

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of	:
	:
West Orange Board of Education,	:
	:
Public Employer	:
	:
and	:
	:
Elizabeth Wilton and Administrators	:
Association of West Orange Public	:
Schools,	:
	:
Petitioners	:

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of one Elizabeth Wilton, an employee of West Orange Board of Education, a hearing was held before ad hoc Hearing Officer Irvine L. H. Kerrison. On May 13, 1969, the ad hoc Hearing Officer issued his Report and Recommendation. Exceptions have been filed by the Petitioners to the Hearing Officer's Report and Recommendation. In addition, the Public Employer has filed an Answer to the Exceptions. The Commission has considered the Hearing Officer's Report and Recommendation, the Exceptions and Answer 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 Administrators Association of West Orange Public Schools is an employee representative within the meaning of section 3 (e) of the Act.

3. The public employer having refused to include the Director of Elementary Education in the unit represented by the Association, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.
4. The Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, are adopted, except as modified herein.
5. The Hearing Officer found that Elizabeth Wilton, Director of Elementary Education, occupies a top-level managerial position and, therefore, may not be included in the same negotiating unit as administrators and supervisors whom she supervises.

Based upon the uncontroverted evidence the Commission finds that Elizabeth Wilton is a supervisor within the meaning of the Act. The evidence further reveals that she reports to the Superintendent of Schools, as well as the Assistant Superintendent of Schools. The Act provides that managerial executives shall not have the right to form or join employee organizations "except in a school district the term managerial executive shall mean the Superintendent of Schools or his equivalent". Inasmuch as there is a Superintendent of Schools and the Director of Elementary Education reports to the Superintendent, it follows that the Director of Elementary Education is neither the "Superintendent of Schools or his equivalent". Accordingly, Elizabeth Wilton, Director of Elementary Education, is not a managerial executive within the meaning of the Act and she may be included in a collective negotiating unit and may be represented by an employee representative.

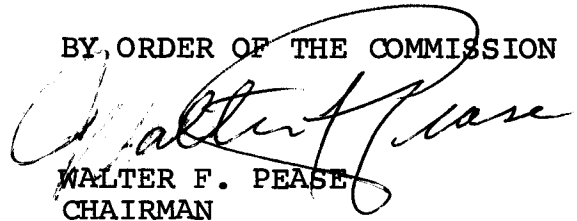
The record reveals that Elizabeth Wilton supervises some of the principals and administrators included in the unit currently recognized by the Board. The Board contends that based upon that fact she may not be included in the unit of principals, assistant principals, subject matter directors and administrative assistants represented by the Administrators' Association of the West Orange Public Schools. The Act provides that supervisors may not be represented by an organization that admits non-supervisory personnel and that supervisory personnel and non-supervisory employees may not be combined in the same unit in the absence of established practice, prior agreement or unusual circumstances. The Act is clear and unambiguous in not proscribing the right of various ranks of supervisors to be combined in the same unit or belong to the same organization. Thus, in the instant case, principals and their assistants, different ranks of supervisors, have been combined in one unit and are represented by the same organization. Based upon all of the above, the Commission finds that the Director of Elementary Education may be included in the aforementioned unit of supervisors and administrators and may be represented by the Association.

The record reveals and the Commission finds that despite a difference in method of compensation from other administrators, the Director of Elementary Education has a community of interest with the other certificated administrators and supervisors employed by the West Orange Board of Education.

Based upon all of the above, the Commission finds that the

collective negotiating unit includes the Director of Elementary Education and is, therefore, described as all principals, subject matter directors, administrative assistants and Director of Elementary Education. Since the unit has been recognized by the Board and no issue exists regarding Elizabeth Wilton's desire to be included in such unit no election need be directed in this matter. The Commission accordingly directs the Board to negotiate with the Association for the unit set forth above.

BY ORDER OF THE COMMISSION



WALTER F. PEASE
CHAIRMAN

DATED: July 2, 1969

Trenton, New Jersey

State of New Jersey
PUBLIC EMPLOYMENT RELATIONS COMMISSION
Post Office Box V
Trenton, New Jersey 08625

_____)
In the Matter of the Representation : REPORT AND RECOMMENDATIONS
Proceedings Concerning the) OF
: HEARING OFFICER
WEST ORANGE BOARD OF EDUCATION)
:
_____)

These proceedings, pursuant to Chapter 303, New Jersey Public Laws of 1968, concern a claim of representation of employees of the West Orange Board of Education in the classification of Director of Elementary Education.

