

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF TRUSTEES OF
MERCER COUNTY COMMUNITY COLLEGE
Public Employer

and
MERCER COUNTY COMMUNITY
COLLEGE FACULTY ASSOCIATION
Petitioner

Docket No. CU-39

DECISION

Mercer County Community College Faculty Association (hereinafter referred to as the Association) petitioned for certification as public employee representative (Docket No. RO-54) for a unit comprised of teaching faculty including department chairmen employed by the Board of Trustees, Mercer County Community College (hereinafter referred to as the College). Pursuant to a Notice of Hearing to resolve a question concerning representation a hearing was held before Hearing Officer Howard Golob, Esquire, on July 7, 1970 at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and to argue orally.

Subsequent to this hearing but prior to the issuance of a Hearing Officer's Report and Recommendations thereon, the original petition (RO-54) was amended by mutual consent and redesignated CU-39, with the understanding that the record compiled in RO-54 be the basis for the Hearing Officer's Report and Recommendations therein. The sole matter at issue was the inclusion or exclusion of department chairmen in the same unit with teaching faculty, the question concerning representation being resolved by an election and certification in RO-192. 1/

Thereafter, the Hearing Officer issued his Report and Recommendations, copy of which is attached. Exceptions to said report were filed by both parties. The Executive Director having considered

1/ The parties endeavored to resolve the only unit question separating them viz. the inclusion or exclusion of department chairmen in a unit of teaching faculty by the Association's filing a petition for certification encompassing only teaching faculty upon the understanding that the status of department chairmen would be resolved through a subsequent clarification of unit procedure (the instant case). This was accomplished by the filing of such petition (RO-192) on October 1, 1970 and the conduct of a consent election resulting in the certification of the Association on October 30, 1970 as exclusive representative (footnote continued pg. 2)

the record, the Hearing Officer's Report and Recommendations and the Exceptions filed thereto on the facts in this case finds:

1. The Board of Trustees of Mercer County Community College is a public employer within the meaning of the Act and is subject to its provisions.
2. Mercer County Community College Faculty Association is an employee representative within the meaning of the Act.
3. The College seeks to exclude department chairmen from the collective negotiating unit for which the Association is certified i.e., teaching faculty. The Association desires to have department chairmen included within such unit. Thus, the matter is properly before the undersigned for determination.
4. The Hearing Officer found department chairmen were not supervisors within the meaning of the Act as the College had contended and a community of interest sufficient to include department chairmen within the faculty unit.
5. The College excepted to the Hearing Officer's Report and Recommendations stating (1) department chairmen were supervisors within the meaning of the Act as they possessed the authority to effectively recommend the hiring, firing or retention of faculty within their departments and that (2) there is no community of interest between department chairmen and rank and file faculty to support the former's inclusion with the latter in a single bargaining unit and therefore such unit would be inappropriate.
6. The Association excepted to the Hearing Officer's finding of no established practice such as to permit the inclusion of department chairmen within the faculty unit.
7. The subject of the instant petition is approximately twelve instructional department chairmen who are sought to be grouped with nearly 120 members of the faculty in a single bargaining unit. Unlike the faculty, department chairmen have a reduced teaching load and administrative and supervisory responsibilities over specific departments, such as English, Social Science, Foreign Language, Music etc. They are appointed by the President of the College to serve for a term (apparently at his pleasure) and are within the Office of the Dean of Faculty. Chairmen report to the Assistant Dean of Faculty in charge of Personnel on all personnel matters who in turn reports to the Dean of Faculty. Members of the faculty within a given

1/ (footnote continued from pg. 1)
for the following unit - "All full-time teaching faculty and full-time professional personnel of the Library Media Center, Academic Skills Laboratory, and Student Personnel Staff but excluding administrative officers, administrative staff, department chairmen, the director of Library Service, of the Media Center, of the Academic Skills Laboratory, of the Computer Center and of Admissions, part-time (adjunct) faculty, technical assistant, the non-professional staff, supervisors within the meaning of the Act, managerial executives, craft employees, and policemen." Also on October 1, 1970, the Association had amended its petition in RO-54 by the filing of a CU petition (CU-39), the case at bar.

department report to the chairman of that department. With respect to a department, a chairman's responsibilities are numerous (Faculty Handbook, 305, pg. 1):

- a) Leadership of the department faculty in all curricular and instructional affairs for day and evening;
- b) Development and evaluation of courses and curricula;
- c) Improvement of instruction;
- d) Screening and interviewing applicants for appointment to the professional staff;
- e) Supervision and evaluation of all full and part-time faculty and staff;
- f) In-service development of staff;
- g) Budget development and control;
- h) Control and effective utilization of equipment and facilities;
- i) Liaison with appropriate advisory commissions;
- j) Assigning faculty to courses;
- k) Supervision of pre-programming, registration, and advisement program;
- l) Preparation of instruction summary reports and schedules each semester for each faculty member and the entire department;
- m) Performance of such other duties as may be defined by the Dean of Faculty.

