

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD OF EDUCATION

-and-

Docket No. CU-84-10  
L-85-15

EDISON PRINCIPALS' ASSOCIATION,  
a/w N.J.A.P.S.

DECISION

The parties herein advised the Commission that they wished to submit their dispute to the Litigation Alternative Program. In this procedure the parties describe and document the nature of their dispute to a Commission designee. Failing a direct resolution of the issue by the parties, the Commission designee issues a recommendation designed to resolve the dispute without prejudice to the parties' legal positions.

On February 14, 1985, I conducted an informal session with the parties concerning this dispute. The Edison Township Board of Education was represented by its consultant, Raymond A. Cassetta, and the Edison Principals' Association was represented by its attorney, Robert M. Schwartz. During the proceedings each party presented testimony from principals and supervisors and from the Superintendent of Schools.

The parties have stipulated that the issue in this dispute is as follows: Should the position of vice-principal be excluded from the Association's unit consisting of principal, vice-principals, and supervisors, because of a conflict of interest

between the principals and vice-principals. The Board also contends that there is a conflict of interest between the principals and the supervisors and that the supervisors as well should be excluded from the unit.

The Association objects to any consideration on the principal-supervisor issue given the fact that the Board and the Association had previously litigated this issue in unit clarification proceedings ending in a Director of Representation decision, D.R. No. 82-8, 7 NJPER 560 (para. 12249 1981). The Director concluded that the Board had failed to demonstrate a conflict of interest sufficient to support the exclusion of both vice-principals and supervisors from the existing unit. He did state however that he might have reached a different conclusion if the factual record had been more fully developed concerning the relationship between the principals and vice-principals and that he would entertain a motion to reopen the hearing for that purpose.

While I agree with the Association, that the Director's decision limited the reopening of this matter to the principal-vice-principal issue, I allowed the Board to present its evidence concerning the supervisors in order to determine if there had been any change in circumstances from the time of the Director's decision.

I find the following facts:

a) The Principals, Vice-Principals, and Supervisors are all supervisors within the meaning of the Act and have been in the

same negotiation unit for at least 13 years. <sup>1/</sup>

b) The principals are evaluated by the superintendent, the vice-principals by the principals, and the supervisors by the deputy superintendent. These evaluations are performed once a year for all tenured employees and three times a year for non-tenured employees. These evaluations are used to determine whether an employee receives tenure or receives an increment, and it is the principal who makes the recommendations as they concern vice-principals. The principals expect that their recommendations will be followed by the Board.

The evaluations are based upon the individual's overall performance and they are designed to identify the individual's strengths and weaknesses. There have been very few, if any, negative evaluations performed by the principals and a vice-principal has never had an increment denied.

The evaluation process has remained unchanged for at least 13 years and the principals have always evaluated the vice-principals. There has been no evidence of any actual conflict of interest in the principals performing evaluations of vice-principals. The Board presented an evaluation performed by a principal in 1980 which it believed was inaccurate based upon its

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<sup>1/</sup> This negotiations unit was altered in 1981 by the Director of Representation's decision. It was clarified to exclude the non-supervisory titles of guidance counselors, coordinators, and child study team members.

lack of negative comments, and stated that the following year's evaluation included those negative comments only because the superintendent had applied pressure on the principal to do so. This, the Board asserts, is an example of an actual conflict and that the principal would not have failed to include the negative comments had the principal and vice-principal not been in the same unit. I do not believe that the principal altered his 1980 evaluation simply because the two were in the same unit, and believe the principal when he stated that the vice-principal had been an outstanding administrator for many years and that his overall performance had been excellent. For these reasons the principal believed that any negative aspect of his overall performance was minimal. The principal also credibly testified that the fact that both he and the vice-principal were in the same unit had no bearing on his actions.

c) The principal plays a prominent role in the hiring of vice-principals for that principal's building. There have been six vice-principals hired in the last ten (10) years. The general hiring procedure has been as follows:

1) Notices of vice-principal vacancies are posted both internally and externally by the Central Business Office.

2) All applications are received by the Central Business Office and an initial screening and interviewing of the candidates is performed by the Director of Personnel..

3. The superintendent and deputy superintendent then interview a smaller number of candidates and they then reduce the number even more.

