

D.R. NO. 92-31

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

In the Matter of

NO. ARLINGTON BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-92-14

NO. ARLINGTON EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation finds that district supervisors and department chairpersons are supervisors within the meaning of the Act and removes them from the teachers' unit. The Director rejects the Association's argument that established practice permits these supervisors continued unit inclusion. No facts were present to show a pre-1968 relationship and their inclusion in the unit with teachers creates a conflict of interest.

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Appearances:

For the Public Employer  
Carlin & D'Elia, attorneys  
(Anthony V. D'Elia, of counsel)

For the Employee Representative  
Bucceri & Pincus, attorneys  
(Louis P. Bucceri, of counsel)

DECISION

On September 20, 1991, the North Arlington Board of Education ("Board") filed a Petition for Unit Clarification with the Public Employment Relations Commission ("Commission"). The Board seeks to remove department chairpersons and district coordinators ("department heads") from the collective negotiations unit of teachers represented by the North Arlington Education Association ("Association"). The Board argues that these employees are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Board also asserts that the continued inclusion of department chairpersons and

district coordinators in the unit with teachers creates a prohibited conflict of interest.

The Association denies that these employees are statutory supervisors and objects to their removal from its unit. It further asserts that the Association has a pre-1968 negotiations relationship with the Board which exempts it from the statutory mandate to separate supervisors from non-supervisory employees. It also argues that there has been no actual conflict of interest caused by the chairpersons' inclusion in the unit, and that any potential conflict is not relevant given the long history of the department chairpersons' inclusion in the unit.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.6. The assigned staff agent conducted an investigatory conference on October 30, 1991, at which the parties asserted certain facts. The Board supplemented its factual assertions with written submissions on January 6, 1992. The Association has not rebutted the Board's assertions. We make the following factual findings:

There are about 115 professional employees (teachers, guidance counsellors, etc.) as well as secretaries, custodial/maintenance employees and bus drivers represented in the Association's unit. When this petition was filed, the parties were abiding by the terms of their most recently expired collective negotiations agreement; that agreement expired on June 30, 1991. In February 1992, (after this petition was filed), the parties ratified

a successor agreement that covers the unit for the period from July 1, 1991 through June 30, 1994.

The Board has always employed department chairpersons and district coordinators. The Board has 12 such positions which it wishes to remove from the unit. The three district-wide coordinators are: the Director of Child Study, the District Mathematics Supervisor and the Bilingual Supervisor. There are nine department chairperson (or "director") positions: Director of Athletics, Director of Industrial Arts, Director of Science, Director of Physical Education, Director of Business Education, Director of Social Studies, Director of English, Director of Special Needs<sup>1/</sup> and the Director of Mathematics.<sup>2/</sup> The district supervisors (including the Director of Child Study) have district-wide responsibility to supervise and evaluate teachers within their disciplines. They report to the Superintendent. Department directors (department chairpersons) have responsibility to coordinate and supervise their respective subject areas in the high school. They report to the high school principal.

While the department chairpersons still teach two or three classes per day, their duties are primarily administrative. They supervise the department's curriculum development, assign teaching load to each of the department's teachers, and consult with teachers

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1/ The District Bi-Lingual Supervisor also holds this title.

2/ The District Mathematics Supervisor also holds this title.

in their department regarding their teaching techniques. All but the Director of Science has a New Jersey State Supervisor's Certificate.<sup>3/</sup>

The department chairpersons are responsible for conducting an initial screening and interview for all teacher candidates within their subject area. The department chairperson then recommends applicants to the Superintendent or high school principal for a subsequent interview.

Since 1982, the Board's policy has been that the department chairpersons and district coordinators perform all the formal observations and evaluations of tenured and non-tenured teachers. They also make recommendations through the year-end reports for retention (or non-retention) and tenure (or non-tenure) of teachers within their respective departments. While the Superintendent (and in some instances, the principal) reviews evaluations and end of-the-year recommendations, they rely primarily on the recommendations and expertise of the department heads. These recommendations concerning contract renewal and tenure are almost always followed.

The department head position is the first step in the grievance procedure in the Association's contract covering teachers. At least one grievance was filed with a department head

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<sup>3/</sup> The Board has advised us that the employee in this title is not presently functioning as a supervisor because of the absence of the supervisor's certificate. The Board intends to abolish this title at the end of the school year.

