

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF TRUSTEES OF ESSEX COUNTY  
COLLEGE

Public Employer-Petitioner

Docket No. CU-66

and

ESSEX COUNTY COLLEGE FACULTY  
ASSOCIATION

Employee Representative

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of the negotiating unit for certain employees employed by the Board of Trustees of Essex County College, hearings were held before Hearing Officer Martin R. Pachman. All parties were given an opportunity to examine and cross-examine witnesses, to present evidence, to argue orally and to file briefs. Subsequent to the issuance of the Hearing Officer's Report and Recommendations, timely exceptions were filed by both parties. The undersigned has considered the entire record, the Hearing Officer's Report and Recommendations and the exceptions and, on the basis of the facts in this case, finds:

1. The Board of Trustees of Essex County College is a Public Employer within the meaning of the Act and is subject to its provisions.
2. The Essex County College Faculty Association is an Employee Representative within the meaning of the Act.
3. The Public Employer seeks clarification of a unit of its teaching faculty which is represented by the Association as the recognized employee representative. The Public Employer contends that Department Chairmen should not be included in the faculty unit. 1/ The Association seeks the inclusion of Department Chairmen in the unit. The agreement

1/ The unit description as contained in the 1971-1973 agreement follows:  
"...all full-time teaching faculty presently employed and hereafter employed by the Board including only: Instructors, Assistant Professors, Associate Professors, Professors, and persons with the following titles: Counselors of the Counseling Division, Librarians, Coordinators, Assistant Division Directors, Instructional Assistants and Instructional Development Specialists.

But excluding the following positions, classifications, and titles:  
President, Administrative Vice-President, Assistant to the President, Deans, Director of Business Affairs, Associate Deans, Assistant Deans, Division Directors or Heads, Graphics Production Coordinator, Coordinator

(Continued)

between the parties, referred to in footnote 1, provides that "All provisions concerning Department Chairmen will be clarified later subject to unit clarifications by the Public Employees (sic) Relations Commission." <sup>2/</sup> Accordingly, the matter is properly before the undersigned for determination.

The Hearing Officer found that Department Chairmen have and exercise authority to recommend retention or non-retention of non-tenured faculty and thus are supervisors within the meaning of the Act, <sup>3/</sup> and that there is substantial actual conflict of interest between Department and other faculty members because of the intimate relationship between management and Department Chairmen. Furthermore, he found no established practice or prior agreement which would warrant including supervisors and non-supervisors in the same negotiating unit. Therefore, he recommended that Department Chairmen should not be included in the existing faculty unit.

The College excepted to the Hearing Officer's Report and Recommendations on two grounds: (1) it is claimed that Department Chairmen do have the power to effectively recommend the hiring of faculty members and that (2) it is further claimed Department Chairmen do have the authority to effectively discipline faculty members. Thus, the College contends that Department Chairmen are supervisors not only because they can effectively recommend regarding discharge as found by the Hearing Officer, but also because they can effectively recommend regarding hiring and disciplining.

The Association excepted to the Hearing Officer's findings that the Department Chairmen have the authority to effectively recommend discharge and his further finding that there is an actual substantial conflict of interest between Department Chairmen and other faculty members. Accordingly, the Association excepts to the final recommendation of the Hearing Officer that Department Chairmen should be excluded from the negotiating unit.

The subject of the instant petition is a group of approximately 20 Department Chairmen. Under the terms of the agreement between the parties from August 31, 1970 to August 31, 1971, Department Chairmen received a reduced teaching load as well as a sliding differential of between 4 and 8% depending upon the size of the Department. The parties agree that, although

<sup>1/</sup> (Continued) of Library Materials, Production Coordinator."

Also in existence at the College is the title of Assistant Department Chairman. However, the parties have stipulated these employees are neither supervisors within the meaning of the Act nor are they possessed of sufficient conflict of interest with the faculty group as to be excluded within the meaning of the Wilton court decision, and are not sought to be excluded from the unit. (Tr. 201-202)

<sup>2/</sup> Article 1-2, Agreement covering period August 30, 1971 to August 27, 1973.

