

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS BOARD OF EDUCATION

Petitioner and Public Employer

and

Docket No. CU-5

PARSIPPANY-TROY HILLS EDUCATION ASSOCIATION

Employee Organization

DECISION


Pursuant to a Notice of Hearing to resolve a question concerning the unit status of Principals, Assistant Principals, Directors, the Electronic Data Processing Manager, and the Coordinator Curriculum Aids, hearings were held on March 9 and March 20, 1970, before Hearing Officer Jeffrey B. Tener, at which all parties were given the opportunity to present evidence, examine and cross-examine witnesses, to argue orally, and to file briefs.

On August 26, 1970, the Hearing Officer issued his Report and Recommendations. Neither party filed exceptions to the Hearing Officer's Report and Recommendations.

The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and, on the basis of the record in this case, finds:

1. The Parsippany-Troy Hills Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. The Parsippany-Troy Hills Education Association is an employee representative within the meaning of the Act.
3. On November 13, 1969, the Public Employer filed a petition for unit clarification and, in an addendum thereto, specifically requested exclusion of Directors, Principals, and Assistant Principals from the unit currently represented by the Parsippany-Troy Hills Education Association. Therefore, a question exists concerning the unit placement of public employees and the matter is appropriately before the Executive Director for determination.
4. In the absence of exceptions to the Report and Recommendations of the Hearing Officer, attached hereto and made a part hereof, the undersigned adopts the findings and recommendations of the Hearing Officer pro forma.
5. The undersigned finds, in agreement with the Hearing Officer, that the Principals, Assistant Principals, Directors, EDP Manager and Coordinator Curriculum Aids are supervisors within the meaning of the Act, and that the evidence does not warrant the inclusion of supervisors in the same unit with non-supervisors.
6. In concurrence with the Hearing Officer's conclusions, the undersigned finds that the unit be clarified to exclude Principals, Assistant Principals, Directors, the EDP Manager and the Coordinator Curriculum Aids.


Louis Aronin
Executive Director

DATED: October 7, 1970
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS BOARD OF EDUCATION

Petitioner and Public Employer

and

Docket No. CU-5

PARSIPPANY-TROY HILLS EDUCATION ASSOCIATION

Employee Organization

Appearances:

For the Parsippany-Troy Hills Board of Education

Metzler Associates

By Robert E. Murray, Esq.

For the Parsippany-Troy Hills Education Association

Cassel R. Ruhlman, Jr., Esq.

REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER

A petition was filed with the Public Employment Relations Commission on November 13, 1969 by the Parsippany-Troy Hills Board of Education 1/ requesting a clarification of unit. Pursuant to a Notice of Representation Hearing dated December 15, 1969 and two subsequent Orders Rescheduling Hearing dated January 9, 1970 and January 28, 1970, hearings were held before the undersigned Hearing Officer on March 9, 1970 and March 20, 1970, in Newark, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. In accordance with a request to extend the date for the filing of briefs, both parties submitted briefs April 30, 1970. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Parsippany-Troy Hills Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of

1/ Correct name of Public Employer as amended at hearing.

the Act.

2. The Parsippany-Troy Hills Education Association is an employee representative within the meaning of the Act.
3. The Public Employer having filed an objection with the Public Employment Relations Commission regarding the inclusion of supervisors in a unit with nonsupervisors on February 12, 1969 and repeated on October 9, 1969 and having subsequently filed a unit clarification petition, there is a question of unit placement of public employees and the matter is appropriately before the undersigned for Report and Recommendations.

BACKGROUND

Following the passage of the New Jersey Employer-Employee Relations Act in September, 1968, the above-named Board and Association commenced collective negotiations. Prior to the culmination of this effort, which resulted in a written, signed contract on March 27, 1969, the Board, by letter dated February 12, 1969 to the Public Employment Relations Commission:

...did object to having supervisory personnel represented by the same organization as the teachers and indicated this to PTHEA. A plea was then made by the supervisory personnel to the Board of Education to allow the PTHEA to be their bargaining unit at least until PERC made a determination. In order not to hold up the negotiating process, the Board of Education reluctantly agreed to the request. 2/

The matter was not resolved during the ensuing school year so on October 9, 1970, the Board President, in a letter to the Chairman of the Commission, agreed to proceed with negotiations in a unit including teachers

2/ Letter dated February 12, 1969 to PERC from Betty S. Minor, President of the Board of Education. Exhibit C-1.

and administrators "...still maintaining a reservation about the unit designation relative to administrators and teachers being represented by the same unit." 3/ On November 13, 1969, the Board filed a petition for unit clarification.

