

P.E.R.C. NO. 88-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WESTFIELD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-142-204

WESTFIELD ASSOCIATION OF  
EDUCATIONAL SECRETARIES,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Westfield Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally removed two employees from the Westfield Association of Educational Secretaries' negotiations unit and unilaterally set the salaries for those positions. The Commission finds that the two positions were not supervisory and therefore the Board was obligated to negotiate with the Association before changing the employees' salaries.

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WESTFIELD ASSOCIATION OF  
EDUCATIONAL SECRETARIES,

Charging Party.

Appearances:

For the Respondent, Winne, Banta, Rizzi, Hetherington and Basralian, Esqs. (Robert M. Jacobs, of counsel)

For the Charging Party, N.J.E.A. UniServ Regional Office No. 15 (Ronald Harvey, UniServ Representative)

DECISION AND ORDER

On December 9, 1985 the Westfield Association of Educational Secretaries ("Association") filed an unfair practice charge against the Westfield Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3) and (5),<sup>1/</sup> when it removed two positions from

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of

the Association's collective negotiations unit and unilaterally set the salaries for those positions.

On June 18, 1986, a Complaint and Notice of Hearing issued. By letter dated September 5, 1986, the Board requested its earlier statement of position be treated as its Answer. In that statement, the Board asserted that it created two non-unit positions due to a reorganization, filled those positions with two unit employees, and left vacant the two employees' former positions.

On September 9, 1986, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by October 30, 1986.

On March 26, 1987, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 87-57, 13 NJPER 309 (¶18129 1987). She found that the new positions are supervisory within the meaning of the Act, that the employees in those positions are not performing unit work, and that the Board was therefore not obligated to negotiate their salaries. She further found that the Association failed to show unlawful motive or that the Board dominated or interfered with the existence or administration of the Association.

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1/ Footnote Continued From Previous Page

employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

On April 9, 1987, the Association filed exceptions. It asserts: (1) the Board did not create two new positions, but instead created new titles and job descriptions; (2) the two employees do not independently evaluate anyone; (3) the two employees would not be the first step in the grievance procedure; (4) the assistant superintendent is always involved in the evaluation process, and (5) the Board created the appearance of supervisory duties to accomplish its goals of giving higher salaries and protecting the two employees from bumping.

On April 14, 1987, the Board filed a reply answering each of these assertions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-15) are essentially accurate. We adopt and incorporate them here with the following clarifications.

Findings no. 3 and 11 are modified to indicate that Ford and Schwartzbach continued, for the most part, to perform the duties they did before the Board created the new titles. The Board did not create completely new positions.

Finding no. 3 is further modified to state that in November 1984, the Board eliminated its per diem administrative secretaries and created positions for two accounting clerks and one administrative secretary. According to the job descriptions, the accounting clerk and administrative secretary report to the assistant business manager. The contractual grievance procedure provides that grievances be presented to the immediate superior.

Accordingly, we do not assume that Ford and Schwartzbach would necessarily be the first step in the grievance procedure.

Finding no. 15 is modified to show that Foley personally evaluates the two accounting clerks with input from Ford and Schwartzbach. He testified that he added comments to and signed the formal evaluations and met with the clerks as part of the evaluation process.

Although raised in the context of an unfair practice charge, the main issue is whether Ford and Schwartzbach are supervisors within the meaning of the Act. If they are, then the Board lawfully created the two non-unit titles and placed them in those titles. If they are not, then the Board violated the Act when it unilaterally set their salaries.

The Hearing Examiner found that the two positions are supervisory and that, accordingly, the Board did not violate the Act. We disagree.

Foley's May 15, 1985 memorandum plainly shows his intent to remove Ford and Schwartzbach from the Association's unit to increase their salaries and insulate them from contractual bumping in case of lay-offs. The text of the memorandum is as follows:

Attached are the job descriptions for the positions of accounts payable and purchasing. I would like to propose that these positions be taken out of the Westfield Association of Educational Secretaries and be treated as separate positions. The individuals currently holding these positions (Claire Ford, purchasing, and Charlotte Schwartzbach, accounts payable, were consulted and expressed agreement with leaving the unit.

I feel this reorganization is critical for several reasons.

1. Both positions place considerable emphasis on bookkeeping/accounting skills. Skills such as typing and steno are not essential to their work. Currently these positions are classified as Level IV, which makes them subject to the normal "bumping" procedures for all secretaries at or above this level. At some future time we may find an excellent secretary placed in an accounting position without the necessary skills.
2. Should a vacancy occur in either of these positions, our assignment of these positions to the Level IV guide may make it difficult to hire suitable help. For instance, an accounts payable officer with 4 years experience in industry would earn \$11,775 on our 1984-85 Guide. Even if the individual had more than six years experience, the maximum we could pay is \$12,855 for 1984-85. Experienced bookkeepers will earn \$16,000 and up.
3. Both positions currently have a clerk for back-up. It is my expectation that both the accounts payable and purchasing agent assign work to a subordinate and oversee the work in that department. Their evaluations, therefore, will not only involve their individual performance, but the work of a subordinate.