The authority of the undersigned hearing officer to conduct the proceedings was set forth in a notice (Exhibit No. 1) from the New Jersey Public Employment Relations Commission, hereinafter referred to as PERC, to him and to the interested parties which reads, in part, as follows:

"To all interested parties concerning a claim of representation of employees of the West Orange Board of Education in the classification of Director of Elementary Education.

"NOTICE is hereby given that a hearing will be held concerning the matter of representation made with respect to the employees of the West Orange Board of Education in the classification of Director of Elementary Education by the employee organization listed below and other interested parties. Said hearing will be held on April 22, 1969 at 10:00 a.m. at the place stated below before the Hearing Officer named below, designated ad hoc Hearing Officer of the Commission for that purpose with all powers conferred upon the Commission by Chapter 303, New Jersey Public Laws of 1968 in connection with the discharge of the duty or duties so delegated to him."

Hearing was held at the stated time on the stated date at the offices of the New Jersey State Board of Mediation in Newark, New Jersey, at which all parties had the opportunity to introduce facts and to present their points of view. Appearances were:

FOR THE WEST ORANGE BOARD OF EDUCATION (hereinafter referred to as the board)

Samuel A. Christiano, Esq., board attorney
Theodore D'Alessio, superintendent of schools

FOR THE ADMINISTRATORS' ASSOCIATION OF THE WEST ORANGE PUBLIC SCHOOLS --
(hereinafter referred to as the association)

John H. Dorsey, Esq., attorney
Dr. Stanley Stonesifer, president
Miss Elizabeth Wilton, petitioner

The parties stipulate as follows on the Petition (Exhibit No. 2) and the Answer (Exhibit No. 3):

1. Miss Elizabeth Wilton, one of the petitioners, is a public employee within the public school system maintained by the board and has tenure in a position designated by it as Director of Elementary Education, a supervisory position.

2. The petitioner Wilton is a member of the co-petitioner, the Administrators' Association of the West Orange Public Schools, an employee organization under Chapter 303, and has requested that association to act as her representative, in accordance with Chapter 303, for the purpose of negotiating a contract of employment for her for the school year 1969-1970 with the board.

3. The petitioner has requested that the board recognize it as the appropriate negotiating unit for all administrative personnel including co-petitioner Wilton.

4. By way of a resolution adopted by it on February 10, 1969, the board has recognized the petitioner association as the negotiating unit for principals, assistant principals, subject matter directors and administrative assistants, but has refused to recognize the petitioner association as the negotiating unit for Wilton as the Director of Elementary Education.

This board denial of the association claim for representation for Wilton is the sole issue before the hearing officer.

The board takes the position that:

1. Wilton is a top echelon supervisor and, as such, does not belong in the same negotiating unit with principals, assistant principals, subject matter directors, and administrative assistants.

2. The position of Director of Elementary Education has a conflict of rather than a community of interest with the association as recognized by the board resolution (Exhibit No. 4) of February 10, 1969, since that resolution stipulates that: ". . .Directors who act in supervisory capacity over any of the foregoing (principals, assistant principals, etc.) are specifically excluded from said unit."

The board asks that PERC rule that the association is not the appropriate negotiating unit for Wilton, or for the position that she holds in the public school system.

The association takes the position that:

1. It is the proper negotiating unit for Wilton and the position held by her in the public school system.
2. The only employee of the public school system prohibited by Chapter 303 from joining and being represented by an employee organization is the superintendent of schools.

The association asks that PERC rule that:

1. The board recognize it as the appropriate negotiating unit for all professional supervisory personnel, excluding the superintendent of schools but including Wilton.
2. Wilton may be active in and represented by the association.

Following is relevant evidence adduced from sworn testimony heard and exhibits submitted during the course of the hearing.

