

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
HILLSIDE BOARD OF EDUCATION  
Public Employer

and

HILLSIDE EDUCATION ASSOCIATION  
Petitioner

Docket No. CU-2

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the status of Director of Music 1/, Director of Cafeteria, Director of Special Services; Director of Guidance; Director of Physical Education and Director of Industrial Arts of Hillside Board of Education a hearing was held before Hearing Officer Jeffrey B. Tener on October 7, 1969 at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Thereafter, on February 16, 1970 the Hearing Officer issued his Report and Recommendations 2/. Exceptions were filed by the Petitioner. The Executive Director has considered the record, the Hearing Officer's Report and Recommendations, the Exceptions and on the facts in this case finds:

1. The Hillside Board of Education is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Hillside Education Association is an employee representative within the meaning of the Act.

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1/ This position has apparently been eliminated.

2/ Attached hereto and made a part hereof.

3. The public employer having refused to include the aforementioned directors in the unit represented by the Hillside Education Association a question concerning the unit placement of public employees exists and the matter is appropriately before the Executive Director for determination.

4. The Hearing Officer's findings and recommendations are hereby adopted.

The Petitioner excepts to the Hearing Officer's findings and recommendations contending that the directors are not supervisors within the meaning of the Act; that if they are supervisors, there is an established practice which warrants their inclusion in a unit of non-supervisory employees; and that there is a community of interest between directors and other employees.

The uncontroverted testimony reveals that:

(a) Director of Special Services who is also the school psychologist coordinates the work of the learning disabilities team; does testing; is in charge of the social workers; interviews candidates and makes recommendations regarding their hire; directs a group consisting of seven employees; makes evaluations of employees; and makes recommendations regarding increments for non-tenured personnel.

(b) Director of Physical Education coordinates the physical education program for the elementary and high schools; observes teachers; evaluates teachers; and recommends increments. He interviews candidates for hire and makes recommendations regarding their employment; and has recommended the transfer of employees. There are seven employees in the physical education group.

(c) Industrial Arts Director observes industrial arts classes in elementary and high schools; evaluates teachers; makes recommendations

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(c) Industrial Arts Director observes industrial arts classes in elementary and high schools; evaluates teachers; makes recommendations

regarding increments; has recommended the termination of teachers; and interviews candidates for positions in his department and makes recommendations regarding their employment. There are six teachers in the industrial arts group.

(d) Guidance Director directs four guidance counselors and a secretary. He is responsible for and coordinates the guidance program in the elementary and high schools.

He interviews candidates and makes recommendations regarding their employment; evaluates guidance counselors; and makes recommendations regarding increments.

(e) Director of Cafeteria is responsible for the operation of four school cafeterias; orders and buys food; and hires, fires, and directs twenty-four cafeteria employees.

The uncontroverted testimony of the school superintendent who was formerly the high school principal reveals that each of the aforementioned directors, except for the Director of Cafeterias, basically reports to the high school principal, makes recommendations to the principal regarding the hire, evaluation, transfer and retention of employees; and directs the activities of his respective group. The uncontroverted testimony also reveals that such recommendations are relayed by the principal to the superintendent or acted upon by the principal without an independent investigation. The evidence further reveals that neither the superintendent nor the Board conducts an independent investigation. Thus, although the final action is that of the Board this action is the result of recommendations from the directors which are therefore effective recommendations.

The evidence also reveals that the directors generally do not have scheduled classes, are paid on a ratio basis like administrative personnel, and work somewhat different hours from teachers.

The Association contends that (1) the directors' job descriptions do not provide for such recommendations; (2) their authority and role is similar to that of department chairmen who have been included in the recognized unit; (3) the evaluation form does not provide for a directors' signature; and (4) the directors' recommendations have not always been followed.

The evidence does not reveal any instance during the incumbent superintendent's tenure as superintendent or as high school principal when the directors' recommendations were not followed. Since this period covers the last three years the Association's contention on this issue is without merit. The assertion that neither the evaluation form nor the job description provides for the director's recommendations is directed to form rather than substance. Since the directors do make recommendations, which have been found to be effective, this fact must override the absence of provisions for such recommendations in either a job description or a form.

With respect to the Association's contention that the position of director is analogous to that of department head, the Executive Director finds that assuming arguendo the validity of this argument it can not alter the finding on the facts in this case. Where the parties have voluntarily resolved a unit problem in accordance with the provision of the statute, their possible inclusion of supervisors in a unit does not require the Commission to make a similar unit finding in a related situation. The Commission is neither relieved of its obligation nor may it be guided in its determination regarding the status of directors simply because the parties earlier agreed to include department chairmen in the unit.

Based upon all of the above I conclude that the directors are supervisors within the meaning of the Act. My finding with regard to the

Director of Cafeterias is predicated upon the uncontroverted evidence that she has the authority to hire and fire employees, and not merely the authority to recommend such action.