<sup>3/</sup> The Act refers to a "supervisor" as an employee "...having the power to hire, discharge, discipline, or to effectively recommend the same..." (N.J.S.A. 34:13A-7)

the 1971-1973 agreement does not specify terms of Department Chairmen, the provisions of the 1970-1971 agreement have been maintained.

The pertinent structure of the College is as follows: there are approximately 190 faculty members. Each faculty member is generally in one of the 22 academic departments, each headed by a Department Chairman. These departments are allocated to five divisions, each of which is headed by a Division Director. Division Directors report to the Dean of Academic Affairs who, in turn, reports to the President. At the top of the structure is the Board of Trustees.

The method by which Department Chairmen are selected is specified in the 1970-1971 agreement. That agreement provides that applications shall be received by the Division Director. The Division Director then nominates a candidate for Chairman. A majority of the faculty must vote affirmatively for a nominee for him to be designated. The process is to continue until a candidate has been approved by the faculty. This designee must then be submitted for approval to the Dean of Academic Affairs, the President, and the Board of Trustees.

The testimony reveals that this procedure has been followed in general although in some departments the faculty might vote on a candidate before that name is submitted to the Division Director. However, even in this case, the Division Director resubmitted the name to the department for a formal vote so the terms of the agreement were met.

Also, there was one instance in which an Acting Chairman was directly appointed without the consent of the faculty. The parties agree, however, that, generally, the procedures specified in the 1970-1971 contract have been applied subsequently.

The undersigned agrees with the conclusion of the Hearing Officer that the ballot procedure included in the selection process is not controlling on the administration's right to select the candidate of its choice for the position of Department Chairman. His recommendation that the method of appointment is not sufficient to overcome a finding of supervisory authority of the position is adopted.

The Hearing Officer found that the Department Chairmen effectively recommend retention or non-retention of non-tenured faculty and that such action renders them supervisors within the meaning of the Act. The finding is affirmed for the reasons set forth by the Hearing Officer in his Report and Recommendations.

The Hearing Officer found that Department Chairmen cannot make effective recommendations regarding hiring. Exception to that finding was taken by the College although that finding did not affect the ultimate conclusion of the Hearing Officer that Department Chairmen are supervisors within the meaning of the Act.

The evidence cited by the Hearing Officer and the record taken as a whole support the conclusion that Department Chairmen can effectively

recommend in the act of hiring. While in some departments there are screening committees which interview candidates for employment, it is the Department Chairman who must recommend an individual for employment. The record indicates that not only are the recommendations of Department Chairmen followed in 98% of the cases but also that in several instances where the recommendations of Department Chairmen were initially rejected, the Department Chairmen obtained reconsideration of those decisions and succeeded in persuading the Dean and other authorities to hire the individuals. Based upon the above and the findings of fact cited by the Hearing Officer, the undersigned concludes that Department Chairmen do have the power to effectively recommend hiring. Accordingly, the contrary conclusion of the Hearing Officer is not adopted.

The undersigned adopts the conclusion of the Hearing Officer for the reasons cited by him that Department Chairmen cannot effectively recommend discipline and are not supervisors within the meaning of the Act on that basis. A review of the record fails to reveal support for the claim that Department Chairmen do, in fact, have a significant role in the disciplinary process.

Having found Department Chairmen to be supervisors within the meaning of the Act, the undersigned next considers whether, as claimed by the Association, there is an established practice or prior agreement which would dictate the inclusion of these supervisors in a unit with non-supervisors. 4/

As reported by the Hearing Officer, the written agreements between the parties have neither included nor excluded the title Department Chairman from the negotiating unit - the 1970-1971 agreement indicating the position had yet to be established (as of the time of the agreement's execution), and the current agreement, for 1971-1973, indicating that the unit placement of this position was subject to proceedings before this Commission. It is clear, therefore, that the unit placement of Department Chairmen has, from the beginning, been an open question and that there is no history of treatment favoring their inclusion or exclusion. 5/ The Association, however, contends that the duties of Department Chairmen are

4/ Section 7 of the Act provides that "...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 personnel to membership..." Section 8 provides that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors..."

