

P.E.R.C. NO. 84-146

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF WILLINGBORO, COUNTY OF BURLINGTON,

Public Employer-Petitioner,

-and-

Docket No. CU-80-40

WILLINGBORO EDUCATION ASSOCIATION,
NJEA, NEA,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in agreement with a Commission Hearing Officer, finds that the following positions are supervisory and should be removed from the negotiations unit represented by the Willingboro Education Association: Department Chairpersons (including those in Child Study and Special Education), Guidance Directors, Athletic Director, Music Coordinator, Reading Supervisor, and Director of Vocational Education; and that the following positions are non-supervisory and should remain in the negotiations unit: TV Program Director and TV Specialist. Neither party filed exceptions to the Hearing Officer's report.

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NJEA, NEA,

Employee Representative.

Appearances:

For the Public Employer-Petitioner, Barbour &
Costa, Esqs. (John T. Barbour, Of Counsel)

For the Employee Representative, Selikoff and
Cohen, Esqs. (Joel S. Selikoff, Of Counsel)

DECISION AND ORDER

The Board of Education of the Township of Willingboro ("Board") has filed a Petition for Clarification of Unit with the Public Employment Relations Commission. The Board seeks the removal of the following allegedly supervisory positions from a negotiations unit of teachers and other non-supervisory employees represented by the Willingboro Education Association, NJEA, NEA ("Association"): Department Chairpersons (including those in Child Study and Special Education), Athletic Director, Guidance Directors, Reading Supervisor, Music Coordinator, Vocational Education Director, TV Specialist, and TV Program Director.^{1/}

^{1/} The Board originally also sought the removal of the position of Coordinator of Health and Physical Education, but that position was later abolished, thus making its unit placement a moot issue.

Commission Hearing Examiner Charles A. Tadduni conducted eight days of hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On April 18, 1984, the Hearing Officer issued his report and recommended decision. H.O. No. 84-12, 10 NJPER ____, (¶ ____ 1984). He found that the position of TV Specialist and TV Program Director were not supervisory and should not be removed from the Association's negotiations unit, but that all the other positions in dispute were supervisory and should be removed.

The Hearing Officer served a copy of his report on the parties and informed them that exceptions, if any, had to be filed with the Commission on or before May 2, 1984. Neither party filed exceptions or requested an extension of time.

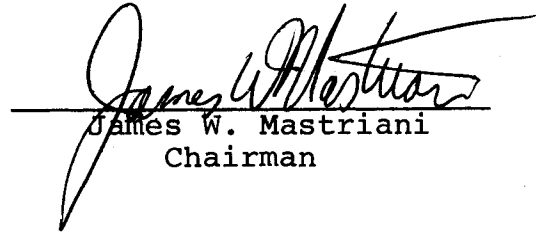
Pursuant to N.J.A.C. 19:11-8.8 and N.J.S.A. 34:13A-6(f), the full Commission, in the absence of exceptions, has transferred this case to itself and has delegated authority to me to issue a decision. I have reviewed the record. The Hearing Officer's findings of fact (pp. 6-28) are accurate. I adopt and incorporate them here. Based on these findings, and in the absence of exceptions, I agree with the Hearing Officer's conclusions concerning the unit placement of the positions in dispute.

ORDER

The following positions are removed from the negotiations unit which the Willingboro Education Association, NJEA, NEA represents: Department Chairpersons (including those in Child Study and Special Education), Guidance Directors, Athletic

Director, Music Coordinator, Reading Supervisor, and Director of Vocational Education.

The following positions remain within the negotiations unit which the Association represents: TV Program Director and TV Specialist.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
June 14, 1984

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NJEA, NEA,

Employee Representative.

SYNOPSIS

In a Clarification of Unit Petition filed by the Willingboro Township Board of Education, a Commission Hearing Officer determines that the titles of Department Chairperson, Guidance Director, Athletic Director, Music Coordinator, Reading Supervisor and Director of Vocational Education perform various supervisory duties for the Board. The employees in these titles were found to have effective involvements in several areas: teacher hiring, evaluation and decisions concerning renewal/non-renewal. The Hearing Officer concludes that the inclusion of these positions in a negotiations unit which contains non-supervisory teaching professionals has engendered such conflicts of interest as to warrant the exclusion of these positions from the extant unit. Accordingly, the Hearing Officer recommends that the extant unit be clarified to exclude the titles of Department Chairperson, Guidance Director, Athletic Director, Reading Supervisor, Music Coordinator and Director of Vocational Education.

The Hearing Officer further concludes that the titles of TV Specialist and TV Program Director are not supervisors within the meaning of the Act and do not perform such supervisory duties as would engender conflicts of interest by their being in the same negotiations unit with non-supervisory teaching professionals. Accordingly, the Hearing Officer recommends that the request to clarify the extant unit to exclude these titles be denied.

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

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(John T. Barbour, Esq.)

