

D.R. NO. 88-35

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

In the Matter of

SALEM COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. CU-88-30

SALEM COMMUNITY COLLEGE
FACULTY ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation determines the EOF director/specialist, the financial aid coordinator, the student development specialist/academic programs and the coordinator of student admissions employed by Salem Community College are not supervisors. The Director found that the EOF director/specialist chairs a search committee, but she does not have greater authority than other faculty members on the committee and that her responsibility is temporary. The financial aid coordinator evaluates the financial aid specialist, but there is no indication that evaluations affect the employment status of other employees. The Director found the history of the parties' relationship outweighed potential future conflicts of interest that might result from the continued inclusion of the EOF director/specialist and the financial aid coordinator in the unit.

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Appearances:

For the Public Employer
Jordan and Jordan, Esqs.
(John D. Jordan, of counsel)

For the Petitioner
NJEA-Higher Education
(Jerry Veldof, Field Rep.)

DECISION

On January 12, 1988, the Salem Community College ("College") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to exclude certain titles from the collective negotiations unit of full-time instructional personnel represented by the Salem Community College Faculty Association ("Association"). The specific titles sought to be excluded are EOF director/specialist, financial aid coordinator, student development specialist/academic programs and the coordinator of student admissions. The College asserts that these positions should be excluded from the unit because they are supervisors and

their inclusion in the unit would create a conflict of interest under Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). The Association asserts that these titles are not supervisory and their inclusion in the unit does not create a conflict of interest.

On May 13, 1988 we sent the parties a preliminary determination. On May 24, 1988, the College responded, agreeing with our factual findings but disputing our conclusions. The College asserts that we should not rely on our decision in Salem County College, P.E.R.C No. 85-20, 10 NJPER 532 (¶15244 1984), aff'g H.O. No. 85-1, 10 NJPER 457 (¶15207 1984), because the College administration has changed. It argues that that there is sufficient evidence to allow a finding that the EOF director/specialist and the financial aid coordinator regularly exercise supervisory authority and that the possibility that these positions may perform supervisory tasks in the future is sufficient to warrant their exclusion from the unit.

We conducted an administrative investigation into this matter. N.J.A.C. 19:11-2.6. It reveals the following:

Salem Community College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and is the employer of the disputed positions.

The Salem Community College Faculty Association is the majority representative of a unit comprised of the College's full-time instructional personnel.

Joan Wilson has been the EOF director/specialist for ten years. She plans and administers the EOF program. She is the immediate supervisor of the EOF staff including the EOF bilingual counselor and the EOF specialist. According to Bruce Hannaford, Dean of Student Services, Wilson will evaluate the EOF staff this spring and could recommend their discipline to him. Hannaford stated Wilson's recommendations would carry substantial weight.

Wilson currently chairs the search committee attempting to fill the EOF bilingual counselor position. The committee reviews applications and interviews applicants. Several administrators and other professional employees also serve on the committee. The committee will recommend a candidate for the position to Hannaford. He states that the recommendation will be forwarded to the president of the College for presentation to the Board of Trustees. The Board of Trustees will make the final determination.

Wilson recommended changes in the EOF program, including the level of instruction. She also develops and implements the EOF program budget.

John Watson has been the financial aid coordinator for two years. The financial aid coordinator administers the financial aid program. He supervises and evaluates the financial aid specialist. Both are in the faculty unit. The dean of administrative services, Anthony DeGaetano, supervises them.^{1/} DeGaetano stated that he

^{1/} According to DeGaetano, he was appointed Dean of Administrative Services in August 1987, and has performed the functions of that position since 1981.

would rely on Watson to recommend corrective action or discipline of the financial aid specialist.

If a financial aid specialist vacancy occurred, Watson would chair the search committee. As chairperson, his duties would be the same as the chairperson of the search committee presently selecting an EOF bilingual counselor.

The student development specialist/academic programs coordinates the advising process. She assigns faculty and support advisors to students. That process may have an impact on faculty members' schedules. She is expected to recommend changes in the advising process when necessary.

