

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

OLD BRIDGE BOARD OF EDUCATION

-and-

DOCKET NO. CU-85-54
LAP-86-2

OLD BRIDGE ADMINISTRATORS
ASSOCIATION

DECISION

On April 9, 1985, the Old Bridge Administrators Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"), seeking to include the titles of Department Chairperson, Director of Guidance and Coordinator of Gifted and Talented into the Administrators unit which consists of High School Principal, Vice principal-High School, Principal-Middle School, Elementary Principal, Director of Community School, Principal of Pupil Services, Director of Chapter 1 and Director of Library Services.

On July 24, 1985, an informal conference was conducted for the purposes of clarifying the issues and exploring the possibility of voluntary resolution of the matter. During the conference, the parties mutually agreed to have the matter processed through the Litigation Alternative Program ("LAP").

A LAP hearing was scheduled for October 3, 1985. Due to a scheduling conflict, the hearing was rescheduled to December 10, 1985 and again rescheduled to December 12, 1985. The LAP hearing was conducted on December 12, 1985.

The historical events which led up to the filing of the Petition in this matter are as follows. On November 28, 1984, the Director of Representation found that Department Chairpersons, Directors of Guidance and the Coordinator of Gifted and Talented Education employed by the Old Bridge Board of Education ("Board") were supervisory employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and ordered that such titles be removed from the nonsupervisory teachers unit, effective June 30, 1985. See, In re Old Bridge Board of Education, D.R. No. 85-9, 11 NJPER 31 (¶16017 1984).

The Association's brief continues as follows:

In or about the month of December 1984, the department supervisors requested inclusion in the Old Bridge Administrators Association, the existing supervisory unit. In January 1985, this request was honored by the Association and the Association so notified the Board. In March 1985, the Board responded that it would not recognize the inclusion of the department heads in the unit because they are evaluated by the two high school principals....(Association's Brief pp 1-2)

The instant Petition followed.

The Association takes the position that the petitioned-for titles share a community of interest with titles in the unit, since all of the unit titles comprise the Board's middle management

positions. Additionally, the Association argues that the Commission favors broad-based administrator's units and, in this case, there arises no actual or potential substantial conflict of interest as the result of including the petitioned-for titles in the administrator's unit. Any conflict which may exist is only de minimis since it would only be the two high school principals who evaluate the two of the three petitioned-for titles.^{1/}

The Board takes the position that since the Department Chairpersons and the Directors of Guidance report to and are evaluated by the high school principals, a conflict of interest exists. Accordingly, the Department Chairpersons and Directors of Guidance should not be included in the same unit as the high school principals.

The parties have agreed to the following facts:

1. The high school principals are responsible for performing the required evaluations of the Department Chairpersons and Directors of Guidance. The principals evaluate the Department Chairpersons in their dual capacities as administrators and teachers.
2. While no incidents requiring disciplinary action have occurred, the high school principals are responsible for disciplining the Department Chairpersons and Directors of Guidance should the circumstance present itself.

^{1/} There are 19 employees serving in the three petitioned-for titles; 16 Department Chairpersons, 2 Directors of Guidance and 1 Coordinator of Gifted and Talented. The high school principals evaluate all petitioned-for titles except the Coordinator who is evaluated by the Assistant Superintendent, a title not included in the administrator's unit.

3. Principals and vice-principals have been included in the administrator's unit since the unit was initially formulated. At least since the formulation of the administrator's unit, Principals have evaluated vice-principals. Since vice-principals have no teaching assignments, vice-principals are evaluated in the role as administrators only. A vice-principal has never filed a grievance against a Principal contesting the Principal's evaluation.

4. Since department chairpersons and directors of guidance are not presently covered by a collective agreement, the manner in which a grievance filed by such employees would be processed is presently unclear. However, the current Administrator's Agreement calls for the immediate supervisor to hear first step grievances. The high school Principal would hear Department Chairpersons' and Directors' of Guidance grievances at the first step. Department Chairpersons have never filed a grievance.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in pertinent part that:

...except where established practice, prior agreement or special circumstances dictate the contrary ... any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same [shall not] have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership....

The law further mandates that "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." N.J.S.A. 34:13A-5.3.

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971) the Court established the standard upon which to judge the community of interest among various levels of supervisory personnel in the same unit. The Court found that "...where a substantial actual or potential conflict of exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and ... a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute." Wilton, supra, at 427. The Court remanded to the Commission the question of whether substantial conflicts existed between Mrs. Wilton and other supervisory personnel. Rather than denote the circumstances under which a substantial actual or potential conflict of interest exists, the Court stated that "...each case must be determined on its own particular facts."

In regard to the instant matter, the parties agree that the high school Principals evaluate the Department Chairpersons and Directors of Guidance and might possibly be the first step of the grievance procedure. While it is clear from the information elicited during the hearing that no actual conflict presently exists, the substantial, potential conflict of interest that would result from the inclusion of the Department Chairpersons and Directors of Guidance in the administrator's unit is evident.

The Association cites In re City of Trenton, D.R. No. 83-33, 9 NJPER 382 (¶14172 1983). I agree that this case is

instructive here. In discussing the Wilton case, the Director of Representation stated:

There are certain factual distinctions between the circumstances involved in Wilton and the present circumstances that should be noted at the outset of this review. First, Wilton arose in the context of an employment relationship where supervisors had not previously been represented for collective negotiations purposes. Thus, there was no experiential factor present under the Wilton setting which could enter into the analysis of whether a potential for conflict of interest could be deemed, in the words of the Court, "tolerable" or "de minimis."

