

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

In the Matter of

PARSIPPANY-TROY HILLS BOARD
OF EDUCATION,

Public Employer,

-and-

PARSIPPANY-TROY HILLS
SUPERVISORS ASSOCIATION,

DOCKET NO. RO-81-56

Petitioner,

-and-

PARSIPPANY-TROYS HILLS
EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, adopting the findings and recommendations of a Hearing Officer, determines that area chairpersons are supervisors within the meaning of the Act, 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 area chairpersons. The Director agrees with the Hearing Officer that the record did not establish the existence of a negotiations relationship between the Association (the teachers' unit representative) and the Board prior to 1968, and therefore the Association could not invoke the statutory exception of "established practice" to permit the continued inclusion of area chairpersons in its unit. Even if such circumstances were demonstrated, the substantial increase in supervisory responsibilities assigned to area chairpersons would require their removal from the Association's unit.

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

In the Matter of

PARSIPPANY-TROY HILLS BOARD
OF EDUCATION,

Public Employer,

-and-

PARSIPPANY-TROY HILLS
SUPERVISORS ASSOCIATION,

DOCKET NO. RO-81-56

Petitioner,

-and-

PARSIPPANY-TROYS HILLS
EDUCATION ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Dillon, Bitar & Luther, attorneys
(John W. Adams of counsel)

For the Petitioner
Newman, Herman & Saltman, attorneys
(Robert M. Schwartz of counsel)

For the Intervenor
Katzenbach, Gildea & Rudner, attorneys
(Arnold M. Melk of counsel)

DECISION AND DIRECTION OF ELECTION

On September 24, 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 ("Commission") by the Parsippany-Troy Hills Supervisors Association ("Petitioner") seeking to represent in a separate

negotiations unit all area chairpersons employed by the Parsippany-Troy Hills Board of Education ("Board"). The area chairpersons are currently represented by the Parsippany-Troy Hills Education Association ("Association") and are included in a unit which also includes teachers and other professional staff. Pursuant to N.J.A.C. 19:11-2.7, the Association was granted intervenor status in this matter.

Hearings were held before Commission Hearing Officer Arnold H. Zudick on October 26 and 27, 1981, in Newark, New Jersey, 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 January 4, 1982. The Hearing Officer thereafter issued his Report and Recommendations on February 23, 1982, a copy of which is attached hereto and made a part hereof.

The Association filed exceptions to the Hearing Officer's Report and Recommendations on March 3, 1982.

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

1. The Parsippany-Troy Hills 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 Parsippany-Troy Hills Supervisors Association and the Parsippany-Troy Hills Education Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Association is the exclusive representative of a unit of professional employees employed by the Board which includes teachers, coordinators, area chairpersons and several other professional titles.

4. The Petitioner seeks a separate negotiations unit of area chairpersons. It argues that area chairpersons are supervisors and therefore may not be included in a unit which includes nonsupervisors. The Board agrees that area chairpersons are supervisors. It does not oppose a separate unit. The Association argues that the area chairpersons are not supervisors, and that their inclusion in the negotiations unit with teachers does not present a conflict of interest.

5. The Hearing Officer found that the area chairpersons are supervisors within the meaning of the Act, that their supervisory functions have substantially increased since their initial inclusion in the unit, and that the exercise of their supervisory 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 Association and the Board. Finally, the Hearing Officer recommended that area chairpersons should be removed from the existing collective negotiations unit and provided with the opportunity to choose separate representation.

The Association excepts to the Hearing Officer's findings, arguing that area chairpersons are not supervisors within the meaning of the Act and that there is no actual or potential conflict of interest between area chairpersons and other unit members. The Association submits that even if area chairpersons are supervisors, their inclusion in the negotiations unit predated the passage of the Act and they therefore may continue to be included in the present unit based upon the statutory exception of "established practice."

After a review of the entire record, the undersigned substantially adopts the Hearing Officer's findings of fact, conclusions of law, and his recommendation that an election be provided to resolve the question concerning representation in the unit of area chairpersons.

N.J.S.A. 34:13A-5.3 defines a supervisor as one having the power or effective power to hire, discharge or discipline employees. The record reveals that area chairpersons screen applicants for teaching positions and make hiring recommendations. The high school principal described their role as "paramount and decisive," and, in this regard, stated that he would not hire a teacher without the approval of the area chairperson. In addition, area chairpersons initiate effective recommendations concerning

teacher nonrenewal, and the grant and denial of increments. The high school principal, vice principal and the area chairperson comprise an administrative team to evaluate teachers. The area chairpersons, all of whom hold supervisory certificates, sign evaluations.

