

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

In the Matter of

WALDWICK BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-80-34

WALDWICK EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, determines that department chairpersons, coordinators and the director of guidance should be removed from a unit of employees which includes nonsupervisory teaching personnel. The individuals in the above titles are supervisors and, since 1979, their supervisory duties have significantly increased. The Director agrees with the Hearing Officer that the chairpersons were not supervisors prior to 1968 and, therefore, the statutory exception of "established practice" may not be relied upon to support the Association's claim that the chairpersons may continue to be included in a unit with nonsupervisory personnel.

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WALDWICK EDUCATION ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner  
Aron, Till & Salsberg, attorneys  
(Richard M. Salsberg of counsel)

For the Employee Representative  
Schneider, Cohen, Solomon & DeMarzio, attorneys  
(J. Sheldon Cohen of counsel)

DECISION

Pursuant to a Petition for Clarification of Unit filed on November 13, 1979, with the Public Employment Relations Commission (the "Commission") by the Waldwick Board of Education (the "Board"), hearings were conducted before a designated Commission Hearing Officer on the claim raised by the Board that department chairpersons, subject co-ordinators and the director of guidance, should be removed from the collective negotiations unit represented by the Waldwick Education Association (the "Association") because they 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 because of a potential conflict of interest.

Hearings were held before Commission Hearing Officer Arnold H. Zudick, on May 1, June 16 and July 18, 1980, in Newark, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. <sup>1/</sup> Post-hearing briefs were submitted by the parties and the record closed on October 15, 1980. The Hearing Officer thereafter issued his Report and Recommendations on November 17, 1980, 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 December 15, 1980. The Board filed a reply to these exceptions on December 30, 1980.

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

1. The Waldwick 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., is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

<sup>1/</sup> This matter was originally assigned to Hearing Officer Bruce Leder who conducted the hearing of May 1, 1980. Pursuant to N.J.A.C. 19:11-6.4, the undersigned substituted Arnold H. Zudick as Hearing Officer on June 6, 1980, due to the original Hearing Officer's unavailability to complete the hearing and for the issuance of a Report and Recommendations.

2. The Waldwick Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association is the recognized representative of a unit comprised of Board personnel including department chairpersons, subject co-ordinators, the director of guidance and teachers.

4. The Board argues that the titles in question are supervisors within the meaning of the Act, that the conditions requiring the implementation of the statutory exceptions permitting the continuation of a mixed unit of supervisors and nonsupervisors are not present herein, and that a conflict of interest due to the inclusion of these titles in a unit which contains the employees who are the subject of their supervision, the teachers.

5. The Association argues that the instant titles have never been, and are not now, supervisors within the meaning of the Act. The Association claims that there is no conflict of interest as the result of the inclusion of these titles in the present unit. Furthermore, the Association contends that even if the disputed titles were supervisors, a negotiations relationship existed between the parties prior to the passage of the Act which created an "established practice" mandating the continued inclusion of these titles within the unit.

6. The Hearing Officer found the following: (a) there was no showing that a pre-1968 negotiations relationship existed between the parties; (b) the disputed titles were not supervisors within the meaning of the Act prior to 1968; (c) the instant titles are now supervisors within the meaning of the Act; (d)

with the implementation of the new State Board of Education's evaluation requirements, the date of the titles increased to the point that these personnel are primarily responsible for evaluation of nonsupervisory staff; and (e) that a substantial potential conflict of interest arises between the disputed personnel and nonsupervisory unit members requiring the former's removal from the teachers unit.

