D.R. NO. 82-8

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

In the Matter of

EDISON TOWNSHIP BOARD OF EDUCATION,

Public Employer-Petitioner,

-and- DOCKET NO. CU-79-44

EDISON PRINCIPALS ASSOCIATION a/w NJASSPS,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies the composition of a negotiations unit which includes Board personnel who are employed as principals, vice principals, supervisors, guidance counselors, coordinators and child study team members. The Director finds that the guidance counselors, coordinators and child study team members are nonsupervisory employees and that there is no "established practice" relationship between the Board and the Association which might be the basis for continuing their inclusion in the unit with supervisory employees. Therefore, the Director removes the nonsupervisory employees from the unit.

The Director also concludes that supervisors may remain in the unit with principals, since neither supervises the other and since their responsibilities do not present an actual or potential substantial conflict of interest.

The record does not reveal that there is an actual or potential substantial conflict of interest between the vice principals and principals, and therefore, the Director determines that vice principals may remain in the unit with principals and supervisors. However, the Director indicates that he would be willing to entertain a motion by the Board to reopen the record for a more complete examination concerning the principal/vice principal relationship.

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EDISON PRINCIPALS ASSOCIATION a/w NJASSPS,

Employee Representative.

Appearances:

For the Public Employer-Petitioner
R. Joseph Ferenczi, attorney

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

DECISION

Pursuant to a Petition for Clarification of unit filed with the Public Employment Relations Commission (the "Commission") on April 10, 1979, by the Edison Township Board of Education (the "Board"), hearings were conducted before a designated Hearing Officer on the claim raised by the Board that substantial conflicts of interest and/or supervisory/nonsupervisory relationships exist among employees currently represented by the Edison Principals Association (the "Association").

Hearings were held before a designated Hearing Officer on November 13, 14, and 15, 1979 in Trenton, New Jersey, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Post-hearing briefs were submitted by both parties; the record was closed April 3, 1980. Pursuant to N.J.A.C. 19:11-6.4, the Director of Representation transferred this matter to Hearing Officer Arnold H. Zudick on October 14, 1980. 1/ On November 7, 1980, the Hearing Officer issued his Report and Recommendations, a copy of which is attached herto and made a part hereof. Both the Board and the Association have filed timely exceptions to the Hearing Officer's Report.

The undersigned having carefully considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript, the exhibits and the exceptions filed by the parties, finds and determines as follows:

1. The Edison Township 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.

2. The Edison Principals Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the recognized representative

1/ Due to the resignation of Hearing Officer Bruce Leder, the matter was reassigned to another Hearing Officer in June 1980. This matter was assigned to Hearing Officer Zudick after the resignation of the originally assigned Hearing Officer.

of a unit comprised of administrative personnel of the Board. 2/

3. In the proceeding before the Hearing Officer, the Board argued that a potential or actual substantial conflict of interest exists due to the supervisory relationships within the unit, and requested that the Commission divide the present unit into three separate units as follows: (1) principals; (2) vice principals and supervisors; and (3) guidance counselors, cooperative education coordinators, and child study team members.

The Board maintains that principals supervise vice principals and supervisors. In addition, the Board claims that supervisors and vice principals act in a supervisory capacity with regard to other employees of the school district. According to the Board, guidance counselors, the cooperative education coordinators and child study team members are nonsupervisors who may not be included in units with supervisory personnel. 3/ The Board maintained that it did not engage in a pre-1968 negotiations relationship with the Association which would permit the continued inclusion of supervisors in a unit with nonsupervisors under the "established practice" exception embodied in N.J.S.A. 34:13A-5.3, below, n.3.

2/ The Association's unit includes employees in the following titles: Principals, Vice Principals, Supervisors, Psychologist, Learning Consultants, Social Workers, Guidance Counselors and Coordinators.

