

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE BOARD OF TRUSTEES,

Public Employer

Docket No. R-12

and

MIDDLESEX COUNTY COLLEGE FACULTY ORGANIZATION,
LOCAL 1940, AMERICAN FEDERATION OF TEACHERS

Petitioner

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of Department Chairmen, Director of Admissions, Director of Student Activities, Registrar and Assistants to Director of Administrative Services of Middlesex County College, a hearing was held before ad hoc Hearing Officer, Michael H. Moskow, at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and to argue orally. Thereafter, the public employer and the petitioner filed briefs. On July 24, 1969, the Hearing Officer issued his Report and Recommendations. Exceptions have been filed by the petitioner to the Hearing Officer's Report and Recommendations. A brief in reply to the petitioner's exceptions has been filed by the public employer. The Commission has considered the record, the Hearing Officer's Report and Recommendations, petitioner's exceptions and the employer's reply and on basis of the facts in this case finds:

1. Middlesex County College Board of Trustees is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. Middlesex County College Faculty Organization, Local 1940, American Federation of Teachers is an employee representative within the meaning of the Act.

3. The public employer disagrees that certain employees, described below, should be included in the existing collective negotiating unit. There is, therefore, a question concerning the composition of the unit, and accordingly the matter is appropriately before the Commission for determination.

4. The Commission has reviewed the rulings of the Hearing Officer made at the hearing and subsequent thereto and finds no error was committed. The rulings are hereby affirmed. ^{1/} The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, are adopted.

5. The petitioner herein seeks clarification of a unit of the full-time faculty members employed by the Middlesex County College Board of Trustees, which unit was recognized as the exclusive negotiating representative. ^{2/}

1/ The petitioner requested that the case be remanded for the purpose of a rehearing contending that the hearing was not properly conducted and for the purpose of receiving additional evidence.

A review of the entire record reveals it to be complete. In addition, it was supplemented by an eleven page brief filed by the petitioner and a thirty-four page brief filed by the public employer. There is nothing to indicate any party was denied a full opportunity to present its case. The transcript does not reveal that any evidence submitted was excluded by the Hearing Officer, although the petitioner did withdraw one document after an objection from the public employer. Furthermore, the Hearing Officer, in response to the request of the petitioner in its brief, did accept numerous additional documents into evidence after the close of the hearing. The only documents which the Hearing Officer refused to accept were three documents which he ruled were beyond the scope of those described by the petitioner in its brief. Accordingly, the request to reopen the record or hold a hearing de novo is denied.

2/ The parties had agreed that the status of Department Chairmen, the Director of Admissions, Assistants to the Director of Administrative Services, the Director of Student Activities and the Registrar would be determined subsequent to recognition.

We find, in agreement with the Hearing Officer, that Department Chairmen, the Director of Admissions, the Director of Student Activities, and the Registrar are supervisors within the meaning of the Act because they do effectively recommend the hiring and discharging of personnel and may discipline such employees.


Having found the aforementioned to be supervisors, we now reach the question as to whether or not they should be included in a unit of nonsupervisory personnel because of "established practice, prior agreement or special circumstances".

We agree with the Hearing Officer that "established practice" or "prior agreement" does not mean the solicited or unsolicited submission by the employee representative of wage and fringe benefits demands without more nor does it mean a limited "history" of an employee organization's relationship with the public employer. There must be the give and take of negotiations including a bilateral relationship rather than an unilateral establishment of terms and conditions of employment such as that which occurred in this case. Furthermore, no agreements were reached by the parties, let alone reduced to writing and executed. Based upon the foregoing, the Commission rejects the contention that there is "established practice" or "prior agreement" which warrants the inclusion of supervisors in a negotiating unit of nonsupervisors. Nor do we find any "special circumstances" for inclusion of supervisors and nonsupervisors in the same unit.

