

P.E.R.C. NO. 85-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMAPO-INDIAN HILLS REGIONAL  
HIGH SCHOOL DISTRICT BOARD  
OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-84-12

RAMAPO-INDIAN HILLS EDUCATION  
ASSOCIATION, INC., NJEA,

Public Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in agreement with a Commission Hearing Officer, clarifies a unit of professional, non-supervisory employees represented by the Ramapo-Indian Hills Education Association, Inc., NJEA, to exclude the title of Director of Athletics. Neither party filed exceptions to the Hearing Officer's Report.

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Public Employee Representative.

Appearances:

For the Public Employer-Petitioner, Green &  
Dzwilewski, Esqs. (Allan P. Dzwilewski, of  
Counsel)

For the Public Employee Representative,  
John Biondi, Field Representative, NJEA  
UniServ Regional Office

DECISION AND ORDER

On September 6, 1983, the Ramapo-Indian Hills Regional High School District Board of Education ("Board") filed a Clarification of Unit Petition with the Public Employment Relations Commission. The Board seeks the removal of two Athletic Directors from a unit of professional, non-supervisory employees which the Ramapo-Indian Hills Education Association, Inc., NJEA ("Association") represents. The Board alleges that the Directors are supervisory employees and the Association disputes this assertion.

On December 1, 1983, the Administrator of Representation Proceedings issued a Notice of Hearing.

On January 26 and 27, 1984, Hearing Officer Marc F. Stuart conducted a hearing. The parties examined witnesses and

introduced exhibits. Both parties filed post-hearing briefs.

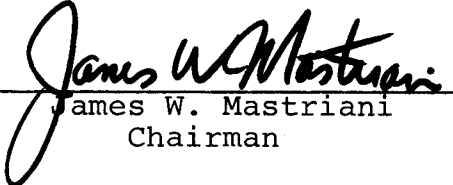
On May 24, 1984, the Hearing Officer issued his report and recommended decision. H.O. No. 84-15, 10 NJPER \_\_\_\_, (¶ \_\_\_\_ 1984). The Hearing Officer found that the Athletic Directors were supervisors within the meaning of N.J.S.A. 34:13A-5.3 and recommended that their position be clarified out of the Association's unit.

The Hearing Officer served his report on the parties and advised them that exceptions, if any, were due by June 11, 1984. Neither party has filed exceptions or requested an extension of time.

Pursuant to N.J.A.C. 19:11-8.8 and N.J.S.A. 34:13A-6(f), the full Commission has transferred this case to itself and has delegated authority to me to decide this case in the absence of exceptions. I have reviewed the record. The Hearing Officer's findings of fact are accurate. I adopt and incorporate them here. Based upon the findings of fact, and in the absence of exceptions, I conclude that the Directors are supervisors and should be removed from the Association's unit.

ORDER

The unit represented by the Ramapo-Indian Hills Education Association, Inc., NJEA, is clarified to exclude the title of Director of Athletics.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
September 4, 1984

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

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ASSOCIATION, INC., NJEA,

Public Employee Representative.

Synopsis

A Hearing Officer of the Public Employment Relations Commission determines that the title Athletic Director is a supervisory title within the meaning of the Act and should be excluded from the collective negotiations unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, 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.

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Appearances:

For the Public Employer-Petitioner  
Green & Dzwilewski, Esqs.  
(Allan P. Dzwilewski of Counsel)

For the Public Employee Representative  
John Biondi, UniServ Representative

HEARING OFFICER'S  
REPORT AND RECOMMENDATION

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") on September 6, 1983, by the Ramapo-Indian Hills Regional High School District Board of Education (the "Board") seeking clarification of a negotiations unit of its employees represented by the Ramapo-Indian Hills Education Association, Inc., NJEA (the "Association"). The Board seeks to have the title Director of Athletics (hereafter Athletic Director), which title is currently in the Association's collective negotiations unit, removed therefrom because it is allegedly "supervisory, managerial and/or confidential." <sup>1/</sup>

<sup>1/</sup> The parties subsequently stipulated the sole issue to be whether the district's two Athletic Directors are Supervisors within the meaning of the Act. (TA-8).

The Association argues that the Athletic Director title is not supervisory and, as such, appropriately belongs in its unit.

