

E.D. NO. 4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CUMBERLAND COUNTY COLLEGE

Public Employer

and

Docket No. CU-3

CUMBERLAND COUNTY COLLEGE FACULTY ASSOCIATION

Petitioner

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the unit status of Department Chairmen of the Cumberland County College, a hearing was held on January 21, 1970, before Hearing Officer Theodore A. Winard at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses, to argue orally, and to file briefs. On April 7, 1970, the Hearing Officer issued his Report and Recommendations. Neither party filed exceptions to the Hearing Officer's Report and Recommendations.

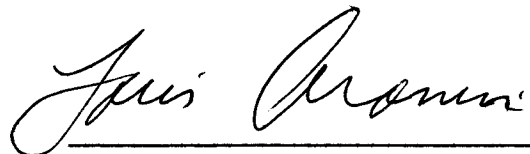
The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and, on the basis of the record in this case, finds:

1. Cumberland County College is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Cumberland County College Faculty Association is an employee representative within the meaning of the Act.
3. The Petitioner herein seeks clarification of a unit of full-time faculty members employed by the Cumberland County College, requesting the inclusion of Department Chairmen.

The public employer disagrees that Department Chairmen should be included in the existing collective negotiating unit. Therefore, a question exists concerning the composition of the unit and the matter is appropriately before the Executive Director for determination.

4. In the absence of exceptions to the Report and Recommendations of the Hearing Officer, attached hereto and made a part hereof, the undersigned adopts the findings and recommendation of the Hearing Officer pro forma.
5. The undersigned finds, in agreement with the Hearing Officer, that Department Chairmen are supervisors within the meaning of the Act and that there is insufficient evidence in the record of "established practice, prior agreement, or special circumstances" to warrant the inclusion of supervisors in the same unit with non-supervisors.
6. In accordance with the conclusion of the Hearing Officer, the undersigned finds that the appropriate collective negotiating unit is "Instructors, Director of Admission, Director of Student Activities, Assistants to the Dean, Librarians with degrees, Coordinators, Counselors, but excluding Department Chairmen, President, Business Manager, managerial executives, supervisors as defined in the Act, office clerical employees, craft employees and policemen."

Petitioner's request to clarify the unit is denied and the petition is hereby dismissed.



Louis Aronin
Executive Director

DATED: May 26, 1970
Trenton, New Jersey

In the Matter of

CUMBERLAND COUNTY COLLEGE

Public Employer

and

Docket No. CU-3

CUMBERLAND COUNTY COLLEGE FACULTY ASSOCIATION

Petitioner

Hearing Officer's Report and Recommendations

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission to resolve a question concerning the representation of Department Chairmen of the Cumberland County College, a hearing was held on January 27, 1970 before the undersigned Hearing Officer of the Commission at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and to argue orally. Thereafter, the public employer filed a Statement and Memorandum of Law. The Hearing Officer has considered the entire record and finds:

1. Cumberland County College is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Cumberland County College Faculty Association is an employee representative within the meaning of the Act.
3. The petitioner herein seeks clarification of a unit of full-time faculty members employed by the Cumberland County College, which unit was recognized as the exclusive negotiating representative.
4. The public employer disagrees that Department Chairmen should be included in the existing collective negotiating unit. There is, therefore, a question concerning the composition of the unit, and accordingly, the matter is appropriately before the undersigned for determination.

5. Two issues are posed in the instant case concerning whether Department Chairmen may be included in a collective negotiating unit with other full-time faculty members. The first issue is whether a Department Chairman is a supervisor within the meaning of Section 7 of the Act and secondly, if so, whether there is "established practice or prior agreement" to warrant the inclusion of Department Chairmen in a negotiating unit with non-supervisory faculty members.

In the opinion of the undersigned, the totality of the record developed herein indicates Department Chairmen at Cumberland County College do possess pertinent attributes of supervisory authority as set forth in Section 7 of the Act, insofar as the power to make effective recommendations concerning hire, discharge or discipline of employees.

