

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
WEST ORANGE BOARD OF EDUCATION

-and-

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL NO. 68

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the West Orange Board of Education, a hearing was held on February 14, 1969 before ad hoc Hearing Officer George Marlin at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Thereafter, on March 10 the ad hoc Hearing Officer issued a Report and Recommendation. The Commission has considered the record, the Hearing Officer's Report and Recommendation, and the Employer's "Notice of Appeal" and finds:

1. The West Orange Board of Education is a public employer within the meaning of Section 3(c) of the Act and is subject to the provisions of the Act.
2. The International Union of Operating Engineers, Local No. 68, is an employee representative within the meaning of Section 3(e) of the Act.
3. The public employer having refused to recognize the employee representative as the exclusive representative of certain employees a question concerning the representation of public employees exists and the matter is appropriately before the Commission.

4. The Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, is adopted. <sup>1/</sup>
5. The Commission finds that the appropriate unit is: "all head custodians, assistant custodians, drivers, maintenance workers, firemen and matrons employed by the West Orange Board of Education."
6. The Commission directs that a secret-ballot election shall be conducted among the employees in the unit found appropriate. The election shall be conducted as soon as possible but no later than 30 days from the date set forth below.

Those eligible to vote are employees set forth in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

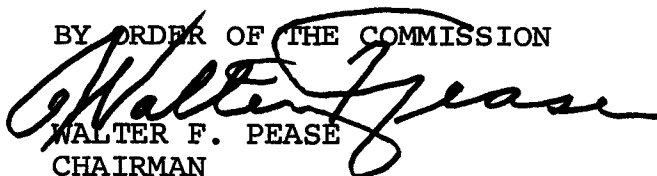
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<sup>1/</sup> In adopting the Hearing Officer's Report and Recommendation the Commission does not agree with his comments beginning on page 2 "Since there is an agreement between the Board and the Union for a consent election, the burden of establishing evidence for the exclusion of these employees [head custodians] from the unit claimed appropriate by the Union falls clearly upon the Respondent Board." The Commission considers a representation proceeding to be investigatory and not adversary in nature. Accordingly, neither party has a burden of proof. However, the Hearing Officer's comment does not affect the factual situation nor the Hearing Officer's eventual conclusions.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by International Union of Operating Engineers, Local 68.

The majority representative shall be determined by a majority of the valid ballots cast.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, appearing to read "Walter F. Pease", is written over the typed name and title.

WALTER F. PEASE  
CHAIRMAN

DATED: April 10, 1969  
Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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IN THE MATTER OF THE REPRESENTATION UNIT :  
DISPUTE BETWEEN

WEST ORANGE BOARD OF EDUCATION :

-and-

INTERNATIONAL UNION OF OPERATING ENGINEERS, :  
LOCAL NO. 68 :

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APPEARANCES:

Samuel A. Christiano, Esq.  
For the Board of Education

Parsonnet, Parsonnet &  
Duggan, Esqs.  
By: Victor J. Parsonnet, Esq.  
For the Union

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REPORT AND RECOMMENDATION

On February 14, 1969, a hearing was held before the Undersigned, pursuant to the provisions of the New Jersey Employer - Employee Relations Act (Chapter 303, P.L. 1968) hereinafter referred to as the "ACT".

The West Orange Board of Education has consented to an election being held to determine whether its employees in the job classifications known as assistant custodians, firemen and matrons, drivers and maintenance workers, desire to be represented for the purposes of collective negotiations in respect to rates of pay, wages, hours of employment and other conditions of employment by International Union of Operating Engineers, Local No. 68.

A question of controversy arose as to whether the employees in the job classification known as head custodians should be properly included in the unit comprised of the

above enumerated employees and whether they should be entitled to vote in said consent election. Pursuant to Section 8 (d) of the Act, the New Jersey Public Employment Relations Commission directed this formal hearing. The undersigned was appointed to act in its behalf to conduct the said hearing and report and make recommendations upon the issue pursuant to Section 8 (g) of the Act. Upon consideration of the entire record, I hereby render the following decision:

The Act specifies in Section 8(d) that a unit is not appropriate if it contains both supervisory and non-supervisory employees in the absence of established practice, prior agreement or special circumstances. The Board of Education took the position that the head custodians are managerial and supervisory employees and that there is no precedent for considering them as part of the bargaining unit.

The Union claimed that these employees are not supervisors and that they have been part of and treated as a homogenous group in the past.

The legislature has established broad guidelines for determination of the appropriate unit. Section 7 of the Act provides "the negotiating unit shall be defined with due regard for the community of interest among the employees concerned ....". The only applicable prohibition, however, is that against the inclusion in the same unit of supervisory and non-supervisory employees, provided that this restriction does not apply where there is an established practice, prior agreement or special circumstances.

