

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

In the Matter of

BLOOMFIELD BOARD OF EDUCATION,

Public Employer,

-and-

BLOOMFIELD ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

DOCKET NO. RO-81-78

Petitioner,

-and-

BLOOMFIELD EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, determines that Department Chairpersons; Supervisors of Music, Mathematics, Reading, Health, Safety & Physical Education, and Coordinators of Foreign Language and Home Economics are supervisors within the meaning of the Act, and should be removed from a unit of employees which includes nonsupervisory teaching personnel. These employees may participate in an election to designate or reject a negotiations representative in a separate unit of supervisors.

The Director, adopting the additional recommendations of the Hearing Officer, determines that the Coordinator of Science and the Guidance Department Chairperson at North Junior High School are not supervisors within the meaning of the Act.

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Appearances:

For the Public Employer
Cassetta, Brandon Associates
(Raymond A. Cassetta, Labor Consultant)

For the Petitioner
Wayne Oppito, attorney

For the Intervenor
Gerald Restaino, NJEA UniServ Representative

DECISION AND DIRECTION OF ELECTION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") on October 14, 1980, and amended on May 4, 1981, by the Bloomfield Administrators and Supervisors Association

("Petitioner") who seek to represent in a separate negotiations unit all Department Chairpersons, four Supervisors (Supervisors of Music; Mathematics; Reading; and, Health, Safety & Physical Education), and three Coordinators (Coordinators of Foreign Language - Secondary; Home Economics - Secondary; and Science - Elementary), employed by the Bloomfield Board of Education ("Board"). ^{1/} The above titles are currently included in a negotiations unit represented by the Bloomfield Education Association ("Intervenor") which represents various nonsupervisory professional titles.

The Petitioner argues that the petitioned-for unit is appropriate because the employees in the disputed titles are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and are therefore inappropriate for continued inclusion in the Intervenor's unit, which is comprised of nonsupervisory employees. In addition, the Petitioner argues that a conflict of interest exists due to the inclusion of the instant titles in the existing unit.

The Intervenor argues that none of the disputed employees are supervisors within the meaning of the Act, and that no conflict of interest exists because of their inclusion in the unit.

The Board did not take a position with respect to the unit placement of the disputed titles and indicated that it would

^{1/} The original Petition sought various administrative titles, as well as the Director of Pupil Personnel Services and the Coordinator of Child Study in addition to the above titles. The amendment to the Petition, however, deleted all of these titles from the scope of the unit sought.

accept any determination by the Commission.

A hearing was held before Commission Hearing Officer Arnold H. Zudick on January 25, 1982, in Newark, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. The Petitioner filed a brief which was received by March 18, 1982. Neither the Board nor the Intervenor submitted a brief. The Hearing Officer issued his Report and Recommendations on March 31, 1982, a copy of which is attached hereto and made a part hereof. No exceptions to the Hearing Officer's Report and Recommendations have been received.

The undersigned has carefully considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript and the exhibits and finds and determines as follows:

1. The Bloomfield Board of Education is a public employer within the meaning of the Act, is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. The Bloomfield Administrators and Supervisors Association and the Bloomfield Education Association are public employee representatives within the meaning of the Act, and are subject to its provisions.

3. The Petitioner seeks certification as the majority representative in a negotiations unit including Department Chairperson, Supervisors and certain Coordinators. The Intervenor

currently represents the disputed titles in its unit of professional employees, and seeks dismissal of the Petition. The Board takes no position with regard to the Petition.

Since the parties have been unable to agree upon the appropriateness of the unit sought by the Petitioner, a question concerning the representation of department chairpersons, supervisors, and certain coordinators exists, and the matter is appropriately before the undersigned for a determination.

4. The sole issue herein concerns the supervisory status of the disputed titles and whether this determination requires removal of these titles from the Intervenor's unit and placement in the unit sought by the Petitioner.

5. The Hearing Officer found that Department Chairpersons; Supervisors of Music, Mathematics, Reading, and Health, Safety & Physical Education; and Coordinators of Foreign Language and Home Economics are supervisors within the meaning of the Act. The Hearing Officer recommended that these employees should be removed from the existing collective negotiations unit and be provided with the opportunity to choose separate representation.

The Hearing Officer also found that the Coordinator of Science and the Guidance Department Chairperson at North Junior High School were not supervisors and recommended that they remain in the Intervenor's unit.