-- in 1985, by high school physical education teachers. In the early 1980's, a grievance was filed by a teacher involving the assignment of teaching loads. In 1990, a department chairperson was required to testify before the Office of Administrative Law against a teacher facing tenure charges.

The Association contends that the Director of Athletics should be considered separately because he supervises only coaches. The district's coaching staff is selected primarily from among the Board's full-time teaching staff. Compensation for coaching assignments is governed by the Association's contract with the Board. The Director of Athletics assists in the selection of coaches, evaluates their coaching performance and recommends them for renewal (or non-renewal) of their coaching assignment. Under the parties' contract, a coach may initiate a grievance with the Director of Athletics as the "immediate supervisor."

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The first issue is whether the district coordinators and department chairpersons are supervisors as defined by N.J.S.A. 34:13A-5.3 and 5.6. Section 5.3 provides, in part:

...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 5.6 provides, in part:

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

In numerous decisions concerning department chairpersons, we have decided that department chairpersons are supervisors within the meaning of the Act. Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. 85-116, 11 NJPER 368, (¶16130 1985); Willingboro Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984), Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶14202 1983), req. for rev. den., P.E.R.C. No. 84-80, 10 NJPER 56 (¶15030 1984); Bloomfield Bd. of Ed., D.R. No. 82-56, 8 NJPER 383 (¶13175 1982), aff'g H.O. No. 82-13, 8 NJPER 262 (¶13113 1982); Paterson Bd. of Ed., D.R. No. 82-46, 8 NJPER 250 (¶13110 1982); Parsippany-Troy Hills Bd. of Ed., D.R. No. 82-51, 8 NJPER 283 (¶13128 1982), aff'g H.O. No. 82-12, 8 NJPER 178 (¶13077 1982); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶13062 1982), aff'g H.O. No. 82-8, 7 NJPER 688 (¶12309 1981).

This case is not an exception. Since 1982, the Board has required district coordinators and department chairpersons to obtain supervisory certifications and to formally observe and evaluate teachers in the classroom. The Superintendent and the high school principal place great reliance on personnel recommendations of the department heads and actually defer to their subject matter expertise. The recommendations concerning initial hiring and the renewal or non-renewal of contracts of non-tenured teachers are almost always followed. The department heads' role in the evaluation and the hiring processes and their record of effective

recommendations establish their substantial power to affect, negatively or positively, the careers of teachers in the district. Accordingly, I am inclined to conclude that the district coordinators and department chairpersons are supervisors within the meaning of the Act.<sup>4/</sup>

The 5.3 statutory exception of established practice is not applicable to this case. West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973). The parties did not negotiate their first contract until after the early 1970's. Even assuming that a statutory exception existed here, I find that both changed circumstances and conflicts of interest warrant the removal of chairpersons from the negotiations unit. In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court 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. [Wilton at 425].

Beginning in the 1970's, department chairpersons' roles in the teacher observation and evaluation processes have grown considerably. This evolution is marked by their increased role in the observation of teachers, participation in the screening process

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<sup>4/</sup> I do not see any need for exceptional treatment for the Athletics Director. He has the same responsibilities to select, supervise, evaluate and recommend retention as chairpersons in other departments. The coaches he evaluates are unit personnel represented by the Association.

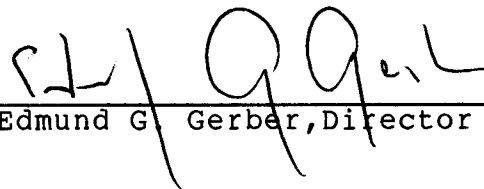


for hiring teachers and their input into decisions concerning the renewal or non-renewal of teachers. Cinnaminson Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981). Moreover, the role of department chairpersons in the Association grievance procedure has created both an actual and a potential conflict of interest between the chairpersons' supervisory role and their role as unit members.

These circumstances warrant removing the department heads from the unit. Wilton; Watchung Hills; Ramapo-Indian Hills.

Accordingly, the district coordinators and department chairpersons are hereby removed from the Association's unit of non-supervisory personnel.<sup>5/</sup> This determination is effective immediately. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: May 18, 1992  
Trenton, New Jersey

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<sup>5/</sup> I decline to remove the Director of Science from the unit, because lacking a supervisor's certificate, he can neither supervise nor evaluate teachers. Accordingly, there is no basis to remove the position from the unit at this time. In any event, the Board intends to abolish the title at the end of this school year.