

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-79-40

JERSEY CITY TITLE I  
ADMINISTRATORS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, excludes the Title I Director from representation within a unit of Title I Administrators, but includes the Assistant Director in the administrative unit. The Director finds a substantial potential for conflict of interest between the Director and the administrators. However, the Director does not find that the Assistant Director is a supervisor of administrators, or a confidential employee, or that the Assistant Director has a conflict of interest with other administrators, as claimed by the Board.

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Petitioner.

Appearances:

For the Public Employer  
Louis Serterides, Esq.

For the Petitioner  
David A. Hatchett, Title I Administrator

DECISION

On February 22, 1979, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the Jersey City Title I Administrators Association (the "Association") seeking a clarification regarding the composition of a collective negotiations unit comprised of Title I Administrators employed by the Jersey City Board of Education (the "Board"), which unit the Association represents. More specifically, the instant Petition raises the question of whether two administrators, the Director and the Assistant Director of

the Title I Program, are represented by the Association. The Association maintains that it represents the employees in these positions. The Board maintains that these individuals may not be included within the Association's unit because of a conflict of interest between the Director and the Assistant Director and other Title I administrative personnel. The Board, additionally, argues that the Director and the Assistant Director are confidential employees.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Steven P. Weissman on March 24, 1979, and March 25, 1979, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Neither party submitted post-hearing briefs. The Hearing Officer issued his Report and Recommendations on July 17, 1979, a copy of which is attached hereto and made a part hereof. Neither party has filed exceptions to the Hearing Officer's Report.

The Hearing Officer concluded from the factual evidence presented that neither the Director nor the Assistant Director possess the authority to hire, or to discharge employees, or to effectively recommend these actions. Further, although the Hearing Officer found that the Director and Assistant Director did possess the ability to administer mild sanctions to employees, he concluded that neither the Director nor the Assistant Director possessed the

authority, or effective authority, to discipline employees. <sup>1/</sup>

Nevertheless, the Hearing Officer concluded that a potential for a substantial conflict of interest, as envisioned by the Supreme Court in In re Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), existed which would require the exclusion of the Director of the Title I Program from the administrators unit. The Hearing Officer based his recommendations upon an examination of the Director's role in the Administrative Council of the Board <sup>2/</sup>, the Director's role in the preparation of the Title I budget and the Director's authority to administer certain disciplinary sanctions to administrators. The Hearing Officer particularly noted the inclusion of the Director in the Administrative Council as significant in that the Director is perceived by the Superintendent as a more significant management representative than other district special program directors. The Hearing Officer raised the concern expressed in the Wilton matter, supra, that the Director of the Title I Program, by virtue

<sup>1/</sup> On an organizational chart, Directors and Heads of various programs, as well as School Principals, are placed directly below the Superintendent and Assistant Superintendents. Assistant Directors are immediately below the Director level, along with Vice Principals and Assistant Principals. The level below the Assistant Directors includes Coordinators and Department Supervisors. There are ten Title I Administrators (undisputed unit employees) on the Coordinator level. There are 140 Title I Program Instructors.

<sup>2/</sup> The Administrative Council, which consists of the Superintendent, the six Assistant Superintendents, the Board Secretary, the Director of the Title I Program, and the individual in charge of facilities maintenance, meets monthly to discuss major problems and educational concerns of the district, such as special programs, hiring practices, contract changes, and negotiations proposals.

of his responsibilities to management, is placed in a conflicting loyalty situation as the result of his inclusion in the negotiations unit with other administrative personnel.

The Hearing Officer found no substantial potential conflict of interest between the Assistant Director and the other administrators in the unit.

The undersigned, on the basis of a review of the entire record including the transcripts, the documentary evidence, as well as the Hearing Officer's Report, and particularly noting the lack of exceptions filed by either party to the Report, adopts the findings and recommendations of the Hearing Officer. As noted by the Hearing Officer, the Title I Director participates actively in a sensitive management capacity through his input as a member of the Board's Administrative Council. His activities in this regard pose a substantial potential for a conflict of interest which requires his exclusion from the administrators unit. Further, the undersigned agrees with the Hearing Officer that the Assistant Director does not play a supervisory role within the intendment of the Act with respect to other administrators in the administrator's unit. Additionally, the Assistant Director is not a confidential employee since his responsibilities do not entail a "knowledge in connection with the issues involved in the collective negotiations process [which] would make [his] membership in any appropriate negotiating unit incompatible with [his] official duties." N.J.S.A. 34:13A-3(g). Finally, the record does not establish a substantial potential for conflict of interest between the Assistant Director and other Title I Administrators.