3/ N.J.S.A. 34:13A-5.3 provides in relevant part as follows: " ... 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 ... "

4. The Association argued before the Hearing Officer that it engaged in a pre-1968 negotiations relationship with the Board within the meaning of the statutory "established practice" exception, and that actual substantial conflicts of interest have not arisen among unit members, thereby permitting a continuation of this mixed unit of supervisory/nonsupervisory employees. 4/ If no "established practice" is found, the Association submits that, at most, the unit may be split in two; one comprised of nonsupervisory titles and the second comprised of principals, vice principals and supervisors.

5. The Hearing Officer found that the guidance counselors, coordinators and child study team members were nonsupervisory employees and that principals, vice principals, and supervisors were supervisors within the meaning of the Act. He also found that there was no pre-1968 "established practice" between the Association and the Board. The Hearing Officer then recommended that the nonsupervisory titles be removed from the contested unit. The Hearing Officer then found that there was no actual

4/ In In re W. Paterson Bd. of Ed., P.E.R.C. No. 77 (1973), the Commission stated that an "established practice" would be found where the facts revealed that there was "An organization regularly speaking on behalf of a responsible 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 the intent to reach agreement." at p. 10. In In re W. Paterson Bd. of Ed., P.E.R.C. No. 79 (1973), the Commission, upon consideration of P.E.R.C. No. 77, held that the § 5.3 "established practice" and "prior agreement" exceptions related solely to pre-Act (July 1, 1968) relationships. P.E.R.C. No. 77 further provides that evidence of an actual substantial conflict of interest precludes the continued applicability of the "established practice" and "prior agreement" exceptions.

or potential substantial conflict of interest between principals, vice principals and supervisors and recommended that they remain in the same unit.

6. The Board excepts to the Hearing Officer's recommendation that there are no actual or potential substantial conflicts of interest between principals, vice principals and supervisors as the result of their inclusion in a single unit, and continues to urge that principals be separated from the supervisors and the vice principals.

7. The Association excepts to the Hearing Officer's conclusion that there was no pre-1968 negotiation relationship between the parties to support a finding of "established practice". Specifically it challenges the Hearing Officer's findings that there was no well defined unit, that there were no negotiation sessions and there was no executed contract.

8. After review of the entire record, the undersigned adopts the findings of fact, conclusions of law and recommendations of the Hearing Officer with certain modifications set forth, infra. There is substantial evidence in the record to support the finding that the pre-1968 relationship between the Board and the Association does not satisfy the "established practice" standard described in W. Paterson, supra.

In W. Paterson the Commission observed:

> The Commission has consistently given a narrow interpretation to these terms [i.e., "established practice" and "prior agreement"] ... The Commission has generally refused to find that either condition existed because the evidence failed to establish that the

> process of negotiation was the method whereby significant employee conditions were determined. Based on the Commission's experience it appeared that many, perhaps most, employer-employee relationships prior to 1968 were characterized by an organization's request for improvement of a particular condition or resolution for a particular grievance. Upon submission the matter was considered privately by the employer and his decision was later announced. There was seldom evidence a sense of mutual undertaking for the resolutions of differences or an intent to achieve common agreement. P.E.R.C. No. 79 at p. 9

In 1964, the principals formed an informal association to pursue issues of interest such as employment conditions and education policy. 5/ The record reveals that the principals initiated discussions with the Superintendent of Schools regarding their salaries, and salaries of other administrators who were "on ratio" with the teachers, including vice principals and supervisors. These discussions took place at regularly scheduled administrative meetings. The Superintendent then reviewed the suggestions of the principals and prepared his salary recommendation for submission to the Board of Education. There is no evidence that members of the Board or the School Superintendent entered into a dialogue or process of give-and-take with the principals, with any intent to reach a mutual agreement on salary or other conditions of employment. Further, there is no evidence that any Board adopted salary guide for ratio personnel was the product of a relationship

5/ A formal principals' organization was not formed until 1968.

between the Board and the Association [6/] meeting the "established practice" standard.