Evidence was presented by both parties concerning the role of the department chairmen in various personnel matters, specifically hiring, promoting, retaining and not rehiring teaching personnel. The function of the Personnel Committee of a department, the members of which (except the chairman) are elected by the members of that department, was outlined. This committee, comprised of faculty, serves to assist the department chairmen in personnel matters including the screening of applicants for faculty positions, the evaluation of faculty and the making of recommendations for reappointment, tenure appointment and promotion. Testimony revealed a difference between the manner in which a committee may function under a department chairman and the way it is required to serve under the administration's view i.e., as an advisory body to the department chairman, not one to make his decisions. What is significant is that the administration, which appoints the chairman and to which he is responsible, considers the recommendations emerging from this committee as the chairman's recommendations and holds him accountable. This becomes obvious when the experience for academic year 1969-1970 in personnel actions is reviewed.

During that year department chairmen recommended 17 faculty for tenure, and 15 of these were granted tenure by the Board of Trustees. In the same period 27 applicants for faculty positions recommended for appointment by department chairmen were hired out of a total of 30 so recommended, all faculty recommended for reappointment by chairmen were reappointed (81) and all faculty members whose contracts were not recommended to be renewed by department chairmen were not renewed (4). This record of accomplishment for department chairmen was achieved despite the fact that a chairman's recommendation is subject to review by others and is presented to the President, chief administrator, accompanied by the recommendations of reviewing authorities (the Assistant Dean of Faculty in Charge of Personnel and the Dean of Faculty in the case of appointments and reappointments and the College Personnel and Budget Committee, the Assistant Dean of Faculty in Charge of Personnel and the Dean of Faculty in the case of promotions). ~~Sometimes~~ the recommendations of the reviewer are based upon personal knowledge gained through interview or other independent investigation. Presented with the recommendation of the department chairman and recommendations of the others mentioned above for appropriate personnel action, the President makes a recommendation to the Board of Trustees which has final authority in personnel matters. Given this relationship and the experience demonstrated over the 1969-1970 academic year, the effectiveness of the department chairmen's recommendations is evident, for were it not, there would be evidence in the record controverting the aforesaid statistics or explaining the reason why in the vast majority of cases the Board of Trustees agreed with the department chairmen's recommendations.

To attribute this agreement to the system of the hierarchy of administration where recommendations of reviewing authorities accompany the department chairman's recommendations assumes the existence of facts in each instance which cannot be assumed or found in the record, viz. that the recommendations of reviewing authorities were the same as the department chairman's in each instance and it was these rather than the department chairman's recommendations by which the Board was guided in each case. In contrast to this is the testimony of the President of the College who as the chief executive officer making personnel recommendations to the Board stated he believed "that effectively they [department chairmen] have the power of recommending appointments, reappointments, tenure appointments, et cetera." (T. 153 ll. 4-6) Absent proof to rebut these statistics and the experience demonstrated thereby, the undersigned finds the recommendations of department chairmen to be effective as to hiring, reappointment, promotion and termination of faculty personnel. Accordingly department chairmen are found to be supervisors within the meaning of the Act and the finding of the Hearing Officer to the contrary is not adopted.

Since the issuance of the Hearing Officer's Report and Recommendations in this matter and the filing of exceptions, the Supreme Court of New Jersey decided Board of Education of the Town of West Orange v. Elizabeth Wilton et als, 57 N.J. 404 (1971) wherein it found that an intimate relationship of an employee to management and policy making can provide the basis for exclusion of that employee from a unit of employees over which he has supervisory authority, viz. the power of evaluation. Clearly the inclusion of department chairmen in the faculty unit would compromise the chairman's relationship to the administration. Such would be the case also assuming arguendo the chairmen were not supervisors within the meaning of the Act. In either case, whether they be supervisors or not, inclusion of department chairmen would violate the intendment of the statute, compromise their role in administration and create actually and potentially substantial conflicts of interest between them and the faculty they evaluate. This would negate community of interest, if any, between department chairmen and faculty.