Mary Schnierer has been the the coordinator of student admissions for ten years. She directs and organizes the admissions process. She directs the work of a secretary, a student aide and a work study student. She has served on search committees to hire adjunct faculty, administrators and Deans, but not employees included in the Association's unit.

N.J.S.A. 34:13A-5.3 provides:

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.

A determination of supervisory status requires more than the assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such action.

In Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976), we noted:

[T]he bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employees in question, the mere "possession" of the authority is a sterile attribute unable to sustain a claim of supervisory status.

The Board of Trustees retains the ultimate power to hire, discharge or discipline. The critical question here is whether these positions have the power to "effectively recommend" such personnel actions. "Effective recommendation" occurs when the recommendation is adopted without independent review and analysis by a higher level of authority. See Teaneck Bd. of Ed., E.D. No.23 (1971), Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), aff'g H.O. No. 84-11, 10 NJPER 149 (¶15075 1984). The power to evaluate may indicate the existence of a conflict of interest where a position is primarily responsible for evaluating subordinates and where the evaluations are instrumental in making significant personnel decisions. Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER 571 (¶12255 1981).

The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (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. [Id. at 425].

In Salem Community College, P.E.R.C No. 85-20, 10 NJPER 532 (¶15244 1984), aff'g H.O. No. 85-1, 10 NJPER 457 (¶15207 1984), the Hearing Officer determined that coordinators and specialists employed by the College were not supervisors and any conflicts of interest between those positions were de minimis. It does not appear that circumstances have changed sufficiently to warrant a different conclusion.

The College asserts that Wilson has the authority to recommend discipline, but she has not done so during the ten years that she has held the position. Hannaford stated that Wilson would evaluate employees this spring. As of May 24, 1988, we had no indication that she evaluated employees during the College's spring semester. Wilson's responsibility for evaluations is, at this point, only hypothetical. Additionally, the College has not alleged that evaluations would be used to determine promotions, increments, terminations or other personnel actions. Even assuming arguendo that the EOF director/specialist would evaluate her staff, we are unwilling to assume, at this juncture, that the degree of conflict of interest generated would be sufficient to warrant her removal from the faculty unit. See Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976); Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER (¶12255 1981). The College does not assert, nor does the record show, that Wilson has the authority to recommend discharge.

Wilson currently chairs a search committee to hire a bilingual specialist. While the committee as a whole has the authority to recommend a candidate to fill the position, there is no evidence that the chairperson has more authority than other members of the committee. In Edison State College, P.E.R.C. No. 87-147, 13 NJPER 502 (¶18185 1987), aff'g H.O. No. 87-10, 13 NJPER 180 (¶18078 1987), the Hearing Officer found the assistant registrar was a supervisor where he organized the selection process and the search committee. In Edison, the selection committee interviewed candidates and the chairperson made an effective recommendation. Most members of the search committee were management. The chairperson also evaluated employees, effectively recommended them for salary increases and had total authority to discipline them.

While the committee chaired by Wilson is likely to make an effective recommendation, there is no indication that Wilson plays a greater role in the selection process than other committee members, including faculty members. Finally, the committee is temporary and any supervisory powers accorded Wilson as committee chairperson are also temporary. There is no indication that she has previously sat on a search committee or that she will participate in another search committee. In order to be effective, supervisory authority must be regularly exercised. Somerset Cty. Guidance Center. Wilson's position on the search committee is not sufficient to sustain a claim of supervisory status. Further, any conflict of interest generated by the EOF director/specialist's position on the search

committee is not sufficient to warrant her removal from the faculty unit.

Accordingly, we find the EOF director/specialist is not a supervisor and that her inclusion in the faculty unit would not create an actual or potential substantial conflict of interest.

The financial aid coordinator evaluates the financial aid specialist and would chair a search committee to replace him if necessary. The financial coordinator has not served as a chairperson of a search committee and there is nothing in this record to suggest that he would have supervisory authority if he did.

The College has not alleged that the annual evaluations prepared by Watson have been used to affect the financial aid specialist's employment status. In Salem Community College, 10 NJPER at 460, the Hearing Officer specifically addressed the financial aid coordinator's evaluation activities. Then, the financial aid coordinator's evaluation responsibilities were new and the Hearing Officer did not find an actual or potential substantial conflict of interest. It does not appear that the financial aid coordinator's responsibilities have changed.^{2/} Accordingly, we are not inclined to find that the financial aid coordinator is a supervisor or that including him in the same unit as the financial aid specialist would create an impermissible conflict of interest.