Although the Act provides that supervisors shall not be included in units with nonsupervisors, it also provides for certain exceptions which may permit the continuation of a mixed unit structure. N.J.S.A. 34:13A-5.3 provides:

... nor, except where established practice, prior agreement or special circumstances, dictate to the contrary, shall any supervisor ... have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership ...

In In re West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973), the Commission held that the statutory exception of established practice relates solely to pre-Act (1968) relationships. In reviewing the record, the Hearing Officer found that an established practice, pre-dating the Act, had not been demonstrated. The Association excepts to the Hearing Officer's finding, noting that there was testimony offered to the effect that there was, in fact, a pre-1968 collective negotiations relationship.

The Commission, in addressing the issue of established practice, has determined that evidence in support of this exception must be clear and convincing. In re Tp. of Teaneck, E.D. No. 23 (1971). Further, the Commission has held that such a relationship requires:

An organization regularly speaking on behalf of a reasonably well-defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue (now called negotiations) with an employer who engaged in the process with the intent to reach agreement. 1/

In examining the evidence with regard to the pre-1968 relationship in this matter, the undersigned determines that the requirements for the finding of the statutory exception of "established practice" have not been met. The evidence is far from clear and convincing that the Board dealt with "an organization regularly speaking on behalf of a reasonably well-defined group of employees," including area chairpersons, 2/ and that the employer met with an intent to reach agreement.

Having determined that area chairpersons are supervisors within the meaning of the Act and that there is no "established practice" which falls within the statutory exception noted above, the undersigned need not examine in detail the additional circumstances found by the Hearing Officer to constitute conflict of interest. The Hearing Officer's analysis of the facts and the law is consistent with previous Commission decisions in those areas. As the Commission observed in West Paterson, supra, n.1, unless a

1/ In re West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973).

2/ The testimony cited by the Association is that of elementary school principal John Monahan. Asked if the P.E.A. was the organization meeting with the Board, Monahan testified: "I think we had an organization then. It was not a formal organized bargaining group." Later, when asked if the P.E.A., having formally become the majority representative in 1968, then purported to represent area chairpersons, Monahan indicated his inability to answer that question.

supervisor has a paper title and hollow authority, there seems to be no way to eliminate a potential for conflict. The term supervisor denotes it. ^{3/}

Accordingly, for the above reasons, the undersigned adopts the Hearing Officer's recommendation that area chairpersons are supervisors within the meaning of the Act and should be removed from the Parsippany-Troy Hills Education Association's unit. The petitioned-for unit is prima facie appropriate. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all area chairpersons, but excluding managerial executives, confidential employees, police and craft employees, and all other professional employees of the Parsippany-Troy Hills 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.

^{3/} Even if the Association had demonstrated the elements of "established practice" herein, it nevertheless appears that the area chairpersons' role in hiring, discharge and discipline was significantly less in 1968 than it is now, and did not reach supervisory level. It further appears that the area chairpersons' role in the evaluation process has significantly increased as a result of the implementation of the 1980 rules concerning teacher evaluation developed by the Commissioner of Education. Regardless of any supervisory role which assertedly was exercised by area chairpersons prior to 1968, it appears from the record evidence that the recent substantial increase of supervisory authority now being exercised by area chairpersons requires their removal from the Association's unit. See In re Ramapo Reg. H/S Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981).

Those eligible to vote are the area chairpersons 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 Petitioner 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 eligibility 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 Parsippany-Troy Hills 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



Carl Kurtzman, Director

DATED: April 29, 1982
Trenton, New Jersey

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

In the Matter of

PARSIPPANY-TROY HILLS BOARD
OF EDUCATION,

Public Employer,

-and-

PARSIPPANY-TROY HILLS
SUPERVISORS ASSOCIATION,

DOCKET NO. RO-81-56

Petitioner,

-and-

PARSIPPANY-TROY HILLS
EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

In a Petition for Certification of Public Employee Representative, a Hearing Officer of the Public Employment Relations Commission recommends that an election be directed in a unit of area chairpersons employed by the Parsippany-Troy Hills Board of Education. The Hearing Officer found that area chairpersons were supervisors within the meaning of the New Jersey Employer-Employee Relations Act and were no longer appropriate for inclusion with nonsupervisory professional employees and, therefore, were required to be removed from the unit represented by the Parsippany-Troy Hills Education Association.