The instant Petition filed by the Association indicates that the Association was recognized on January 10, 1979, and no collective negotiations agreement currently exists. The Petition was filed on February 22, 1979, approximately one month after recognition. Accordingly, the instant dispute has arisen in the context of the formation of a collective negotiations unit and there is a dispute as to the identification of certain individuals regarding the appropriateness of their inclusion within the scope of the generally defined unit. Since this is a matter involving the identification of employees, the instant determination is effective immediately in accordance with in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977).

Accordingly, the undersigned determines that the Director of the Title I Program is hereby excluded from representation within the administrators unit and the Assistant Director is hereby included within the administrators unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: November 19, 1979  
Trenton, New Jersey

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-79-40

JERSEY CITY TITLE I  
ADMINISTRATORS ASSOCIATION,

Petitioner.

SYNOPSIS

A Commission Hearing Officer in a clarification of unit proceeding recommends that the Director of the Title I Program in Jersey City be excluded from the Title I Administrators Association due to the potential for a substantial conflict of interest between the Director and other Title I administrators. The Hearing Officer also finds that there does not exist an actual or potential substantial conflict of interest between the Assistant Director and other Title I administrators and therefore recommends that the Assistant Director be included in the Title I administrators unit. Finally, the Hearing Officer finds that neither the Director nor Assistant Director is a confidential employee within the meaning of the Act.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer  
Louis Serterides, Esq.

For the Petitioner  
David A. Hatchett, Title I Administrator

HEARING OFFICER'S REPORT  
AND RECOMMENDATIONS

A Petition for Clarfication of Unit was filed on February 22, 1979 with the Public Employment Relations Commission (the "Commission") by the Jersey City Title I Administrators Association (the "Association") seeking a clarification regarding the composition of Petitioner's unit. Specifically, the Association seeks to include the Director and the Assistant Director of the Title I Program employed by the Jersey City Board of Education (the "Board") within its negotiations unit which presently represents Title I Administrators. Pursuant to a Notice of Hearing, hearings were held before the undersigned Hearing Officer on March 24, 1979 and March 25, 1979 in Newark, New Jersey, at which time all parties were given an opportunity to



examine witnesses, to present evidence, and to argue orally. The parties have not submitted briefs in support of their respective positions. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Jersey City Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), is subject to its provisions, and is the employer of the employees who are the subject of this proceeding.

2. The Jersey City Title I Administrators Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association seeks a clarification of an existing negotiating unit concerning the status of two administrative positions, Director and Assistant Director of the Title I Program, in the Jersey City School System. The Board asserts that there exists a conflict of interest between the Director, Dr. James Gaines, and the Assistant Director, Donald Howard, and other Title I administrative personnel. In the alternative, the Board argues that the Director and Assistant Director are confidential employees and are therefore inappropriate for inclusion in the unit represented by the Association. Accordingly, there is a question concerning the composition of the negotiations unit and the matter is properly before the Hearing Officer for his Report and Recommendations.

#### BACKGROUND

The top echelon of the administrative hierarchy in the Jersey City School District consists of the Superintendent, Dr. Michael Ross and six assistants superintendents. Reporting to the assistant superintendents are the

directors or heads of various special programs, such as Title I, and the elementary and secondary school principals. On the next rung of the organizational ladder are vice principals, assistant principals and assistant directors, below whom are coordinators and department supervisors. With the exception of the Superintendent, assistant superintendents and Title I administrators, all other administrators employed by the Jersey City Board of Education have been represented by the Jersey City Education Association, Administrators and Supervisors Association (the "JCASA") for about the last ten years. Teachers are represented by the Jersey City Teachers Association, clericals by the Secretaries Association of Jersey City, teachers aides by the Jersey City Teacher Aides Association, and blue collar employees by Local 2262, AFSCME.