I would suggest as part of this proposed change that the position be placed at a ratio beyond Level V - approximately 5%. Benefits would remain as secretaries have now, but summer hours would be eliminated. The total cost would be \$4,200.

There are some procedural questions which should be reviewed with Bill Peek. I am not certain whether the recognition clause in Article I of the agreement is binding in this case. After his review, I will give it to the Finance Committee.

Foley recognized that removing the two employees from the unit might run afoul of the contract's recognition clause. When the Board

adopted this recommendation, it did so at its peril in the event the employees were not supervisors.<sup>2/</sup>

In Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970), the Court emphasized the legislative command and public policies requiring collective negotiations over compensation and rejected a claim that employers should be free to increase individual employee compensation unilaterally. The Court stated:

It has been said that advantages to an employee through an individual contract "may prove as disruptive of industrial peace as disadvantages." Individually negotiated agreements constitute "a fruitful way of interfering with organization and choice of representatives; increased compensation, if individually deserved, is often earned at the cost of breaking down some other standard thought to be for the welfare of the group, and always creates the suspicion of being paid at the long-range expense of the group as a whole." J.I. Case Co. v. N.L.R.B.,...321 U.S. [332] at 338-339...N.L.R.B. v. Allis-Chalmers Mfg. Co.,...388 U.S. [175] at 180-181 (1967).... [Id. at 428]

With that legislative and judicial guidance, we examine the Board's action in light of Foley's memorandum.

N.J.S.A. 34:13A-5.3 provides that supervisors are those employees having the power to hire, discharge, discipline, or to effectively recommend the same. "The mere possession of the authority is a sterile attribute unable to sustain a claim of

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<sup>2/</sup> Clarification of Unit petitions may be filed to obtain determinations as to the supervisory status of employees without running the risk of violating the Act by acting unilaterally.

supervisory status." Somerset Cty. Guidance Center, D.R. 77-4, 2 NJPER 358, 360 (1976). We must review all the circumstances of a particular case to determine whether the employee has and regularly exercises such power. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill Tp. DPW, P.E.R.C. No. 30 (1970).

Schwartzbach has no role in hiring. Ford, while in her old title, was consulted once about the hiring of an employee. Neither Schwartzbach nor Ford has discharged or disciplined any employees. Their supervisory status thus turns on their role in evaluating employees.

While evaluating alone is not one of the statutory criteria, we have looked to it as it relates to other actions such as renewal, tenure, promotion and salary. See Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985) and cases cited in H.E. at 18. Evaluations alone, however, do not necessarily create a conflict of interest sufficient to exclude the evaluator from a unit. See, e.g., Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1987).

There are three evaluations in the record.<sup>3/</sup> Ford prepared an initial evaluation of McCarthy in February 1986. She prepared a handwritten form, then typed it and gave it to Foley.

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<sup>3/</sup> Two were written after the charge.



They discussed her feelings and then Foley added his comments to the evaluation. Both Ford and Foley signed the evaluation and met with McCarthy at an evaluation conference. The evaluation was favorable and the employee was rated satisfactory. Ford has never recommended any adverse personnel actions.

In December 1985, Schwartzbach discussed her evaluation of Behan with Foley. Foley wrote the actual evaluation and only he signed it. Both Foley and Schwartzbach attended the evaluation conference. Foley also prepared Behan's February 1986 evaluation after input from Schwartzbach. No adverse personnel actions flowed from Schwartzbach's participation in Behan's evaluations. Behan was recommended for renewal.

Under all the circumstances of this case, we find that Ford and Schwartzbach are not supervisors. Neither has the statutorily required power to hire, discharge, discipline or effectively recommend the same. Foley retains substantial control of the evaluation process, including preparation of the evaluation forms themselves. Ford and Schwartzbach's limited role is not sufficient to require their exclusion from the Association's unit. We consider a supervisor's role in evaluations because evaluations can serve as effective recommendations for the statutorily mandated criteria. Recommendations for another's evaluations which might then serve as recommendations for another's personnel decisions are too far removed from the personnel decisions to create a conflict of interest substantial enough to remove the titles from the unit. Contrast Wilton v. West Orange Bd. of Ed., 57 N.J. 404 (1971).

Regardless of whether it was well-intentioned, the Board acted at its peril when it removed the titles from the unit unilaterally. Because we have found that both titles belong in the Association's unit, the Board violated subsections 5.4(a)(5) and, derivatively, (a)(1) when it unilaterally set salaries for the titles. We agree, however, with the Hearing Examiner that the Association failed to prove that the Board discriminated against any employees in order to encourage or discourage employees in the exercise of protected rights, or that the Board dominated or interfered with the Association. Accordingly, we dismiss the remaining allegations.

