

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

In the Matter of

LAKESWOOD BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-77-96

LAKESWOOD ADMINISTRATORS' ASSOCIATION,
AFSA,

Petitioner.

SYNOPSIS

In agreement with the findings and recommendations of a Hearing Officer, the Director of Representation finds that Department Chairpersons and Educational Specialists may vote to be included in a collective negotiations unit presently consisting of Principals, Assistant Principals and Federal Program Directors. The Director finds that the Department Chairpersons and Educational Specialists are supervisors within the meaning of the Act. The Director has ordered that a secret ballot election be held to determine if the Department Chairpersons and Educational Specialists as well as the Federal Program Directors desire to be represented by the Lakewood Administrators' Association, AFSA.

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LAKWOOD ADMINISTRATORS' ASSOCIATION,
AFSA,

Petitioner.

Appearances:

For the Public Employer
John Miraglia, Labor Consultant

For the Petitioner
William W. Thompson, II, Esq.

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning representation of employees, a hearing was held before Hearing Officer James F. Schwerin, on January 31, 1978, at which time all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. The Lakewood Administrators' Association, AFSA (the "Association") submitted a post-hearing brief on February 27, 1978; the Lakewood Board of Education (the "Board") did not submit a post-hearing filing. The Hearing Officer issued his Report and Recommendations on March 29, 1978, a copy of which is annexed hereto and made a

part hereof. No exceptions to the Hearing Officer's Report and Recommendations have been filed.

The undersigned has considered the entire record including the Hearing Officer's Report and Recommendations and the transcript and on the basis thereof finds and determines as follows:

1. The Lakewood 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., as amended (the "Act"), the employer of the employees involved herein, and is subject to the provisions of the Act.

2. The Lakewood Administrators' Association, AFSA, is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association is the exclusive representative of a negotiations unit consisting of Principals, Assistant Principals, and Directors employed by the Board. The Association has filed the instant Petition for Certification of Public Employee Representative seeking to add Department Chairpersons, Educational Specialists and Federal Program Directors employed by the Board to the above-existing unit. The Board contends that the Department Chairpersons and Educational Specialists are not supervisors within the meaning of the Act and have a conflict of interest with the employees currently in the unit. As to the Federal Program Directors, the Board on the record at the hearing, withdrew its objections to the inclusion of this title. Accordingly, there is a question concerning the representation of certain employees and the matter is appropriately

before the undersigned for determination.

The Hearing Officer found that both the Department Chairpersons and Educational Specialists were supervisors within the meaning of the Act. The basis for his finding was the involvement of the personnel in these titles in curriculum development, teacher evaluations and recommendations with respect to the hiring of new personnel and the retention of non-tenured teachers. Overall, the Hearing Officer found that the people in these titles performed many of the same functions that Assistant Principals performed. Assistant Principals are currently in the unit represented by the Petitioner.

The Board also contended that these titles should not be included in the existing unit due to the difference in workyear (ten month as opposed to twelve month) and due to the evaluation of Department Chairpersons by the Principal. The Hearing Officer discounted the former argument as having no merit, and rejected the latter argument due to his finding that some of the current unit members are also evaluated by the Principal.

Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and noting the absence of exceptions thereto, the undersigned finds that there is ample evidence to support the Hearing Officer's findings of fact, and these are specifically adopted. The undersigned agrees with the Hearing Officer that the Department Chairpersons and Educational Specialists are appropriate for inclusion in the Association's negotiations unit. The record reveals that the Department Chairpersons and

Educational Specialists are supervisors within the meaning of the Act due to the effective recommendations made by these personnel with respect to the hiring of new personnel and the retention of non-tenured personnel. These supervisory employees share a substantial community of interest with the Association's unit members, often working in conjunction with unit members in areas of curriculum determination and teacher evaluation. The Board's suggestion that the evaluation of Department Chairpersons by Principals produces a conflict of interest is discounted by record evidence that the similar evaluation by Principals of Assistant Principals, who are undisputed unit members, has not evidenced a conflict of interest.

Accordingly, the undersigned directs that a secret ballot election shall be conducted among the Department Chairpersons, Educational Specialists, and Federal Program Directors. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are 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, were on vacation, or temporarily laid-off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit 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 public employer is directed to file with the undersigned and with the employee organizations an eligibility list, consisting of an alphabetical listing of names of all eligible voters together with their last known 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 Lakewood Administrators' Association with a 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 purposes of collective negotiations by Lakewood Administrators' Association, AFSA.

The majority representative shall be determined by a majority of valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman Director

DATED: May 23, 1978
Trenton, New Jersey

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

In the Matter of

LAKEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-77-96

LAKEWOOD ADMINISTRATORS' ASSOCIATION,
AFSA,

Petitioner.

SYNOPSIS

A Commission Hearing Officer finds that Department Chairpersons, Educational Specialists, and Federal Program Directors are supervisors within the meaning of the New Jersey Employer-Employee Relations Act and have a community of interest with Principals, Assistant Principals and Directors. He recommends that an election be ordered in which the former three titles vote on whether they wish to be included in a unit with the latter three to be represented by Petitioner for collective negotiations.

A 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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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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LAKEWOOD BOARD OF EDUCATION,

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-and-

Docket No. RO-77-96

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AFSA,

Petitioner.