The last paragraph of the addendum to the petition specifies that Directors, Principals, and Assistant Principals should be excluded from the unit. At the hearing, Petitioner indicated a desire to exclude two other allegedly supervisory positions -- Coordinator Curriculum Aids and Electronic Data Processing Manager. The Association objected to addition of these two titles on the basis that they were not specified in the petition or the addendum. However, the undersigned finds that these two positions should be considered in this proceeding because consideration of these two positions did not prejudice the Association - particularly since the second day of hearing was over one week after the first day - and because the addendum and letters referred to above speak in terms of excluding supervisory or administrative personnel. It is clear that the Board wanted to exclude these positions and it is also clear from a letter to the undersigned from the President of the Association that the Association understood the meaning of the terminology employed by the Board. That letter states that:

The administrators, including principals, vice principals, directors, coordinators, and other supervisors reaffirm their strong desire to remain with the Parsippany-Troy Hills Education Association as their bargaining unit. 4/

3/ Letter from Mrs. Minor to then Chairman Walter Pease dated October 9, 1969. Exhibit C-1.

4/ Undated letter received by the undersigned December 8, 1969 from Ronald F. Vanadia, President of the Association. Exhibit C-1.

In addition, the contract entered into by the parties on February 6, 1970 specifies in the recognition article that the Coordinator Curriculum Aids and E.D.P. Manager are to have their status clarified by PERC. 5/

Accordingly, the undersigned includes recommendations with respect to these two positions. The parties stipulated for the purposes of this hearing that the other three positions - Principals, Assistant Principals, and Directors - are supervisors within the meaning of the Act.

ISSUES

1) Are the Coordinator Curriculum Aids and Electronic Data Processing (EDP) Manager supervisors within the meaning of Act? If so, is there "established practice, prior agreement or special circumstances" to justify including supervisors in a unit with nonsupervisors in view of the general statutory proscription against such units? 6/ If they are not supervisors or if there is "established practice, prior agreement, or special circumstances", do they have a sufficient community of interest to be included with other nonsupervisory unit employees?

5/ Contract between the parties dated February 6, 1970, Public Employer Exhibit 1.

6/ There are two statutory references. Section 7 provides that:
..nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership...

Section 8 provides that:

...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors...

2) Is there "established practice, prior agreement or special circumstances" to warrant including supervisory Principals, Assistant Principals, and Directors in a unit with nonsupervisory employees in light of the statutory language cited in footnote 6/?

COORDINATOR CURRICULUM AIDS AND EDP MANAGER

In the Act, the term "supervisory" is used to describe one "...having the power to hire, discharge, discipline, or to effectively recommend the same..."

It is clear and the parties agree that the Coordinator Curriculum Aids and EDP Manager do not have the power to hire, discharge or discipline. The question is whether or not they have the power to effectively recommend on such matters.

While there is undisputed testimony that the occupants of both positions have been involved in interviewing candidates for employment within their respective jurisdictions and that both have made recommendations regarding the employment of certain people and that these people subsequently were employed, and while the job descriptions of both positions make reference to assisting in the selection of employees, it has not been established to the satisfaction of the undersigned that the occupant of either position makes effective recommendations regarding the hiring of employees. In both cases, the person has been one of several people to interview candidates and to make recommendations with respect thereto. Furthermore, in the unique case of the Coordinator Curriculaum Aids, the recommendations of that person are given special consideration because of his recognized expertise in his area. The Superintendent also testified that the Principal of the school involved would have to concur in the recommendations of the Coordinator Curriculum Aids.

The Coordinator Curriculum Aids has been involved and apparently is expected to be involved in the evaluation of professional personnel, specifically the audio-visual specialists. Experience in this area has been limited but it seems that formal written evaluation of professionals is done by school Principals and that the Coordinator Curriculum Aids has been involved only informally in the evaluation process of professionals. In one case, his oral recommendation regarding one of the audio-visual specialists was followed. The EDP Manager does not evaluate professional personnel. Therefore, on the basis of their relationships with other professional personnel, the EDP Manager and the Coordinator Curriculum Materials are not found to be supervisors within the meaning of the Act.

There remains a very narrow area of activity for the occupants of these two positions and that relates to the evaluation of clerical personnel within their jurisdictions.

There are two clerical personnel assigned to each of these areas. The above finding regarding the hiring of employees applies. However, the incumbents of these positions is required to and does prepare written evaluations of these clerical employees regarding retention or nonretention, reemployment, tenure contract, discipline, etc. Again, the effectiveness of these recommendations has not been established by long-standing practice. Nevertheless, there is no indication that these recommendations have not been effective and there is some evidence that they have been followed.

While it is recognized that this constitutes a somewhat limited basis for a finding that the two positions in question are supervisory because of the fact that their supervisory activities apply at present

to only two people in each instance, the undersigned is constrained to make such a finding based upon his reading of the Act.

ESTABLISHED PRACTICE, PRIOR AGREEMENT, SPECIAL CIRCUMSTANCES

Having found the EDP Manager and the Coordinator Curriculum Aids to be supervisors within the meaning of the Act, those two positions can be combined with the three positions - Principals, Assistant Principals, and Directors - which the parties stipulated to be supervisory in determining whether, in this case, supervisors can be joined with nonsupervisors in a single unit. In the event that the Executive Director or the Commission should find the EDP Manager and the Coordinator Curriculum Aids not to be supervisors, the following discussion regarding established practice, prior agreement or special circumstances would not apply to them.

The question before the undersigned is whether or not in this school district there existed a relationship between the Board and an employee organization which would dictate a finding that, in spite of the general statutory prohibition, a unit which includes both supervisors and nonsupervisors is appropriate. This would require a finding that there exists established practice, prior agreement, or special circumstances.