7. The Association objects to the Hearing Officer's findings and conclusions in all but item (b), above.

The principles applicable to the issues which arise in this matter are not complicated. The Act, which was adopted for public employees in 1968, prohibits the inclusion of supervisors in units with nonsupervisors. A supervisor is defined as an employee who has the power to hire, discharge, discipline or effectively recommend the same. N.J.S.A. 34:13A-5.3. In In re Tp. of Cherry Hill, P.E.R.C. No. 30 (1969). The sole exceptions to this prohibition, outlined by the Act, are where "established practice, prior agreement or special circumstances dictate the contrary." Id. The Commission has found that the established practice and prior agreement exceptions are limited to negotiations relationships predating the passage of the Act. In re W. Paterson Bd. of Ed., P.E.R.C. Nos. 77 and 79 (1973). <sup>3/</sup>

<sup>3/</sup> The mere finding of a pre-1968 established practice or prior agreement does not necessarily mandate the continuation of a mixed supervisory/nonsupervisory unit. West Paterson, supra, holds that the subsequent occurrence of an event constituting a substantial conflict of interest will terminate the continued applicability of the statutory exception. See also In re River Dell Bd. of Ed, P.E.R.C. No. 78-85, 4 NJPER 252 (¶ 4128 1978). Additionally, the mixed unit may not continue to be preserved where the supervisory status of the individuals involved has been substantially altered. In

Turning to the instant matter, the Hearing Officer found that the evidence did not establish the existence of a pre-1968 relationship between the Board and the Association which would meet the requirements of either "established practice" or "prior agreement." He further concluded that the existence or non-existence of such a relationship was inconsequential since he found no evidence to establish that department chairpersons were supervisors prior to 1968. The record bears out the Hearing Officer's findings that department chairpersons were not supervisors prior to 1968, and therefore supports his conclusion that consideration of the parties' pre-1968 relationship is inconsequential. The testimony of two department chairpersons relative to their status prior to 1968 establishes that they did not participate in the hiring process for teachers within their departments. The record indicates that the extent of the chairpersons' evaluative responsibilities during the pre-1968 period does not support a finding that their participation in this process had any meaningful effect with respect to discharge and discipline. Indeed, neither

3/ (continued)...In re Ramapo-Indian Hills Reg. H.S. Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981), the undersigned stated:

Logically, the statutory exceptions which preserve pre-existing relationships are not applicable where the circumstances underlying the pre-existing relationship no longer exist, as in the instant matter where the scope of the Director's supervisory responsibilities have been significantly upgraded, thus creating a potential conflict of interest between the Director of Guidance and other unit employees. The circumstances relevant to the narrow statutory exception having been removed, the Act's policy prohibiting mixed supervisory/nonsupervisory employee units is preeminent."

See also In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981).

Association nor the Board has objected to the Hearing Officer's finding that department chairpersons were not supervisors prior to 1968.

The Hearing Officer nevertheless found that in the post-1968 period department chairpersons, coordinators and the director of guidance have acted as supervisors within the meaning of the Act. The Hearing Officer reached this conclusion after analyzing the extent of their participation in the district's herein and evaluation practices. As indicated above, the Association has excepted to the Hearing Officer's conclusion that the personnel in these titles are supervisors and should be removed from the unit.

The record confirms that the disputed employees significantly participate in the hiring of nonsupervisory personnel within their subject areas. The testimony, on the whole, indicates that the principals and chairpersons (coordinators and director of guidance) each assess the qualifications of candidates and confer with each other with the intent of achieving a consensus recommendation which is submitted to the superintendent. The superintendent testified that the district would not hire an applicant who was not acceptable to the department chairperson. On the other hand, department chairpersons testified with respect to several instances in which they had not interviewed applicants; they had not been consulted in the selection of an applicant who was offered employment; their preference for an applicant was not passed on to the superintendent; and the district offered employment to a candidate who was not the consensus choice of

both the principal and chairperson. After considering all the instances of hiring since 1970 which have been cited in the testimony, the undersigned cannot conclude that the instances cited by the Association represent isolated exceptions to the norm. More importantly, an examination of the most recent experience of the district is inconclusive due to relative inactivity in this area. The Superintendent's testimony reveals that the teaching staff is substantially tenured, the district has been releasing teachers at a much greater rate than hiring teachers due to declining enrollment, and with reference to 1981-82 "[T]his is the first year in quite some time we've had more than one teacher that we're hiring." Accordingly, the undersigned cannot conclude from the record evidence that department chairpersons effectively recommend the hiring of teachers.

