

P.E.R.C. NO. 87-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAINLAND REGIONAL BOARD
OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-86-9

MAINLAND REGIONAL ADMINISTRATORS
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Clarification of Unit filed by the Mainland Regional Board of Education. The Board sought the removal of the principal from a collective negotiations unit consisting of principals and vice-principals represented by the Mainland Regional Administrators Association. The Commission finds that the principal and the vice-principal share a community of interest which warrants their continued inclusion in the same negotiations unit and that a conflict of interest does not exist.

P.E.R.C. NO. 87-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAINLAND REGIONAL BOARD
OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-86-9

MAINLAND REGIONAL
ADMINISTRATORS ASSOCIATION,

Employee Representative

Appearances:

For the Public Employer, Pachman and Glickman, Esqs.
(Martin R. Pachman, of counsel)

For the Petitioner, Wayne J. Oppito, Esq.

DECISION AND ORDER

On August 5, 1985, the Mainland Regional Board of Education ("Board") filed a Petition for Clarification of Unit. The petition seeks the removal of the principal from a collective negotiations unit of the principal and vice-principals represented by the Mainland Regional Administrators Association ("Association"). The Board alleges that a conflict of interest requires the principal's removal.

On November 7, 1985, the Director of Representation issued a Notice of Hearing.

On January 6, 1986, Hearing Officer Susan Wood Osborn conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On September 5, the Hearing Officer issued a report recommending dismissal of the petition. H.O. No. 87-4, 12 NJPER __ (¶____ 1986). She found a community of interest between the principal and vice-principals and no conflict of interest significant enough to warrant the principal's exclusion.

On October 8, after having received an extension of time, the Board filed exceptions. It asserts that the Hearing Officer erred in making certain findings of fact; in her analysis of West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971) and other precedents; in her analysis of the principal's evaluation of vice-principals and the effectiveness of the principal's recommendations; in her analysis of the grievance procedure; and in her ultimate conclusion that any conflict of interest between the principal and vice-principals was too minor to warrant the principal's exclusion from the Association's unit.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-10) are comprehensive and accurate in every regard but one. We adopt and incorporate them here with this clarification of finding no. 12. The negotiated grievance procedure provides that it shall not limit the right of any administrator to discuss a grievance informally with the immediate supervisor and/or the superintendent and to have the grievance resolved without the Association's intervention, provided the adjustment is not inconsistent with the contract. The formal grievance process is commenced by filing a grievance. At level one, the grieving administrator discusses the grievance with the immediate supervisor,

either directly or through an Association representative, with the objective of resolving the matter informally. The grievant must tell the immediate supervisor that a grievance hearing is taking place. Levels two, three and four contemplate, respectively, submission of the grievance to the superintendent, the Board and arbitration.^{1/}

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., protects public employees in the exercise of the right to form, join and assist any employee organization or to refrain from such activity. The Act applies to all school board employees, supervisory or non-supervisory, except confidential employees and superintendents.

Negotiations units must be defined with due regard for the community of interest among employees concerned. N.J.S.A. 34:13A-5.3. The public policy underlying the Act favors the

1/ We otherwise reject the exceptions to the findings of fact. Finding no. 11 accurately states that in the case of a non-tenured vice-principal, the principal performs two evaluations and the superintendent one evaluation each year. That finding later states that the superintendent writes a corresponding evaluation for each evaluation by the principal. While that statement would be untrue as applied to non-tenured vice-principals, all vice-principals are in fact tenured and hence the statement is true. Finding no. 11 accurately relates Dr. Hurley's testimony. Finding no. 12 accurately relates the history of the grievance filed by the vice-principal in charge of guidance; the record shows only that the grievance did not reach the superintendent and does not show whether that grievance was resolved by the principal or withdrawn. Finally, finding no. 12 accurately states that no grievance has been filed concerning a vice principal's evaluation.

ultimate organization of all employees desiring collective negotiations and the placement of employees in broad-based negotiations units. State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974). Whether a community of interest exists must be examined in light of this policy. Section 5.3, with limited exceptions, also proscribes placing supervisors and non-supervisors in the same negotiations unit and Wilton holds that a community of interest between different levels of supervisors should not be found if a substantial actual or potential conflict of interest exists with respect to these supervisors' duties and obligations to the employer in relation to each other. We must determine whether supervisors are united by a community of interest, or divided by a conflict of interest, upon each case's own particular facts.

