

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

In the Matter of

RAMSEY BOARD OF EDUCATION,

Public Employer,

-and-

RAMSEY SUPERVISORS ASSOCIATION
a/w NJASSPS,

DOCKET NO. RO-81-36

Petitioner,

-and-

RAMSEY TEACHERS ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, determines that department supervisors, who were formerly called department chairpersons, should be removed from a unit of employees which includes non-supervisory teaching personnel and may participate in an election to designate or reject a negotiations representative in a separate unit of supervisors. The department supervisors are in fact supervisors and, since 1979, their supervisory duties have significantly increased. The Director agrees with the Hearing Officer that the record did not establish the existence of a collective negotiations relationship between the RTA and the Board prior to 1968, and therefore the RTA could not invoke a claim of "established practice" to permit the inclusion of supervisors in its unit. Even if such circumstances were demonstrated, the substantial increase in supervisory responsibilities assigned to supervisors would require their removal from the RTA unit.

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Appearances:

For the Public Employer
Winne, Banta, Rizzi & Harrington, attorneys
(Robert M. Jacobs of counsel)

For the Petitioner
Robert M. Schwartz, attorney

For the Intervenor
Bucceri & Pincus, attorneys
(Sheldon H. Pincus of counsel)

DECISION AND DIRECTION OF ELECTION

On September 9, 1980, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Ramsey Supervisors Association, affiliated with NJASSPS (the "Petitioner"). Petitioner seeks to

represent a unit of approximately ten subject matter Supervisors employed by the Ramsey Board of Education (the "Board"). The petitioned-for employees are currently represented by the Ramsey Teachers Association (the "RTA") in a unit including certified personnel employed by the Board. Pursuant to N.J.A.C. 19:11-2.7, the RTA was granted intervenor status in this matter.

Hearings were held before Commission Hearing Officer Joan Kane Josephson on January 19, 20, and April 29, 1981, in Trenton, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Post-hearing briefs were submitted by the parties, the last of which was received by June 29, 1981. The Hearing Officer thereafter issued her Report and Recommendations on October 7, 1981, a copy of which is attached hereto and made a part hereof.

The RTA filed exceptions to the Hearing Officer's Report and Recommendations on October 19, 1981.

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

1. The Ramsey 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. (the "Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. The Ramsey Supervisors Association, affiliated with NJASSPS and the Ramsey Teachers Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. The RTA is the recognized representative of a unit comprised of certain Board certificated personnel including "department chairpersons" and teachers. ^{1/}

4. The Ramsey Supervisors Association seeks to represent a unit comprised exclusively of the petitioned-for supervisors.

5. The Petitioner asserts that subject matter supervisors are supervisors within the meaning of the Act and are therefore inappropriate for inclusion in a unit with nonsupervisors, and that their continued inclusion in the RTA unit causes a conflict of interest between the subject matter supervisors and the teachers whom they supervise. Additionally, the Petitioner asserts that the RTA did not prove a negotiations relationship existed prior to 1968, ^{2/} which would show that an established practice existed under the exception set forth in N.J.S.A. 34:13A-5.3 allowing supervisors to be represented by an employee organization that admits nonsupervisory personnel to membership.

The RTA argues that subject matter supervisors are not supervisors, that there is no conflict of interest between teachers and subject matter supervisors, and that the request to remove the petitioned-for employees from the existing unit is, therefore, inappropriate.

^{1/} During the contractual period of the Board - RTA 1978-1981 agreement, the Board revised the job description of the petitioned-for employees and changed their job title from department chairperson to "Supervisor."

^{2/} The Commission, in In re West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973), held that the statutory exception of established practice relates solely to pre-Act (1968) relationships.

The Board claims that the subject matter supervisors are supervisors and that as a result of the implementation of the new State observation and evaluation requirements the supervisory duties of the petitioned-for employees have dramatically increased. In addition, the Board asserts that the increased duties pose potential and actual conflicts of interest between the supervisors and the nonsupervisors in the existing unit.

6. The Hearing Officer found that subject matter supervisors are supervisors within the meaning of the Act, that their supervisory functions have substantially increased since 1968 when they were department chairpersons and that the exercise of their responsibilities would present a substantial conflict of interest vis-a-vis their inclusion in the negotiations unit with teaching staff members whom they supervise. The Hearing Officer also found that none of the statutory exceptions which might otherwise permit the continued inclusion of supervisors and nonsupervisors in the same negotiations unit were applicable because there was no pre-Act negotiations relationship between the Teachers Association and the Board affecting the distinct interests of department chairpersons. Finally, the Hearing Officer recommended that the subject matter supervisors should be removed from the existing collective negotiations unit and provided with the opportunity to choose separate representation because the substantial increase in their supervisory duties presents potential or actual conflicts of interest between the supervisors and the teachers whom they supervise.