I now reach the issue regarding the applicability of "established practice, prior agreement or special circumstances" as a basis to include these supervisors in a unit of nonsupervisory employees. I find, as did the Hearing Officer, that the practice whereby the Association's requests were considered by the Board which then engaged in unilateral determinations of terms and conditions of employment does not constitute give and take negotiations or a bilateral relationship. Furthermore, no agreements were reached by the parties let alone reduced to writing and executed. Based upon these facts, the Executive Director rejects the contention that there is "established practices" or "prior agreement" or "special circumstances" which warrant the inclusion of supervisors in a negotiating unit of nonsupervisors 3/ .

Based upon my aforementioned findings I do not deem it necessary to decide whether or not the directors have a community of interest with the nonsupervisory employees.

The Petitioner's request to include directors in a unit of nonsupervisory employees is hereby denied and the Petition is hereby dismissed.



Louis Aronin  
Executive Director

DATED: May 6, 1970  
Trenton, New Jersey

3/ Middlesex County College Board of Trustees, PERC No. 29.

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Appearances:

For the Hillside Board of Education

Metzler Associates

By Robert E. Murray, Esq.

For the Hillside Education Association

Cassel R. Ruhlman, Jr., Esq.

REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on October 7, 1969 by the Hillside Education Association requesting a clarification of unit. Pursuant to a Notice of Hearing dated October 29, 1969, a hearing was held before the undersigned Hearing Officer on November 20, 1969, 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. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Hillside Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Hillside Education Association is an employee representative within the meaning of the Act.
3. The Public Employer disagrees that certain employees, described below, should be included in the existing negotiating unit. There is, therefore,



a question concerning the composition of the unit.

The Hillside Education Association, hereafter the HEA, has been recognized as the majority representative for the purpose of collective negotiations by the Hillside Board of Education, hereafter the Board.

The HEA submitted a request for recognition and a proposed definition of an appropriate unit to the Board on November 7, 1968. The proposed unit definition included the following categories: (1) classroom teachers, (2) guidance counselors, (3) nurses, (4) librarians, (5) social workers, (6) psychologists, (7) specialists, (8) home instruction teachers, (9) attendance officers, (10) directors, (11) department chairmen, (12) coaches, (13) advisors, and (14) substitutes.

On November 13, 1968, the Board passed a resolution which provided that, "In accordance with the provisions of the New Jersey Employer-Employee Relations Act, the Hillside Board of Education hereby recognizes the Hillside Education Association as the representative designated for the purposes of collective negotiation by the majority of the non-supervisory certificated teaching and certificated non-teaching employees employed by the Board of Education and excluding any employee whose duties, all or in part, are of a supervisory nature within the meaning of the New Jersey Employer-Employee Relations Act."

The parties entered into a written agreement on January 20, 1969 for the period between September 1, 1969 and August 31, 1970. The recognition clause of this agreement is identical to that contained in the Board resolution quoted above.

The Board and the HEA apparently agreed to negotiate for all those positions requested by the HEA except directors and department chair-

men pending a determination by PERC regarding their inclusion in or exclusion from the unit. Department chairmen and directors were represented by an ad hoc committee in negotiations for 1969-1970.

The HEA, in its petition filed October 7, 1969, requested, among other things, a determination as to which of the fourteen categories sought by the HEA are supervisory. The positions initially in dispute were department chairmen and directors. <sup>1/</sup> At the hearing, the Board agreed to include department chairmen in the unit. Therefore, the only position in dispute was director.

The Board contends that there are five directors: Director of Special Services, Director of Guidance, Director of Physical Education, Director of Industrial Arts, and Director of Cafeteria.

The HEA expressed surprise at the inclusion of a so-called "Director of Cafeteria". The HEA regards the dietician as a classroom teacher and not as a Director. This category will be discussed separately below. The HEA also indicated that there was a position of "Director of Music" although the position is currently vacant. The Board stated that the position "Director of Music" had been abolished although it admitted that this had not been done by any formal action. The Administrative Manual of the school system does list a "Director of Music" position. If this position has been or is abolished, there is and will be no issue. If the position were to be filled, the undersigned finds that the occupant of that position should be considered as any other director.

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<sup>1/</sup> The parties agreed that the "psychologist" included in the unit request of the HEA is a "director" and he will be considered as a "director" herein.

The question before the Hearing Officer is whether or not directors can be included in the larger unit of classroom teachers, department chairmen and the other categories listed above.

The Board contends that the directors are supervisors as defined in Chapter 303 and that, therefore, they cannot be included in a unit with nonsupervisors. The Board denies that there is established practice, prior agreement, or special circumstances which would permit supervisors and nonsupervisors to be in the same unit. Furthermore, the Board maintains that directors do not have a community of interest with other unit employees and, therefore, that a unit which included directors would not be appropriate.