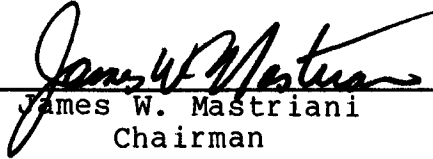
Under all the circumstances of this case, we agree with the Hearing Officer that the principal and the vice-principals share a community of interest which warrants their continued inclusion in the same negotiations unit. This is a one-school district where the principal and vice-principals operate on the "team concept." The superintendent works in the same building as the principal and vice-principals and works closely with them. While the principal evaluates the vice-principals and submits a report and recommendations, the superintendent is the supervisor who makes the effective recommendations concerning the hiring, firing and disciplining of vice-principals. The superintendent makes his own

observations, conducts his own conferences and writes his own independent evaluation reports. The principal and vice-principals have been in the same negotiations unit for over a dozen years and that unit has functioned smoothly and without significant conflicts. While the first step of the negotiated grievance procedure raises the possibility that a principal may informally resolve the grievance of another unit member, we do not believe that this possibility under the facts of this particular case warrants removing the principal from that unit.^{2/} Accordingly, we dismiss the Board's petition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Reid abstained.

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986

^{2/} To protect against this possibility, the Board may condition any informal resolution of a vice-principal's grievance at step one upon the superintendent's approval.

H.O. NO. 87-4

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

MAINLAND REGIONAL BOARD
OF EDUCATION,

Public Employer-Petitioner.

-and-

Docket No. CU-86-9

MAINLAND REGIONAL ADMINISTRATORS
ASSOCIATION,

Employee Representative.

SYNOPSIS

A Hearing Officer recommends that the Public Employment Relations Commission dismiss a Petition for Clarification of Unit filed by the Mainland Board of Education. The Hearing Officer finds there is no substantial conflict of interest between the principal and the vice-principals in this one-school district, and that the existing unit of principals and vice-principals, which is represented by the Mainland Administrators Association, continues to be appropriate.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

H.O. NO. 87-4

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

In the Matter of

MAINLAND REGIONAL BOARD
OF EDUCATION,

Public Employer-Petitioner.

-and-

DOCKET NO CU-86-9

MAINLAND REGIONAL ADMINISTRATORS
ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer
Pachman and Glickman, Esqs.
(Martin R. Pachman, of counsel)

For the Petitioner
Wayne J. Oppito, Esq.

HEARING OFFICERS REPORT
AND RECOMMENDED DECISION

On August 5, 1985, the Mainland Regional Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to clarify a collective negotiations unit of principals and vice principals, which is currently represented by the Mainland Regional Administrators Association ("Association"). The Board seeks to exclude the principal from the unit on the basis of an alleged conflict of interest between the principal and the vice-principals. The Association objects to the Board's Petition.

On November 7, 1985, the Director of Representation issued a Notice of Hearing. On January 6, 1986, a hearing was held in this matter at which time both parties had the opportunity to present relevant evidence and examine witnesses. Both parties filed post-hearing briefs, the last of which was received on March 6, 1986.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Mainland Regional High School District Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act") and is subject to its provisions. The Board is the employer of the employees who are the subject of the Petition.

2. The Mainland Administrators Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the exclusive representative of the administrator's unit which is composed of one principal and four vice-principals (T. 7, 10).^{1/} The current collective negotiations agreement in effect between the parties covering the period July 1, 1984, through June 30, 1987, (J-1) was entered into in or about early September, 1985, shortly after the filing of the instant Petition (T. 6). Article VII of that agreement contains an acknowledgement of the instant clarification of unit proceeding (J-1, p. 17).