Title I, a federally funded program designed to assist educationally deprived children, was first established in Jersey City in 1965. The Jersey City program was budgeted at approximately \$4.2 million for the 1978-1979 school year and serviced 18 elementary schools and 11 private schools. <sup>1/</sup> Overseeing the operation of the Title I Program and its approximately 140 instructors, are 10 administrators. After unsuccessfully seeking inclusion in the JCASA, the Title I administrators requested and were granted recognition by the Board on January 10, 1979, as the exclusive negotiating representative for the following titles in the Title I Program: math coordinator, reading coordinator, supporting services coordinators, assistant coordinator kindergarten, assistant coordinator math, assistant coordinator reading, assistant coordinator nonstandard English, parochial school consultants. However, at that time the Board maintained that

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<sup>1/</sup> Tr 2-81.

the inclusion of the Director and the Assistant Director in the unit would be inappropriate.

POSITION OF THE PARTIES

The thrust of the Association's contention is that since the establishment of the Title I Program, its administrators have functioned together in a cohesive and harmonious manner. Most administrative matters, including programming and budget preparation, have been undertaken collectively. Rarely, if ever, has any serious conflict arisen between the Director or Assistant Director and other Title I Administrators. Given the absence of any substantial conflict in the past, the Association argues that there is no reason to assume that antagonisms will now develop simply because the administrators of the Title I Program have chosen to organize for purposes of collective negotiations. In support of this assertion, the Association calls attention to the JCASA which, since its inception approximately ten years ago, has represented the directors of other special programs without the development of any serious conflicts.

The Board on the other hand, while acknowledging that no major conflicts have arisen in the past, asserts that the present role of the Director and the Assistant Director in the evaluation process and the formulation of the budget, and their likely future role in negotiations and grievances, particularly in light of the fact that Gaines sits on the Administrative Council, <sup>2/</sup> will invariably give rise to the type of conflict envisioned by the Supreme Court in In re Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971). Therefore, the Board contends that the inclusion of the Director and Assistant Director in the Title I Administrators Unit would be inappropriate.

<sup>2/</sup> Described infra at pp. 11, 12.

In the alternative, the Board maintains that the future role of the Director and Assistant Director with respect to negotiations and grievances coupled with their responsibilities for budget preparation and evaluation of other Title I Administrators make them confidential employees as defined by N.J.S.A. 34:13A-3(g).

#### CONFLICT OF INTEREST

##### Framework for Analysis

Under N.J.S.A. 34:13A-5.3, public employees are granted the right to join an employee organization provided, however, that "except where established practice, prior agreement, or special circumstances dictate the contrary," no "supervisor having the power to hire, discharge, discipline, or to effectively recommend the same" shall "have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership ... " The section further directs that the "negotiating unit shall be defined with due regard for the community of interest among the employees concerned ... "

In applying the general statutory admonition against the combination of supervisory and nonsupervisory personnel in the same unit, the Commission is guided by the approach set forth in Wilton, supra. Therein the Supreme Court articulated the grounds for determining whether a conflict of interest exists between various levels of supervisory and administrative employees. The factual backdrop of Wilton is closely analagous to the one herein. In Wilton, the Board had recognized the Association as the majority representative for principals, assistant principals, subject matter directors, and administrative assistants but excluded the Director of Elementary Education (Wilton) and the

Director of Secondary Education.

Rejecting the concept that all supervisors should be included in the same unit irrespective of their relation to each other, the Court stated:

Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular supervisor bespeaks such an intimate relationship with the management and policy-making function as to indicate actual or potential substantial conflict of interest between him and other supervisory personnel in a different or lower echelon of authority, such supervisor should not be admitted to the same negotiating unit. Admission would not be fair either to the other supervisory employees or to the employer. Obviously no man can serve two masters. 57 N.J. at 416.

In reversing the Commission's construction of N.J.S.A. 34:13A-6(d) and remanding the case back to P.E.R.C. for specific factual findings consistent with its statutory analysis, the Court noted that Wilton's responsibilities included reviewing the budget proposals of all principals, playing an integral role in the hiring process, and evaluating elementary school principals for purposes of recommending tenure and salary increments. <sup>3/</sup>

In view of the statutory definition of "supervisors" and the Supreme Court's decision in Wilton, supra, the following two tiered analysis will be employed in resolving the dispute herein:

(1) Do the Director and Assistant Director have the power to hire, fire, and discipline or effectively recommend the same.

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<sup>3/</sup> The case subsequently settled, making a reconsideration of the facts in light of the Court's statutory analysis unnecessary.

