

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST PATERSON BOARD OF EDUCATION

Public Employer

and

Docket No. R-73

EAST PATERSON EDUCATION ASSOCIATION

Petitioner

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of Department Chairmen, Coaches and Director of Athletics <sup>1/</sup> of the East Paterson Board of Education, a hearing was held on June 20, 1969 before ad hoc Hearing Officer Daniel House at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Thereafter, on September 5, 1969 the ad hoc Hearing Officer issued a Report and Recommendations. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. The Commission has considered the record and the Hearing Officer's Report and Recommendations and finds:

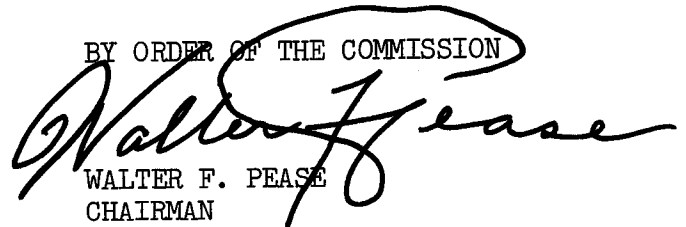
1. The East Paterson Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The East Paterson Education Association is an employee representative within the meaning of the Act.
3. The Public Employer having refused to include the Department Chairmen

1/ The Petitioner withdrew its request to resolve the status of coaches at the hearing.

and Director of Athletics in the unit represented by the East Paterson Education Association, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.

4. In the absence of Exceptions to the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's Report and Recommendations pro forma, without, however, establishing this case as a precedent.
5. Accordingly, the Commission finds the appropriate collective negotiating unit is: "all classroom teachers, Nurses, Guidance Counselors and Librarians employed by the East Paterson Board of Education, including Department Chairmen and Director of Athletics."
6. The unit, exclusive of Department Chairmen and the Director of Athletics, has been recognized by the Board. No issue exists regarding the desire of the Department Chairmen and Director of Athletics to be included in the previously recognized unit. Therefore, there is no need for an election to be directed in this matter. The Commission accordingly directs the Board to negotiate with the Association for the unit set forth in section 5 above.

BY ORDER OF THE COMMISSION



WALTER F. PEASE  
CHAIRMAN

DATED: October 8, 1969  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Docket No. R-73

In the Matter of the Representation  
Proceedings Concerning

REPORT AND RECOMMENDATIONS

EAST PATERSON BOARD OF EDUCATION,  
the Board

OF HEARING OFFICER

and

EAST PATERSON EDUCATION ASSOCIATION,  
the Association

The undersigned, Daniel House, was designated by the Commission as ad hoc hearing officer in the above matter to conduct hearings concerning the question of representation involved and to make a report and recommendations in the matter. Pursuant to the notice of hearing dated May 23, 1969, a hearing was held before me on June 20, 1969, in Newark, New Jersey.

There appeared for the Board:

Dr. Frank M. Marlon, Superintendent of Schools

There appeared for the Association:

Robert Chanin, Esq., Attorney

At the outset of the hearing Mr. Chanin moved to amend the petition (i.e. the letter from the Association to the Commission requesting that the Commission intervene in the matter of representation here involved); Mr. Marlon for the Board accepted the amendment. In the original petition the Association requested that the appropriate unit be found to include the Department Chairmen, the Coaches and the Director of Athletics with the basic teachers unit already recognized and described in the current agreement between the parties. The amendment was to eliminate the submission as a unit question of the category Coaches on the ground that, since the Coaches of necessity had to be teachers who were in the already recognized negotiating unit, the problem with relation to them was not a matter of

adding to the basic teachers negotiating unit but of improper refusal by the Board to negotiate with relation to that function of the teachers who act as Coaches. I grant the motion to amend the "petition".

On the basis of the record, I find:

1. The East Paterson Board of Education, referred to herein as the Board, is a public employer within the meaning of Section 3 (c) of the Act and is subject to the provisions of the Act.