With regard to the status of the two Assistants to the Director of Administrative Services, we are in agreement with the Hearing Officer's finding that inasmuch as they do not teach students, they do not have a community of interest with the teaching faculty and should not be included in the faculty unit.

Having concluded that the Department Chairmen, Director of Admissions, Director of Student Activities, and Registrar are supervisors within the meaning of the Act and that there is insufficient evidence in the record of "established practice, prior agreement, or special circumstances" to warrant the inclusion of supervisors in the same unit as nonsupervisors and having found that the Assistants to the Director of Administrative Services do not have a community of interest with the teaching faculty, we find that the appropriate collective negotiations unit is: "all full-time faculty members employed by the Middlesex County College Board of Trustees, but excluding Department Chairmen, the Director of Admissions, the Director of Student Activities, the Registrar, Assistants to the Director of Administrative Services, managerial executives, supervisors, as defined in the Act, office clerical employees, craft employees, and policemen".

BY ORDER OF THE COMMISSION



WALTER F. PEASE
CHAIRMAN

DATED: December 17, 1969

Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION

In the Matter of)
)
MIDDLESEX COUNTY COLLEGE BOARD)
OF TRUSTEES)
)
and)
MIDDLESEX COUNTY COLLEGE FACULTY)
ORGANIZATION, A.F.T.)
)

HEARING
OFFICER'S

REPORT

AND
RECOMMENDATIONS

Appearances:

FOR THE MIDDLESEX COUNTY COLLEGE BOARD OF TRUSTEES

John A. Hoffman, Esquire
Attorney, Board of Trustees

William R. Walsh, Jr.
Dean of Administration

C. Nicholas Venezia, Esquire
Member, Board of Trustees

FOR THE MIDDLESEX COUNTY COLLEGE FACULTY ORGANIZATION, A.F.T.

Joseph F. Cascella
National Representative, A.F.T.

Charles Korn
Chairman, Faculty Organization, A.F.T.

Background

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission (herein called the Commission), the undersigned Hearing Officer met with representatives of the parties in Edison, New Jersey on

March 12, 1969. The hearing was originally scheduled for March 1, 1969 but rescheduled at the request of the parties. A transcript, which was taken of the proceedings, was delivered to the Hearing Officer on April 7, 1969. Briefs from both parties were received by the Hearing Officer on April 29, 1969.

In the brief submitted by the Faculty Organization, a request was made to schedule a further hearing to receive certain documents specifically "the minutes of the faculty organization meetings and the minutes of the welfare committee meetings and memorandums of correspondence between the faculty organization and its welfare committee and the membership of the organization" which the Faculty Organization stated were submitted at the hearing held on March 12, 1969, but not received by the Hearing Officer. The Hearing Officer did not see any need to hold another hearing for this purpose, but because there may have been some confusion at the original hearing as to what documents were and were not being submitted by the Faculty Organization and because the instant proceeding is an investigatory one with an emphasis on completeness of record, the Hearing Officer permitted the Faculty Organization to send him the documents while sending copies simultaneously to Mr. John A. Hoffman, attorney for the Board of Trustees, who was then given an opportunity to comment in writing on the documents. The documents were received by the Hearing Officer on May 23, 1969, and on May 28, 1969 Mr. Hoffman wrote to the Hearing Officer objecting to the procedure followed, to the manner in which the documents were submitted by the Faculty Organization, and to some of the documents because they differed from the statement describing the documents in the brief of the Faculty

Organization. Mr. Hoffman also requested that the Hearing Officer immediately rule that the documents were not admissable and would not be considered. In a letter dated June 13, 1969, the Hearing Officer wrote to Mr. Hoffman listing the 17 specific documents that were being accepted as part of the record and the 3 documents submitted by the Faculty Organization that were not accepted as part of the record because they were beyond those requested in its brief. In a letter dated June 24, 1969, Mr. Hoffman reiterated his objection to the procedure followed and commented in writing on the documents accepted. Mr. Hoffman indicated that his copy of one of the documents was completely unintelligible; in order to expedite matters, the Hearing Officer had the document retyped because it could not be reproduced and mailed it to Mr. Hoffman on June 30, 1969. Mr. Hoffman's comments on the retyped document were received by the Hearing Officer on July 7, 1969.