(2) Do the responsibilities of the Director and the Assistant Director create an actual or potential substantial conflict of interest between themselves and other members of the negotiations unit.

It should also be noted that in addition to giving due consideration to the question of conflict of interest, consideration must also be accorded to the policy articulated by the Supreme Court in In re State of New Jersey and Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974) which favors the creation, where appropriate, of broad-based units.

#### Discussion

A careful review of the entire record indicates that neither the Director nor Assistant Director play any significant role in the hiring or disciplinary process. On September 7, 1977, the Board passed a resolution <sup>4/</sup> removing all authority for the hiring of Title I instructional and noninstructional personnel from the Director and his assistant and transferring such authority to the Personnel Department, headed by the Assistant Superintendent of Schools in Charge of Personnel, Margaret DiNardo. The last four Title I Administrators hired were all hired through the Personnel Office. <sup>5/</sup> Even with regard to the establishment of job qualifications for various positions, the Director testified that his authority is limited and that in many instances his recommendations have not been followed. <sup>6/</sup>

Although Gaines has never attempted to discipline or discharge any Title I Administrators, he did testify that he probably has the right to place written reprimands in the files of his staff should such action be necessary. <sup>7/</sup> However, he also testified that he has no right to dock employees

<sup>4/</sup> Submitted into evidence as Joint Exhibit J-3.

<sup>5/</sup> Tr 1-13.

<sup>6/</sup> Tr 2-88.

<sup>7/</sup> Tr 1-19, 20.

In view of the above, the undersigned concludes that neither the Director nor the Assistant Director possess the requisite authority to hire or fire <sup>13/</sup> or effectively recommend these actions. Although they do possess the ability to administer mild sanctions such as the placing of a reprimand in an employee's file, nevertheless, the Director and Assistant Director do not qualify as "supervisors" within the meaning of the Act. However, the undersigned must also consider whether there exists an actual or potential substantial conflict of interest between the Director or the Assistant Director and other Title I Administrators. To determine whether such a conflict exists record evidence will be examined with regard to the role of the Director and Assistant Director in the following areas: (1) the evaluation of other Title I Administrators; (2) the formulation of the Title I budget; (3) participation on the Administrative Council; (4) negotiations; and (5) general personnel decisions.

In Wilton, supra, the Court noted that:

Significant indications of ... conflict are existence of a duty in some of the group to evaluate the performance of others in the unit in the interest of the employer ...  
57 N.J. at 423

Responsibility for the evaluation of subordinates has also been cited in several Director of Representation decisions as an indicia of conflict of

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<sup>13/</sup> While there was no direct testimony regarding the authority of the Director or Assistant Director to discharge, the nature of the testimony with respect to the administration of discipline leads the undersigned to conclude that neither Gaines nor Howard possess the requisite power to fire or effectively recommend the same.

interest. <sup>14/</sup> Using standard Board forms, Gaines evaluates his administrative staff in terms of work performance and submits the evaluations to his immediate superior, Assistant Superintendent Franklin Williams. Williams then passes the evaluations on to the Assistant Superintendent in Charge of Personnel. Although the purpose of these evaluations is not clear from the record, the evaluations of non-Title I teaching and administrative personnel are utilized as a basis for determining whether tenure should be granted or an increment withheld. <sup>15/</sup> It is important to note that the Board has never dismissed a Title I Administrator who received a positive evaluation from the Director. In addition, the fact that Title I Administrators have not received a raise since 1975 despite the Director's annual requests, may be attributed to the Board's poor fiscal condition and to the lack of an association to negotiate on their behalf.

According to the job description for the Director of Title I Program, <sup>16/</sup> he is responsible for the preparation of the annual budget, for the control of expenditures based upon past experiences, and for placing limitations on allocations. Both Gaines and Ross testified that the preparation of a proposed budget for submission to Assistant Superintendent Williams is the collective effort of the Title I coordinators, the parents, the principals and the Assistant Director and Director. <sup>17/</sup> A "need assessment" is conducted

14/ In re Parsippany-Troy Hills Board of Education, D.R. 79-7, 4 NJPER 394 (Para 4177 1978); In re Somerset County Guidance Center, D.R. 77-4, 2 NJPER 358 (1976).