After a review of the entire record, the undersigned adopts the Hearing Officer's findings of fact, conclusions of law and recommendations.

The Act at N.J.S.A. 34:13A-5.3 defines a supervisor as one "having the power to hire, discharge, discipline, or to effectively recommend the same." The Act further provides that, with three exceptions, not relevant herein, supervisors may not be included in collective negotiations units with nonsupervisors.

There is ample evidence in the record to support the conclusion that the employees, whose removal the Hearing Officer recommended, have effective hiring powers and that their role in the evaluation process places them in a position of making effective recommendations concerning nonrenewal or withholding of increment with regard to nonsupervisory professional staff included in the Intervenor's unit. Additionally, the record supports the Hearing Officer's conclusion that the Coordinator of Science and the Guidance Department Chairperson do not have effective input into hiring, nonrenewal, or discipline.

Accordingly, for the above reasons, and noting the absence of exceptions, the undersigned adopts the Hearing Officer's findings and recommendation that the Coordinator of Science and the Guidance Department Chairperson at North Junior High School are not supervisors within the meaning of the Act and should remain in the Intervenor's unit. ^{2/} The undersigned also adopts

^{2/} The record reveals that although Ms. Lottie Lelek, the Guidance Department Chairperson is not a supervisor within the meaning of the Act, the Board intends to have Ms. Lelek's replacement function as a supervisor. The Hearing Officer recommended that Ms. Lelek remain in the Intervenor's unit and that if the Board, when it replaces Ms. Lelek, requires the new chairperson to function as a supervisor, the title would be appropriate for inclusion in the Petitioner's proposed unit. While this recommendation is consonant with the statutory scheme, the undersigned cannot speculate concerning future factual circumstances and makes no determination. The Hearing Officer sets forth the appropriate procedure to obtain a determination in footnote 21. That procedure may also be utilized by the Intervenor at the appropriate time.

the Hearing Officer's recommendation that Department Chairpersons; Supervisors of Music, Mathematics, Reading, Health, Safety & Physical Education; and Coordinators of Foreign Language and Home Economics are supervisors within the meaning of the Act and should be removed from the Bloomfield Education Association's unit. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: Department Chairpersons, Supervisor of Music, Supervisor of Mathematics, Supervisor of Reading, Supervisor of Health, Safety & Physical Education, Coordinator of Foreign Language, and Coordinator of Home Economics, but excluding Coordinator of Science - Elementary, Guidance Department Chairperson at the North Junior High School, managerial executives, confidential employees, teaching staff, craft and clerical employees, and police within the meaning of the Act, and all Principals, Vice Principals, Assistant Principals, Acting Principals and all other employees.

Pursuant to N.J.A.C. 19:11-2.6, the undersigned directs that an election be conducted among the above employees. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear at the polls in order to be eligible to

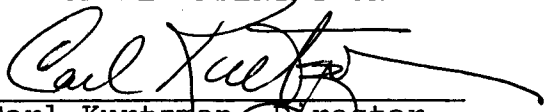
vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Board shall file with the undersigned and with the Petitioner an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Petitioner with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Bloomfield Administrators and Supervisors Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 7, 1982
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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-and-

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Petitioner,

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BLOOMFIELD EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

In a Petition for Certification of Public Employee Representative, a Hearing Officer of the Public Employment Relations Commission recommends that an election be directed in a unit of Department Chairpersons, Supervisors of Music; Mathematics; Reading; and, Health, Safety & Physical Education; and Coordinators of Foreign Language and Home Economics. The Hearing Officer found that said titles were supervisors within the meaning of the New Jersey Employer-Employee Relations Act and were no longer appropriate for inclusion with nonsupervisory professional employees represented by the Intervenor.

The Hearing Officer, however, concluded that the Coordinator of Science and the Guidance Department Chairperson at North Junior High School were not supervisors and should remain in the Intervenor's unit.

The 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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For the Public Employer
Cassetta, Brandon Associates
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For the Petitioner
Wayne Oppito, Esq.