ORDER

The Westfield Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate salaries for new unit positions.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by failing to negotiate salaries for new unit positions.

B. Take the following affirmative action:

1. Negotiate with the Westfield Association of Educational Secretaries salaries for the titles accounts payable officer and purchasing agent retroactive to July 16, 1985.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
July 14, 1987  
ISSUED: July 15, 1987

**NOTICE TO ALL EMPLOYEES****PURSUANT TO**

AN ORDER OF THE

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

and in order to effectuate the policies of the

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,**

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate salaries for new unit positions.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by failing to negotiate salaries for new unit positions.

WE WILL negotiate with the Westfield Association of Educational Secretaries salaries for the titles accounts payable officer and purchasing agent retroactive to July 16, 1985.

Docket No. CO-86-142-204WESTFIELD BOARD OF EDUCATION

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 87-57

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

In the Matter of

WESTFIELD BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-142-204

WESTFIELD ASSOCIATION OF  
EDUCATIONAL SECRETARIES,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Westfield Board of Education did not violate the New Jersey Employer-Employee Relations Act when it created two new positions, and unilaterally implemented new terms and conditions of employment, including salaries, for the unit employees it promoted into the new positions. The Hearing Examiner found that these new positions are supervisory within the meaning of the Act, and that the employees in the new positions are not performing bargaining unit work. Thus, the Board was not obligated to negotiate.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-57

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

In the Matter of

WESTFIELD BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-142-204

WESTFIELD ASSOCIATION OF  
EDUCATIONAL SECRETARIES,

Charging Party.

Appearances

For the Respondent

Winne, Banta, Rizzi, Hetherington and Basralian, Esqs.  
(Robert M. Jacobs, of counsel)

For the Charging Party

N.J.E.A. UniServ Regional Office No. 15  
(Ronald Harvey, UniServ Representative)

HEARING EXAMINER'S  
REPORT AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 9, 1985, by the Westfield Association of Educational Secretaries ("Association") alleging that the Westfield Board of Education ("Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, the Association alleges that the Board violated

§5.4(a)(1), (2), (3), and (5)<sup>1/</sup> of the Act when it removed two positions from the collective negotiations unit represented by the Association, and unilaterally set a salary for each of the two employees in those positions (Exhibit C-1).<sup>2/</sup>

The Board argues that it has not violated the Act. It acknowledges that it created two new titles, accounts payable officer and purchasing agent, and that it unilaterally set salaries for these new titles. The Board contends that while it promoted bargaining unit members to the new titles, the previous titles of these employees still exist, and although vacant, continue to be part of the Association's unit. It maintains that these new positions are not "secretarial or primarily clerical", and that the positions are supervisory within the meaning of the Act,<sup>3/</sup> and therefore are not

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1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ Commission exhibits are designated "C-1", etc.; joint exhibits are designated "J-1", etc.; Charging Party exhibits are designated as "CP-1", etc.; and Respondent exhibits are designated as "R-1", etc.

3/ The parties stipulated that the positions are not confidential within the meaning of the Act (T8-9).

included in the Association's collective negotiations unit.

A Complaint and Notice of Hearing issued on June 18, 1986. By letter dated September 5, the Board requested that its earlier statement of position denying that it committed any violation of the Act, be treated as an Answer to the Charge (Exhibit C-2). On September 9, 1986, a hearing was conducted in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses and present relevant evidence. Both parties waived oral argument and submitted briefs by October 30, 1986.<sup>4/</sup>

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The Westfield Board of Education is a public employer within the meaning of the Act, is the employer of the employees involved in the unfair practice charge, and is subject to the provisions of the Act.

2. The Westfield Association of Educational Secretaries is an employee representative within the meaning of the Act and is subject to its provisions. The most recent agreement between the parties covered the period July 1, 1983 through June 30, 1986 (Exhibit J-1). That agreement recognizes the Association as the exclusive representative of a collective negotiations unit defined as:

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<sup>4/</sup> By letter dated November 11, 1986, the Association indicated that the matter was tentatively resolved and requested that its Charge be held in abeyance pending final resolution. By letter dated January 6, 1987, the Association advised me that the issue was not settled and requested a decision.



All secretaries except the Executive Secretary to the Superintendent of Schools, and temporary help (who work less than 90 days and/or are not required to become members of PERS) (Exhibit J-1 at p. 1).

3. At its regular meeting on June 18, 1985, the Board created two new positions: accounts payable officer and purchasing agent (Exhibit J-2). The job descriptions adopted for each of the new titles provide that these are 12 month positions and have a salary "set annually by the Board of Education" (Exhibit J-2 attachments).

