

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE GREATER EGG  
HARBOR REGIONAL HIGH SCHOOL DISTRICT  
Public Employer

and

Docket No. CU-21

OAKCREST TEACHERS ASSOCIATION, INC.  
Public Employee Representative  
and Petitioner

DECISION

Pursuant to a Notice of Hearing concerning the issue of inclusion of department chairmen within an existing negotiating unit, hearing was held on July 30, 1970 before Hearing Officer Jeffrey B. Tener at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and argue orally. Thereafter, on November 30, 1970, the Hearing Officer issued his Report and Recommendations to which no exceptions were filed. Having considered the record and the Hearing Officer's Report and Recommendations issued thereon and based upon the record herein, the undersigned finds:


1. The Board of Education of the Greater Egg Harbor Regional High School District is a public employer within the meaning of the Act and is subject thereto.
2. The Oakcrest Teachers Association, Inc. is an employee representative within the meaning of the Act.
3. The Association seeks to include department chairmen within an existing unit 1/ and petitions therefor. The Board disagrees. Both sides have agreed, however, to submit the question to the Commission for resolution. 2/ Thus a question concerning the composition of the unit exists and this matter is properly before the undersigned for determination.

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1/ The unit includes classroom teachers, guidance counselors, librarian(s), nurses, social workers, but excludes the superintendent, principal, assistant principal, assistant to the assistant principal, director of student personnel services, business manager, and school psychologists.

2/ In the current contract the Board and the Association agree "...that final determination on department heads will be reserved to final decision by the Public Employment Relations Commission."

4. In the absence of exceptions to the Report and Recommendations of the Hearing Officer, the undersigned adopts the findings and recommendations of the Hearing Officer pro forma. In accordance therewith department chairmen are excluded from the unit and the petition is dismissed.

  
Maurice J. Nelligan, Jr.  
Executive Director

DATED: June 25, 1971  
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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BOARD OF EDUCATION OF THE  
GREATER EGG HARBOR REGIONAL HIGH SCHOOL DISTRICT 1/

Public Employer

and

Docket No. CU-21

OAKCREST TEACHERS ASSOCIATION, INC. 2/

Petitioner

APPEARANCES:

For the Board of Education of the  
Greater Egg Harbor Regional High School District  
Edward Champion, Esq.

For the Oakcrest Teachers Association, Inc.  
Eugene J. Sharp, Field Representative,  
New Jersey Education Association

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on February 24, 1970 by the Oakcrest Teachers Association, Inc. requesting a clarification of unit. Pursuant to a Notice of Representation Hearing dated April 27, 1970 and two subsequent Orders Rescheduling Hearing dated May 12, 1970 and June 8, 1970, a hearing was held before the undersigned Hearing Officer on July 30, 1970 in Camden, New Jersey, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. The parties waived the right to file briefs. Upon the entire record in this proceeding, the Hearing Officer finds:

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1/ As amended at hearing.

2/ As amended at hearing.

1. The Board of Education of the Greater Egg Harbor Regional High School District is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Oakcrest Teachers Association, Inc. is an employee representative within the meaning of the Act.
3. The public employer disagrees that department chairmen should be included in the existing negotiating unit. There is, therefore, a question concerning the composition of the unit and this question is appropriately before the undersigned for Report and Recommendations. The contract between the parties dated April 2, 1970 for the period between July 1, 1970 and June 30, 1971 which was offered as a joint exhibit provides in paragraph B of Article I for determination by P.E.R.C. of the status of department heads.
4. The major issue in this case is whether or not department chairmen are supervisors within the meaning of Chapter 303, Laws of 1968. Section 7 of the Act describes a supervisor as one "...having the power to hire, discharge, discipline, or to effectively recommend the same..." If department chairmen are found to be supervisors as maintained by the Board but disputed by the Association, then Section 8 of the Act would preclude them from being in a unit with nonsupervisors absent one of the exceptions:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors...

5. In the opinion of the undersigned, it was clearly established that department chairmen are supervisors as that term is used in the Act. This finding is based upon the testimony of the several department

chairmen as well as that of the Superintendent who testified for the Board.