The Association excepts to the Hearing Officer's findings, arguing that: (1) subject matter supervisors do not exercise supervisory powers within the meaning of the Act; and (2) no actual or potential conflict of interest exists between subject matter supervisors and other unit members.

After a review of the entire record, the undersigned adopts the Hearing Officer's findings of fact, conclusions of law and recommendation that the subject matter supervisors should be removed from the RTA's collective negotiations unit.

The record reveals that beginning in October 1979, substantial changes occurred in the administrative and supervisory organization of the Ramsey school system. Pursuant to new State Department of Education regulations requiring evaluation of tenured as well as nontenured instructional staff, the Board adopted new evaluation guidelines under which department chairpersons became the primary evaluators responsible for the ultimate recommendation concerning reemployment, tenure or grant of increment for the evaluated teacher. Prior to the October 1979 changes, this evaluation and recommendation function was the responsibility of the school principal.

On the basis of these findings, the Hearing Officer concluded that the petitioned-for employees are supervisors within the meaning of the Act. The undersigned finds ample evidence in the record to support this finding and hereby concludes that the subject matter supervisors are statutory supervisors.

The Hearing Officer also found that a pre-1968 collective negotiations relationship did not exist between the Board and the Association relating to department chairpersons. The undersigned has reviewed the transcript and exhibits carefully and notes that the Staff Manual in existence in 1965 provided for a mechanism which resembles collective negotiations. However, a review of the record indicates a lack of any other substantive evidence to establish that collective negotiations actually occurred or that the parties' practices were consistent with the outline contained in the Staff Manual. Therefore, the undersigned, noting the absence of exceptions with regard to the Hearing Officer's finding of fact and conclusion concerning the nonexistence of a pre-1968 collective negotiations relationship, and noting the absence of evidence establishing a negotiations relationship, determines that the requirements for the finding of the statutory exception of "established practice" have not been met.

Even if an "established practice" existed herein, and even if department chairpersons were found to be supervisors at that time (pre-1968), the undersigned has determined that when an employer has dramatically increased the role of supervisors by giving them substantially greater supervisory authorities, those employees may no longer be included in negotiations units with nonsupervisory employees. See e.g., In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1982); In re Ramapo-Indian Hills Reg. H.S. Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981); and In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981). In Ramapo the undersigned stated:

Logically, the statutory exceptions which preserve pre-existing relationships are not applicable where the circumstances underlying the pre-existing relationship no longer exist, as in the instant matter where the scope of the Director's supervisory responsibilities have been significantly upgraded, thus creating a potential conflict of interest between the Director of Guidance and other unit employees. The circumstances relevant to the narrow statutory exception having been removed, the Act's policy prohibiting mixed supervisory/non-supervisory employee units is preeminent.

The record in this matter reveals that the Board substantially increased the supervisory role of the petitioned-for employees over the past two years.

Accordingly, for the above reasons, the undersigned adopts the Hearing Officer's recommendation that subject matter supervisors are supervisors within the meaning of the Act with substantially increased supervisory responsibilities and should be removed from the Ramsey Teachers Association's unit. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all Supervisors, but excluding managerial executives, confidential employees, police and craft employees, and all other professional employees of the Ramsey Board of Education.

Pursuant to N.J.A.C. 19:11-2.6, the undersigned directs that an election be conducted among the above employees. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the subject matter supervisors 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, or 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

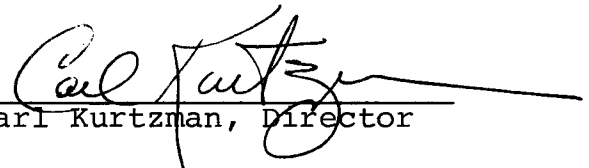
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer shall file with the undersigned and with the Association an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibilitiy 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 the Association with 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 purpose of collective negotiations by the Ramsey Supervisors Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

DATED: January 28, 1982
Trenton, New Jersey


Carl Kurtzman, Director

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SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends the removal of Department Supervisors from the non-supervisory negotiations unit represented by the Ramsey Teachers Association. She found them to be supervisors within the meaning of the Act and further found that a substantial conflict of interest existed that required their removal from the non-supervisory unit. The Hearing Officer did not find that a bargaining history existed prior to 1968 which would have allowed the supervisors to remain in the non-supervisory unit.

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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For the Public Employer
Winne, Banta, Rizzi & Harrington, Esqs.
(Robert M. Jacobs, Esq.)

For the Petitioner
Robert M. Schwartz, Esq.

For the Intervenor
Bucceri & Pincus, Esqs.*
(Sheldon H. Pincus, Esq.)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On September 9, 1980, a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by the Ramsey Supervisors Association, a/w NJASSPS (the "Petitioner") seeking to represent a unit of "super-visors" employed by the Ramsey Board of Education (the "Board").