Since there is an agreement between the Board

and the Union for a consent election, the burden of establishing evidence for the exclusion of these employees from the unit claimed as appropriate by the Union falls clearly upon the Respondent Board.

The legislature has determined that an employee shall be excluded from a non-supervisory unit if he has "the power to hire, discharge, discipline, or to effectively recommend the same" (Sec. 7). The record fails to establish that these employees possess such powers.

The power to hire is solely within the jurisdiction of the Board. The head custodians may not hire even part-time or temporary employees. In the case of absences due to illness, their only function is the clerical act of notifying the Board.

On the question of discharge, the head custodians have recommended that such action be taken by the Board. However, the testimony presented has disclosed that while there have been several requested discharges in the last several years, in no case has the Board complied. Consideration may be given to the recommendation of the head custodians but the Board obviously makes the final determination independently. Giving consideration to the recommendations or opinions of an employee who possesses knowledge of the facts when they are obviously not the prime consideration is not sufficient to establish a power to "effectively recommend". It would be more appropriate to say that the head custodian suggests rather than persuades.

Finally, the record contains no evidence showing that head custodians have any power to discipline or to

effectively recommend the same.

In view of the fact that the statute itself specifies the factors which determine that an employee is a supervisor, it becomes unnecessary to discuss other guides established by State and Federal labor boards.

The other question to be determined is whether there exists a sufficient "community of interest" between the head custodian and the other employees conceded to be appropriately within the unit.

I find that there is a substantial and continuing community of interest among these employees. Head custodians are given greater responsibilities than assistant custodians, such as, assigning work, checking the heating plant, ordering supplies, reporting absences and safety and security checks. But, aside from these duties which comprise an hour to an hour and a half at most of each work day, and which do not in and of themselves constitute supervisory functions under the Act, the duties of both are identical. Their work is essentially janitorial, and both do cleaning, dusting, repair work, and assist on snow removal and garbage details.

Perhaps the strongest evidence that a genuine community of interest exists is the fact that for approximately 20 years both the employees and the Board considered the head custodians to be a proper and integral part of the West Orange Custodians Association which includes among its membership all maintenance employees. Historically, the Board and the Association have negotiated the wages and working conditions for the aforesaid personnel, including head custodians. In fact, head custodians have been officers

of the Association and have served on its negotiating committee.

Further, the head custodians and assistant custodians have been deemed to be so identical in the past that the wages have been the same through the first six steps of the pay scale negotiated by the Board and the Association. While the practice apparently is to promote employees to the position of head custodian after they have passed the sixth step, it was possible for a head custodian to be earning less than an assistant custodian having greater longevity at his position.

The only suggestion of a lack of common interest was the Board's assertion that the inclusion of head custodians would interfere with their ability to evaluate the other employees concerning annual raises, and that it would create an awkward situation in the presentation of grievances. This claim was unsupported by the evidence presented at the hearing. It is shown to be without merit by virtue of the fact that no such problem has occurred in the past while the head custodians and assistant custodians were members of the same association.

From all of the foregoing, and upon the entire record, it is determined:

1. Head custodians employed by the West Orange Board of Education are not managerial executives or supervisory employees within the meaning of Chapter 303, P.L. 1963.

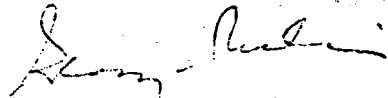
2. The head custodians employed by the West Orange Board of Education shall be included in and are appropriate members of the bargaining unit which includes assistant custodians, drivers, maintenance workers, firemen and



matrons employed by said Board.

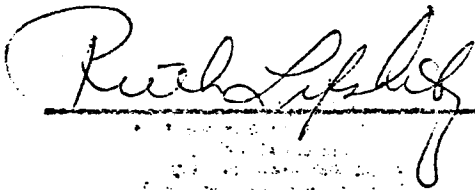
3. Pursuant to the consent agreement of the parties, an election shall be held at a place and date determined by the New Jersey Public Employment Relations Commission to determine whether or not the employees in the unit found to be appropriate herein desire to be represented for the purposes of collective negotiation in respect to wages, rates of pay, hours of employment and other conditions of employment by International Union of Operating Engineers Local No. 68.

Dated: March 10, 1969

  
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GEORGE MARLIN

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NEW YORK )

On this 10th day of March, 1969, before me personally appeared GEORGE MARLIN, to me known and known to me to be the individual described in and who executed the within instrument and he duly acknowledged to me that he executed the same.

  
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RUTH L. L. L.  
HENRY F. B. B., STATE OF NEW YORK  
No. 14-752195  
Qualified in New York County  
Commission Expires March 30, 1970