4. On July 16, 1985, the Board appointed Purchasing Clerk Claire Ford to the newly created position of purchasing agent, at an annual salary of \$21,000. The Board similarly appointed Accounts Payable Clerk Charlotte Schwartzbach to the position of accounts payable officer, at an annual salary of \$17,000. Both employees received a raise of about \$4,000 (Exhibit J-3; T48, T84, T102).<sup>5/</sup>

#### Background

5. Prior to their respective promotions, Ford and Schwartzbach both held the formal title chief accounting clerk (also called senior accounting clerk), a bargaining unit title <sup>6/</sup>

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<sup>5/</sup> Notations from the Transcript of the September 9 hearing are designed as "T1", etc.

<sup>6/</sup> Since Ford worked in the purchasing section, she was referred to internally as the purchasing clerk; Schwartzbach was referred to internally as the accounts payable clerk since she worked in the accounts payable section (T14-T15; T47).

When Schwartzbach started employment in the business office in 1983, she performed the duties listed under the chief accounting clerk job description, which was adopted in 1981 (Exhibit R-2, T17, 69). Ford also worked under that job description until 1983 (T90).

The chief accounting clerk job description describes the responsibilities of the job as, "takes and transcribes dictation...; obtains, gathers and organizes pertinent data needed for computer use; supervises the bookkeeping department; supervise(s) word processing procedures." (Exhibit R-2).

Until 1983, certain accounts payable and purchasing responsibilities, including preparing bills, posting revenues, taking bids, quoting, purchasing, and supervising the accounts payable and purchasing sections (i.e., Schwartzbach, Ford, and temporary employees) were vested with the Assistant Business Manager/Office Manager, Claire Mazurek. Mazurek left that position in 1983, and although Greg Brennan was appointed as the new assistant business manager, Mazurek's responsibilities vis-a-vis accounts payable and purchasing were gradually divided up between Ford and Schwartzbach (T22, T47, T53-T54).

6. By January, 1984, Ford had responsibility for preparing, analyzing and making recommendations on bids; keeping a cash book and monthly reports on receipts and disbursements; and purchasing for 21 departments and nine schools -- all duties Ford asserts were performed previously by Mazurek (Exhibit R-8; T24, T91, T94). Schwartzbach was given responsibility for preparing bills,

posting revenues, and assigning work to the temporary help in the accounts payable section (T24, 69).<sup>7/</sup>

7. On November 29, 1983, the Association distributed a memorandum asking if jobs had changed (Exhibit R-8, T93). Ford responded to the Association's negotiating team with a description of her new duties and indicated that she was acting as the Purchasing Agent (R-8; T94). Receiving no response from the Association, she went first to Gregg Brennan, the acting assistant superintendent, then to Superintendent Greene and the personnel director, and pointed out that her duties had expanded to include purchasing agent duties. Each agreed that her title and job description should be changed to more accurately reflect her work (T94, 104-106). When Foley was appointed as assistant superintendent for business in September, 1984 (T14) she went to him with the problem. At each step, Ford was asking for a higher salary to go with the title change commensurate with the increased responsibilities (T106).

8. Upon being hired, Foley was instructed to "straighten out the [organizational] mess in the business office." According to a 1982 independent consultant's management study of the business

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<sup>7/</sup> The independent consultant's report of October 1982 attributes these duties to Ford and Schwartzbach (Exhibit R-1). However, since Exhibit R-1 has limited probative value in terms of establishing what the functions of employees were in 1982, I will not permit it to refute Ford's and Schwartzbach's direct and credible testimony concerning when they assumed these duties.

office (Exhibit R-1) the structural problems included a lack of internal controls, and a lack of formal organizational structure for upward reporting (Exhibit R-1; T10-T14). In line with the consultant's report, Foley set up what he described to be a pyramid-type organizational structure with rigid, formal lines of authority for upward reporting (T41-T42). He also recommended to the Board of Education that formal job descriptions be adopted, that temporary employees be terminated, and that three additional full-time positions be established: 2 accounting clerks (scale 3) and 1 administrative secretary (scale 3) (T18). Job descriptions for these new positions (Exhibits R-3 and R-4) were adopted by the Board in November 1984 (T18-20). The accounting clerks are unit positions and the employees, according to the job description, "report to the Assistant Superintendent for Business" (Exhibit R-3).

9. Once these positions were filled in December, 1984, Foley assigned Ford and Schwartzbach the responsibility of assigning and supervising the work of their respective accounting clerks (T20-T22).<sup>8/</sup> (T70).

10. By December, 1984, Foley realized that the additional duties and responsibilities assigned to Schwartzbach and Ford, some of which had been Mazurek's and some arose from their assignment to supervise the work of the new accounting clerks, were not part of

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<sup>8/</sup> One accounting clerk was assigned to purchasing, and one to accounts payable.

the job descriptions for "chief accounting clerk" (T17).