5/ The fact that the 1970-1971 agreement contained several provisions relating to the contemplated position of Department Chairmen is not inconsistent with the conclusion that their unit placement was a continuing issue in view of the fact that within this same agreement the parties expressly reserved to a later time the resolution of that question.


essentially the same as that of Coordinators and Assistant Divisional Directors, titles that were included in the faculty unit in April 1970 (though subsequently abolished), and because of this similarity the treatment of these latter titles should weigh in favor of the inclusion of Department Chairmen. The record does not support the claimed likeness. First, Assistant Division Directors and Coordinator, unlike Department Chairmen, had no role in the hiring process. Secondly, Department Chairmen, unlike the other positions, are expected to make recommendations for retention or non-retention of non-tenured faculty.

Whatever other similarities may exist, the supervisory authority and duties which distinguish Department Chairmen are not found in the other two titles. Accordingly, the undersigned does not find that Department Chairmen are substantially equivalent to Assistant Division Directors and Coordinators. In light of this fact and the further fact that the placement of Department Chairmen in or out of the faculty unit has never been agreed to by the parties, there is no basis for applying the "established practice, prior agreement" exceptions.

Since Department Chairmen are found to be supervisors within the meaning of the Act and since no established practice or prior agreement is found dictating the inclusion of supervisors in a unit of non-supervisors, it is not necessary to consider the conflict of interest issue raised by the Employer on the basis of the decision of the New Jersey Supreme Court in Wilton. <sup>6/</sup>

The unit is hereby clarified to exclude Department Chairmen from the existing faculty unit.

BY ORDER OF THE EXECUTIVE DIRECTOR

  
 Maurice J. Neilligan, Jr.  
 Executive Director

DATED: July 27, 1973  
 Trenton, New Jersey

<sup>6/</sup> Board of Education of the Town of West Orange v. Elizabeth Wilton, et al,  
 57 N.J. 404 (1971)

STATE OF NEW JERSEY  
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BOARD OF TRUSTEES OF  
ESSEX COUNTY COLLEGE

Public Employer

and

ESSEX COUNTY COLLEGE  
FACULTY ASSOCIATION

Employee Representative

Docket No. CU-66

APPEARANCES

For the Public Employer

Jackson, Lewis, Schnitzler &  
Krupman, Esquires

By: Patrick L. Vaccaro, Esq.

Richard N. Cudrin, Esq.

For the Employee Representative

Philip Feintuch, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On September 30, 1971, a petition was filed with the Public Employment Relations Commission by the Board of Trustees of Essex County College (hereinafter the Board), seeking to clarify a unit of its employees represented by the Essex County College Faculty Association (hereinafter the Association). The title specifically sought to be clarified was that of Department Chairman. 1/

Pursuant to a Notice of Hearing to resolve a question concerning the

1/ The unit description as contained in the current agreement is: "all full-time teaching faculty presently employed and hereafter employed by the Board including only: Instructors, Assistant Professors, Associate Professors, Professors, and persons with the following titles: Counselors of the Counseling Division, Librarians, Coordinators, Assistant Division Directors, Instructional Assistants and Instructional Development Specialists. (footnote continued next page)

composition of a unit at the Essex County College, and subsequent Orders Rescheduling Hearing, hearings were held on December 7, 1971, December 22, 1971 and January 10, 1972, before the undersigned at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally.

Thereafter briefs were submitted by both parties. Based upon the record and briefs in this case the Hearing Officer finds:

1. The Board of Trustess of Essex County College is a Public Employer within the meaning of the Act and is subject to its provisions.
2. The Essex County College Faculty Association is an employee representative within the meaning of the Act.
3. The public employer herein seeks clarification of a unit of its teaching faculty, represented by the Association as recognized employee representative, seeking the exclusion therefrom of the Department Chairmen.
4. The Association maintains that Department Chairmen should be included within the existing unit.
5. There is therefore a question concerning the composition of the unit, and accordingly, the matter is appropriately before the undersigned for report and recommendation.