Pursuant to a Notice of Hearing dated December 1, 1983, hearings were conducted by the undersigned Hearing Officer on January 26 and 27, 1984, in Newark, New Jersey, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Subsequent to the close of the hearings the parties filed briefs, the last of which was received on March 22, 1984. The Board filed a reply letter brief on April 2, 1984.

Based upon the entire record in these proceedings, the Hearing Officer finds and determines as follows:

1. The Ramapo-Indian Hills Regional High School District 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. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Ramapo-Indian Hills Education Association, Inc., NJEA is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Board seeks a clarification of the collective negotiations unit of its employees currently represented by the Association. The parties have been unable to agree upon the continued placement in the unit of the title in question and, therefore, a question concerning the composition of a collective negotiations unit exists, and the matter is appropriately before the undersigned for Report and Recommendations.

4. N.J.S.A. 34:13A provides in pertinent part:

5.3...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 non-supervisory personnel to membership....

\* \* \*

6(d).... The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

5. The instant petition concerns the position of Athletic Director. The district contains two high schools: (1) Ramapo High School; and (2) Indian Hills High School. <sup>2/</sup> Each high school has one Athletic Director. <sup>3/</sup> The Athletic Director is head of the Athletic Department in his respective school. <sup>4/</sup> The Athletic Director title has been in the Association's unit since the unit's inception, <sup>5/</sup> appearing to be at least since September, 1968, <sup>6/</sup> and possibly going as far back as the early 1960s. <sup>7/</sup>

<sup>2/</sup> TA-22. Transcript designations are indicated as follows: (1) TA indicates the transcript of January 26, 1984; (2) TB indicates the transcript of January 27, 1984. Exhibit designation are as follows: C - Commission Exhibit; J - Joint Exhibit; P - Petitioner's Exhibit; R - Respondent's Exhibit.

<sup>3/</sup> TA-23.

<sup>4/</sup> TA-26.

<sup>5/</sup> TA-100; TB-43.

<sup>6/</sup> TB-44.

<sup>7/</sup> TA-49.

6. The District's other department heads/subject supervisors were previously removed from the association's unit in In re Ramapo-Indian Hills High School Board of Education, H.O. No. 81-3, 6 NJPER 405, (§ 11206 1980), aff'd D.R. No. 81-26, 7 NJPER 119, (¶ 12048 1981). 8/

7. The district began hiring coaches from outside the district approximately three to four years previously coinciding with a decrease in student enrollment and corresponding reduction in staff. 9/ One result of this development was to add the function of recruitment to the Athletic Director's job. 10/ Since the hiring of outside coaches began, the number of outside coaches at Indian Hills High School has increased dramatically, 11/ although there was a decrease from eight in 1982-1983 to seven in 1983-1984. 12/ Also around this same time principals began spending less time with building-level concerns and departmental budget matters and began spending more time with district-area concerns. 13/ As a result more responsibility in these former areas was given over to department heads and in the Athletic Department to the Athletic Director. 14/

8. The district's Athletic Directors make recommendations for hire and reemployment of coaches. 15/ Since the 1980-1981 decline

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8/ TA-30.

9/ TA-32-33; TB-23.

10/ TA-32-33; TB-23.

11/ TA-7; TA-8.

12/ TB-9.

13/ TA-39.

14/ TA-39.

15/ TA-40; TB-4.



in enrollment and accompanying reductions in staff at Ramapo High School, all of the Athletic Director's recommendations for hire and reemployment of coaches have been followed. <sup>16/</sup> At Indian Hills High School during approximately this same period all recommendations for hire have been followed without modification. <sup>17/</sup> The Athletic Director at Ramapo High School has effectively hired approximately 15 to 20 coaches since the inception of his employment as Athletic Director in 1979. <sup>18/</sup>

9. The Athletic Director at Ramapo High School evaluates all coaches in writing. <sup>19/</sup> Although the Athletic Director's evaluations are countersigned by the Principal, since the 1980-81 reductions in staff the Principal has never modified any of the Athletic Director's evaluations. <sup>20/</sup> No other official takes part in the evaluation process in any formal way. <sup>21/</sup> The Athletic Director at Indian Hills High School is the sole evaluator of coaches at his school, which evaluations are performed in writing at year's end. <sup>22/</sup> Prior to the reductions in staff, the Principal at Ramapo High School had more direct input into the evaluation and nonretention of coaches, <sup>23/</sup> and in 1978 the Principal did in fact decline to reemploy a coach

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<sup>16/</sup> TA-41; TA-104-105.