2. The East Paterson Education Association, referred to herein as the Association, is an employee representative within the meaning of Section 3 (e) of the Act.

3. The Association having requested the Board, and the Board having refused to recognize the Association as the exclusive representative for Department Chairmen, including the Director of Athletics, as part of the same negotiating as teachers, a question of representation of public employees exists and the matter is appropriately before the Commission.

4. The Board argued that the Department Chairmen lack community of interest with teachers adequate to be placed in the same negotiating unit because they are supervisory within the meaning of the Act.

The Association argued: a) that the Department Chairmen are not such supervisors as are barred by Sections 7 and 8 of the Act from being represented by an organization admitting to membership nonsupervisors; b) that if they are found to be such supervisors within the meaning of Sections 7 and 8, the history, showing that the Association represented and negotiated for them in the same unit as the teachers and that the Board recognized and so negotiated with the Association for them, brings them within the Act's exception to the prohibition in Sections 7 and 8, and, in fact, requires their inclusion in the teachers unit without regard to the question of community of interest; and c) that there is, in any case, adequate community of interest between the Department Chairmen and the other categories in the

negotiating unit described in the current agreement between the parties so that they<sup>may</sup>/appropriately be part of the same negotiating unit.

Are They "Supervisors"?

The question focuses more precisely on our problem if it is stated: "Are they such supervisors as, with the stated exceptions, are barred by the Act from being represented in collective negotiations by an employee organization that admits nonsupervisory personnel to its membership?" Such supervisors are described in Section 7 as those "having the power to hire, discharge, discipline, or to effectively recommend the same"; thus, it is clear that under the Act supervisors other than those so described (provided they meet the test of community of interest) may be in the same negotiating unit as the nonsupervisory personnel.

I find from studying the record that Department Chairmen not only do not have the power to hire, discharge or discipline (which power is possessed exclusively by the Board of Education), but they do not have the power to effectively recommend such actions. It is true that the Department Chairmen have some effect on the hiring of new teachers to the extent that when they are assigned to interview applicants they act as a screen, passing on for consideration and possible hire only those applicants they deem possibilities; however, the recommendations made by the Department Chairmen are filtered through the High School Principal and then through the Superintendent and are not made to the Board as recommendations of the Department Chairmen; the recommendation acted on by the Board is the Superintendent's which in turn is based on the recommendation of the Principal. The real relationship of the Department Chairmen to the teachers they supervise is spelled out in the official Board description of the job's responsibilities, supplemented by Principal Farese's subsequent memorandum to the Department Chairmen elaborating on those responsibilities; the supervision involved is for the purpose of assisting the teachers in improving their function in educating

the children. The pertinent portion of the Board's description reads:

"3. Area of Responsibility.

- a. Reports to: The Department Chairman shall report directly to the building principal in matters dealing specifically within a building. He in turn reports to the Superintendent of schools.
- b. Supervises: The Department Chairman shall have functional supervision over the members of his teaching department, in addition to the normal supervisory responsibilities of a teacher.

"4. Responsibilities.

Within the limits of approved programs and policies, a department chairman shall be responsible for, and have authority to accomplish, the initiation of new or revised curriculum concepts and methods within his field of specialization, and shall work cooperatively with other department chairmen, teaching members of his department in the development of an integrated and coordinated curriculum program for the system."

That the central function of the Department Chairmen does not include recommend the responsibility effectively to/hire, discharge or discipline is further demonstrated in Dr. Farese's elaboration of the Department Chairmen's responsibilities, which he testified was "...a very comprehensive job description covering just about all aspects of supervision that would be a vital concern to secondary education." (All the involved department chairmen are functioning in the secondary schools in this case.) There is not in the entire four page single spaced document a single explicit statement requiring department chairmen to make recommendations regarding hire, discharge or discipline; the only function mentioned which borders on requiring such recommendations is described "Assist in evaluating and rating teachers." (underlining supplied) An official evaluation form is used; while there is a place indicated in the form for the Principal to indicate his conclusion as to whether the teacher is or is not satisfactory, there is no such place indicated for conclusions by the Department Chairman.