For the Employee Representative
Selikoff and Cohen, Esqs.
(Joel S. Selikoff, Esq.)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") on December 10, 1979 by the Board of Education of the Township of Willingboro (the "Board") seeking a clarification regarding the composition of a collective negotiations unit represented by the Willingboro Education Association (the "Association"). The Board seeks a determination which would exclude certain employment titles from the negotiations unit represented by the Association on the grounds that said titles are supervisory and that their inclusion in a collective negotiations unit with non-supervisory teaching personnel gives rise to conflicts of interest. Pursuant to a

Notice of Hearing, hearings were held before the undersigned Hearing Officer on May 8, 11, 12, July 7, 9, 20, 21 and September 24, 1981, in Trenton, at which all parties were given an opportunity to examine witnesses, present evidence and argue orally. Briefs were submitted by the parties by December 23, 1981. Based upon the entire record in this proceeding, the Hearing Officer finds:

1. The Willingboro Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. (the "Act"), is subject to its provisions, and is the employer of the employees who are the subject of this proceeding.

2. The Willingboro Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Board has filed a Petition for Clarification of Unit seeking the exclusion of several allegedly supervisory positions from the unit represented by the Association. ^{1/} The Association opposes the exclusion of these positions from its unit. Accordingly, there is a question concerning the composition of the negotiations

1/ Exhibit J3 (Article I), an agreement between the Board and the Association covering school years 1980-1982 sets forth the following recognition clause:

A. The Board recognizes the Association as the exclusive representative of the personnel hereinafter listed for the purpose of collective negotiation of salaries and of the terms and conditions of employment pursuant to Chapter 123 P.L. 1974: (1) classroom teachers, nurses and librarians, (2) ten and twelve month counselors, social workers, speech therapists and learning disability teacher-consultants. (3) the district reading supervisor, (4) high school and junior high school guidance directors, (5) ten and twelve month psychologists, (6) certificated T.V. professional personnel and any equivalent positions which, after the execution hereof, may be created by the Board.

(continued)

unit and the matter is properly before the Hearing Officer for a report and recommendations.

I Positions of the Parties

The Board asserts that the unit should be clarified to exclude each of the following 43 positions:

A) Department Chairperson -- (31 positions): eleven at Willingboro Memorial Junior High School, ten at John F. Kennedy High School and ten at Willingboro High School.

B) Child Study Team Chairperson -- (1)

C) Special Education Chairperson -- (1)

D) Athletic Director -- (1)

E) Guidance Directors -- (3): one at Memorial, one at John F. Kennedy, and one at Willingboro High School.

F) Coordinator of Health and Physical Education -- (1)

G) Reading Supervisor -- (1)

H) Music Coordinator -- (1)

I) Vocational Education Director -- (1)

J) TV Specialist -- (1)

K) TV Program Director -- (1)

The Board seeks the removal of these positions from the Association's negotiations unit based upon the contention that the employees in these positions are supervisors within the meaning of the Act.

1/ (continued)

B. The parties hereto have agreed that for the purposes of this Agreement the Association was considered to be the representative of the Director of Vocational Education, Coordinator of Music and Coordinator of Health and Physical Education, which determination was made without prejudice to the rights of either the parties hereto or the individuals involved to pursue any appropriate avenue available to any of them for the purpose of obtaining a definitive adjudication of this issue.

The Board further maintains that none of the statutory exceptions which may permit a mixed (supervisor/non-supervisor) unit to exist are present herein. Finally, the Board contends that regardless of the Commission's conclusion concerning the status of the above-referred employees as supervisors, actual and potential conflicts of interest have resulted from the inclusion of these positions in the same unit with non-supervisory teaching personnel; accordingly, the Board argues that the above-referred employment positions should be excluded from the Association's unit.

At the outset of this proceeding, the Association's position herein was as follows: a) the positions at issue are non-supervisory in nature; b) assuming arguendo the positions are supervisory, there is an established practice herein which would mandate that these positions remain in the Association's current negotiations unit; c) in any case, there is no conflict of interest -- actual or potential -- which has arisen herein; and d) the duties of these positions have remained essentially the same through the years. In its post hearing briefs, the Association maintained and argued only points (a) and (d) -- that the titles in dispute are now and always were non-supervisory in nature.

II Discussion of Law

N.J.S.A. 34:13A-5.3 provides in part that "...nor except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same have the right to be represented in collective negotiations by an employee

organization that admits non-supervisory personnel to membership."

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

The Commission has determined that the Act, in effect, defines supervisor as one having the authority to hire, discharge, discipline, or to effectively recommend any of the foregoing.

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court examined the factors attendant upon the structuring of negotiations units consistent with the purposes of the Act. The Court stated:

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

The Commission has concluded that the mere finding of an established practice or prior agreement does not mandate the continuation of a mixed supervisory/non-supervisory unit. ^{2/} Further, in In re Ramapo-Indian Hills Regional High School District Board of Education, D.R. No. 81-26, 7 NJPER 119 (¶12048 1981), the Director stated:

^{2/} In re West Paterson Board of Education, P.E.R.C. No. 77 (1973).

