

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

In the Matter of

PATERSON BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-82-42

PATERSON EDUCATION ASSOCIATION,  
NEW JERSEY EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that department heads, who are supervisory employees, shall be removed from the Association's negotiations unit at the conclusion of the current collective negotiations agreement. The department heads' supervisory duties have recently been increased. Thus, even if their inclusion in the teacher's unit predated the passage of the Act in 1968, and might qualify as an "established practice," the substantial increase of their supervisory functions has created circumstances which render the statutory "established practice" exception inapplicable.

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Appearances:

For the Public Employer/Petitioner  
Leonard Jacoby, Labor Relations Director

For the Employee Representative  
Thomas Ziccardi, UniServ Representative

DECISION

On December 11, 1981, the Paterson Board of Education (the "Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission (the "Commission"). The Petition seeks the removal of 17 <sup>1/</sup> department heads at Eastside High School and Kennedy High School from an existing unit of teachers and professional personnel with related nonadministrative titles represented by the Paterson Education Association (the "Association").

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the

1/ At an informal conference, the Board amended this number downward to 14.

matters involved in the Petition in order to determine the facts. The assigned Commission staff agent convened an informal conference with the parties on February 3, 1982.

On the basis of the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Paterson 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.

3. The Paterson Education Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is currently the exclusive representative of all nonadministrative professional personnel employed by the Paterson Board of Education, including the department head titles in question.

4. The Board seeks the removal of 14 department heads at the Board's Eastside and Kennedy High Schools from the existing nonadministrative professional unit. The Board alleges that: (1) the employees in those titles possess supervisory authority within

the meaning of the Act; and (2) their continued inclusion in such a unit creates a conflict of interest with nonsupervisory employees (teachers and other nonadministrative, nonsupervisory professionals).

5. The Board alleges, and the Association does not dispute, that department heads assist in the development and implementation of department objectives; evaluate curriculum on a continuing basis; assist teachers in resolving instructional problems; check lesson plans; conduct departmental meetings; recommend curriculum changes; assist in preparation of the department's budget; oversee the department's text book and equipment needs; provide in-service training for department members; keep abreast of new developments in their respective fields and make them known to members of their staff; and evaluate professional staff. Moreover, the Association does not dispute the Board's assertion that the effect of the Commissioner of Education's 1979 regulations has been to increase the formality and broaden the effect of department heads' evaluations of professional staff -- the latter of which have amounted to effective recommendations concerning promotion, grants of tenure, discipline and even discharge in some cases.

The circumstances herein are not unlike the circumstances in several other matters which have recently been placed before the Commission. In In re Bd. of Ed. of the Borough of Paramus, D.R. No. 82-7, 7 NJPER 556 (¶ 12247 1981), a matter also involving

department heads, the undersigned stated:

... [T]he increased scope of supervisory duties delegated to the department chairpersons in its implementation of the Commissioner of Education's 1979 regulations resulted in a substantial change and expansion of the chairpersons' supervisory obligations. At that time the Board delegated to Department Chairpersons the primary responsibility for preparing summary evaluations of teachers, performance observation reports and for follow-up teacher conferences. Embodied in this responsibility was the requirement for recommending to the administration the continued employment of teachers or the grant or withholding of salary increments.

....

... [T]he extent of the chairpersons changed evaluative functions have given rise to a potential for a substantial conflict of interest between the chairpersons and teachers.

Accord, In re Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1982); In re Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER 571 (¶ 12255 1981); In re Delaware Valley Reg. H/S Bd. of Ed., D.R. No. 82-11, 7 NJPER 530 (¶ 12234 1981); In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981); In re Ramapo-Indian Hills Reg. H/S Dist. Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981).

The Association has argued that a relationship constituting an "established practice" existed between the parties prior to the passage of the Act, and therefore the department heads may

remain in the unit pursuant to the exception embodied in N.J.S.A. 34:13A-5.3. <sup>2/</sup>

Even if such a relationship were proven herein, the recent change of circumstances relating to the department heads' substantially increased supervisory responsibilities would require their removal from the unit. In Ramapo-Indian Hills, supra, 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. <sup>3/</sup>

Accordingly, the undersigned determines, consistent with past precedent and the applicable facts herein, that department heads must be removed from the Association's negotiations unit. The instant determination shall be effective at the termination

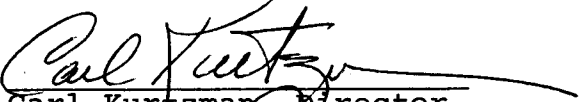
<sup>2/</sup> N.J.S.A. 34:13A-5.3 provides, in relevant part:

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

<sup>3/</sup> Similarly, in In re Cinnaminson Tp. Bd. of Ed., supra, the undersigned determined that the substantial increase in supervisory duties of Department Chairpersons upon implementation of a new job description would "negate any statutory established practice if it had existed."

of the current collective negotiations agreement between the parties,  
on June 30, 1982. In re Clearview Reg. H/S Bd. of Ed., D.R. No.  
78-2, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: March 24, 1982  
Trenton, New Jersey