The Hearing Officer concluded that no established practice or prior agreement existed to otherwise justify the continued inclusion of the title in the existing unit. Moreover, the Hearing Officer found that actual and potential substantial conflict of interest exists within the current unit structure that warranted a separate unit for area chairpersons.

The 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.

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

In the Matter of

PARSIPPANY-TROY HILLS BOARD
OF EDUCATION,

Public Employer,

-and-

PARSIPPANY-TROY HILLS
SUPERVISORS ASSOCIATION,

DOCKET NO. RO-81-56

Petitioner,

-and-

PARSIPPANY-TROY HILLS
EDUCATION ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Dillon, Bitar & Luther, Esqs.
(John W. Adams of counsel)

For the Petitioner
Newman, Herman & Saltman, Esqs.
(Robert M. Schwartz of counsel)

For the Intervenor
Katzenbach, Gildea & Rudner, Esqs.
(Arnold M. Mellk of counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on September 24, 1980, by the Parsippany-Troy Hills Supervisors Association (the "Petitioner") seeking to represent in a separate negotiations unit all area chairpersons

(approximately 28) employed by the Parsippany-Troy Hills Board of Education (the "Board"). ^{1/} The above title is currently represented by the Parsippany-Troy Hills Education Association (the "Intervenor") which represents various professional titles in addition to area chairpersons. ^{2/}

The Petitioner argues that the petitioned-for unit is appropriate because area chairpersons are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and are therefore inappropriate for inclusion in the Intervenor's unit which includes nonsupervisors. In addition, the Petitioner argues that a conflict of interest exists with the inclusion of area chairpersons in the existing unit which justifies their exclusion therefrom. The Intervenor argues that area chairpersons are not supervisors within the meaning of the Act, and that no conflict of interest exists between them and the remainder of its unit. The Board also argued that area chairpersons are supervisors within the meaning of the Act and it did not oppose a separate unit.

Pursuant to a Notice of Hearing dated July 1, 1981, hearings were held in this matter on October 26 and 27, 1981, ^{3/} in Newark, New Jersey, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and

^{1/} Initially, the Petitioner sought area chairpersons as well as coordinators. However, the Petitioner amended the Petition at hearing and deleted coordinators from its Petition.

^{2/} By the submission of a collective agreement covering the above title, the Intervenor has properly intervened herein pursuant to N.J.A.C. 19:11-2.7.

^{3/} This matter was originally scheduled for hearing on August 11, 12 and 13, 1981. However, pursuant to the parties' request, the hearings were rescheduled for October 1981.

argue orally. Subsequent to the close of hearing, the parties filed briefs in this matter the last of which was received on January 4, 1982. ^{4/}

Based upon the entire record in these proceedings, the Hearing Officer finds:

1. The Parsippany-Troy Hills Board of Education is a public employer within the meaning of the Act, is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. The Parsippany-Troy Hills Supervisors Association and the Parsippany-Troy Hills Education Association are public employee representatives within the meaning of the Act and are subject to its provisions.

3. The Intervenor is currently the majority representative of a professional unit of employees employed by the Board which includes teachers, coordinators, area chairpersons and several other professional titles. The collective agreement in effect between the Board and the Intervenor when the Petition was filed expired on June 30, 1981 (Exhibit J-1). ^{5/}

4. The Petitioner seeks an election in a collective negotiations unit of area chairpersons because it argues that said title is supervisory and is therefore inappropriate for continued inclusion in the Intervenor's unit. The Board agrees that area chairpersons are supervisory and it is not opposed to a

^{4/} Due to the substitution of attorneys for the Intervenor subsequent to the hearing, additional time was provided for the submission of briefs.

^{5/} Since the Intervenor's agreement expired on June 30, 1981, the instant Petition was timely filed pursuant to N.J.A.C. 19:11-2.8(c)(3).

separate unit. The Intervenor argues that the Petition be dismissed because area chairpersons allegedly are not supervisors, and that no conflict of interest exists with their inclusion in the unit. Since the parties have been unable to agree upon the appropriateness of the unit sought by the Petitioner, a question concerning the representation of area chairpersons exists, and the matter is appropriately before the undersigned for Report and Recommendations.

