D.R. NO. 84-5

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

In the Matter of

RUMSON-FAIR HAVEN REGIONAL
BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-81-25

RUMSON-FAIR HAVEN EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation determines that the Board's Athletic Director, who administers the school district's athletic program and who also teaches, is not a supervisor within the meaning of the Employer-Employee Relations Act, and therefore may be placed in the teachers' unit. The factual record reviewing the three year period of operation under the full time Athletic Director position did not demonstrate that the Athletic Director exercised effective recommendation power regarding the hire, discharge or discipline of the district's athletic coaches.

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RUMSON-FAIR HAVEN EDUCATION
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Kalac, Newman & Griffin, attorneys
(Peter P. Kalac of counsel)

For the Petitioner
Klausner & Hunter, attorneys
(Stephen B. Hunter of counsel)

DECISION

On October 27, 1980, the Rumson-Fair Haven Education Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"), seeking a determination that the position of Athletic Director employed by the Rumson-Fair Haven Regional Board of Education ("Board") should be included in the negotiations unit represented by the Association. The Board contends that the Athletic Director is a supervisor within the meaning of the New Jersey Employer-

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and thus cannot be represented by the Association.

Pursuant to a Notice of Hearing dated August 25, 1981, a hearing was held before Commission Hearing Officer Mark A. Rosenbaum on December 7, 1981, at which time all parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Both parties submitted post-hearing briefs, the last of which was received on July 6, 1982. The Hearing Officer issued his Report and Recommendations on August 13, 1982, a copy of which is attached hereto and made a part hereof. Thereafter, on September 10, 1982, the Association filed exceptions to the Report and Recommendations. The Board did not file any exceptions. The undersigned remanded the matter to the Hearing Officer on February 25, 1983, for the purpose of developing a more complete factual record. A hearing was subsequently conducted on April 14, 1983. There were no post-hearing submissions and the record has been transferred directly to the undersigned for determination.

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

1. The Rumson-Fair Haven Regional Board of Education is a public employer within the meaning of the Act, is the employer

of the employee involved herein, and is subject to its provisions.

2. The Rumson-Fair Haven Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association has filed a Petition for Clarification of Unit seeking a determination that the title of Athletic Director be included within its negotiations unit, arguing that this position is not supervisory in nature.

4. The Board argues that the Athletic Director is a supervisor within the meaning of the Act and therefore cannot be included in a unit with nonsupervisory employees.

5. The Hearing Officer reached the following conclusions: (1) the Athletic Director is a supervisor within the meaning of the Act; (2) the Association is the majority representative of a unit containing nonsupervisory employees; (3) neither established practice, prior agreement, nor special circumstances exist which could allow the Association to represent supervisors; (4) that potential conflicts of interest exist between the Athletic Director and members of the negotiations unit represented by the Association; and (5) that the negotiations unit represented by the Association should be clarified to exclude the Athletic Director.

The Association excepted to the Hearing Officer's Report and Recommendations insofar as it was found that the Athletic Director is a supervisor within the meaning of the Act. The Association also excepted to the Hearing Officer's finding that a

"sufficient Wilton-type potential conflict of interest exists [between the Athletic Director and members of the negotiations unit] to warrant exclusion of the Athletic Director from the negotiations unit represented by the Association."

6. The undersigned, in examining the record herein, has considered the record developed at the initial hearing, as well as the additional testimony elicited from Gerald Matthews, the Athletic Director, which was presented at the remanded hearing.