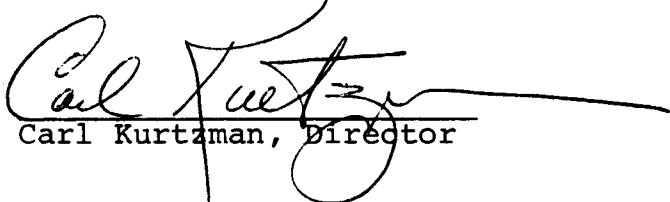
Nevertheless, the absence of clear evidence demonstrating that chairpersons, coordinators and the director of guidance make effective recommendations as to hire is not the critical factor in determining that, under the facts herein, these disputed individuals are supervisors and have duties to management which present a potential for a substantial conflict of interest with teachers. The chairpersons, coordinators and the director of guidance have for some time engaged in evaluations of teachers with the high school principals. However, since 1979, the chairpersons' evaluative functions have significantly increased. In previous years, both the chairperson and the principal together prepared end of the year evaluations. The chairpersons are now primarily responsible for the final year-end evaluation of teachers.



The principal reviews and signs the evaluations, and sometimes requires certain additional comment by the chairpersons. While the department chairpersons who testified stated that they did not include a specific recommendation concerning non-renewal, the grant of tenure or the denial of an increment in the evaluation report, it is apparent from the testimony of the superintendent that the evaluations are instrumental in arriving at these determinations. Contrary to the views of the Association, the changes to the system of evaluation are substantive, not merely procedural. That these changes arose during the pendency of the processing of the Board's instant clarification of unit petition does not render the changes any less significant.

Accordingly, for the above reasons, the undersigned adopts the Hearing Officer's recommendation that chairpersons, coordinators, and the director of guidance are supervisors within the meaning of the Act, have potential substantial conflicts of interest with teachers, and should be removed from the Waldwick Education Association unit. Since the contract covering the employees in the Waldwick Education Association unit expired during the processing of the within petition, this determination is effective immediately. <sup>4/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: August 7, 1981  
Trenton, New Jersey

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

In the Matter of

WALDWICK BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-80-34

WALDWICK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a Clarification of Unit Petition filed by the Waldwick Board of Education, a Hearing Officer of the Public Employment Relations Commission recommends the removal of the supervisory titles of Department Chairmen (including the Special Services Chairman), Subject Coordinators, and the Director of Guidance from the remainder of the non-supervisory unit represented by the Waldwick Education Association.

The Hearing Officer found that the disputed titles were not supervisors within the meaning of the Act prior to July 1, 1968, but that they did attain that status subsequent to 1968. The Hearing Officer also concluded that no pre-1968 established practice or prior agreement existed between the Board and the Association. Finally, the Hearing Officer found that a potential substantial conflict of interest exists that mandates the removal of the above titles from the instant unit.

A 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 Proceedings 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  
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THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. CU-80-34

WALDWICK EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Public Employer, Aron, Till & Salsberg, Esqs.  
(Richard M. Salsberg, of Counsel; Barbara A. Morrill,  
on the Brief)

For the Respondent, Schneider, Cohen, Solomon & DeMarzio,  
Esqs. (J. Sheldon Cohen, of Counsel; Paul A. Montalbano,  
on the Brief)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of unit was filed with the Public Employment Relation Commission (the "Commission") on November 13, 1979 by the Waldwick Board of Education (the "Board") seeking a clarification of a negotiations unit of employees represented by the Waldwick Education Association (the "Association"). The Board seeks to have certain titles currently in the Association's collective negotiations unit removed therefrom allegedly because they 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 because of a potential conflict of interest. The Association argues that the titles in question most appropriately belong in their unit.

Pursuant to a Notice of Hearing dated March 25, 1980, hearings were held in this matter on May 1, June 16, and July 18, 1980,<sup>1/</sup> in Newark, New Jersey, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Subsequent to the close of hearing, the parties filed timely briefs in this matter the last of which was received on October 15, 1980.<sup>2/</sup>

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

1. The Waldwick Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Waldwick Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Board seeks a clarification of the collective negotiations unit of its employees currently represented by the Association. The parties have been unable to agree upon the continued placement of the titles in question in the unit and, therefore, a question concerning the composition of a collective negotiations unit exists, and the matter is appropriately before the undersigned for Report and Recommendations.

