

P.E.R.C. NO. 87-115

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN HILLS REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-85-35

WARREN HILLS REGIONAL EDUCATION ASSOCIATION

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission clarifies the existing negotiations unit of Warren Hills Regional High School District Board of Education teachers and department chairpersons represented by the Warren Hills Regional Education Association to exclude department chairpersons. The Commission finds that the chairpersons are supervisors.

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WARREN HILLS REGIONAL
EDUCATION ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner, Robert L. Schumann, Esq.

For the Employee Representative, New Jersey Education
Association (John Davis, UniServ Representative)

DECISION AND ORDER

On December 21, 1986, Warren Hills Regional High School Board of Education ("Board") filed a Clarification of Unit Petition. The Board seeks a determination that all department chairpersons are supervisory employees under N.J.S.A. 34:13A-5.3 and therefore should be excluded from the existing negotiations unit of teachers and department chairpersons represented by the Warren Hills Regional Education Association ("Association").

On June 19, 1985, a Notice of Hearing issued.

On August 6 and 7, 1985, Hearing Officer Jonathan Roth conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They filed post-hearing briefs by January 15, 1986.

On October 3, 1986, the Hearing Officer issued his report and recommended decision. H.O. No. 87-6, 12 NJPER 796 (¶17303 1986). He found that department chairpersons are supervisors within the meaning of the Act and he recommended they be removed from the existing unit.

On November 5, 1986, the Association filed exceptions. It asserts that department chairpersons are not supervisors, and that the present unit is appropriate because it has existed since 1968 and there has been no substantial conflict of interest.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 3-10) are generally accurate.^{1/} We adopt and incorporate them here. We add that the industrial arts department chairperson participated in a meeting with the principal and a teacher over a problem with his observation of the teacher. The Association president attended, but did not represent him.

The issue is whether the department chairpersons are supervisors. If they are, they must be excluded from the existing unit. N.J.S.A. 34:13A-5.3^{2/}

1/ The record is not clear on whether there are ten or eleven department chairpersons.

2/ The "established practice" and "prior agreement" exceptions are not applicable here since they apply only to a pre-July 1, 1968 relationship. West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶13062 1982).

N.J.S.A. 34:13A-5.3 defines a supervisor as one "having the power to hire, discharge, discipline, or to effectively recommend the same." Department chairpersons who participate in the hiring process, recommend non-renewal of non-tenured teachers and evaluate and discipline teachers are supervisors within the meaning of the Act. Watchung Hills Reg. High School Bd. of Ed., P.E.R.C. 85-116, 11 NJPER 368 (¶16130 1985). See also Willingboro Tp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984); Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶14202 1983), request for rev. den., P.E.R.C. No. 84-80, 10 NJPER 56 (¶15030 1983); Bloomfield Bd. of Ed., D.R. No. 82-56, 8 NJPER 383 (¶13175 1982); Paterson Bd. of Ed., D.R. 82-46, 8 NJPER 250 (¶13110 1982); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶13062 1982). Here, the department chairpersons are an integral part of the hiring, evaluation and disciplinary processes. Department chairpersons review and screen applicants and submit three candidates to the principal, often including their first choice. They observe teachers and submit observation reports to the principal. These reports are the basis of yearly evaluations. Department chairpersons' recommendations for hiring and non-renewal are generally followed. Department chairpersons also issue written and oral reprimands. We therefore hold these department chairpersons are supervisors within the meaning of the Act and exclude them from the existing unit.

ORDER

The negotiations unit represented by the Association is clarified to exclude department chairpersons.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson and Wenzler voted in favor of this decision. Commissioner Smith was opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987

H.O. NO. 87-6

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE WARREN
HILLS REGIONAL HIGH SCHOOL DISTRICT,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-85-35

WARREN HILLS REGIONAL
EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission finds that department chairpersons employed by the Board of Education of the Warren Hills Regional High School District are supervisors within the meaning of the Act. He also finds that conflicts of interest between the chairpersons and teachers warrant their severance from the unit of teachers and chairpersons.

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 exception 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.

H.O. NO. 87-6

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE WARREN
HILLS REGIONAL HIGH SCHOOL DISTRICT,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-85-35

WARREN HILLS REGIONAL
EDUCATION ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner
Robert L. Schumann, Esq.

For the Employee Representative
New Jersey Education Association
(John Davis, UniServ Rep.)

HEARING OFFICER'S RECOMMENDED REPORT AND DECISION

On December 21, 1984, the Board of Education of the Warren Hills Regional High School District ("Petitioner" or "Board") filed a Clarification of Unit Petition ("Petition") with the Public Employment Relations Commission ("Commission") (C-1).^{1/} The Board seeks to exclude all department chairpersons ("chairpersons" or "department heads") from a negotiations unit composed of teachers

^{1/} Exhibits are designated as follows: C- refers to Commission exhibits; J- refers to Joint exhibits and P- refers to Petitioner's or Board's exhibits.

and department heads represented by the Warren Hills Regional Education Association ("Association").

