

D.R. NO. 98-12

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

In the Matter of

RIDGEFIELD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-97-23

RIDGEFIELD EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by the Ridgefield Education Association seeking to remove the titles of consociate teacher and high school social studies department chairperson from an existing professional non-supervisory negotiations unit. The Director finds that the consociate teachers act as mentors to other teachers, but their duties do not create an impermissible conflict of interest with other unit members. See also, Atlantic County Welfare Division, D.R. No. 94-2, 19 NJPER 408 (¶24179 1993). Furthermore, they are not supervisors within the meaning of the Act so they can remain in the existing unit.

The Director finds that it was unnecessary to determine whether the high school social studies department chairperson was a supervisor because the position was abolished, and remains vacant.

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Appearances:

For the Public Employer,
Ferrara, Turitz, Harraka & Goldberg, attorneys
(Stanley Turitz, of counsel)

For the Petitioner,
Alfred F. Maurice, attorney

DECISION

On January 15, 1997, the Ridgefield Education Association filed a Petition for Clarification of Unit seeking to remove the titles of consociate teacher and high school social studies department chairperson from its existing professional, nonsupervisory negotiations unit of Ridgefield Board of Education employees. The Association asserts that these employees perform classroom observations which are evaluative, and their inclusion in the unit creates an impermissible conflict of interest with other unit members which warrants their removal from the unit. The Association also asserts that the disputed employees are supervisors

within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., which requires their removal from a nonsupervisory unit.

The Board opposes the petition asserting that the employees are not supervisors, their inclusion in the unit does not pose a conflict of interest and they should remain in the unit. Additionally, the Board asserts that an examination of the high school social studies chairperson title is unnecessary because the Board abolished the position on June 19, 1997.

We have investigated the issues raised by the petition. There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The Ridgefield School District is a suburban community in Bergen County with approximately 11,500 residents. There are 1,800 students enrolled in the district, assigned to four schools, including one high school. In addition to providing standard educational programs, the District is a receiving magnet school district for special education. Approximately 250 children from 65 school districts are enrolled in special education services including a preschool program, and programs for school-age children with emotional disturbances, autism and multiple-handicap conditions.

Richard Sabella is the superintendent. The Board's table of organization reveals:^{1/} A business administrator/board

^{1/} Board Exhibit A diagrams the Table of Organization.

secretary reports to the superintendent. Building principals report to the business administrator/board secretary.

Custodial/maintenance and food service employees report to the business administrator/board secretary and to building principals. Board office personnel report to the business administrator/board secretary. In the school building, the vice principal reports to the principal. The instructional staff report to the vice principals as do the secretarial/clerical employees.

Board employees are divided into four negotiations units for collective bargaining. Custodial and maintenance employees are in one unit; secretarial employees are in another unit. School administrators are in a third negotiations unit. The fourth unit, comprised of all teaching staff, is represented by the Association.

The Board and the Association are parties to a contract with a term of July 1, 1995-June 30, 1997.^{2/} The Association is recognized in Article Ia as the representative of all certificated full-time and regular part-time teaching staff members excluding supervisors and administrators.

Other relevant contract language includes Article 14, Teacher Evaluations, which reads:

A.1 All monitoring or observations of work performances of the teacher shall be conducted openly and with the full knowledge of the teacher.

^{2/} A successor contract may have been negotiated.

A.2 Teachers shall be evaluated only by persons appointed by the Superintendent and certified by the New Jersey Board of Examiners to supervise instruction.

B.1 The term "evaluation" shall be construed to mean a written evaluation prepared by the administrator/supervisor of a teaching staff member's total performance, including but not limited to the staff member's observed performance during the instructional process.

B.2 An observation shall be construed to mean a visitation to a classroom by a member of the Administrative or Supervisory Staff Member who holds an appropriate certificate for the supervision of instruction, for the purpose of observing a teaching staff member's performance of the instructional process.

B.3 Each observation shall be followed within a reasonable period of time by a conference between the Administrative or Supervisory Staff Member and the Teaching Staff Member. It is further agreed that both parties to such a conference will sign the written evaluation report and retain a copy for his/her records.

B.4 Any teacher who wishes to respond in writing to his evaluation shall have five school days in which to do so. Such a response shall be attached to the evaluation and made part of the teacher's personnel file.

B.5 A teacher shall have the right, upon written request, to review the contents of his personnel file, and to be able to copy the contents.

B.6 No material derogatory to a teacher's conduct, service, character, or personality shall be placed in his personnel file unless the teacher has had an opportunity to review such material.