Logically, the statutory exceptions which preserve pre-existing relationships are not applicable where the circumstances underlying the pre-existing relationship no longer exist, as in the instant matter where the scope of the Director's supervisory responsibilities have been significantly upgraded, thus creating a potential conflict of interest between the Director of Guidance and other unit employees. The circumstances relevant to the narrow statutory exception having been removed, the Act's policy prohibiting mixed supervisory/nonsupervisory employee units is pre-eminent. Ramapo, supra, at p. 120.

In In re Waldwick Board of Education, D.R. No. 82-5, 7 NJPER 498 (¶12221 1981), the Director stated:

The mere finding of a pre-1968 established practice or prior agreement does not necessarily mandate the continuation of a mixed supervisory/nonsupervisory unit. West Paterson, supra, holds that the subsequent occurrence of an event constituting a substantial conflict of interest will terminate the continued applicability of the statutory exception. See also In re River Dell Bd. of Ed., P.E.R.C. No. 78-85, 4 NJPER 252 (¶4128 1978). Additionally, the mixed unit may not continue to be preserved where the supervisory status of the individuals involved has been substantially altered. Waldwick, supra, at p. 500, n. 2.

III Findings of Fact and Conclusions of Law

The Willingboro School District is comprised of 14 school buildings. Eleven are elementary schools which each have one principal and no vice or assistant principal. There is one junior high school (Willingboro Memorial) which has a principal, a vice principal and two assistant principals. Finally, there are two high schools, each having a principal, a vice principal and three assistant principals.

(A) Department Chairpersons

Pre 1968 -- Prior to 1968, most Department Chairpersons did

not hold certification as supervisors. The contract between the Board and the Association covering the period February 1968-December 1968 (Exhibit J-13) contained a provision which required that only certified supervisory personnel be permitted to evaluate teachers. That contract also called for each teacher's evaluation to be presented by the building principal, in the name of the building principal and in narrative form. These provisions have been substantially, if not completely, continued in the parties' contracts through the date of hearing.

Assistant Superintendent Gilbert testified that in 1968, when he was a high school principal in Willingboro, Department Chairpersons gave informal, discussion-type input to building administrators (principal, vice principal and/or assistant principals) concerning the evaluations of teachers in their respective departments. The building administrators did almost all of the observations of teachers in the classrooms, wrote the evaluations, signed the evaluations and presented them to the teachers. The Department Chairperson's role in this process was minimal. Mr. Gilbert testified that when he was a principal, Department Chairpersons were not usually involved in interviewing teacher candidates or in other aspects of the hiring process. George Brandau, now the Director of Secondary Education but a principal in 1969, testified similarly to Mr. Gilbert concerning the Department Chairpersons' role in the evaluation and hiring processes during this period of time. Mr. Brandau indicated that a few of the Department Chairpersons sometimes became more involved in the evaluation process. However, he notes that this was unusual and was not the expected norm from Department Chairpersons; rather, he suggests that these occasional

higher levels of involvement were due to the nature of their own (the Department Chairperson) personalities or an unusual set of circumstances. ^{3/} If there was any Department Chairperson involvement at all with personnel problems, it was usually to call attention to the problem and then to leave it for various administrators to deal with. Mr. Brandau describes the Department Chairperson position during this period as primarily an administrative and liaison-type position. Angelo Coppola, now the Personnel Manager but a vice principal in 1971, testified that in 1971 only building administrators were involved in the hiring process. Further, Mr. Coppola testified that Department Chairpersons did not routinely observe teachers; in this period, Department Chairpersons' observations were done upon request by a building administrator. Such requests were usually occasioned by a problem which the building administrator felt warranted the subject matter expertise of the Department Chairperson. ^{4/}

Robert Trauma, now a vice principal but a Department Chairperson from 1964-1971, testified similarly to Mr. Coppola in this regard -- that when he did observe teachers in the classroom, it was usually at the request of a building administrator who had discussed with Trauma the type of problem which required Trauma's subject matter expertise (science). ^{5/} Trauma also described the Department Chairperson position in those years (64-71) as far narrower in its scope than it is today. He said Department Chairpersons then were the liaison between the administration and the teachers,

^{3/} Tr 2/13-17; 133-140.

^{4/} Tr 4/120-30.

^{5/} Tr 4/100-105.

did curriculum work, departmental budgets and worked out solutions for various specific departmental problems (grades, room assignments, books, materials, etc.).

Only one Association witness testified concerning Department Chairperson functions specifically during and prior to 1968. ^{6/} Curtis Allen first became a Department Chairperson in 1968 (Vocational Education). He testified that he did in-class teacher observations that were short, part-period visits. A building administrator also did observations of the vocational education teachers, independent of Mr. Allen. Based upon his observations of a teacher, Mr. Allen would complete a check-list of items and turn that over to the building administrator who was assigned to evaluate teachers in the vocational education department. The building administrator then completed the evaluation process by writing the evaluation and giving it to the teacher. Mr. Allen also testified that during this period, he was involved in one instance in which he discussed an ongoing problem with two teachers, write letters of reprimand to them when it did not improve and made his building administrator aware of the problem. Eventually, the teachers were not renewed.

