

P.E.R.C. NO. 87-147

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HIGHER EDUCATION,
(THOMAS A. EDISON STATE COLLEGE),

Public Employer-Petitioner,

-and-

DOCKET NO CU-86-7

COUNCIL OF NEW JERSEY STATE COLLEGE
LOCALS, NEW JERSEY STATE FEDERATION
OF TEACHERS, A.F.T., AFL/CIO,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission clarifies the negotiations unit of State College employees represented by the Council of New Jersey State College Locals, New Jersey State Federation of Teachers, AFT/AFL-CIO to exclude the Assistant Registrar at Thomas A. Edison State College. The Commission finds that the Assistant Registrar is a supervisor and should be excluded from the non-supervisory unit.

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LOCALS, NEW JERSEY STATE FEDERATION
OF TEACHERS, AFT/AFL-CIO,

Employee Representative.

Appearances:

For the Public Employer, W. Carey Edwards, Attorney
General (Melvin E. Mounts, Deputy Attorney General)

For the Petitioner, Barbara Hoerner, Staff
Representative

DECISION AND ORDER

On July 31, 1985, the State of New Jersey, Department of Higher Education, Thomas A. Edison State College ("College") filed a clarification of unit petition. The College seeks to exclude the Assistant Registrar of Thomas A. Edison State College from the negotiations unit of State College employees represented by the Council of New Jersey State College Locals, New Jersey State Federation of Teachers, AFT/AFL-CIO ("Council"). The College alleges that the Assistant Registrar is a "supervisor" within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and therefore must be excluded from the non-supervisory unit.

On January 30, 1986, the Director of Representation issued a Notice of Hearing.

On May 5, 1986, Hearing Officer Susan Wood Osborn conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On February 13, 1987, the Hearing Officer issued a report recommending that the Assistant Registrar be removed from the negotiations unit. H.O. No. 87-10, 13 NJPER 180 (¶18078 1987). She found that he was a "supervisor" because he hires, assigns, directs and evaluates employees, and makes effective recommendations about whether or not to renew their employment contracts.

On March 10, 1987, after receiving an extension of time, the Council filed exceptions. It contends that the Hearing Officer erred in: (1) not finding that the Assistant Registrar's job description does not state that he hires, fires or disciplines unit employees; (2) not finding that the Registrar might recommend training; (3) not finding that the Registrar reviews the Assistant Registrar's daily work; (4) not finding that the Registrar has the right to review evaluations made by the Assistant Registrar; (5) not finding that the Registrar would challenge the Assistant Registrar's evaluation in the event he disagreed with it; (6) finding that the Assistant Registrar, instead of a search committee, makes hiring recommendations; (7) finding that the Assistant Registrar has total

responsibility for correcting deficiencies among those he supervises, and (8) making irrelevant findings.^{1/}

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-9) are accurate. We adopt and incorporate them here.

Based upon these facts, we agree that the Assistant Registrar at Thomas A. Edison State College is a supervisor within the meaning of the Act.^{2/} The Registrar has delegated to the Assistant Registrar those duties concerning hiring, performance evaluations and work assignments that establish that he has "the power to hire, discharge, discipline or to effectively recommend the same." N.J.S.A. 34:13A-5.3. While his decisions and recommendations are hypothetically subject to review, his job description may not reflect his degree of discretion, and a search committee assists him

^{1/} The Council also points out a typographical error which appears on p. 10 of the report. The third full sentence in the text should read:

Conversely, the Federation argues that Dye's input into the hiring, supervision and evaluation process is significantly watered down by independent review by the Registrar and other higher levels of supervision, and therefore, he does not make an "effective recommendation" so as to characterize his position as supervisory within the Commission's definition as set forth in the statute and relevant caselaw.

^{2/} We decide this question based upon the factual record before us. We, of course, express no opinion about Assistant Registrars at other State Colleges.

in making hiring decisions; the actual duties he performs and the power he exercises make his supervisory status clear. E.g., Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). Therefore, we find him to be a supervisor and exclude him from the unit.

ORDER

The negotiations unit is clarified to exclude the Assistant Registrar at Thomas A. Edison State College.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
May 20, 1987
ISSUED: May 21, 1987

H.O. NO. 87-10

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HIGHER EDUCATION,
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Public Employer-Petitioner.

-and-

DOCKET NO. CU-86-7

COUNCIL OF NEW JERSEY STATE COLLEGE
LOCALS, NEW JERSEY STATE FEDERATION
OF TEACHERS, A.F.T., AFL/CIO

Employee Representative.