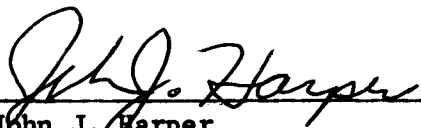
8. Having found department chairmen to be supervisors within the intendment of the Act, the presence or absence of established practice, prior agreement or special circumstances permitting the inclusion of department chairmen as supervisors within a unit of non-supervisory faculty must be determined.

The Mercer County Community College has a short history. In 1967 Mercer County began operating this facility which formerly was Trenton Junior College. Since that time the College has entered into individual contracts with faculty. In 1968-69 informal discussions were had between the Faculty Interest Committee of the Faculty Senate and the administration concerning the faculty's salary schedule. Such did not assume the dimension of negotiations. What occurred was merely a mutual exchange of views and information followed by the unilateral determination of salary and fringe benefits by the College. Absent the give and take of bargaining these talks can only be considered discussions.

Academic year 1969-70 saw the demand for recognition of the Association denied and an arrangement made between the faculty and the administration to permit discussions of terms and conditions of employment of the faculty (including department chairmen) for the 1970-71 academic year pending resolution of the question of representation before the Commission. During this period discussions were carried forward by the Faculty Interest Committee on behalf of the faculty which took on the character of negotiations. There was a give and take, an exchange of proposals and counter-proposals, which culminated in a tentative agreement. This agreement was accepted by the teaching faculty after a vote was taken but found to be

unacceptable by the department chairmen who thereafter arranged for separate talks with the administration to negotiate for a satisfactory arrangement viz. the restoration of the department chairmen's salary differential. Such was in fact accomplished. The foregoing demonstrates not an established practice or prior agreement to treat department chairmen as part of the faculty bargaining unit but rather a history (albeit a short one) of dealing with department chairmen separately on matters closely affecting their employment status. Therefore, the undersigned concurs in the finding of the Hearing Officer and concludes there is no established practice to include department chairmen with other members of the faculty.

Accordingly, since department chairmen are found to be supervisors and there exists no established practice to permit their inclusion with teaching faculty, they cannot be included in the existing unit and the petition of the Association is hereby dismissed.



John J. Harper
Acting Executive Director

DATED: August 6, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF TRUSTEES
MERCER COUNTY COMMUNITY COLLEGE 1/

Public Employer

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Docket No. CU-39

MERCER COUNTY COMMUNITY COLLEGE
FACULTY ASSOCIATION

Petitioner

APPEARANCES:

James P. Mc Donough, Esq. of Camden, N.J.
for the Petitioner.

Smith, Stratton, Wise & Heher of Princeton, N.J.
by William J. Brennan III, Esq.
for the Public Employer

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On January 19, 1970 Mercer County Community College Faculty Association filed a petition for Certification of Public Employee Representative in a unit inter alia of teaching faculty and department chairmen employed by The Board of Trustees Mercer County Community College (Docket No. RO-54). Because of budgetary deficiencies, the hearing was delayed until July 7, 1970. Subsequently, a petition for Certification of Public Employee Representative was filed by the aforementioned faculty association in a unit inter alia of teaching faculty (RO-192) with the understanding that the question of the status of department chairmen would be adjudicated at a later date (CU-39) based upon the record developed in the July 7, 1970 hearing (RO-54). On October 30, 1970

1/ As amended at the hearing in RO-54.

the faculty association was certified in the following unit:

All full-time teaching faculty and full-time professional personnel of the Library Media Center, Academic Skills Laboratory, and Student Personnel Staff but excluding administrative officers, administrative staff, department chairmen, the director of Library Service, of the Media Center, of the Academic Skills Laboratory of the Computer Center and of Admissions, part-time (adjunct) faculty, technical assistant, the non-professional staff, supervisors within the meaning of the Act, managerial executives, craft employees, and policemen.