The position of the HEA is that directors are not supervisors as defined in the Act and that, even if they were supervisors, they should be included in the unit because they do have a community of interest with other unit employees and there is established practice, prior agreement, or special circumstances to justify a unit consisting of supervisors and nonsupervisors.

Chapter 303 provides that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors..." (Section 6(d))

A supervisor is defined as a public employee "...having the power to hire, discharge, discipline, or to effectively recommend the same..." (Section 7)

Section 7 also specifies that "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition

and unit definition except in the event of a dispute."

Therefore, it must be decided whether the directors are supervisors as defined in the Act and, if they are supervisors, whether there is established practice, prior agreement, or special circumstances to permit a combined unit of supervisors and nonsupervisors. Directors must have a community of interest with other unit employees if they are to be included in an appropriate unit with the other employees.

The statutory language quoted above also makes clear that the commission is not to intervene except in the event of a dispute. Therefore, the question of whether or not department chairmen should be included is not before the Hearing Officer in view of the agreement of the parties to include them in the unit.

#### Supervisors

The first question is whether or not directors are supervisors, i.e., whether they have the power to hire, discharge, discipline, or to effectively recommend the same.

The record indicates that directors do interview candidates for positions within their jurisdictions. The Superintendent testified that he could recall no case in which a teacher was hired without the director's recommendation. This is not a mere formality: all candidates for positions are interviewed by the director concerned; some are recommended for employment, others are not.

Directors also evaluate personnel under their jurisdiction. They complete evaluation forms on each person under them and make a recommendation as to whether or not a person should be continued in his position and also, in the case of non-tenure teachers, whether or not a person should be granted regular employment. These forms call for the signature of the principal.

However, the Superintendent testified that the evaluations in fact are filled out by the directors in totality, signed by the directors, and merely initialed by the principal. The evaluation reports which were submitted in evidence generally followed this pattern. The Superintendent also testified that the recommendations of the directors are followed in virtually all cases; he was unable to recall a case in which this recommendation was not adopted. The Superintendent stated that the directors are required to fill out the evaluation forms and to make recommendations regarding tenure and increments for teachers.

Furthermore, the principal generally discusses the evaluation with the director. Thus, there is no evidence that the principal conducts an independent review of the evaluation of the director.

Based upon the above, the Hearing Officer finds that directors in the Hillside school system have the power to make effective recommendations with respect to hiring and discharging and that, therefore, they are supervisors as defined by the Act.

Established Practice, Prior Agreement, or Special Circumstances

Having found the directors to be supervisors as defined in the Act, the next question is whether or not there is established practice, prior agreement, or special circumstances to justify a combined unit of supervisors and nonsupervisors. The Act provides that supervisors should not be in a unit with nonsupervisors except where dictated by the conditions listed above. The Hearing Officer reads the language of the Act to mean that, in most cases, supervisors are not to be combined with nonsupervisors. Only in an atypical or exceptional situation could they be combined.

The terms "established practice, prior agreement or special circumstances" are not defined in the Act. The early decisions of the

Commission do not provide a definition or guidance as to its interpretation of the meaning of these terms although they have been interpreted quite narrowly to date.

It is clear that membership in the HEA has been open to directors for a long time - undoubtedly as long as the position has existed. It is also clear that the HEA has been a spokesman or representative body of the teachers and directors for a long time. This was acknowledged by the Board in 1963 when the Superintendent of Schools wrote a letter to the President of the HEA recognizing the HEA "as a representative body." The letter did not specify the purposes of the representation but the request to the Board of Education for recognition refers to "the exclusive negotiation representative for certified personnel." The response of the Superintendent indicated that, "In the future, the Board of Education will work out definite policies of procedure that will be followed. In the meantime, we will follow the same procedure that we have been following in the past in making requests."

This response indicates several things. First, the HEA in 1963 and prior thereto made "requests" to the Board. Second, the Board of Education adopted any procedures and policies that may have been followed in this area.

There is no evidence, notwithstanding the statement in the letter, that any "definite policies of procedure" were worked out subsequently. The system of "requests" apparently was continued.

The President of the HEA described the nature of the relationship between the Board and the HEA prior to the passage of Chapter 303. Essentially, a committee from the HEA - sometimes in consultation with the Superintendent who was the leader of the teachers' group - would present

requests regarding salaries and a variety of other items to the Board at a public meeting of the Board. Sometime later, the teachers and the committee would learn what action the Board had taken from the newspapers, the Superintendent, word-of-mouth, etc.

There is no evidence of give and take or compromise or even of discussion in this relationship. HEA did not have any role in the handling of grievances. Accordingly, the Hearing Officer does not find that the required "collective negotiation" had taken place. Therefore, there is no established practice, prior agreement, or special circumstances to warrant a combined unit of supervisors and nonsupervisors.