The prime issue in the case is whether the Academic Department Chairmen, Director of Admission, Assistant to the Director of Administrative Service in Charge of Data Processing, Assistant to the Director of Administrative Service for Purchasing and Property, Director of Student Activities, and Registrar should be included in a bargaining unit with faculty members. In the original request by the parties, the Bookstore Manager was included in the list of positions in question and the two Assistants to the Director of Administrative Services were listed as one position - Assistant to the Director of Administrative Services. During the hearing the Faculty Organization withdrew its request to include the Bookstore Manager, and the parties jointly requested that the Hearing Officer issue

separate recommendations on the two Assistants to the Director of Administrative Services. The Faculty Organization contended that the above named persons should be included in the same bargaining unit with faculty members. The Board of Trustees did not dispute the fact that the Faculty Organization represented a majority of faculty members. Neither did the Board object to the Department Chairmen and other above named persons organizing for collective negotiations, but it did object to their inclusion in the same bargaining unit with faculty members.

There appears to be no question that the Middlesex County College Board of Trustees is a public employer within the meaning of Section 3(c) of the Act and that it is therefore subject to the provisions of the Act. Similarly, there appears to be no question that the Faculty Organization, A.F.T., is presently an employee representative within the meaning of Section 3(c) of the Act.

Discussion and Findings

On the issue of whether academic department chairmen, Director of Admissions, Assistants to Director of Administrative Service, Director of Student Activities, and Registrar should be included in the same bargaining unit with faculty members, the following appears to be the applicable portion of the Act:

34:13A-5.3. Right of public employees; exceptions; representatives of majority. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, 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, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute. (Emphasis supplied.)

Two issues appear to be present in this case regarding whether department chairmen and the other personnel in question should be included in the same bargaining unit with faculty members: First, are the department

chairmen "supervisors as defined in the Act, and second, does the exception phraseology which reads "except where established practice, prior agreement, or special circumstances dictate to the contrary" permit their inclusion in a unit with faculty members.

In the opinion of the hearing officer, the evidence indicates that department chairmen at Middlesex County College clearly are "supervisors" within the definition provided in the Act. Although they do not have the final authority to hire, discharge, or discipline faculty members they have the power to make effective recommendations in these matters.

The college employs 140 faculty members divided into thirteen departments each headed by a department chairman. Approximately three of the department chairmen report directly to the Dean of Faculty; each of the other chairmen report to one of three division heads. Department chairmen receive extra compensation above the salary schedule for faculty members and a reduced teaching load for serving in this capacity. The standard teaching load for faculty members is 15 hours per week, while five of the department chairmen teach nine hours per week, two teach seven hours, three teach six hours, two teach four hours, and one does not teach at all.

The final legal authority for hiring and discharging faculty members rests with the Board of Trustees of the college. In practice, however, department chairmen usually make recommendations to the division chairmen or directly to the Dean of Faculty regarding the hiring or discharge of faculty members. The Dean of Faculty then makes recommendations to the President who makes further recommendations to the Board of Trustees.

This type of procedure is not uncommon in educational institutions beyond the elementary and secondary school level.