<sup>17/</sup> TB-3-5; TB-27-28.

<sup>18/</sup> TA-106.

<sup>19/</sup> TA-43.

<sup>20/</sup> TA-45.

<sup>21/</sup> TA-115.

<sup>22/</sup> TB-6; TB-16-17.

<sup>23/</sup> TA-47.

contrary to the recommendation of the Athletic Director. 24/ Also in 1977 the Principal at Indian Hills High School did hire an assistant coach without the corresponding recommendation of the Athletic Director. 25/ Since the reductions in staff, the Athletic Director at Ramapo High School has recommended that two coaches not be retained. Both recommendations were approved and followed. 26/ Since the inception of his employment in 1981, the Athletic Director at Indian Hills High School has not had any occasion to recommend the nonretention of a coach. 27/

10. The Athletic Directors at both high schools are responsible for hiring personnel, some from within the Association's unit, to serve in varying capacities at athletic events such as security guards, ticket collectors, chaperones, etc. 28/ Prior to the 1980-81 reductions in staff, the Principal at Ramapo High School took a more active role in reviewing the Athletic Director's selection of ticket takers, referees, etc. 29/

11. The Athletic Director at Ramapo High School is represented at the bargaining table by coaches who are active in the union and who are evaluated by the Athletic Director. 30/

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24/ TA-50; TA-97.

25/ TB-54.

26/ TA-48; TA-113.

27/ TB-6.

28/ TA-60-62; TB-35.

29/ TA-98.

39/ TA-60.

During the most recent round of negotiations with the Board, there were three present coaches and one former coach on a negotiating committee consisting of seven people in all. 31/

12. The Athletic Director at Ramapo High School holds a supervisory certificate. 32/ The Athletic Director at Indian Hills High School is currently involved in course work and will be eligible for a supervisory certificate in December of 1984. 33/ The job description for the position of Athletic Director requires, by September 1, 1985, a valid New Jersey Principal's or Supervisor's Certificate or eligibility for same. 34/

13. Both of the District's Athletic Directors have had their teaching loads reduced from three teaching periods per day to two teaching periods per day due to a need for the Athletic Directors to perform a greater number of supervisory-type duties. 35/

#### ANALYSIS

The Board argues that the Athletic Directors are supervisors within the meaning of the Act and therefore may not be represented for the purpose of collective negotiations by the Association. It is undisputed that the Association does not represent supervisory personnel. The Association contends however (1) that the Athletic Directors are not supervisors within the meaning of the Act; that (2) a pre-Act negotiations relationship existed between the Board

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31/ TA-146.

32/ TA-70.

33/ TB-19.

34/ TA-19; P-4.

35/ TA-149-150.

and the Association to justify the continued inclusion of the Athletic Directors in the Association's unit; and (3) no conflicts of interest have manifested themselves to disturb the existing unit structure.

### Statutory Supervisor

The testimony reveals that both Athletic Directors effectively hire coaches as well as other personnel who serve in varying capacities at sporting events. Since the decrease in student enrollment and the accompanying reductions in staff occurring approximately during the 1980 and 1981 school years, both Athletic Directors have made numerous recommendations for the hire of outside coaching personnel and, in all cases, their recommendations have been approved and followed. In fact, the testimony reveals that the Athletic Director at Ramapo High School has effectively hired approximately 15 to 20 coaches since the inception of his employment as Athletic Director in 1979. Additionally, during the same period of time, both Athletic Directors have been the sole evaluators of coaching personnel. Such evaluations are formal and executed in writing and are largely instrumental in the decision not to continue a coach's employment. The evaluations conducted by the Athletic Directors have not been modified or altered in any way. Furthermore in this regard, the testimony reveals that in the case of the Athletic Director at Ramapo High School, and during the period since the decline in enrollment and accompanying staff reductions, two coaches were recommended for nonretention and both recommendations were followed. Accordingly, the undersigned determines that the Athletic Directors are supervisors within the meaning of the Act. <sup>36/</sup>

<sup>36/</sup> Notwithstanding certain stated differences in the duties performed by each of the district's two Athletic Directors, the undersigned concludes for the purpose of this Clarification of Unit Petition, that the duties of the two Athletic Directors are sufficiently similar to dictate a common result.

