

P.E.R.C. NO. 87-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROSELLE PARK BOARD OF EDUCATION,
Public Employer,

-and-

Docket No. CU-85-44

ROSELLE PARK ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

Public Employer-
Petitioner

ROSELLE PARK BOARD OF EDUCATION,

Public Employer-
Petitioner,

-and-

Docket No. CU-85-46

ROSELLE PARK ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Employee Representative

SYNOPSIS

The Public Employment Relations Commission grants the Roselle Park Administrators and Supervisors Association petition to clarify the existing collective negotiations unit of administrators and supervisors to include the newly created title of Supervisor of Curriculum/Instruction and Funded Programs. The Commission further dismisses the Roselle Park Board of Education's clarification of unit petition which sought to remove department supervisors from the existing unit. The Commission finds that there is not a conflict of interest between the department supervisors and the remainder of the unit.

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ROSELLE PARK ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer, Pachman and Glickman, Esqs.
(Steven Glickman, of counsel)

For the Employee Representative, Wayne J. Oppito, Esq.

DECISION AND ORDER

On January 30, 1985, the Roselle Park Administrators and Supervisors Association ("Association") filed a clarification of unit petition (CU-85-44). The Association seeks to clarify the existing collective negotiations unit of administrators and supervisors to include the new title of Supervisor of Curriculum/Instruction and Funded Programs ("Curriculum

Supervisor"). The Roselle Park Board of Education ("Board") objects and contends that its inclusion would create an actual or potential conflict of interest between the Curriculum Supervisor and the department supervisors.

On February 11, 1985, the Board filed a clarification of unit petition (CU-85-46). The Board seeks the removal of department supervisors from the existing unit on the basis of an alleged conflict of interest. The Association objects to the Board's petition.

On August 14, 1985, the Director of Representation issued a Notice of Hearing together with an Order Consolidating Cases.

On October 8, 1985, Hearing Officer Susan Wood Osborn conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On April 1, 1986, the Hearing Officer issued a report and recommended decision. H.O. No. 86-5, 12 NJPER ____ (¶ ____ 1986). She found no substantial actual conflict of interest and no more than a de minimis potential for conflict of interest between the principals, assistant principals and department supervisors. Consequently, the Hearing Officer recommended that the existing unit remain unchanged. In addition, she found that including the Curriculum Supervisor in the existing unit would be appropriate.

On May 1, 1986, the Board filed exceptions. It contends the Hearing Officer erred in making certain factual findings and in recommending that the existing unit remain unchanged.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-9) are thorough and accurate.^{1/} We adopt and incorporate them here.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, protects public employees in the exercise of the right to form, join and assist any employee organization or to refrain from such activity. That protection extends to all school board employees, supervisory or non-supervisory, except confidential employees and superintendents.

Negotiations units shall be defined with due regard for the community of interest among the employees concerned. Ibid. The public policy underlying the Act favors the placement of employees in broad-based negotiations units. State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974). Further, the Director of Representation has found appropriate broad-based units of supervisory administrative staff in school districts. No. Bergen Bd. of Ed., D.R. No. 84-8, 9 NJPER 615 (¶14263 1983); Parsippany-Troy Hills Tp. Bd. of Ed., D.R. No. 79-7, 4 NJPER 394 (¶4177 1978).

However, the Supreme Court in West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971), held that all supervisors, regardless of their status with respect to each other, do not per se possess the

^{1/} We specifically reject the Board's exceptions to finding no. 8. That finding accurately reflects Springer's testimony regarding an earlier conflict and its solution.

community of interest which requires or justifies their inclusion in the same negotiations unit. The Court stated:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such superior is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.
[Id. at 425-426]

[E]ach case must be determined on its own particular facts.
[Id. at 427]

Under all the circumstances of this case, we agree with the Hearing Officer that the principals, assistant principals and department supervisors share a community of interest which warrants their continued inclusion in the same negotiations unit.

The Board argues that the historical relationship of the unit stresses both a conflict and incompatibility of interest. We disagree.