The record reveals that prior to the 1980-81 academic year, the position of Athletic Director was a stipended, extra-curricular position in the negotiations unit represented by the Association. During the 1979-80 academic year, the Board was advised that the then incumbent Athletic Director would be leaving the position. The Board then made a determination to eliminate the extracurricular nature of the position. The Board constituted the Athletic Director position as a regular full time position, and hired Matthews to fill it. As the Athletic Director, Matthews partially teaches as a physical education instructor and otherwise administers the district's athletics programs. Matthews also functions as the basketball coach, but this assignment is not constituted as part of his athletic director functions. During subsequent negotiations, the Board and the Association concluded an agreement for the period of July 1, 1980 to June 30, 1982 which did not include an extracurricular stipend for the Athletic Director

position as it had in the past. [1/] The title, Athletic Director, however, was inserted in the recognition clause of the 1981-83 collective negotiations agreement between the Board and the Rumson-Fair Haven Supervisors Association ("Supervisors"). [2/]

The Board asserts that when the Athletic Director was an extracurricular position it was not supervisory in nature. However, the Board asserts that, with the creation of the full time Athletic Director position, it vested the Athletic Director with the supervisory authority to hire, to evaluate, and to effectively recommend nonrenewal of coaches. The Board claims that the coexistance of the supervisory Athletic Director with the nonsupervisory coaches in the same unit is inappropriate.

The Association argues that the Athletic Director does not formally evaluate any Board employee, and that the Athletic Director's role in the hiring process is a subordinate one, subject to the review of the Assistant Superintendent of Schools, the Superintendent, the Board of Education collectively and individual members of the Board.

1/ The Board argues that by concluding this agreement, the Association waived its right to assert a claim to the unit placement of the Athletic Director position. Under the circumstances, the Board's position is found to be without merit. Since the Board had abolished the Athletic Director as an extracurricular position, there was no stipend to negotiate. There is no record evidence to support the claim that the Association was abandoning its claim to represent the position. In fact, the Association filed the instant Petition within three months of the execution of the contract.

2/ The Supervisors' Association declined to intervene in this proceeding.

A public employee is a supervisor within the meaning of the Act if he or she hires, discharges or disciplines employees or effectively recommends the same. In re Tp. of Cherry Hill, P.E.R.C. No. 30 (1970).

The Athletic Director devotes a portion of his day to his teaching responsibilities (two classes) and the balance of his day to the administrative responsibilities with respect to the district's athletic program. As a physical education instructor he does not exercise any supervisory responsibilities and he functions in the same manner as other physical education instructors. As Athletic Director, his functions include insuring that athletic events are properly scheduled; arranging for sites, officials, and transportation for scheduled events; and managing the athletic budget. From the record, it appears that the Athletic Director is also involved, to some degree, in the hiring of new coaches, the retention of existing coaches, and the observation of the performance of coaches.

Matthews, in describing his role in the hiring process, indicates that both he and the Board's Superintendent have been involved in the recruitment of candidates for coaching vacancies. While the Superintendent testified that he is the person ultimately responsible for recommending the hiring of coaches, he also testified that he has always forwarded Matthews' hiring recommendations to the Board. The hiring of coaches must be accomplished within certain guidelines established by Board and Department of Education

policy. In many instances, this has limited the selection process to one available applicant. The record, including Matthews' testimony, shows that not all of the Athletic Director's hiring recommendations have been followed during his three years of tenure. Moreover, it appears that the Board unilaterally intervened to create an aide consultant position in the tennis program and the Athletic Director testified that he did not play a role in the designation of this position. Candidates recommended by both Matthews and the Superintendent for the positions of football and soccer coaches have been rejected by the Board. Accordingly, on the basis of this record, it appears that the Athletic Director's involvement in the hiring process is limited to approving the single applicants for positions and, where there are several applicants, or where the Board takes a specific interest in the particular sport, the Athletic Director's recommendations are not effective and the Board makes its own decisions based on its own considerations.

The record also reveals that the Athletic Director could not recall recommending the nonretention of any incumbent coach. 3/ Decisions with regard to retention are made jointly by Matthews and the Superintendent. The participation of the Superintendent with the Athletic Director in the renewal area indicates that the

3/ On one occasion, the Athletic Director and the Acting Superintendent had agreed not to recommend the reappointment of a coach who was not a teaching staff member; however, it appears that their recommendation as to this matter was never forwarded to the Board inasmuch as the coach never reapplied for the position.

Athletic Director does not have sufficient independent authority to make effective recommendations even in this limited area. On the basis thereof, the undersigned concludes that the Athletic Director does not make effective recommendations with regard to renewal decisions.