Pre-Act Negotiations Relationship

In In re West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973), the Commission held that the statutory exception of established practice relates solely to pre-Act (July 1, 1968) relationships. The record reveals a probable pre-Act negotiations relationship between the Board and the Association's unit which unit appears to have included the Athletic Director title since its inception. <sup>37/</sup> However, the record also reveals a substantial change in the Athletic Directors' duties since 1968 with a sizeable increase in supervisory-type responsibilities following the decline in enrollment and accompanying reductions in staff during the 1980-81 period. The testimony indicates that prior to the reductions in staff, the Principal of each school took a more active role in the supervision, selection and hiring of Athletic Department Personnel. Since the 1980-81 modifications, however, these functions appeared to have been given over entirely to each school's respective Athletic Director. In this regard, it is noted that each Athletic Director has had his teaching load reduced from three to two teaching periods per day due to a need for the Athletic Directors to perform a greater number of supervisory-type duties. Thus, it would appear that the dramatic change in duties performed by the Athletic Directors, and particularly the vast increase in the number of supervisory-type duties performed, would mitigate against a finding of any effective pre-Act negotiations relationship. <sup>38/</sup> In re Ramapo-Indian Hills Reg. H.S. District Bd. of Ed., supra, 7 NJPER 119. Thus the undersigned finds that the

<sup>37/</sup> The testimony suggests a pre-Act negotiations relationship; however, the witnesses testifying in this regard appeared somewhat vague in terms of dates and times.

<sup>38/</sup> It is noted that a finding of a pre-Act negotiations relationship does not compell a supervisor's continued inclusion in a mixed unit; although, it serves as one factor in establishing the propriety of continuing the mixed unit.

scope of the Athletic Directors' supervisory duties has substantially increased over the years thereby negating the effect of any pre-Act established practice.

Conflict of Interest

The New Jersey Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 425-426 (1971) held:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.

This record supports a finding of both actual conflict and potential for substantial conflict involving the Athletic Directors and other members of the Association's unit. The Athletic Directors evaluate and effectively recommend the non-retention of coaches who are included in the Association's unit. Since the 1980-81 reductions in staff, the Athletic Director at Ramapo High School has effectively recommended the nonretention of two coaches. Although the Association attempted to establish at the hearing that the number of applications for outside coaching positions was limited, and that the Athletic Director was in turn merely rubber stamping a single applicant's application to the Principal and Board, the record is clear that the Athletic Director does conduct the search and make the selection, and that the Athletic Director's recommendations have been followed in every case. Additionally, the Athletic Directors are responsible

for the selection of personnel to serve in varying capacities at sporting events. Although the record is unclear as to the degree of demand for these jobs, it is clear that the decision to hire rests with the Athletic Directors and is routinely approved by the Principals. Finally, the record reveals that the Athletic Directors are represented at the negotiating table by individuals who they supervise who are also members of the Association's unit. In fact, the testimony demonstrates that during the most recent negotiations session, and out of a negotiating committee of seven unit members, three were present coaches and one was a former coach. Thus, the undersigned concludes that the record is replete with evidence of both actual conflict and potential for continued substantial conflict of interest.

#### RECOMMENDATIONS

Based upon the foregoing discussion the undersigned hearing officer recommends that the Athletic Directors employed by the Board be removed from the Association's negotiations unit for the following reasons:

(a) The Athletic Directors are supervisors within the meaning of the Act;

(b) A probable pre-Act negotiations relationship existed between the Board and the Association's unit, which unit contained the title Athletic Director; however, any finding of an established practice in this regard is negated by an increase in the overall number of supervisory-type duties acquired subsequent to July 1, 1968, and particularly following the decline in enrollment and accompanying reductions in staff occurring approximately during the 1980-81 school years;

(c) Both an actual conflict and a potential for substantial conflict of interest exists justifying the removal of the Athletic Directors from the Association's unit.

RESPECTFULLY SUBMITTED

A handwritten signature in cursive script that reads "Marc F. Stuart". The signature is written in dark ink and is positioned above a horizontal line.

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Marc F. Stuart, Hearing Officer

DATED: May 24, 1984  
Trenton, New Jersey