5. The parties agreed that the issue herein concerns the placement of area chairpersons and whether they should remain in the Intervenor's unit or be placed in the unit sought by the Petitioner.

Analysis - Law and Facts

In recent years there have been numerous cases before the Commission concerning the supervisory status of area or department chairpersons. ^{6/} Those cases have established several elements to be considered in determining the overall issue. The Act at N.J.S.A. 34:13A-5.3 defines a supervisor as someone who can hire, discharge, discipline or effectively recommend the same, and it further indicates that except where established practice, prior agreement or special circumstances dictate the contrary, supervisors cannot be in units with nonsupervisory personnel. The Commission has determined that the above statutory

^{6/} In re Ridgewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (¶ 11102 1980); In re Ramapo-Indian Hills Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981); In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981); In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Paramus Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶ 12247 1981); and In re Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER ____ (¶ _____ 1982).

exceptions (especially established practice and prior agreement) were meant to apply only to circumstances which existed prior to July 1, 1968 (the initial passage of the Act). ^{7/} The Commission has also defined the extent and type of relationship necessary to support a claim of established practice, ^{8/} and determined that clear and convincing evidence is required to prove such an exception. ^{9/} Finally, the Commission has indicated that the statutory exceptions are to be narrowly interpreted and that the mere existence of one exception is not necessarily enough to guarantee the continued existence of a mixed unit. ^{10/}

In fact, the Commission held in In re West Paterson, P.E.R.C. No. 77, supra, at pp. 15-16, that even if an exception to the Act existed, an examination of conflict of interest standards as established in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) were still necessary in determining whether the unit was "appropriate." In more recent determinations, the Commission held that even where a pre-1968 established practice or prior agreement existed to otherwise justify the continuation of a mixed unit, it was still necessary to determine whether substantial changes in the job functions of the disputed titles and/or the existence of actual or the potential for substantial conflict of

^{7/} In re West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973).

^{8/} In re West Paterson Bd. of Ed., P.E.R.C. No. 79, supra, n.7; In re West Paterson Bd. of Ed., P.E.R.C. No. 77, (1973); In re City of Camden, P.E.R.C. No. 53 (1971); In re City of Camden, P.E.R.C. No. 52 (1971); In re Middlesex Cty. College, P.E.R.C. No. 29 (1969); In re Tp. Teaneck, E.D. No. 23 (1971); and In re Hillsdale Bd. of Ed., E.D. No. 2 (1970).

^{9/} In re Teaneck, supra, n.8 at pp. 7-8.

^{10/} In re W. Paterson Bd. of Ed., P.E.R.C. No. 77, supra, pp. 9-10, 14-15 (1973).

interest would nevertheless require the separation of supervisors from the remaining nonsupervisory unit. 11/

Consequently, the elements that must be examined to determine the appropriate unit for the instant title are: ability to hire, discharge, discipline or effectively recommend the same, the existence of one or more statutory exceptions to the rule that supervisors be separated from nonsupervisors; changed circumstances; and, conflict of interest.

Hiring

The record supports a finding that area chairpersons are an integral part of the hiring process and have made effective recommendations for hiring unit employees. For example, John Monahan, an elementary principal testified that area chairpersons have made recommendations for hiring and that people have actually been hired based upon those recommendations. 12/ Robert Perlett, an area chairperson, testified that he has made hiring recommendations, none of which have been rejected, and that he has participated in the hiring of all 18 people in his department. 13/ In addition, Bernard Packin, Principal at Parsippany Hills High School testified that he would not hire a teacher without the approval of an area chairperson, and he has agreed to a chairperson's request not to hire a particular person. 14/ Finally, John Capsouras, an area

11/ See In re Ramsey Bd. of Ed., supra, n.6; In re Paramus Bd. of Ed., supra, n.6; and In re Ramapo-Indian Hills Bd. of Ed., supra n.6. This philosophy was enunciated as far back as In re Hillside Bd. of Ed., supra, n.8.

12/ Transcript ("T") I, pp. 63, 64, 65, 68.

13/ T I, p. 76.

14/ T II, pp. 59-60

chairperson, testified that he had hired -- with Board approval -- at least three people. 15/

Discharge/Discipline - Non-Renewal/Increment Denial

In the education field, discharge is most often equated with non-renewal of a teacher and discipline is equated with increment denial.