* On September 4, 1980, Substitution of Attorney was filed with the Commission replacing Goldberg & Simon, P.A. (Theodore M. Simon, Esq.).

The Petition named the Ramsey Teachers Association (the "RTA" or the "Intervenor") as the current representative of the employees in question. ^{1/} The Petitioner seeks to represent a collective negotiations unit of ten subject matter Supervisors who are currently represented by the RTA in a unit including all certificated personnel employed by the Board.

Pursuant to a Notice of Hearing, hearings were held before the undersigned Hearing Officer on January 19 and 20 and April 29, 1981. Briefs and reply briefs were submitted by the parties by June 29, 1981. Upon the entire record in the proceeding, the Hearing Officer finds:

1. The Ramsey 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. (the "Act"), is subject to its provisions, and is the employer of the employees who are the subject of this proceeding.

2. The Ramsey Supervisors Association, a/w NJASSPS and the Ramsey Teachers Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Petitioner seeks to represent a unit of ten subject matter Supervisors by severing this title from the unit represented by the Intervenor. The Intervenor is the recognized representative of a unit composed of Board personnel including Supervisors and opposes the removal of the Supervisors from its

^{1/} The RTA was granted intervenor status in this proceeding pursuant to N.J.A.C. 19:11-2.7.

unit. Accordingly there is a question concerning representation of certain employees and the matter is properly before the Hearing Officer for a report and recommendations.

The Board argues that the petitioned-for employees are supervisors whose supervisory duties "dramatically increased" following the implementation of new State observation and evaluation requirements and therefore they must be excluded from their current collective negotiations unit pursuant to N.J.S.A. 34:13A-5.3. Further, they contend that potential and actual conflicts of interest exist between the supervisors and the remaining non-supervisors in the existing unit as a result of the increasing changes in the scope of their supervisory duties.

The Petitioner argues that the employees in question are supervisors within the meaning of the Act and that their continued inclusion in the RTA unit causes a conflict of interest as enunciated in Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971). Further, they posit that the RTA did not prove a negotiations relationship existed prior to 1968, which proof would be necessary to find that an established practice existed under the exception in §5.3 of the Act allowing supervisors to be represented by an employee organization that admits non-supervisory personnel to the membership.

The Ramsey Teachers Association argues that these employees do not exercise supervisory powers within the meaning of the Act and that no conflicts of interest were demonstrated that justified the disturbance of a unit structure that existed prior to 1968.

Discussion and Analysis

The statutory provisions concerning the appropriateness of including supervisory and non-supervisory employees in the same negotiations unit are contained in N.J.S.A. 34:13A-5.3 and 6(a) which provide in relevant part as follows:

"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(a)...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 includes (1) both supervisors and non-supervisors..."

The Commission has determined that the terms "established practice" and "prior agreement" refer to negotiations relationships which pre-existed the passage of the Act in 1968. In re West Paterson Board of Education, P.E.R.C. No. 77 (1973). This standard has recently been applied by the Director of Representation to cases similar to the instant matter concerning the continuation in a unit of department chairpersons or supervisors in a unit with non-supervisors. See: In re Cinnaminson Township Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122, 1981) and Ramapo-Indian Hills Regional High School District Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶12048, 1981). In the absence of the existence of circumstances falling within the enumerated statutory exceptions, the Act prohibits the inclusion of supervisory with non-supervisory employees in the same unit.

Additionally, if the supervisors' good faith performance as supervisors would often put them at odds with other employees in the unit, thus raising a substantial conflict (actual or potential) between the Supervisors and the teachers, they lack the requisite community of interest to remain in the same unit. As the Supreme Court said in Board of Education of West Orange v. Wilton, supra at p. 425:

"If performance of the obligations or powers delegated by the employer to a supervisory employees whose membership in the unit is sought creates an actual or potential 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."

There is no evidence in the record to support the Ramsey Teachers Association's argument that a pre-1968 collective negotiations relationship existed between the Board and the RTA as it relates to the role of the department chairpersons, as the Supervisors were called until recently. ^{2/}

Therefore, the issues before the undersigned are (1) whether the Supervisors are supervisors within the meaning of the Act and (2) whether actual or potential substantial conflicts of interest are generated by the continued inclusion of the Supervisors in the Intervenor's unit.

^{2/} The Intervenor introduced a staff manual which was in existence in 1965 which indicates the Board recognized the RTA as a representative body for professional employees through which they could develop and present group opinions. No evidence was presented as to the role of the department supervisors in this unit and I therefore find this staff manual insufficient to find a pre-1968 relationship as to supervisors in the teachers unit.