Based upon all of the foregoing, the undersigned concludes that prior to 1968, the Department Chairpersons were not supervisors

6/ While several other Association witnesses testified concerning Department Chairperson functions, their testimony was couched in terms of pre and post 1976, the first year in which the Board required Department Chairpersons to have supervisory certification.

7/ Tr 7/40-50.

within the meaning of the Act. ^{8/} The testimony shows that the Board's evaluation process during that time period was generally an informal one and was not uniform district-wide. The Department Chairpersons' participation in the evaluation process was also not consistent. On balance, their participation level in the teacher evaluation process was comparatively low. There is no testimony in the record which shows that they had any role in the hiring process during this time. The only evidence of any supervisory activity was Mr. Allen's testimony concerning his counselling and writing letters of reprimand to two teachers who were eventually non-renewed. On balance, the evidence clearly indicates that Department Chairpersons in the pre 1968 era were not supervisors within the meaning of the Act.

The parties stipulated that they had engaged in collective negotiations within the meaning of the Act prior to 1968 and that the job titles which are in dispute herein were included in their pre 1968 negotiations unit. If, however, Department Chairpersons are determined currently to be supervisors within the meaning of the Act, because the undersigned has concluded that the Department Chairpersons were not supervisors within the meaning of the Act during the pre 1968 period, there can be no established practice asserted herein as the basis upon which to justify the continued inclusion of Department Chairpersons in the current unit of non-

^{8/} While the Hearing Officer is aware that the Association has now modified its position herein and is contending that the contested positions are not now and never were supervisors within the meaning of the Act, the undersigned has made the above finding for two reasons: (a) the Association may again change its position before the Commission; and (b) the Board's position in this matter is premised upon an asserted change in the nature of the Department Chairperson position which occurred over time to make the current Department Chairperson position a supervisory one.

supervisory teaching professionals.

Post 1968 -- The focus of much of the balance of the testimony about Department Chairpersons was from the years 1972-77 and 1980-81.

In May 1975, the Board passed a resolution requiring that all Department Chairpersons hold supervisory certificates as of September 1976. ^{9/} Prior thereto, most Department Chairpersons in Willingboro did not possess supervisory certification.

Generally, the Department Chairperson position has encompassed four principal types of duties: (a) teaching (b) liaison work between the administration and teachers (c) administrative work -- department budgets, supplies, curriculum, teaching schedules, etc. and (d) some measure of duties which lay somewhere between personnel troubleshooter and supervisor, depending upon the point in time when the reading was taken. Department Chairpersons have a reduced teaching load: either two teaching/zero duty periods or three teaching/zero duty periods, depending upon the size of the department.

The Board's position that Department Chairpersons should be removed from the unit is hinged upon their factual contention that the supervisory component of the Department Chairperson position has changed, primarily since the Board first required Department Chairpersons to possess supervisory certification at the start of the 1976-77 school year. It is at this point which the

^{9/} The undersigned notes that during this period (1975-80), the Legislature and the Department of Education were enacting various requirements in connection with T & E legislation. Included among these were certain minimum qualitative and quantitative requirements for the evaluation of teaching staff by school districts.

Board contends it changed the operational balance of its teacher evaluation system, and with that, the concomitant responsibilities of Department Chairpersons. The Association's position on this issue is directly opposite -- essentially, that nothing has changed (vis-a-vis Department Chairperson's supervisory duties) from before to after the 1976-77 school year.

Based upon the record herein, the undersigned concludes that between 1974 and 1977, the Board changed the structure, procedures and administration of its teacher evaluation system and in so doing, shifted the central responsibility for the actual performance of teacher evaluations to the Department Chairpersons. While it is clear from the record that Department Chairpersons had been involved, in varying degrees, in the teacher evaluation process prior to 1976, subsequent thereto Department Chairpersons emerged as the pivotal person in each department's evaluation process. Prior to this time (1976), this central role had been occupied by one of the building administrators. 10/

Several witnesses testified that the evaluation process and the Department Chairpersons' role therein had changed during this time. 11/ The evaluation process is today more tightly structured and run than it was in years prior to the 74-77 timeframe. The primary functional responsibility for doing teacher evaluations now rests with Department Chairpersons. 12/ The purpose of evalua-

10/ The record indicates that, typically, each building administrator is assigned a department or group of departments in which he/she coordinates the completion of teacher evaluations, with the appropriate Department Chairperson.

11/ Tr 2/40-50; Tr 3/39, 50-54, 83; Tr 4/4-10, 92-95; Tr 5/6-8; Tr 6/58 (teachers never got draft reports prepared by Department Chairperson Noller); Tr 7/5-7 (Department Chairperson Bergen prepared an informal "supervisory report" for each teacher and gave it to his assigned building administrator), 17, 58 and 92.

12/ Tr 3/39; Tr 4/95; Tr 7/50.

tions is to improve the quality of student instruction through improving each individual professional staff member. Also, in the case of non-tenured instructional staff, evaluations assist the administration in deciding whether or not to recommend that the Board grant tenure to a non-tenured staff member. Tenured teachers are given one formal evaluation yearly; non-tenured staff are given three formal evaluations yearly. Each formal evaluation is preceded by a number of classroom performance observations. Teacher observations are now done by Department Chairpersons (primarily) and the building administrator to whom the particular department is assigned.