Accordingly, for the above reasons, the undersigned concludes that evidence of an "established practice" which might constitute a basis for continuing the present mixed supervisory/non-supervisory structure of the Association's unit, is not present herein. The undersigned notes that the Association has not excepted to the Hearing Officer's finding that guidance counselors, the cooperative education coordinators and child study team members are nonsupervisory employees. However, the Association has urged

6/ An October 27, 1966 letter from Principal Charles Boyle to Superintendent Joseph Ruggieri concerning "Principals Salary Committee Recommendations" illustrates the manner in which the parties' pre-1968 relationship may be described, and is fully supportive of the Hearing Officer's conclusions. The memo, in relevant part, states:

> The principals request that you submit the attached letter to the Board of Education for consideration. We would also appreciate it if you will put this item on the agenda for Monday's meeting.
>
> The principals were somewhat discouraged that no action was taken after the June Board meeting. It was my feeling that a substantial number of the Board members felt that something should be done. Especially with regard to the training level recommendation that is mentioned in our letter.
>
> Also, we are not pleased with the fact that we are the last group to be considered concerning salary requests. After teachers' requests, secretaries' requests, and custodians' requests are settled, then the Board gets around to discussing the principals' requests or they are not even considered, as was the case of the last two years. In the future, we would like to be considered first, not last, or certainly before all other salary issues are settled. We are cognizant of the fact that the principal's salary will be determined by the masters level maximum of the teachers' salary guide. Yet, this could be anticipated in any consideration by the Board. (Exhibit R-9)

that the Commission not dismiss the "peaceful and effective collective negotiations history since that time (post-1968)." Assuming for the moment the factual accuracy of the Association's description of the parties' post-1968 experience, the undersigned must nonetheless be guided by the preemptive nature of the Act, which precludes the commingling of supervisors and nonsupervisors in units unless there is a basis to apply the statutory exceptions.

The undersigned now turns to the Hearing Officer's recommendation that supervisors should remain in the unit with principals. The Hearing Officer found that there is no supervisory relationship between supervisors and principals and that the responsibilities of the individuals functioning in these titles have not resulted in a conflict of interest and would not present a potential for substantial conflict of interest. See Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971). The undersigned adopts the findings and recommendations of the Hearing Officer as to supervisors. The supervisors' responsibilities are district-wide, and involve the development and improvement of curriculum and instruction in their area of specialization. A principal is responsible for the total educational program at a given school. Supervisors report to, and are thus evaluated by, the Superintendent for Curriculum and Instruction. A principal reports to, and is thus evaluated by, the Superintendent. Accordingly, neither the supervisors nor the principal 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.

Lastly, the Hearing Officer recommended that vice principals remain in the unit with principals and supervisors since vice principals are supervisors, act in the place of principals in their absence, and since the evidence at best established only a de minimis, as opposed to substantial, conflict of interest between principals and vice principals. The Hearing Officer noted the scant evidence in the record of incidents of actual conflict which may have arisen as a result of the principals' evaluation of vice principals. The Board, in its exceptions, criticizes the Hearing Officer's conclusions, arguing that Wilton identifies the evaluative function as an example of the kind of conflict which is substantial, rather than de minimis.

It appears that the Board has misperceived the basis of the Hearing Officer's conclusion. The Hearing Officer did not find that the responsibility to evaluate would result only in de minimis conflict; rather, he concluded that the evidence placed in the record concerning the principals' evaluations of vice principals could not support a finding other than that of a de minimis conflict. The mere finding of an evaluative responsibility does not, per se, give rise to the conclusion that there is a potential for substantial conflict. Had the Court in Wilton believed that the mere finding of an evaluative function would necessarily result in a finding of actual or potential substantial conflict of interest, it would not have remanded the Wilton matter to the Commission for a full factual review of this issue.

Although the record in the instant matter does not support the conclusion that vice principals should be removed

from the Association's unit, the undersigned cannot conclude that a different conclusion might not be reached if a factual record concerning the relationship between principals and vice principals had been more fully developed. Under the particular circumstances of this matter, 7/ the undersigned would be willing to entertain a motion by the Board to reopen the record for further development of the issue of the principal/vice principal relationship.

