

D.R. NO. 87-27

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

In the Matter of

LAWRENCE TWP. BOARD OF EDUCATION,

Public Employer,

-and-

LAWRENCE TWP. ADMINISTRATORS ASSOCIATION, DOCKET NO. RO-87-79

Petitioner,

-and-

LAWRENCE TWP. EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among chairpersons employed by Lawrence Township Board of Education, following an administrative investigation of a representation petition filed on behalf of the chairpersons by the Lawrence Township Administrators Association. The Director found that the department chairpersons were supervisors within the meaning of the Act and that their supervisory functions have grown since 1978. Accordingly, the Director orders the proposed unit severed from the wall-to-wall teachers unit represented by Lawrence Township Education Association and that an election be conducted in the proposed unit.

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Appearances:

For the Public Employer,
Carole S. Deddy
Business Administrator/Board Secretary

For the Petitioner
New Jersey Principals & Supervisors Assoc.
Wayne J. Oppito, Esq.

For the Intervenor
New Jersey Education Association
(Charles A. Walker, UniServ Rep.)

DECISION AND DIRECTION OF ELECTION

On October 15, 1986, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Lawrence Township Administrators' Association ("Association") seeking to represent

approximately eight department chairpersons employed by the Lawrence Township Board of Education ("Board").^{1/}

The Lawrence Township Education Association/NJEA ("LTEA") sought to intervene in this case and submitted a copy of the current collective negotiations agreement it executed with the Lawrence Township Board of Education covering a unit of teachers, secretaries and cafeteria employees. The LTEA's request to intervene is approved. See N.J.A.C. 19:11-2.7.

On November 25, 1986, a Commission staff agent conducted an exploratory conference attended by representatives of the Association, LTEA and the Board. The LTEA opposed the petition, claiming that the petitioners were adequately represented in the current broad-based unit of certificated personnel. The Board neither opposed nor favored the petition. On December 9, 1986, the petition was amended and is supported by an adequate showing of interest.

^{1/} The original petition stated that "Department Chairpersons/Supervisors seek inclusion into the existing Administrators' Association..." On December 9, 1986, the petition was amended by letter stating that the Lawrence Township Administrators' Association "seeks to add the positions of Department Chairpersons to the existing supervisory unit [of principals, assistant principals and directors]..." The authorization cards, of sufficient number to meet the Commission's showing of interest requirements, clearly expressed the desire of Department Chairpersons to have the Association represent them in collective negotiations.

I directed that an administrative investigation be conducted into the matters raised by the filing of the petition. To date, the investigation revealed the following facts:

1. The Lawrence Township 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. ("Act") and is the employer of the petitioned-for employees.

2. The Lawrence Township Administrators' Association and Lawrence Township Education Association/NJEA are public employee representatives within the meaning of the Act. The LTEA is presently the exclusive negotiations representative of a collective negotiations unit which includes the petitioned-for employees; its unit consists of about 250 certificated and non-certificated personnel. The current collective negotiations agreement runs from July 1, 1985 through June 30, 1987. No party offered evidence of a pre-1968 collective negotiations relationship.

3. The Board also has a 1985-1987 collective negotiations agreement with the Lawrence Supportive Staff Association which represents a negotiations unit consisting of approximately 75 bus drivers and custodial and maintenance employees.

4. The Lawrence Township Administrators' Association represents a unit of approximate 6 principals, 4 vice principals and 6 directors employed by the Board. It has represented administrators for approximately 10 years and its current agreement runs from July 1, 1985 through June 30, 1987.

5. Approximately eight department chairpersons are employed by the Board at the high school in the various academic departments. They have obtained supervisory certificates and have a reduced teaching load compared to that of classroom teachers. Department chairpersons report to school at the same time as other teachers and share with them tasks such as "corridor" and "cafeteria" monitoring. The chairpersons job description lists many responsibilities including screening and interviewing teacher applicants, observing teachers, assisting the principal in preparation of annual evaluations of department personnel, making recommendations to the principal concerning staffing and advising the principal of curriculum and instructional needs of the department. Before 1978, department chairpersons did not evaluate teachers.