The College employs approximately 51 full time faculty members divided into nine departments, each headed by a Department Chairman. All of the Department Chairmen report to the Dean of Instruction. Department Chairmen do not receive added compensation for their position but come in at a higher place than an Assistant Professor to compensate for the added responsibility and generally receive a reduced teaching load for serving in this capacity. Department Chairmen, furthermore, initiate the budget process and possess the initial approving authority for the purchase of materials and supplies.

The final authority for hiring and discharging faculty members rests with the Board of Trustees. In the actual operation of the College, Department Chairmen make evaluations and recommendations to the Dean of Instruction regarding the hiring, retention or non-retention of faculty members. The Dean of Instruction then makes recommendations to the President who makes further recommendations to the Board of Trustees.

The petitioner contends that the recommendation of the Department Chairman on the hiring of prospective faculty is a composite recommendation of the Department Chairman and the faculty of the respective department. However, the record clearly indicates that by procedure and by their own action, Department Chairmen have accepted and enforced this function as a part of their own responsibility. A prospective candidate is interviewed by the Department Chairman and the Dean of Instruction and a recommendation is received from the Department Chairman as to the retention of the candidate. The record leaves no question that the Department Chairman makes the critical recommendation in the hiring process. His recommendation has been shown by the testimony to have been the decisive element in the decision to hire twenty-six new faculty members during the tenure of Dean Phelon, as the Dean of Instruction. The Dean testified:

"The individual has to work within the Department, and for the Department Chairman. And, he is answerable to the Department Chairman.

Therefore, it would be ridiculous for me to insist on the employment of one whom the Department Chairman did not approve." (Tr 81)

The Dean further stated there has never been a case of irreconcilable disagreement on hiring and that he has always agreed with the Department Chairman in his recommendation.

It is also clearly demonstrated by the record that the evaluating and recommendatory function of the Department Chairman is the key in the process of retention, non-retention and discharge of faculty members. This conclusion is adequately supported by a series of evaluative reports submitted by the respective Department Chairmen pursuant to a procedure created by an Instructional Council consisting of the Dean of Instruction and the Department Chairmen. Introduced

in evidence as exhibit P-1 is the Evaluation Procedure adopted by Instructional Council in 1968 and considerable emphasis was placed by the petitioner on it and the Faculty Handbook to demonstrate the absence of actual authority for the exercise of the recommendatory function. However, in the judgment of the undersigned, the evaluation made by the Department Chairman is premised on the evaluative criteria adopted by the Instructional Council and the actual recommendation is a natural outgrowth of following the procedure of evaluation. Thus, although, the evaluative criteria and Faculty Handbook may not unequivocally confer the right to effectively recommend retention and/or non-retention, it does not so circumscribe the authority of the Department Chairman^{1/} and as a matter of procedure, practice and by their own action Department Chairmen have universally accepted and enforced this function as a part of their overall responsibility. In many instances, a general evaluation report pointed towards a recommendation in the absence of a specific recommendation and in any event the Dean of Instruction has in all instances sought out the recommendation of the Department Chairman prior to making his recommendation to the President. Three recommendations of discharge or non-retention have been concurred in by the Dean of Instruction,

^{1/}

Faculty Handbook, Cumberland County College, Page 37 provides:

"Instructional Council. The Instructional Council is composed of Department Chairmen and the Dean of Instruction. It is their primary responsibility to review and recommend to the President tenure appointments, promotions, and employment of new academic personnel."

Page 50 provides:

"The following list is suggestive of the broad classifications of functions for which Department Chairmen are responsible. It is not to be considered as inclusive of all specific duties to be performed by Chairmen."

and in all instances except one,^{2/} non-retention has been initiated by the Department Chairmen.

The role of the Department Chairman within the context of the operation of an ongoing educational institution was explained by the Dean of Instruction:

"... And, he has a much greater insight, and very frankly, the ability to evaluate his professional stature, where I don't have that advantage.

I am a generalist, I have a special background in one particular academic area, but it is not English, if we're talking of an English teacher.

My evaluation is based on an instructional methodology, and general performance, whereas the specific professional judgment of the instructor's competency in his specific area, or the discipline, is to be made by the Department Chairman, who is competent in that discipline, or a related discipline.