During the hearing, the Faculty Organization stipulated that the procedure followed in the great majority of times for hiring faculty members is that the department chairman, who is generally the only one who deals with prospective faculty members, interviews the prospective candidate and recommends that he be hired. (transcript pp. 138-139) The Faculty Organization attempted to show that when disagreements occurred between department chairmen and their supervisors, the opinion of the latter would prevail, which, in the opinion of the Faculty Organization, demonstrated that the department chairmen did not have the power to effectively recommend the hiring of faculty members. In practice, however, the vast majority of recommendations by department chairmen were accepted by the central administration and the Board of Trustees. The Dean of Faculty testified that when he disagreed with the hiring recommendation of a department chairman, that he would meet with the chairman and attempt to reach a mutual agreement on a course of action. He testified further that no more than two per cent of department chairmen recommendations for appointment were actually changed either by mutual agreement or otherwise. In the opinion of the hearing officer, the changing of a small percentage of department chairmen recommendations does not negate their power to make effective recommendations.

The evidence regarding the power of department chairmen to discharge faculty members was similar to that presented for hiring faculty members. The Dean of Faculty testified that less than two percent of the

department chairmen recommendations for rehire or nonrehire of faculty members were changed by mutual agreement or otherwise. Department Chairmen visit classes of department members and prepare written evaluations of each faculty member which is the chief evaluation process available to the Dean of Faculty and other higher echelon administrators. Department chairmen also make effective recommendations on whether a faculty member should get tenure and on salary increments.

In addition, chairmen have the power to discipline faculty members without approval from higher echelon administrators. Two of the department chairmen (the only ones to testify on this issue) testified that they felt that there could or would be a conflict of interest between their duties as department chairmen and membership in the same bargaining unit as faculty members.

Regarding the personnel other than department chairmen, much of the above discussion is applicable. The Director of Admission, the Director of Student Activities, and the Registrar are supervisors having the power to train, supervise, evaluate and recommend the hiring of professional personnel assigned to their departments. The Assistants to the Director of Administrative Services in charge of Data Processing and the Assistant to the Director of Administrative Services for Purchasing and Property are not supervisors, but do not teach classes and do not, in the opinion of the hearing officer, have a community of interest with the teaching faculty.

Furthermore, in the opinion of the hearing officer, the evidence does not indicate that the department chairmen and other administrative personnel in question

should be included in the bargaining unit under the exception phraseology which reads, "except where established practice, prior agreement or special circumstances dictate the contrary." The college was only recently established, first enrolling students in September 1966, only two years before the passage of the New Jersey Employer-Employee Relations Act. The Faculty Organization was originally established by the President of the College who served as chairman for two or three months until officers were elected. In addition, the Organization enrolls all professional staff members of the College including the President of the College.

The evidence does not indicate that collective negotiations took place prior to September 1968 between the Faculty Organization and the Board of Trustees or any representative of the Board such as the President of the College. It is true that the Faculty Organization through its Welfare Committee presented a list of nine proposals in response to a request from President Chambers for advice or on its own initiative. In either case, there is no indication that bargaining or negotiations took place at the meeting with President Chambers that was attended by the entire Welfare Committee or at the two or three other meetings during which only the Chairman of the Committee and one or two other professional staff members participated. President Chambers testified that the Committee did present proposals but that he did not consider the meetings "negotiations." The Chairman of the Welfare Committee testified that President Chambers listened but did not negotiate. In addition, no agreements were reached between the parties. A few of the

proposals were modified by President Chambers after the meetings and incorporated in the Faculty Handbook, which was prepared unilaterally by President Chambers.

On the above basis, the Hearing Officer does not find in the evidence presented "established practice, prior agreement, or special circumstances" which in themselves, could warrant inclusion of the Department Chairmen and other personnel in a unit with the faculty members under Section 34:13A-5.3. The history and circumstances are too limited to require a finding as required under the Act.

One important qualification is necessary to this finding and to the finding that Department Chairmen are "supervisors" and thus should be excluded from the bargaining unit of faculty members. Middlesex County College is a relatively new school and its policies and operating procedures may change in future years as the school reaches different stages in its development. Although Department Chairmen presently act as "supervisors," it is possible that in future years the Board of Trustees, central administration, and faculty may want to change the role of the Department Chairmen. At some institutions of higher learning, Department Chairmen are elected by the members of the department for two or three year terms of office and act more as "coordinators" than "supervisors." If the position of Department Chairmen at Middlesex County College ever changes in this fashion and they no longer act as supervisors of the faculty members in their department, it would seem appropriate to include them in a bargaining unit with faculty members.