Supervisory authority:

The board contends that the West Orange Public Schools Organization Chart (Exhibit No. 5) clearly indicates that elementary principals and directors of special subjects report directly to Wilton. It argues that duties of the Director of Elementary Education spelled out in the Board Policy Manual (Exhibit No. 6) equally clearly demonstrate that hers is a top echelon administrative position.

The board points out that Wilton plays a major role in recruiting, selecting, training and evaluating elementary school principals.

It submits correspondence (Exhibit No. 14) concerning Emmett L. LaDuke, principal of Pleasantdale School, as follows:

1. A February 19, 1965 letter from Wilton to LaDuke which reads:

"Thank you for your letter of application for an elementary principalship in West Orange.

"I shall be happy to see you when you are in our area on Friday, February 26th.

"I am enclosing an application blank for you to complete and return to us."

2. A February 26, 1965 letter from Wilton to the Educational Placement Bureau of New York University which reads:

"Mr. Emmett L. LaDuke, who received his 6th year Certificate in Administration from New York University in 1962, has applied for an elementary principalship in West Orange.

"We would appreciate receiving a set of his credentials as soon as possible."

The parties stipulated that similar correspondence involving Wilton and principals Edward Burns (Gregory School) and Roland Dumont (St. Cloud School) is in board personnel files.

The board also submits Wilton's evaluations (Exhibits Nos. 13, 15 and 16) of LaDuke, Burns and Dumont immediately prior to their being granted tenure as elementary principals.

That of LaDuke, dated February 26, 1968, reads:

"Mr. LaDuke has done a fine job as principal of the Pleasantdale School during the past three years. I have found him to be conscientious, completely reliable and straightforward, and deeply committed to the job of trying to improve the curriculum.

"His leadership at Pleasantdale is evidenced by the involvement of his teachers in the new philosophy of social studies and math and an improved school library.

"I am happy to recommend Mr. LaDuke for tenure as a principal. I am sure he will continue to grow and will become an outstanding educational leader."

That of Burns, dated April 4, 1967, reads:

"Mr. Burns has done an excellent job in the three years he has been at Gregory. He has developed fine rapport with both teachers and parents and has become a valuable member of the principals' group.

"His leadership at Gregory is evidenced by the improved reading program with more emphasis on individual differences, a more adequate school library, the introduction of an economic approach to primary social studies and many improvements to the school plant.

"I recommend Mr. Burns for tenure as a principal. I am sure he will continue to grow and will become an outstanding educational leader."

That of Dumont, dated April 4, 1967, reads:

"Mr. Dumont has done a very fine job of organizing St. Cloud School in the three years he has been principal. It has not been an easy task. Many things that are done in a casual manner when a school is small must be organized and changed as a school grows and resistance is always met as things change.

"His leadership at St. Cloud is evidenced by the involvement of his teachers in the new philosophy of social studies, more understanding of children and a child study approach to some of the problem children, supervision of children before school and during the lunch period, improved bulletin boards and a general improvement in the appearance of the building.

"Mr. Dumont has a genuine interest in and understanding of children which contribute to his success as an elementary principal. I recommend him for tenure as a principal. I am sure he will continue to grow and will become an outstanding educational leader."

The board argues that the correspondence and performance evaluations alluded to above demonstrate without doubt that Wilton actually hires, supervises and evaluates principals, and thus has top level supervisory authority.

The association replies that the supervisory authority of Wilton as compared to that of elementary principals adds up to a difference of degree rather than of kind. It argues that Wilton merely coordinates on a system-wide basis what elementary principals coordinate on the building level.

The association points out that the Board Policy Manual makes the Director of Elementary Education ". . . directly responsible to the Superintendent in the performance of all duties." It argues that, therefore, the superintendent is not bound by Wilton's recommendations

as to either policies or persons. It fur
what the superintendent may or may not recom
her recommendations to him.

Administrative salary guide:

The board contends that, while Wilton's salary is con
stated ratio of 1.60 from the teachers' salary guide for 1966
indicated on the Administrative Salary Guide (Exhibit No. 8) --, ha
for 1969-70, effective July 1, 1969, is not computed on a ratio basis.
points out that 1969-70 salaries for other top scholan administrators,
such as the superintendent, the assistant superintendent, the director of
buildings and grounds, etc., similarly are not computed on a ratio basis,
while these for elementary principals and directors of special subjects
still are. The board argues that this difference in salary computation
further supports its contention that Wilton is a "management" employee
as distinguished from a "rank and file supervisory employee" within the
context of the West Orange Administrators' Association.