The current teacher evaluation procedure now utilized by the Board was changed and shaped primarily during the period from 1974-1977. Department Chairpersons are functionally the primary evaluators -- they do the bulk of the evaluation work and make the evaluation judgments. While it is true that the building administrators are also still involved in the evaluation process, it is equally true that the work done by Department Chairpersons in the evaluation process is rarely (if ever) changed, only occasionally is supplemented and their evaluation opinions generally are accorded substantial weight in the district. ^{13/} The step-by-step evaluation procedure itself has changed. Today that process is as follows: (a) classroom pre-observation conference between the Department Chairperson and the building administrator; (b) pre-observation conference between the Department Chairperson and the teacher being evaluated; (c) classroom observation; (d) post-

13/ Tr 2/96-106, 135-145; Tr 3/39; Tr 4/120, 130-140.

observation conference between Department Chairperson and building administrator; (e) post-observation conference between Department Chairperson and teacher; (f) formal evaluation of teacher is written by Department Chairperson. After an appropriate number of observations (which will vary with the circumstances and the people involved), the Department Chairperson will write a formal evaluation. This formal, written evaluation will be based primarily upon the Department Chairperson's classroom observations; however, also part of the considerations are the Department Chairpersons' non-classroom, day-to-day observations of the teacher, conversations with the building administrator and feedback from other sources such as parents and students. The Department Chairpersons now sign the written evaluation (whereas before 1976 they did not). Department Chairpersons have supplanted building administrators as the primary performer in the teacher evaluation process.

While in their testimony several Department Chairpersons indicated their roles had not changed from before to after 1976, their own testimony belies this contention. During years prior to 1976, Department Chairpersons Montgomery and Allen indicated that what they provided to their building administrators vis-a-vis a teacher's evaluation was a checklist or summary of their observations. This was not the teachers formal written evaluation, which in those times was written and signed by the building administrator. Department Chairpersons Noller and Bergen indicated that they prepared a "supervisory report" as a result of any observations they performed and that this too was not the teacher's formal evaluation but only a summary document which they provided to the building administrator who eventually wrote the

evaluation. While Department Chairperson Crosby states that the pre and post 1974-77 role of Department Chairpersons is "essentially" unchanged, her testimony indicates that the 6-step evaluation process was not utilized until 1976.

That Department Chairpersons have been delegated a meaningful role in the evaluation process is clear from this record. Ms. Crosby's testimony, ostensibly offered to show that Department Chairpersons input into this process is insubstantial, supports the opposite conclusion. Ms. Crosby testified that in 1979, she disagreed with her building administrator concerning the timing of an observation and the content of the building administrator's alteration of the evaluation written by Crosby. Their disagreement eventually led them to discard the original set of observations and the consequent evaluation, and to perform a new set of observations (consonant with the timeframe which Crosby had originally suggested) and to draft a new evaluation. 14/

Accordingly, the undersigned concludes that the Board's evaluation process has evolved from an informal and inconsistent procedure in which Department Chairpersons and building administrators had widely varying roles, to a process which is structured formal and consistent and one in which the Department Chairpersons play a central and crucial role. However, it is not merely the Department Chairpersons' role evolution which provides reason for removing the Department Chairpersons from the extant teachers' negotiations unit. Moreover, it is what flows from their redefined roles -- conflicts of interest -- which provides the compelling basis

14/ Tr 5/32-45, 103-110. See also, Tr 3/52. Tr 4/138-42.

for their removal from the extant unit. The record in this matter is rife with examples of both actual and substantial potential conflicts of interest which have been engendered by the presence of Department Chairpersons in a collective negotiations unit with non-supervisory teaching personnel. There is testimony about several instances which occurred in various departments where the Department Chairpersons, on the basis of his/her observations and evaluation of a teacher, recommended non-renewal of the teacher's employment. 15/ (In several instances, the teachers were not renewed.) There is also testimony by two Department Chairpersons who were (and are) Association activists and who avoided all involvement in any non-renewal recommendation or other types of disciplinary actions which were actually taken against teachers in their departments while they were Department Chairpersons. 16/

There were instances of teachers who brought grievances complaining about their evaluations -- performed, written and signed by their Department Chairperson. Further, the Department Chairperson attended the grievance hearings and participated therein on behalf of the Board, while the grievant was being represented by the Association. 17/

There was testimony concerning an instance where a grievance was filed about a letter of reprimand issued to a teacher by a building administrator. The teacher's Department Chairperson attended the grievance hearings on behalf of the grievant and was

15/ Tr 2/98-100, 141; Tr 3/43; Tr 4/104-110, 134-144; Tr 7/13-17, 57, 65-72.

16/ Tr 6/38, 74, 90-110.

17/ Tr 7/65-72.

called as a witness by the Association. This same Department Chairperson served as an Association building representative while also serving as a Department Chairperson, 18/ as did a number of other Department Chairpersons.