Accordingly, for the reasons stated above, the undersigned clarifies the Edison Principals Association unit consistent with the Hearing Officer's recommendation. Since the filing of the Petition, the parties' contractual agreement has expired. Thus, guidance counselors, cooperative education coordinators, and child study team members are excluded from the Edison Principals Association unit effective with this determination. 8/

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Carl Kurtzman, Director

DATED: August 19, 1981
Trenton, New Jersey

7/ The Commission has not to date addressed the issue of the unit placement of supervisors who are supervised by fellow unit members. After its remand, the Wilton matter was withdrawn from consideration by the Petitioner.

8/ See In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Since the instant matter was initiated by the filing of a clarification of unit petition the undersigned has refrained from defining alternate unit structures but instead has confined the decision herein to a determination concerning the appropriateness of the inclusion of certain disputed titles within the existing unit.

H.O. NO. 81-7

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

In the Matter of

EDISON TOWNSHIP BOARD OF
EDUCATION,

Public Employer-Petitioner,

-and- Docket No. CU-79-44

EDISON PRINCIPALS ASSOCIATION
a/w NJASSPS,

Respondent.

SYNOPSIS

In a Clarification of Unit Petition filed by the Edison Township Board of Education, a Hearing Officer of the Public Employment Relations Commission, recommends the removal of the non-supervisory titles of guidance employees, cooperative education coordinators and child study team members from the Edison Principals Association. However, the Hearing Officer found that the remainder of the titles in the unit, principals, vice principals, and supervisors, were supervisors within the meaning of the Act and were appropriate for inclusion in the same unit.

The Hearing Officer found that the Association was not a recognized majority representative until the 1968-69 academic year and therefore no established practice or prior agreement existed prior to the effective date of the Act, which may have justified a dismissal of the petition. The Hearing Officer held that the Act prevented the inclusion of supervisory with non-supervisory titles; therefore, the guidance, coordinator and child study team titles were removed from the unit. Finally, the Hearing Officer concluded that there was not sufficient evidence of a potential substantial conflict of interest between principals and vice principals to justify the removal of the vice principals from the existing unit.

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 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.

H.O. NO. 81-7

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

In the Matter of

EDISON TOWNSHIP BOARD OF
EDUCATION,

Public Employer-Petitioner,

-and- Docket No. CU-79-44

EDISON PRINCIPALS ASSOCIATION
a/w NJASSPS,

Respondent.

Appearances:

For the Public Employer-Petitioner,
R. Joseph Ferenczi, Esq.

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(J. Sheldon Cohen, of Counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") on April 10, 1979 by the Edison Township Board of Education (the "Board") seeking a clarification of a negotiations unit of its employees represented by the Edison Principals Association (the "Association"). The Board seeks to have certain titles currently in the Association's collective negotiations unit removed therefrom and divided into separate collective negotiations units, allegedly because they lack a community of interest with the remainder of the titles in the unit, and because of the existence of a potential or actual substantial conflict of interest. The Association argues that a pre-1968 established practice exists to justify

the composition of the unit, and that no substantial conflict of interest has occurred.

Pursuant to a Notice of Hearing dated September 6, 1979, hearings were held in this matter before Hearing Officer Bruce Leder on November 13, 14 and 15, 1979 in Trenton, New Jersey. All parties were given the opportunity to 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 April 3, 1980.

Because of the subsequent unavailability of the original Hearing Officer, the Director of Representation, pursuant to N.J.A.C. 19:11-6.4, transferred this matter to the undersigned Hearing Officer on October 14, 1980 for the issuance of the Report and Recommendations.[1/]

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

1. The Edison Township 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.

1/ The original Hearing Officer resigned from the Commission in mid June 1980 and the Director transferred this matter to a second Hearing Officer at that time. The second Hearing Officer also resigned from the Commission on October 10, 1980, and this matter was then transferred to the undersigned.

2. The Edison Principals 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 a Report and Recommendations.

4. The parties agree that the issue in this matter is as follows:

> Whether, as the Board contends, the Edison Principals Association should be divided into three separate units comprised of: Unit A, Principals; Unit B, Vice Principals and Supervisors; Unit C, Guidance, Cooperative Education Coordinators, and Child Study Team Members.