To elaborate on the above finding, the undersigned does not find that the relationship between the parties had anything to do with collective negotiation. Thus, while the HEA was a recognized representative body and while it was interested in salaries and other aspects of the employment relationship and did present requests to the Board on these matters, the Board and the HEA did not engage in collective negotiation. The parties acknowledge that there was never a written agreement between them governing working conditions. If "prior agreement" means written agreement, then this condition was not met. No special circumstances were described at the hearing which would support the position of the HEA.

There is another factor which should be considered in this connection. Even if the Commission were to find that the relationship described above constitutes "past practice", the nature of the job of directors is changing -- although the job description has not been altered to reflect this change.

This year, for the first time, directors do not have regularly assigned classroom duties although they may fill in occasionally, teach

special classes, etc. The department chairmen, on the other hand, are simply given a somewhat reduced teaching load to permit them to handle departmental business. The job of the director has been changed to permit the director to devote virtually full time to the development, improvement and coordination of his area of responsibility on a system-wide basis.

Furthermore, since about 1964, directors have been paid on a ratio basis like the building principals and other administrative personnel. Department chairmen, in contrast, receive honoraria.

Therefore, even if there were "established practice" in this case, it does not seem reasonable to conclude that the Act was intended to freeze permanently into a unit a group of employees whose changing job responsibilities suggest that, regardless of what may have existed in the past, now should be excluded from the unit.

#### Community of Interest

It is recognized that the directors and those in the unit have much in common - pensions, holidays, hours and school year (although directors tend to work both a longer day and year than do classroom teachers), insurance, etc. Both groups operate in the field of public education. However, there also are important differences - salary schedules, immediate supervisor, and the fact that teachers teach and directors usually do not teach. Most directors have private offices unlike unit personnel. There are other differences.

The Commission has tended to define community of interest broadly. Thus, in this case, the directors and classroom teachers might have a community of interest were it not for the fact that the directors have been found to be supervisors as defined in the Act. As supervisors, their



conflict of interest with the unit employees whom they supervise transcends any community of interest that might unite the two groups. Therefore, the undersigned finds that directors do not have a community of interest with the other employees in the negotiating unit. This finding, however, is predicated upon the finding that the directors are supervisors.

Director of Cafeteria

This position seems to be somewhat different from the others. Little evidence or testimony was offered with respect to this position. The HEA expressed surprise that the Board regarded the dietician as a director. They stated that the dietician had always been considered as a classroom teacher and has been paid on the same salary guide as the classroom teachers. The HEA did not list the dietician as one of the groups that they sought to represent, apparently because they regard this person as a classroom teacher.

The Administrative Manual, which admittedly is out of date, does not list the position "Director of Cafeteria." It does list "Director of Music" but it does not list "Director of Special Services."

The undersigned is not impressed with the mere title "Director of Cafeteria." If that is what the occupant of the position in question is called by the Board of Education, this fact is not widely known.

However, the functions of the job are important. Interesting but not controlling is the fact that the dietician is paid on the teachers salary guide rather than on a ratio as are the other directors. But it may be that this position is worth less than the positions held by the other directors.

Notwithstanding the somewhat unique aspects of this position, the uncontroverted testimony of the Superintendent indicates that the Director


of Cafeteria "has pretty much free reign in ordering, buying, and hiring, and firing, and so forth." Accordingly, the Hearing Officer finds her to be a supervisor as defined in the Act. Much of the same reasoning applied above militates against a finding of established practice, prior agreement, or special circumstances. Furthermore, as a supervisor, she lacks a community of interest with unit employees although it is recognized that the employees that she supervises are not unit employees. It is not inconceivable that the cafeteria employees could become a part of a unit with classroom teachers at some future time (See Bergenfield Board of Education, P.E.R.C. NO. 7). If that were to happen, the supervisor of the cafeteria employees should not be in the same unit as the employees supervised. This is nothing more than theoretical possibility but it is worthy of consideration.

Based upon the above, the undersigned finds that the Director of Cafeteria is a supervisor as defined in the Act, that there is insufficient established practice, prior agreement, or special circumstances to justify combination of supervisors and nonsupervisors, and that there is insufficient community of interest to warrant a finding that the Director of Cafeteria should be included with classroom teachers and other unit employees.

#### Recommendations

It is recommended that the unit be clarified to exclude all directors including the Director of Cafeteria. The directors are supervisors who lack sufficient community of interest with unit employees to

be grouped with them and there is no established practice, prior agreement, or special circumstances to indicate a finding that directors should be included with other unit employees.

  
Jeffrey B. Tener  
Hearing Officer

DATED: February 16, 1970  
Trenton, New Jersey