For the Intervenor
Gerald Restaino, N.J.E.A. UniServ Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on October 14, 1980, and amended on May 4, 1981, by the Bloomfield Administrators and Supervisors Association (the "Petitioner") seeking to represent in a separate negotiations unit all Department Chairpersons, four Supervisors, (Supervisors

of Music; Mathematics; Reading; and, Health, Safety & Physical Education), and three Coordinator's (Coordinators of Foreign Language - Secondary; Home Economics - Secondary; and Science - Elementary), employed by the Bloomfield Board of Education (the "Board"). ^{1/} The above titles are currently included in a negotiations unit represented by the Bloomfield Education Association (the "Intervenor") which represents various nonsupervisory professional titles and whose collective negotiations agreement most recently expired on June 30, 1981. ^{2/}

The Petitioner argues that the petitioned-for unit is appropriate because the disputed titles are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") and are therefore inappropriate for continued inclusion in the Intervenor's unit which is comprised of nonsupervisory employees. In addition, the Petitioner argues that a conflict of interest exists with the inclusion of the instant titles in the existing unit which mandates their exclusion therefrom.

The Intervenor argues that none of the instant titles are supervisors within the meaning of the Act, and that no conflict

^{1/} The original Petition sought various administrative titles, as well as the Director of Pupil Personnel Services and the Coordinator of Child Study in addition to the above titles. The amendment to the Petition, however, deleted all of these titles.

^{2/} By the submission of a collective agreement covering the above titles (Exhibit J-1) the Intervenor has properly intervened herein, pursuant to N.J.A.C. 19:11-2.7.

Since the original Petition was filed by October 15, 1980, it was timely filed pursuant to N.J.A.C. 19:11-2.8(c)(3). The filing of the amendment does not effect the timeliness of the Petition.

of interest exists because of their inclusion in the unit, all of which it believes justifies leaving the titles in its unit.

The Board took a neutral position with respect to the unit placement of the disputed titles and indicated that it would accept any determination by the Commission.

Pursuant to a Notice of Hearing dated December 3, 1981, a hearing was held in this matter on January 25, 1982, 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 hearing the Petitioner filed a brief in this matter which was received by March 18, 1982. Neither the Board nor the Intervenor submitted a brief.

Based upon the entire record in these proceedings, the Hearing Officer finds:

1. The Bloomfield Board of Education is a public employer within the meaning of the Act, is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. The Bloomfield Administrators and Supervisors Association and the Bloomfield Education Association are public employee representatives within the meaning of the Act, and are subject to its provisions.

3. The Petitioner seeks an election in a negotiations unit including the instant titles, because it argues that those titles are inappropriate for continued inclusion in the Intervenor's unit. The Intervenor currently represents the disputed titles in its

unit of professional employees and is opposed to an election and seeks dismissal of the Petition. The Board is neither opposed to an election nor opposed to a dismissal of the Petition.

Since the parties have been unable to agree upon the appropriateness of the unit sought by the Petitioner, a question concerning the representation of department chairpersons and certain supervisors and coordinators exists, and the matter is appropriately before the undersigned for Report and Recommendations.

4. The parties agreed that the issue herein concerns the placement of the disputed titles and whether they should remain in the Intervenor's unit, or be placed in the unit sought by the Petitioner.

ANALYSIS - LAW AND FACTS

The undersigned in a recent decision, In re Parsippany-Troy Hills Bd. of Ed., H.O. No. 82-12, 8 NJPER ____ (¶ ____ 1982), reviewed the well established case law concerning the very issues raised herein. It was noted that the Act at N.J.S.A. 34:13A-5.3 defined a supervisor as someone who could hire, discharge, discipline or effectively recommend the same, and it indicated that such supervisors could not, but for three exceptions, be included in units with nonsupervisors. Numerous cases have issued recently removing titles similar to the instant titles based upon a finding that such titles were supervisors within the meaning of the Act. ^{3/}

^{3/} In re Englewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (¶ 11102 1980); In re Ramapo-Indian Hills Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981); In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981); In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Paramus Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶ 12247 1981); and In re Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER ____ (¶ ____ 1982).

The New Jersey Supreme Court has also established that titles similar to the instant titles may be removed from existing units based upon conflict of interest as defined in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971).

In determining whether the instant titles should be removed from the Intervenor's unit several key factors were examined: the hiring process, the evaluation -- non-renewal -- discipline processes, and evidence of conflict of interest.