5. The Board argued that the existing Association must be divided as requested because of the existence of a conflict of interest among the present unit members. The Association contends that the unit has existed since prior to the effective date of the Act on July 1, 1968, and that no conflict of interest existed to justify the division of the unit sought by the Board.

Analysis

I. Did a Negotiations Relationship Exist Between the Parties Prior to the Passage of the Act?

In defense of its position that the division of the unit sought by the Board is unwarranted, the Association contends that

the current unit composition has existed prior to the effective date of the Act, and that a pre-1968 negotiations relationship has existed with the Board. In view of the above, the Association maintains that an established practice has existed between the parties which justifies a continuation of the current negotiations unit. The Board argues that there was no formal relationship between the parties prior to the effective date of the Act, and that the Board never negotiated with the Association until after July 1, 1968.

The facts show that during the mid 1960's, and certainly prior to July 1968, several principals had meetings with the Superintendent of Schools wherein salary was discussed. In July 1967 a salary guide for administrators and teachers was adopted by the Board and made part of the same form.[2/] The Association contends that this salary guide was arrived at through negotiations with the Superintendent, the Board's agent, and that it represented an agreement between the parties.

The evidence with respect to the meetings that occurred prior to 1968 shows that these were not scheduled negotiations sessions with the Board, but were actually regularly scheduled administrative meetings by the Superintendent with principals to discuss many things, only one of which was salary.[3/] Joseph Ruggieri, the Superintendent until June 1968, testified that the purpose of the salary discussions was to take a consensus of what

2/ See Exhibit R-19.
3/ Transcript (T) I, pp. 14, 64, 68.

the principals thought about the guide that the Superintendent would propose to the Board.[4/] Joseph Kreskey, a principal during the mid 1960's and currently an assistant superintendent, testified that he attended the principals' meeting as a principal but that the principals had no formal association,[5/] and that they did not put forward any written demands for salaries or benefits and did not have a written agreement with the Board.[6/] Finally, Harold Alley, a principal since 1964, testified that he believed that the principals negotiated with the Board through the Superintendent.[7/] However, when pressed further Alley admitted that the principals did not submit written proposals at these meetings with the Superintendent and that he was not aware of any formal agreement between the Board and the Association until 1969.[8/]

Having reviewed the evidence concerning the Superintendent's meetings with the principals, the undersigned is convinced that these meetings were merely discussions and not negotiations within the meaning of the Act. Superintendent Ruggieri testified that only principals and supervisors came to these meetings and that vice principals only came if their principal was absent.[9/] There was no showing by the Association that the principals were representing all of the titles in the Association. In fact, the evidence shows that in 1967 the vice principals felt that their salaries were not being adequately discussed in the principals'

4/ T. I, p. 15.
5/ T. II, p. 32.
6/ T. II, p. 33.
7/ T. I, p. 104
8/ T. I, p. 106.
9/ T. I, pp. 14-15.

meetings and they therefore requested and received their own meeting with the Superintendent and the Board.[10/] Leo Scanlon, a vice principal at that time, and now a principal, testified that he did not consider those meetings to be negotiations, and that there was no formal principals organization until 1968.[11/]

Finally, in order to establish that the principals' meetings were negotiations, the Association would need to demonstrate a true give and take with the Board regarding terms and conditions of employment with the intent to reach agreement.[12/] The Association, however, never established those elements.

10/ T. II, p. 7.

11/ T. II, pp. 8-12.

12/ The Commission has indicated the type of relationship that is required to support a claim of established practice. See 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); and In re Hillside Board of Education, E.D. No. 2 (1970).

> The Commission said that such a relationship requires:
>
> > 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. In re West Paterson, P.E.R.C. No. 77, p. 10 (1973).

In addition, the Commission in In re Teaneck, E.D. No. 23, pp. 7-8 (1971), indicated that there must be clear and convincing evidence that a negotiations relationship existed.

In the instant matter, however, there was no exchange of proposals to establish negotiations, there was no evidence of an intent by the Board to reach agreement, and, there was considerable doubt as to the titles involved in the discussions that were held.