^{1/} References to exhibits shall be indicated by "C-1", etc., references to transcript pages shall be indicated by "T. 1", etc.

3. The Association was formed prior to 1973 and included the superintendent, business administrator, principal, and the two assistant principals. In 1975, the superintendent and business administrator were released from the Association (T. 47). In 1976, the Board and the Association negotiated their first written agreement which contained a recognition statement and a salary guide.

4. In 1978, the parties agreed to add to the unit the two supervisors of instruction who were then responsible for the direct supervision and evaluation of professional staff (T. 47). Until 1980 there were only two assistant principals: one assistant principal for educational services and one for student services. The assistant principal for educational services was responsible for curriculum and programs development; the assistant principal for student services was responsible for student discipline and attendance (T. 46-49). In 1980 the assistant principal for student Services was abolished, and two vice-principal positions were created. In 1981, the assistant principal for curriculum and the supervisors of instruction positions were eliminated, and the supervisors of instruction became vice-principals, leaving a principal and four vice-principals in the unit (T. 48-49). The unit has continued with that composition (T. 47-48).

5. The Board operates only one school, grades 9 through 12. In addition to the administrators, there are 92-100 professional staff and as well as certain support staff (T. 58).

The teachers are organized in a separate unit, as are the secretaries and the custodians (T. 58). There is no assistant superintendent (T. 58). The offices of all of the administrators are located within the one school building. The superintendent's office is located next to the principal's office. Two of the vice-principals' offices are located in the same area, but about 40 feet away from the principal and superintendents' offices. The other two vice-principals are housed in the other side of the building, about 250-300 feet away from the superintendent's office (T. 58).

6. The principal has overall responsibility for the entire school, including the staff, curriculum, supplies and equipment. According to the Board Policy Manual, Section 212D, (J-3) which incorporates the district's table of organization, the principal reports to the superintendent and the vice-principals report to the principal. The "School Site Administrator" section of the Board's Policy Manual provides for the appointment, qualifications and general responsibilities of the school principal. Under "general responsibilities" the Manual provides:

The Principal shall be responsible to the superintendent for the administrative detail relating to all organization, administration and supervision within the school, and shall serve in the superintendent's absence as the district chief administrative officer. Principal shall mean the head of the school in the district. Principals shall include the district's principal, assistant principal and vice principal.

7. The job descriptions for the administrative staff as well as the supervision procedure were developed by Vice-Principal Meyers while he was an assistant principal in consultation with the principal and superintendent (T. 51).

The Principal's job description (J-2) has been in effect since at least 1982 (T. 14). That job description provides that the principal's responsibilities include the planning and implementing of the instructional program; overseeing staff supervision and evaluation, supervising the athletic and student activities programs, being responsible for building maintenance, interfacing with parents and the community, assisting in budget preparation, suggesting changes in educational programs, and serving as a resource person to the superintendent and the Board (J-2).

8. The job description for vice-principal (J-4) provides under the section "Supervisor:", "Superintendent/Principal," and under "Immediate Supervisor:", "Principal." Each vice-principal is responsible for one or more academic departments. Their duties are exclusively administrative, they normally, have no teaching responsibilities (T. 37). There are no department heads in the district (T. 42). Each vice-principal is responsible for his departments' equipment, supplies and staff, including evaluating personnel and interviewing and recommending candidates for employment and re-employment (J-4; T. 11, 42-43). The vice-principals conduct departmental meetings with staff members from their departments (T. 42). Each has a grade level to which

they are assigned (9, 10, 11 and, 12) and each works with the guidance counselor for that grade level. Each is responsible for discipline of students at that grade level. The vice-principal moves with the students from year to year (T. 11, 43-44).

