnote 2, supra. <sup>3/</sup> There is no claim that APSA has ever represented the titles now sought in the APSAC petition. All parties stipulated on the record that all of the employees at issue are supervisors within the meaning of the Act.

The one issue that involves all three parties is the proper unit placement of the titles sought as a separate unit by APSAC. APSA does not wish to have these people in its unit and joins APSAC in denying the existence of a community of interest. The Board, however, argues that the most appropriate unit is one of all administrators other than certain ones conceded by all parties to be inappropriate for inclusion in any unit, <sup>4/</sup> and the two titles it seeks to have excluded, the Directors of Secondary and Elementary Education.

Herbert Levine, Coordinator of Reading Programs, testified that he works with principals, assistant principals and directors on an Administrative Council which is an advisory body to make recommendations to the Superintendent as to programs and pupil services on a district-wide basis. The other coordinators also serve on this council. <sup>5/</sup> He has no supervisory

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<sup>3/</sup> T2:96-97.

<sup>4/</sup> These are the Superintendent, Assistant Superintendent, Business Administrator, and Assistant Business Administrator.

<sup>5/</sup> T1:45, 64.

duties with regard to any APSAC or APSA personnel. <sup>6/</sup> In the course of his duties he would meet with principals, or on occasion assistant principals, to discuss the reading program and its advancement, and possibly the performance of classroom or reading teachers. Other coordinators would have similar consultation-coordination interaction with principals. A similar relationship exists with the Director of Secondary Education. More of his time is spent dealing with teachers. <sup>7/</sup>

Aside from salary, the other terms and conditions of employment for coordinators are similar to what is received by the APSA bargaining unit. The one difference is that the salaries for administrators outside of APSA are determined on a Management By Objective ("MBO") system which is not in force under the APSA contract. <sup>8/</sup> This is a major reason advanced by APSA for there not being a community of interest with the APSAC people; the other is that APSA people are certificated and tenured, while APSAC personnel are not.

The duties of Administrative Assistant Victoria Kerr include working with the Superintendent in giving notice of board action as well as participating in curriculum committees, aiding school staff in developing objectives, and working on testing programs. <sup>9/</sup> Supervisor of Buildings and Grounds Howard Salisbury confers and works with principals and assistant principals but not with coordinators. <sup>10/</sup>

It is clear to the undersigned that both the APSA and APSAC members are part of the administrative team which is responsible for seeing that all of the necessary services provided by a school district are available, be they in-classroom or out. The testimony evokes a definite pattern of consultation

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<sup>6/</sup> T1:46.

<sup>7/</sup> T1:70-71, 73.

<sup>8/</sup> T1:74.

<sup>9/</sup> Exhibits P6 and 7.

<sup>10/</sup> T1:89.



and cooperation between coordinators and supervisors and the administrative assistant on the one hand with the principals and others who are represented in the APSA unit. While there is a difference in the salary structure between the MBO system and the APSA schedule, that is only a reflection of the fact that the heretofore unrepresented APSAC administrators had to accept the Board's wishes on that point, while APSA could resist in the negotiations process.<sup>11/</sup>

Under the mandate of In re State of New Jersey and Professional Assn. of New Jersey Department of Education, 64 N.J. 231 (1974), the Commission must determine the most appropriate unit in disputed cases. This has resulted in the Commission pursuing a policy of favoring broad based units over more numerous smaller ones which might on their own be appropriate, but are less so than having one unit where there is a community of interest. See In re Camden Board of Education, E.D. No. 76-32, 2 NJPER 123 (1976) and cases cited therein. One factor noted in Camden, supra, is the number of units with which the employer must bargain. The Parsippany Board already has four units (including APSA) to satisfy, and further proliferation cannot help labor stability.

The only remaining argument against the existence of a community of interest among the administrators is that APSA has certificated, tenured people and APSAC does not. This is a definite point of differentiation, but in the undersigned's judgment it is not sufficient to outweigh the commonality of purpose and pattern of a cooperative effort which is reflected in the testimony and exhibits. Therefore, having found that the most appropriate unit would be one combining APSAC and APSA personnel, it must be recommended that the petition for certification of a separate APSAC unit be dismissed.

<sup>11/</sup> It is noted that even the APSA contract refers to considering an MBO method for determining the salary schedule in the next contract.

Before turning to the issues raised by the clarification petition, mention must be made of another argument raised by the Board against the propriety of an APSAC unit. APSAC is affiliated with the New Jersey Education Association ("NJEA"), and so are the Parsippany-Troy Hills Education Association representing the teachers and other existing units. It is urged by the Board that the Act--more particularly N.J.S.A. 34:13A-5.3 <sup>12/</sup>--precludes supervisory and non-supervisory units of the same employer from affiliation with the same statewide organization.