1/ This matter was originally assigned to Hearing Officer Bruce Leder who conducted the hearing of May 1, 1980. Pursuant to the parties' agreement and in accordance with N.J.A.C. 19:11-6.4, the Director of Representation substituted the undersigned as Hearing Officer on June 6, 1980 to complete the processing of this matter.

2/ Due to the very late receipt of the transcript in this matter the undersigned granted the parties' joint request for an extension of time to file the briefs herein.

4. The parties agree that the titles in question are as follows:

- a. Department Chairmen  
(including Special Services Chairman)
- b. Subject Coordinators
- c. Director of Guidance

5. The parties stipulated that the Association has represented these titles at least since the passage of the Act in 1968, but the parties differ as to whether a negotiations relationship existed prior to July 1, 1968 which would justify a finding of established practice.

6. The Board argued that the titles in question are supervisors within the meaning of the Act, that a negotiations relationship did not exist between the parties prior to the passage of the Act, and, that a conflict of interest existed with the inclusion of these titles in the unit. The Association argues to the contrary on all of these points and maintains that the titles should remain in the unit.

#### ANALYSIS

##### I. Did A Negotiations Relationship Exist Between The Parties Prior to July 1, 1963?

As a defense to the Board's petition, the Association alleges that a negotiations relationship existed between the parties prior to the passage of the Act thereby creating an "established practice" which justifies a continuation of the current unit structure. The Commission has indicated the type of relationship between parties that is necessary to establish that a

negotiations relationship existed.<sup>3/</sup> The Commission has required that a negotiations relationship be evidenced by:

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 an intent to reach agreement. <sup>4/</sup>

In order to prove that a negotiations relationship existed it must be shown that a consistent relationship existed between the parties as demonstrated by an exchange of proposals on terms and conditions of employment, and that a give and take relationship existed with the intent to reach agreement. The mere labeling of an event as negotiations or calling a document a proposal will not ordinarily be enough to demonstrate that negotiations occurred.<sup>5/</sup>

The facts in the instant matter show that there is actually no physical evidence to substantiate the Association's contention that a pre-1968 negotiations relationship existed. The Association did not present any copies of written proposals it may have made to the Board, not did it present any form of written agreement between the parties. The strongest evidence that the Association could develop on this point was the testimony from

<sup>3/</sup> In re West Paterson Board of Education, P.E.R.C. No. 79 (1973); In re West Paterson Board of Education, 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 County College Board of Trustees, P.E.R.C. No. 29 (1969); In re Township of Teaneck, E.D. No. 23 (1971); In re Hillside Board of Education, E.D. No. 2 (1970).

<sup>4/</sup> In re West Paterson Board of Education, P.E.R.C. No. 77, p.10 (1973).

<sup>5/</sup> In re Teaneck, E.D. No. 23, p. 8 (1971).

Richard Keil, a department chairman since 1964. Keil testified that prior to 1968 the Association definitely negotiated with the Board over salaries and other benefits.<sup>6/</sup> He also testified that the Association made proposals to the Board, and that some form of written agreement was reached.<sup>7/</sup> To some extent, Kiel's testimony was corroborated by James Stock, another department chairman.<sup>8/</sup> However, Stock's testimony was not nearly as effective as Kiel's, in fact, Stock admitted that he was never actually involved in the process that Kiel described.<sup>9/</sup>

Although Kiel appeared to be a credible witness, the lack of any physical evidence to corroborate his testimony makes it impossible to prove an established practice. The Commission in In re West Paterson, P.F.R.C. No. 77, pp 9-10 (1973), gave a very narrow interpretation to the "established practice-prior agreement" provision of the Act. The Commission further indicated that these provisions were exceptions to the Act and could not be found without establishing certain minimum ingredients as previously set forth herein.<sup>10/</sup> Among those ingredients was the exchange of proposals and the intent to reach agreement. Without the physical evidence of proposals and a written agreement, the Association does not satisfy the Commission's requirements concerning established practice and it certainly does not show that the Board

<sup>6/</sup> Transcript (T.) pp. 305-327.