A Notice of Hearing was issued on June 18, 1985 and on August 6 and 7, 1985 I conducted a hearing in this case at which the parties were allowed to examine witnesses, present evidence and argue orally. I received the completed transcript of the proceedings on November 4, 1985. Post-hearing briefs were submitted by January 15, 1986.

Neither party alleges that the Association or the department heads have a pre-1968 bargaining history with the Board (1T 8, 9). The parties have stipulated that the Association has represented the teachers since November 19, 1968 (J-1). The Board contends that department heads should be excluded from the Association's unit because they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act"), their duties have changed over the years and actual and potential conflicts of interest have resulted from their inclusion in a negotiations unit with nonsupervisory teaching personnel. The Association alleges that the titles are nonsupervisory, there is no actual or potential conflict of interest and the duties of the chairpersons have not materially changed over the years.

Based upon the entire record, I make the following

FINDINGS OF FACT

1. The Board of Education of the Warren Hills Regional High School District is a public employer within the meaning of the Act.

2. The Warren Hills Regional Education Association is a public employee representative within the meaning of the Act.

3. Eleven department chairpersons are employed by the Board (1T 54). The chairpersons job description was issued in 1974 (J-1). It asserts that their function is to assist teachers and evaluate instruction. It vests them with curricular, supervisory and administrative functions. It requires them to obtain a standard New Jersey Supervisors' Certificate. Five are assigned to the Junior High School Building which houses about 75 teachers and the seventh, eighth and ninth grades (J-1; 1T 121, 136). Six department chairpersons are assigned to the Senior High School which houses about 67 teachers and the tenth, eleventh and twelfth grades (J-1; 1T 75). Beginning in 1970, department chairpersons received stipends (1T 13). In 1974 they were required to obtain supervisory certification within three years (J-1). Department chairpersons report to school at the same time as other teachers and occasionally have tasks such as library monitoring and "office," "morning" or "cafeteria" duties (1T 145-146, 188). Chairpersons have reduced teaching load compared to the normal complement of homeroom duty preparation period and five or six teaching periods (1T 108, 147, 188; 2T 46). Chairpersons in one to five member departments devote one period to departmental duties; chairpersons in five to ten

member departments devote two periods to departmental duties; chairpersons in departments with eleven or more members devote three periods to departmental duties (2T 48). The release time is memorialized in the collective negotiations agreement signed by the Township and the Association (2T 58). In all cases, chairpersons teach no fewer than two and no more than four classes in order to carry out their supervisory responsibilities (1T 109). Chairpersons of the english, math, science, social studies, physical education and health departments spend at least 50 percent of their time in their supervisory responsibilities (1T 119; 2T 48).

4. In the early 1970's, department chairpersons did not interview teacher applicants (1T 114). Now, department chairpersons participate with the superintendent and building principal in the selection and evaluation of department members (1T 19, 97, 98). In the selection process, department chairpersons routinely screen applicants for a particular position (1T 18). Initial screenings consist of a review of an application, a personal interview and occasional elimination of some applicants (1T 18, 19, 21). Interviews with applicants are sometimes attended by the building principal or superintendent (1T 23). The chairperson typically recommends a particular applicant to the building principal. The principal then discusses the candidate with the superintendent. A curriculum coordinator or a vice principal occasionally participate in the hiring process after initial screening (2T 74-75). The superintendent frequently interviews the candidate again and issues

his recommendation to the Board, which makes the final hiring decision (1T 26, 27, 76). The social studies department chairperson testified that he interviews all department applicants (one year he was unavailable to interview applicants and two people were hired without his recommendation). Since 1978, the three applicants he recommended for hire were in fact hired (1T 169, 197). The superintendent testified that in the 1983-1984 teacher selection process, he and a school principal favored one specific candidate among the three final candidates for a teacher position in the music department. The music department chairperson recommended another of the three candidates. The superintendent endorsed the chairperson's recommendation to the Board, which hired that same candidate (1T 20, 24-26, 71).

5. In the early 1970's, only those department chairpersons with supervisory certificates formally evaluated teachers (1T 114, 130). The majority of evaluations were prepared by the school principal or vice principal (1T 33). The early evaluations were prepared in "check list" form in contrast to narrative form (1T 32, 163, 181-182). As more chairpersons earned their supervisory certifications during that late 1970's they wrote more "narrative" observations of classroom teachers.