RECOMMENDATION

The Hearing Officer hereby recommends to the Commission as follows:

Academic Department Chairmen, Director of Admissions, Assistant to the Director of Administrative Service in Charge of Data Processing, Assistant to the Director of Administrative Service for Purchasing and Property, Director of Student Activities, and Registrar should not be included in the same bargaining unit with faculty members at Middlesex County College. The Commission should certify the Faculty Organization as the exclusive representative of a bargaining unit consisting solely of faculty members.



Michael H. Moskow
Hearing Officer

July 24, 1969

Middlesex County College
Faculty Organization
Local #1940, AFT
Edison, N.J.
08817

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N.L.P.E.R.C.

July 31, 1969.

Public Employment Relations Commission
Labor and Industries Building
John Fitch Plaza
P.O. Box V
Trenton, N.J. 08625

Re.: MIDDLESEX COUNTY COLLEGE
BOARD OF TRUSTEES

AND

MIDDLESEX COUNTY COLLEGE
FACULTY ORGANIZATION,
LOCAL No. 1940, AFT R-12

Your Honors:

The undersigned respectfully begs to petition the Public Employment Relations Commission to receive an exception to the report and recommendation of the Hearing Officer, Dr. Michael H. Moskow, in the above-referenced matter. The exception is:

1. The recommendation is not consistent with available evidence. The hearing was conducted in the form and nature of adversary proceedings instead of as a purely investigatory hearing where all available information may be introduced. This effectively limited the record in two ways. First, evidence objected to by the Board was excluded, and, second, valuable time was lost on minor items since the hearing was in effect restrained by the limitations of adversary proceedings. Therefore, the Union does respectfully petition for a complete rehearing under a different hearing officer, properly conducted to place in the record all available evidence bearing

on the issue.

2. The introduction of all available evidence will establish, without doubt, that there did exist in fact an established practice whereby the faculty organization did represent all professional employees, and that this practice was in effect negotiations under Art. I-19 of the 1947 Constitution of the State of New Jersey. Prior to the adoption of Ch.303 of the Public Laws of 1968, these negotiations were limited to the rights accorded to employees under this constitutional section. These negotiations included department chairmen in the negotiations unit. The Union contends that the hearing officer overemphasizes the issue of negotiation with regard to past practice. The term past practice is not defined in the act and is subject to interpretation. The hearing officer finds that there was unity of all professionals, regardless of rank or position, within the faculty organization, during which time, the constitution of that organization provided, among other items, for fostering the improvement of standards, services and goals of the profession and for the promotion of the welfare of the membership in Article II:B. In Article II:C, the constitution provided for the consideration of local questions of educational policies and professional obligations and priveleges. (A copy of the constitution is attached.)
3. With regard to the supervisory nature of the function of department chairmen, considerable additional evidence could have been introduced to establish the erratic nature of his authority. It can be established, both before and after the hearing, that faculty members have been hired without consultation of department chairmen, and that the recommendations of department chairmen not to renew contracts of faculty members were not accepted by higher authority. The effectiveness of the recommendations of department chairmen are subject entirely to the whim and caprice of higher authority.