The teacher shall have the right to submit a written answer to such material, and his answer shall be reviewed by the Superintendent, or his designee, and attached to the file copy.

B.7 Although the Board agrees to protect the confidentiality of personnel references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

C. Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person, which are used in any manner in evaluating, a teacher shall be promptly investigated and called to the attention of the teacher. The teacher shall be given an opportunity to respond to and/or refute such complaint. The teacher shall not have the right to be represented by the Association or anyone designated to be a representative at any meetings or conferences regarding such complaint [sic] unless such meetings or conferences are before the Board of Education or a committee consisting of the Board of Education members.

Schedule D, the Extra Service Guide, reflects the negotiated stipends payable to employees performing 62 extra positions. Stipends for consociate teacher and department chairperson 7-12 social studies are included on the guide.

Marcella Gleie, hired on October 23, 1986 as the Board's first consociate teacher, was assigned to the high school.^{3/} It is not known how Gleie was paid for the first four years of the position's existence. However, a stipend for consociate teachers has appeared on Schedule D since 1990. The stipend amount included in the new contract is unknown.

^{3/} Gleie is now a principal. She submitted an affidavit, as a principal, about the duties of consociate teachers.

Two events triggered the filing of this clarification of unit petition. First, in May 1996, an Association grievance was filed for a teacher who was denied a contract for the 1996-1997 school year. The grievant contended that her principal never observed her in class, but decided not to renew her contract based on a classroom observation prepared by a consociate teacher. Secondly, in December 1996, the high school social studies department chairperson, Charles Manto, was observing teachers, although his job description didn't mention classroom observations as a duty. The Association asked that this position be removed from the unit.

On June 20, 1997, after the filing of this petition, the Association wrote to the superintendent asking him to remove Judith Argenta, the K-12 math and science department chairperson,^{4/} from the unit because she was writing observations. The Association did not submit any specific details about this situation. Since the Association did not amend this petition to include this title for review, I will not examine the K-12 math and science department chairperson position.

The Association seeks to exclude three employees from its unit: two consociate teachers Peter Noonan and Janet Seabold, and one high school social studies department chairperson, Charles

^{4/} At the end of June, Argenta submitted an affidavit asserting that she was a consociate teacher. It is not clear if she held both titles at once.

Manto. The Board asserts that Enrico Ciamillo, Judith Argenta and Charles Manto also hold the position of consociate teacher.

The Board submitted five affidavits signed June 24, 1997 from Noonan, Seabold, Manto, Ciamillo and Argenta in which they describe their duties as consociate teachers. Their identical affidavits read as follows:

1. I am an employee of the Ridgefield Board of Education in the position of consociate teacher.
2. My job responsibilities as consociate teacher are outlined in the job description attached herewith.
3. I have no power to hire, discharge, or effectively recommend the same.

These individuals supplemented their earlier affidavits with new ones dated September 25, 1997. Point 3 in the new affidavit states:

3. As a consociate teacher, I have no power to hire, discharge, discipline or effectively recommend the same concerning any employee of the Ridgefield Board of Education.

The job description referred to by these consociate teachers was adopted in May 1996 and it indicates their qualifications and responsibilities. Consociate teachers are required to hold a New Jersey Supervisor's certificate. The teacher must have a minimum of three years of successful teaching experience, proven leadership ability, demonstrated effective human relations skills and motivational techniques. The consociate teacher reports to the building principal and is evaluated by the principal in accordance with Board policy and the job description. Consociate teachers work either a ten or eleven month school year. Their salary is determined by their placement on the teacher salary guide plus a stipend.

Their performance responsibilities are to:

-- assist the principal in the administrative functioning of the building, i.e., scheduling, assembly programs, student conduct, and classroom observations;

-- assist teachers in the improvement of instruction through modeling, workshops, and dissemination of professional information;

-- assist in the accomplishment of professional improvement plans prepared by the teaching staff;

-- assume other such responsibilities as assigned by the principal or superintendent.

The Association submitted an earlier job description which does not include classroom observations and only requires a standard New Jersey teaching certificate. A New Jersey Supervisor's certification was preferred, but not required.^{5/}

The purposes and duties of consociate teachers were described in several Board exhibits including an affidavit from Superintendent Sabella, affidavits signed by five consociate teachers, a certification jointly submitted by three principals and through Professor Bloomfield's report. The Association did not submit any affidavits.

Consociate teachers focus their efforts on their relationships with other teachers. They do not usually have a regular classroom assignment. They serve as mentors to other teachers and act as peer reviewers. They give classroom teachers

^{5/} The new job description may have resulted from meetings between Association representatives and three principals during which the Association asserted that the prior job description was inaccurate.

ideas to improve their classroom practices. Consociate teachers observe classroom activities. They suggest teaching techniques to other teachers for their use. A collaborative relationship evolves between the consociate teacher and the classroom teacher, focused on analyzing the classroom/student situation and providing instructional suggestions.