The undersigned has carefully reviewed the record with regard to the Athletic Director's responsibilities for observation and evaluation. The record indicates that, to date, the Athletic Director has not formally observed or evaluated coaches. Under the present "evaluation" system, Matthews testified that he observes coaches and informally discusses problems with them. The Superintendent testified that Matthews discussed with him his oral evaluations of coaches. Matthews testified that it is anticipated that during the 1983-84 school year the Athletic Director will implement a formal written evaluation of Athletic Department Coaches. However, to date, the record does not establish an effective evaluative role for the Athletic Director. 4/

This finding is further supported by the fact that the Athletic Director does not formally observe or evaluate athletic department personnel or make recommendations covering tenure or

4/ The undersigned acknowledges that the job description for the Athletic Director sets forth certain supervisory responsibilities. However, the actual role of the Athletic Director as established in the record is determinative. In re Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). Should the Athletic Director's responsibilities change to the point that the position becomes supervisory within the meaning of the Act, the Board has the discretion to file an appropriate petition to seek the removal of the title from the Association's negotiations unit.

increments. 5/ In addition, he does not participate in the formulation of Professional Improvement Plans. With regard to the present evaluation system, Matthews testified that he would observe the coaches and, if there were any problems, he would talk to them about the problems. The Board's Superintendent testified that Matthews gave him the oral evaluations of all coaching staff personnel. However, the undersigned is not pursuaded that these informal oral evaluations are sufficient to warrant a finding that the Athletic Director has the ability to make effective recommendations.

Having found that the Athletic Director does not hire, discharge or discipline athletic department personnel or make effective recommendations in those areas, the undersigned determines that the Athletic Director is not a supervisor. Further, any conflict of interest which the Board claims will arise as the result of the Athletic Director's duties has not been demonstrated in the record.

Accordingly, the undersigned clarifies the Association's unit to include the Athletic Director effective immediately. 6/

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Carl Kurtzman, Director

DATED: August 9, 1983
Trenton, New Jersey

5/ Matthews testified that beginnning with the 1983-84 school year, a formal written evaluation of athletic department personnel will be implemented.

6/ See In re Clearview Reg. H/S Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

H.O. NO. 83-3

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

In the Matter of

RUMSON-FAIR HAVEN REGIONAL
BOARD OF EDUCATION,

Public Employer,

-and- DOCKET NO. CU-81-25

RUMSON-FAIR HAVEN EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that the Athletic Director employed by the Rumson-Fair Haven Regional Board of Education be excluded from a collective negotiations unit represented by the Rumson-Fair Haven Education Association.

The Hearing Officer recommends a finding that the Athletic Director is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act. He further recommends findings that neither established practice, prior agreement, nor special circumstances exist which would permit the inclusion of the Athletic Director in a negotiations unit which includes non-supervisory personnel. The Hearing Officer also recommends a finding that a conflict of interest compels the exclusion of the Athletic Director from the negotiations unit represented by the Education Association.

A Hearing Officer's Report and Recommendation is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director or 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.

H.O. NO. 83-3

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

In the Matter of

RUMSON-FAIR HAVEN REGIONAL
BOARD OF EDUCATION,

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-and- DOCKET NO. CU-81-25

RUMSON-FAIR HAVEN EDUCATION
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Kalac, Newman & Griffin, attorneys
(Peter P. Kalac of counsel)

For the Petitioner
Klausner & Hunter, attorneys
(Stephen B. Hunter of counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On October 27, 1980, the Rumson-Fair Haven Education Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"), seeking to resolve a dispute between the Association and Rumson-Fair Haven Regional Board of Education ("Board"). The Association contends that the Athletic Director in the employ of the Board should be included in the negotiations unit represented by the Association. The Board asserts that the Athletic Director is a supervisor within the meaning of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and thus cannot be represented by the Association.

Pursuant to a Notice of Hearing dated August 25, 1981, a hearing was held before the undersigned on December 7, 1981. At the hearing, all parties were given the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Both parties submitted post-hearing briefs.