The association replies that this proceeding is being contested during
the school year 1968-69, with Wilton on a ratio formula for her salary,
as are elementary principals and directors of special subjects. It
contends that what may or will happen after July 1, 1969 is not relevant
to the instant issue.

Board meeting attendance:

The board contends that Wilton, at the request of the superintendent,
attends public meetings of the board on a regular basis, while principals
are instructed to attend only on occasion and only for specific purposes.
Again, it argues this confirms her position as a top scholan administrator.

The association replies that anyone may attend public meetings of the
board, and that Wilton's attendance is at the request and direction of the
Superintendent, who holds the real authority.

Selection of elementary teachers:

The board contends that, if Wilton recommends teacher A for an open position and a principal recommends teacher B, Wilton has the final say and teacher A is hired.

The association replies that this is not necessarily so since the superintendent may elect to support the principal rather than Wilton, and so recommend to the board.

Increments for principals:

The board contends that principals not under tenure are evaluated annually by Wilton; unless she approves, such principals are not accorded increments. It points to Board By-laws (Exhibit No. 10), specifically to the provision that:

"2, a. - Increases on all guides shall be based on meritorious service. Favorable reports by the Superintendent of Schools and those charged with supervisory responsibility, and approval by the Board of Education are a prerequisite to the granting of all increases in salary. There shall be no automatic increments or increases in salary."

Once more, the board argues that Wilton exercises real managerial rather than routine supervisory functions.

The association again replies that the final decision is still that of the superintendent who may overrule Wilton.

Budget review:

The board contends that Wilton reviews budgets and requisitions for educational materials submitted by principals under her jurisdiction, and that she has the authority to make deletions.

Once more, the association replies that Wilton's decisions are subject to review and rejection by the superintendent.

Administrators' Association membership:

The board contends that only Wilton of the top echelon management group is a member of the association. The assistant superintendent, the superintendent of buildings and grounds, the cafeteria director, the business manager, etc., although admittedly not all certified, have not joined.

The association replies that all certified personnel except the superintendent have the option of joining it if they wish.

The board makes the point that there is no reason why all its top echelon administrators, excluding the superintendent, should not form their own negotiating unit. It argues that to have Wilton in the same negotiating unit as the people she supervises constitutes a conflict of interest that could seriously reduce her effectiveness as an administrator. In such a unit, Wilton could be faced with the problem of preferring charges against fellow association members, denying increments to them, not recommending tenure, etc.

The association retorts that, under Chapter 392, Wilton is entitled to be a member since she is both a professional and a supervisor.

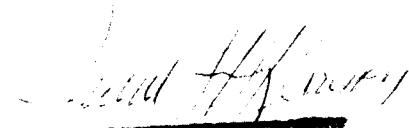
After careful study and review of testimony heard and exhibits submitted during the course of the hearing, the hearing officer concludes that the weight of the evidence adduced weighs heavily in the board's favor.

1. Elementary principals and directors of subjects clearly report directly to Wilton. She approves increments for elementary principals not on tenure. She reviews and approves budgets and requisitions for educational materials submitted by elementary principals. She also selects elementary teachers.
2. Wilton closely recruits, selects, trains, and evaluates elementary principals. Further, the association submits no evidence that her recommendations ever have been rejected by the superintendent of schools.
3. Wilton, as a top echelon managerial employee, attends public board meetings on a regular basis.
4. Effective July 1, 1969, Wilton, like other top echelon managerial employees, will have her salary computed on a non-ratio basis.
5. Only Wilton of the top echelon managerial group is a member of the association.

From all of the above, the hearing officer concludes that Wilton is a top-level managerial employee rather than a rank and file supervisory employee, and that it would be inappropriate for her to be included in the

same negotiating unit as administrators whom she supervises.

The hearing officer, therefore, recommends that PERC rule that the association is not the appropriate negotiating unit for Wilton, or for the position that she holds in the public school system.


IRVINE L.M. ZE RIBSON
Hearing Officer

Dated: May 13, 1969