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1/ (footnote continued from preceding page)  
 But excluding the following positions, classifications and titles: President, Administrative Vice-President, Assistant to the President, Deans, Director of Business Affairs, Associate Deans, Assistant Deans, Division Directors or Heads, Graphics Production Coordinator, Coordinator of Library Materials, Production Coordinator."

Also in existence at the College is the title of Assistant Department Chairman. However, the parties have stipulated these personnel are neither supervisors within the meaning of the Act nor are possessed of sufficient conflict of interest with the faculty group as to be excluded within the meaning of the Elizabeth Wilton court decision, and are not sought to be excluded from the unit. (Tr. p. 201-202)

6. The employer raises two arguments for exclusion from the faculty unit. The Department Chairmen are regarded by the employer as having supervisory authority within the meaning of Section 7 of the Act, and therefore may not be included within a unit of non-supervisors, and further, even if the authority possessed by these people is not supervisory, it certainly tends to create an actual or potential conflict of interest with members of the faculty sufficient to exclude them from that unit, as directed by the New Jersey Supreme Court in Board of Education of the Town of West Orange v. Elizabeth Wilton, et al, 57 N.J. 404 (1971). The Association, denies that the authority possessed by Department Chairmen is supervisory, and argues that even assuming it were, the past practice exception in Section 7 of the Act would permit these employees to be represented in a single unit. Inferentially, the Association would also deny the Wilton argument of the employer.

The Essex County College, established in 1968, currently employees some 190 full-time faculty, in twenty-two academic departments, each having a Department Chairman. These departments, in turn, are divided into five divisions each having a Division Director who reports to the Dean of Academic Affairs. The Dean is responsible to the President, who reports to the Board of Trustees. (Tr. 12A) 2/

Prior to the establishment of departments, in September of 1970, there existed some 13 or 14 positions entitled "Assistant Division Directors and Coordinators." (Tr. 28) The incumbents therein each

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2/ References to the transcript of the first days proceedings will be followed by an A. All others will merely consist of the page number.



reported to the Division Director , with regard to their scope of authority, which consisted of areas within their division, ranging both larger and smaller than the current departments. (Tr. 60A) On December 15, 1969 the Association petitioned the Public Employment Relations Commission to include Coordinators and Assistant Divisional Directors, and certain other titles not pertinent to the instant matter, within their unit. That case was withdrawn prior to any decision being rendered, on April 14, 1970 based upon stipulation that the titles were to be included within the faculty unit. (Jt. Ex. 3)

At the College, Department Chairmen obtain their position in the following manner: applications are received by the Division Director, who nominates a single candidate to the faculty of the department involved. The faculty then votes yes or no as to the particular candidate. If the designee is approved by the majority of faculty members, he is submitted for approval by the Dean of Academic Affairs, the President and the Board of Trustees. In the event the candidate is rejected, the process begins anew. [Jt. Ex. 2, Art. 37]. This procedure was established contractually in the 1970-71 Agreement. There is some disagreement on the record as to, how, in fact this system has been implemented. Dean Newman testified that the faculty may not vote on anyone not nominated by the Director, and further that rejection of the candidate may certainly take place at his level or above. (Tr. p. 3-4) He also testified that as the new contract is silent on the matter the administration could if it wished merely appoint a chairman, and in fact in one case wherein no acceptable candidate applied to the Divisional Director this has been done. (Tr. p. 9, 4) However, they are attempting to follow the original procedure currently. (Tr. p. 9)