On October 1, 1970 the instant case was filed. It was stipulated by the parties at that time that the record developed during the hearing in Docket No. RO-54 would be the record in the case now to be decided. 2/

Based upon the record developed in Docket No. RO-54, and considering the briefs submitted thereto I make the following findings and recommendations:3/

1. The Board of Trustees of Mercer County Community College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, hereinafter called the Act.
2. The Mercer County Community College Faculty Association is an employee representative within the meaning of the Act.
3. The matter is appropriately before the Commission for adjudication.
4. The employer is a community college located in the City of Trenton, New Jersey. A Board of Trustees, which consists of the County Superintendent and eight other persons appointed by the Director

2/ On December 2, 1970 the Executive Director approved the request by the petitioner to withdraw its petition in Docket No. RO-54.

3/ During the hearing the public employer stated that its participation in the hearing was not a waiver of its objection to the participation of Commissioner Hipp in this proceeding. It is noted that on May 29, 1970, the Executive Director in a letter to employer's counsel, stated with reference to the disqualification of Commissioner Hipp, "this issue will be posed if and when the Commission is required to issue a decision. Should that occasion arise, it will be a matter for consideration by both Dr. Hipp and the Commission as a body."

of the Board of Chosen Freeholders with the advice and counsel of that Board have the responsibility to operate the college. In the field of labor relations it had delegated the day by day operations permitted by statute to the President of the college. Reporting to the President is an administrative staff of deans, one of whom is the Dean of Faculty. Reporting to the Dean of Faculty are three assistant deans, one of whom is in charge of personnel. Reporting to the Assistant Dean of Faculty in Charge of Personnel on all personnel matters is the department chairman of the respective instructional departments, i.e. Department of Chemistry; Department of Social Sciences; Department of Electrical Engineering, etc. Reporting to the Department Chairman are members of the teaching faculty, some of whom have tenure, some of whom do not. 4/ The Department Chairmen with the assistance of at least two tenured members of the department recommend all personnel matters, i.e. hiring, firing, promotions and granting of tenure. These recommendations normally are submitted to the Assistant Dean of Faculty in Charge of Personnel, from where they are forwarded to the Dean of Faculty. The Assistant Dean includes his own recommendation.

Concerning new hires, the Dean of Faculty also interviews the applicant and submits his recommendation. The recommendation is then reviewed by the President of the college, who after his own interview submits his recommendation to the trustees of the college who make the final decision.

4/ Tenure is acquired automatically with the individual being employed in the category in which he is being tenured on the first day of the fourth year of employment.

Similary, other personnel matters are initiated by a decision by the department chairmen with the participation of tenured department personnel. A second recommendation is made by the Assistant Dean of Faculty in Charge of Personnel. A third recommendation is made by the Dean of Faculty. A fourth recommendation is made by the President of the college to the Trustees, who have the ultimate authority. 5/

For the 1969-70 term, 15 of 17 members of the faculty recommended for tenure by the Department Chairman were so granted. Similarly 27 applicants for employment of 30 so recommended were hired; 81 of 81 recommendations for renewal of contract were renewed; and 4 of 4 where the recommendation was not to renew were not renewed. The fact, though, is that the ultimate decision is made by the Board of Trustees after the recommendation submitted by the President.

The department chairman is appointed by the President of the college. He has a reduced teaching load as compared to other members of the faculty. He also has the following duties: leadership of the department faculty in all curricula and instructional affairs for day and evening; development and evaluation of costs and curricular; improvement of instructions; screening and interviewing applicants for appointment of the professional staff; supervision and evaluation of all full and part-time faculty staff; in service development of staff; budget development and control; control and effective utilization of equipment and facilities; liaison with appropriate advisory commissions; assigning faculty to courses; supervision of preprogramming; registration and advisement program;

5/ In cases of promotion another step is added below the Dean of Faculty, i.e. a recommendation by the budget committee.

preparation of instruction summary reports and schedules each semester for each faculty member and entire department; and performance of such other duties as may be defined by the Dean of Faculty.

The Department Chairman, though he had the ultimate responsibility on the departmental level for the aforementioned, is advised by various committees within the department. Budgets are prepared and administered by a department as a whole, though, it goes out over the signature of the department chairman. Most personnel matters and curriculum matters are the results of the personnel committee of the department or the department acting as a committee as a whole.

The petitioner argues that there is an established practice by which department chairmen whatever their status, i.e. supervisor or not, to include them with the faculty group. Since its inception in 1967, the college has entered into individual contracts with faculty members. Prior to the entering into such contracts, there were discussions between the college administrators and members of the faculty interest committee of the faculty senate. These discussions were more or less the college informing the faculty as to the salary scale and other benefits. There was no give and take of negotiations. There were proposals by the faculty interest committee, discussion with the college and then a decision made by the college. After the college made its decision, individual contracts were preferred and signed.