Based on the entire record of these proceedings, the Hearing Officer finds that:

1. The Rumson-Fair Haven Regional Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Rumson-Fair Haven Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association has filed a Petition for Clarification of Unit seeking a determination that the title of Athletic Director be included within the their negotiations unit and the matter is appropriately before the undersigned for report and recommendations.

4. N.J.S.A. 34:13A provides, in pertinent part:

> 5.3 ... 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 non-supervisory personnel to membership. ...
>
> * * *
>
> 6(d) The division shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which included (1) both supervisors and nonsupervisors. ...

5. The instant petition concerns the position of Athletic Director. Prior to the 1980-81 academic year, the Athletic Director position was represented by the Association, and was a stipended, extracurricular position. 1/ During the 1979-80 academic year, the Board became aware of the likely resignation or retirement of its incumbent Athletic Director. 2/ At that time, the Board determined to change the Athletic Director position from a stipended, extracurricular position to " ... have the Athletic Director in a supervisory role, which could impact upon the employment of coaches, the termination of coaches, and the evaluation of the coaching and total athletic program." 3/ In subsequent negotiations between the Board and the Association, a collective agreement was reached for a period of July 1, 1980 to June 30, 1982. That contract did not include a stipend for

1/ Exhibit J-1 (Appendix B)

2/ Transcript ("T") pp. 77, 78

3/ T at p. 78

the Athletic Director position. [4/] Subsequently, the Board and the Rumson-Fair Haven Supervisors Association ("Supervisors") concluded a collective agreement for the period of July 1, 1981 to June 30, 1983, which included the Athletic Director position within its recognition clause. [5/]

6. Several coaches testified on behalf of the Association. Without exception, the coaches indicated that the present Athletic Director, Mr. Gerry Matthews, never formally evaluated their performances. [6/] Some coaches testified that Matthews occasionally observed them during games or meets [7/] and that they met with Matthews as a group only to receive their schedules and other paper work prior to the fall athletic season. [8/]

7. Dr. William Greenham, the Board's Superintendent of Schools testified that Matthews had extensive involvement in the evaluation and hiring of coaches in the district. While Greenham was ultimately responsible for recommending the reappointment of incumbent coaches to the Board, Matthews previously reviewed all

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4/ Exhibit J-2. The Board argues that by concluding this agreement, the Association waived its right to claim the Athletic Director position. However, a clarification of unit petition is appropriate to seek inclusion of existing titles which the parties failed to include in their most recent contract. A Commission determination to include such a title in a negotiations unit would become effective upon the expiration of the parties' current contract. Since the instant agreement between the parties (Exhibit J-2) expired on June 30, 1982, the waiver argument presented by the Board is moot. Clearview Reg. H/S Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

5/ Exhibit J-3. The Supervisors were invited to participate in this matter, but declined to assert intervenor status. Exhibit A-14; T at p. 123.

6/ T at pp. 26, 42, 61 and 67

7/ T at pp. 43, 62 and 68

8/ T at pp. 28 and 68

candidates with Greenham. 9/ On numerous occasions Matthews gave Greenham oral informal evaluations of all coaching staff. 10/ Greenham also testified that Matthews initiated conferences with certain coaches and assistant coaches to review the poor attendance patterns of certain coaches. 11/ These conferences resulted in the satisfactory resolution of the attendance problems. 12/ Greenham also testified that he always forwarded Matthews' recommendations on retention, 13/ nonretention, 14/ and hiring of coaches 15/ and athletic personnel 16/ to the Board without alteration, and that the Board, with only one exception, 17/ implemented all of Matthews' recommendations. Greenham himself is responsible for evaluation of Matthews' performance, 18/ both as Athletic Director and as Head Basketball Coach. 19/

9/ T at p. 74

10/ T at pp. 74, 83-85, 104-105

11/ T at pp. 84, 107

12/ Id.

13/ T at pp. 83-85

14/ T at pp. 74, 87, 104-105

15/ T at p. 74, 90

16/ T at p. 74

17/ T at pp. 89, 104-105. One recommended candidate withdrew from consideration for a coaching position.