Instead, the record shows that the principals never made written proposals nor entered into a contract with the Board prior to 1969. The fact that the principals were given the opportunity to discuss salary with the Board on their own behalf does not establish that they represented the unit within the meaning of the Act in contract negotiations.

With respect to exhibit R-19, which the Association contends was a negotiated written agreement between the parties, effective July 1, 1969, the facts show that that document actually covers two different groups of employees. On one side of that exhibit the administrators salary guide, which includes the instant titles, is listed, and on the other side the teachers' salary guide and benefits are listed. The undersigned has reviewed the evidence concerning R-19 and finds that said exhibit was not a negotiated agreement between the parties for the following reasons.

First, the Association contends that R-19 was a "negotiated agreement." The facts show, however, that the only meetings within which R-19 could have been "negotiated" were actually the regularly scheduled principals meetings which the undersigned has already found to be only discussion meetings. Harold Alley testified that the meetings in question were the principals' meetings and that they included the discussion of other items besides salary.[13/] As set forth in the preceding discussion, the instant facts do not establish that these principals' meetings were negotiations.

13/ T. I, p. 97.

No proposals changed hands, and there was no demonstration that a give and take relationship existed. The undersigned credits the testimony of Superintendent Joseph Ruggieri and Charles Boyle when they testified that these meetings were discussions only, and that the Superintendent made the final determination.[14/]

Second, the evidence does not demonstrate that the principals or supervisors who were present at the various meetings with the Superintendent were empowered to - or did in fact - represent all of the titles in question. Although Harold Alley testified that salary was discussed for all of the ratio titles (the instant titles),[15/] his testimony is contradictory and cannot be credited. For example, when asked to name the people who participated in these meetings Alley only gave the names of principals or supervisors and indicated that he believed that it covered all of the people.[16/] Later he testified:

> "...I can't certify that this wasn't uniquely a principals' meeting, but my recollection is that...there was a cross-representation of all ratio employees."[17/]

This testimony shows that Alley was uncertain as to who was present at those meetings, and therefore his testimony cannot be relied upon.

The evidence that can be relied upon was provided by Leo Scanlon, who is a principal, and Ann Riley, a social worker.

14/ T. I, pp. 23, 64-65.
15/ T. I, pp. 99-100.
16/ T. I, p. 98.
17/ T. I, p. 99.

Scanlon testified that prior to 1969 he was a vice principal and that with regard to the principals' meetings with the Superintendent the vice principals felt:

> "...that they better go on their own and discuss this with the Board directly, because at the time, we felt our interests weren't being presented properly with the Superintendent, and we asked for a session with the Board.18/

Riley testified that prior to 1969 her salary was discussed with and then given to her by the Superintendent.19/

The above testimony established that prior to 1969 the principals were acting primarily on their own behalf, and not in a concerted approach on behalf of all of the titles currently in the Association's unit.

The third, and perhaps most persuasive reason why R-19 was not a negotiated agreement, was established by the Board's witnesses. Superintendents Ruggieri and Boyle, and former Board President Arthur Price, all testified on the differences between the meetings with the teachers and those with the principals. For example, Charles Boyle testified that that part of R-19 which represented the teachers guide was actually arrived at through negotiations and after an impasse had occurred.20/ He further testified that the teachers association was recognized by the Board while the negotiations for their part of R-19 were being conducted.21/

18/ T. II, p. 7.
19/ T. I, pp. 95-96.
20/ T. I, pp. 55-56.
21/ T. I, p. 57.

The Association did not rebutt this testimony and therefore, there is every reason to believe that the Board knew the difference between discussions and negotiations. The facts support the Board's contention that the principals part of R-19 was arrived at after discussions only, not negotiations.

II. The Composition of the Negotiations Unit

Having found that there was no pre-1968 established practice to justify the automatic continuation of the instant unit, it must now be decided whether the current unit composition represents an appropriate collective negotiations unit. In deciding that question, either one of two factors could justify a division of the instant unit. First, whether supervisors are included in the unit with non-supervisors which is prohibited by the Act, and second, whether an actual or potential substantial conflict of interest exists among the unit members.