SYNOPSIS

A Hearing Officer finds that the Assistant Registrar at Thomas A. Edison State College is a supervisor within the meaning of the Act, based upon his authority to effectively recommend hiring and to assign, direct and evaluate employees. She recommends that the collective negotiations unit of faculty and professional administrative staff be clarified to exclude the Assistant Registrar.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

H.O. NO. 87-10

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

In the Matter of

STATE OF NEW JERSEY,
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LOCALS, NEW JERSEY STATE FEDERATION
OF TEACHERS, A.F.T., AFL/CIO

Employee Representative.

Appearances:

For the Public Employer
W. Carey Edwards, Attorney General
(Melvin Mounts, Deputy Attorney General)

For the Petitioner
Barbara Hoerner, Staff Representative

HEARING OFFICERS REPORT
AND RECOMMENDED DECISION

On July 31, 1985, The State of New Jersey, Department of Higher Education, Thomas A. Edison State College, ("the State") filed a Petition for Clarification of Unit with the Public Employment Relations Commission. By its Petition, the State seeks to remove the Assistant Registrar from the extant collective negotiations unit represented by New Jersey State College Locals, New Jersey State Federation of Teachers, AFT, AFL/CIO ("Federation"). The State alleges that the Assistant Registrar at

Edison State College is a supervisor within the meaning of the New Jersey Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), and therefore must be excluded from the existing non-supervisory staff unit represented by the Federation. The Federation disagrees with the State's Petition.^{1/}

On January 30, 1986, the Director of Representation issued a Notice of Hearing.^{2/} On May 5, 1986, a hearing was held in this matter at which time both parties had the opportunity to present relevant evidence and examine witnesses. Both parties filed post-hearing briefs on July 29, 1986.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The State of New Jersey Department of Higher Education (Thomas A. Edison State College) ^{3/} is a public employer within the meaning of the Act and is subject to its provisions. The State is the employer of the employees who are the subject of the Petition.

^{1/} In the State's Petition, it initially alleged that the Assistant Registrar is both a supervisor and a managerial executive. At the hearing, however, the parties agreed that the issue herein is only whether the Assistant Registrar is a supervisor (T-60).

^{2/} This matter was originally consolidated with a second Unit Clarification Petition filed by the Federation on May 22, 1985 (Docket No. CU-85-65). On June 24, 1986, the Federation withdrew that Petition and the matter was severed from the instant case.

^{3/} On July 9, 1986, Title 18A was amended to provide autonomy for each of the State Colleges. However, I find that statutory amendment to be of no consequence to the instant issue concerning unit composition.

2. The New Jersey State College Locals, New Jersey State Federation of Teachers, AFT, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions. The Federation is the exclusive representative of a collective negotiations unit of teaching and professional administrative staff at the State's nine state colleges (Exhibit J-1).^{4/} At the time of the hearing, there was a current collective negotiations agreement in effect, which was signed on October 21, 1983, and covered the period July 1, 1983, through June 30, 1986 (Exhibit J-1). Article I of J-1 describes the existing collective negotiations unit as:

Included: Full-time teaching and/or research faculty, department chairpersons, administrative staff (non-managerial), student personnel staff, demonstration teachers, teacher-A. Harry Moore School, professional academic support personnel (holding faculty rank), full-time members of the State College Unit who teach summer session;

Excluded: College president and vice-president, deans, associate and assistant deans and other managerial executives, secretarial staff, maintenance staff, bookstore, food service, etc. staff, adjunct and part-time professional staff, graduate assistants, all others."

3. The parties stipulated that employees holding eligible positions at Edison State College became members of the bargaining

^{4/} Exhibits are designated as follows: "C-" are Commission exhibits; "J-" are joint exhibits; "R-" are Employer exhibits; and "P-" are Employee Representative exhibits. References to transcript pages shall be indicated by "T-1", etc.

unit in the Fall of 1982 (T-63). Prior thereto, professional employees at Edison State were not represented by any employee organization (T-63).

4. Edison State College has no "campus" or "instructors." It's main function is to grant college credits for life experience and courses taken at other institutions. The Registrar's Office is mainly responsible for admission of students, evaluation of students' credentials, management of student records, and handling public and student inquiries (T-15). The evaluation process also includes evaluation of foreign credentials for students, candidates for teacher certification and candidates for the CPA examination (T-15).