Hiring

Department Chairpersons, George Hatt, Robert Blomquist, and Richard MacNett testified that they are involved in the interviewing process and are part of the hiring team which includes the principal, department chairperson, and/or the vice principal or assistant superintendent. ^{4/} They all indicated that they make recommendations, and MacNett specifically testified that he believes that his recommendations carry more weight than the other members of the hiring team, and that his first choice has always been accepted. ^{5/}

The Supervisor of Reading, Adelaide Palmer, testified that she is involved with screening and interviewing applicants and that her hiring recommendations have always been followed. ^{6/} She also indicated that her hiring function was similar to the department chairpersons. In addition, Joseph Bongiorno, Assistant Superintendent, testified that the other supervisors (Supervisors

^{4/} Transcript ("T"), pp. 14-15, 18-19, 38-39, 54-55, 57-58

^{5/} T pp. 57-58

^{6/} T pp. 70, 79

of Music; Mathematics; and, Health, Safety & Physical Education) perform duties similar to those performed by Mrs. Palmer, and he also testified that the Coordinators of Foreign Language and Home Economics perform the same hiring function as performed by department chairpersons. 7/

The above information demonstrates that department chairpersons, the instant supervisors, and at least the two coordinators named above have effective input into the hiring process.

Evaluation, Non-Renewal, Discipline

The evidence adduced at hearing shows that the department chairpersons, the supervisors, and the Foreign Language and Home Economics coordinators are required to observe and evaluate unit members using the Teacher Observation Performance Report (Exhibit J-8). 8/ That form includes a space for comments as well as a space to check unsatisfactory performance. Department Chairperson Blomquist testified that he has checked the unsatisfactory box which can have an adverse effect on someone's future employment. 9/ In addition to J-8, the above titles are required to prepare an Annual Performance and Recommendation Report (Exhibit J-6) which includes a Professional Improvement Plan and provides space for the evaluator to check whether an increment should be granted. 10/ Although none of the witnesses have had an occasion to recommend

7/ T p. 103

8/ T pp. 12, 37-38, 50, 53, 71, 102-103

9/ T p. 50

10/ T pp. 46, 55, 56, 72

non-renewal since 1968, they all recognize that they do have the authority to make such recommendations. ^{11/} In fact, Blomquist and MacNett testified that the department chairperson of physical education did make a non-renewal recommendation which was accepted. ^{12/}

In addition to evaluation responsibilities the above titles have authority to discipline employees. Both Blomquist and Palmer testified that they have disciplined employees in writing and included such information in their personnel files. ^{13/} Finally, the evidence shows that except for one department chairperson, Lottie Lelek, all of the individuals holding the instant titles have been certified as supervisors since at least 1978.

Conflict of Interest

The evidence shows that a teacher's strike occurred in this district in 1978. All of the chairpersons, supervisors and coordinators who testified at the hearing participated in the strike, although not all department chairpersons employed by the Board honored the strike. ^{14/} In several recent decisions it has been established that conflict of interest is established once it is proved that supervisors have been placed in a pressure situation where they must choose between performing their supervisory duties or supporting an otherwise nonsupervisory organization. See In re Paramus, supra; In re Ramapo-Indian Hills, supra; and

^{11/} T pp. 20, 21, 40, 43, 58, 78, 101

^{12/} T pp. 43, 59

^{13/} T pp. 47-48, 81

^{14/} T pp. 29-31, 41, 56, 77, 95

In re Parsippany-Troy Hills, supra. Such a conflict has been established herein as evidenced by the fact that supervisors were faced with a choice of whether to honor the strike or report to work. The very theory behind Wilton, supra, was to prevent supervisors from being placed in such pressure situations, and the appropriate remedy herein is to remove department chairpersons, the instant supervisors, and at least the Foreign Language and Home Economics Coordinators from the Intervenor's unit.

Coordinator of Science-Elementary

Although the initial evidence produced at hearing regarding coordinators and specifically the above title, indicated that all of the instant coordinators were supervisors within the meaning of the Act, other evidence was presented to show that the Coordinator of Science was not intended to be a supervisor. For example, Richard Urban, the Coordinator of Science, testified that he has a supervisor's certificate and has evaluated at least three teachers and recommended their non-renewal and that those recommendations were followed. ^{15/} However, Urban also testified that he does not normally evaluate teachers, he doesn't use Exhibits J-8 or J-6, that he is not involved in the hiring process, that he has never made written reprimands, and, that these three evaluations and recommendations were performed based upon a special request. ^{16/}