9. Immediate past Superintendent Hurley, called as a witness by the Board, testified that the school is run by the "team concept", and the vice-principals are part of the "administrative team" (T. 38).^{2/} The superintendent conducts a monthly meeting with the entire administrative staff, including principals, vice-principals and the business administrator (T. 37). Vice-Principal Meyers, a former superintendent from 1982 to 1984, testified that as superintendent, he met at the beginning of each year with the vice-principals and the principal and they as a group developed goals that they wanted to achieve; then each individual would develop goals that he wanted to achieve, and all of those goals are part of each principal's and vice-principal's evaluation criteria (T. 65).

The superintendent also meets with principal and vice-principals at the end of the year to get recommendations for renewals and non-renewals of staff for the following year (T. 66). The principal meets with the vice principals regularly to discuss matters concerning school business (T. 4, 11). In his absence, the

^{2/} At the time of the hearing, the superintendent position was vacant, and the incumbent principal had only occupied that position for four days.

principal appoints a vice-principal on a rotational basis, to run the building (T. 5, 38).

10. The most recent hiring of vice-principals was done by a committee composed of an assistant principal, the principal, and the superintendent. This committee did a paper screening of credentials and recommended candidates to the Board. These candidates were then interviewed by the full Board and two were selected -- one from inside the district, and one from outside -- to fill the two created vice-principal slots (T. 59-62).

11. The vice-principals are evaluated separately by the principal and by the superintendent. With regard to non-tenured vice-principal's, Meyers testified that when he was superintendent, the principal had two evaluation conferences with the vice-principal, and the superintendent had one (T. 66). All vice-principals are now tenured, and therefore are evaluated once a year (T. 19). The principal completes and signs a written evaluation on each of the vice-principals and has done so for similar administrators since 1973. Hurley testified that there is no formal observation prior to the evaluation, but that the evaluation is an on-going process of how they perform on a daily basis (T. 34). While evaluations are completed in February, if something noteworthy happens, positive or negative, a separate evaluation could be done, or a letter of reprimand or commendation could be inserted in the vice-principal's file. This happened in the Spring of 1985 when Meyers (as Vice-Principal) was given a

letter of commendation for his performance in conjunction with graduation (T. 35).

While there is no specific line for a recommendation with regard to continued employment or increments, (T. 19), the principal has routinely added a recommendation for re-employment on each vice-principal's evaluation (ER-1 through 10, T. 14-15, 19-20, 23-32). Hurley testified that his signature appears on each evaluation merely to indicate that he had knowledge of it (T. 15), and he testified that it is the superintendent's responsibility to recommend re-employment of vice-principals (T. 20). As part of the normal process, the superintendent does an independent evaluation of each of the vice-principal's (T. 21). Thus, for each of the evaluations done by the principal, such as those offered in evidence as ER-1-10, there is a corresponding written evaluation performed by the superintendent on each vice-principal covering the same time period (T. 40). This has been the case since at least 1980 (T. 55). The superintendent signs the evaluation and holds a conference with the employee (T. 41, 52), and his evaluation of vice-principals is also done by an on-going evaluation process (T. 40). The superintendent uses a format to evaluate vice-principals similar to that used by the principal, but his perspective is different (T. 40). Hurley testified that while the result of each of the evaluations was a recommendation for retention, the evaluations done by the principal and by the superintendent has varied greatly as to substance, including perceptions of strengths and weaknesses (T.

21). The superintendent has also had the occasion to place letters of recommendation in files of vice-principals citing professionalism and commending performance (T. 67-68).

The principal has the authority to recommend the withholding of an increment to the superintendent, but in fact has never done so (T. 20, 36). The superintendent makes recommendations to the Board based upon his own evaluation of the vice-principal and upon the principal's recommendation to the superintendent (T. 41). Hurley testified that if hypothetically, he received a recommendation from the principal recommending non-retention or withholding an increment, he would require the principal to thoroughly document the recommendation, but if the recommendation was thoroughly documented, he would not hesitate to so recommend to the Board (T. 36). But, Hurley testified that if his recommendation differed from the principal, his recommendation would override the principal's (T. 42).