<sup>7/</sup> Id.

<sup>8/</sup> T. pp. 242-259.

<sup>9/</sup> T. p. 258.

<sup>10/</sup> See note 4.

intended to reach any agreement. In order to justify an exception to the Act the elements of that exception must be clearly established. Kiel's testimony, although not contradicted, is not the best evidence of a negotiations relationship, and does not dispell the possibility that the pre-1968 meetings with the Association were discussions only, and not negotiations. Noting that sufficient doubt remains regarding the purpose and structure of the pre-1968 meetings, the exception to the Act cannot be implemented.

## II. The Supervisory Issue

Since the undersigned has found that a pre-1968 established practice did not exist between the instant parties, the question of whether the titles at issue were supervisors prior to 1968 is no longer critical. Nevertheless, a brief examination of that issue is helpful.

The only evidence that the instant titles may have been supervisory prior to 1968 came from department chairmen Daniel Flegler and Richard Keil. Both of these witnesses testified that department chairmen have always had evaluative duties.<sup>11/</sup> However, upon closer analysis the undersigned is unable to rely upon that testimony to establish supervisory authority. There was no indication on the record to establish that any recommendations by department chairmen prior to 1968 were considered effective. In addition, Kiel testified that prior to 1968 his input in the hiring process was not essential.<sup>12/</sup> Absent any proof that the input

<sup>11/</sup> T. pp. 192, 317.

<sup>12/</sup> T. p. 334. See also testimony of Al Parelli, T. p. 262.



from department chairmen was effective, the undersigned finds that they were not supervisors within the meaning of the Act prior to 1968.

Having already found that no established practice existed herein, if the undersigned finds that the titles at issue are now supervisors within the meaning of the Act, then the titles must be removed from the Association's unit. The Association has argued that the instant titles have never been, and are not now, supervisors within the meaning of the Act. The evidence, however, does not support that contention. For many years subsequent to 1968 the titles in question have been effectively involved in the hiring and evaluation process. Joseph Mas, who has been Superintendent for ten years, testified that the titles in question are involved in the screening and interviewing of job applicants,<sup>13/</sup> and that the recommendation for hiring is a concensus of the department chairmen (subject coordinator, or director of guidance) with the principal.<sup>14/</sup> Mas also testified that he would not hire anyone without going through the department chairmen level,<sup>15/</sup> and stated that he would not hire anyone who was not acceptable to the department chairmen.<sup>16/</sup>

With regard to evaluations, Mas testified that the instant titles have been performing evaluations and making

<sup>13/</sup> T. pp. 17-23. This testimony only concerned the department chairmen and subject coordinator positions. But at T. p. 33 Mas indicated that his testimony also covered the director of guidance.

<sup>14/</sup> T. p. 106.

<sup>15/</sup> T. p. 107.

<sup>16/</sup> T. p. 22.

recommendations concerning increments, tenure, and non-renewal for the last ten years.<sup>17/</sup> He further testified that there was a dual responsibility for the end of year evaluations. Both the department chairmen and the principal completed an evaluation.<sup>18/</sup> Nevertheless, Mas testified that the department chairmen's recommendations are effective, and he even accepted a chairman's recommendation of renewal despite a principal's recommendation for non-renewal.<sup>19/</sup>

The Association disputes the Board's contention that department chairmen make effective recommendations. The Association cited certain instances where chairmen recommendations were not followed. However, the fact that a supervisor's recommendation must be effective, does not mean that every recommendation must be adopted. The Superintendent testified that department chairmen have made recommendations regarding hiring and renewal or non-renewal, and he has followed many of those recommendations. For example, Dr. Mas indicated that the evaluations of three different department chairmen about a specific teacher were instrumental in the decision not to renew that teacher's contract.<sup>20/</sup>

The Superintendent's testimony further reveals that in 1979, with the introduction of the New Jersey State Board of Education's new evaluation requirements, that the duties and responsibilities of the instant titles increased. Under the old policy the department chairmen (coordinators and director of guidance) and the

<sup>17/</sup> T. pp. 166, 171, 179, & 182.

