P.E.R.C. NO. 77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST PATERSON BOARD OF EDUCATION
Public Employer-Petitioner

and

Docket No. CU-71

WEST PATERSON EDUCATION ASSOCIATION
Respondent and
Employee Representative

DECISION

Pursuant to notice, a hearing was held to resolve a question concerning the composition of a negotiating unit for certain employees of the West Paterson Board of Education (the "Board"). Post-hearing briefs were filed by both parties. On June 12, 1973, Hearing Officer James W. Mastriani issued his Report and Recommendations. The Board filed timely exceptions to that Report; the West Paterson Education Association (the "Association") filed a brief in answer to the exceptions, to which the Board filed additional reply. The Commission has considered the entire record in this case, the Hearing Officer's Report, the exceptions, briefs and answers and finds as follows:

The Board is a public employer within the meaning of the Act and is subject to its provisions. The Association is an employee representative within the meaning of the Act.

The Board has petitioned for clarification of an existing unit; it seeks the exclusion of principals and vice-principals therefrom. The Association resists the petition and asks that the disputed titles remain in the unit. A question exists regarding the composition of the unit and the matter is properly before the Commission.

The West Paterson school district is relatively small, a K through 8 district with four schools. There are three principals, one of whom covers two buildings, and three vice-principals, two of whom are full-time teachers. There are approximately 70 teachers and 25 non-certificated employees, a Superintendent and a Business Manager-Board Secretary. The existing unit for negotiations originated from the agreement of the parties, and from the beginning the Association has been recognized by the Board as the representative of that unit of employees. In an earlier proceeding before this Commission 1/ involving the unit placement of these same principals and vice-principals, it was found that beginning in 1965 the Association had annually negotiated for teachers, principals, vice-principals, custodians, nurses, and secretaries as a single group and that these negotiations resulted in annual agreements covering this group. The first agreement 2/ contained salary provisions and a group medical insurance plan for all employees, improvements in sick and vacation leave for custodians and secretaries, and a stipulation that a joint committee of the Board and Association would discuss and research the question of ratio compensation for principals. The Association had proposed that principals and vice-principals be compensated on the basis of a ratio to teachers' salaries, but it settled for

1/ Initiated by a Board petition filed October 31, 1969 and concluded by a decision of the Executive Director, adverse to the Board, on September 14, 1970. Docket No. CU-4.

2/ The document is captioned "The following are the results of the negotiations between the West Paterson Board of Education and the West Paterson Education Association," and is for the term of the 1966-1967 school year.

money increments and a study committee regarding ratio for principals; it agreed to defer the ratio question with respect to vice-principals. The agreement did not contain a grievance procedure although there was testimony that the Association did process grievances subsequently and that the principal was the Step One employer representative. The Association's negotiating committee for that first agreement included one of the three principals. In that same earlier Commission proceeding it was further found that negotiations were entered into and agreements arrived at for the same unit of employees for the years 1967-1968 and 1968-1969. 3/ For the 1967-1968 period the Board agreed in principle with the ratio method of compensation for principals: "a salary index plan shall be the instrument of this Board's policy to compensate teachers and principals; all elements of the index plan are negotiable between the Board...and...Association." The parties agreed to form a joint committee "to maintain a continual, thorough study of personnel compensation"; guidelines were established (i.e., Cost of Living Index etc) as reference points for the future negotiation of elements within the index plan; specific salary figures were agreed upon for principals, teachers and others and a lengthy analysis was set forth regarding a principal's responsibility and how elements of that total responsibility related to the salary mechanism. For the 1968-1969 school year the ratio method was again applied to principals; the dollar amount was increased. 4/ Throughout this entire period beginning in 1965 Beatrice Gilmore, a principal, was a member of the Association's negotiating committee and a

3/ Typically these agreements focused on salaries for the various categories of employees. For 1968-1969, it was virtually the only consideration.

4/ All three vice-principals were full-time teachers during this period. Apparently they were placed on the teachers' guide and given $1500 per year in addition.

participant in its meetings with the Board or its spokesman.

Following the passage of Chapter 303 in 1968 the parties negotiated and in March 1969 executed an agreement for the year 1969-1970. This was the first agreement which in form and content had the characteristics of a conventional labor relations agreement; it contained a well defined recognition clause setting forth a negotiating unit similar in scope to that of prior years and specifically including principals and vice-principals; a detailed description of the grievance procedure wherein the principal continued to be the Step One representative of the employer for the resolution of teacher grievances; a provision concerning the negotiation of a successor agreement wherein the parties agreed that such shall apply "to all teachers" - the quoted phrase having elsewhere been defined as a shorthand description of all those categories enumerated in the recognition clause; and a variety of clauses regarding salaries, hours of work and other terms and conditions of employment. It was during the term of this agreement that the Board in October 1969 filed a petition with the Commission to clarify the unit by excluding principals and vice-principals, and all that has been set forth in the above recitation of events appears in the record of that proceeding (Docket No. CU-4). While that clarification case was in process, the parties in April 1970 executed an agreement for the school year 1970-1971 in which they footnoted to the recognition clause the following:

> "Both parties agree to abide by the final decision of the Public Employment Relations Commission as to the inclusion of these categories in the unit [i.e., principals and vice-principals, who had been listed among the inclusions]. Each party shall have the right to appeal."

In that same document, the parties footnoted to provisions concerning hours, work-year, and salaries of principals and vice-principals the following:

> "The Board agrees to negotiate the terms and conditions of principals and vice-principals for 1970-1971 after the final decision of the Public Employment Relations Commission on Docket No. CU-4, if that decision is in favor of the Association. Each party shall have the right to appeal."

As recited earlier that final decision issued in September 1970 calling for the continued inclusion of the disputed titles. No appeal was taken. Negotiations commenced for a successor agreement and continued over some months until an impasse was declared in January 1971. 5/ Mediation by the Commission did not succeed; fact-finding was invoked with formal recommendations for settlement made to the parties in May 1971; an agreement was executed the following month for the school year 1971-1972. Both the fact-finding report (not part of the record but administratively noticed here) and the subsequent agreement treat the inclusion and coverage of principals and vice-principals as unquestioned. Principals received from $800 to $1400 a year increase (apparently the ratio method of compensation was replaced by specific sums) and it was agreed, inter alia, that the Board would pay the reasonable expenses of one principal per year to attend the annual meeting of the Department of Elementary School Principals of the New Jersey Education Association; vice-principals continued to be placed on the teachers' guide with specified additional dollars to be paid according to a separate table; there were provisions concerning the work year and work day of principals and vice-principals.

