

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

In the Matter of

EAST ORANGE BOARD OF EDUCATION,

Public Employer-Petitioner,

- and -

Docket No. CU-83-29

EAST ORANGE EDUCATION ASSOCIATION,

Employee Representative-Respondent.

SYNOPSIS

In a Petition for Clarification of Unit, a Hearing Officer of the Public Employment Relations Commission recommends that department heads and the head school librarian be removed from the Association's negotiations unit upon the expiration of the current collective negotiations unit. The Hearing Officer found that the titles were supervisors within the meaning of the New Jersey Employer-Employee Relations Act and were no longer appropriate for inclusion with nonsupervisory professional employees.

While there was no allegation of an established practice or prior agreement to otherwise justify the continued inclusion of the titles in the existing unit, the Hearing Officer found that changed circumstances and potential substantial conflict of interest exists within the current unit structure also warranted removal of the titles.

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.

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Appearances:

For the Public Employer-Petitioner, Love & Randall, Esqs.
(Melvin E. Randall, Esq.)

For the Employee Representative-Respondent,
Gerard Restaino, UniServ Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On November 18, 1982, the East Orange Board of Education ("Board") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking the removal of 50 department heads and one head school librarian from an existing negotiations unit of teachers and other professional personnel represented by the East Orange Education Association ("Association").

The Board argued that the department heads and head school librarian are supervisors within the meaning of the Act and that conflicts of interest existed with the inclusion of the department heads and head school librarian in the unit. The Association argued to the contrary on all of these points and maintained that the department heads and head librarian should remain in the unit.

Pursuant to a Notice of Hearing dated January 27, 1983, a hearing was held in the matter on March 17, 1983, in Newark, New Jersey, at which the 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 Board filed a timely letter brief which was received on March 25, 1983. The Association did not file a brief.

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

1. The East Orange 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. ("Act") and is subject to its provisions.

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

3. The Board and the Association are parties to a negotiations agreement covering the period from September 1, 1980, to August 31, 1983. (Exhibit J-1). That agreement defines the unit as follows:

All personnel under contract or on leave, employed by the Board including:

Classroom Teachers, Nurses, Guidance Counselors, Librarians, Social Workers, Reading Resource Teachers, Vocational Counselors, Psychologists, Speech Correctionists, Learning Disability Teacher Consultant, Department Heads,

but excluding:

Superintendent of Schools, Secretary-Business Manager, Assistant Superin-

tendents, Assistant to Secretary-Business Manager, Principals, Directors, Assistant Principals, Assistant Directors and Assistants to the Directors. Administrative Assistants, Supervisors, Coordinators, Summer School teachers, evening school teachers.

4. On November 18, 1982, the Board filed the instant Clarification of Unit Petition seeking the removal of 50 department heads and one head school librarian from the negotiations unit based upon its assertion the titles were supervisors within the meaning of the Act or had conflicts of interest with other unit personnel.

5. In focusing upon the Board's claims that the instant titles should be removed from the Association's unit the following factors were examined: the hiring process, evaluations; non-renewal; discipline and conflict of interest; and changed circumstances.

A. Hiring

Principal Frank Penn of East Orange High School and Assistant Principal Archie Pollock of Clifford Scott High School testified that department heads participate in the hiring of teachers. (Tr. at pp. 7-8, 27-28). Penn testified that when a vacancy exists the prospective teacher meets with the principal, assistant principal and the department head. (Tr. at p. 8). Penn further testified that the department head's judgment as to whether the candidate should be hired are "most critical." (Tr. at p. 8). Pollack testified that the department head's input as to whether the person should be hired is given weight.

(Tr. at p. 28). In addition, Prospective Teachers Interview Data forms (Exhibits P-8 and P-9) were introduced into evidence.

These forms were completed and signed by department heads Lou Molinari and James Montgomery after they interviewed applicants for teacher positions. Both Molinari and Montgomery recommended that the applicants be hired. Montgomery testified that his recommendation was followed and the teacher was hired. (Tr. at p. 65).