The high school principal evaluates department supervisors. The record indicates only one instance in which a department supervisor received an evaluation which included some negative comments; that employee did not file a grievance. In addition, the high school principal interviews outside applicants for department chairperson. He makes a recommendation to the superintendent who independently interviews and ultimately makes a recommendation to the Board.

These facts, weighed in light of a broad-based unit with a long negotiations history, do not demonstrate an incompatibility of interest between unit members, a compromise of interest or a significant detriment to the rights of either the Board or the Association. See City of Trenton, D.R. No. 83-33, 9 NJPER 382, 384 (¶14172 1983). The Board's mere speculation about potential conflicts is not sufficient to split a unit when we can look to the parties' 20 years of past experience. West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973).

The Board also asserts that tensions between segments of the negotiations unit constitute an actual conflict requiring severance. The Board contends the principals felt the department supervisors were dominating the unit. It specifically points to potential conflicts arising from competing negotiations demands.

In Clifton Bd. of Ed., D.R. No. 80-18, 6 NJPER 38 (¶11020 1980), the Director of Representation addressed this issue:

[I]n situations where two groups of employees within the same unit have different views of economic or non-economic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" and, therefore, does not warrant the severance of employees from an appropriate unit. [Id. at 39]

The Board also objects to the Association's contract ratification procedure in which the unit is divided into two subgroups, each of which must approve a proposed agreement before settlement. It relies on Clifton Bd. of Ed., D.R. No. 80-18, 6 NJPER 38 (¶11020 1980), for its assertion that the "minority influence" here constitutes a conflict of interest.

In Clifton, the Director of Representation explained that a majority representative must assure that the views of the minority are considered. The Association has done just that. Here, the ratification procedure requires that both the majority and minority subgroups approve a proposed agreement before settlement. This ratification procedure has not produced any evidence of a conflict of interest.

Finally, the Hearing Officer recommended that the existing unit be clarified to include the title of Supervisor of Curriculum/Instruction and Funded Programs. In the absence of exceptions, we adopt that recommendation.

ORDER

The Board's petition for clarification of unit is dismissed.

The existing unit is clarified to include the title of Supervisor of Curriculum/Instruction and Funded Programs.

BY ORDER OF THE COMMISSSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986

H.O. NO. 86-5

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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Employee Representative-Petitioner

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Docket No. CU-85-46

ROSELLE PARK ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,
Employee Representative.

SYNOPSIS

The Hearing Officer recommends that the Commission clarify the administrators and department supervisors negotiations unit to include the newly created title Supervisor of Curriculum/Instruction and Funded Programs. The Hearing Officer rejected the Employer's claim that the new title possesses duties which would create a substantial potential conflict of interest with the existing unit members.

The Hearing Officer also recommends dismissal of the Employer's unit clarification petition seeking to remove the department supervisors and from the existing negotiations unit. The Hearing Officer found that given the 20-year history of a combined administrators and supervisors without substantial conflict of interest, any potential conflict of interest was no more than de minimus. Further, the Hearing Officer found that the Association's internal ratification procedure did not demonstrate an actual conflict of interest between members of the unit that would justify separate units.

A Hearing Officer's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Appearances:

For the Public Employer
Pachman and Glickman, Esquires
(Steven Glickman of Counsel)

For the Petitioner
Wayne J. Oppito, Esquire

HEARING OFFICERS REPORT
AND RECOMMENDED DECISION

Petitions for Clarification of Unit were filed with the Public Employment Relations Commission ("Commission") on January 30, 1985, by the Roselle Park Administrators and Supervisors Association ("Association") , Docket No. CU-85-44, and on February 11, 1985, by

the Roselle Park Board of Education ("Board"), Docket No. CU-85-46. The Association seeks to clarify its existing collective negotiations unit of administrators and supervisors to include the newly created title, Supervisor of Curriculum/ Instruction and Funded Programs. The Board objects to the proposed inclusion of this title in the unit.

The Board in its Petition is seeking the removal of department supervisors from the Association's existing unit on the basis of an alleged conflict of interest between the department chairpersons and the administrators. The Association objects to the Board's petition.

On August 14, 1985, the Director of Representation issued a Notice of Hearing together with an Order Consolidating the Cases. On October 8, 1985, a hearing was held in these matters at which time both parties had the opportunity to present relevant evidence and examine witnesses. Both parties filed post-hearing briefs, the last of which was received on December 6, 1985.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Roselle Park Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act"), and is the employer of the employees who are the subjects of these petitions.