5/ It was also in January 1971 that the Supreme Court issued its decision in Board of Education of the Township of West Orange v. Elizabeth Wilton, 57 N.J. 404.

In November 1971, during the term of the last mentioned agreement the Board again petitioned the Commission seeking the exclusion of principals and vice-principals from the negotiating unit and claiming that the Supreme Court's decision in Wilton 5A/ enunciated new standards which would require a disposition favorable to the Board. Thus the instant case.

The Hearing Officer in this case found principals to be supervisors because they effectively recommend to the Superintendent on the hiring of unit employees and they evaluate both tenured and non-tenured teachers with the result that a negative evaluation may be an element in the decision not to renew the contract of a non-tenured teacher. He further found that they recommend regarding teacher assignment, they are consulted and directed by the Superintendent regarding the administration of the labor agreement, they are responsible for the work of the clerical and custodial staffs and the classroom activities of teachers, they attempt to resolve for the employer grievances at Step One, and they substitute for the Superintendent during the latter's vacation (although the record is silent on their authority at these times). 6/ The Hearing Officer also found that the history of negotiations for a single unit of principals,

---

5A/ "...we hold that where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and that a unit which undertakes to include all of them is not an appropriate negotiation unit within the intendment of the statute." Wilton, supra, at pg. 427.

6/ There was no specific finding that vice-principals are supervisors but in the prior Commission proceeding (CU-4) such finding was made on the basis that although they were full-time teachers they possessed the same authority as principals and substituted for principals. While a less compelling case exists for finding vice-principals to be supervisors, neither party urges separate treatment or disposition of the two categories. They will be treated as one.

vice-principals, teachers and others, beginning in 1965 constituted "established practice" within the meaning of the statute's provision permitting supervisors and non-supervisors to be in the same unit. 7/ He likewise found that four successive, written, one year labor agreements between the Board and the Association extending over the period 1969 to 1973 8/ and covering the same mixed unit constituted "prior agreement" within the meaning of that same statutory provision. The Hearing Officer then faced the central question: what is the impact of Wilton and subsequent like decisions upon an existing unit of supervisors and non-supervisors which has been grounded upon "established practice" and "prior agreement"?

Reduced to essentials, the Board argument, drawing upon Wilton, is that where the evidence demonstrates conflict of interest, of a substantial kind, be it potential or in fact, arising from the inclusion of supervisory personnel with those supervised, that fact requires the separation of those in conflict, regardless of the depth or success of the relationship that may have evolved from the negotiations process. The Association, viewing the statute literally, argues that given "established practice" and/or "prior agreement", the perpetuation of the mixed unit is dictated thereby, that the holding in Wilton is inapposite although certain dicta is supporting. As detailed at length in his report the Hearing Officer reasoned that Wilton acknowledged a legislative intent that historically based mixed units might in exceptional circumstances be approved, that the

7/ N.J.S.A. 34:13A-6(d): [The Commission] shall decide in each instance which unit of employees is appropriate for collective negotiations provided that, except where dictated by established practice, prior agreement or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors...

8/ The fourth agreement, for the school year 1972-1973, had not at the time of the hearing been executed but its terms were being implemented. The specific provisions concerning principals and vice-principals are virtually the same as in the preceeding agreement except that 1) principal salaries increased about $800 and vice-principal salaries increased

(continued next page)

Court in Wilton, in terms of its holding, was formulating and adopting principles to be observed in the creation of a new unit rather than in the endorsement of an existing mixed unit, and that with respect to such existing unit, the caveats expressed in dicta should and could be harmonized by distinguishing between actual and potential conflict of interest. The Hearing Officer agreed with the Board that the responsibilities of principals and vice-principals, on behalf of their employer, could give rise to situations presenting them with conflicting interests vis-a-vis those supervised, but further found that no such conflict had arisen. He thereupon concluded that in the absence of demonstrated conflict in the past, the established relationship should not be disturbed.

The Board excepts to these findings and conclusions on three general grounds: 1) there is neither "established practice" nor "prior agreement;" 2) in applying Wilton, no significant distinction should be drawn between an existing unit and a proposed unit where none previously existed; 3) even assuming the existence of "established practice" or "prior agreement", it was error to conclude that principals or vice-principals should remain in the existing unit.

Before treating these exceptions we think it important to record several preliminary observations. First, to narrow the issue, it is advisable to state what this case is not about. Obviously, we are not concerned here with a definition in the first instance of a unit where none previously existed. Nor are we called upon to make a determination regarding elements within a unit for which the employer has given recognition but which the parties have agreed, at the time of recognition, is subject to clarification by the Commission. Nor is this a situation involving an established unit

8/ (footnote continued from preceding page)
to the same extent teacher salaries did; 2) the continued inclusion of these titles in the existing unit was made dependent upon the outcome of the instant case and any appeal therefrom.

for which clarification is sought because of alleged substantial changes in job content. Likewise, we are not concerned here with clarification arising from the creation of new job titles or the employer's assumption of new functions. Finally, this not a case where the requested clarification is grounded on some basis other than conflict of interest arising between supervisors and non-supervisors. Considerations significant to or dispositive of the instant case may be of little consequence in these or other settings.

The second observation is a statement of the Commission's past treatment and interpretation of the statute's "established practice-prior agreement" provision. The Commission has consistently given a narrow interpretation to these terms. In cases where the issue has been raised - and many of them have been in the education field - the Commission has generally refused to find that either condition existed because the evidence failed to establish that the process of negotiation was the method whereby significant employee conditions were determined. Based on the Commission's experience, it appeared that many, perhaps most, employer-employee relationships prior to 1968 were characterized by an organization's request for improvement of a particular condition or resolution of a particular grievance. Upon submission the matter was considered privately by the employer and his decision was later announced. There was seldom evidenced a sense of a mutual undertaking for the resolution of differences or an intent to achieve common agreement. The Commission was reluctant to equate this pattern of behavior with "established practice" or "prior agreement" for several reasons. First, these provisions were stated as exceptions to what the Legislature declared to be the norm; if the statutory exceptions came to embrace the typical pre-1968 relationship, the exceptions might have wider application than the norm. Second, and of greater

significance, a history of this kind of relationship has little value as an indicator of whether a mixed unit would meet the statute's objectives when after 1968 the parties became subject to Chapter 303 and their relationship escalated to a process of negotiations.