The Association argues that the contract signed by the parties March 27, 1969 covering the period between July 1, 1969 to June 30, 1970 constitutes "prior agreement". The undersigned disagrees. The Hearing Officer finds that the agreement into which the parties entered was entered without prejudice to the position of the Board of Education regarding the unit that the Board considered to be appropriate. This was discussed above wherein it was pointed out that the Board indicated that it was opposed to a unit which included supervisors and nonsupervisors but that it would agree to such a unit pending determination by the

Commission. This was the first written agreement between the parties and, in the opinion of the undersigned, "prior agreement" as distinguished from "established practice" must, minimally, mean a written agreement. Accordingly, the undersigned finds no "prior agreement" within the meaning of the Act in this case.

The Association also contends that there is "established practice" to justify a combined unit of supervisors and nonsupervisors. The facts do not support this contention. It is true that the administrators have been members of the Association for some time and that in 1965 the Association and the Board did engage in some give and take regarding the salary level which may or may not have constituted "negotiations". However, in the opinion of the undersigned, this cannot be found to be "established practice". There are several reasons for the finding. First, the Board never recognized the Association as the negotiating agent for the employees concerned, either with or without the administrators in the unit. Second, for at least several years beginning in 1966, a rival employee organization also presented salary proposals to the Board and the Board met with this group. Third, the Association did not process grievances on behalf of its members although in one case, the Board, at the request of the individual, agreed to permit a member of the Association to come with him to a Board hearing. However, the individual withdrew the complaint before the hearing. Fourth, even if there were "negotiations" between the Board and the Association prior to the enactment of Chapter 303, Laws of 1968, the Association never made any demands, requests, proposals, etc. to the Board regarding administrators only. Of course, the administrators benefitted from improved fringe benefits as did all employees of the district as a result of a Board policy of applying such benefits uniformly

and from improved salaries to the extent that administrators' salaries were tied to the teachers' guide through a ratio system. Fifth, the ratio system for administrators initially was adopted by the Board in 1958 at the urging of the Superintendent. The Association played no role in its adoption. Finally, the only time since its adoption that the ratio was changed was in 1966 and this change, again, resulted from a suggestion by the Superintendent to the Board. The Board accepted the suggestion of the Superintendent. The Superintendent then discussed and explained the revision in the ratio with the administrators. At no time was the Association or an officer of the Association involved in any way in this change. Based upon the above, the undersigned does not find "established practice" within the meaning of the Act.

Similarly, there is no evidence of "special circumstances" in this case which would indicate a combined unit of supervisors and non-supervisors.

In summary, the facts in this case do not support a finding of "established practice, prior agreement, or special circumstances" and, therefore, a unit consisting of supervisors and nonsupervisors would not be appropriate.

COMMUNITY OF INTEREST

If it is determined ultimately that the EDP Manager and Coordinator Curriculum Aids are not supervisors and/or that the Principals, Assistant Principals, and Directors with or without the other two positions could be combined with nonsupervisors on the basis of "established practice, prior agreement, or special circumstances", then the question

of community of interest must be faced. 7/

An expert witness, the Superintendent of Schools in Darien, Connecticut, testified for the Board of Education that a very broad unit creates tremendous management problems. It was argued that the difficulties created were so great that the constitutional obligation of the Board of Education to "...provide for the maintenance and support of a thorough and efficient system of free public schools..." 8/ would be threatened.

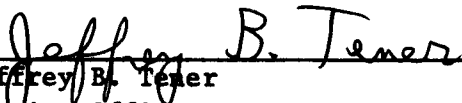
The undersigned is not convinced. The occupants of the five positions in dispute share so many benefits, aspects, features, aims, challenges, and goals with respect to both professional and collective negotiations considerations that they do appear to have a strong community of interest. Furthermore, there is no demonstrated conflict of interest in the area of collective negotiations between these five positions and the other positions in the unit. However, this finding should not be interpreted as an attempt to dilute or circumvent the general statutory proscription against the inclusion of supervisors with nonsupervisors in a single unit. This finding is conditional upon a determination by the Executive Director or the Commission in contravention to the findings above that the EDP Manager and Coordinator Curriculum Aids are not supervisors and/or that there is "established practice, prior agreement, or special circumstances" to warrant a combined unit.

7/ The Statute provides in Section 7 that " The negotiating unit shall be defined with due regard for the community of interest among the employees concerned..."

8/ Article 8, Section 4, Paragraph 1, New Jersey Constitution.

RECOMMENDATIONS

The Hearing Officer finds that the EDP Manager and Coordinator Curriculum Aids are supervisors within the meaning of the Act and that there is no established practice, prior agreement, or special circumstances to justify a combined unit of supervisors and nonsupervisors. Accordingly, it is recommended that the unit be clarified to exclude Principals, Assistant Principals, Directors, the EDP Manager and the Coordinator Curriculum Aids.



Jeffrey B. Tener
Hearing Officer

DATED: August 26, 1970
Trenton, New Jersey