Each of the Association witnesses testified that either they voted upon the candidate before submitting that name to the Director, or that a general election among all candidates were held either before or after the Director's participation. (Tr. p. 99, 138, 252, 273, 296) However, on cross examination a number of these witnesses agreed that their elections could have been ignored and another designee's name submitted by the Director (Tr. 159, 161, 220) or that there was substantial conformity to the procedure called for (Tr. p. 253, 282-3, 297). In the opinion of the undersigned this method of selection of the Department Chairmen, and the fact that they serve for a specific period of time would not militate against any finding of either supervisory status or conflict of interest. There is a significant difference between a yes - no vote on a candidate designated by the administration, especially if that candidate may still be rejected after an affirmative vote, and a true election among the faculty, with their choice automatically assuming the chairmanship. The difference is one of controlling who will fill the position. In the latter case the determination is in the hands of the faculty, while in the instant case the administration need not nominate anyone they do not choose, need not appoint anyone elected unless they choose, and in fact, have directly appointed an Acting Chairman when a Director felt that there was no one competent who would receive a majority vote. It is my recommendation, therefore, that if Chairmen are found in other respects to be either supervisory or in conflict with the faculty group, that their method of appointment not be held sufficient to overcome these exclusionary characteristics.

Section 7 of the Act, in pertinent part provides "nor, except where established practice, prior agreement or special circumstances

dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership." Section 8 enjoins the Commission from determining as appropriate a unit which includes both supervisors and non-supervisors, except where dictated by established practice, prior agreement or special circumstances.

Public Employer admits that Chairmen do not directly have the power to hire or discharge. (Er's Brief p. 24) This authority rests solely with the Board of Trustees, by statute. (Tr. p. 35) It is the contention of the Employer, though, that the Department Chairmens role in the hiring procedure and their evaluation and recommendation of retention or non-retention constitute effective recommendations in those areas.

Hiring at the College is a multi-staged process. Initially, a request for additional staff is made through the preparation of the budget. (Tr. p. 13A) If the request is approved a search is begun, applicants screened and interviewed, and a recommendation is made to the Division Director or Dean that a particular individual be hired. Within that framework, however, there is some conflict in the testimony as to the role of Department Chairmen in the process. Witnesses for the employer testified that it is the responsibility of the Chairmen to interview all applicants, and to recommend to the Division Director and Dean only an acceptable candidate. All of those found unacceptable are not interviewed by anyone of higher authority. In those instances where the Dean or Director disagree with the Chairman, they communicate regarding the individual. (Tr. p. 15-37, 59-65, 85-86)

Certain witnesses for the Association testified that Chairmen utilize committees to interview instead of and in addition to themselves, and that on occasion more than one name is submitted to the Division Director. (Tr. p. 104, 108, 201, 213, 253)

In the opinion of the undersigned, based upon all of the testimony of the witnesses, it is clear that Chairmen exercise an effective veto with regard to the hiring of personnel. That is to say that without the approval of the Chairman, and his exercise of his authority to forward the candidate's name to the Director, that individual will not be hired. Whether the Chairman allows or permits others to act in his behalf does not detract from the fact that the authority is his. It is his name which appears on the personnel action form recommending the hiring of an individual, and it is his name which appears on the correspondence with the candidate.

Thus, the responsibility and authority for initial screening and recommendation is clearly that of the Chairman. However, for a recommendation to be effective, an extremely high order of reliance must be demonstrated. As noted above, the opinion of the Chairman is subject to two additional scrutinies, that is, the applicant is subsequently re-interviewed by the Division Director and the Dean. While both Dean Newman and Prof. Yamba, a Division Director, denied the interview was a de novo process, both clearly indicated it was something more than mere formality, and that there were rare occasions on which the decision of the Chairman were questioned. Despite the 98 per cent record of Chairman in their selection of applicants for positions, in the opinion of the undersigned, these selections are

subject to independent analysis by the hiring authority and therefore do not meet the test of effective recommendation.