The courts of this state have interpreted the statutory language of § 5.3 to the effect that it "only prohibits supervisors from being within the same bargaining unit as non-supers (sic)." Union Council No. 8 v. Housing Authority of City of Elizabeth, 124 N.J. Super. 584, 589 (App. Div. 1973) (emphasis added). Accord, Bowman v. Hackensack Hospital Assn., 116 N.J. Super. 273 (1971). Contrary to the Board's assertion, the undersigned believes these cases are on point and should not be distinguished. Moreover, administrative note is taken that the Commission has certified supervisory units which have the same affiliation as a non-supervisory unit in the same district. Therefore, this argument is rejected although it does not affect the recommendation on the certification petition.

There are two aspects to the clarification petition. The Board seeks to have the APSAC people accreted to the APSA unit, and also asks that two titles be declared not to be a part of APSA. As to the first part, the undersigned must recommend dismissal. Recently in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), the Director of Representation set forth the proper uses of a clarification of unit peti-

<sup>12/</sup> In relevant part, § 5.3 reads:

"Nor...shall any supervisor...have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership..."

tion. It was stated that "reliance upon the Commission's clarification of unit procedure as a vehicle to include...personnel in the unit...based upon a claim of presumptive appropriateness and a shared community of interest is entirely misplaced." D.R. 78-2 at p. 5. Where it is clear that certain job titles have not been included in a unit, a clarification petition may not be used to add them even though such a unit, as found here, would be the most appropriate one.

In this regard, even prior to Clearview, the then Executive Director in Camden, supra, found a clarification petition not proper for adding employees to a unit they had indisputably never been in. Moreover, he expressed a reluctance to impose employees on an organization which did not desire to represent them. Herein, APSA has indicated it does not want the APSAC administrators, so that Camden presents an additional rationale for not ordering their inclusion in the APSA unit.

Finally, there is the question of the status of Walter Jakl, the Director of Secondary Education. As testified by Nicholas Steenstra, a principal, APSA has included basically the same functional personnel since its inception, although certain titles have changed designation over the years. As noted, supra, the contract recognition clause specifies "Directors" with no further elucidation. Timothy Monahan, Assistant Superintendent for Administration, testified that Jakl was the chief APSA negotiator for the current contract--entered June 10, 1976--and that no negotiations took place in regard to his new job which was created by the Board at its meeting of February 26, 1976. The minutes of that meeting reflect that this new title included the duties previously performed by Jakl as Director of Vocational Education as well as the same kind of duties in relation to the rest of the secondary education program. It also shows that Jakl was to be placed on the High School

## Principals' Salary Guide.

Monahan testified that Jakl is the immediate supervisor of the high school principals, and that under the APSA contract he would therefore be the one to handle both the informal level one and the level two initiation of a formal grievance. He further stated that Jakl is responsible for evaluating principals, and that it is planned to make use of Jakl on behalf of the Board in future contract negotiations. On the basis of these factors, the Board urges that there is a sufficient actual or potential conflict of interest between Jakl and the APSA unit to warrant the exclusion of his job title from that unit pursuant to the standards in Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

Wilton mandates that where a particular employee in the performance of his/her duties has "an intimate relationship" with the management function then the actual or potential conflict arising therefrom may make it inappropriate for that employee to be included in a unit entirely made up of supervisory personnel. It is the undersigned's conclusion that Mr. Jakl falls into that category. Although no actual conflict is reflected in the record, the potential is readily apparent in the Director of Secondary Education's role in the grievance procedure and his evaluation duties. While the current principals may be only minimally affected, there is no guarantee that the secondary principals will always all be at the top of their salary guide. Both in handling grievances and making evaluations, the Director is functioning as a management agent in a capacity which has great potential for adverse results for unit members. Consequently, it is the undersigned's recommendation that the position of Director of Secondary Education be excluded from the unit. <sup>13/</sup>

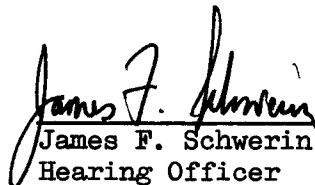
<sup>13/</sup> As it was uncontested that the Director of Elementary Education, when that position is filled, will perform the same basic role in respect to the elementary principals as Jakl does for secondary education principals, this position should also be excluded.

Under Clearview, supra, when a clarification petition is filed during the life of a contract seeking to exclude by reason of conflict of interest personnel previously included by contractual agreement, any such exclusion which may be ordered shall be effective upon the expiration of the contract. While the Board claims it never intended this position to be in the unit, in the negotiations subsequent to the Board action creating the title, no mention of this intent was made, and the contract still reflected that Directors were included with no exceptions listed. As a result, the undersigned recommends that the exclusion be effective only at the end of the current contract which expires June 30, 1978.

RECOMMENDATION

Upon the entire record herein, and for the above-stated reasons, it is recommended that the petition in RO-77-13 and so much of the petition in CU-77-24 as seeks to include APSAC personnel in the APSA unit be dismissed. It is further recommended that the Directors of Secondary Education and Elementary Education be excluded from the APSA unit effective at the end of the current contract.

Respectfully submitted,

  
James F. Schwerin  
Hearing Officer

DATED: January 11, 1978  
Trenton, New Jersey