

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

EAST ORANGE BOARD OF EDUCATION

-and-

Docket No. L-85-21

EAST ORANGE DEPARTMENT CHAIRPERSONS
ASSOCIATION

DECISION

The East Orange Board of Education ("Board") and the East Orange Department Chairpersons Association ("Association") have advised the Public Employment Relations Commission ("Commission") that they agreed to submit the instant dispute to the Commission's Litigation Alternative Program ("LAP"). In this procedure the parties describe and document the nature of their dispute to a Commission designee. Failing a direct resolution of the issue by the parties, the Commission designee issues a recommendation designed to resolve the dispute without prejudice to the parties' legal positions.

On August 5, 1985, I conducted an informal session with the parties concerning this dispute. The Board was represented by Dr. Kenneth King, Assistant Superintendent of Schools, and the Association was represented by Michael Mulkeen, an NJEA UniServ Representative.

The issue in this matter concerns the unit placement of the one employee holding the relatively new title "Supervisor of Library/

Media Services" ("Library Supervisor"). The title preceding the Library Supervisor, Head School Librarian, had been in a negotiations unit of department chairpersons represented by the Association. The Association argued that the Library Supervisor position was the same as the Head Librarian position and should remain in the Association's unit. The Board argued that the Library Supervisor position should be placed in the Administrator's unit which included other supervisors.

Background

On November 18, 1982 the Board filed a representation petition with the Commission, Docket No. CU-83-29, seeking to remove department chairpersons and the Head Librarian from a unit which included teachers. The Board argued that the chairpersons and Head Librarian were supervisors within the meaning of the Act and could not be included with teachers. A hearing was held on March 17, 1983. The Hearing Officer issued his decision on May 11, 1983, H.O. No. 83-14, 9 NJPER 328 (¶14146 1983), and found that the Head Librarian and several chairpersons were supervisors within the meaning of the Act and should be removed from the teachers unit. On August 16, 1983 the Board formally recognized the Association's department chairpersons unit, the East Orange Chairpersons and Head Librarian Association, and the petition was dismissed. The Association negotiated with the Board for a collective agreement, but the parties never reached an agreement.

The Association's unit consisted of approximately 20 chairpersons and the one Head Librarian. The chairpersons reported to and were evaluated by their building principal. The Head Librarian, however, was actually a hybrid position, half-day head librarian and half-day library media specialist. As Head Librarian the affected employee reported to and was evaluated by the Director of Curriculum. As a library media specialist, however, she was evaluated by the building principal where she worked.

The Head Librarian held a ten-month position and was housed in the school in which she performed her media services. The Head Librarian duties consisted of supervising and evaluating the media specialists; implementing the curriculum for media specialists; assisted in budget preparation and ordering supplies for the library media program; and training media specialists.

In June 1984 the Board abolished the Head Librarian position and created a twelve-month position entitled Supervisor of Library/Media Services. The Library Supervisor position is similar to the Head Librarian. The Library Supervisor is a half-time library media specialist, and half-time library supervisor. The Library Supervisor's "supervisory" responsibilities are for twelve months, but the library media responsibilities are for ten months. The Library Supervisor reports to and is evaluated by the Director of Curriculum, but is also evaluated by the building principal in which she performs her media services.

The Library Supervisor supervises the same employees as she did as Head Librarian. She also performs the same curriculum, training, planning, budget and ordering of supplies function as she did as Head Librarian. The Library Supervisor, however, has some broader responsibilities. She meets with other supervisors, recruits and screens applicants, and meets with text book publishers and vendors of audio visual materials.

The Library Supervisor's office is now located in the Board of Education building where the other supervisors are located. However, the Library Supervisor is not located on the same floor as other supervisors, nor is she normally able to attend meetings with other supervisors since she is normally teaching when such meetings are held.

Both the Head Librarian and the Library Supervisor were required to hold a masters degree and a supervisors certification.

The supervisors are included in a negotiations unit known as the East Orange Administrators Association ("Administrators"). That unit includes sixteen principals, eight assistant principals, four directors including the Director of Curriculum, assistant directors, eight administrative assistants, twelve supervisors, and two coordinators. The directors evaluate the supervisors and coordinators. All of the positions in the Administrator's unit are full time but for the instant title, and one other supervisory position. The other supervisory position, however, is currently vacant.

The first step of the grievance procedure for the Head Librarian when that title was in the Association's unit is the same step for the supervisors in the Administrator's unit. Both grievance procedures begin with the Director of Curriculum. However, the Head Librarian might have begun a first step with a principal if the grievance concerned her library media work.