12. The formal grievance procedure in the current agreement provides that grievances by a vice-principal are first submitted at level one to the principal, then to the superintendent, then to the Board, then to arbitration. Any grievances by the principal go to the superintendent as the first step, then to the Board (J-1, T. 13). However, Article III, Section B of the agreement permits an aggrieved employee to attempt to resolve the matter directly with his immediate supervisor or the superintendent (J-1, p. 4). Hurley testified that there were two grievances during

his tenure as superintendent from July 1984 through December 1985. One grievance involved the distribution of workload of a vice-principal who was on a leave of absence. That grievance was resolved by the negotiation of a new clause in the now-current contract to cover such situations (T. 13). That clause provides that the superintendent reassigns the workload and decides to whom, and the proportion, which results in compensation (J-1, p. 15). The other grievance was filed by the vice-principal in charge of guidance. That grievance was resolved by the principal or it was withdrawn (T. 13-14). No grievance has ever been filed concerning a vice-principals' evaluation (T. 69).

ANALYSIS

The N.J. Supreme Court in Bd/Ed of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") determined that various levels of supervising employees, even where they have interests in common, may not be automatically included in the same unit with one another; rather, the Court found that:

...where a substantial actual or potential conflict of interest 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 that a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. 57 N.J. at 427.

The Court added that each case needs to be examined on its own facts, and that only where such a conflict was "de minimis" or tolerable, would the unit combination be permissible. In Wilton,

the Court was concerned that including higher level supervisors in the same unit with the lower level supervisors whose work they are duty-bound to supervise and appraise for the employer, puts the supervisor in a conflicting role -- that the supervisor would be on both sides of the table. The Court mandated that "PERC must decide whether, on a fair appraisal, her role puts her on the management side of the negotiations table." 57 N.J. at 428 In Wilton, the Court remanded the matter to PERC for

"...specific fact-finding and statement of the reasons therefore, as to whether Miss Wilton's obligations to her employer as they now exist are sufficiently indicative of potential conflict of interest between her and the other supervisors to require her exclusion from the administrators' association negotiations unit.... Adequate treatment of the problem require[s] an evaluation of the specific nature of the authority delegated to her ... to supervise and review the work of other supervisors to make responsible and effective recommendations to the superintendent of schools with respect to the hiring, salary and tenure of the principals." 57 N.J. at 428.

The Board here alleges that an actual and potential Wilton-type substantial conflict of interest exists which dictates the removal of the principal from the extant unit.

The Commission has had several occasions to evaluate the appropriateness of a unit of school administrators, and has consistently found a broad-based unit to be appropriate. See North Bergen Board of Education, D.R. No. 84-8, 9 NJPER 615 (¶ 14263 1983) (unit of principals, vice-principals and department chairpersons found to be appropriate); Edison Twp. Board of Education, D.R. No. 82-8, 7 NJPER 560 (¶ 12249 1981) (unit of principals and

vice-principals found to be appropriate); Parsippany-Troy Hills Board of Education, D.R. No. 79-7, 4 NJPER 394 (¶ 4177 1978) (broad-based unit of principals, vice-principals, subject supervisors and coordinators and other administrators found to be appropriate); Lakewood Board of Education, D.R. No. 78-44, 4 NJPER 212 (¶ 4105 1978) (unit of principals, assistant principals, department chairpersons and education specialists found appropriate); Long Branch Board of Education, E.D. No. 47 (1974) (unit of principals and vice-principals found appropriate).