4. During the period that the faculty organization recognition as a bargaining agent, more than half of the then department chairmen submitted designation cards indicating that they desired the faculty organization to represent them. The Union contends that this is another important consideration as well as an important indication that the department chairmen felt that they were part of the bargaining unit.
5. Much of the above discussion applies to the other positions in dispute equally as well as it does to the department chairmen.
6. Should the department chairmen and other employees in question be excluded from the bargaining unit, their meagre numbers will, in fact, deprive them of effective representation. At the same time, the division will deprive the professional union of some of its best minds and leadership. The effect will be to curtail and confine negotiations to the narrow limits of welfare, away from the broad aims of the professional teachers to collectively influence the methods and application of their expertise. Further, the need for effective representation of department chairmen has recently been demonstrated by the recent release of a department chairman from his duties without cause and without effective recourse on his part.
7. For the reasons stated, and in the interest of justice and equity, the union petitions for a rehearing to be conducted for the investigatory purposes of ascertaining all facts relevant to the situation. The Union requests the assignment of a new hearing officer for such hearing since Dr. Moskow might possibly be prejudiced by his prior judgements and conclusions. If the Public Employment Relations Commission has set up other appellate procedures which

which would preclude such rehearing, the Union hereby begs to petition for such appellate procedure.

Respectfully submitted

Charles Korn

Charles Korn,
Past Chairman,
for the Faculty
Organization.

cc. Mr. John A. Hoffman

WILENTZ, GOLDMAN & SPITZER

252 MADISON AVENUE

PERTH AMBOY, N. J. 08862

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826-0700

DAVID T. WILENTZ
G. GEORGE GOLDMAN (1922-1989)
HENRY M. SPITZER
WARREN W. WILENTZ
ROBERT N. WILENTZ
MATTHIAS D. DILEO
ROBERT A. PETITO
MORRIS BROWN
ALLEN RAVIN
HAROLD G. SMITH
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ALFRED J. HILL
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ROBERT W. LEWANDOWSKI
WALTER H. GEHRICKE
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STANLEY L. BENN
HAROLD A. KUSKIN
BARRY D. MAURER
ARTHUR S. KLEIMER
STEPHEN E. BARCAN
ALAN E. DAVIS

August 12, 1969

Public Employment Relations Commission
Labor and Industries Building
John Fitch Plaza
P. O. Box V
Trenton, New Jersey 08625

R-12

Re: Board of Trustees of the Middlesex County College
-and-
Middlesex County College Faculty Organization, A.F.T.

Gentlemen:

This will acknowledge the receipt of the report and recommendations from Dr. Michael H. Moskow, Hearing Examiner, in connection with the above-noted matter and exceptions to this report and recommendations filed by Charles Korn for the Middlesex County College Faculty Organization (hereinafter referred to as Faculty Organization) by letter dated July 31, 1969. This letter is filed on behalf of the Board of Trustees of the Middlesex County College in reply to those exceptions.

1. The first exception which Mr. Korn takes to said report states that the hearing was not conducted in proper form and that the record was limited because the Board of Trustees (hereinafter referred to as Board) objected to the inclusion of certain evidence and time was lost at the hearing because of the manner in which same was conducted. Please be advised that the transcript will reveal that said hearing was conducted in the usual manner. The Faculty Organization was given an opportunity to present its position by virtue of documentary evidence and witnesses and the Board was then given

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the right to cross-examine said witnesses. The Board then presented its position by virtue of documentary evidence and testimony from witnesses, and the Faculty Organization was given the opportunity to cross-examine the Board's witnesses. With regard to Mr. Korn's contention that evidence which the Faculty Organization wished to introduce was excluded, this is unfounded. First, an examination of the transcript will clearly reveal that at no time was any evidence which the Faculty Organization attempted to properly admit ever excluded from the hearing by the Hearing Examiner. Second, when the Faculty Organization wished at the conclusion of the hearing to introduce more evidence and in its brief requested the right to introduce more evidence, the Hearing Examiner, over the objection of the Board, allowed the introduction of such evidence. With regard to Mr. Korn's contention that time was lost at the hearing by virtue of the nature of the proceedings, please be advised that both parties at the time of the hearing presented their evidence before the Hearing Examiner and at the conclusion of the hearing, neither party requested that the hearing be continued. Prior to the hearing, both parties had received adequate notice of the date of the hearing and had more than adequate time to prepare the testimony which was to be presented. At the hearing, the Faculty Organization was represented by both Mr. Charles Korn, the then Chairman of the Organization, and Joseph F. Cascella, a Union Representative.