The Registrar reports to the Vice-President for Academic Affairs. There are two other Vice-Presidents: a Vice-President of Public Affairs and Vice-President of Administration and Finance (T-16). All three vice-presidents report directly to the College President (T-16). Jack Phillips, the current Registrar, has held that position since about 1981 (T-15; 55-56).^{5/} When Phillips was appointed Registrar, he reorganized the Registrar's Office as follows: Under the Registrar is the Assistant Registrar, Gregory Dye. He is responsible for the transcript evaluation unit, which consists of three full time and two part-time transcript evaluators

^{5/} The position of Registrar is a non-bargaining unit position, categorized by the State as "exempt managerial".

(T-20). The full-time evaluators are in the Federation's unit; the two part-time evaluators are not because they are part-time (T-64).^{6/} The transcript evaluation unit is responsible for the evaluation of students up to the point of graduation. Also under the Registrar is the office supervisor, who is responsible for student records and maintenance of the files (T-17). She supervises the clerical staff. The Registrar personally performs the remaining functions, such as making admission decisions for limited service students, and evaluating all foreign credentials for student teachers and CPA candidates (T-17).

5. The job description for the Assistant Registrar (Exhibit R-1) has been in effect since 1980 and Dye has held that position since 1981 (T-19). Dye performs the duties listed in the job description, including supervising the transcript evaluation process and supervising the professional staff (the evaluators), coordinating the training of new professional staff members, and overseeing the day-to-day operations of the Registrar's Office. (T-19).

The Registrar's enclosed office is located on the opposite side of the building from the Assistant Registrar and the

^{6/} I take administrative notice of the fact that the Federation has filed a Petition for Certification with the Commission seeking to represent part-time faculty and professional administrative staff. That Petition (Docket No. RO-86-130), which is pending a determination before the Director of Representation, may seek to cover these employees.

evaluators, some 30 to 40 yards away (T-22-23). Phillips does not personally observe them engaged to their work activities (T-22). The Registrar has divested himself from day-to-day involvement with the activities of his staff, and has delegated responsibility for the transcript evaluation unit to Dye (T-23).

Dye is responsible for assigning and supervising the work of the transcript evaluators. Dye's performance evaluation is based upon his fulfillment of that responsibility, including the quantity and quality of work produced by his staff (Exhibit R-2; T-21). The quantity is measured by the weekly reports (T-50). The quality is ascertained by complaints from the student, public or the Vice-President (T-50-51). Dye makes work assignments to his evaluation unit staff. Such assignments are in writing when necessary. The Registrar does not review his assignments of work (T-22). Although the Registrar requires Dye to file weekly written reports as to what has been done and what has not, the work is not personally reviewed by Registrar (T-21). Dye apprises the Registrar when there is a need to borrow people to do transcript evaluations (T-52).

Dye completes written performance evaluations for each of the transcript evaluators at Edison State College (T-26). He also completes a salary increase recommendation form, in which he rates the employee "satisfactory or unsatisfactory", which is used to determine whether an employee receives a salary increase (T-31; T-45). Dye does not consult with the Registrar before he completes

these evaluations, and the Registrar accepts them without independent review (T-27). The Registrar signs the evaluation before it goes up the chain of command to the Vice-President and then the President; the Registrar's signature indicates merely that he has seen it, since everything that goes to the President has to go through channels (Exhibit R-3; T-27, 50). The parties stipulated that the Registrar is the only supervisor who signs evaluations along with another supervisor because it is the only situation in this college where a "direct supervisor" of unit employees does not report directly to a vice-president (T-60-61). The performance evaluations are used to recommend renewal of either a one year or a multi-year employment contract (T-30). Evaluators do not receive tenure (T-69). When asked whether he would overturn a recommendation of Dye's for re-appointment of a transcript evaluator, Registrar Phillips indicated that he would have no basis to know otherwise (T-57).

There was an occasion in 1983 that a part-time evaluator was temporarily taken away from transcript evaluation functions and reassigned to Mr. Phillips directly to clear up a back-log in file control. Therefore, Phillips completed the evaluation on her for that time period (Exhibits P-1 and P-2). He indicated that he felt that was appropriate since, during that period, he was assigning her work which occupied practically all of her time (T-44-45). This temporary reassignment was unusual and if it had not been for the reassignment, she would have been doing evaluation work and

would have been evaluated by Dye (T-65). Other than this temporary reassignment period, she has reported to and been evaluated by Dye (T-65).

Dye has full responsibility to fill vacancies for transcript evaluator positions (T-31). He accepts an evaluator's resignation and forwarding it to the College President (T-31-32). He then communicates with the Personnel Office and makes the advertising arrangements (T-31). It is his responsibility to organize a selection process (T-31). He may, and has in the past, organized a search committee consisting of the executive assistant to the vice president, a senior evaluator and Dye (T-73).