The Commission has, also, on numerous occasions examined the relationship between employees to test for a conflict of interest as described by the Court in Wilton. In the educational setting, the Commission has frequently found a conflict of interest between department chairpersons and non-supervisory teaching staff. See, Watchung Hills Regional H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶ 16130 1985); Willingboro Twp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶ 15179 1984); Ramapo-Indian Hills Regional Bd. of Ed., P.E.R.C. No. 85-21, 10 NJPER 535 (¶ 15246 1984); Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶ 14202 1983); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶ 13062 1982); Cliffside Park Bd. of Ed., D.R. No. 83-10, 8 NJPER 540 (¶ 13248 1982). These cases generally have found that there is a potential for substantial conflict of interest between the department chairpersons and teachers because of the former's responsibility to supervise and evaluate the performance of

teachers, where those evaluations form the basis of management's decision on employment matters such as non-renewal of contract or withholding of increment or promotions. ^{3/}

Those cases, however, were in a supervisory/non-supervisory context. As the Hearing Officer noted in Central Regional Board of Education, H.O. No. 78-7, 3 NJPER 366 (1977), the New York PERB in examining a similar issue of an administrators unit appropriateness, in the matter of Union Free School District No. 3 of the Town of North Hempstead and Oyster Bay, 6 PERB 4041 (¶ 6-4021 1973), observed that

Supervision of subordinate supervisors tends to be less intensive and less constant than that of rank-and-file employees....the relationship among supervisors lacks the same sharp potential for conflict which characterizes relationship between supervisors and rank-and-file personnel. 6 PERB at 4044.

In the instant matter, the relationship between the principal and the vice-principals lacks that sharp contrast between them. In fact, the reverse is true: the evidence shows, and former Superintendent Hurley specifically testified that, the school is operated on the "team concept". Although the principal functions as the team leader, the principal and vice-principals regularly meet together and develop plans for the effective

^{3/} In addition to finding conflict of interest between supervisors and non-supervisory employees, N.J.S.A. 34:13A-5.3 prohibits, with certain exceptions, supervisors' inclusion in a unit with non-supervisors.

operation of the school. They jointly develop both individual and group goals for the operation of the school as a whole. In the absence of the principal, a vice-principal takes over. They share many of the same duties and concerns. ^{4/} They share in the responsibilities for staff supervision and evaluation, budget preparation assistance for the superintendent, equipment and supplies, and curriculum development.

Unlike para-military organizational structures such as police and fire departments, or large school districts with multi-tiered layers of supervision, this Board does not have a strict chain of command. Since this Board is a one-school district, the administrators group is relatively small. The superintendent's office is located adjacent to the principals'. He has frequent and direct interaction with the vice-principals. He meets with the whole administrative team once a month, and at

^{4/} It should be noted that in police and fire cases, where this Commission has also frequently had occasions to test for conflict of interest, the Commission will normally find that because of the strict chain of command that exists in such para-military organizational structures, an inherent conflict of interest exists which compels the separation of superior officers from patrolmen. See Union City, P.E.R.C. No. 70 (1972). However, as the Director held in Borough of South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977), an exception to the normal finding of such conflict of interest will be found where "...in a department in which there is a very small force, where superior officers perform virtually the same duties as patrolmen, and where any conflict is de minimus in nature;..." 3 NJPER at 350. For an example of the application of this exception, see Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶ 11146 1980).

the end of each year to get their recommendations concerning non-tenured staff renewals.

The principal does not make an effective recommendation^{5/} concerning the hiring, tenure, retention or other matters effecting the employment status of the vice-principals. The hiring process works on the team approach -- in fact, the screening committee to hire vice-principals was composed of the superintendent, principal, and an assistant principal. The Board hires based upon the recommendation of this committee, not an effective recommendation of the principal alone.

No vice-principal has ever been recommended for non-renewal. Thus, there is no record evidence of termination. Neither is there any evidence of any kind of discipline of a vice-principal.

Previous Commission decisions have held that the evaluation process can be a significant factor in weighing supervisory status over other employees where the evaluation plays an important role in affecting various personnel actions, such as tenure or promotion. See, e.g., Watchung Hills Board of

^{5/} The Commission has previously determined that a recommendation that is subject to independent review and analysis by a higher level of authority does not constitute an "effective recommendation." See Teaneck Board of Education, E.D. No. 23 (1971); Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶ 15102 1984) aff'd H.O. No. 84-11, 10 NJPER 149 (¶ 15075 1984).