^{15/} T pp. 83, 88-90

^{16/} T pp. 86-88, 90-93

Assistant Superintendent Bongiorno agreed that Urban was not intended to be an evaluator nor was he responsible for making recommendations. ^{17/} In fact, Bongiorno testified that he was unaware that Urban had made evaluations and recommendations, and he indicated that Urban would not be expected to make evaluations in the future. ^{18/}

Having reviewed the above facts, the undersigned is now convinced that Richard Urban is not a supervisor within the meaning of the Act nor will he be performing such a function in the future. The three evaluations which he participated in were not authorized by the Superintendent's office as a matter of policy, and they were isolated instances amounting to only a de minimis supervisory role. Urban is only expected to use his expertise to assist approximately 200 elementary school teachers in teaching science, but he is not expected nor authorized to evaluate these teachers. Consequently, the undersigned concludes that the Coordinator of Science should remain in the Intervenor's unit.

Lottie Lelek

The undersigned has determined hereinabove that the instant department chairpersons, as a group, are supervisors within the meaning of the Act. However, the evidence produced herein also demonstrated that one department chairperson, Lottie

^{17/} T pp. 104-107

^{18/} T pp. 106-109

Lelek, Guidance Department Chairperson at North Junior High School, does not possess a supervisor's certificate, does not have the authority to evaluate teachers or make recommendations for non-renewal, and, does not have the authority to make hiring recommendations. ^{19/} In fact, Bongiorno testified that Lelek's job is one of overseeing the work and balancing caseload and assignments. However, he indicated that whoever is eventually hired by the Board to replace Lelek will be required to hold a supervisor's certificate and exercise the same evaluation and recommendation functions as Department Chairperson MacNett. ^{20/}

It is clear from the above information that although Lelek holds a chairperson title, she is not a supervisor within the meaning of the Act. But it is also clear that it is the Board's intent to have Lelek's eventual replacement perform as a supervisor. These facts present a unique situation which require a realistic remedy. The undersigned recommends that since Lelek is not a supervisor that her title of Guidance Department Chairperson at North Junior High School not be removed from the Intervenor's unit at this time. If the Board, when it replaces Lelek, requires the new chairperson to function as the other titles discussed herein function, then the title would be appropriate for inclusion in the Petitioner's proposed unit.

RECOMMENDATIONS

Based upon the foregoing discussion, the undersigned Hearing Officer recommends the following:

^{19/} T pp. 111-115

^{20/} T p. 115

1. That Department Chairpersons, Supervisors of Music; Mathematics; Reading; Health, Safety & Physical Education, and the Coordinators of Foreign Language and Home Economics employed by the Board are supervisors within the meaning of the Act and must be removed from the Intervenor's negotiations unit.

2. That the Coordinator of Science-Elementary is not a supervisor within the meaning of the Act and should not be removed from the Intervenor's unit.

3. That the Guidance Department Chairperson at North Junior High School is not currently a supervisor within the meaning of the Act and should not now be removed from the Intervenor's unit. If the current occupant of said title is replaced by someone who is authorized to perform duties similar to the other chairperson's, then said title would be appropriate for inclusion in the Petitioner's proposed unit. 21/

4. That the unit being sought by the Petitioner, minus the Coordinator of Science and the Guidance Chairperson at North Junior High School, is an appropriate unit for representation, and that a yes/no secret ballot election be directed in the following negotiations unit wherein eligible voters shall vote as to whether they wish to be represented by the Petitioner.

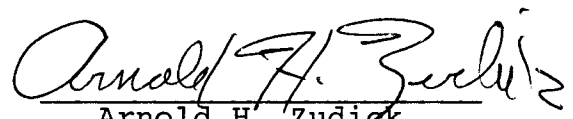
Included: All (but one) department chairpersons, Supervisors of Music; Mathematics; Reading; and Health, Safety &

21/ If a new chairperson is hired to replace Lelek and is given supervisory authority and the Intervenor will not agree to release that title at that time, then the Petitioner and/or the Board may file a Petition for Clarification of Unit seeking removal of that title from the Intervenor's unit and inclusion in the Petitioner's unit.

Physical Education, and the Coordinators of Foreign Language and Home Economics employed by the Bloomfield Board of Education.

Excluded: All managerial and confidential employees, the Coordinator of Science-Elementary, the Guidance Department Chairperson at North Junior High School, and all other employees employed by the Board.

Respectfully submitted,


Arnold H. Zudick
Hearing Officer

DATED: March 31, 1982
Trenton, New Jersey