<sup>15/</sup> Tr 1 17-19. Apparently there is some dispute as to whether or not Title I administrative personnel are eligible to receive tenure. The precise nature of the dispute was not placed on the record. However, administrative notice is taken of the fact that the Commissioner of Education in certain cases has ruled that Title I instructors are entitled to tenure provided they fulfill the statutory requirements set forth in Title 18A. Administrators, on the other hand, are civil service employees and, therefore, the Board contends, do not fall within the purview of the education laws.

<sup>16/</sup> See Exhibit J-1.

<sup>17/</sup> Tr 1-34; Tr 2-47.



each year and a dollar amount per individual student is computed. Discussions and joint meetings are held with all Title I Administrators to discuss the appropriation of available monies. It is Gaines' task to oversee this process, bringing together the recommendations of the parents, administrative staff, and principals.

Upon completion of a proposed budget, Gaines submits the budget for approval to Assistant Superintendent Williams and to the Superintendent. <sup>18/</sup> Ross testified that he and Williams would review the budget proposal and in consultation with Gaines suggest various modifications. <sup>19/</sup> The budget would then be submitted to the Board and then to the State Department of Education for final approval. In the event that either state or federal officials have questions concerning the budget, Gaines or Howard might be called upon to meet with such officials. <sup>20/</sup> Thus while the preparation of the budget is essentially a joint undertaking, the record clearly indicates that Gaines is responsible for supervising and coordinating the overall process.

The Administrative Council, which meets monthly, is comprised of the Superintendent, all six assistant superintendents, the Board Secretary, Gaines, and the individual in charge of facilities maintenance. <sup>21/</sup> At Council sessions major problems and educational concerns of the district are discussed such as; special programs, hiring practices, contract changes, and negotiations proposals. <sup>22/</sup> Ross also testified that the Council is given confidential reports pertaining to the Board's financial situation as well

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<sup>18/</sup> Tr 1-34.

<sup>19/</sup> Tr 1-40.

<sup>20/</sup> Tr 1-24.

<sup>21/</sup> Tr 2-25.

<sup>22/</sup> Tr 2-26.

as the status of negotiations with various units. Gaines, however, testified that in the two or three years that he has sat on the Council he has never been present for discussions concerning negotiations, yearly budgets, or personnel items. When such matters are brought up, Gaines is excluded from the room along with the general public. Gaines also testified that the Superintendent meets separately with the assistant superintendents to discuss budgets, personnel problems and negotiations. <sup>23/</sup> Even crediting Gaines' testimony, the very fact that he has been asked to sit on the Administrative Council is significant and indicates that he is perceived by the Superintendent as more of a management representative than are other special program directors. The reasons given by Ross for having the Director of Title I sit on the Council bear this out. In addition to the relative autonomy of the Title I program over the past ten years, <sup>24/</sup> Gaines oversees programs in more than half of the elementary schools in Jersey City. As Ross further testified, Gaines is involved with principals and teachers in a way which makes it necessary for him to be a part of the Council. <sup>25/</sup>

Although the Director's duties as to evaluation and budget, coupled with his position on the Administrative Council suggest the existence of at least a potential conflict of interest, other evidence contained in the record tends to somewhat mitigate this potential for conflict. For example, with regard to the implementation of various personnel policies such as sick leave, leaves of absence, etc., neither the Director nor the Assistant Director has

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<sup>23/</sup> Tr 2-78, 79.

<sup>24/</sup> This autonomy has been significantly reduced as a result of the September 1977 resolution transferring responsibility for hiring to the Personnel Department.

<sup>25/</sup> Tr 2-32.

ultimate authority. Thus, although the Director does sign a request for sick leave credit, actual approval can only be granted by the Personnel and Medical Departments with the final decision being made by the Board. <sup>26/</sup> A similar procedure is utilized for leave of absence requests. <sup>27/</sup> While the Director explained that he can "encourage" the attendance of administrators at special after school functions, he maintains that he has no power to enforce such a recommendation. <sup>28/</sup>

Moreover, directors and heads of other special programs, who are basically on the equivalent rung of the administrative hierarchy as the Director and Assistant Director of Title I, are in the Jersey City Administrators and Supervisors Association. Many of these directors, such as Margaret Penny, the head of the Emergency School Aide Act Program, Robert Russomongo, the Director of Bilingual Education, Margaret Finn, the Director of Adult Education, and Michael Ventuolo, the Director of Health and Physical Education, are also responsible for preparing department budgets and evaluating personnel in their respective programs. <sup>29/</sup> Despite their inclusion in a unit with lower level administrators, Ross testified that he could not recall any specific conflicts which have developed as a result of this unit composition. <sup>30/</sup>

Ross emphasized that the primary difference between Gaines and other program directors is that the Director of Title I is a member of the Administrative Council whereas, other directors do not attend Council sessions on a regular basis. <sup>31/</sup> Moreover, Ross implied that the size and scope of the

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<sup>26/</sup> Tr 1-37.