11. On May 15, 1985, Dr. Foley sent a memorandum to Superintendent Greene (Exhibit CP-1) proposing that the "accounts payable and purchasing positions" be removed from the unit because (a) the Board may not be able to keep the positions filled at the contractual salary level; (b) as unit positions, the employees could be "bumped" by other employees not necessarily possessing the required skills; and (c) the positions involve "considerable emphasis on bookkeeping/ accounting skills...and responsibility to assign and oversee work for a subordinate clerk" (Exhibit CP-1). The memo transmits new job descriptions and suggests a salary level and workyear for the new positions (Exhibit CP-1). The memo also indicates, and the testimony corroborates, that "Ford and Schwartzbach ...were consulted and expressed agreement with leaving the unit." <sup>9/</sup> Foley admitted that the purpose of removing the two positions from the unit was, in part, so that the Board could increase Ford's and Schwartzbach's salaries (T53). Foley's recommendations were followed by the Board: these new positions of purchasing agent and accounts payable officer were created on June 18, 1985 (Exhibit J-2; T51). The Board has neither abolished nor filled their former positions (T31).

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<sup>9/</sup> Ford agreed to being removed from the unit because she felt she could not get the position and salary increase in the unit (T108). Schwartzbach agreed to leave the unit but was not promised more money if she left (T83).

12. The Board then posted each of the positions. Members of the existing clerical staff applied and were interviewed. Foley recommended Purchasing Clerk Claire Ford and Accounts Payable Clerk Charlotte Schwartzbach for the respective new positions (T29-T30; T71).

13. By letter dated June 26, 1985, Foley notified the Association vice-president that Ford's and Schwartzbach's titles were being removed from the unit (Exhibit CP-2).<sup>10/</sup>

14. On July 16 the Board appointed Ford and Schwartzbach to the new positions (see finding of fact #4).

15. In addition to the purchasing agent and the accounts payable officer, there are eight clerical employees in the business office: a confidential secretary assigned to Foley; an administrative secretary assigned to Foley; an administrative secretary assigned to the assistant business manager; a payroll supervisor; a payroll clerk; two accounting clerks; and a switchboard operator. Foley evaluates everyone personally except the two accounting clerks and the payroll clerk (T57).

According to Foley's unrefuted testimony, the payroll supervisor, has duties and responsibilities similar to the two disputed titles (T39). She is responsible for payroll preparation, payroll reports, accounts maintenance, and the supervision and

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<sup>10/</sup> That Foley's memo referred to the previous senior titles rather than the new titles, I believe, was simply an error.

evaluation of a payroll clerk under her (T37). The payroll supervisor has been excluded from the unit since 1983 (T38-T39).

Purchasing Agent Claire Ford

16. The job description for purchasing agent includes the following responsibilities: "writes bid specifications, prepares bids and quotes, recommends purchases, requests performance bonds, organizes and prepares textbook orders, arranges for servicing of all district equipment, reviews purchase orders and checks for availability of funds, inputs (on the computer) all district purchase orders, works in close cooperation with the accounts payable department, and in cooperation with the assistant superintendent, evaluates the purchasing clerk (Exhibit J-2 attachment).

Ford still performs some of the duties of chief accounting clerk and some have been taken over by the account clerk (T109-110).

17. The new accounting clerk position in purchasing was filled by a lateral transfer of Joan McCarthy, an administrative secretary. When McCarthy was originally hired by Foley's predecessor, it was intended that McCarthy would be shared accounts payable between purchasing, but other assigned duties did not permit it (T111). Ford interviewed and recommend McCarthy when was she was first hired (T-111).<sup>11/</sup>

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<sup>11/</sup> Although the record does not reveal precisely when McCarthy was first hired, she was eligible for tenure at the end of school year 1985-86.

Foley and Ford discussed the possibility of transferring McCarthy into the accounting clerk position in Ford's section (T97-99).

18. After McCarthy was transferred to the purchasing section, Ford was directed to assign and supervise her work, observe her on a daily basis and report progress to Foley (T97). Between December, 1984 and June, 1985, Foley evaluated McCarthy. Ford evaluated her for the first time in July, 1985 (T97).

Ford wrote McCarthy's evaluation of February, 1986 (Exhibit R-5; T32-T98). Foley asked Ford if she had any problems or reservations about McCarthy work. Foley reminded her that McCarthy was due for tenure (T33). Foley asked her to complete the evaluation forms and make a specific recommendation about McCarthy's performance in terms of whether she should be rated "satisfactory", "excellent" or "needs improvement" (Exhibit R-5; T113). Ford prepared a handwritten evaluation, then typed it, and gave it to Foley. Ford testified that, "we discussed my feeling about Joan, my observations, and then he [Foley] said, 'Let me add to that', and he added the sentences, 'I want the purchasing department to become responsible for the distribution of various printouts to all locations. Please assist Claire Ford in completing this task'." (T-113). The evaluation (Exhibit R-5) is what Ford prepared plus the two sentences (above) Foley added (T113). There was then an evaluation conference conducted in which Ford presented the evaluation to McCarthy. Ford signed it, Foley signed it, and



McCarthy signed it (T33, T98). The evaluation was favorable, the employee was rated "satisfactory", and was recommended for tenure. Such recommendations go through Foley, through the superintendent, to the Board (T45-T46).