Additionally, consociate teachers extensively support the special education programs acting as liaisons to the 65 child study teams from sending school districts as well as with sending district administrators and families. Consociate teachers link special education to the mainstream education program and assist teachers to blend mainstream and special education elements in their classrooms. They handle special education services paperwork, thus, freeing classroom teachers for more instructional time.

Consociate teachers do not have a role in hiring employees. Since the position's inception in 1986, no consociate teacher has been involved in the discipline of another teacher. The Association cited one example in the eleven year history of consociate teachers where one may have had a role in the decision to discharge an employee. In May 1996, a teacher was not offered a teaching contract for the next year by her principal. The teacher filed a grievance alleging that the principal used the contents of a classroom observation written by a consociate teacher to decide not

to renew the teacher's contract. The Association did not provide any documentation about this incident.^{6/}

No other personnel actions were described which resulted from consociate teacher classroom observations. In the affidavits submitted by the three principals, they attest that they do not utilize any information from consociate teachers to determine whether to hire, fire, discipline, discharge or effectively recommend the same for any teacher.

Consociate teachers observe teachers in their classroom. After such an observation, the consociate teacher prepares a written classroom observation report and then meets with the teacher to discuss the observation. After both sign the observation report, it is given to the building principal who places it into the teacher's personnel file. Principals review the classroom observation reports to keep themselves current on teaching techniques used in the classroom. Principals attested in their affidavits that they do not use classroom observation reports to recommend or make personnel decisions.

The Association submitted one example of a classroom observation report prepared by a consociate teacher about a particular teacher. The observation was conducted on October 22,

^{6/} On February 12, 1997, the Association and the grievant signed an agreement with the Board releasing the Board from any claims arising out of or related to the employment of the grievant, and her resignation and/or her non-renewal of employment.

1996 and the teachers met about the report and observation on October 31, 1996. The report describes the activities the teacher conducted in her classroom, commending her ideas and participation and making suggestions about future classroom ideas to involve the students more. It is not known if this classroom observation report was ever used to make a personnel decision.

In addition to contract language addressing evaluations, a board policy, approved on June 14, 1979, covers teaching staff evaluations.^{7/} The policy indicates that an evaluation plan includes the development of job descriptions and evaluative criterion based upon local goals, program objectives, and instructional priorities. Methods of data collection and reporting appropriate to the job description include, but are not limited to, observations of classroom instruction. Supervisors are to conduct observation conferences with teachers. Where deemed appropriate, the policy provides for the use of appropriately certified personnel for observations. The plan includes individual improvement plans, the preparation of annual written performance reports by the supervisor, and an annual summary conference between the supervisor and the teacher.

A supervisor is defined by the plan as any appropriately certified individual assigned the responsibility for the direction

^{7/} The Association submitted an earlier Board policy on evaluations. The policy does not indicate that it was approved. Accordingly, it will not be considered.

and guidance of the work of teaching staff members. Nothing is included in the definition concerning the duties of hiring, firing, disciplining or the effective recommendation of any of these personnel decisions in relation to teaching staff.

Pursuant to the policy, teachers participate in an annual summary conference with their supervisor. The conference occurs prior to an annual written performance report which is also prepared by a supervisor. Data considered may include classroom observation reports. An observation conference means a discussion between a supervisor and a teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation. An observation means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties.

The evaluation policy predates the creation of the consociate teacher position so the role of a consociate teacher was not contemplated. No examples were provided of specific conferences between a consociate teacher and a teacher during which the consociate teacher apprised the observed teacher about their performance and implications for their annual evaluation. Any meetings between consociate teachers and teachers are for the purpose of discussing instructional methods after observing a teacher in the classroom. No evidence indicates that consociate teachers perform the annual evaluations or classroom observations and conferences as defined in the evaluation policy.

In addition to the position of consociate teacher, the Association seeks to exclude the position of the high school social studies department chairperson from its negotiations unit. It is unknown how long this position has existed. The title appears as a position in the teacher's unit listed on the Extra Service guide from the contract period July 1, 1995 - June 30, 1997. A negotiated stipend amount is listed. The parties agree that this position was discussed in past negotiations and was addressed in negotiations for a successor contract. However, the amount of the stipend is unknown.

At the time the petition was filed, the position existed. However, the Board abolished the position at its meeting on June 19, 1997.