The Assistant Registrar, together with the committee, screens and interviews applicants at length, and makes a recommendation to the College President (T-33). While the Registrar and the Vice-President see each applicant for about five minutes each, they do not look at their credentials or other paperwork (T-58). Phillips testified that he has not had to hire anyone since he hired Dye four years ago. The recommendation to hire comes from Dye, and is routinely accepted (T-33).

Although there has not been an occasion to initiate discipline, Dye would have "total responsibility" in that area, should the need arise (T-34). Phillips testimony shows that Dye is responsible for dealing with any deficiencies of his employees. The following is illustrative:

Q: What if he came to you and said we're having problems with such and such transcript evaluator, you wouldn't deal with that?

A: Gregg, that is why I hired you. You are responsible to sort that out, not me. If I have to sort that out, I don't need you (T-53).
...Gregg Dye has been given that responsibility and if he cannot handle it then I would have to replace Gregg Dye (T-54).

Dye keeps the time sheets, has authority to approve leaves of absence, vacation leave or administrative leave (T-35). These decisions are not reviewed by the Registrar (T-35). Dye has the authority to select evaluators to go to professional conferences, including which conferences and which staff, subject only to availability of funds (T-35-36).

Dye fills in for the Registrar when he is absent, including vacation periods and substitutes for the Registrar when he is not available to attend meetings, both internal and external. On such occasions he is expected to speak for the Registrar of the College (Exhibit R-2; T-35-36). Dye makes recommendations for changes in College policies with regard to the transcript evaluation functions. These recommendations are routinely submitted to the College president or vice-president. He has responsibilities to implement college policies, as set forth in the policy handbook, in the area of transcript evaluation (T-38). Neither Dye nor Phillips is involved in the processing of grievances, since the first step in the grievance procedure is the College President (T-78-79).

ANALYSIS

The parties in this matter have stipulated that the issue herein is whether the Assistant Registrar at Thomas A. Edison State College is a supervisor within the meaning of the Act. N.J.S.A. 34:13A-5.3, in relevent part, defines that term and provides:

...nor, except where established practice, prior agreement or special circumstances dictate to 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 personnel to membership....

See also, Cherry Hill Township Department of Public Works,

P.E.R.C. No. 30 (1970). In the instant matter, the State asserts that Dye is regularly involved in effectively recommending hiring of employees and possesses a regular, formal and effective role in the evaluation process of employees. Conversely, the Federation argues that Dye's input into the hiring, supervision and evaluation process is significantly watered down by independent review by the Registrar and other higher levels of supervision, and therefore, he does make an "effective recommendation" so as to characterize his position as supervisory within the Commission's definition as set forth in the statute and relevant caselaw.

In order to establish supervisory status, the record must indicate that the power claimed to be possessed must be exercised with some regularity. The Commission will look beyond the title or the job description to ascertain what authorities the employee actually exercises. See Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, (1976)

The Commission has previously held that an "effective recommendation" occurs when that recommendation is adopted without independent review and analysis by a higher level of authority.

See Teaneck Board of Education, E.D. No. 23 (1971), Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶ 15102 1984), aff'g H.O. No. 84-11, 10 NJPER 149 (¶ 15075) 1984).

In this matter, it is true that Dye has a title in common with assistant registrars at other State colleges, and is employed under a job description that does not specifically detail his supervisory responsibilities. However, in looking beyond those elements to examine what authority Dye actually exercises, I find that he actually and regularly exercises the type of authority over subordinate transcript evaluators to indicate statutory supervisory status.

He is responsible for selecting, screening, interviewing and recommending appointments to the evaluator positions. While he may use a committee approach, that is at his option. His recommendations go through the chain of command and are routinely accepted. Dye assigns the evaluators their work, and such assignments are not reviewed by anyone. Since the Registrar has divested himself of the day-to-day involvement with the work group, Dye is responsible for and is evaluated on the production of the work performed by his employees. Dye does regular and formal evaluations of his staff, and those evaluations are used as the basis for salary increases and contract renewal. While the Registrar's signature also appears on each evaluation, those evaluations are neither discussed with the Registrar before they are completed, nor has the Registrar ever modified Dye's

evaluations of his employees. The Registrar does not independently review the work of the evaluators. While Dye has never recommended that an employee be disciplined nor has he recommended against a salary increase or against contract renewal, he clearly has the authority to do so.