In its determinations reviewing Wilton considerations in the context of a history of collective representations, the Commission has found that the experiential factor, rather than the speculative factor, should be utilized to gauge the potential for substantial conflict arising in the future. In In re West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973), the Commission observed:

Future contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculations not benefited by hindsight.

An examination of the record in the instant matter reveals an absence of any incident demonstrating an incompatibility of interest between the superintendents and their assistants, a compromise of interest, or a significant detriment to the rights of either the city or AFSCME. The basis for the Hearing Officer's finding of potential conflict was his conclusion that it was possible that disciplinary proceedings relating to

potential wrongdoings of the Assistant Sanitation Superintendent or the General Foreman might never be initiated because the respective superintendents might not bring wrongdoings to the attention of the Department Director who is responsible for disciplining all but minor infractions. The reasonable foreseeability of such conduct arising, however, is not borne out by any record evidence, notwithstanding the Street Superintendent's inclusion since 1977 and the Sanitation Superintendent's inclusion since 1979. Speculation as to future contingencies is not a compelling consideration given the evidence as to the history of the parties' relationship. In re City of Trenton at 384.

Thus, it is clear that in City of Trenton the Director was saying that Wilton may be limited to some extent in circumstances where one may bring to bear the benefit of an historical perspective. Since Department Chairpersons and Directors of Guidance have never been included in the administrator's unit previously, such historical perspective is not present in this case and any limitation of Wilton would be inappropriate here.^{2/} Thus, the expectation of conflict of interest arising between Principals and Department Chairpersons and Directors of Guidance is consistent with well established case law and is controlling in this particular case.. See West Paterson, supra.

^{2/} The Association points out that since the inception of the administrator's unit, vice-principals have been included and have been evaluated by Principals. Absent changed circumstances or other consideration, this situation, when considered in its historical context, is more likely to be controlled by In re City of Trenton, supra. The petition in this matter does not require me to decide the unit placement of vice-principals however.

Likewise, In re Edison Township Bd. of Ed., D.R. No. 82-8, 7 NJPER 560 (¶12249 1981), cited by the Association, is not supportive of its argument. In In re Edison Township Bd. of Ed., supra, the Board of Education filed a Petition for Clarification of Unit in which it sought to separate a long-standing negotiations unit comprised of principals and vice-principals. On the basis of the record developed in that case, the Director of Representation, affirming the Hearing Officer, found that the evidence established only a de minimis conflict of interest and thus continuation of the vice-principals was not contrary to Wilton. It is important to note that the decision in Edison Tp. Bd. of Ed., was issued with the benefit of an historical perspective regarding a unit comprised of both principals and vice-principals. It is also important to note that "[t]he Hearing Officer did not find that the responsibility to evaluate would result only in de minimis conflict; rather, he concluded that the evidence placed in the record concerning the principals's evaluation of vice-principals could not support a finding other than that of a de minimis conflict." Id. at 561.

The Association also cites In re North Bergen Bd. of Ed., D.R. No. 84-8, 9 NJPER 615 (¶14263 1983), in support of its position that Department Chairpersons and Directors of Guidance should be included in the administrator's unit. However, the facts present in North Bergen Bd. of Ed., supra, are distinguishable from those extant in this case. In North Bergen Bd. of Ed., the Director adopted the Hearing Officer's finding that the high school principal was (1) only

nominally responsible for evaluating department chairpersons; (2) the principal had not evaluated them for several years; and (3) the evidence indicated that the principal was not likely to evaluate department chairpersons in the future. Id. at 615. On the basis of these particular facts, the department chairpersons were included in the same unit as the principals. Clearly, a similar factual setting does not exist in the instant matter. There is no indication from the parties that the Old Bridge high school Principals are only nominally involved in Department Chairpersons and Directors of Guidance evaluation. Further, there is every indication that the Principals will continue to be the primary evaluators.

Lastly, the Association cites In re Lakewood Bd. of Ed., D.R. No. 78-44, 4 NJPER 212 (¶4105 1978). In Lakewood, supra, the Director of Representation affirmed the Hearing Officer's finding that Department Chairpersons and Educational Specialists should be included in a unit containing principals and assistant principals. In the Lakewood case, principals evaluated assistant principals, who were undisputed unit members. However, in Lakewood, the Hearing Officer found that the Department Chairpersons and Educational Specialists actually "performed many of the same functions that Assistant Principals performed." Id. at 213. In the instant matter, there is no indication of such similarity of function between Department Chairpersons and Directors of Guidance and vice-principals. Consequently, I find this case to be distinguishable on the facts and decline to follow it in this

matter. Consequently, a substantial, potential conflict of interest exists between the Department Chairpersons and Directors of Guidance and the high school Principals such that the requisite community of interest between the petitioned-for titles and the rest of the unit is lacking and their inclusion in the administrator's unit would be inappropriate.

With regard to the title Coordinator, Gifted and Talented, no conflict of interest has been indicated between this title and any other title in the administrator's unit. As indicated above, the Coordinator is evaluated by the Assistant Superintendent, a nonunit title. Accordingly, the Coordinator, Gifted and Talented should be included in the administrator's unit.

Conclusion

On the basis of the particular factual circumstances extant in this case:

1. The Department Chairpersons and Directors of Guidance should not be included in the administrator's unit as it is presently formulated, and
2. The Coordinator, Gifted and Talented should be included in the administrator's unit.


Stuart Reichman
Commission Designee

DATED: January 2, 1986
Trenton, New Jersey