<sup>18/</sup> T. p. 26.

<sup>19/</sup> T. pp. 56-57.

<sup>20/</sup> T. pp. 49-50.

principal evaluated the non-supervisory professionals and together drafted the end of year evaluation. However, that system has changed. Now the department chairmen (coordinators and director of guidance) are primarily responsible for the evaluations, and for the development of professional improvement plans for the non-supervisory professionals.<sup>21/</sup> The dual evaluation policy is no longer utilized. In fact, Dr. Mas testified that during the past school year the instant titles performed the end of year evaluation based upon the new procedure.<sup>22/</sup> Although the principal still has the right to comment on those evaluations, the instant titles actually perform the role of the primary evaluator.

An examination of the evaluation forms also demonstrate an increase in the responsibilities of the instant titles. The new evaluation form (Exhibit P-3) is far more comprehensive than the original form (Exhibit P-5), and requires greater analysis by the evaluator.

The Association argued that the new duties thrust upon the instant titles is substantially similar to those performed in the past. However, whether that is accurate or not is no longer of any consequence. The undersigned believes that the instant titles are supervisors within the meaning of the Act whether relying upon the old evaluation process or the new. Since the Act forbids the inclusion of supervisors with non-supervisors, and since no established practice or prior agreement exists to otherwise

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<sup>21/</sup> T. pp. 26-28.

<sup>22/</sup> T. pp. 119-120.

justify inclusion, the undersigned recommends that the instant titles be removed from the existing unit.

### III. Conflict of Interest

Even assuming that an established practice or prior agreement existed between the parties herein, and further assuming that the instant titles were supervisors within the meaning of the Act prior to 1968 (which the Association disputes), the undersigned would still recommend the removal of the titles based upon a conflict of interest. The facts show that with the implementation of the new State Board of Education evaluation requirements the duties of the instant titles increased. The evaluation procedures became more comprehensive and more precise. As the duties of the disputed titles increased, the potential for substantial conflict with the non-supervisory professionals also increased. The State Supreme Court in Board of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971), indicated that where a conflict is more than a mere de minimis conflict it is opposed to the public interest. The potential for conflict in this matter is well beyond the de minimis stage. The instant titles can substantially affect the employment status of the unit members, and it is for the protection of both sides that the disputed titles be removed from the unit.

This very issue has been considered in three previous decisions.<sup>23/</sup> Those decisions held that department chairmen

<sup>23/</sup> See In re Ridgewood Bd. of Ed, D.R. No. 80-33, 6 NJPER 209 (¶11102 1980); In re Cinnaminson Twp. Bd of Ed, H.O. No. 81-2, 6 NJPER 396 (¶11205 1980); and In re Ramapo-Indian Hills Bd of Ed, H.O. No. 81-3, 6 NJPER 405 (¶11206 1980).


and other similar titles should be removed from units with non-supervisory employees because of actual or potential substantial conflict of interest. The facts show that the duties of the disputed titles herein are substantially the same as the duties of those titles which were removed from non-supervisory units because of conflict. The facts of this case suggest the same conclusion.

RECOMMENDATIONS

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

1. That the Department Chairmen (including Special Services Chairman), Subject Coordinators, and Director of Guidance employed by the Board be removed from the Association's negotiations unit.
  - a. That no established practice or prior agreement existed between the parties.
  - b. That the titles in question were not supervisors within the meaning of the Act prior to 1968, but were supervisors within the meaning of the Act subsequent to 1968.
  - c. That a conflict of interest exists with the inclusion of the disputed titles in the existing unit.

Respectfully submitted,

  
Arnold H. Zudick  
Hearing Officer

DATED: Trenton, New Jersey  
November 17, 1980