Consequently, in the early cases examined where one party sought to protect an existing unit by invoking the exceptions, the Commission seldom found that a pre-1968 relationship evidenced what it considered to be the minimum requisite ingredients: an organization regularly speaking on behalf of a reasonably well defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue (now called negotiations) with an employer who engaged in the process with an intent to reach agreement. Since 1968 and the enactment of Chapter 303, there has of course been a requirement of good faith negotiations with an exclusive representative.

Turning to the Board's first exception and in light of the above observations, we think it evident that the relationship of these parties falls squarely within the term "established practice." Beginning in 1965 the parties negotiated agreements on a regular basis for a single unit including principals and vice-principals. By today's standards the scope of those early negotiations and agreements was limited, but it did include salaries (which today as then is usually of primary interest), method of payment, fringe benefits and non-economic matters. When the parties moved into negotiations under Chapter 303 the only significant difference discernible from the evidence is that the scope of their agreements expanded and they now executed written documents drawn in agreement form, but the process whereby agreement was reached remained essentially the same and the same group of employees continued to be covered. It was not until after the execution of the written agreement for 1969-1970 that the Board first

tested the unit question. Following a determination, the parties resumed negotiations for the same group wherein, according to the Board, a matter of high priority was negotiating a change in the method of compensating principals - something the parties had previously done in 1965; an agreement was executed in June 1971 for the following school year. The Wilton decision had issued six months earlier. 9/

The Board contends that the record in the first proceeding (CU-4) does not support a finding of "established practice". It filed no exceptions to the Hearing Officer's Report in that case and it sought no review after that Report was adopted. The Board also objects that the Hearing Officer in the instant case precluded the Board from offering testimony with respect to those early negotiations. Since it was the Board's position at the hearing that the application of Wilton to the facts developed in the first proceeding would now produce an opposite result, no purpose would seem to be served by taking additional testimony on those early negotiations. 10/

In this same first exception, the Board claims the Hearing Officer also erred in finding that "prior agreement" existed. Since it is clear

9/ The Board alleges extenuating circumstances to explain its posture during this set of negotiations. Having considered same, we give greater weight to what was done than to the reasons for doing it.

10/ The Board's offer of proof indicates that the testimony would show that the only negotiations regarding principals concerned their compensation. As indicated earlier, that is not an insignificant item. In any event, the offer would seem to be at odds with evidence taken at that first hearing. Since the same Superintendent testified at both hearings, it is not unreasonable to expect that such testimony would have been given at the first opportunity, not now in rebuttal to earlier findings. The only significant testimony by the Superintendent at that first hearing, in terms of the history of the situation, was his statement that principals and vice-principals were included within that first formal agreement (for 1969-1970) because they had been included in the unit previously.

from the statute that the exceptions are intended to be alternative conditions, and since "established practice" has already been found, a specific finding (or absence) of "prior agreement" would not seem to alter the central question of the case. The documents in evidence parallel the experience of the parties and support what has been said above concerning their relationship. Whether the pre-Chapter 303 documents constitute "prior agreement" is unnecessary to decide. We are satisfied that under the circumstances of this case the 1969-1970 agreement and, following resolution of the first case, the 1971-1972 agreement constitute "prior agreement". 11/ In sum we find no merit to the Board's first exception. The second and third exceptions will be treated together since they involve the basic question posed above: given established practice and prior agreement, what is the effect of Wilton?

Having considered the extensive presentations of the parties, we think that each has, to a certain extent, overstated the case. The Board argues that upon finding a conflict of interest, present or possible, the Commission is required by Wilton to remove the source of the conflict. It also says that this position does not vitiate the statute's exceptions: if there is no showing of either kind of conflict, then supervisors may continue to remain with non-supervisors. Frankly, we do not see how such a situation could exist and the Board offers no illustration. Unless a supervisor has a paper title and hollow authority, there seems to be no way to eliminate a potential for conflict. The term supervisor denotes it. Consequently, to adopt the Board's position in full would appear to negate

11/ In that first case, the Hearing Officer found no prior agreement although the 1969-1970 document was in evidence. The Commission is not bound to accept that finding if contrary to the evidence. The later pro forma adoption of the Hearing Officer's report is a statement that the end result is acceptable and does not imply approval of every element within that report. In its exceptions now, the Board states that "obviously" no prior agreement could be found before the 1971-1972 agreement, which was the first to be negotiated after the decision in CU-4. To the contrary, it is not obvious why the 1969-1970 agreement is beyond the area of consideration.

any possible application of the statute's exceptions.12/ Furthermore, Wilton is not seen as making the sweeping declaration the Board attributes to it. If it did, it cannot be reconciled with the statute's exceptions. Yet, the Court specifically recognized the exceptions as a reservation to the general standard for unit determination. At page 424, it said: "Aside from these specifications [i.e., the exceptions], the nature of the negotiating unit is to be determined generally 'with due regard for the community of interest among the employees concerned...' " The Court then proceeded to hold that where a conflict of interest exists (of the kind relied on by the Board here), "the requisite community of interest [among supervisors] is lacking..." at page 427. It seems beyond question that the Court realized the exceptions posed different considerations and that its holding related to the question of community of interest in non-exceptional circumstances. The "requisite" community of interest which conflict can negate is not a requisite when dealing with the exceptions. The Commission concludes from its reading of Wilton that the Court was not required and did not attempt to interpret the exceptions in light of its observations regarding conflict, and its decision cannot be read to say that the existence of conflict renders the exceptions inapplicable.

This view is supported by a post-Wilton decision of the Appellate Division, reviewing a Commission decision in which the interest of officers was found to be in conflict with that of firemen, thereby causing them to be placed in separate units. The Court affirmed that finding and went on to observe, as the Commission had also, that there was no "established

12/ The Board exhorts the Commission to exercise "creativity" and to "legislate itself in this area." Yet it is manifestly inappropriate for an administrative agency to indulge in a construction which would totally disregard an expression of the Legislature. The Board offers no solution, only an exhortation.

practice "which would dictate a contrary result.[13/] If the finding of conflict ends further inquiry, as the Board urges, the Court could have so stated and declined to consider the question of "established practice". That it did not is an indication of its view of the statute and Wilton.