Dr. Farese testified with regard to the recommendations he receives from the Department Chairmen:

"I am guided very strongly by their recommendations. In most instances I do follow their recommendations concerning the eval-

uation of personnel. Where there is a difference I bring them in and we discuss this difference."

He testified that he passes his recommendation (not the Department Chairman's) to the Superintendent whether or not there is agreement between him and the Department Chairman; he said:

"...in the final analysis I make the recommendation to the superintendent of schools."

Department Chairmen are not required in this system to have supervisor's certificates. Although, if they were so required, it would not by itself prove that the chairmen had the responsibility effectively to recommend the hire, discharge or discipline of personnel, the fact that such a certificate is not required is evidence that such is not the Department Chairmen's responsibility: only some other areas of supervisory function might be covered by a certificate requirement, but a certificate would clearly be a requirement for the area of supervision involved in effectively recommending the hire, discharge or discipline of teachers.

I conclude that the Department Chairmen in the East Paterson district are not such supervisors as are responsible to make effective recommendations about the hire, discharge or discipline of teachers.

#### Practice

Even if the Department Chairmen were to be found to have the responsibility effectively to recommend the hire, discharge or discipline of personnel, there is evidence of practice adequate to exempt them from the prohibitions against their placement in the same negotiating unit with the teachers.

In 1966 the Board of Education recognized the Association as the "official representative of the full time professional employees" for the purpose of discussing, prior to determination by the Board, professional personnel policies and matters of mutual concern. Such discussions took place and matters concerning the Department Chairmen were among the items discussed. Prior to the 1967-68 school year, the Board and the Association

negotiated about teachers and Department Chairmen in a single negotiation; there was a give and take on, among others, proposals relating to extra compensation for the Department Chairmen. The exchange did not result in an agreement on this particular point; but this did not negate the fact that there was a negotiation, i.e. a give and take discussion attempting to arrive at an agreement.

#### Community of Interest

The fact that all the employees involved in the unit proposed by the Association are employees of the same employer in itself establishes among them some community of interest for purposes of collective negotiations. In addition: except for the extra stipend paid Department Chairmen for the chairmen's responsibilities, the pay of the Department Chairmen and of the teachers is found in the same salary schedule; the Department Chairmen teach classes half or more of the number of periods taught by the other teachers (some in the already recognized unit do not teach classes at all); Department Chairmen and the employees in the already recognized unit share the same insurance, pension, retirement and other fringe benefits; they all have the same holiday and vacation schedule, and the same leave of absence program; Department Chairmen and the others have above them the same supervisory hierarchy, i.e.: Assistant Principal, Principal, Assistant Superintendent, and Superintendent; Department Chairmen and teachers have the same basic employment contract (although a separate contract is signed to cover the Department Chairman function); the facilities like cafeteria, lounges, etc. are available in common to teachers and Department Chairmen; while most of the already recognized unit (the classroom teachers) do not have private offices available for their use, and Department Chairmen do, so too do the Guidance Counselors who are part of the already recognized unit; the Department Chairmen like the other teachers, have a ten month contract.

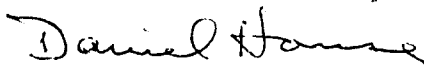


The above listing does not exhaust all of the possible areas of common interest, but it is more than adequate to show a wide and profound community of interest in matters which are the subject for collective negotiations. The record contains no information about any conflict of interest between the Department Chairmen and the employees in the already recognized unit such as to make the inclusion of the Department Chairmen in that unit inappropriate.

Recommendation

I hereby recommend that the appropriate unit for the purposes of collective negotiations between the East Paterson Board of Education and the East Paterson Education Association be composed of all those included in the unit described in Article One of the current agreement between the parties and that it also include all Department Chairmen, including the Director of Athletics.

Dated at New York, N. Y.,  
September 5, 1969

  
DANIEL HOUSE, Hearing Officer