Education, supra; Emerson Board of Education, D.R. No. 82-13, 8 NJPER 586 (¶ 13271 1982). Here, while the principal fills out an evaluation on each of the vice-principals, the evidence shows that the superintendent also performs a separate evaluation on each of the vice-principals and meets with each vice-principal in a formal evaluation conference to discuss the evaluation. In the event that the superintendent's evaluation and the principals' evaluation were in disagreement, the superintendent's would be controlling as to a recommendation for any personnel action such as retention.

In Ramapo-Indian Hills Board of Education, supra, the Commission found that the mere rubber-stamping by the Principal of the department chairperson's evaluations did not undo the effectiveness of those evaluations; thus the evaluations were a source of potential conflict between the department chairperson and the employee. Here, by contrast, the superintendent's separate and independent evaluation could hardly be characterized as rubber-stamping of the principal's recommendations. Therefore, while the principal has input via his evaluation responsibilities, concerning the vice-principal's retention and salaries, the principals' evaluation makes no effective recommendation as to the vice-principal's employment status.

The Commission has previously held that the performance of evaluations is not, per se, evidence of potential conflict of interest dictating removal from the unit. See Edison Township

Board of Education, supra. Here, I find that any potential conflict of interest engendered by the principal's evaluation of the vice-principals is watered down by virtue of the superintendent's responsibility to also do an evaluation on each vice-principal. Therefore, I find that any potential for conflict of interest between the principal and vice principals is de minimus.

There have been no grievances filed by vice-principals concerning their evaluations. The record indicates that the only two grievances filed by vice-principals in recent years involved the reassignment of duties to them in the absence of another vice-principal. One grievance was resolved directly by the principal; the other was resolved in contract negotiations. While I note that this is evidence of an actual conflict of interest in the past, the situation cannot arise in the future, since the contract language has now been modified to provide that the superintendent shall direct how the workload is to be redistributed in the event of the absence of one of the unit members. (See J-1, Article VI). Any future grievances concerning such reassignments of work would be directed toward the decision of the superintendent, not the principal, and therefore, this conflict cannot arise in the future, and the potential for conflict between the principal and vice-principals on re-assignments is now de minimus.

While the collective negotiations agreement provides that any unit member may file a grievance with his immediate supervisor at step 1, there is also a provision in the contract that allows an aggrieved employee to attempt to resolve the matter directly with the superintendent. This allows a vice-principal to by-pass the principal with any grievance he might have with an action taken by the principal. Thus, the potential for conflict between the principal and a vice-principal is minimized in the area of processing grievances.

Moreover, in City of Trenton, D.R. No. 83-33, 9 NJPER 342 (¶ 14172 1983), the Director of Representation noted that Wilton was decided in a context where supervisors had not previously been represented. In that matter, he found that where there is a history of collective negotiations, the Commission has looked to the parties' experience rather than speculation to gauge the potential for substantial conflict of interest arising in the future. See also, West Paterson Bd/Ed, P.E.R.C. No. 77 1973). Here, the administrators' unit has a 13-year history of collective negotiations with a stable labor relations history. The only evidence presented that suggests conflict is the two grievance concerning workload re-assignments. For the reasons expressed earlier, similar grievances against the principal are not likely to recur.


CONCLUSIONS

Accordingly, I conclude that there is no conflict of interest between the principal and the vice-principals. Therefore, I recommend that the principal remain in the Association's unit.

RECOMMENDATIONS

Based upon the record in this matter, I recommend that the Board's Petition be dismissed.

Respectfully submitted


Susan Wood Osborn
Susan Wood Osborn
Hearing Officer

Dated: September 5, 1986
Trenton, New Jersey