18/ T at 82. While Matthews, as Athletic Director, is also responsible for teaching physical education courses, the Physical Education Department Chairperson does not evaluate Matthews' teaching performance.

19/ Of course, the position of Head Basketball Coach is not a subject of the instant petition.

ANALYSIS

The Board argues that the Athletic Director is a supervisor within the meaning of the Act and therefore may not be represented for the purposes of collective negotiations by the Association. 20/ It is undisputed that the Association does not represent supervisory personnel, other than in their stipended extracurricular capacities. The Association does not contend, nor does the record suggest, that "established practice" or "prior agreement" exist herein which could permit a supervisor to be represented by the Association pursuant to N.J.S.A. 34:13A-5.3 and 6(d). Nor do "special circumstances" exist which would allow a supervisor to be represented by the Association pursuant to the same statutory provisions. Thus, the undersigned considers below whether or not the Athletic Director is a supervisor within the meaning of the Act.

Preliminarily, the undersigned notes that a determination of supervisory status requires far more than a job description or verbal assertion stating that an employee may have the power to hire, discharge, discipline or effectively recommend the same:

> [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

20/ The Board further asserts that the current collective agreement between the Board and the Supervisors, which includes the Athletic Director title within its recognition clause, compels the placement of the Athletic Director in the Supervisors unit. Since the Supervisors are not a party to these proceedings, the undersigned is without jurisdiction to recommend such a unit placement.

> mere "possession" of the authority is a sterile attribute unable to sustain a claim of supervisory status. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

With this caveat in mind, the undersigned reviews the responsibilities and actual job performance of the Athletic Director to determine whether or not he is a supervisor within the meaning of the Act.

The Athletic Director is responsible for the evaluation of all coaches and athletic equipment personnel employed by the Board; indeed, the position requires a New Jersey Supervisor or Administrator Certificate. 21/ As noted, supra, the Athletic Director informally performed these responsibilities throughout the 1980-81 school year. The Athletic Director summarized his informal evaluations and recommended retention or nonretention of coaching personnel to the Superintendent, who routinely forwarded these evaluations and recommendations without alteration to the Board. Without exception, all coaches whom Matthews recommended be retained were retained by the Board and the coach whom Matthews recommended not be retained was not retained by the Board. In addition, Matthews was involved in two hiring decisions for the 1980-81 academic year. In both cases, Matthews interviewed candidates for the positions and recommended candidates for appointment, and in both cases, those candidates were hired. 22/

21/ Exhibit J-4

22/ See n.17

One disciplinary problem during the academic year led to a conference between Matthews and the coaches involved, but did not result in any form of discipline.

A public employee is a supervisor within the meaning of the Act if he has the power to make effective recommendations regarding hiring or discharge or discipline. In re Tp. of Teaneck, E.D. No. 23 (1971). While Matthews has not effectively recommended discipline of employees during his term as Athletic Director, his track record reveals actual, frequent and near universal adoption of his personnel recommendations as to hiring and discharge of employees. 23/ Accordingly, the undersigned finds that the Athletic Director is a supervisor within the meaning of the Act.

Having found the Athletic Director to be a statutory supervisor, the undersigned now addresses the Association's assertions that the Athletic Director should nonetheless be included in the Association's negotiations unit. 24/ The Association argues that, even if the Athletic Director is a supervisor,

23/ Matthews' effective recommendations of retention or nonretention of coaches from season to season are analagous to hiring and discharge determinations, and support the above conclusion. Moreover, while Matthews' participation in the hiring and discharge processes has been neither formal nor written, these facts do not detract from the regularity and effectiveness of his recommendations.