1. The Roselle Park Administrators and Supervisors Association is an employee representative within the meaning of the

Act. The Association is the recognized majority representative of a collective negotiations unit of all principals, assistant principals, and department supervisors employed by the Board.

3. The recognition clause of the parties' 1984-86 collective agreement defines the collective negotiations unit as "Principals, Assistant Principals, Department Supervisors, Athletic Director, Director of Special Services." (J-5).^{1/} The unit is composed of five principals, (one in the high school, one in the middle school, and three in the elementary schools), one assistant principal at the high school, one athletic director, one director of special services, and eight department supervisors, all at the high school (T-11-13; 47-49).

The unit has been in existence for at least 20 years (T-66). It originally included the principals, assistant principals, department supervisors, the Superintendent of Buildings and Grounds, members of the Child Study Team, and the Dietician (T-66). The Child Study Team members and the Superintendent of Buildings and Grounds were removed from the unit as a result of an agreement between of the Board and the Association because of the non-supervisory nature of those positions (T-16-18, 47-48, 67). The Dietician was removed from the unit about 15 years ago (T-67). The members of the unit as it is currently structured are all supervisors (T-18, 47).

^{1/} Exhibits are designated as 'C- ' for Commission exhibits and 'J- ' for joint exhibits. Transcript notations are designated as 'T- '.

All of the district's employees whose positions require professional supervisory certificates are presently included in the existing unit, except the Supervisor of Curriculum /Instruction and Funded Programs (T-47, 70).

The parties commenced negotiations for the 1984-86 agreement in September, 1984 (T-14) and concluded those negotiations in May, 1985, (T-15) The current agreement is effective from July 1, 1984 until June 30, 1986 (T-72).

4. The position of Supervisor of Curriculum/Instruction, and Funded Programs (also referred to as the "Curriculum Supervisor") was first advertised in May, 1984, to become effective in September, 1984 (Exhibit J-3). Ms. June Coultas, the incumbent employee, was hired for the position in July, 1984 (T-14) On July 16, 1984, the Association made a request of the Board that the Curriculum Supervisor position be included in the its unit (Exhibit J-1; T-14-15). The Board President formally responded on July 25, 1984, (Exhibit J-2; T-15) and disagreed that the title should be included in the unit .

5. The job description of the Curriculum Supervisor (Exhibit J-4) generally describes the position as:

Coordinates and guides the development, implementation, evaluation and revision of curriculum and instructional Services K-12. The supervisor works with principals in maximizing the development of the curriculum and instructional program. In the secondary schools, the supervisor works cooperatively with the department supervisors through and with the principal.

The job description generally provides that the Curriculum Supervisor, Ms. June Coultas, is to coordinate, assist, and work cooperatively with the principals and department supervisors in the formulation, implementation and evaluation of curriculum and instructional programs. According to the job description, Coultas is responsible for developing and maintaining curriculum guides; assisting in recruiting, screening and recommending new staff; coordinating district testing and evaluating test results as it relates to current curriculum; participating in the selection of textbooks and instructional materials, and supervising the funded programs (Exhibit J-4). The record shows that the role of the Curriculum Supervisor is to work in cooperation with the Board's middle management team to assure compliance with the Board's educational goals. The position is on the same horizontal plane of the table of organization as the principals (J-6). Coultas is a staff supervisor, not a line supervisor.

6. The Superintendent dichotomizes the responsibilities of various district personnel for curriculum as follows: the Curriculum Supervisor is responsible for the development of curriculum, for curriculum study, implementation, in-service, workshops. The teachers implement the curriculum; the department supervisors supervise the teachers in implementation. The Principal's responsibility is to supervise the implementation of the Board's approved curriculum at each of their levels (T-30-32)

The Superintendent also testified that it was the Board's intention, in creating the Curriculum Supervisor position, that the individual would be responsible for the whole area of curriculum -- that that person would work with the principals in harmony and cooperation. He further testified that it was "the Board's intent to have the supervisor evaluate any personnel in the area of curriculum development and curriculum work" (T-29).