The superintendent described the current evaluation process as follows: A supervisor (i.e., department chairperson or assistant principal or principal or curriculum coordinator) visits a teacher's classroom to observe the teacher conducting a lesson. The

supervisor writes a "response" to the visit which is placed in the teacher's personnel folder and reviewed at the end of the school term (1T 40). A department chairperson may also enter various written comments in a teacher's folder in the course of the term. The supervisor who observes the teacher will schedule a conference at which he or she discusses the observation with the teacher (1T 41). The superintendent recalled one informal grievance filed by a teacher in response to a department chairperson's observation. The Association filed a written request that the observation be reconsidered. Apparently, no further action was taken. The industrial arts department chairperson testified that eight years ago a teacher who was dissatisfied with a classroom observation requested and received a meeting with him, the principal and the Association president. The chairperson stated that the Association president represented the teacher at the meeting (2T 9, 21). The only formal grievance involved an observation written by a curriculum coordinator (1T 35).

At the end of the term, the building principal writes a summary evaluation of the teacher, based primarily on material placed in the personnel folder (1T 39-40). The Junior High School principal testified that department chairpersons are "key evaluators" because they most frequently observe and evaluate non-tenured teachers in his school (1T 155). Summary evaluations are used for matters of promotion, increment, discipline, renewal and as "feedback" for teachers about their classroom performance (1T 43).

6. The department chairpersons also participate in the preparation of Professional Improvement Plans ("PIPS") for teachers (2T 52). PIPS were instituted in the District in about 1980 (1T 13, 86). The superintendent testified that the building principal formulates the plan and the chairperson "carries it out" (1T 85). But the chairperson of the largest department (English) testified that if a teacher was not following a PIP, he would recommend corrections to the teacher (1T 52). The social studies department chairperson testified that the principal has requested his recommendations for the PIPS for teachers in his department (1T 202).

7. There have been two instances in which increments have been withheld from teachers. In one case, the teacher was in a department which had no chairperson. In the second case, the chairperson was not specifically involved (1T 97). With respect to non-tenured teachers, a department chairperson's recommendation of renewal or non-renewal of contract carries significant weight (1T 45). The Junior High School principal testified that he "leans heavily" on department chairpersons recommendations for renewal or non-renewal of teacher contracts (1T 116). He cited one example in which the social studies department chairperson made specific recommendations which he followed in determining which non-tenured teachers would be rehired for the following term (1T 46, 98, 117). The social studies department chairperson explained that one year his recommendation for non-renewal of a teacher's contract was not followed. He stated that the same recommendation was followed the

following year (1T 193-194). The english department chairperson stated that in at least one instance he recommended non-renewal and the teacher's contract was not renewed (2T 53, 75). With respect to tenured teachers, principals submit their year-end observations to the superintendent. Unless a specific concern arose during the term the evaluations are not discussed individually (1T 48).

8. The superintendent testified that department chairpersons have placed about five written warnings or reprimands of teachers in files or mailed notices to them (1T 110-111). The chairperson typically consults with the building principal before a warning is issued (1T 112). The junior high school principal testified that he relies on a department chairperson's recommendation of discipline "a great deal." (1T 115). He recalled that when department heads have informed him of a teacher's failure to maintain lesson plans or grade book notations, he has told the teacher of the problem(s) (1T 116). He also stated that since 1970 no grievance had been filed concerning a department chairperson (1T 140). The social studies department chairperson testified that he was not involved in the disposition of any grievances filed by teachers (1T 196). The building principal once instructed him to inform a teacher that his or her teaching method was unacceptable. The home economics department chairperson testified that she orally reprimanded a teacher who was late for a teaching assignment (2T 230).

9. The department chairpersons' participation in budget formulation have increased substantially in recent years because the District has shifted to "program oriented budgeting" (1T 53). During the 1970's, chairpersons were informed that a certain amount of money was available to their departments (1T 163). Now, chairpersons consult with their teachers and assess the department's needs for materials. They submit a written proposal to the building principal that is refined and sent to the superintendent. The english department chairperson testified that he "constructs" a budget for materials and other departmental needs and presents it to the building principal (2T 50). The industrial arts chairperson testified that he had no more authority now then he had in 1973 to unilaterally determine his department's budget (2T 43). The home economics department chairperson testified that since 1978 departmental budgeting has changed to a line item format (1T 223-224). In 1984, she solicited suggestions from teachers before submitting her proposed budget to the principal. The high school principal informed her that some money needed to be cut from the departments budget and remanded it to her to make cuts (1T 225-226).