The Association's position, on the other hand, seems unduly narrow. It argues that the prohibition against mixed units falls whenever established practice or prior agreement is found and that upon either finding, the continuation of such unit is mandated. That approach is fairly mechanical and seems to remove from consideration any evaluation of whether the end result--the allegedly mandated unit--is within the overall objectives of the statute. We can conceive of situations where the end result would be demonstrably obnoxious to such objective and surely beyond the contemplation of the Legislature when it adopted these exceptions. It also lends itself to a literal application whereby a single, one-year, prior agreement would be sufficient to trigger the exceptions with no regard to be given to other substantial considerations. When the Legislature charged the Commission to "decide in each instance which unit of employees is appropriate", we think it intended a greater degree of discretion and judgment than the Association's approach permits. The statute itself suggests that no unit is mandated because of particular findings. It provides that "except where dictated by [one of the exceptions]," the mixed unit is forbidden; it does not say the existence of any of the exceptions dictates a particular unit result. Clearly, the sense of it is that an appraisal and judgment is to be made to determine whether exceptional circumstances warrant,

---

13/ I.A.F.F. v. P.E.R.C. et al, docket no. A-2345-70, decided Jan. 15, 1972; certification denied, Sept. 21, 1972, docket no. C-14 (both unreported).

indeed require, a deviation from the norm. Like the Board, the Association cites Wilton for support, specifically, that portion where the Court, pondering the statute's ambiguity concerning what to do with different echelons of supervisors, observed that the statute "is not wholly without direction", and then recited the statutory exceptions applicable to mixed units of supervisors and non-supervisors, at page 424. The Association equates the Court's effort to find a sense of direction with a "directive" that mixed units be endorsed whenever the exceptions exist. For the reasons already indicated, we do not agree.

In the Commission's analysis of the problem, it should be said at the outset that we do not regard the holding in Wilton as dispositive of the instant case, but do find certain principles stated in Wilton persuasive in the interpretation of the statute's exceptions. Contrary to the Board, we attach great weight to the history of the parties' relationship and little weight to the possibility that at some future time an actual conflict of interest may develop. This relative distribution of weight was not a factor in Wilton since the Court was not confronted with examining an historical relationship and it specifically reserved on the question of the exceptions. The exceptions are directed to the past--the practice and agreement of the parties--and it seems elementary that past fact, not future possibility, was intended as the area for examination in making the determination: do circumstances exist which dictate an exception to the rule prohibiting mixed units? 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 supervisor 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 speculation not benefited by hindsight. And that is, we think, what the Legislature intended: the preservation of mixed units where,in spite of this anomoly, the experience of the parties has demonstrated their ability to negotiate and administer agreements while at the same time protecting the integrity of their interests, and where that experience has further demonstrated no compelling reason to terminate or alter that relationship. Relating this interpretation to the Wilton formula, the effect of such an experience is to eliminate from significance what the Court described as potential conflict of interest, or, more precisely, to reason that while a potential for conflict may be forecast, past experience has proven it to be unrealized, not of a substantial kind but rather de minimis, and therefore, in the words of the Court "tolerable".

Conversely, Wilton considerations provide a frame of reference for identifying those situations where circumstances mitigate against, rather than dictate, the preservation of a mixed unit, i.e., where past experience reveals compromise of interest or significant detriment to the rights of either party, to the employees or segment thereof. Under this approach, neither a finding of established practice, prior agreement, nor an acknowledgement of possible future conflict would necessarily dispose of the question of the mixed unit's appropriateness. The history of the relationship would have to be examined.

Returning to the facts of the instant case, we have found established practice and prior agreement, the Hearing Officer has found that by virtue of the principals' and vice-principals' duties and authorities there is a possibility of conflicting interests, the Board has

conceded that since 1965 "there has been no direct incident wherein a principal or vice-principal could be accused of demonstrably subordinating his obligations to the Board because of his or her membership in the same unit as teachers," and the Superintendent has testified that there has been no incompatibility or problem arising from the dual status of those in question. A complete review of the record confirms the Superintendent's conclusion.

The Board cites the Baumann incident to demonstrate, not subordination of duty, but the risk that such could happen. In 1972, Principal Baumann advised the Superintendent in writing that a particular clause in the then current agreement was too restrictive on the scheduling of teachers and the number of subjects they would teach. To accomodate individual student differences, he felt greater flexibility was needed and recommended that the Board seek to remove this clause from future contracts. In the earlier proceeding (CU-4), Mr. Baumann testified that, as a principal, he had been on the Association's negotiating committee and that he wished to remain a member of the Association. He also testified that his dual status had not interfered with his duties as principal and cited at length his handling of a group grievance from 14 teachers in which he denied relief and the matter was dropped. He also cited that he had reported to the Superintendent on the tardiness of various teachers who failed to comply with his direction, that he had persuaded the Superintendent not to hire a particular individual under consideration by the Superintendent but whom Baumann considered unsuitable. It cannot be denied that the opportunity to be derelict has and does exist. But the performance of Baumann demonstrates, if anything, that he has been able to faithfully serve both interests. The Board applauds his integrity, and the

Association requests his continued inclusion in the unit.

The case reduces itself to the final position of the Board: the mere potential for conflict requires the removal of supervisors from the unit. We should think that if that possibility is to be credited as a persuasive factor, there would have been some event, conduct or pattern of behavior in the seven-year experience before this hearing which would confirm the Board's present expectation and strongly suggest, if not conclusively demonstrate, the inappropriateness claimed for this unit, and the adverse consequences resulting from its existence. The fact that the record speaks to the contrary shows the claimed potential to be insubstantial and sufficiently remote to disqualify it as a controlling factor. The record further shows that over the years the parties have successfully negotiated, concluded and administered agreements for this unit (except once, in 1970, during the pendancy of the earlier case) with no showing that the interest of either party or that of the employees has been compromised. Finally, the record shows no compelling reason to disturb the existing relationship. In sum, there exists a set of circumstances which dictates an exception to the rule.

The Board claims this result is absurd. Admittedly, it runs counter to the general notion regarding composition of an appropriate unit and by normal standards would not be found appropriate. But the Legislature intended that there be exceptions, and the parties by their conduct have established that this otherwise inappropriate unit has served and accomplished substantially the same purpose that any traditionally appropriate unit is designed to do. That, it seems, is the best evidence of whether a unit is appropriate.