As with the hiring category, the record shows that area chairpersons have had effective input in the non-renewal and increment denial of unit members. Packin testified that certain teachers have not been renewed based upon area chairperson recommendations and that teachers normally knew of these recommendations. 16/ He also indicated that area chairpersons play the same role with respect to increment denials. 17/ In addition, Mr. Perlett testified that he has made recommendations for non-renewal and they have always been accepted. 18/ Finally, another area chairperson, Tony Santarsiero, testified that he has made recommendations for denial of increment which have also been followed. 19/

Observations/Evaluations

Observations and evaluations of teachers usually form the basis for decisions on non-renewal and increment denials. The facts in the instant matter show that although area chairpersons

15/ T II, pp. 83-84

16/ T II, pp. 23-24, 27

17/ T II, p. 25

18/ T I, p. 98

19/ T I, pp. 141-142, 164

perform observations/evaluations, they are not alone in formulating a recommendation in the evaluation process, nor do they sign the evaluation in every case. The weight of the evidence shows that many recommendations by area chairpersons are made in conjunction with principals and vice principals, but area chairpersons play a vital role. Packin, for example, testified that in his school he considers the area chairpersons part of the administrative team -- also including the principal and vice principal -- that formulates the evaluation, and he indicated that area chairpersons are always involved in that process. ^{20/} In addition, he testified that his area chairpersons are required to sign the evaluation form (Exhibit J-4) because they are so actively involved in the observation process. ^{21/} Area chairman Perlett testified that he has signed Exhibit J-4 and he does consider the final recommendation on that form to be his recommendation. ^{22/} He indicated that he has never had a disagreement with the principal or vice principal on the final recommendation.

Perlett also testified that area chairpersons are responsible for conducting classroom observations and completing the observation form (Exhibit J-3), and for developing a Performance Improvement Development Plan (Exhibit P-3) for each teacher. ^{23/} He further indicated that he evaluates the teacher on his/her performance on Exhibit P-3, and that both J-3 and P-3 are used in

^{20/} T II, pp. 10-11

^{21/} T II, p. 11

^{22/} T I, pp. 84, 116-117

^{23/} T I, pp. 82-86

formulating the final evaluation on J-4. ^{24/} In fact, area chairperson Santarsiero testified that although he does not sign the evaluation form, said form does not in essence vary from the observation form which he prepared. ^{25/} Principal Monahan also indicated that the area chairpersons provide input in the evaluation process, and their observations have a great deal of weight in that process. ^{26/}

In view of the above information it is evident to the undersigned that area chairpersons have an effective input into the overall evaluation process which occasionally results in a non-renewal or denial of increment for specific teachers.

Exceptions to the Act

The Intervenor argued in its brief that an established practice exception to the Act existed with respect to area chairpersons which justified their continued inclusion in its unit. However, despite the undersigned's request for information concerning established practice, very little was actually adduced in the record. The only evidence cited by the Intervenor was testimony by Monahan that some form of organization existed prior to 1968 and meetings were held with Board representatives. However, Monahan clearly indicated that the organization was informal and had not been formally recognized. ^{27/} Despite the existence of some informal meetings where terms and conditions of employment

^{24/} T I, pp. 82-84, 87-88

^{25/} T I, pp. 139-140

^{26/} T I, pp. 23, 24, 32, 37, 43, 70

^{27/} T I, p. 53

were "set", this information is insufficient to prove an established practice. As previously discussed, the Commission has strictly interpreted the exceptions to the Act, and evidence of any exceptions must be clear and convincing. See In re West Paterson, P.E.R.C. 77 supra; In re Teaneck, supra, n.8. No such evidence exists herein. Consequently, no exceptions to the Act have been demonstrated.

Changed Circumstances/Conflict of Interest

Even assuming that an exception to the Act existed herein, the evidence supports a finding that both changed circumstances and conflict of interest exists either of which would negate any exception to the Act.

Regarding the changed circumstances, the evidence shows that prior to 1968 the area chairpersons basically performed a helping teacher function. In addition, Santarsiero testified that prior to 1968 he had no role in hiring, ^{28/} area chairperson Don Suppa stated that they had no role in discipline or dismissal prior to 1968, ^{29/} Perlett testified that now the area chairperson role is more formalized, ^{30/} and, Packin testified that prior to 1968 observations involved a simple process, whereas now they include a developmental process. ^{31/} Finally, the evidence shows that prior to 1977 the area chairpersons were not "required" to possess a supervisors' certificate. Now such a certificate is required for one to be an area chairperson. ^{32/}