7. The Superintendent testified that the principals, the Director of Pupil Services and the Curriculum Supervisor all appear on the same level on the organizational chart (Exhibit J-6), and are all directly supervised and evaluated by the Superintendent (T-32-33).

8. Dale Springer, the High School Principal, testified that he evaluates the department supervisors and submits a formal evaluation to the Superintendent that is a composite of their role as a teacher and as a department head (T-27). He further testified that Ms. Coultas did not participate in the development of evaluations for department chairpersons (T-23). Both Springer and Thomas Faria, an elementary principal, testified that Coultas has never evaluated any of the members of the Association's unit (T-15, 16, 22-23).

The department supervisors evaluate teachers in their respective departments (T-64); the Director of Pupil Services evaluates the Child Study Team and the special education teachers (T-64). The Athletic Director is evaluated by the Principal (T-61,

64). The Superintendent and High School Principal evaluate the Assistant Principal together (T-62).

9. Department supervisor vacancies are filled as follows: the High School Principal is involved in the initial screening of applicants. He selects the best three to five candidates and submits those to the Superintendent. Principals may be involved in interviewing to choose the best three. The Superintendent makes a selection and a recommendation to the Board. (T-58-59).

10. Kenneth Seppelt, a Board member, testified that although there has been at least one instance in which the High School Principal has given an evaluation to a department supervisor which has included some negative comments, that department supervisor did not file a grievance. (T-57-58). The grievance procedure for department supervisors would be: Step 1, the Principal; Step 2, the Superintendent; and Step 3, the Board of Education. (T-58).

11. Springer testified that the collective negotiations unit has two "sub-groups": "Group A" consists of the principals, the assistant Principal, and the supervisor of Pupil Services (seven total), and Group "B" consists of the department supervisors, including the Director of Athletics (eight total) (T-73).

12. In the 1979-80 school year, there was an attempt to divide the unit. Springer testified that the conflict was between those who have supervising responsibilities and those who do not,

and between the high school and elementary and middle school personnel. A solution to that conflict was the removal of the Child Study Team members and an agreement to prevent the supervising high school secretary from being brought into the unit (T-69-70).

13. The negotiations committee for the association is composed of one or two supervisors and one or two principals. During the last negotiations, the Association team was represented by Faria and by Herman Mopsick, a consultant for the New Jersey Principals and Supervisors Association (T-50-52).

The Association negotiated a salary for the principals and the department supervisors' salary is set by a negotiated stipend on top of the teacher's salary guide (T-43-44).

14. Springer testified that proposals are made on behalf of the entire unit based on existing guides (T-74); some proposals pertain to the supervisors and others pertain to the principals (T-74-75). He further testified that if the Board makes a proposal that is satisfactory to the principals but not to the supervisors, or vice-versa, then the Association would not accept the proposal (T-76). The sub-groups meet separately and jointly to discuss the proposals. (T-77-79). Faria testified that, in essence, any proposal concerning salary increases had to be acceptable to both sub-groups in order for the proposal to be accepted by the Association.

The record shows that during the last negotiations, the parties reached impasse and a mediator was assigned. During mediation, the parties first discussed the supervisors' stipend.

That issue was shelved for awhile and there was a tentative agreement first on the issue of the salaries for principals. Then the issue of increases for department supervisors was eventually resolved. Finally, a Memorandum of Agreement was signed (T-80-86). The Association made proposals on an entire package to the Board, and the negotiations committee was free to reach an agreement with the Board subject to the ratification by the membership (T-87).

15. The Association's ratification procedure was changed from "one-person, one-vote" to an arrangement where "each group would meet (separately) and make a determination and then get together for further discussion and the acceptance" (T-74). During the most recent negotiations, a majority of each group -- the department supervisors and the principals/vice-principals -- had to ratify the agreement in order to effectuate a ratification (T-41). Seppelt testified that the separate proposals and the Association's ratification procedure cause problems for the Board in negotiations in that the parties are negotiating with two separate factions of the negotiations unit, both of which must be satisfied to produce an agreement. Further, he testified that during the parties most recent negotiations, the parties each signed a tentative agreement, and the Association returned to the table and indicated that the department supervisors were not satisfied and negotiations resumed (T-42-43).