Appearances:

For the Public Employer, John Miraglia, Labor Consultant

For the Petitioner, William W. Thompson, II, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On November 29, 1976, the Lakewood Administrators' Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to add Department Chairpersons, Educational Specialists and Federal Program Directors employed by the Lakewood Board of Education ("Board") to its existing unit of Principals, Assistant Principals and Directors. Pursuant to a Notice of Hearing, a hearing was held before the undersigned Commission Hearing Officer on January 31, 1978, in Newark at which both parties had the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. The Association submitted a brief on February 27, 1978, while the Board chose not to submit

Upon the entire record the Hearing Officer finds that:

1. The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act") and is subject to its provisions.

2. The Association is an employee organization within the meaning of the Act and is subject to its provisions.

3. A Petition for Certification of Public Employee Representative having been filed and the employer having objected to the appropriateness of the unit sought, a question concerning representation exists and the matter is properly before the Hearing Officer for a Report and Recommendations.

A set of stipulations was placed in evidence as a joint exhibit. In it the parties stipulate that the present unit is composed of supervisors within the meaning of the Act, but the sought-after titles are only stipulated to have Department of Education supervisor certificates (as do the current unit's people) without reference to their status under the Act. The Board contends that Department Chairpersons and Educational Specialists (or Subject Supervisors as they are also known) are not supervisors within the meaning of the Act and have a conflict of interest with the titles now in the unit.^{1/} The Association contends that these two titles are supervisors and that they do have a community of interest with the Principals, Assistant Principals, and Directors.

As established by the stipulations, a job description, and the testimony of Conrad Lindemann, Department Chairman for Science at the high school, Department Chairpersons are heavily involved in curriculum development in their field, working with Principals, Assistant Principals, Subject Supervisors or Directors (apparently each subject area would have one or the other). They do teacher evaluations in conjunction with Principals and Assistant Principals and are themselves evaluated by Principals. They teach up to a maximum of three

^{1/} On the record at the hearing, the Board withdrew its objections to inclusion of Federal Program Directors in the unit.

periods a day. Mr. Lindemann testified that when new personnel are to be hired for his department, he interviews applicants and passes along his top two or three choices to the Principals, listing order of preference. As far as he could recall, his top choice was hired each time. While no formal recommendations are made as to retention or granting of increment on the evaluation form filled out on teachers by Department Chairpersons, Principal George Gamvas testified that he makes such decisions on a consultive basis with the Assistant Principal and Department Chairperson on the rehiring of non-tenured teachers, and if one or the other is strongly negative, he won't recommend the retention of a teacher. Negativism in an evaluations was stated to be highly influential in a decision as to whether to rehire.

The job functions of Assistant Principals and Department Chairpersons were characterized as being almost the same except that the Assistant Principals are not linked to one department and there was no indication that they teach. Changes in duties for teachers can be recommended by Department Chairpersons and these recommendations are almost always followed.

The functions of Department Chairpersons in Lakewood are quite similar to those described in In re River Dell Bd. of Education, E.D. No. 76-28, 2 NJPER 89 (1976). The Executive Director affirmed the Hearing Officer's finding that the Department Chairmen therein were supervisors within the meaning of the Act. This was based on the fact that they initiated the hiring procedure through interviewing applicants and sending the top candidate to the principal who then interviewed the applicant. If he agreed with the Department Chairman, the name would then be submitted to the Superintendent. Principals and Department Chairmen also shared evaluation duties which controlled decisions on renewal. The undersigned is convinced that the River Dell decision is applicable herein and

and that the Lakewood Department Chairpersons are supervisors. ^{2/}

Mathematics Subject Supervisor Francis Nace testified that the four Educational Specialists perform interview functions quite similar to those of Department Chairpersons, and in fact often do so in conjunction with them. A candidate would have to be recommended by the Principal, Department Chairperson and Subject Supervisor in order to be considered by the Superintendent. Evaluation of teachers is also a regular portion of his duties, and Mr. Nace testified that on his recommendation teachers have had their duty assignments changed. The Hearing Officer concludes that the nature of the Subject Supervisors' duties in the hiring and evaluative processes are substantially similar to those of Department Chairpersons and therefore they are supervisors within the meaning of the Act.

The Board further asserts that there is a lack of community of interest between the existing unit and the titles herein disputed. This is not supported by the record. Both Department Chairpersons and Educational Specialists meet regularly with the current unit personnel to work together on curriculum development. Subject Supervisors, in their fields, are the counterparts of Directors in other subjects, while without rebuttal Messrs. Gamvas and Lindemann indicated that Department Chairpersons are performing many of the same functions as Assistant Principals.

Two arguments are put forth by the Board. The first is that Department Chairpersons are ten-month employees while the others are twelve month. There is no reason apparent to the undersigned why this would create any great problem in negotiations or cause any conflict to arise. Second, the Board notes that

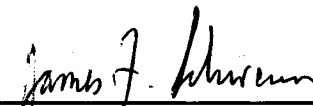
^{2/} The Lakewood Education Association formerly represented Department Chairpersons in a unit with teachers, but refused to continue to represent "supervisors." While this is in no way conclusive, it is a further indication of their actual role in the Lakewood administrative structure.

Department Chairpersons are evaluated by Principals. In the current unit, Assistant Principals are evaluated by Principals and no conflict has been claimed to exist as a result. In re State of New Jersey and Professional Assn. of New Jersey Dept. of Education, 64 N.J. 231 (1974) directs the Commission to find the most appropriate unit and this has meant that the most broadly based appropriate units are favored. Herein there can be no real question but that all of these administrative titles work together in both curriculum and teacher evaluation, and this outweighs anything that can be argued against the existence of a community of interest.

RECOMMENDATION

Upon the entire record and for the above-stated reasons, it is recommended that an election be ordered in which Department Chairpersons, Educational Specialists and Federal Program Directors vote as to whether they wish to be represented in a unit with Principals, Assistant Principals and Directors for the purpose of collective negotiations by the Lakewood Administrators' Association.

Respectfully submitted,



James F. Schwerin
Hearing Officer

DATED: Trenton, New Jersey
March 29, 1978