

D.R. NO. 85-9

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

In the Matter of

OLD BRIDGE BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-85-10

OLD BRIDGE EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Commission Designee, on the basis of an administrative investigation, determines that Department Chairpersons employed by the Old Bridge Board of Education are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, and, consequently, must be removed from the existing unit of certificated personnel and support staff.

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Appearances:

For the Public Employer
Wilentz, Goldman & Spitzer
(Steven J. Tripp of Counsel)

For the Employee Representative
Oxford, Cohen & Blunda
(Sanford R. Oxford of Counsel)

DECISION

On August 15, 1984, the Old Bridge Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Petition seeks the removal of all Department Chairpersons in the high school, as well as the high school's two Directors of Guidance, and the Coordinator of Gifted and Talented Education, from an existing unit of all certificated personnel and support staff.

The Old Bridge Education Association ("Association") is the recognized exclusive representative of the above-described unit of employees. The Association opposes the removal of the Department Chairpersons, Directors of Guidance, and Coordinator of Gifted and Talented Education from the existing unit. In accordance with N.J.A.C. 19:11-2.6, The Administrator of Representation caused an administrative

investigation to be conducted into the matters involved in the petition in order to determine the facts. The assigned staff agent convened an informal conference with the parties on September 12, 1984.

The investigation reveals the following:

1. The Old Bridge Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Old Bridge Education Association is an employee representative within the meaning of the Act and is subject to its provisions. It is currently the exclusive representative of all certificated personnel and support staff.

3. The Board seeks the removal of Department Chairpersons, Directors of Guidance and Coordinator of Gifted and Talented Education. The Board alleges that (1) the employees in those titles possess supervisory authority within the meaning of the Act; and (2) their continued inclusion in such a unit creates a conflict of interest with allegedly non-supervisory employees (teachers and other non-administrative, non-supervisory professionals).

4. The Board alleges that these titles have expansive supervisory duties which create a direct conflict with subordinate non-supervisory members of the negotiating unit. It is alleged that duties include the effective authority to hire, discharge and discipline unit members and that their recommendations are uniformly followed. These duties also include classroom observations and evaluations, as well as the development and implementation of department objectives,

establishment and continued evaluation of curriculum and the conducting of departmental meetings.

The Board further alleges that the conflict of interest between the disputed titles and the rest of the unit has become all the more apparent when considering the fact that teachers, dissatisfied with their evaluations, have grieved these evaluations to higher levels of the administration.

5. The Association does not dispute that these titles have supervisory duties and that these duties are fulfilled. It does claim, however, that there is no significant conflict of interest in that only two grievances concerning evaluations have been filed. It is further claimed that the duties of these titles have not changed and that the majority of the time, the people performing these duties are engaged in non-supervisory activity.

In a letter dated November 5, 1984, the parties were advised that, on the basis of the findings of the investigatory conference, I was inclined to remove the disputed titles from the unit. The parties were reminded of their obligations under N.J.A.C. 19:11-2.6 to submit within the time frame provided, additional statements of position or documentary evidence relevant to the instant petition. The parties were further advised that in the absence of disputed substantial and material factual issues being raised which would warrant the convening of an evidentiary hearing, the matter would be disposed of by me based upon the administrative investigation conducted herein.

On November 8, 1984, the Board filed a position statement indicating that it was in complete agreement with my November 5, 1984 letter and urged me to issue an order excluding the positions in

question from the existing unit. It is the Board's position that an evidentiary hearing is unnecessary.

On November 13, 1984, the Association filed a position statement in which the Association agreed with findings of the administrative investigation but argued that the proviso contained in N.J.S.A. 34:13A-5.3 dealing with "established practice, prior agreement or special circumstances" pertains in the instant matter and, consequently, department chairpersons ^{1/} should remain in the current negotiations unit. The Association further contends, without citation of authority, that on the basis of P.E.R.C. precedent, the Department Chairpersons should be allowed to file a Petition for Certification of Public Employee Representative and an election should be conducted. However, since no Petition for Certification of Public Employee Representative has been filed by the Department Chairpersons, I will make no determination with respect to the filing of such petition.

On the basis of the specific facts of the instant matter, I have determined that the circumstances herein are not unlike the circumstances in several other matters which have been placed before the Commission. In In re Willingboro Bd. of Ed, P.E.R.C. No. 84-146, 10 NJPER 389 (¶ 15179 1984), the Commission affirmed a Hearing Officer finding that Department Chairpersons who formally evaluate teachers

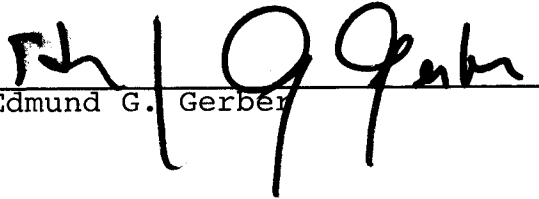
^{1/} The Association's position statement makes no reference to the Director of Guidance or Coordinator of Gifted and Talented Education titles. Therefore, it is assumed that the Association is in agreement with my letter of November 5, 1984 that such titles should be removed from the unit, and, accordingly, a dispute with regard to those titles no longer exists. However, in the event that the Association's failure to mention the Director of Guidance or Coordinator of Gifted and Talented Education titles was merely an oversight, the determination and rationale set forth herein in terms of the Department Chairpersons shall likewise apply to the Director of Guidance and Coordinator of Gifted and Talented Education titles.

and whose evaluations are subject to the grievance procedure, are supervisors, and that actual and substantial potential conflicts of interest exist to warrant their exclusion from a supervisory unit containing non-supervisory personnel. Guidance Directors, as well, who were found to engage in the hiring and evaluation process were also deemed to be supervisory and were excluded from the unit. Accord, In re Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶ 14202 1983) Request for Review denied, P.E.R.C. No. 84-80, 10 NJPER 56 (¶ 15030 1984); In re Cliffside Park Bd. of Ed., D.R. No. 83-10, 8 NJPER 540 (¶ 13248 1982); In re Parsippany-Troy Hills Bd. of Ed., D.R. No. 82-51, 8 NJPER 283 (¶ 13128 1982); In re Paterson Bd. of Ed., D.R. No. 82-46, 8 NJPER 250 (¶ 13110 1982); In re Bloomfield Bd. of Ed., D.R. No. 82-56, 8 NJPER 383 (¶ 13175 1982); In re Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER 571 (¶ 12255 1981); In re Delaware Valley Reg. High School Bd. of Ed., D.R. No. 82-11, 7 NJPER 530 (¶ 12234 1981); In re Walwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Cinnaminson Twp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981); In re Ramapo-Indian Hills Reg. High School District Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981). Moreover, it is clear that the exception to N.J.S.A. 34:13A-5.3 concerning "established practice, prior agreement or special circumstances," does not apply where there exists actual or substantial potential conflicts of interest. Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

Accordingly, I find the Department Chairpersons to be supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, and, effective at the expiration date of the

current agreement between the Board and the Association, the Department Chairpersons shall be excluded from the negotiations unit currently represented by the Association. Clearview Regional High School, D.R. No. 78-2, 3 NJPER 248 (1977).

BY ORDER OF COMMISSION DESIGNEE


Edmund G. Gerber

DATED: November 28, 1984
Trenton, New Jersey