With regard to discharge, the employer argues that the evaluation process in which the Chairman recommends for retention or non-retention of non-tenured faculty would constitute the authority to effectively recommend discharge. Under the procedure as established in the present agreement, there are three evaluations in addition to that of the Chairman. These are a peer evaluation, a self evaluation, and a student evaluation. The Chairman's evaluation is based upon a summary of these three, and his own evaluation of the instructor. This evaluation is designed to provide an overall summary of the professional involved, not merely one phase of his performance, as is covered by the other evaluations. In addition, this is the only evaluation which contains a formal recommendation for retention or non-retention. All four forms go to the Divisional Evaluation Committee composed of the Division Director, the Department Chairman, one faculty member from each department, and the faculty member under evaluation. This Committee prepares its evaluation on a form which is the duplicate of the Chairman's recommendation, and forwards it to the Director for recommendation to the Dean. (Jt. Ex 1 Art. 39)

While again there was disagreement in the testimony as to how, in fact this system works, certain undisputed facts exist. The evaluation form utilized by the Chairman is the only form covering the total professional output of the individual. It is the only form which requests a specific recommendation for retention or non-retention. Once the Committee makes a decision based upon the document before it, it completes an evaluation form identical to the Chairman's, and only

these two are forwarded to the Division Director for recommendation, and are transmitted to the Dean. The one Division Director testifying, stated that the Chairman's evaluation was the basic document the Committee worked with (Tr. p. 85A) and each of the various Chairmen also testified that their recommendations in every case were followed (Tr. p. 121, 235, 263). Finally, it should be noted that in 89 of 90 cases submitted to the Dean his determination agreed with that of the Chairman. (Tr. p. 307)

Furthermore, in the procedure used during 1970-1971, wherein the recommendation of the Chairman was submitted directly to the Director without an evaluating committee the Chairmen's recommendations were 95% accepted by the Board, including four for non-retention. (Tr. p. 44-46A, 183-184, 192-195, 198)

In summary, then, it is the opinion of the undersigned, that unlike the hiring process, in which a total review of the credentials of the individual under review is possible, in the evaluation process with regard to retention, the assessment of the Chairman is the critical one. Only he has the ability to observe and evaluate the overall contribution of the individual and only he has the authority to draw a conclusion as to retention from that observation. That his recommendation is given the weight this analysis would indicate is borne out by the statistics above. It is my conclusion therefore that the recommendation of the department chairman constitutes an effective recommendation of discharge for non-tenured employees within the meaning of the Act.

The Public Employer also argues that the Chairman may effectively recommend discipline. While it is true that in certain cases discharge may be considered the ultimate form of discipline, the type of discharge discussed above differs in concept in that it is not a penalty for infraction of work rules, but an assessment of the

of the employees' quality of performance. With regard to disciplinary discharge, which would apply to tenured faculty primarily, the Chairman play almost no role. In terms of lesser discipline, the Chairman might render an oral reprimand and place a letter in the individuals personnel file. While this authority is not meaningless, it does not in the opinion of the Hearing Officer constitute the imposition of a penalty as a reprisal for breach of required conduct. In addition, while a department Chairman may be asked to investigate a reported infraction, there is no testimony as to what is done with that investigation or recommendation by the Director. In the absence of specific testimony as to whether or not a specific penalty is recommended, or whether the report is a totally factual one, there can be no basis for determining that this action constitutes an effective recommendation of discipline.

Accordingly, it is the recommendation of the undersigned that in view of the authority of Chairmen to effectively recommend retention or non-retention of faculty that they be found to be supervisors within the meaning of the Act.

The employee representative argues, however, that even if the Chairmen are found to be supervisory, that the statutory exception of "established practice" and "prior agreement" should permit their placement within the unit. This is due to the placement within the unit of Assistant Divisional Directors and Coordinators, who the Association maintains did the same work that Chairmen now do. Under the pre-1970 system, Assistant Divisional Directors observed and evaluated faculty. They had no authority to make recommendations with regard to retention and non-retention. This power was reserved to the Division Director only. (Ex. Pe-19) This was admitted in record

testimony. (Tr. p. 166, 190) Since it is the very authority which in the opinion of the undersigned makes the Chairmen supervisory, that was not possessed by the Assistant Directors and Coordinators, there is no basis for a finding that there exists an established practice of including supervisory and non-supervisory employees in the same unit.