19. Ford has never had the occasion to discipline (T98). She has the authority to recommend withholding of an increment (T99).

Accounts Payable Officer Charlotte Schwartzbach

20. Schwartzbach performs the duties listed in the Accounts Payable Officer job description (Exhibit J-2 attachment; T26-T27). This job description includes the following responsibilities: processes invoices, maintains daily cash report, prepares monthly bill list, prepares bi-monthly payroll worksheets, hand-cuts checks, computes and issues 1099 tax forms, generates and prepares monthly financial reports, enters revenues in computer, trains and assigns work to accounts payable clerk, and in cooperation with assistant superintendent, evaluates accounts payable clerk (Exhibit J-2 attachment).

When Camille Behan was hired to fill the accounting clerk position, Schwartzbach was directed to assign and supervise Behan's work. After July, 1985, she not only delegated work to Behan, but she is also responsible to assure its proper completion (T86).

21. Schwartzbach observes Behan's performance on an on-going basis and this forms the basis of the evaluation she does on Behan (T71). As a non-tenured employee,<sup>12/</sup> Behan is evaluated

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<sup>12/</sup> Behan is up for tenure next year (T40).

twice annually, in December and again in February (T85).

Schwartzbach testified that she prepared Behan's December 1985 evaluation (Exhibit R-6; T72). She first discussed it with Foley and indicated to him that she had serious reservations about the work of the account clerk working under her. She testified that,

I evaluated. I told Dr. Foley the problems that I was having. And I made recommendations as to how possibly they could be solved (T79).

Foley told her to make a "formal presentation" (T72). She prepared "an evaluation", and gave it to Foley (T73). Schwartzbach testified that the contents of R-6 resulted from discussions she had with Foley, but that she did not write the actual document Exhibit R-6, either the handwritten comments or the typewritten ones (T77-79). The employee received an overall rating of "needs improvement" and the evaluation contained some negative comments and suggestions for improvement (Exhibit R-6; T73-T74). Only Foley signed the evaluation (Exhibit R-6).<sup>13/</sup> An evaluation conference as required by the

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<sup>13/</sup> Foley felt his signature is necessary on evaluations to make them "official" because only he holds a supervisory certificate (T46). Foley testified that Exhibit R-6 was prepared by Schwartzbach (T34). However, under each section of Exhibit R-6 typed narrative and handwriting comments appear. Both the nature of the comments, e.g., "It is essential that you and Charlotte develop a close working relationship...If these [problems] are not resolved in an individual conference, then I wish to become involved.", as well as that fact the narrative consistently refers to Schwartzbach in the third person, indicates that it is unlikely that Schwartzbach completed this evaluation. Further, it is signed only by Foley (Exhibit R-6). Therefore, I do not credit Foley's testimony that Schwartzbach wrote Exhibit R-6. However, I do find that the evaluation is based significantly upon Schwartzbach's input.

collective negotiations agreement<sup>14/</sup> was convened between the employee, her Association representative, Schwartzbach and Foley (T35, T59-60, T73). Schwartzbach's assessments of Behan's performance were discussed (T73). Foley added the handwritten comments on Behan's evaluation after the conference (T46, T60). No formal grievance was filed concerning the evaluation (T60). Foley testified that the account clerk's subsequent evaluation of February 2, 1986 (Exhibit R-7) was prepared by Schwartzbach and a conference was held with Foley, Schwartzbach and the account clerk (T35-T36). Foley testified that,

"[Schwartzbach] reported to me that there had been some substantial improvement ... She had given me a report, and I responded to it as part of this, indicating the areas that I held that I had seen improvement in [the account clerk], and in the end, we signed the evaluation. It was a favorable evaluation, and [the account clerk] was recommended for renewal of that year" (T36).

Foley later admitted that Exhibit R-7 is in his handwriting (T64). I find that while Foley actually wrote the formal document, it is based upon substantial input from Schwartzbach.

22. Schwartzbach testified that she has not been involved in any aspect of discipline or evaluation other than her input to the formal evaluations (T74).

There was an incident involving Behan leaving early -- Schwartzbach brought it to Foley's attention. The matter was resolved

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<sup>14/</sup> See Exhibit J-1, Evaluation Procedure

informally between Schwartzbach, Foley & Behan, and no notation was placed in the employee's personnel file (T65).