6. Tenured and non-tenured teachers are observed two and three times respectively, each year. A department chairperson observes a teacher at least once and conducts post-observation conferences. A principal or vice principal normally performs the other observation(s). Written evaluations of the observations are placed in the teacher's personnel file. These evaluations form the primary basis of the summary evaluation, which the Board uses to determine employee promotions, increment receipt, employment renewal and "feedback" for teachers about classroom performance. The summary evaluations are signed by the department chairperson. The principals place significant weight upon the recommendations of the

department chairpersons. Chairpersons also prepare department budget proposals and assess the need for materials.

7. No party presented examples of inadequate representation of department chairpersons or instances of actual conflict between department chairpersons and other negotiations unit personnel.

The first issue for determination is whether the department chairpersons in the Lawrence Township school system are "supervisors" within the meaning of 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 circumstance, 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 the public sector, the board of education retains the ultimate power to hire, discharge or discipline. The critical question here is whether the chairpersons have the power to "effectively recommend" such personnel actions.

The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) 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. [Id. at 425].

In numerous decisions concerning the appropriate unit placement of department chairpersons, the Commission has 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. Before 1978, administrators other than department chairpersons observed teachers. Now, the principals place great reliance on personnel recommendations of the department heads. While not necessarily determinative, these recommendations concerning hiring and renewing or not renewing contracts of non-tenured teachers are usually followed. In essence, department chairpersons, principals and other highly ranked administrators work as a supervisory team. Both the role of the

department heads in the observation process (which substantially constitutes the general summary evaluation) and their making of recommendations (including recommendations on departmental budgets), establish their substantial power to affect, adversely or positively, the careers of teachers in the district. Accordingly, department chairpersons are supervisors within the meaning of the Act and cannot remain in the unit of certificated professional employees.

The statutory exception of established practice is inapplicable to this case. West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973). Even assuming that a statutory exception existed, we conclude that changed circumstances and the resultant substantial conflicts of interest warrant the removal of chairpersons from the negotiations unit. See, Town of West New York, P.E.R.C. No. 87-114, 13 NJPER ____ (¶ 1987).

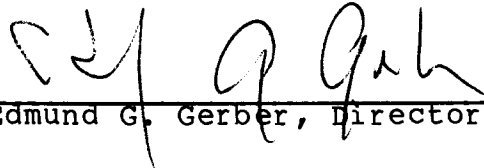
Department chairpersons have not participated in contractual grievances filed by the Association on behalf of teachers. However, the chairpersons have placed written evaluations in teacher personnel folders and recommended renewal and non-renewal of teachers to the building principal. Since 1978, the department chairpersons' roles in observations and evaluations have grown considerably. This evolution has been marked by their increased authorship of narrative observation of teachers, participation in the screening process for hiring teachers, budget formation and decisions regarding renewal and non-renewal of teachers.

Under the facts presented in this case, we find that the petition, as amended, is timely filed and seeks an election in an appropriate unit. Further, we direct that an election be conducted among the employees in the petitioned-for unit, described as follows: Included - all department chairpersons, to be added to the existing unit of principals, vice-principals and directors employed by the Lawrence Township Board of Education. Excluded - all other certificated personnel, including teachers not in the position of department chairperson, all confidential employees, managerial executives, police and firefighter employees, and craft employees.

I direct the Public Employer to simultaneously file an election eligibility list with this office and with the Petitioner. The eligibility list shall consist of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, in accordance with N.J.A.C. 19:11-9.6. The Public Employer shall also file with this office an accompanying proof of service of the eligibility list upon the Petitioner. The eligibility list must be received no later than ten (10) days prior to the date of the election. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The election shall be conducted in accordance with the Commission's rules and will be conducted within 30 days of the date of this decision.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 29, 1987
Trenton, New Jersey