Finally, there was extensive testimony in the record which establishes that in November 1977, a strike occurred in the Willingboro school district; that prior to the strike, a strike vote was taken by the Association of its members; that several Department Chairpersons attended the Association's strike-vote meeting and voted in favor of the strike; that almost all teachers did not work in their teaching positions in the Willingboro school district during the strike; that almost all (if not all) Department Chairpersons did not work during the strike; that picketing by employees occurred; that some Department Chairpersons participated in the picketing and in various other ways assisted the Association in functioning during this time period; and finally, that the Board, through its supervisory and managerial staff, tried to run its educational operations during this time and was unable to do so because of the strike. 19/

The record would further indicate that because of their heightened involvement in the evaluation process, the district administration has consciously enhanced the Department Chairpersons' involvement in the hiring/interviewing process -- a special effort is now made to have the Department Chairpersons attend and participate in teacher candidate interviews; and their assessment of a candidate's "model lesson" presentation is particularly sought by

18/ Tr 6/82, 96-105.

19/ Tr 2/25-30, 142; Tr 3/115, 153-159; Tr 4/17-19, 85-87; Tr 5/61; Tr 7/26, 62 and 75.

the administration.

Based upon the foregoing, it is quite clear that having Department Chairpersons in the same collective negotiations unit with teachers has engendered such conflicts of interest as would militate against the inclusion of Department Chairpersons in the same unit with non-supervisory teaching personnel. Having earlier concluded that Department Chairpersons were not supervisors in pre-1968 years, no established practice may now be asserted to justify the continuation of a mixed supervisory/non-supervisory unit. Further, even assuming arguendo that an established practice may be asserted to have existed herein, the changes in the duties of the Department Chairpersons have given rise to such conflicts of interest as would prohibit the inclusion of Department Chairpersons in a unit with non-supervisory teaching personnel.

(B) Child Study and Special Education Department Chairpersons, Guidance Directors and Athletic Director

Pre 1968 -- There is no testimony specifically concerning the supervisory/non-supervisory roles of the Child Study Department Chairperson, Special Education Department Chairperson and Guidance Directors in the pre-1968 years. Further, there is no suggestion that their roles with regard to evaluations and hiring were different from that of other Department Chairpersons during this time period.

From 1968-71, the Athletic Director position was part time (an honorarium) -- the Athletic Director had a reduced teaching schedule (three classes per day -- in this regard, the Athletic Director position was treated similarly to Department Chairperson

positions). During this time period, the Athletic Director was not extensively involved in the recruitment, interviewing and hiring of coaches. This was at least partially due to the schedule constraints created by the teaching load carried by the position. In part, it was also due to the supervisory system which was then in effect -- as noted above, the supervision during this timeframe was centered upon the building administrators. The Department Chairperson level positions were not prominent in the Board's supervisory processes.

Accordingly, there being nothing in the record to indicate that these department chairperson-level positions were supervisors and further, there being nothing to indicate that these positions were essentially different from their academic department chairperson brethren, the undersigned concludes that the Child Study and Special Education Department Chairpersons, the Guidance Directors and the Athletic Director were not supervisors within the meaning of the Act prior to 1968.

Post 1968 -- In 1976, the Board required that all of these department chairperson positions hold a supervisory certification. Currently, the Department Chairpersons of Special Education and Child Study are extensively involved in interviewing and hiring professional candidates for their respective departments. They are also extensively involved (as are other Department Chairpersons) in evaluating the professionals in these departments (special education teachers, social workers, psychologists, and learning disability specialists).

The Director of Pupil Personnel Services (the person to whom these Department Chairpersons report) testified that these Department Chairpersons do paper screening of candidates for professional positions and dominate candidate interviews. The Director stated that she does not attend all candidate interviews nor do building administrators. In those cases where the Director does not interview a candidate, she indicated that she would speak to the Department Chairperson and initial and forward his candidate recommendation to the Personnel Office. The Personnel Manager testified that he receives candidate recommendations from these Department Chairpersons. 20/ The Special Education and Child Study Department Chairpersons are the sole authors of the formal written evaluations for personnel in their respective departments and make recommendations for renewal and non-renewal. 21/

Since the advent of the supervisory certification requirement, Guidance Directors have been extensively involved in the hiring and evaluation processes for guidance counsellors. Guidance Directors also supervise the overall construction of student and teacher class schedules, arrange in-service training for guidance counsellors, supervise standardized student testing and develop the departmental budgets.

Guidance Directors do paper screening of guidance counsellor candidates and participate in the interview and selection of new guidance counsellors. Guidance Directors have total responsibility for evaluating guidance counsellors 22/ -- they exclusively perform

20/ Tr 3/109-130.

21/ Tr 3/109-130, 145-150.

22/ Tr 3/109; Tr 4/12.

the observations of guidance counsellors, do pre and post observation conferences and write and sign guidance counsellor evaluations. They make recommendations concerning renewals and non-renewals and make proposals regarding corrective measures to be taken concerning deficient personnel.