4. The final candidates are interviewed by the building principal. He makes a list of the top three (3) candidates, sends a memorandum to the superintendent explaining why he believes the three (3) candidates are best, and list them in order of preference. Generally the principals' recommendations are followed, however both parties were uncertain if the principals' first choice is always picked.

d) The principal and vice-principal in any particular building work very closely as an administrative team. When the principal is absent, the vice-principal takes over the principal's daily responsibilities. The principal assigns the responsibilities of the vice-principal and oversees their daily performance. If a vice-principal is sick and needs time off he makes this request to the Central Business Office; he calls the principal only as a courtesy. The principals have the authority to discipline their vice-principals however this discipline has always been oral and informal. If a vice-principal does not follow the oral admonishment of a principal, the principal can place a written reprimand into the vice-principal's file. This has yet to happen however. After a written reprimand the principal can discuss the problem with the superintendent and together they will reach a solution.

e) Under the parties' collective negotiations agreement the first step of a grievance must be initiated by a member, or the Association, in writing with the member's immediate superior. The principal is the vice-principal's immediate superior and may be a

supervisor's immediate superior if the grievable action occurred in the principal's building. There is therefore, the possibility that a principal may be the first step of a grievance filed by a unit member and that he may alter his response based upon the union affiliation. This has never occurred nor does the Board allege that it has occurred. At the second step of the procedure the Association Grievance Committee takes control of the grievance and either submits it to the superintendent or lets it drop. Because of this procedure, the Association claims the principal need not hear any of the grievances filed by those under him.

f) The supervisors are under the control of the deputy superintendent. It is their responsibility to give technical assistance to teachers in the supervisor's area of expertise. The supervisor's responsibilities are district wide requiring them to visit all of the district's schools. While they are in a particular building, the principal of that building is considered to be in charge of the supervisor. The principal may instruct the supervisor to observe a particular teacher and the supervisor is required to follow this instruction, however orders from the deputy superintendent takes precedent.

It is the deputy superintendent's responsibility to perform a written evaluation on the supervisors. The principals provide input into this evaluation and meet with the deputy superintendent once a year to comment on the performances of the supervisors. These comments may or may not become a part of the supervisor's

evaluation and the principals never receive copies of them and never know if any of their comments have been included.

While there are some aspects of a supervisor's performance that only the principals have knowledge of, the deputy superintendent meets with each supervisor at least once a month and is well informed of the supervisor's overall performance.

The principals, as a committee, interview the final three (3) applicants selected to fill a supervisor opening. They make their recommendations to the superintendent.

#### Board of Education Position

The Board acknowledges that the relationship between the Board and the Association has been good and that the members of the Association have collectively contributed in making the Edison school system one of New Jersey's finest. It admits that there has never been any actual conflict of interest in having the principals in the same unit as vice-principals and supervisors, but claims that the potential for a conflict is substantial. It claims that where a principal evaluates vice-principals, plays an integral role in their hiring, and is the first step of the grievance procedure for those vice-principals, that a substantial potential for conflict of interest exists. It further claims that it is willing to voluntarily recognize separate negotiations units consisting of principals in one, and vice-principals and supervisors in another.

### Association Position

The Association asserts that there has been no change of circumstances from the date of the Director's decision, and that all things being the same there is no ground to support the removal of vice-principals and supervisors from the unit. It further claims that it is not enough for the Board to show that there is a potential conflict of interest but in cases involving a unit of supervisors, it must show an actual conflict. This it claims is all the more significant when considering that this unit has worked so well for so long for both the Association and the Board with no adverse effects. It finally asserts that separating this unit into two separate ones is inappropriate given the very strong community of interest each title shares with the others. It states that all three titles are so closely intertwined that they work as a team and that separation of the unit would suit no one's best interest.

### Analysis

N.J.S.A. 34:13A-5.3 provides in pertinent part that "except where established practice, prior agreement or special circumstances dictate the contrary...any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same [shall not] have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership...." The law further mandates that "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." N.J.S.A. 34:13A-5.3



In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971) the Court established the standard upon which to judge the community of interest among various levels of supervisory personnel in the same unit. 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...a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute." Wilton, supra, at 427. The Court remanded to the Commission the question of whether substantial conflicts existed between Mrs. Wilton and other supervisory personnel. Rather than denote the circumstances under which a substantial actual or potential conflict of interest exists, the Court stated that "...each case must be determined on its own particular facts."