10. With respect to possible conflicts of interest, the superintendent testified that department chairpersons' supervisory responsibilities have increased over the years (1T 59-60). The social studies department chairperson testified that over the past six years he has screened applicants, proposed budgets, developed curriculum (in previous years the principal retained that authority

(1T 164)) and consequently has devoted fewer hours to classroom responsibilities. He also stated that one department teacher was mad at him for deleting a New Jersey studies course from the curriculum (presumably pursuant to a legislative measure (1T 210)).

DISCUSSION

The first issue is whether the department chairpeople in the Warren Hills school system are "supervisors" within the meaning of N.J.S.A. 34:13A-5.3 and 5.6. Section 5.3 provides, in part:

...nor, except where established practice, prior agreement or special circumstance, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership...

Section 5.6 provides, in part:

...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors...

In the public sector, the board of education retains the ultimate power to hire, discharge or discipline. The critical question is whether the chairpersons have the power to "effectively recommend" such personnel actions.

In numerous decisions concerning department chairpersons, both the Commission and the Director of Representation have decided that department chairpersons are supervisors within the meaning of the Act. Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. 85-116, 11 NJPER 368, (¶ 16130 1985); Willingboro Bd. of Ed., P.E.R..C No.

84-146, 10 NJPER 389 (¶ 15179 1984), Highland Park Bd. of Ed., D.R. No. 84-2, 9 NJPER 486 (¶ 14202 1983), req. for rev. den., P.E.R.C. No. 84-80, 10 NJPER 56 (¶ 15030 1984); Bloomfield Bd. of Ed., D.R. No. 82-56, 8 NJPER 383 (¶ 13175 1982), aff'g H.O. No. 82-13, 8 NJPER 262 (¶ 13113 1982); Paterson Bd. of Ed., D.R. No. 82-46, 8 NJPER 250 (¶ 13110 1982); Parsippany-Troy Hills Bd. of Ed., D.R. No. 82-51, 8 NJPER 283 (¶ 13128 1982), aff'g H.O. No. 82-12, 8 NJPER 178 (¶ 13077 1982); Ramsey Bd. of Ed., D.R. No. 82-37, 8 NJPER 141 (¶ 13062 1982), aff'g H.O. No. 82-8, 7 NJPER 688 (¶ 12309 1981).

This case is not an exception. In or around 1977, the Board required department chairpersons to obtain supervisory certification to formally observe teachers in the classroom (J-1). Before that time, other administrators observed teachers. The superintendent and the principals place great reliance on personnel recommendations of the department heads and actually defer to their subject matter expertise. While not necessarily determinative, these recommendations concerning hiring and renewing or not renewing contracts of non-tenured teachers are almost always followed. Furthermore, the principals and superintendent depend upon department chairpersons to identify and resolve teaching deficiencies, as evidenced by their participation in PIPS. In essence, the superintendent, principals, curriculum coordinators and department chairpeople work as a supervisory team. Both the role of the department heads in the observation process (which substantially constitutes the general summary evaluation) and their successful

record in making recommendations (including recommendations on departmental budgets), establish their substantial power to affect, adversely or positively, the careers of teachers in the district. Accordingly, I conclude that department chairpersons are supervisors within the meaning of the Act.

The parties stipulated that the Association has represented teachers at the district since November 19, 1968. Thus, the statutory exception of established practice is inapplicable to this case. West Paterson Bd. of Ed., P.E.R.C. No. 79 (1973). Even assuming that a statutory exception existed in this case, I find that both changed circumstances and conflicts of interest warrant the removal of chairpersons from the negotiations unit. The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) held:

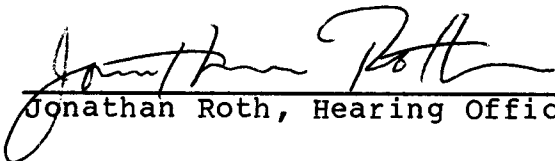
If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [Id. at 425].

Department chairpersons have not participated in contractual grievances filed by the Association on behalf of teachers. Department heads "sat across the table" from the Association in meetings at which a teacher complained about his classroom observation and when the Association requested that an observation be rescinded. The chairpersons have also placed written reprimands in teacher personnel folders and recommended disciplinary

action against teachers to building principals. The testimony reveals that from the late 1970's to the date of hearing, the department chairpersons' roles in observations and evaluations have grown considerably. This evolution is marked by their increased authorship of narrative observations of teachers, participation in the screening process for hiring teachers, budget formulation, renewal and non-renewal of teachers and implementation of PIPS.

Accordingly, I recommend that the department chairpersons are supervisors within the meaning of the Act and should be removed from the Warren Hills Regional Education Association's unit as of June 30, 1986, the expiration date of the parties' collective negotiations agreement in effect on the date the petition in this matter was filed. Clearview Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Respectfully Submitted


Jonathan Roth, Hearing Officer

DATED: October 3, 1986
Trenton, New Jersey