With regard to one group of titles, guidance, cooperative education coordinators, and child study team members, the decision is easy. The evidence shows that those titles are not supervisors within the meaning of the Act, they only supervise students, and must therefore be defined as non-supervisory in a legal sense.[22/] The evidence further shows that the principals, supervisors, and vice principals are supervisors within the meaning of the Act in

22/ T. III, p. 16. See also Exhibits P-5, P-6, P-7, P-8, P-9, which are the job descriptions of these titles.

that they are all involved in the hiring and evaluation process.[23/]

The Act at N.J.S.A. 34:13A-5.3 specifically prohibits the inclusion of supervisory with non-supervisory titles. The Act provides for certain exclusions to this rule, those being "established practice, prior agreement or special circumstances." However, the undersigned has already found that there was no pre-1968 established practice or prior agreement between the instant parties which would justify the exclusion to the rule. Moreover, there was no offer of "special circumstances" which would justify the existing unit. Having found that guidance employees, co-ordinators, and child study team members are non-supervisory and that no exception to the Act exists, these titles must be removed from the remainder of the Association's unit.

In addition to the statutory reasons for exclusion of guidance, coordinators, and child study team employees, the undersigned is convinced that the potential for substantial conflict of interest exists if these titles remained in the unit. The facts show that some of these titles, the guidance and coordinator titles, are evaluated by principals.[24/] In previous cases, the Commission has held that department chairmen who are supervisory are not appropriate for inclusion in units with teachers who are non-supervisory.[25/] That principle is applicable herein.

23/ See Exhibits P-2, P-3, and P-4.
24/ T. III, p. 3, T. II pp. 68-69.
25/ 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).

Although it has been recommended that the aforesaid titles be removed from the unit, that does not mean that a separate unit of guidance, coordinators, and child study team employees is the most appropriate unit for those titles. Not enough evidence was produced at the hearing concerning the existing teachers or non-supervisory professional unit to determine whether that unit would be more appropriate. At this time, it appears that either a separate unit of guidance, coordinators, and child study team employees, or combining those titles with the existing teachers unit would be appropriate.

The only titles that remain for consideration are the principals, vice principals and supervisors. The facts show that all of these titles are supervisors within the meaning of the Act,[26/] that principals evaluate vice principals,[27/] but that vice principals are expected to perform the principals' duties in their absence.[28/] The facts also show that the supervisors neither evaluate nor are evaluated by principals or vice principals.[29/]

The Board seeks to combine supervisors and vice principals in one unit leaving principals alone in their own unit. In order to justify its position the Board must establish that an actual or potential conflict of interest exists between those titles. However, with respect to the supervisors' title, the Board never established that any conflict existed with either the principals or vice principals. The fact that principals may have some input

26/ T. III, p. 16.
27/ T. II, p. 67.
28/ T. III, p. 116.
29/ T. II, pp. 67-70.

into the evaluation of supervisors is insignificant since supervisors are evaluated by the Assistant Superintendent. Consequently, there is no basis upon which to remove supervisors from the principals' unit.

Since the Board raised no problem with the inclusion of supervisors with vice principals, the only remaining issue is whether vice principals can be included with principals. The undersigned believes that they can. The only evidence with respect to conflict between principals and vice-principals is the fact that since the former evaluate the latter that a potential for conflict exists. Standing alone, however, and without any evidence of conflict, the potential for conflict can hardly be called substantial.

The only testimony regarding a possible conflict between principals and vice principals came from Assistant Superintendent Thomas Bradshaw. He testified that some of the evaluations made by principals of vice principals were more complimentary than they should have been.[30/] Nevertheless, Bradshaw later testified that he never cautioned the principals about these evaluations,[31/] and he actually admitted that every principal has been critical of someone who is currently in the Association's unit.[32/] When asked to name actual evidence of conflict, Bradshaw could give no names.[33/]

30/ T. II, p. 91.
31/ T. II, p. 97.
32/ T. II, p. 96.
33/ T. II, p. 85.