24/ The Association argues that the present Athletic Director is performing the same duties as his predecessor, that the Board acknowledged that the predecessor was not a statutory supervisor and that the Athletic Director position should thus be included in the Association's unit. Assuming, arguendo, that the present Athletic Director is performing the same duties as his predecessor, such a finding would not compel the inclusion of the Athletic Director position in the Association's unit. Instead, an examination of the Athletic Director's present duties and actual job performance above determines whether or not that title belongs in the Association's unit.

he does not supervise " ... unit teaching personnel in their capacity as full time teachers in the school district." 25/ This argument presumes that supervisory status under the Act is dependent upon the type or function of the employee whom the supervisor supervises. There is no foundation for such distinctions in either the Act or relevant case law; so long as the individual who is supervised is an employee under the Act, the supervisor is a statutory supervisor. 26/

The Association also asserts that a conflict of interest would prevent the Athletic Director from being represented by the Supervisors and that comparatively less conflict would occur if the Athletic Director were placed in the Association's unit. This argument is based on the conflict of interest identified by the Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 425 (1971):

> 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. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.

25/ Brief of the Education Association, p. 7

26/ An employee who supervises students who are not public employees, for example, is not a statutory supervisor. Edison Tp. Bd. of Ed., H.O. No. 81-7, 6 NJPER 582, 584 (¶ 11292 1980), D.R. No. 82-8, 7 NJPER 560 (¶ 12249 1981).

As noted above, the undersigned is without authority to consider the placement of the Athletic Director into the unit represented by the Supervisors. However, even assuming such authority, the undersigned finds that no conflict exists between the Athletic Director and individuals represented by the Supervisors. While the record reveals that the Supervisors represent employees who are supervised in their coaching capacities by the Athletic Director, 27/ these individuals are represented in their coaching capacities by the Association. Accordingly, no conflict of interest would exist between the Athletic Director and supervisor/coaches if the Athletic Director were placed in the Supervisors unit. 28/

Thus, even assuming comparative conflict to be a legitimate criterion for choosing between two possible negotiations unit placements for one position, 29/ the undersigned finds that a potential conflict of interest herein would occur only if the Athletic Director were placed in the Association's unit. Indeed, assuming arguendo that the Athletic Director is not a supervisor within the meaning of the Act, the undersigned finds that a

27/ T at p. 122

28/ Similarly, Matthews himself, in his capacity as Head Basketball Coach, will still be represented by the Association. The Commission has sanctioned this approach to hybrid employees who are both supervisors and extracurricular non-supervisors. Tp. of Ocean Bd. of Ed., P.E.R.C. No. 82-9, 7 NJPER 446 (¶ 12199 1981).

29/ The undersigned is unaware of Commission or judicial acceptance of a comparative conflict doctrine. Indeed, the concept seems inconsistent with the precepts of Wilton; a conflict which prevents placement in one negotiations unit exists independent of alternative unit placement considerations.

sufficient Wilton-type conflict of interest exists to warrant the exclusion of the Athletic Director from the negotiations unit represented by the Association. The Athletic Director's responsibilities in the hiring, discharge and evaluation processes, as reviewed supra, are extensive. The good faith performance of these responsibilities by the Athletic Director could often put him at odds with those coaches and athletic personnel affected by his recommendations. Clearly, Wilton and its progeny 30/ preclude this potential conflict and dictate the exclusion of the Athletic Director from the collective negotiations unit represented by the Association.

For the above stated reasons, the undersigned recommends the following findings:

1. The Athletic Director employed by the Rumson-Fair Haven Regional Board of Education is a supervisor within the meaning of the Act.

2. The Rumson-Fair Haven Education Association is an employee representative which does not represent supervisors within the meaning of the Act, other than in their nonsupervisory, extracurricular capacities.

3. Neither established practice, prior agreement nor special circumstances exist which could allow the Association to represent supervisors within the meaning of the Act.

30/ While Wilton concerned the conflicts between different supervisors, the Commission has expanded this doctrine to prevent conflicts between nonsupervisory employees. In re City of Camden, P.E.R.C. No. 70 (1972).

4. Potential conflicts of interest exist between the Athletic Director and members of the negotiations unit represented by the Association.

5. Accordingly, the negotiations unit represented by the Association should be clarified to exclude the Athletic Director from that negotiations unit.

Respectfully submitted,

Mark A. Rosenbaum
Hearing Officer

DATED: August 13, 1982
Trenton, New Jersey