In this present case it is abundantly clear that where the principals evaluate the vice-principals, take an active part in their hiring, and might possibly be the first step of the grievance procedure, the potential for a conflict of interest exists. I do not agree with the Association that in order for the Board to prevail it must demonstrate an actual conflict of interest rather than a potential one, however in light of other circumstances, I am

not convinced that a removal of either vice-principals or supervisors from the Association's unit is appropriate.<sup>2/</sup>

In Wilton, supra, the Court stated, "The determinative factor...in ascertaining the appropriateness of a unit is...whether (the title's inclusion) in the unit will serve and not subvert the purpose of the Act, i.e., establishment and promotion of fair and harmonious employer-employee relations in the public service." at p. 416. The Commission's treatment of the "substantial actual or potential conflict of interest" issue raised in Wilton is limited, however in In re City of Trenton, D.R. No. 83-33, 9 NJPER 382 (para. 14172 1983), the Director balanced a potential conflict of interest against factors similarly found in the instant matter and concluded that those factors outweighed any potential conflict of interest. I quote at length from that decision":

There are certain factual distinctions between the circumstances involved in Wilton and the present circumstances that should be noted at the outset of this review. First, Wilton arose in the context of an employment relationship

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<sup>2/</sup> I do not even find a potential conflict of interest between the principals and the supervisors. While the principals provide input into the evaluations of the supervisors, this input is very informal and there is evidence to suggest that in some cases the deputy superintendent does not even utilize the information provided by the principals. I find no change in circumstances from the time of the Director's decision to the present as it concerns the supervisors, and believe that his statement in that decision is still accurate; "...neither the supervisors nor the principals supervise each other, and the record does not indicate that the loyalties owed by principals or supervisors to the Board would present a conflict vis-a-vis their joint inclusion in a negotiations unit.." In re Twp. of Edison Bd. of Ed., D.R. No. 82-8, 7 NJPER 560, 562 (para. 12248 1981).

where supervisors had not previously been represented for collective negotiations purposes. Thus, there was no experiential factor present under the Wilton setting which could enter into the analysis of whether a potential for conflict of interest could be deemed, in the words of the Court, "tolerable" or "de minimis."

In its determinations reviewing Wilton considerations in the context of a history of collective representations, the Commission has found that the experiential factor, rather than the speculative factor, should be utilized to gauge the potential for substantial conflict arising in the future. In In re West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973), the Commission observed:

Future contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculations not benefited by hindsight.

An examination of the record in the instant matter reveals an absence of any incident demonstrating an incompatibility of interest between the superintendents and their assistants, a compromise of interest, or a significant detriment to the rights of either the City or AFSCME. The basis for the Hearing Officer's finding of potential conflict was his conclusion that it was possible that disciplinary proceedings relating to potential wrongdoings of the Assistant Sanitation Superintendent or the General Foreman might never be initiated because the respective superintendents might not bring wrongdoings to the attention of the Department Director who is responsible for disciplining all but minor infractions. The reasonable foreseeability of such conduct arising, however, is not borne out by any record evidence,

notwithstanding the Street Superintendent's inclusion in the unit since 1977 and the Sanitation Superintendent's inclusion since 1979. Speculation as to future contingencies is not a compelling consideration given the evidence as to the history of the parties' relationship. In re Trenton at 384.

The principals, vice-principals, and supervisors have been in the same unit for a long period of time. The relationship between this unit and the Board has been by and large, outstanding. There has been no "incident demonstrating an incompatibility of interest" between any of these titles nor has there ever been a compromise of interest or a significant detriment to the rights of either the Board or the Association because these titles are in one unit. The reasonable foreseeability of such conduct arising is also absent. The Board may speculate as to what might occur, but the history of the parties' relationship and the history of the Association's unit itself, compels me to discount such speculation.

I have been extremely impressed by the great pride of both the Association and the Board in the fact that their school system is one of the finest in New Jersey, dedicated to the betterment of its students. I know that both groups share in the common goal of providing a first rate education and that together they have accomplished this goal. In light of the above, it would appear that severing vice-principals and supervisors from the principals would be detrimental and would do nothing to promote the fair and harmonious relationship the Board and the Association have enjoyed.

For the above reasons, I find that no substantial actual or potential conflict of interests exist which would warrant the removal of vice-principals and supervisors from the unit.

Respectfully submitted,

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Nathaniel L. Fulk

Dated:  
Trenton, New Jersey