The Board relies upon an earlier decision of this agency, Board of Education of East Orange, and asks that the rationale there be

followed. That case involved a large number of administrative positions previously included in the teachers' unit which that Board argued should now be excluded. Applying his understanding of Wilton, the Hearing Officer recommended the exclusion of certain higher echelon positions. No exceptions were filed and the Acting Executive Director routinely adopted the Report pro forma. No party sought review by the full Commission. The Hearing Officer had reasoned that the statute's exceptions must be read together with the statute's requirement that units be defined with due regard for community of interest and that under Wilton the presence of conflict displaced any possible community of interest. As indicated earlier, we do not accept that analysis, nor does it seem that the Wilton court did either. The traditional concepts of community of interest are not controlling in applying the exceptions.

The Commission concludes for the reasons cited herein that exceptions two and three of the Board are without merit, and that principals and vice-principals remain in the existing unit. The petition seeking to exclude them is therefore dismissed.

BY ORDER OF THE COMMISSION

Charles H. Parcells

Charles H. Parcells
Acting Chairman

Dated: September 14, 1973
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST PATERSON BOARD OF EDUCATION
Public Employer-Petitioner

and Docket No. CU-71

WEST PATERSON EDUCATION ASSOCIATION

Respondent-and
Employee Representative

APPEARANCES:

For the Public Employer
Greenwood, Weiss, & Shain, Esquires
By Stephen G. Weiss, Esquire

For the Association
Cassel R. Ruhlman, Esquire
By Joel S. Selikoff, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission by the West Paterson Board of Education requesting clarification of unit on November 23, 1971. Pursuant to a Notice of Hearing dated August 9, 1972, a hearing was held before the undersigned Hearing Officer on October 3, 1972. At the hearing the parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence, to argue orally and to file briefs. Briefs were filed by both parties. Upon the entire record of this proceeding the Hearing Officer finds:

1. West Paterson Board of Education, petitioner, is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. Respondent, West Paterson Education Association is an employee representative within the meaning of the Act and is subject to the provisions of the Act.

3. As a dispute exists concerning the composition of the negotiating unit, a question concerning the representation of public employees exists and the matter is therefore properly before the Hearing Officer for Report and Recommendations to the Executive Director.

BACKGROUND

The petitioner seeks clarification of the negotiating unit to exclude the titles of Principal and Vice-Principal from the existing negotiating unit, 1/ alleging, in essence, that their current inclusion has created a substantial potential for conflict which mandates their exclusion. 2/ Principals and Vice Principals have been included in the negotiating unit described in footnote 1 since the first negotiated contract was entered into by the parties on March 5, 1969 for the contract year 1969-1970, and prior thereto since 1965. Thereafter successive agreements were entered into for the ensuring contract years of 1970-71, 1971-72, and 1972-73. 3/

While Principals and Vice-Principals are currently included in the existing negotiating unit, the parties have negotiated in their present contract a "reservation clause", which states that "the inclusion of

1/ The existing unit recognition clause also includes the titles of teachers, nurses, psychologists, home instruction teachers, attendance officers, supervisor of nurses, custodians, custodians in charge of maintenance, secretary, clerks, social workers, librarian. Excluded from the existing unit are the Superintendent of Schools and Business Manager/Secretary to the Board.
Joint Exhibit No. 4, Agreement, West Paterson Board of Education and West Paterson Education Association, (1969-1970) page 1.1.

2/ The legal basis which petitioner asserts substantiates this position is based on standards set forth by the Supreme Court in: Board of Education of the Town of West Orange v. Elizabeth Wilton, et al, 57 N.J. 404, (1971).

3/ Joint Exhibit No. 1 Agreement, West Paterson Board of Education and West Paterson Education (1969-1970).
Joint Exhibit No. 2 Agreement, West Paterson Board of Education and West Paterson Education Association (1970-1971).
Joint Exhibit No. 3 Agreement, West Paterson Board of Education and West Paterson Education Association (1971-1972).
Joint Exhibit No. 4 Agreement, West Paterson Board of Education and West Paterson Education Association (1972-1973).

Principals and Vice-Principals in the unit is subject to the determination by the Public Employment Relations Commission of the pending petition for clarification of unit (Docket No. CU-71) and any appeal therefrom." 4/

A prior Hearing Officer's Report and Recommendation and Executive Director decision have been rendered involving the instant parties. 5/ In that case, the public employer petitioned to clarify the then current negotiating unit to exclude Principals, Vice-Principals and Supervisor of Nurses, alleging at that time that these individuals were managerial executives and that the inclusion of these titles created potential conflict with the remaining employees in the unit.

Following formal hearing in that matter the Hearing Officer found:

1. That Principals and Vice-Principals are not managerial executives pursuant to the Act.

2. Principals and Vice-Principals are supervisors within the meaning of the Act.

3. While the Hearing Officer found evidence for potential conflicts between the supervisors and teachers, he found the supervisors in question to possess a sufficient community of interest with the remainder of the negotiating unit to warrant a finding that the unit as it existed was an appropriate unit.

4. Having found with due regard for the community of interest of the employees concerned that the existing unit was an appropriate unit, the Hearing Officer found an established negotiating practice since 1965 which warranted an "exception" to the statute which prohibits the inclusion of

---

4/ Joint Exhibit No. 4, supra, page 1.1.

5/ West Paterson Board of Education and West Paterson Education Association, Docket No. CU-4, filed 10/31/69, Hearing Officer's Report and Recommendations, 8/4/70, E.D. Decision No. 16,9/14/70. It should be noted that this decision pre-dates Wilton, which petitioner alleges compels a reconsideration of the matter.

of supervisors and non supervisors in a single unit except where dictated by established practice, prior agreement or special circumstances. 6/

5. Accordingly, he recommended the petition be dismissed.

Neither party to that proceeding filed exceptions to the Hearing Officer's Report and Recommendations. In the absence of exceptions, the Executive Director adopted the Hearing Officer's Report and Recommendations pro forma, on September 14, 1970. The parties have stipulated that the undersigned take official notice of the entire record of the prior proceeding in consideration of the instant matter.

In light of the dismissal of the prior petition, the respondent employee representative moved during formal hearings before the undersigned Hearing Officer for PERC dismissal of the petition or grounds of res ajudicata.