ANALYSISI. Curriculum Supervisor

The Board contends that the inclusion of the Curriculum Supervisor in the extant collective negotiations unit would create an actual or potential conflict of interest between the Curriculum Supervisor and the departments supervisors. Such a conflict, it argues would destroy the community of interest that might otherwise exist.

N.J.S.A. 34:13A-5.3 provides in relevant part 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."

N.J.S.A. 34:13A-5.4 provides in relevant part that:

The commission shall decide in each instance, the unit which is appropriate for purposes of collective negotiations. The unit shall be defined with due regard for community of interest among the employees concerned...

Where an identifiable community of interest exists among employees, it is generally the Commission's policy to favor broad-based units. This policy was adopted by the New Jersey Supreme Court in In re State of New Jersey and Professional Association of New Jersey, Department of Education, 64 N.J. 231 (1974). Moreover, a broad-based unit of supervisory administrative staff in school

districts has been found to be appropriate in previous Commission cases. For example, In re Parsippany-Troy Hills Tp. Bd/Ed, D.R. No. 79-7, 4 NJPER 394 (¶ 4177 1978), (in which the Director of Representation found an all inclusive unit of middle management personnel to be appropriate); In re Edison Tp. Bd/Ed, D.R. No. 82-8, 7 NJPER 560 (¶ 12249 1981), (in which the Director of Representation found that the evaluation of vice principals by principals are insufficient basis to separate a long-standing unit of principals and vice principals); In re No. Bergen Bd/Ed, D.R. No. 84-8, 9 NJPER 615 (¶ 14263 1983), (in which the Director of Representation found a unit of principals and department chairpersons to be appropriate); and In re Lakewood Bd/Ed, D.R. No. 78-44, 4 NJPER 212 (¶ 4105 1978), (in which educational specialists and department chairpersons were included in an existing unit containing principals and vice principals).

However, the Supreme Court in Bd/Ed of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") determined that various echolons of supervising employees, even where they have interests in common, may not be automatically included in the same unit with one another, but rather, the Court found 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 ... a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. (57 N.J. at 427).

The Court went on to add that each case needs to be examined on its own facts, and that only where such a conflict was "de minimus" or tolerable, would the unit combination be

permissible. Thus, the relationship between the Curriculum Supervisor and the administrators and supervisors needs to be examined to determine whether; (a) a community of interest exists between them, and (b) there is an actual or potential substantial conflict of interest as described in Wilton.

It is evident here that a community of interest exists between the Curriculum Supervisor and the extant unit. Coultas is part of the middle management team. She is on the same level of the table of organization as principals and the Director of Pupil Services. Her duties are to develop and coordinate the district's curriculum, kindergarten through 12th grade. The Board intends that Coultas will work cooperatively with the supervisory staff of the district to assure compliance with the Board-approved curriculum plan. The Curriculum Supervisor is required to possess a professional supervising certificate, as are all members of the unit. Coultas reports directly to the Superintendent, as do the principals and Director of Pupil Services.

The Board alleges that, since one of Coultas' job duties is the participation in evaluations of department chairpersons, that a substantial potential conflict of interest exists, as described in Wilton.

In Wilton, the Court was concerned that including higher level supervisors in the same unit with the lower level supervisors whose work they are duty-bound to supervise and appraise for the employer, puts the supervisor in a conflicting role -- that the supervisor would be on both sides of the table. The Court mandated

that "PERC must decide whether, on a fair appraisal, her role puts her on the management side of the negotiations table." In Wilton, the Court remanded the matter to PERC for

"...specific fact-finding and statement of the reasons therefore, as to whether Miss Wilton's obligations to her employer as they now exist are sufficiently indicative of potential conflict of interest between her and the other supervisors to require her exclusion from the administrators' association negotiations unit.... Adequate treatment of the problem require[s] an evaluation of the specific nature of the authority delegated to her ... to supervise and review the work of other supervisors to make responsible and effective recommendations to the superintendent of schools with respect to the hiring, salary and tenure of the principals." (57 N.J. at 428).