The hiring process for teachers was described by the Superintendent. He testified that applications are received by the Superintendent. If an opening exists, the Superintendent refers the application(s) to the high school principal. The principal and the department chairman in the appropriate subject matter area then arrange to interview the candidate. After the principal and the department chairman interview the applicant, the department chairman---and sometimes the principal---go to interview the applicant in the district where the applicant is teaching if possible. The principal and department chairman submit a recommendation to the Superintendent. The Superintendent also testified that he had never employed a teacher over the negative recommendation of a department chairman and that he would not go against the recommendation of a department chairman unless there was something derogatory in the references received on the applicant.

(Tr. 15-18) Received in evidence as Employer Exhibit 3 were documents entitled "Candidate Evaluation Sheet" which provides for an evaluation and rating of a candidate by department chairmen. The Superintendent testified that on several occasions during the summer months department chairmen have interviewed candidates and recommended them and that these were subsequently hired. (Tr 34-36) In at least one instance, the Superintendent testified that he never met a teacher before he was hired on the recommendation of the department chairman which reached the Superintendent through the principal. Where several candidates have been found to be acceptable to a department chairman, the principal and department chairman get together and discuss a

priority rating of the candidates. (Tr. 49) This testimony was uncontroverted and was in fact corroborated by the testimony of the Science Department Chairman who acknowledged that he had the power to make recommendations regarding the hiring of teachers in his department and that his recommendations have been followed. (Tr. 166) The job description of department chairmen which was received as Employer Exhibit 4 provides that department chairmen are to "participate in selecting new staff members."

The record is equally clear with respect to evaluation. Department chairmen, according to the job description referred to above, "...evaluate members of the department and recommend to the principal regarding contracts, increments, and tenure." Employer Exhibit 1 which is the Criteria for Observation and Evaluation provides in the Evaluation and Recommendations Report for a recommendation regarding renewal of contracts, increments, and, where appropriate, tenure. The Superintendent testified that in each of the seven cases where tenure has been granted since the incumbent has been the Superintendent that department chairmen have recommended that tenure be granted. He testified that he relied absolutely upon the decision of the department chairmen. (Tr. 24) He stated that the primary obligation for recommending hiring, firing and increments rests with the department chairmen. (Tr. 76) None of the department chairmen denied the role attributed to them herein regarding evaluation of teachers and recommendations for increments, contracts, tenure, etc.

There were several illustrations of cases in which recommendations of department chairmen were not followed until they were amended. In one case, a department chairman initially recommended against granting a contract to a non-tenure teacher. However, he changed this

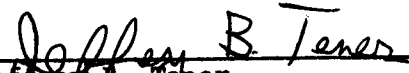
recommendation after conferring with the Superintendent. In this particular case, the chairman, principal and Superintendent apparently agreed that the spirit of the evaluation procedure had not been followed and it was agreed to offer the individual in question a contract but no increment. (Tr. 46-48 and 84-85) In one other instance, a department chairman recommended that a new teacher be hired but the Superintendent through the principal indicated that he believed there were other available candidates who would be more acceptable. The particular applicant was not hired.

In spite of these two instances in which department chairmen changed their recommendations following a reaction from the Superintendent, the preponderance of evidence clearly leads to the conclusion that department chairmen are supervisors within the meaning of the Act and the undersigned so finds. The representative of the Association admitted that the recommendations of department chairmen which are submitted to the principal and the Superintendent have been honored. (Tr. 185)

6. Having found department chairmen to be supervisors, the question of established practice, prior agreement or special circumstances must be considered. No claim was made by the Association that any of the exceptional conditions applied nor does the record support such a finding. The first written contract between the parties was for the year 1969-1970. (Tr. 178) Prior to the passage of Chapter 303, the Salary Welfare Committee of the Association discussed salaries only with the Superintendent. (Tr. 178-179) In fact, the Superintendent accepted a two-year salary guide for 1967-1968 and 1968-1969 on behalf of the teachers even before the teachers had had an opportunity to vote on the guide. This hardly warrants a finding of "established practice". There is simply no evidence of established practice,

prior agreement, or special circumstances.

7. Having found department chairmen to be supervisors within the meaning of the Act and having found no established practice, prior agreement or special circumstances to justify a combined unit of supervisors and nonsupervisors, the Hearing Officer recommends that department chairmen remain out of the unit and that the petition be dismissed.

  
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Jeffrey B. Tener  
Hearing Officer

DATED: November 30, 1970  
Trenton, New Jersey