The Hearing Officer has carefully considered the motion to dismiss and based on the circumstances of the case recommends that a Hearing Officer's Report and Recommendations should issue based on the merits of the case. The parties have by their own agreement, as indicated above, reserved inclusion of the disputed titles in their present recognition clause of the agreement pending PERC determination of the instant petition. Further, in the prior matter the Executive Director Decision No. 16 was rendered prior to the Supreme Court remand of Wilton to the Commission and the petitioner herein has raised Supreme Court direction in Wilton as a prime basis for reconsideration of this case.

Therefore, the Hearing Officer will consider the evidence and argument herein and render recommendations. If the undersigned finds petitioner's request to be without merit he will recommend dismissal of the

---

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

petition. By proceeding in this manner the undersigned feels however that the inquiry herein should be limited to the area petitioner has raised for PERC consideration.

In this case, the public employer renews its previous contention that Principals and Vice-Principals should be excluded from the existing negotiating unit. Petitioner seeks such re-determination on the following basis:

> "In the case of IMO West Paterson Board of Education and West Paterson Education Association , Docket No. CU-4, decided by the Executive Director on September 14, 1970, (E.D. No. 16) it was held that Principals and Vice-Principals are includable because of 'established practice.' Your petitioner believes the basis and rationale of that decision, in light of more recent developments, compels reconsideration and a determination more consistent with the best interests of the school system and its employees, as well as the spirit and intent of the Public Employer-Employee Relations Act." 7/

The "recent developments" which petitioner argues compels reconsideration of the instant matter is court direction found in Board of Education of the Town of West Orange v. Elizabeth Wilton et al, 57 N.J. 404, (1971), Elizabeth Fire Officers Association v. City of Elizabeth, 114 N.J. Super 33, (1971), and Commission treatment of conflict of interest or "Wilton criteria" in subsequent Commission decisions. 8/ Petitioner argues that these decisions which were rendered subsequent to the disposition of the prior matter, constitute an important change in the state of the law regarding unit composition which now compels a decision excluding Principals and Vice-Principals from the negotiating unit.

7/ Public Employment Relations Commission Exhibit No. 1 - Petition.

8/ Borough of Rockaway, E.D. No. 43, November 10, 1972.
City of Elizabeth, PERC No. 71, September 13, 1972.
City of Union City, PERC No. 70, August 4, 1972.
Township of Hanover, E.D. No. 41, December 23, 1971.
City of Camden, PERC No. 52, February 25, 1971.
City of Camden, N.J. Super , 1972 cert. denied N.J. 1972.
Board of Education of East Orange, E.D. No. 34, July 26, 1971.

The Hearing Officer feels the instant matter requires perspective to clarify the legal issues involved and the positions of the parties.

The statute provides that negotiating units be defined with "due regard for the community of interest among the employees concerned." 9/ It empowers the Commission to "decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non supervisors..." [emphasis added] 10/ It is this latter section more commonly referred to as the "statutory exceptions" which in the prior matter the Hearing Officer found to exist and on which the recommendation to continue the unit was based.

The gist of Wilton and subsequent Commission decisons quoted above by the Petitioner is that in determining the appropriateness of a proposed negotiating unit a consideration of the question of substantial potentiality for conflict of interest among employees in a particular unit is mandated as a factor in determining whether the proposed unit fulfills the statutory requirement that such unit be determined with due regard for community of interest. 11/

It is apparent that if a substantial actual or potential conflict of interest is found within the proposed negotiating unit, this factor would negate other considerations of community of interest which may be present. In Wilton, it was held:

> "That where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and that a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute." 12/

9/ C.34:13A-5.3(7) N.J.S.A.
10/ C.34:13A-6(d) N.J.S.A.
11/ See also Elizabeth Fire Officers, supra. p. 37.
12/ Wilton, supra, p. 427.
See also, City of Camden, Supra.

Petitioner argues that there is sufficient evidence in the record of potential or actual substantial conflict in the existing unit to decide that it is not an appropriate unit, and that the requisite community of interest among the employees in the unit is lacking.

In its opening argument the petitioner states that had Wilton issued prior to the issuance of the Hearing Officer's Report and Recommendations in Docket No. CU-4, its request to exclude Principals and Vice-Principals would have been sustained.

> "I believe from the testimony in the previous hearing alone, and the Hearing Examiner's own decisions, that alone, without more, would be sufficient to come to a completely opposite conclusion.
>
> I was going to make reference later, but I might as well do it now.
>
> In the previous Hearing Officer's decision, on page 9, he makes the following statement in supportin his conclusion, that Principals are appropriately included in the bargaining unit:
>
> '...furthermore, the Board has offered no evidence that the present relationship in which Principals and Vice-Principals are in the same unit as classroom teachers has had any serious effect on the school system, although the Superintendent contends the potential for such conflict is present. The undersigned recognizes that Principals in their roles as supervisors will have to take certain actions and make decisions which are covered by the collective agreement. There may be some conflict between the Principal as a unit member, and the Principal as a supervisor...'
>
> I think that alone, quite frankly, is sufficient, a finding by the Hearing Examiner of a potential conflict.
>
> Had he had the Wilton case as a guideline, his decision would have been the opposite." [emphasis added.]

In addition to the area of potential conflict which the Petitioner asserts compels a reversal of the prior matter, it is also argued that the "established practice", which in the prior matter was found to have existed since 1965 and dictated the continued inclusion of Principals and Vice-Principals, was erroneously exalted over the what is now alleged to compel a reverse finding - that substantial actual or potential conflict of interest exists within the instant unit. This latter consideration the presence of conflict and the absence of a community of interest, is alleged to override the statutory exception which permits the inclusion of supervisors and non supervisors in a single unit where dictated by established practice, prior agreement or special circumstances.

The West Paterson Education Association disagrees with the Petitioner's interpretation of Wilton and argues that Wilton is not applicable to the instant unit dispute raising no new legal issue. The Association cites language in Wilton which it alleges clearly distinguishes and separates the legal issue in that decision from the legal issue in the instant case. 13/

> "The extent to which supervisors should be permitted in units of rank-and-file employees, or of other supervisors, is essentially a matter of legislative policy. To the extent reasonably possible the question whether supervisory personnel should be included or excluded ought to be dealt with forthrightly and not vaguely or by silence. See ACIR Report, supra, at 95-96. Although Sections 5.3 and 6(d) of N.J.S.A. 34:13A are somewhat more explicit than the New York counterpart, and somewhat less explicit than statutes of other states, our statute in its totality is ambiguous as to whether all grades of supervisors in a local school system except the superintendent of schools or his equivalent, may be included in the same unit. But it is not wholly without direction. Except where established practice, prior agreement, or special circumstances dictate the contrary, inclusion of non supervisory personnel in the same unit as supervisors who have "the power to hire, discharge, discipline or to effectively recommend

13/ Wilton, supra, p. 424.