CONFLICT OF INTEREST

23. Foley testified that he believes Schwartzbach's and Ford's continued inclusion in the unit with the account clerks would create a potential for conflict of interest because (a) Schwartzbach's and Ford's recommendations are made [to the Board] to grant tenure to the account clerks; (b) Schwartzbach and Ford are responsible for assigning the work and assuring its completion (T40-T41).

Schwartzbach testified that she believed that it would be difficult to supervise and evaluate a fellow union member (T76-T77). Schwartzbach testified that with the issue of her inclusion in the unit still in dispute, she felt somewhat restricted in making a negative evaluation, and would feel more restricted if she were included in the unit (T76).

Ford testified that she feels an "obvious conflict" between her responsibility to supervise and evaluate and her being a member of the Association (T101). As immediate supervisors, Schwartzbach and Ford would be first step of the contractual grievance procedure for their respective accounts clerks (T60-T61). To date, no grievances have been filed (Exhibit J-1; T61).

ANALYSIS

It is undisputed that the Board had a managerial prerogative to create the job titles of Purchasing Agent and Accounts Payable Officer. Ramapo-Indian Hills Bd. of Ed., 176 N.J. Super 35 (1980); Willingboro

Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984); West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶11030 1980). The compensation an employee receives is one of the most fundamental terms and conditions of employment. Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1 (1978); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). The Commission has previously found that compensation for an employee reclassified or promoted to a new unit title is mandatorily negotiable. Fairview Bd. of Ed., P.E.R.C. No. 84-43, 9 NJPER 659 (¶14285 1983); Essex County College, P.E.R.C. No. 87-17, 12 NJPER 736 (¶17375 1986); Bergen Pines County Hospital, P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986); Twp. of Gloucester, P.E.R.C. No. 87-42, 12 NJPER 805 (¶17308 1986), North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985).

In the instant matter, if the new titles are bargaining unit positions, then the rates of compensation for employees filling those titles are mandatorily negotiable.<sup>15/</sup> If the employees in the new positions are not performing bargaining unit work, however, and/or are supervisors within the meaning of the Act, then there is no negotiations obligation with the Association since that unit does not include supervisors. Since it is undisputed that the Board unilaterally set the salaries for these positions, the only issue here is whether the titles are bargaining unit positions. If I find that they are, the Board has

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<sup>15/</sup> There is no dispute between the parties that the employees were properly promoted to the new titles in accordance with the terms of the contract.

violated its duty to negotiate in good faith with the majority representative, the Secretaries Assn. If I find that they are not, then no violation has occurred. See Matawan-Aberdeen Reg. Bd. of Ed., H.E. No. 86-46, adopted in relevant part, P.E.R.C. No. 87-117, 13 NJPER (1987).

The Board argues that the new positions are supervisory, and that there is a potential conflict of interest between the employees in those positions and the employees subordinate to them, thus, those positions must be excluded from the unit. Additionally, the Board alleges that the employees in the new positions are not performing bargaining unit work. The Association argues that the new titles are not supervisory, and that the employees promoted to those titles continue to perform bargaining unit work.

N.J.S.A. 34:13A-5.3 defines the term "supervisor":

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

The above-quoted provision of the Act has been interpreted to contain the statutory definition of supervisor; that being an employee having the authority to hire, discharge, discipline, or effectively recommend. Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). Previous Commission decisions have held that the evaluation process can be a significant factor in weighing

supervisory status over other employees where the evaluation plays an important role in affecting various personnel actions, such as renewal, tenure, promotion, or salary. See, Watchung Hills Regional H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶ 16130 1985); Willingboro Twp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶ 15179 1984); Ramapo-Indian Hills Regional Bd. of Ed., P.E.R.C. No. 85-21, Supra; Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶ 14202 1983); Cliffside Park Bd. of Ed., D.R. No. 83-10, 8 NJPER 540 (¶ 13248 1982); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶ 13062 1982); Emerson Board of Education, D.R. No. 82-13, 8 NJPER 586 (¶ 13271 1982).

Neither Ford nor Schwartzbach can independently hire or fire. Ford had some limited involvement in the initial hiring of McCarthy -- she interviewed and recommended McCarthy when she was first hired. She also had input into the decision to transfer McCarthy into the purchasing department. Neither Ford nor Schwartzbach have had the occasion to discipline. Ford, at least, has the authority to recommend withholding an increment.

However, both Ford and Schwartzbach have significant input into the formal evaluation process. The respective accounting clerks under Ford and Schwartzbach were or will be up for tenure. Ford and Schwartzbach determine, through their respective evaluations, whether these employees receive tenure. Ford specifically recommended tenure for her accounting clerk by rating her satisfactory. Schwartzbach's initial evaluation of her

accounting clerk was negative. Had the accounting clerk's performance not improved, the result would have been non-renewal.