The Athletic Director supervises all aspects of the Board's extracurricular athletic program -- supervises coaches and teachers involved in all aspects of extracurricular athletic activities, develops schedules for all athletic teams, makes equipment purchases, arranges for all transportation concerning extracurricular athletic activities, arranges for security for athletic events and regulates the use of all of the Board's athletic facilities. The Athletic Director is a ten-month position and no longer has any classroom teaching duties.

The Athletic Director has an extensive and crucial involvement in the hiring process for coaches and teachers involved in extracurricular athletic events (chaperone, security, etc.). The Athletic Director recruits for coaching positions, screens applicants, interviews applicants and submits written recommendations for hire to the building principal where the sport is based. The building principal then signs the recommendations and forwards same to the Director of Special Education. In connection with filling certain coaching positions, the Board has asked to speak to the Athletic Director directly. Generally, the Athletic Director's hire recommendations are given considerable deference. The Athletic Director also does periodic (but irregular) evaluations of coaches and makes recommendations to the building principal concerning retention/non-retention of coaches.

The Special Education Department Chairperson, the Child Study Department Chairperson, Guidance Directors and the Athletic Director all currently have effective involvements in the teacher hiring and evaluation processes. These employees have participated in non-renewal situations. None of the above positions worked during the November 1977 strike. Based upon the foregoing, the undersigned concludes that because of the involvement of these employees in teachers' hiring and evaluation processes, having these employees in the same negotiations unit with non-supervisory teaching professionals has engendered such actual and substantial potential conflicts of interest as to warrant the removal of the titles (Special Education Department Chairperson, Child Study Department Chairperson, Athletic Director and Guidance Directors) from the collective negotiations unit.

Having concluded that these titles were not supervisors within the meaning of the Act prior to 1968, the undersigned further determines that no established practice may be asserted to justify the continuation of a mixed supervisory/non-supervisory unit inclusive of these titles.

(C) Music Coordinator, Director of Vocational Education and Reading Supervisor

There was no specific testimony concerning the supervisory/non-supervisory functions of these titles prior to 1968.

The Music Coordinator is a position with district-wide responsibilities which is above the music Department Chairpersons in the Board's supervisory hierarchy. The Music Coordinator reports to the Director of Secondary Education and works closely with the music Department Chairpersons. The Music Coordinator plans and

implements the district's music program -- coordinates inter(music) departmental activities, maintains the music library, arranges equipment purchases and repair and devises the district's music budget.

The Music Coordinator occupies a pivotal role in the hiring process. As with athletic coaches and a number of other comparatively specialized areas (i.e., vocational education), hiring cannot usually be done by utilizing solely traditional methods. In music, the district has a program which requires music "specialists" in a number of areas -- theory, band, chorus, orchestra, etc. The Music Coordinator is extensively involved in planning hiring (and in some instances, RIFs). In so doing, the Music Coordinator devises plans to fill the district's music needs within the boundaries of the allocated budget.

After determining the district's music personnel needs, the Music Coordinator advertises for and solicits appropriate candidates through his contacts in the field, screens candidates, participates in candidate interviews (with music Department Chairpersons and building administrators) and makes hiring recommendations to the building principal. 23

Although evaluations of music teachers are done primarily by music Department Chairpersons, the Music Coordinator is also involved in the evaluation process. At the time of the hearing, there was no music Department Chairperson at one of the high school buildings. Thus, the Music Coordinator served as that building's music Department Chairperson. The Music Coordinator also partic-

ipates (selectively) in the evaluation process of music teachers in other buildings around the district. The Music Coordinator is apprised of and brought into any problem situations involving music teachers and has some input -- either verbal or written -- into the evaluation of all music teachers in the district. 24/

The Director of Vocational Education is another district-wide position which is involved in a comparatively specialized area. The Director is above the vocational education Department Chairpersons in the Board's hierarchy. The Director coordinates the vocational education program in the two high schools, develops the district vocational education departmental budget and is extensively involved in the hiring and evaluation processes for vocational education teachers.

The vocational education program is highly specialized in that it involves multiple, complementary instructional modes. There is a classroom instruction component and a component which involves placement and supervision of students in industrial/commercial settings, working in a co-op program. The building principal relies heavily upon the Director of Vocational Education and the vocational education Department Chairpersons in selecting appropriate candidates. The Director assesses vocational education personnel needs, solicits applicants, screens applicants, participates in candidate interviews and makes hiring recommendations to the building principal.

The Director of Vocational Education is heavily involved in the evaluation process and his opinions are given great weight. This higher-than-normal reliance is, again, essentially due to the

specialized nature of the subject area. The Director of Vocational Education is apprised of and brought into problem situations involving vocational education teachers. Over the past few years, the Director made five recommendations for non-renewal; four of the five recommendations were followed by the Board of Education.

The Reading Supervisor supervises the district's compensatory education reading program and the K-12 developmental reading program. The Reading Supervisor composes the district reading department budget, is involved in hiring and evaluating reading teachers, and in planning staff deployment.

