

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HIGH POINT REGIONAL HIGH SCHOOL  
BOARD OF EDUCATION

Public Employer and Petitioner

and

Docket No. CU-44

HIGH POINT EDUCATION ASSOCIATION

Employee Representative

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the unit status of a certain job classification of the High Point Regional High School Board of Education, a hearing was held on December 15, 1970, before Hearing Officer Phyllis Schectman at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter, on March 23, 1971, the Hearing Officer issued a Report and Recommendation. Exceptions have not been filed to the Hearing Officer's Report and Recommendation. 1/ The Executive Director has considered the record and the Hearing Officer's Report and Recommendation and finds:

1. The High Point Regional High School Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The High Point Education Association is an Employee Representative within the meaning of the Act.
3. The Public Employer's petition for clarification seeks to exclude from the negotiating unit the classification of Director of Guidance and Special Services. The Employee Representative contends that this classification belongs in the unit. Therefore, there is a question regarding the composition of the unit and the matter is properly before the undersigned for determination.
4. In the absence of exceptions to the Hearing Officer's Report and Recommendation, the undersigned accepts the Hearing Officer's findings and recommendation pro forma. Accordingly, the Director of Guidance and Special Services is excluded from the existing collective negotiating unit.

  
Maurice J. Neilligan, Jr.

Executive Director

DATED: May 3, 1971  
Trenton, New Jersey

1/ Attached hereto and made a part hereof.

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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HIGH POINT REGIONAL HIGH SCHOOL  
BOARD OF EDUCATION

Public Employer-Petitioner

and

HIGH POINT EDUCATION ASSOCIATION  
Respondent

Docket No. CU-44

APPEARANCES:

For High Point Regional High School  
Board of Education

Robert C. Shelton, Jr., Esq.

For High Point Education Association

John Davis, New Jersey Education Association  
Field Representative

HEARING OFFICERS' REPORT AND RECOMMENDATION

A petition was filed with the Public Employment Relations Commission by High Point Regional High School Board of Education on November 5, 1970 requesting clarification of unit.

Pursuant to a Notice of Hearing, a hearing was held before the undersigned on December 15, 1970 in Newark, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Briefs were submitted by both parties by January 6, 1970. Upon the entire record in the proceeding, the Hearing Officer finds:

1. The High Point Regional High School Board of Education is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The High Point Education Association is an employee representative within the meaning of the Act.
3. The public employer alleges that the inclusion of the Director of Guidance and Special Services in the unit presently recognized is inappropriate. The Association contends that, notwithstanding a change in classification, the individual involved should be continued in the unit. Therefore, there is a question concerning the composition of the unit and the matter is properly before the undersigned for Report and Recommendation.

BACKGROUND

The High Point Regional High School Board of Education filed a petition for unit clarification seeking to modify the collective negotiations unit, now composed of all certificated personnel employed by the Board of Education excluding the Superintendent, Principal and Business Manager, to exclude the Director of Guidance and Special Services. The Board, while admitting that the individual in question has been a member of the unit since its recognition, contends that the nature of his position has changed substantially enough to mandate a finding that the Director of Guidance and Special Services is a supervisor within the meaning of the Act.

ISSUES

Section 7 of Chapter 303 specifies that:

...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 nonsupervisory personnel to membership...

In view of the above the undersigned will address herself to the following issues: 1) Is the Director of Guidance a supervisor within the statutory construction; and 2) assuming arguendo that supervisory characteristics may be demonstrated, is there sufficient record evidence of established practice and/or prior agreement to overcome the statutory prohibition?

DISCUSSION AND FINDINGS

The High Point Education Association maintains that the Director is not a supervisor, and that sufficient established practice and prior agreement exist to include the Director, should he be found a supervisor, in the present unit. The Hearing Officer disagrees.

The record indicates that the present incumbent of the position entitled Director of Guidance and Special Services has been employed in the High Point School District for five years. He was hired prior to the opening of the School as Director of Guidance to function as chairman of his department in the same way that academic department chairmen function. In the spring of 1970 the position formerly called Director of Guidance was enlarged to Director of Guidance and Special Services increasing the number of employees whose work is directed by the Director. There is no dispute and the record is clear that the Director directs the work of six Special Services personnel in addition to the guidance counselors (Tr 22). However, mere direction of work does not per se or by statutory construction create a supervisor. There is evidence to substantiate that the Director

has the ability to effectively recommend hiring and that his recommendations are accepted without further investigation. Witness Dr. Walter McCarroll, Superintendent of Schools on re-cross examination answered the Hearing Officer's question on this point in the following manner:

The Witness: He (the Director) will bring the recommendations about hiring an individual, and I accept the recommendations and make the recommendations to the Board (Tr 86).

Later on redirect the same witness responded further:.

Hearing Officer: At no time would you do an independent investigation of a candidate that has been recommended to you by the Director?

The Witness: No. I would not (Tr 182).

The Hearing Officer is persuaded by the record that the Director fulfills one of the statutory indicia of supervision. He has, and will continue to effectively recommend the hiring of subordinate employees. Therefore, the Director is a supervisor and the record clearly states that no other title presently included in the unit has the same supervisory powers (Tr 184). If the Director were to remain in the unit he would be the only supervisor in this non-supervisory unit. Such a situation is in direct conflict with Section 7 of the Act unless one of the special exceptions outlined above can be demonstrated.

There is evidence to show that the Teachers' Association has been in existence at High Point Regional High School for at least 4 years, and that prior to 1968 and the passage of Chapter 303 this Association presented proposals on salary and fringes to the Board of Education which were discussed and the results of these discussions culminated in a "salary agreement." After the passage of Chapter 303 and recognition of High Point Education Association, the parties have stipulated to the fact that the Director of Guidance was not excluded from the unit (Tr 9-10). There is further record evidence to indicate that negotiations took place during 1968 and 1969 resulting in written agreements which were received in evidence (Tr 158). There is, in the opinion of the undersigned, sufficient evidence of established practice and prior agreement to warrant the continued inclusion of the Director of Guidance in the aforementioned unit, if the position had not changed.


It is admittedly difficult to draw a line between two positions when one encompasses the other and the incumbent has remained the same. However, the undersigned has found the Director to be a supervisor in his new position. A fortiori there can be no "established practice nor prior agreement" for a heretofore non-existent position. Nothing in this record would support a finding that the third statutory exception "special circumstances" has been satisfied.

Moreover, the Hearing Officer considers it necessary to comment on the position of Director of Guidance and Special Services in the light of the recent New Jersey Supreme Court decision concerning West Orange Board of Education v. Elizabeth Wilton 57 N.J. 404 (1971). There is record evidence which demonstrates that the Director of Guidance and Special Services will write tenure recommendations for people in the unit. (Tr. 23). The record, further indicates that in his position, which involves scheduling and staffing, the Director of Guidance and Special Services becomes privy to information concerning available salary funds (Tr 58). The undersigned points out a potential conflict of interest inherent in these functions as they affect the collective negotiations unit.

To summarize, the undersigned finds the Director of Guidance and Special Services to be a supervisor within the meaning of the Act and by virtue of its being a new position the statutory exceptions of established practice and prior agreement can not apply.

#### RECOMMENDATION

It is recommended that the unit be clarified to exclude the Director of Guidance and Special Services from the presently recognized collective negotiations unit.

  
Phyllis Schectman  
Hearing Officer

DATED: March 23, 1971  
Trenton, New Jersey