This is why I must base my recommendation, to a large extent, in those professional matters, upon his judgment, because I am not a Physicist, or a Scientist, or an English teacher." (Tr 77, 78)

Dr. Sample, President of the College testified:

Q. "Doctor Sample, with regard to the hiring, retention, and discharge of faculty, you have heard the procedure outlined by Dean Phelon, and I ask you, is it not true that the initiation of recommendations for the hiring, retention, and discharge of faculty, initiates with the Department Chairmen?

A. Yes.

Q. And is that the present practice and procedure that is followed at the Cumberland County College?

A. Yes.

Q. And since Dean Phelon's employment in the County College, has that been the practice and procedure?

A. Yes.

Q. Prior to that time, to a lesser degree, was that the practice and procedure?

^{2/} The Department Chairman recommended Francis Costello be retained but he was not employed due to a declining enrollment in his subject matter area. The Department Chairman later concurred in the decision not to re-employ.

A. Yes, to a lesser degree.

Q. What was the reason that it was not as steadfast as it is now?

A. As a college grows, in other words, as faculty are added, the organizational picture necessarily becomes more complex.

When Dean Mauke was my Dean of Instruction, he knew all seventeen of the faculty members very well. He was in a position to evaluate their performance very intimately. This is not true, I don't believe, as a college grows in size. As a college grows in size, a departmental structure becomes necessary, and a very strong departmental structure is necessary." (Tr 113, 114, 115)

Thus, it is elementary that in order for the administration of this expanding college to continue to operate in an efficient manner, the Department Chairmen have assumed a decisive role in making effective recommendations concerning hire, discharge, and discipline of faculty members.

Furthermore, in the opinion of the Hearing Officer, the evidence does not lend to the conclusion that the Department Chairman should be included in a unit with non-supervisory employees of the College by reason of "established practice, prior agreement or special circumstances" as set forth in Section 7 of the Act.

The College commenced instruction in October 1966 without the need for Department Chairmen. The position became a viable title during the period of 1967-68 as a result of a decision in June 1967 that the growth of the College warranted the introduction of Department Chairmen into the organizational structure. The Faculty Association was established during the same period of time and included in its membership all qualified personnel employed by the College. The inclusion of Department Chairmen in the membership of the Association without more is not an established practice. The Hearing Officer does not find a bilateral relationship including the give and take of actual negotiations during 1966-67, 1967-68, but rather a unilateral determination by the College

of the terms and conditions of employment. The record indicates the President of the College made his own recommendations to the Board of Trustees on behalf of the Faculty Association and there were no active negotiations, consultations or conferences with respect to the terms and conditions of employment during these years. Based on the foregoing, the Hearing Officer rejects the contention that there is an established practice which warrants the inclusion of supervisors and non-supervisors in the same negotiating unit. See: Middlesex County College Board of Trustees and Middlesex County College Faculty Organization, P.E.R.C. No. 29, December 17, 1969.

Furthermore, the execution of an agreement on February 6, 1969 concerning the terms and conditions of employment, to be effective on July 1, 1969 and to continue in effect until June 30, 1970 does not constitute "established practice or prior agreement" within the meaning of Section 7 of the Act. The exception phraseology to the statutory proscription on the merger of supervisory and non-supervisory employees in the same negotiating unit refers to an established practice or agreement consummated prior to the effective date of the Act. To accept as established practice an agreement executed subsequent to the enactment of Chapter 303 would render this provision of the Act nugatory and inoperative. The Hearing Officer cannot ascribe such a purpose to the Legislature.

Having concluded that the Department Chairmen are supervisors within the meaning of the Act and that there is insufficient evidence in the record of "established practice, prior agreement, or special circumstances" to warrant the inclusion of supervisors in the same unit as nonsupervisors, the undersigned recommends that the appropriate collective negotiations unit is "Instructors, Director of Admission, Director of Student Activities, Assistants to the Dean, Librarians

with degrees, Coordinators, Counselors, but excluding Department Chairmen, President, Deans, Assistant Deans, Assistants to the President, Business Manager, managerial executives, supervisors as defined in the Act, office clerical employees, craft employees and policemen."

Theodore A. Winard

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Hearing Officer