In order for the exception of "prior agreement" to permit mingling of supervisory and non-supervisory employees there must be minimally a specific kind of agreement, namely a written agreement setting terms and conditions of employment, reached in the context of collective negotiations, executed by both parties, and providing for the inclusion in one unit of supervisors and non-supervisors. It is this latter portion which is missing in the instant case. The first contract mentioning department Chairmen clearly states: "The determination of the inclusion or exclusion of Department Chairmen in the negotiating unit shall be determined upon the establishment of the position." (Jt. Ex. 2) and the lastest one states: "All provisions concerning Department Chairmen will be clarified later subject to unit clarifications by the Public Employment Relations Commission". (Jt. Ex. 1) Both recognition clauses clearly indicate that the Chairmen are neither included or excluded. Therefore, I recommend that no prior agreement be found to exist which includes supervisors and non-supervisors in a single unit.

Mindful of the possibility that the Commission may overrule the undersigned's recommendation as to the supervisory status of Department Chairmen, I move therefore, to a consideration of the concepts laid down by the Supreme Court in Elizabeth Wilton, (Supra). In that case, the court stated that where a substantial actual or



potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and that a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute. Among the indicia looked to by the Court were Mrs. Wilton's role in evaluation and recommendation for tenure, her administrative duties, her role in hiring, her review of budgets, and her responsibility for instructional program and curriculum development.

Clearly, the facts demonstrate just such conflict in the instant case. While the Chairmen's role in hiring and evaluating have been detailed above, there should also be noted their responsibility for formulating departmental budgets, (Tr. p. 13A, 175) setting schedules and making assignments (Tr. p. 50A, Tr. p. 150), authorizing fiscal expenditures (Tr. p. 258, 53A) and making curriculum development proposals. (Tr. p. 50) Perhaps most indicative of the potential substantial conflict which might arise would be the situation in which a Chairman's evaluation, or procedural failure to evaluate might be grieved. This, in fact, almost occurred, but for the Associations failure to act in a timely manner in one instance, (Tr. 312) and some action was in fact initiated in other cases (Tr. p. 189-194). As the court stated in Wilton supra, "If she were joined in a unit which included the principals whose work she was duty bound to appraise in the Boards interest, would she be under pressure, real or psychological to be less faithful to the Board and more responsive to the wishes of her association in the negotiating unit? She is obliged, of course, to be fair and non-discriminatory in evaluating the principals, and

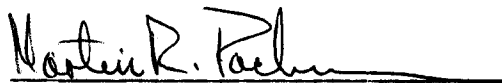
if the Association felt that she was consciously or unconsciously in error in doing so, presentation of a grievance would undoubtedly result. In that event she would have to defend against a complaint made by an organization of which she is a member."

Clearly, then, even if the authority of Chairmen is not such as to be supervisory, it is so intimately connected with the management and policy making function that an actual substantial conflict of interest would exist were the Chairmen admitted to the faculty negotiating unit.

#### RECOMMENDATIONS

Based upon the facts and briefs submitted in this case, the Hearing Officer recommends that:

1. That Department Chairmen be excluded from the faculty unit as supervisors within the meaning of the Act, due to their power to effectively recommend discharge of non-tenured faculty.
2. That there be found to exist no prior agreement or established practice of including supervisory and non-supervisory personnel in a single unit so as to warrant their being found in an appropriate unit.
3. That even absent a specific finding of supervisory authority, the Chairmen hold such an intimate relationship with management as to create actual substantial conflict of interest were they to be joined in a single unit with the faculty, and that they be therefore excluded from such unit.
4. That the petition should therefore be dismissed.

  
Martin R. Pachman  
Hearing Officer

DATED: April 17, 1972  
Trenton, New Jersey