In Ramapo-Indian Hills Board of Education, P.E.R.C. No. 85-21, 10 NJPER 535 (¶ 15246 1984), the Commission found that the mere rubber-stamping of an evaluation by a higher level supervisor, without independent review, does not destroy the effectiveness of the evaluation. See also, Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶ 16010 1984). Similarly, in the instant matter, I find that the Registrar's signature on the evaluations does not alter the fact that Dye makes effective recommendations concerning the professional staff members as to retention and salary increases.

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 tenure, salary, or promotion. In Cinnaminson Twp. Board of Education, D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981), the Director found that department chairpersons in that matter were supervisors within the meaning of the Act based upon their responsibilities "...for evaluation of non-tenured and marginal tenured teachers, for recommendations on increments and renewals,

for screening and rating teacher applicants, for teacher discipline and for grievance administration on behalf of the Board." See also, Watchung Hills Board of Education, 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 5389 (¶ 15179 1984); Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶ 14202 1983); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶ 13062 1982); Cliffside Park Board of Ed., D.R. No. 83-10, 8 NJPER 540 (¶ 13248 1982).

In the instant matter, the Assistant Registrar at Edison State College substitutes for the Registrar in his absence, assigns the work to the evaluators, hires the employees, is responsible for getting the work done, supervises and evaluates the five employees under him and makes an effective recommendation for renewal of their employment contracts. Therefore, I find that the Assistant Registrar at Edison State College is a supervisor within the meaning of the Act.

The Federation argues that even if the Assistant Registrar at Edison State College is found to be a statutory supervisor, the position should remain in the unit for the sake of consistency with the title at other State Colleges. The Federation cites a Hearing Officer's Report in State of New Jersey, H.O. 80-13, 6 NJPER 144 (¶ 11072 1980) in which the Hearing Officer, in considering the placement of certain Assistant Director of Library Services positions, found that the position at only one of eight State Colleges possessed sufficient authority to

warrant a finding of supervisory status. Therefore, the Hearing Officer expressed his belief that, since there are eight State Colleges and only one State-wide unit, that "special circumstances" dictated the continued inclusion of the supervisor in the College Council's unit in order to provide consistency in the unit structure. However, I note that the Director rejected the Hearing Officer's findings regarding the existence of "special circumstances", and found that the possession of supervisory authority results in a conflict of interest which is virtually inherent between supervisors and non-supervisory employees, thus dictating the removal of that position at the one State College where the position was found to be supervisory. State of New Jersey, D.R. No. 82-35, 8 NJPER 87 (¶ 13036 1982).

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) the N. J. Supreme Court found that where the employee is obligated to oversee and evaluate work of his subordinates for the employer, the Commission must test for actual or potential conflict of interest between him and the employees he supervises. Where such actual or potential conflict of interest exists, the supervisor cannot be included in the same unit with the employees he supervises.^{7/} The matter here is not unlike the Director's

^{7/} Here, the parties stipulated at the hearing that the issues herein were limited to whether the Assistant Registrar at Edison State is a supervisor within the meaning of the Act. However, since in its post-hearing brief, the Federation now raises the possibility of unit inclusion based upon a need for

finding in that previous matter. While under ordinary circumstances, it makes good labor relations sense to place all employees in a title in the same collective negotiations unit, it is not always possible to do so. The Commission has previously split titles where it is necessary to do so to avoid potential conflict of interest between supervisory and non-supervisory employees. This also occurs with some frequency in cases of confidential employees, where even though an employee holds a title in common with other unit members performing similar work, the very nature of one employee's work may be confidential, where the work of others in the title is not. Here, it must also be remembered that Edison State is unique from the State's other traditional college settings. Therefore, it follows that the functions of the Office of the Registrar may not be identical to the functions of similar offices on the other College campuses. Therefore, justification exists in this instance for splitting the title.

I find that the continued inclusion of the Assistant Registrar at Edison State College would engender a potential for conflict of interest with unit members and therefore, the position cannot remain in the unit.

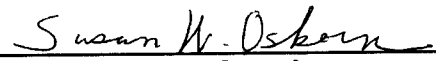
7/ Footnote Continued From Previous Page

consistency with the title at other campuses, I must also examine for actual and potential Wilton-type conflict of interest.

CONCLUSIONS

Based upon the entire record in this matter, I recommend that the Commission find that the Assistant Registrar at Thomas A. Edison State College is a supervisor within the meaning of the Act, and that the position be removed from the collective negotiations unit.^{8/}

RESPECTFULLY SUBMITTED,


Susan Wood Osborn
Hearing Officer

DATED: February 13, 1987
Trenton, New Jersey

^{8/} Since the collective negotiations agreement expired since the filing of this petition, I recommend that the Commission's decision have immediate effect. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).