^{28/} T I, p. 145

^{29/} T I, p. 176

^{30/} T I, p. 105

^{31/} T II, p. 13

^{32/} T I, p. 74; TII, p.5

The evidence regarding conflict of interest is even more extensive than the changed circumstances information. For example, the record shows that a strike by the Intervenor occurred in this district in 1975, and the area chairpersons chose to support the strike primarily because they were included in the Intervenor's unit. However, the evidence shows that the area chairpersons felt uncomfortable supporting the strike because of their chairperson status, or even being required to choose whether or not to support the strike. ^{33/} Chairperson Perlett's testimony can best illustrate the frustration and conflict of divided loyalties that the chairpersons experienced:

Q. Meetings were held in June?

A. In June. And it was obvious, at that time, that there was talk of a strike, and we talked among ourselves as to what we would do. We had questions as to what was our responsibility. Were we teachers or were we supervisors? Our decision, at the time, was that we were teachers because we were members of the Teacher's Association for the most part, and that we would probably, if a strike were called that following September, go out on strike. We were not very happy with that decision nor would we have been happy with any other, I think. And it was a very difficult situation for all of us concerned.

Q. When you state that you weren't happy with that decision and you're saying it was a very difficult situation for all of you, what do you mean?

A. We didn't know where our loyalties belonged. We thought of ourselves as Chairpersons and, therefore, responsible for curriculum. We knew that we observed

teachers; however, at that time, it was not clear-cut whether or not we were evaluators. I think that has changed since the strike as to whether we're evaluators or not. T I, p. 102.

The law is clear that actual conflict of interest is established once it is proved that supervisors have been placed in a pressure situation where they must choose between performing those supervisory duties or supporting an otherwise nonsupervisory organization. See In re Paramus, supra, and In re Ramapo-Indian Hills, supra. There can be no doubt that the instant area chairpersons were placed in such a pressure situation and this amounted to actual substantial conflict of interest.

In addition to the above evidence, there have been other incidents of conflict in this district. Perlett testified that he has made recommendations which have resulted in the cut back of a full time teacher to a three-fifths teacher which amounts to a reduction in force, ^{34/} and the evidence shows that Santarsiero also made a decision which involved a reduction in force. ^{35/} Furthermore, both Perlett and Suppa testified that they have been denied representation by the Intervenor when a conflict existed between the supervisor and the teacher, at which time the Intervenor gave priority to the teacher. ^{36/} This evidence demonstrates that the Intervenor is unable to adequately represent a mixed unit and that the current unit structure is unworkable. Finally, both Monahan and Packin testified that

^{34/} T I, p. 92

^{35/} T I, p. 143

^{36/} T I, pp. 89-90, 174-175

testified that chairpersons have been required to testify against teachers in other matters. ^{37/} All of the above information demonstrates the existence of a substantial conflict of interest.

Consequently, as a whole, the overwhelming weight of the evidence adduced herein demonstrates that area chairpersons in Parsippany are supervisors within the meaning of the Act, that an actual and potential substantial conflict of interest exists between them and other unit members all of which require their immediate removal from the Intervenor's unit.

Recommendations

Based upon the foregoing discussion, the undersigned Hearing Officer recommends the following:

1. That area chairpersons employed by the Board are supervisors within the meaning of the Act and must be removed from the Intervenor's negotiations unit.

(a) That no established practice or prior agreement existed herein to justify the continued inclusion of area chairpersons in the Intervenor's unit.

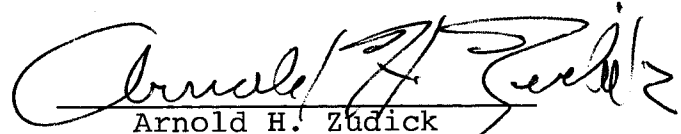
(b) That actual and potential substantial conflict of interest exists requiring the removal of the instant title from the Intervenor's unit.

2. That the unit being sought by the Petitioner is appropriate, and that a yes/no secret ballot election be directed in the following negotiations unit wherein the eligible voters shall vote as to whether they wish to be represented by the Petitioner.

37/ T I, p. 40; T II, pp. 60-61

Included: All area chairpersons employed by the Parsippany-Troy Hills Board of Education.

Excluded: All managerial and confidential employees within the meaning of the Act, all other employees employed by the Board.


Arnold H. Zudick
Hearing Officer

DATED: February 23, 1982
Trenton, New Jersey