> the same" is prohibited. Aside from these specifications, the nature of the negotiating unit is to be determined generally "with due regard for the community of interest among the employees concerned..." [Emphasis added]

Based on this language, the Association argues that there is in fact legislative policy which dictates continued inclusion of supervisors in the unit of non supervisors providing the exceptions are met. 14/ These conditions, namely established practice or prior agreement are argued to be present in the clearest fashion thereby serving as protection to the existing unit structure. To do otherwise would violate the clear intention and direction in the statute as structured by legislative policy.

It is also argued that the Supreme Court in the final sentence of the passage quoted above explicitly recognized that the general standard of community of interest (or absence of conflict of interest) criteria on which de novo unit determinations are based is not an overriding consideration when applied to negotiating units which through established practice or prior agreement have included supervisors with non supervisors.

FACTS

The West Paterson school district consists of four elementary schools with classes ranging from kindergarten through eighth grade. There are three principals involved with one principal assigned to two schools. There are also three vice-principals, one full-time and two who serve as teachers with additional compensation for administrative duties.

The Principals and Vice-Principals prior to the negotiation of the first formal collective negotiations agreement for the contract year 1969-70 were included in a negotiating unit with non supervisory personnel since 1965. 15/ Subsequent thereto, commencing in 1969, four consecutive agreements 16/ were negotiated by the public employer and employee

---

14/ C. 34:13A-6(d) N.J.S.A.

15/ This issue was determined in the prior matter of E.D. No. 16. That record fully supports a finding of established practice.

16/ Joint Exhibits No. 1-4, supra. See footnote No. 3.

representative, all of which included the principals and vice-principals in the negotiating unit described in footnote no. 1. As a result of employer sentiment during negotiations for the contract year 1972-73 the parties have made the continued inclusion of these titles subject to determination of the instant petition.

The parties to this proceeding have stipulated that principals and vice-principals are supervisors within the meaning of the Act. (Tr.11, p. 13) However, as the issue of conflict of interest is raised herein as the basis for the reconsideration of this matter an inquiry into the specific role of the principal as a supervisor is necessary.

The principal effectively recommends the hiring of employees within the unit although his function in hiring is not independent of the Superintendent of Schools with whom the function is shared. (Tr. 1, p. 91-97) The principal evaluates the performance of non-tenure and tenure teachers and at least with respect to non-tenure teachers a negative recommendation may result, again in a joint atmosphere with the Superintendent of Schools, in the dismissal of the teacher by virtue of non-renewal of the ensuing year's employment contract. (Tr. 2, p. 94-95) The Superintendent then makes a formal recommendation to the Board. These functions while not indicative of independent authority from the Superintendent of Schools does support the parties stipulation that the employees concerned are supervisors within the meaning of the Act.

In addition to the above, the principal is responsible for the teacher's classroom activities and the activities of clerical and custodial personnel. The principal serves as management's representative in the first step of the grievance procedure and serves a written reply to a grievance brought to level two. The principal is consulted by the Superintendent on the manner in which the Superintendent wishes the terms of the labor agreement to be enforced. A professional file of evaluations of professional personnel

is maintained by the principal. While the Superintendent is on vacation the principals and vice-principals substitute in his abscence although the record does not indicate whether this includes the exercise of any authority. In addition, the principal's duties include the recommendation of teacher assignment, supervision of teacher lesson plans, and certain policing of the labor agreement following directives of the Superintendent of Schools relating to the administration of preparation periods and the holding of professional meetings within his building which are limited by the terms of the agreement.

FINDINGS

The undersigned finds, based on the above facts, that principals are supervisors within the meaning of the Act. This consideration standing alone would be sufficient evidence to exclude them from a proposed negotiating unit which seeks to include non-supervisory personnel absent a negotiating history which warranted a finding of established practice or absent a history of collective negotiations agreements which warranted a finding of prior agreement.

However, this is not a proposed negotiating unit but an existing one. The employees in question, as the above facts indicate, have been included in a unit of non-supervisors since 1965, and four collective negotiation agreements are in evidence before the undersigned. There is established and prior agreement. **

The Petitioner contends that a substantial, potential or actual conflict of interest within the Wilton context is sufficient to exclude those individuals despite the established practice and prior agreement. Petitioner interprets the statutory exceptions as not to mandate the continued inclusion of supervisors upon a finding of potential conflict of interest. The respondent association interprets the statute as to dictate the inclusion

** Middlesex County College, PERC No. 29, (1969).
Willingboro Board of Education, E.D. No. 3, (1970).
Henry Hudson Regional School District, E.D. No. 12, (1970).

upon a finding of established practice and prior agreement and that upon such finding, there is no alternative but continued inclusion.

In attempting to reconcile these contrasting legal positions, the undersigned is compelled to make the following observations from which his finding will ensue. It is self-evident that a supervisor, by the very nature of the duties he possesses (hire, fire, discipline or effectively recommend the same) is placed in a position of some measure of potential conflict over the individual he supervises. Since the statute permits the inclusion of supervisors in a unit of non-supervisors where dictated by established practice, prior agreement or special circumstances, the undersigned does not feel that the Commission is compelled to exclude supervisors from a unit of non-supervisors where they have been historically included solely upon the finding that a potential conflict exists by virtue of the exercise of supervision by one unit member over the other. This logic of - supervisor - therefore potential conflict - therefore exclusion, cannot be reconciled with legislative policy and statutory direction. The very basis for the statutory proscription against a prospective unit which seeks to undertake the inclusion of both supervisors and non-supervisors, is the recognition that inherent potential conflict exists between the two classes of employees. In a de novo unit determination their inclusion in a single unit is prohibited to avoid this inherent potential conflict from potentially surfacing to the detriment of the parties.