I agree with the Board of Education that the petitioned-for employees are supervisors whose supervisory responsibilities have recently been even more clearly delineated. Assistant Superintendent of Schools for Curriculum and Personnel, Dr. Ronald L. Capasso, corroborated testimony of four department Supervisors describing their role in observation and evaluation of teaching staff members. Pursuant to new State Department of Education regulations requiring evaluation of tenured as well as non-tenured instructional staff, the Board adopted new evaluation guidelines in October 1979. The guidelines provide for an annual or summative evaluation which includes a recommendation for or against re-employment, tenure or increment, depending on the employment status of the evaluated teacher. Dr. Capasso testifies that the department supervisors became the primary evaluators responsible for the ultimate recommendation (Tr. 111-14). ^{3/} The annual evaluation form was substantially changed to reflect this added responsibility. The prior evaluation form provided space for an evaluation by the department chairman (now supervisor) and space for an additional ultimate recommendation as to increment, tenure, etc. The building principal was the primary evaluator who made the ultimate recommendation under the former procedure (Tr. III-9). The Association argues that the input of the supervisor was unchanged and that they were not and are not supervisors under the Act. I disagree in both instances. But assuming arguendo they were not supervisors prior to their new evaluation role, I am convinced that the ultimate responsibility here now lies with the primary evaluator, the department supervisor.

^{3/} Transcript references are as follows: I - January 19, 1981, II - January 20, 1981, and III - April 29, 1981.

The Supervisors significantly participate in the hiring of non-supervisory personnel within their subject areas. The Supervisors do initial screening of all applicants, conduct interviews and narrow the selection down to a few (usually three) final acceptable applicants for review through the principal and on to the Superintendent (Tr I-133). This process has evolved over the last few years. The Superintendent previously initiated and screened the applicants (Tr I-150, 177). Final determination is made only from the supervisors recommendations; however, final determination, the ultimate choice, is made by the Superintendent. While the Supervisors do not make the ultimate selection of personnel to be hired, this is not critical here because the Supervisor's role in recommending continued employment, or tenure, or increments is sufficient for the undersigned to find them to be Supervisors within the meaning of the Act.

Even absent a finding that the Supervisors are statutory supervisors, I would recommend that they not remain in the teachers' unit because there is a substantial conflict between the interests of the supervisors and the people in their respective departments. Board of Education of West Orange v. Wilton, supra. This was poignantly demonstrated when the Supervisor of the Business Education Department, Mrs. Jean Cooper, testified as to her experience in grievances.

She testified concerning several instances in which teachers in her department filed informal or formal grievances against actions of Mrs. Cooper in her role as department supervisor. One particular grievance concerned Mrs. Cooper's reprimand of a teacher which was

formally being grieved by that teacher. The teacher and a Ramsey Education representative requested a meeting with Mrs. Cooper in order to formally pursue the first step of the grievance procedure (P-9 in Evid.). The employee was grieving the action of Mrs. Cooper before Mrs. Cooper at the first step of the grievance procedure -- it was against her and before her (Tr II-80). She testified at length describing conflicts she felt in responding to these grievances as a supervisor vis-a-vis her membership in the RTA (Tr II-69, 96-97).

The Supervisors have a great deal of independence in running their own departments. One of the other grievances Mrs. Cooper had filed against her concerned her assignment of the grievant to teach a particular class.

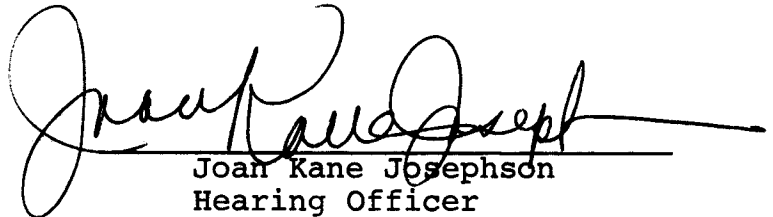
The ten department supervisors together with the principal and vice principal make up an administrative team that meets regularly to develop school policy (Tr III-16). Additionally, there is a new "program orient budget" process which involves the supervisors in a broad scope of budgeting wherein they must consider such items as teachers' salaries, State aid and allocation of essential resources (Tr III-17-21).

She also described a conflict she experienced as an RTA member and a supervisor in the fall of 1978 during a job action concerning what she considered improper use of business department resources by the RTA during this period (Tr II-99). I believe these are the types of conflicts that create divided loyalties to the Association and the Board and therefore the supervisors should not be in the same unit as the non-supervisors.

Accordingly, since I have not found a pre-1968 established practice; and since I find the petitioned-for department supervisors to be supervisors within the meaning of the Act; and since there exists substantial conflicts of interest in their remaining in the existing unit, I recommend that the supervisors be removed from that unit.

I further recommend that the Director of Representation direct an election among the petitioned-employees.

Respectfully submitted,



Joan Kane Josephson
Hearing Officer

DATED: October 7, 1981
Trenton, New Jersey