2. In exception No. 2, Mr. Korn feels that the Hearing Examiner made an erroneous determination in finding that there was no established past practice which dictated that department chairmen should be in the same bargaining unit as faculty members. A complete review of the transcript should clearly reveal that

Dr. Moskow's interpretation was correct and predicated upon the evidence presented at the hearing. The newness of the institution, the manner in which the Faculty Organization was established and the manner in which the President of the College sought and received advice from the organization all establish the fact that there was no established tradition of negotiations which necessitates the grouping of department chairmen and faculty members of their department in the same bargaining unit.

3. In exception No. 3, the Faculty Organization takes exception to the Hearing Examiner's finding that the department chairmen were supervisors. At the hearing, evidence was clearly presented which indicated that department chairmen had the right to effectively recommend appointment of new faculty members; recommend reappointment of faculty members; recommend dismissal of faculty members; evaluate faculty members and discipline faculty members. It was also clearly established that there was both a teaching and salary differential between the department chairmen and other faculty members. In fact, at the hearing, the Faculty Organization conceded that in the vast majority of instances, the recommendations of the department chairmen were followed by the Board of Trustees. It was also clearly established by the department chairmen who testified at the hearing that to admit department chairmen in the same bargaining unit as faculty members of the department either could or would create a severe conflict of interest. This conflict could seriously impair the independent judgment of the department chairman and thus render valueless their function in the organizational hierarchy of the college. Thus, it should be clear that the Hearing Examiner's conclusion on this issue was correct and based upon the evidence presented at the hearing.

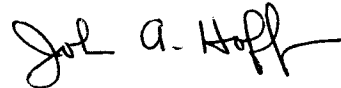
4. In exception No. 4, Professor Korn asserts that more than one-half of the department chairmen submitted designation cards indicating that they desired the Faculty Organization to represent them. Assuming this evidence is relevant to the question of whether department chairmen are supervisors, the Faculty Organization at the time of the hearing had the opportunity to present this evidence, but elected not to do so. What was established, however, at the hearing was that the department chairmen felt that there would be a severe conflict of interest presented if they were represented by the same bargaining unit.
5. Exception No. 6 of the Faculty Organization apparently deals with the fact that if department chairmen are deemed not to be in the same bargaining unit as the faculty members, their numbers would be small. This is a fact with regard to every union which is made up of supervisory personnel since there are of necessity less supervisors than regular working employees. Furthermore, nowhere in the statute relating to the establishment of PERC and the standards to be used by PERC in making unit determinations is there any language that indicates that the number of employees in a unit is an important factor. Moreover, if it is true as Mr. Korn asserts, that the "best minds and leadership" of the Faculty Organization are department chairmen, there should be no problem of these individuals adequately representing their interests.
6. In this regard, Mr. Korn in exception No. 6 also indicates that if department chairmen are not members of the same bargaining unit as faculty members, that the Faculty Organization would be deprived of its best minds and leadership. This may be because of the fact that the report is being written by Charles Korn, who is a department chairman. A review of the recent elections of the

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Page 5.

Faculty Organization reveals that neither its five elected officers, nor the Chairman of the Welfare Committee, nor the Chairman of the Negotiating Committee are department chairman. It would therefore seem that this emotional appeal for inclusion of department chairmen in the bargaining unit is also unfounded.

In conclusion, I would just like to reiterate that a complete review of the record clearly reveals that the report and recommendation of the Hearing Examiner was correct and that a further rehearing of this matter would be valueless since all relevant facts were previously adduced at the initial hearing in which both sides had an opportunity to properly present their positions.

Respectfully submitted,



JOHN A. HOFFMAN, Attorney
for the Board of Trustees
of the Middlesex County College

JAH:BJ

CC: Mr. Charles Korn