B. Evaluations, Non-renewal and Discipline

The job description of department heads (Exhibit J-2) states that one of the responsibilities of the title is to "[assist] with the supervision and evaluation of staff of the department as required." Further evidence indicates that department heads observe and evaluate unit members using Teacher Observation and Teacher Evaluation forms (Exhibits P-6a,b,c, and P-7a,b,c, respectively). (Tr. at pp. 43-44, 79). These forms include space for comments as well as a space to note unsatisfactory performance. The forms also include space for the observer/evaluator to complete a Professional Improvement Plan. Department heads Bortnik, Montgomery and Molinari all testified that they have completed and signed Teacher Observation forms (Tr. at pp. 50-52, 56-57, 79) and Molinari testified that he has completed and signed Teacher Evaluation forms. (Tr. at p. 79). Montgomery also testified that he believes his observation reports are accepted and that credence is given to his comments. (Tr. at p. 72). Assistant Principal Pollock testified that department heads at the Clifford Scott High School "have the prime respon-

sibilities for observation and evaluation of the teaching staff." (Tr. at p. 28). Pollock also testified that department heads write the entire evaluation including their recommendations. (Tr. at p. 28). Principal Penn further testified that department heads at East Orange High School meet with individual teachers to discuss problems, including those related to curriculum, that the department head has detected while observing the teacher. (Tr. at p. 16).

Department Heads Molinari, Montgomery and Bortnik testified that they have not had occasion to discipline a teacher or recommend increment denial or non-renewal. (Tr. at pp. 48, 56, 77). However, Principal Penn and Assistant Principal Pollack testified that they have followed other department heads' recommendations as to discipline and increment denial. (Tr. at pp. 22 and 30). In addition, Pollack testified that he is not aware of an instance where a department head's recommendation for discipline or increment denial has ever been denied. (Tr. at p. 31). Penn also testified that he has, without exception, followed the recommendation of department heads with regard to the disciplining of unit members. (Tr. at p. 22).

Changed Circumstances

Prior to the implementation of the new department heads' job description in 1979, the department heads were not required possess supervisors certificates. Now such certificates are required. (Tr. at pp. 25 and 76). Principal Penn testified that department heads now have a more direct responsibility in the observation and evaluation of teachers and that their

recommendations are now given more weight than they now were accorded prior to 1979-80. (Tr. at pp. 25 and 26).

Head School Librarian

The job description of the head school librarian (Exhibit J-3) indicates that one of the responsibilities of the head librarian is to "[assist] with the supervision and evaluation of school media program service and staff." The head school librarian visits the schools in the City to observe librarians as well as to provide guidance and suggestions as to the management of the library. (Tr. at p. 37). As a result of these visits, the head school librarian provides King with a verbal evaluation. (Tr. at pp. 33 and 37). Principal Penn and Assistant Principal Pollock testified that they evaluate the librarians in their respective high schools. (Tr. at pp. 20 and 30). However, Deputy Superintendent King testified that because he is concerned with librarians on a district-wide basis he requires that the head librarian provide him with observation and evaluation information rather than providing such information to a building principal. (Tr. at p. 37). The record also reveals that the head librarian's recommendation that a librarian be transferred as a form of discipline has been "implemented." (Tr. at p. 34).

ANALYSIS

The Director of Representation, in a long line of decisions, has removed department heads moved from teacher negotiations units when such titles were found to be supervisory

within the meaning of the Act. ^{1/} In these decisions it was noted that under N.J.S.A. 34:13A-5.3, a supervisor is someone who has the power to hire, discharge, discipline or effectively recommend the same and that supervisors may not be included in negotiations units with nonsupervisors in the absence of circumstances which might form a basis for application of the limited statutory exceptions.

The record reveals that department heads participate in the hiring and evaluation of unit personnel and that their power in those areas as well as with regard to discipline is effective. In addition, the record indicates that the head school librarian has effective input into the observation, evaluation and disciplining of unit members. It is therefore apparent that department heads have effective power in the hiring of unit members and that they, along with the head school librarian have effective power in the areas of evaluation, non-renewal and discipline.