<sup>27/</sup> Tr 2-4, 77.

<sup>28/</sup> Tr 1-39.

<sup>29/</sup> Tr 2-28, 29, 30. It should be noted that in the case of Penny, she does not evaluate administrators.

<sup>30/</sup> Tr 2-65.

<sup>31/</sup> Tr 2-31.

as a form of discipline. Such disciplinary action can only be taken by the Assistant Superintendent in Charge of Personnel. <sup>8/</sup> While the Assistant Director testified that he has, on occasion, investigated complaints regarding the work performance of nonadministrative Title I employees, he also indicated that authority to determine whether or not disciplinary measures are necessary resides with Assistant Superintendent DiNardo. <sup>9/</sup> Howard further testified that he makes no recommendation as to the type of disciplinary action, if any, which might be appropriate. In fact, most personnel matters are handled by Ms. Haines, the Educational Personnel Liaison Coordinator for Title I, who is directly responsible to the Assistant Superintendent in Charge of Personnel. <sup>10/</sup> According to the Director, his last significant personnel recommendation in terms of administrative staff occurred in September or October of 1977 at which time he unsuccessfully urged that the then Assistant Director not be demoted to Supervisor of Support Services. <sup>11/</sup>

Insofar as grievances are concerned, neither Gaines nor Howard has a formal role in any grievance procedure. This is evidenced by the fact that a grievance recently filed by Title I teachers aides was sent directly to the Assistant Superintendent in Charge of Personnel, completely bypassing the Director and Assistant Director. Although the Director and Assistant Director have only limited input into most personnel decision, both acknowledged that they might be called upon to testify at a grievance or disciplinary hearing concerning a Title I employee. <sup>12/</sup>

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<sup>8/</sup> Tr 1-39.

<sup>9/</sup> Tr 2-9-12.

<sup>10/</sup> Tr 2-81, 82.

<sup>11/</sup> Tr 2-95, 96.

<sup>12/</sup> Tr 1-59, Tr 2-12.

Title I program also serves to differentiate that program and the concomitant responsibilities of its Director from other programs whose staff and budget are more limited. However, Gaines testified that the Compensatory Education Program, whose director is in the Jersey City Administrators and Supervisors Association, has an operating budget of almost \$4 million and has programs in all 36 of the district's schools whereas Title I is budgeted at \$4.2 million and has programs in only 18 public schools and 11 private schools. <sup>32/</sup>

From the foregoing discussion it is clear that record evidence exists on both sides of that rather nebulous line which separates off top echelon administrators from those lower level administrators whom they supervise. Notwithstanding the fact that the record fails to demonstrate any actual substantial conflict of interest between the Director and other Title I administrators, the undersigned finds that there does exist the potential for substantial conflict. Admittedly, any inquiry into the potential for conflict is by its very nature speculative. Nevertheless, certain criteria have been identified which signal the likelihood that conflict may arise in the future. Particularly where a supervisory or administrative unit has been recently recognized, consideration must be given to the role which high level administrators may play in an eventual grievance procedure as well as their possible role vis-a-vis negotiations. Furthermore, current administrative responsibilities which prior to recognition may not have been a source of conflict may, thereafter, become a cause of strife. In the instant matter, responsibilities which may give rise to future conflicts include: the Director's role on the Administrative Council, a body which functions as an arm of management; his role in the preparation of the Title I budget; his responsibility for the

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<sup>32/</sup> See footnote 7, supra.

evaluation of other Title I Administrators; and his authority to administer mild disciplinary sanctions.