This is not the first time the Commission has considered the inclusion of supervisors in a unit with higher level supervisors. In fact, in most police and fire units throughout the State, superior officers are included in one negotiations unit. In In re Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (¶10091 1979), for example a unit including the deputy chief, captains, lieutenants and sergeants was found to be appropriate. The facts in that case show that all of the titles were supervisors within the meaning of the Act, but that the higher titles evaluated the lower titles, nevertheless, the unit was appropriate.34/

In addition, the Commission long ago established that principals and vice-principals share a community of interest with each other. In In re Long Branch Board of Education, E.D. No. 47, (1974), the Commission held that a unit of principals, vice principals and supervisors was appropriate. In that case it was found that all administrators were under a common supervisory structure, the board recognized the administrators as a management team, and all of the titles shared common work objectives. These elements are clearly applicable in the instant case. The vice principals perform essentially the same duties as the principals and in fact assume their duties in their absence.

In two more recent cases, the Commission has approved broad-based administrators units. In In re Lakewood Bd of Ed, D.R. No. 78-44, 4 NJPER 212 (¶4105 1978), the Director of Repre-

34/ See also, In re Town of Kearny, D.R. No. 78-30, 4 NJPER 54 (¶4025 1977); In re Borough of So. Plainfield, D.R. No. 78-18, 2 NJPER 349 (1977).

sentation found that a unit of department chairmen, educational specialists, assistant principals, and principals was appropriate. In In re Delaware Valley Reg. HS Dist. Bd of Ed., D.R. No. 79-15, 4 NJPER 496 (¶4225 1978), a unit of a principal and administrative assistant was found appropriate.

Although the Board argued that a Wilton [35/] conflict existed between the principals and vice principals that justified their separation from one another, the evidence does not support that contention. The evidence at best establishes only a de minimis amount of conflict between those titles and hardly shows the potential for substantial (emphasis added) conflict of interest. The evidence herein revealed that principals have been evaluating vice principals since about 1974, but when Board witnesses were asked to name the incidents of conflict, they provided none.[36/]

In support of its position with respect to this issue, the Board relied upon certaion decisions which the undersigned believes are distinguishable from the instant facts. In In re Jersey City Bd of Ed, D.R. No. 80-15, 5 NJPER 533 (¶10273 1979), the Title I Director title was found to be inappropriate for inclusion in a unit with the Assistant Director because the Director served on a management administrative council. In the instant matter those facts do not exist. The vice principals in fact stand in for the principals and perform very similar duties and the principal does not appear to be serving on any council or body

35/ Bd of Ed of West Orange v. Wilton, 57 N.J. 404 (1971).
36/ T. II, pp. 84-85 and T. III, p. 6.

designed to create managerial policy. In In re Parsippany-Troy Hills Twp. Bd of Ed, D.R. No. 79-7, 4 NJPER 394 (¶4177 1978). The Director held that the titles of Directors of Secondary and Elementary Education be removed from an administrators unit because of conflict. In that decision, however, the Director held that the most appropriate unit for representation of administrators was an all inclusive administrators unit, except where a Wilton conflict was evident. In the instant matter, the only evidence of conflict is de minimis, therefore the all inclusive unit of principals, supervisors and vice principals is appropriate.

Recommendations

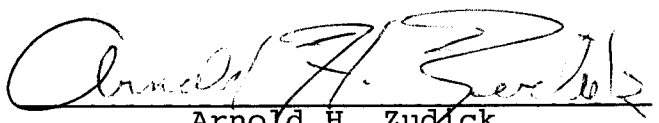
Based upon the foregoing discussion, the undersigned Hearing Officer recommends the following:

1. That the titles of guidance, cooperative education coordinators, and child study team members be removed from the Association's unit.

a. That no pre-July 1, 1968 established practice or prior agreement existed between the instant parties.

2. That a unit of principals, supervisors, and vice principals is an appropriate unit, and that no conflict exists to justify the removal of vice principals.

Respectfully submitted,



Arnold H. Zudick
Hearing Officer

DATED: Trenton, New Jersey
November 7, 1980