I find that the facts of this case do not demonstrate such a substantial conflict, actual or potential. The nature and degree of supervision Coultas exercises over other members of the administrators and supervisors' unit can be clearly distinguished from those duties described in Wilton. In the Wilton case, Ms. Elizabeth Wilton in her capacity as Director of Elementary Education was on a higher plane of supervisory authority than the rest of the Board middle management team. Here, however, the Curriculum Supervisor is on the same level of the organizational structure. Miss Wilton was directly responsible to the Board to oversee the work of the nine elementary principals, evaluate their performance, and make effective recommendations to the Superintendent with regard to tenure and salary increases for them (57 N.J. at 426). Here, however, the Curriculum Supervisor is not responsible for the immediate supervision of any bargaining unit member. Coultas has

not evaluated their work, nor has she been called upon to make a recommendation concerning tenure, salary increases, or any other term or condition of their employment.

While the job description provides that the Curriculum Supervisor shall participate in the evaluation of department supervisors, and the Board's stated intention in creating that position was that she would assist the principal in evaluating, Coultas has not, to date, even participated in the formal evaluation of staff. The Commission has previously held that the authority to supervise must be more than just a "sterile attribute" listed as a duty in a job description, but must be a power that is actually and regularly exercised. See, In re Rumson-Fair Haven Reg. Bd/Ed, D.R. No. 84-5, 9 NJPER 529 (¶ 14216 1983); In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976)

It is possible that Coultas may actively participate in the evaluation process in the future. However, given the job responsibilities described in J-4 and the testimony concerning the Board's intentions in creating the position, I cannot foresee Coultas conducting independent formal evaluations of the department supervisors that rise to the level of an effective recommendation as to hiring, firing or discipline of department supervisors. Moreover, Coultas is not a step in the unit's grievance procedure, and there is no record evidence to suggest that she will be involved in handling grievances.

Based upon the foregoing, I find that the Curriculum Supervisor is appropriate for inclusion in the Association's unit and I recommend that the Commission add the title to the existing unit,^{2/} effective immediately.^{3/}

II. Principals and Supervisors

The Board alleges that an actual and potential Wilton type substantial conflict of interest exists which dictates the removal of department supervisors from the extant unit. In In re City of Trenton, D.R. No. 83-33, 9 NJPER 342 (¶ 14172 1983), the Director of Representation noted that Wilton was decided in a context where supervisors had not previously been represented. He found that where there is a history of collective negotiations, the Commission has looked to the parties' experience rather than speculation to gauge the potential for substantial conflict of interest arising in the future. ^{4/} See In re West Paterson Bd/Ed, P.E.R.C. No. 77

^{2/} Nothing herein prevents the Board from petitioning the Commission anew should the authority of the position to supervise and evaluate staff change substantially over the course of time.

^{3/} In cases where the clarification of unit petition has been filed prior to the execution of the parties' current agreement, the unit clarification becomes effective immediately upon the issuance of the Commission's decision. This would mean that the terms and conditions of employment for the position must be negotiated between the parties. See, In re Clearview Reg. Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (1977), and In re Union County Reg. Bd/Ed, D.R. No. 83-22, 9 NJPER 228 (¶ 14186 1983).

^{4/} This is distinguished from police and fire units, wherein the Commission has consistently found that the paramilitary structure of those departments results in an inherent potential for conflict of interest between superior officers and rank-and-file employees.

(1973), where the Commission observed:

Future contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculations not benefited by hindsight. (Slip op. at 8).

In examining the history of the parties' relationship in Trenton, supra, the Director found that the reasonable foreseeability of the public works superintendents not exercising their responsibility to appraise the performance of their subordinate level supervisors (foremen) was not borne out by the record evidence. Therefore, the Director found that future contingencies would not be compelling. I believe that in Trenton, the Director was saying that Wilton's mandate to search for potential conflict of interest may be somewhat limited in circumstances where one may examine the facts from an historical perspective, and find a healthy unit composition.

In this case, we have the benefit of historical perspective rather than mere speculation. The principals and supervisors have an extensive, twenty-year history of inclusion in the unit with one another. In fact, it predates the passage of the Act.