^{2/} The College argues that we should not rely on the earlier Salem Community College because the administration has changed. However, Dean DeGaetano who is Watson's supervisor, has performed the responsibilities of the Dean of Administrative Services since 1981.

The College argues that the possibility that conflicts of interest might arise if the EOF director/specialist and the financial aid coordinator remain in the unit dilutes their effectiveness sufficiently to warrant their exclusion. Employees in newly created positions who have not yet performed any supervisory duties or employees in positions where duties have been changed have sometimes been prospectively excluded from units where the circumstances clearly indicated that the position would exercise supervisory functions. Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); Sterling Bd. of Ed., P.E.R.C. No. 80 (1973). However, the history of the parties' relationship outweighs the possibility of a future conflict, absent a change in circumstances. In West Paterson Bd. of Ed., P.E.R.C. No. 77 at pp. 15-16 (1973), the Commission stated:

[F]uture contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculation not benefited by hindsight.

The responsibilities of the EOF director/specialist and the financial aid coordinator have not changed significantly. Given the history of these positions, we find that no substantial potential conflict of interest exists. See Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971).

The student development specialist/academic programs and the coordinator of admissions are also appropriately included in the faculty unit. Neither position is involved in hiring, disciplining or terminating other unit employees. Nor are they involved in any activity which might create a conflict of interest with other members of the faculty unit.

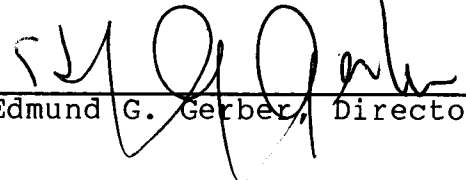
There are no facts before us to indicate that the EOF specialist, the financial aid coordinator, the student development specialist/academic programs or the coordinator of admissions are supervisors within the meaning of N.J.S.A. 34:13A-5.3, or that their activities might result in a substantial conflict of interest with other unit members. See Bd. of Ed. of West Orange v. Wilton, 57 N.J. at 427 (1971); Tp. of Cherry Hill, P.E.R.C. No. 30 (1970). We do not agree with the employer's interpretation of Wayne Tp., P.E.R.C. No. 87-82, 13 NJPER 77 (¶18035 1986), rev'd App. Div. Dkt. No. A-2683-86T7 (10/8/87). However, even accepting that interpretation, Wayne would not be controlling here.

Despite the fact that these positions have existed for a long time, there has been no demonstration that the employees in these positions exercised supervisory authority. There has been no showing that they have made effective recommendations concerning hiring or discipline of other unit employees. Although the financial aid coordinator has participated in evaluations of the financial aid specialist, there has been no claim or showing that these evaluations were used to affect the terms and conditions of

employment of the specialist. Finally, we note that Wayne concerned a claim of employee confidentiality -- a status which disqualifies an employee from membership in any collective negotiations unit because of the employee's access to confidential labor relations materials of the employer. Here, the employer claims only that these employees will exercise supervisory authority -- and the Commission has ruled that the mere possession of such supervisory status, without more, is an insufficient basis to exclude employees from a negotiations unit. Somerset Cty. Guidance Center.

Accordingly, it appears that the EOF director/specialist, financial aid coordinator, student development specialist/academic programs and the coordinator of admissions are not supervisors within the meaning of the act and their inclusion in the unit does not create an impermissible conflict of interest. Therefore, based upon the entire record in this matter, we decline to clarify the faculty unit represented by the Salem Community College Faculty Association to exclude the EOF director/specialist, financial aid coordinator, student development specialist/academic programs and the coordinator of student admissions and dismiss this Petition.^{3/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 6, 1988
Trenton, New Jersey

^{3/} If events subsequently show that the EOF director/specialist is functioning as a supervisor, the College is free to re-file with the Commission to seek to have the faculty unit clarified to exclude that position.