

D.R. NO. 92-36

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

In the Matter of

KEARNY BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-92-149

KEARNY DEPARTMENT CHAIRPERSONS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among department heads employed by the Kearny Board of Education. The Director determined that the department heads are supervisors and must be removed from their current unit of all certificated personnel. The Kearny School Administrators' Association, composed of principals, vice principals and others, refused to represent the department heads.

The Director determined that a "substantial potential conflict" would result from the inclusion of the petitioning employees in the Administrators' Association. Accordingly, he ordered the formation of a separate department head unit over the Board's objection.

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Appearances:

For the Public Employer
John D. Onnembo, Superintendent

For the Petitioner
Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION AND DIRECTION OF ELECTION

On February 24, 1992, the Kearny Department Chairpersons Association (KDCA) filed a representation petition seeking to represent about 13 "department heads" employed by the Kearny Board of Education. The department heads are currently included in a negotiations unit of all "certificated personnel", including teachers, nurses, guidance counselors, etc., represented by the Kearny Education Association (KEA). The current agreement expires June 30, 1992.

On April 15, 1992, the Board filed a statement of position. On May 1, 1992, the KDCA filed documents supporting its petition.

Our investigation shows:

1. Department heads "directly supervise teachers" in their respective departments. The job description provides that the department heads write periodic evaluations of teachers, interview teaching candidates, evaluate lesson plans, supervise substitute teachers, design curricula, organize departmental meetings at least once a month, etc.

Department heads write year-end evaluations for all teachers in their respective departments in the high school. Principals perform this function in the elementary and junior high schools.

Department heads also implement Professional Improvement Plans (PIPs) for teachers and monitor their progress.

2. Department heads have participated in the hiring of more than 30 teachers over the past several years. Almost all of their recommendations have been followed by the principal.

Six non-tenured teachers over the same period were dismissed. Department chairpersons recommended five of the six dismissals.

Department heads also discuss matters of daily supervision with their assigned teachers. If the matter is not resolved, a vice principal may assist in resolving the problem. Department heads have on occasion placed written "incident" reports in teacher files.

3. Department heads have also been called to testify for or speak on behalf of the Board in several grievances over the past 16 years. These grievances concerned several named teachers.

4. Department heads teach one or two classes per day; the remainder of their time is used to discharge their departmental obligations. They are evaluated at the end of each term by vice principals or principals; one evaluation is for teaching performance, the other for their supervisory responsibilities.

5. Department heads are currently included in a negotiations unit of about 380 certificated personnel. The Kearny School Administrator's Association represents a unit of administrators -- principals, vice principals, directors, supervisors and coordinators. The Administrator's Association was founded about two years ago and includes about 17 unit employees; before that time, they were included in the certificated unit. The Administrator's Association has declined the department heads' request to be included in their organization.

The Board also negotiates with a unit of support staff -- custodians, maintenance employees and secretaries.

On May 29, 1992, we issued a letter tentatively finding that the department heads should be included in a separate negotiations unit. No party filed a response.

N.J.S.A. 34:13A-5.3 provides 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 non-supervisory personnel to membership....

The law also states 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. The Commission must consider the general statutory intent in promoting harmonious employer-employee relations. Tp. of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987).

Department chairpersons who participate in the hiring process, recommend non-renewal of non-tenured teachers and evaluate and discipline teachers are supervisors within the meaning of the Act. Watchung Hills Reg. HS Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985); Willingboro Tp. 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), request for rev. den., P.E.R.C. No. 84-80, 10 NJPER 56 (¶15030 1983); Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981).

The Kearny department heads are an integral part of the Board's hiring, evaluation and disciplinary processes. They review and screen applicants, observe teachers, write teacher evaluations and their recommendations for hiring and non-renewal are generally followed. No party contends that the department heads do not perform these asserted duties or for that matter, denies their supervisory roles. I find that these department heads are supervisors within the meaning of the Act and are excluded from the existing certificated unit.

The Board contends that the department heads should be included in the Administrator's Association unit; it is opposed to the formation of a separate unit of department heads. The Administrator's Association opposes the inclusion of department heads in its unit. No party denies that principals evaluate department heads.

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the Court set a standard for determining 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 interest exists among supervisors with respect to their duties and obligation to the employer in relation to each other, the requisite community of interest among them is lacking and...a unit which undertakes all of them is not an appropriate unit...." Wilton at 427.

Although the facts do not show that an actual conflict exists between principals, vice principals and the department heads, a substantial potential conflict -- arising from the evaluation process -- would result from the inclusion of the petitioning employees in the Administrator's Association. See In re West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp 333 (¶77

1973).^{1/} Furthermore, I will not require an employee organization which had refused to represent these department heads to negotiate terms and conditions of employment on their behalf.

Accordingly, I direct that a mail ballot election be conducted in this unit:

Included: All department heads employed by the Kearny Board of Education.

Excluded: All administrative personnel in other negotiations units, non-supervisory certificated personnel, non-professional employees, police officers, firefighters, craft employees, confidential employees and managerial executives within the meaning of the Act.

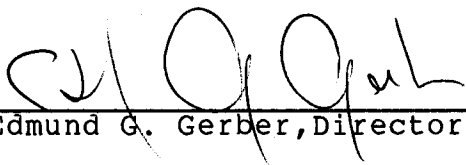
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

^{1/} We have found where there is a de minimis conflict of interest between principals and chairpersons, chairpersons will be included with principals. See North Bergen Bd. of Ed., D.R. No. 84-4, 9 NJPER 615 (¶14263 1983), where the school principal was only nominally responsible for evaluating chairpersons, the principal had not evaluated them for several years and evidence indicates the principal was not likely to evaluate chairpersons in the future.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 16, 1992
Trenton, New Jersey