The only bargaining unit member that evaluates department supervisors is the High School Principal. The experience of the district is that the High School Principal has, in fact, included negative comments in his evaluations of department supervisors. Such an evaluation has never resulted in the filing of a grievance. Like the supervisors in the Trenton matter, the High School Principal's inclusion in the same collective negotiations unit with department supervisors has not deterred him from performing his evaluative responsibilities of the department supervisors. Therefore, there is no basis to conclude that anything more than a mere de minimus potential conflict of interest, if that, exists in this case.

Further, the actual "conflict of interest" which the Board referred to as its stated reason for separating the two groups is just not the type of "conflict" referred to by the Supreme Court in Wilton. In Wilton, the Court was describing a conflict of interest "...with respect to their duties and obligations to the employer with respect to each other..." The Court expressed its concern that inclusion in the unit would create split loyalty and divided allegiance. What the Board describes is, at its worst, competing bargaining demands which can occur with any collective negotiations unit which is not strictly homogenous. The same variations might occur, for instance, in a unit of some salaried and some hourly workers, or in a unit of blue collar and white collar employees. The Commission has previously addressed the issue of "competing demands" from various segments of a collective negotiations unit as

an alleged basis to sever certain employees from an existing unit. In In re Clifton Bd/Ed, D.R. No. 80-18, 6 NJPER 38 (¶ 11020 1980), the Director of Representation noted:

...in situations where two groups of employees within the same unit have different views of economic or non-economic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" as opposed to "conflict of interest" and, therefore, does not warrant the severance of employees from an appropriate unit. Clifon, at 395/

The record shows that the Association negotiates a salary for principals and a stipend on top of the teachers' guide for department chairpersons. But, nothing compels this. The Association has wide latitude to formulate its economic proposals in negotiations in a way that it believes best benefits its membership.

In re Ford Motor Co. v. Hoffman, 346 U.S. 330 (1953), the U.S. Supreme Court has stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees ... A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.6/

5/ See also, In re Mercer County Prosecutor, D.R. No. 79-18, 5 NJPER 60 (¶ 10039 1979).

6/ See also, In re Lawrence Tp. PBA, Local 119, P.E.R.C. No. 84-71, 10 NJPER 41 (¶ 15023 1953); In re Hamilton Tp. Ed/Assn., P.E.R.C. No. 79-20, 4 NJPER 476, 478 (¶ 4215 1978); Belen v. Woodbridge Tp. Bd/Ed, 142 N.J. Super 486 (App. Div. 1976); In re City of Union City, P.E.R.C. No. 82-65, 9 NJPER 98 (¶ 13040 1982)

The record shows that in negotiations, the needs of the principals' group and the supervisors group would each have to be satisfied in order for the Association to reach agreement with the Board. It is quite naturally in the interest of any organization to represent all of the factions of its unit membership. The fact that the Association may have a mechanism to assure the satisfaction of its membership in its ratification procedures is not normally the concern of the Board unless it impacts on the Association's responsibility to negotiate in good faith with the employer.^{7/} Here, the Board seems to be suggesting that because the Association found the proposed contract settlement was not completely acceptable to its membership and returned to the table to ask for additional increases, that was evidence of the kind of conflict prohibited by Wilton. I reject that suggestion. The Association has the right to establish its own ratification procedure, and there is no evidence to establish that its procedure has created either a Wilton conflict of interest.

RECOMMENDATIONS

I find that there is no basis in the record to conclude that there is a substantial actual conflict of interest and there is no more than a de minimus potential for conflict of interest between

^{7/} While I find that the Association's ratification procedure is a matter internal to the Association, I caution that the Association must negotiate in good faith for the unit as a single unit in negotiations and signing a collective negotiations agreement.

the principals, assistant principals and the department supervisors. Therefore, I recommend that the existing unit be found to continue to be appropriate, and that the Board's petition for unit clarification CU-85 -46 be dismissed.

I further recommend that the existing unit be clarified to include the title Supervisor of Curriculum/Instruction and Funded Programs.

Respectfully submitted,

Susan Wood Osborn

Susan Wood Osborn
Hearing Officer

DATED: April 1, 1986
Trenton, New Jersey