Exceptions to the Act

The Association did not contend, nor does the record suggest, that "special circumstances", "established practice" or "prior agreement" exist herein which could permit a department

1/ In re Bloomfield Bd. of Ed., D.R. No. 82-56, 8 NJPER 383 (¶ 13175 1982); In re Parsippany-Troy Hills Bd. of Ed., D.R. No. 82-51, 8 NJPER 283 (¶13128 1982); In re Ramapo Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶ 13062 1982); In re Paramus Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶ 12247 1981); In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Cinnaminson Twp. Bd. of Ed., D.R. No. 81-49, 7 NJPER 274 (¶ 12122 1981); In re Ramapo-Indian Hills Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981).

head or the head school librarian to be represented by the Association pursuant to N.J.S.A. 34:13A-5.3 and 6(d).

Even assuming for the sake of argument that an exception to the Act existed, the evidence supports a finding that both changed circumstances and potential substantial conflict of interest exist, either of which would negate any exception to the Act.

Moreover, the instant matter is similar to several previous decisions. In Bd. of Ed. of the Borough of Paramus, D.R. No. 827, 7 NJPER 556 (¶ 12247 1981), a matter involving department heads, the Director of Representation stated:

...[T]he increased scope of supervisory duties delegated to the department chairpersons in an implementation of the Commissioner of Education's 1979 regulations resulted in a substantial change and expansion of the chairperson's supervisory obligations. At that time the Board delegated as Department Chairpersons the primary responsibility for preparing summary evaluations of teachers performance observation reports and for follow-up teacher conference. 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., Supra;
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., Supra; In re Cinnaminson Tp.
Bd. of Ed., Supra; In re Ramapo-Indian
Hills Reg. H/S Dist. Bd. of Ed., Supra.

The record reveals that a number of changes have occurred with regard to department heads since 1979. For example, department heads are now required to possess a supervisor's certificate, and exercise a greater and more formalized role in the observation and evaluation of personnel. ^{2/} The testimony of the Board's witnesses that the department heads have a more direct and primary role in the observation and evaluation of teachers is consistent with the increased scope of supervisory duties of department heads in other school districts pursuant to the Commission of Education's 1979 regulations. See e.g., In re Paramus, supra.

The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) held that if the good faith performance of the obligation to the employer arising from the authority delegated the employee places that employee in a position of actual or potential conflict of interest with other personnel, that employee may not be included in negotiations units with the employees with whom they have a conflict.

Consequently, as a whole, the weight of the evidence demonstrates that department heads and the head school librarian are supervisors within the meaning of the Act, that potential

^{2/} In reaching this conclusion the Hearing Officer is fully cognizant that department head Montgomery testified that his responsibility in the areas of hiring, firing, evaluation and discipline is less than in the past and that he feels weight is given his recommendations. (Tr. at pp. 69-71).

substantial conflicts of interest exist between them and other unit members, both of which require their removal from the Association's unit at the expiration of the current collective negotiations agreement. ^{3/}

RECOMMENDATIONS

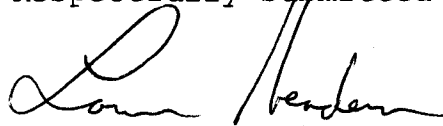
Based upon the foregoing discussion, the undersigned Hearing Officer recommends the following:

1. That department heads and the head school librarian employed by the Board are supervisors within the meaning of the Act and must be removed from the Association's negotiations unit at the expiration of the current collective negotiations agreement.

2. That no established practice or prior agreement existed herein to justify the continued inclusion of department heads and the head librarian in the Intervenor's unit.

3. That actual and potential substantial conflicts of interest exist requiring the removal of the instant titles from the Intervenor's unit.

Respectfully submitted



Lawrence Henderson
Hearing Officer

DATED: May 11, 1983
Trenton, New Jersey

^{3/} The Director of Representation has determined that a party to a collective negotiations agreement may seek to exclude personnel from a negotiations unit on the ground that they are supervisors within the meaning of the Act even though the alleged supervisors were included in a current agreement. However, the mutual agreement of the parties to include these personnel under the agreement has created "special circumstances" which dictates that these personnel continue to be included in the unit during the life of the agreement.
(Continued)

3/ (Continuation)...In re Clearview Reg. H.S. Bd. of Ed.,
D.R. No. 78-2, 3 NJPER 248 (1977); In re Wayne Bd. of
Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd
P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980).