The Commission, supported by the courts, 17/ has extended the logic of the prohibition and the Wilton concept to exclude certain non-supervisors from other non-supervisors in a proposed unit where the evidence would support a finding that a potential, substantial, conflict of interest exists between the non-supervisors.

17/ City of Camden, supra. Footnote No. 8.

The Court and Commission decisions cited by the Petitioner, with the exception of East Orange Board of Education, 18/ were all de novo unit determinations, where the records indicated that potential conflicts of interest were present in the proposed units and that if such units were permitted to operate, there would be a substantial likelihood of conflicts developing which would manifest itself to the detriment of the objectives of the parties. The presence of conflict was sufficient to void the presence of any community of interest in the proposed units.

When the undersigned examines these situations with the instant petition, it is found that an existing unit which contains supervisors and non-supervisors which has an historical basis, need not possess the community of interest required when defining a proposed unit. The Legislature recognized that supervisors may not have a community of interest with non-supervisors and so prohibited their inclusion in prospective units. The Legislature opted, however, to permit the continuation of units which include supervisors and non-supervisors where dictated by established practice and prior agreement. For this reason the Supreme Court in Wilton found direction in the statutory exceptions of established practice and prior agreement. It was noted that the inclusion of supervisors in any negotiating unit should be a matter of Legislative policy. The Supreme Court also recognized that the statutory exceptions contemplated a unit which may not possess the standard of community of interest required of the proposed unit. 19/

Careful examination of the issue, however, cannot lead the undersigned to conclude that established practice and prior agreement can be so read as to cement an historical unit where: (1) In the exercise of supervisory

18/ In East Orange, supra, Footnote No. 8, certain supervisors were excluded from a negotiating unit despite established practice and prior agreement. This is offered by Petitioner as a policy precedent. The undersigned disagrees. In the absence of exceptions the Hearing Officer's Report and Recommendation cannot be interpreted as policy.

19/ Wilton, supra at p. 424.

responsibilities the existence of actual conflict between the supervisors and non-supervisors permits the setting aside of the exceptions where evidenced that their inclusion has prevented the employer from discharging his management responsibilities or the employee organization in full and fair representation of unit employees, and (2) if the authorities of the supervisors can additionally extend beyond the role of supervisor and can be found to be so inherently close to being managerial so as to dictate that the statutory exceptions not apply to them.

The criteria is examined below:

1. Within the Wilton context, the undersigned finds that the record supports the employer's contention that there is potential conflict of interest within the existing unit by virtue of the supervisory responsibilities the principals possess in the areas of evaluation and participation in the grievance procedure. However, the record is devoid of any evidence which indicates that by virtue of the composition of the unit that there have been any actual incidents or examples where areas of potential conflict have surfaced or have shown that the unit as it has existed has operated to the detriment of the objectives of the employer or the employee representative. For the purposes of developing the record in this area the Hearing Officer inquired of the Superintendent of Schools, Mr. Harold L. Ritchie:

> Hearing Officer: Previously, on your direct examination by Mr. Weiss, you went down a list of items, like lesson plans, transfer evaluations where you felt there might be an area where potentially an action of a Principal might not be compatible with the Board's expectation of what he might do in those instances; do you remember that?
>
> The Witness: Yes. That's the potential variable, yes.

> Hearing Officer: To your knowledge, have there been any incidents, or events, or examples, during the past few years, where by virtue of the Principal's and Vice-Principals' inclusion in the Teachers' unit, that there has been an actual contradiction, or incompatibility, or problem --
>
> The Witness: No.
>
> Hearing Officer: (Continuing) with respect to the relationship between the Board and the Principal, as an administrative agent of the Board?
>
> The Witness: No, there has not.

2. The examination of the record cannot lead the undersigned to conclude that the authorities of the principals in fact so inhere to management that the exceptions not apply to the instant situation. While the statute prohibits managerial executives from any type of representation, the undersigned feels that despite the narrow definition of managerial executives within the school system (superintendent of schools or his equivalent) if the functions of the principals were to be so closely tied to the formulation or participation in labor relations policy that such individuals should not be permitted continued inclusion in the unit of non-supervisors. There is no evidence which would lead the undersigned to conclude that the principals are involved in policy formulation at the highest level of management. Instead the principals are consulted by the Superintendent in how the contract will be administered and implemented in the areas supervised by the principals. For example, the contract limits the extent to which the principal can require teachers to meet regarding professional policy and practices and the principal upon direction of the Superintendent polices this section. They may not, however, be held without the consent of the Superintendent. The principal also administers the section of the agreement regarding the working day of the teachers upon direction of the Superintendent.

The record does indicate that a memo was prepared by a principal regarding a clause in the agreement which the principal felt needed additional administrative flexibility. 20/ The undersigned cannot infer from the memo that it satisifies the objective standard of policy formulation as described above.

Therefore, in the absence of evidence of any actual conflict which has prevented the principals from discharging their supervisory responsibilities to management, absent any evidence that their inclusion has created a situation where the employee representative has been unable to fairly represent its membership, absent substantial and persuasive evidence which would lead the undersigned to conclude that the principals exercise a major role in the development and administration of the negotiated agreements, or management's labor relations policy, the undersigned must find that the statutory exceptions prevail and that the individuals concerned remain within the unit as it has historically existed. 21/ This finding fully takes into consideration the area of supervision which the principals effectively discharge. The exercise of supervisory responsibilities and the potential conflict created in the exercise of those responsibilities, cannot lead the undersigned to conclude, in view of the statutory exceptions, that the principals be excluded from the unit.

This Hearing Officer has considered traditional precepts of labor relations and finds that the New Jersey statute permitting supervision within units of non-supervision is aberrational and one can be sympathetic to the postion of a management who desires separate representation for their supervisors.

20/ Public Employer Exhibit #3, Copy of memo dated January 3, 1972, to Mr. Ritchie, from Mr. Baumann.

21/ While the principals have been emphasized in this report the identical conclusion and recommendation is made for vice-principals. The record indicates little, if any, significant duties which would compel exclusion of this title.

This factor cannot dictate that the Legislative intent be ignored based on the entire record of this proceeding.

RECOMMENDATION

Based on the entire record of the proceedings, the facts and findings above, the undersigned respectfully recommends that the petition herein be dismissed.

RESPECTFULLY SUBMITTED

James W. Mastriani
Hearing Officer

DATED: June 12, 1973
Trenton, New Jersey