Compensatory education reading is taught in all 14 school buildings by approximately 25 compensatory education reading teachers. Developmental reading is taught by all elementary teachers and by some teachers in the secondary schools (approximately 175 teachers). In the elementary schools and high schools, there are no reading Department Chairpersons. Accordingly, the evaluation process for reading teachers in these buildings is performed primarily by building administrators. The Reading Supervisor does occasional evaluations of these teachers. The Reading Supervisor has (at least) verbal input (via discussions with the building administrator in charge of reading teacher evaluations) into each reading teacher's evaluation. The Reading Supervisor is apprised of and is brought into all problem situations involving reading teachers.

The Reading Supervisor interviews (separately) all applicants for compensatory education reading teacher positions and gives a written recommendation to the building principal. His assessment of candidates is given considerable weight due to the somewhat

specialized nature of this field.

All three of the foregoing titles have an extensive involvement in the hiring and evaluation processes for teachers. They occupy a level in the Board's supervisory/administrative hierarchy which is above Department Chairpersons and which has district-wide (as compared to building-wide) responsibilities. While they are not extensively involved in routine evaluations, where problems arise they are informed and consulted by "local" supervision. Further, due to the specialized nature of these subject areas, the building administrations are prone to rely upon their (Director of Vocational Education, Reading Supervisor and Music Coordinator) recommendations more so than usual. Accordingly, the undersigned concludes that the employees in these positions make effective hiring and evaluation recommendations and are thus supervisors within the meaning of the Act. Further, their presence in a unit of non-supervisory professionals creates conflicts of interest sufficient to warrant the removal of said titles from the extant negotiations unit.

(D) Coordinator of Health and Physical Education,
TV Program Director and TV Specialist

There is no specific testimony in the record concerning the pre-1968 functions and responsibilities of these positions. At the time of this hearing, the Health and Physical Education Coordinator (HPE Coordinator) position had been eliminated by the Board of Education.

There is virtually no testimony in the record which indicates that the TV Specialist or the HPE Coordinator performs super-

visory functions. The TV Specialist teaches in the vocational education department and is treated in essentially the same manner as are other vocational education teachers. With regard to the HPE Coordinator, the undersigned believes that to attempt to determine the supervisory/non-supervisory status of a position which no longer exists would be inappropriate. Accordingly, the undersigned finds that the dispute which was initially raised concerning this title is, at this time, moot.

The TV Program Director position was vacant at the time of this hearing (but the position had not been abolished). Testimony concerning this position came primarily from two sources: a Board member and an employee in the title of TV Specialist.

The district runs a TV studio whose purpose is to produce and broadcast educational programming to the district and to serve as a training place for students interested in learning about the TV industry and the skills needed to work therein.

The TV Program Director was described as having performed essentially the same functions as those performed by the TV Specialist, plus the following: composed the budget of the TV station operation and was in day-to-day control of the studio. The TV Program Director did not participate in the hiring process, the discharge/discipline process or the evaluation process. The TV Specialist said his own teaching function was evaluated by the vocational education Department Chairperson and that he (the TV Specialist) was accountable to the Director of Secondary Education concerning the performance of his non-classroom teaching duties. That the TV Program Director had been in day-to-day charge of the studio

operation -- allocation of work and arrangements for the performance of work -- is not an indicator of supervisory status under this Act.

Based upon all of the foregoing, the undersigned concludes that neither the TV Specialist nor the TV Program Director were or are supervisors within the meaning of the Act. Further, the undersigned concludes that the presence of these positions in the extant negotiations unit has not given rise to conflicts of interest. Accordingly, the Board's request to clarify the unit to exclude these titles should be denied.

IV Conclusions and Recommendations

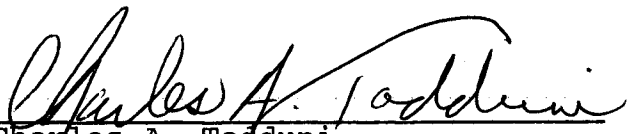
Based upon the entire record in this matter and the above discussion, the undersigned concludes and recommends as follows:

1) Having Department Chairpersons (including those in Child Study and Special Education), Guidance Directors, the Athletic Director, Music Coordinator, Reading Supervisor and the Director of Vocational Education in the same unit with non-supervisory teaching personnel has engendered conflicts of interest of sufficient magnitude as to warrant the exclusion of the above-referred titles from the extant negotiations unit. Accordingly, it is recommended that the unit be clarified, effective immediately, to exclude the following titles: Department Chairpersons (including those in Child Study and Special Education), Guidance Directors, the Athletic Director, the Music Coordinator, the Reading Supervisor and the Director of Vocational Education.

2) The TV Program Director and the TV Specialist are not supervisors within the meaning of the Act nor do they perform

such supervisory duties as would create conflicts of interest warranting their removal from the unit. Accordingly, the undersigned recommends that the request to clarify the unit to exclude the titles of TV Program Director and TV Specialist be denied. The position of Coordinator of Health and Physical Education has been abolished by the Board of Education and the undersigned considers the dispute concerning the status of that title to be moot.

Respectfully submitted,


Charles A. Tadduni
Hearing Officer

Dated: April 18, 1984
Trenton, New Jersey