In Ramapo-Indian Hills Board of Education, P.E.R.C. No. 85-21, 10 NJPER 535 (¶ 15246 1984), the Commission found that the fact that a second signature by a higher level supervisor appears on an evaluation does not destroy the effectiveness of the evaluation by the primary evaluator. Here the primary evaluators are Ford and Schwartzbach. The record does not support a contrary conclusion. Nor does the record suggest that Foley does any separate, independent review of the accounting clerks' performance. Instead, the unrefuted and credible evidence shows that he relies on Ford and Schwartzbach to determine the content of the evaluation, the overall rating, and whether the employees should be retained and/or receive tenure.

Thus, I find that Schwartzbach and Ford are supervisors within the meaning of the Act.

The N.J. Supreme Court in Bd. of Ed. of West Orange v. Elizabeth Wilton, 57 N.J. 404 (1971) was concerned that including supervisors in the same unit with subordinates whose work they are duty-bound to supervise and appraise for the employer, puts the supervisor in a conflicting role which potentially creates divided loyalty and split allegiance. The Court mandated that "PERC must decide whether, on a fair appraisal, her role...to supervise and review the work of [subordinates] and to make responsible and effective recommendations to the superintendent of schools with



respect to the hiring, salary and tenure..." indicates such a potential conflict of interest requiring exclusion from the unit. 57 N.J. at 428.

This is precisely the case here. Schwatzbach's and Ford's roles in supervising and reviewing the work of their subordinate clerks and making recommendations through the formal evaluation procedure engenders such a substantial conflict of interest. Schwatzbach has already had the occasion to experience such an actual conflict when she had to participate in an evaluation conference with the employee, together with that clerk's Association representative, and defend her (Schwatzbach's) evaluation of the accounting clerk. The potential for Ford to be in a similar conflict situation is also present. Moreover, while no grievances have actually been filed, Ford and Schwatzbach as immediate supervisors, are the first step in the contractual grievance process. This is actually the type of conflict the Court found to be impermissible in the Wilton case. Thus, I find that the exclusion of the Purchasing Agent and the Account Payable Officer from the clerical unit is appropriate given the substantial potential for conflict of interest between them as supervisors, and the unit members for which they are responsible to supervise and evaluate.

The Board also alleges that Ford and Schwatzbach are not performing bargaining unit work. The Association correctly contends that Ford and Schwatzbach are for the most part, continuing to

perform the duties they did prior to the creation of the new titles. However, the record establishes that they were working out of job title for many months prior to the creation of new titles and job descriptions. Both Schwartzbach and particularly Ford, testified that the level of responsibility they assumed as Purchasing Agent and Account Payable Officer, are at least in part, responsibilities previously held by Mazurek, the Assistant Business Manager/Office Manager.

Moreover, their previous positions as accounting clerks were in fact, replaced with the new accounting clerk positions (scale 3) that the Board created in December, 1984. Behan and McCarthy, the new account clerks, have replaced Schwartzbach and Ford, who were promoted to supervisory positions out of the unit.<sup>16/</sup> Thus, the Association has not lost bargaining unit positions at all. I note, however, that even assuming that the purchasing agent and the account payable officer continue to do some clerical duties, the fact that they also have supervisory responsibilities negates any conclusion that they may in part be performing some bargaining unit work. Once it is found that employees are supervisory, they cannot be included in a non-supervisory unit even to the extent that they perform unit work. See, Cliffside Park Bd/Ed, P.E.R.C. No. 87-61, 13 NJPER 2

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<sup>16/</sup> I attach no weight to Foley's assertions that Schwartzbach's and Ford's specific positions as chief accounting clerks are not abolished but remain vacant.

(¶18001 1986) re-affirming that principle as set forth in Cliffside Park Bd. of Ed.. D.R. No. 83-10, supra.

Based upon the foregoing, I find that the purchasing agent and the account payable officer are supervisory positions within the meaning of the Act and that these employees are not primarily engaged in performing bargaining unit work. Therefore, I find that the Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) by unilaterally establishing terms and conditions of employment including compensation for the purchasing agent and the accounts payable officer.

I also find that the Association has not established that the Board had any unlawful motive in creating these titles, or placing them outside the negotiations unit. Therefore, the Board did not discriminate against any employees in order to encourage or discourage employees in exercise of statutorily protected rights, in violation of N.J.S.A. 34:13A-5.4(a)(3). Further, the Association neither alleged nor proved any facts which show that the Board dominated or interfered with the existence or administration of the employee organization, in violation of N.J.S.A. 34:13A-5.4(a)(2).

CONCLUSIONS OF LAW

Upon the entire record, I conclude that the Westfield Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3) or (5) when it created the position of purchasing agent or accounts payable officer, and unilaterally established terms and conditions of employment for those positions.

RECOMMENDATIONS

I recommend that the Commission ORDER that the Complaint be dismissed.

*Susan Wood Osborn*

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Susan Wood Osborn  
Hearing Examiner

DATED: March 26, 1987  
Trenton, New Jersey