ANALYSIS

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization...." However, under the Act, supervisors may not be placed into negotiations units with nonsupervisory employees. N.J.S.A. 34:13A-5.3 provides:

...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 nonsupervisory personnel to membership...

N.J.S.A. 34:13A-6(d) provides:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

A clarification of unit petition is appropriately utilized to seek the exclusion of classifications which may have been included in an existing unit contrary to statutory provisions. Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). An effective recommendation is one that is adopted without independent review and analysis by a higher level of authority. Borough of Edgewater, D.R. No. 92-27, 18 NJPER 230 (¶23103 1992). An indication that the power claimed to be possessed is actually exercised is needed. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status". Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976). We must review all the circumstances of a particular case to determine whether the disputed employees have and regularly exercise such power. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill Tp. DPW, P.E.R.C. No. 30 (1970).

A determination of supervisory status may also turn on the role of the disputed employee in evaluating employees. We have looked to the performance of evaluations as they relate to personnel actions such as renewal, tenure, promotion and salary. See Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985). Evaluations alone, however, do not necessarily

create a conflict of interest sufficient to exclude the evaluator from a unit. See, e.g., Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1987). But, evaluations can serve as effective recommendations for the statutorily mandated supervisory criteria. Recommendations to a supervisor concerning evaluations which might then serve as recommendations for another supervisor's personnel decisions are too far removed from the personnel decision itself to create a conflict of interest substantial enough to remove the titles from the unit. Contrast Wilton v. West Orange Bd. of Ed., 57 N.J. 404 (1971). See also, Westfield Bd. of Ed., P.E.R.C. No. 88-31, 13 NJPER 635 (¶18237 1987). In instances where the evaluations directly result in personnel actions, the evaluator cannot remain in the unit. See Atlantic Cty. Welfare Division, D.R. No. 94-2, 19 NJPER 408 (¶24179 1993).

In Atlantic Cty. Welfare Division, there were two social work specialists in the same title. One was a mentor. He had duties requiring him to have skills and knowledge beyond that required of other social workers and served as a mentor. Although he assisted lower-level supervisors with methods of service delivery and recommended technique improvements to the social workers, it was found he did not have supervisory authority over social workers and belonged in the nonsupervisory unit. The other social worker in the same title was found to be a supervisor. Her responsibilities created an impermissible conflict of interest with nonsupervisory unit employees and she was clarified out of the nonsupervisory unit.

The facts reviewed in the instant case do not support the Association's assertion that consociate teachers should be removed from the teachers' negotiations unit. Their responsibilities in relation to other teachers in the unit do not create an impermissible conflict of interest, nor do they appear to be supervisory within the meaning of the Act.

Consociate teachers have existed in this district for eleven years. During that time, they have not hired, disciplined or discharged any teachers. Furthermore, no examples were provided of instances in which consociate teachers effectively recommended such action.^{8/}

The Association submitted one sample classroom observation report prepared by a consociate teacher. It detailed the classroom activities of the observed teacher and commended the teacher several times for her classroom participation. No explanation was provided by the Association of how this report was ever used other than in a meeting between the two teachers to discuss teaching techniques.

Consociate teachers act as mentors to less experienced and less proficient teachers. Their classroom observations are used

^{8/} The Association put forth one example in which a teacher/grievant alleged that a classroom observation prepared by a consociate teacher was used by a principal to decide not to renew the teacher's contract. This situation was described by the Association in general terms and was not supported by evidence or affidavits from any party involved in the grievance. There is insufficient evidence to consider this as an example of the effective recommendation of a personnel action.

constructively -- to strengthen techniques used in the teacher's daily classroom activities. The classroom observations do not rise to the level of formal classroom observations used by principals to prepare annual evaluations or make personnel decisions. In this regard, the consociate teachers function similarly to the mentor social work specialist in Atlantic County Welfare Division. Consociate teachers' other duties are administrative. They act as liaisons to principals, teachers, sending district administrators, parents and students in the special education programs.

Based upon the foregoing, consociate teachers are not supervisors within the meaning of the Act. Nothing they do creates an impermissible conflict of interest which precludes them from remaining in the assigned negotiations unit. Therefore, I will allow this position to remain in the Association's negotiations unit and I dismiss the Association's petition concerning this title.

The Association also seeks the removal of the high school social studies department chairperson from their negotiations unit. It is not necessary to determine whether this title is supervisory and should be removed from the Association's unit because the position was abolished on June 19, 1997. Therefore, I also dismiss the petition filed by the Association concerning the title of high school social studies department chairperson.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: December 26, 1997
Trenton, New Jersey