In the fall of 1969, before discussion for the 70-71 faculty contracts had commenced, petitioner demanded recognition as the exclusive negotiating agent for the unit of faculty including department chairmen. The college declined to do so and when the parties could not agree as to the negotiating unit, to make sure that there was some sort of discussions concerning salary, the petitioner herein bowed out of the picture for the moment.

As agreed, the faculty interest committee than discussed salaries, terms and conditions of employment which eventually led to faculty contracts for the 1970-71 academic year. During this time, there was give and take, proposals and counter-proposals, notwithstanding the college's argument that these were only discussions. The offer of the college was voted upon and accepted by the faculty. Immediately thereafter the department chairmen apparently not satisfied with the agreement arranged for separate discussions with the college administration to negotiate for itself what they, I assume, considered a better arrangement.

ANALYSIS

I do not believe that the Department Chairmen are supervisors within the meaning of the Act. While it is true that by playing the number game i.e. 15 of 17, 27 out of 30, 81 out of 81, 4 out of 4, it can be argued that the department chairmen effectively recommend the hire, fire, or discipline of employees, I believe it is not conclusive. As such a recommendation is reviewed by the assistant dean of faculty, the dean of faculty, and the President, I do not believe that just because on many occasions there is ultimate agreement between the trustees and the department chairmen that they have, in fact, necessarily effectively recommended the same. As suggested by the President of the college, Mercer is not a large institution. The President is not out soliciting and raising funds and, in fact, is mainly in Trenton running the show. Though the personnel action is initiated by the Department Chairman, it is subsequently reviewed with the reviewing party conducting his own independent investigation. Moreover, though the duties of the department chairmen based upon the job description of the department chairman are quite extensive, it seems, based upon the record testimony, that the nature of the ~~best~~ i.e. higher education, operates more in committee form rather than the "one person" form.

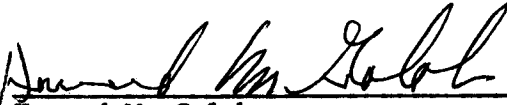
As stated previously, I cannot recommend a finding that department chairmen are supervisors within the meaning of the Act. Furthermore, though inferred by the employer, I cannot recommend that the department chairman be excluded as a managerial executive or as a department head. He does not operate by himself but as stated above as part of a committee. He does not make policy only implements it. Though the title in question is "department chairman", this not what legislature had in mind when it referred to "department chairman" in the statute. Accordingly, I cannot recommend that the department chairmen be found to be managerial executives within the meaning of the Act or excluded based upon the definition of "employee".

Concerning "established practice", I find that there is no established practice to include department chairmen with other members of faculty. First, the record indicates that at one stage they did negotiate for themselves, notwithstanding the proposals agreed to by the faculty as a whole. Moreover, I believe that a history of one year, i.e. 1970-71, is not "established".

The department chairmen, as noted above, do teach and have student contact. Though the department chairmen do receive additional compensation for holding that position, they receive the same benefits as other faculty members. There is common supervision, i.e. the dean of faculty, the President of the college and the Board of Trustees. They receive the same benefits, holidays, vacation rights, privileges, including sabbatical leave, and promotion rights. Moreover, the chairmen and the rest of the faculty are covered by the same faculty and personnel policies and procedures as enumerated in the faculty handbook. Also the department chairmen and the rest of the faculty basically work at the same location under the same hard physical conditions. I therefore find that there is community of interest among the department chairmen and teaching faculty.

Accordingly, based upon the record as a whole and the foregoing, I recommend that the department chairmen be included with the certified unit and that the appropriate unit reads as follows:

All full-time faculty including department chairmen and full-time professional personnel of the Library Media Center, Academic Skills Laboratory, and Student Personnel Staff but excluding administrative officers, administrative staff, the director of Library Service, of the Media Center, of the Academic Skills Laboratory of the Computer Center and of Admissions, part-time (adjunct) faculty, technical assistant, the non-professional staff, supervisors within the meaning of the Act, managerial executives, craft employees and policemen.


Howard M. Golob
Hearing Officer

DATED: December 10, 1970
Trenton, New Jersey