The undersigned must inquire, as did the Supreme Court in Wilton, supra, whether or not the inclusion of the Director of Title I in a unit with other Title I Administrators, whose work he is bound to appraise in the Board's interest, would place him under pressure to be less faithful to the Board and more responsive to the wishes of his associates in the negotiating unit. If the Association felt that the Director was not being fair and objective in rendering evaluations might not a grievance result against which the Director would have to defend? Based upon the record evidence it is the undersigned's conclusion that these questions require an affirmative response. <sup>33/</sup> Accordingly, the undersigned finds that the Director's evaluation duties when coupled with his responsibility for preparing a budget and his position on the Administrative Council warrant his exclusion from the Title I Administrator's Association due to the potential for substantial conflict of interest.

However, the Assistant Director does not sit on the Administrative Council or evaluate staff except in the Director's absence; nor does he have primary responsibility for overseeing the preparation of the Title I budget. Thus, the undersigned concludes that there does not exist an actual or potential substantial conflict of interest which would require the exclusion of Howard

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<sup>33/</sup> During cross-examination Gaines appeared to be in a quandary over the nature of his role should a situation such as the one described above arise. When confronted by a question concerning the potential conflict between his evaluation duties and his inclusion in the Title I administrator's unit, Gaines parried the question by pointing to the apparent lack of conflict in the JCASA. Ross, however, testified that he was of the opinion that the inclusion of high level administrators in the Administrators and Supervisors Association has hampered their ability to objectively evaluate their subordinates and thus has adversely affected the quality of education provided to students in the Jersey City School District.

from the Title I Administrators Association. Although Howard testified that in Gaines' absence he would assume the helm of the Title I program along with the accompanying duties, clearly such powers are exercised, at best, sporadically. In past decisions the Director of Representation has noted that supervisory authority which warrants the exclusion of an individual from a unit must be exercised with a certain degree of regularity. <sup>34/</sup> Such regularity is not established by the evidence contained in the record insofar as the Assistant Director is concerned.

#### CONFIDENTIALITY

In addition to its contention that the Director and Assistant Director should be excluded from the Association due to conflicts of interest, the Board maintains that they are confidential employees within the meaning of the Act.

N.J.S.A. 34:13A-3(g) defines confidential employees as follows:

(g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

To determine whether or not a given individual performs duties which would make him a confidential employee, the role that such an individual plays vis-a-vis the grievance procedure, negotiations and the preparation of the budget must be examined. Since all of the above aspects of both the Director's and Assistant Director's job responsibilities have been previously reviewed in the context of the conflict of interest discussion, infra, only a cursory summary will now be undertaken. The only duty which both the Director and the

<sup>34/</sup> In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976); In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (Para 4018 1977); see page 7 of H.O. Report.

Assistant Director presently perform which supports the Board's claim of confidentiality relates to their role in the formulation of the Title I budget. However, despite the Director's responsibility for the overall coordination and supervision of the budget, it is basically the product of a joint effort by the entire Title I administrative staff. There is no evidence in the record which indicates that either Gaines or Howard are privy to budget information which is not also available to other Title I administrators. Moreover, neither the Director nor the Assistant Director currently handle any grievances on behalf of management or participate in any manner in negotiations. Whereas the potential for conflict must be considered when determining whether to exclude someone from a negotiations unit on grounds of substantial conflict of interest, an inquiry into an employee's confidential status must be based primarily upon current responsibilities. Accordingly, the undersigned finds that neither the Director nor Assistant Director are confidential employees.

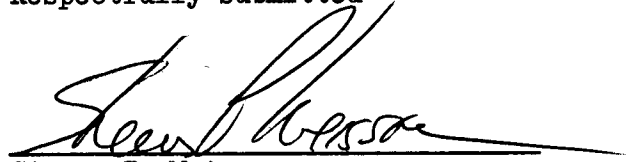
#### RECOMMENDATIONS

Based upon the entire record and the findings derived therefrom, the undersigned Hearing Officer recommends that the Director of Title I be excluded from the unit of Title I Administrators due to the actual and potential substantial conflict of interest which would be created by his inclusion therein. In addition, it is recommended that the Assistant Director of the Title I Program be included in the negotiating unit since his inclusion would not create an actual and potential substantial conflict of interest. Finally, it is



recommended that neither the Director nor Assistant Director be found to be confidential employees.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Steven P. Weissman", written over a horizontal line.

Steven P. Weissman  
Hearing Officer

DATED: July 17, 1979  
Trenton, New Jersey