The salary of the Library Supervisor position is derived one-half from the teachers unit and one-half from the Administrator's unit. When the Head Librarian position had been in the Association's unit the Association attempted to negotiate one complete salary for that title, but no agreement was reached. Most of the benefits received now by the Library Supervisor are the same as received by the Head Librarian, however where there is a difference (between what the Association's unit and Administrator's unit provides) the Board gives the Library Supervisor the better benefit. For example, the Library Supervisor received five paid vacation days for the summer of 1984 (and presumably 1985) as did all other supervisors.

Analysis

It is evident by several of the instant changes that the Board intended to restructure the Head Librarian position to be as equivalent as possible to the supervisors in the Administrator's unit. Having reviewed the facts it is clear tht either the Association's unit, or the Administrator's unit would be

"appropriate" for inclusion of the Supervisor of Library/Media Services. The Library Supervisor position has elements of community of interest with both units. The issue here, therefore, is which unit is the "most appropriate" unit.

Despite the Board's attempt to restructure the Head Librarian position into the Library Supervisor position to justify its placement into the Administrator's unit, there are some obvious and critical differences between the Library Supervisor and other supervisors in the Administrator's unit. The Library Supervisor is only a half-time supervisor, and although her office is now in the Board of Education building, she is on a different floor from other supervisors and consequently has little interaction with the other supervisors. In addition, because the Library Supervisor also performs library media services, she is almost always unavailable to attend staff meetings with other supervisors. Most important, however, the Library Supervisor is apparently the only supervisor who is evaluated by two members of the Administrator's unit. That puts the employee holding the Library Supervisor's title in greater conflict than other supervisors, with other administrators in the same unit.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") provides at §5.3 that supervisors shall not be included in units with non-supervisory employees. The Act, however, does not, on its face, restrict a unit with different levels of supervisors. Indeed, the Commission has approved units of supervisors even where some supervisors (such as principals)

evaluated other supervisors (such as vice principals) in the same unit. In re Edison Twp. Bd.Ed., D.R. No. 82-8, 7 NJPER 560 (¶12249 1981); In re Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (¶10091 1979); In re Lakewood Bd.Ed., D.R. No. 78-44, 4 NJPER 212 (¶4105 1978). Consequently, the Administrator's unit is not, per se, inappropriate even though the Director of Curriculum evaluates the supervisors.

The New Jersey Supreme Court, however, established in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) that a title or group of titles may not be included in a negotiations unit where there has been--or would be--actual, or the potential for substantial conflict of interest. There is always the potential for conflict when one employee (supervisor) evaluates another employee (supervisor), however, there is greater conflict when both employees are in the same unit. But where, as here, one employee is evaluated by two other employees in the same unit, there is the potential for substantial conflict of interest.

In the instant dispute the Library Supervisor is evaluated by the Director of Curriculum for her supervisory duties, and by a principal for her library media duties. Since both the Director and the principals are included in the Administrator's unit, the inclusion of the Supervisor of Library/Media Services in that unit would create conflict for the Library Supervisor more so than for any other supervisor, as well as create conflict for the principal as compared with any other supervisor. It would create the type of conflict found to be inappropriate by Wilton, supra.

In comparison, there is no conflict with the placement of the Library Supervisor in the Association's unit. The Library Supervisor is neither evaluated by, nor evaluates anyone in the Association's unit. Although the Library Supervisor has, in other respects, a greater community of interest with the supervisors in the Administrator's unit than with the department chairpersons in the Association's unit, it has the potential for substantial conflict if placed in the Administrator's unit, but no conflict if placed in the Association's unit. Accordingly, I find that the Association's unit is the "most appropriate unit for the Library Supervisor given the circumstances as they currently exist."^{1/}

Recommendation

Based upon the entire record presented in this matter and the above analysis, I recommend that the parties agree to place the Supervisor of Library/Media Services in the Association's unit.

Arnold H. Zudick
Commission Designee

Dated: September 26, 1985
Trenton, New Jersey

^{1/} The controlling element in this matter is that the Library Supervisor is evaluated by two members of the Administrator's unit. If the Library Supervisor was treated like other supervisors and only evaluated by the Director of Curriculum, then no "substantial conflict" of interest would exist. Other than the evaluation structure, the Library Supervisor has a greater community of interest with the Administrator's unit than with the Association's unit even considering her half-time work. Given the evaluation structure, however, the Library Supervisor cannot be included in the Administrator's unit. The potential for "substantial conflict of interest" overrides the other elements of community of interest.