P.E.R.C. NO. 89-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY VOCATIONAL
SCHOOLS BOARD OF EDUCATION,

Respondent-Public Employer

-and- Docket No. CI-86-76-20

MARIE IADIPAOLI,

Charging Party.

ESSEX COUNTY VOCATIONAL ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Respondent-Employee Representative,

-and- Docket No. CI-86-77-21

MARIE IADIPAOLI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Marie Iadipaoli against the Essex County Vocational Schools Board of Education and the Essex County Vocational Administrators and Supervisors Association. The charge alleged that the Board and the Association violated the Act when it negotiated a contract that excluded Iadipaoli from the Association's negotiations unit. The Commission finds that the Board and the Association acted in good faith in removing the title.

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-and- Docket No. CI-86-77-21

MARIE IADIPAOLI,

Charging Party.

Appearances:

For the Respondent-Public Employer, H. Curtis Meanor, Acting County Counsel (Anthony P. Sciarrillo, Assistant County Counsel, of counsel)

For the Respondent-Employee Representative, Wayne Oppito, Esq.

For the Charging Party, Klausner, Hunter & Oxfeld, Esqs. (Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On April 23, 1986, Marie Iadipaoli ("charging party") filed unfair practice charges against the Essex County Vocational Schools Board of Education ("Board") and the Essex County Vocational Administrators and Supervisors Association ("Association"). She alleges that the Board violated subsections 5.4(a)(1), (2) and

(5)[1/] and the Association violated subsections 5.4(b)(1) and (3)[2/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by negotiating a contract excluding her title from the Association's unit.

On May 6 and June 23, 1986, the Board filed statements arguing that five director positions, including the charging party's position as Director of Curriculum and Instruction, were managerial and confidential and thus should be excluded from the Association's unit. It further argued that it had satisfied its negotiations obligation.

On August 7, 1986, the cases were consolidated and a Complaint and Notice of Hearing issued.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

On August 12, 1986, the Association filed an Answer contending it had acted legally and in good faith when it agreed to exclude the director positions.

On August 15, 1986, the Board filed a letter requesting its position statements be deemed its Answer.

On March 27 and 30, and April 22, 1987, Hearing Examiner Susan A. Weinberg conducted a hearing. The parties examined witnesses and introduced exhibits. At the end of the charging party's case, the Board and Association moved to dismiss. The Hearing Examiner granted the Board's motion finding no bad faith or unilateral action. She denied the Association's motion.

On April 6, 1987, the charging party requested special permission to appeal the Board's dismissal. On April 20, the Chairman denied the request, stating the Commission would consider any exceptions to the dismissal at the conclusion of the case.

The case continued with only the charging party and the Association. They waived oral argument but filed post-hearing briefs by September 9, 1987.

On January 22, 1988, the Hearing Examiner recommended dismissal of the allegations against the Association. H.E. No. 88-36, 14 NJPER 142 (¶19057 1988). She found that the Association had acted within the range of reasonableness allowed a majority representative in contract negotiations. She did not decide whether the charging party was a confidential employee or a managerial executive within the Act's meaning. She noted that the directors

could file a petition seeking representation by another majority representative.

On April 25, 1988, the charging party filed exceptions. She did not except to the findings concerning her job duties or negotiations. She claims, however, that the Hearing Examiner did not address these facts: The December 1985 negotiations session took place in the office of Lawrence Schwartz, the Board's attorney. He indicated that all the directors had to be taken out of the unit. When the Association failed to agree, he packed his suitcase and said the Board was going to walk out of negotiations and take everything off the table and that the Association could sweat it out as negotiations would drag on for years. Schwartz then proposed a salary for each unit member. In the past, raises were across the board. Schwartz stated the proposal was to rectify past inequities. The largest increases were for two of the Association's negotiators. The alleged inequities occurred nine years earlier when the two negotiators were promoted without a significant pay increase. The charging party claims the average salary increase was 7.3% for unit members who had not moved into the unit as a result of a promotion, were not on the negotiations team, and had not lost an increment. She further claims the average increase was 13.5% for the negotiators.

The charging party also excepts to the Hearing Examiner's conclusion that "[t]he Board came to the table with a belief that the title of Director was managerial and/or confidential..." (TB97)

and that "[t]he Board presented numerous, facially sound and strongly supported facts regarding the managerial and/or confidential nature of the positions in dispute." H.E. at 13.

The charging party maintains that she is neither a confidential employee nor managerial executive and that the Board and Association violated her right to be represented in the appropriate collective negotiations unit. As a remedy, she seeks a raise at the highest rate granted one of the Association's negotiators, 15.6%.

On May 31 and June 14, 1988, after extensions of time, the Association and Board filed replies urging adoption of the recommended decision.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-11) are accurate. We adopt and incorporate them adding the above description of the December 1985 negotiations session. We also add that unit members' raises ranged from .5% to 15.6% and that Association negotiator Calderone received the greatest increase. We do not adopt the Association's entire analysis of the raises because the testimony about which employees were new to their positions was too equivocal.

Parties are free to negotiate about the composition of a negotiations unit. Bor. of Wood-Ridge, P.E.R.C. No. 88-68, 14 NJPER 130 (¶19051 1988); see also Salt River Valley Users Ass'n, 204 NLRB 83, 83 LRRM 1536 (1973), enf'd 498 F.2d 393, 86 LRRM 2873 (9th Cir. 1974); Douds v. Longshoremen, 241 F. 2d 278, 39 LRRM 2388 (2d

Cir. 1957). Neither side is required to agree or make a concession on a unit change proposal. Neither side can insist to impasse on a change. Wood-Ridge, 14 NJPER at 132. If agreement cannot be reached, unit changes can only come about through our unit clarification procedures. N.J.A.C. 19:11-1.5. However, we cannot intervene in matters of unit definition unless there is a dispute between the parties. N.J.S.A. 34:13A-5.3.

The Board vigorously proposed and the Association ultimately agreed to exclude all directors from the Association's unit. There was no evidence that either party acted in bad faith. See Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953).

Had the Board refused to negotiate about the directors, it would have done so at its peril. If the directors were not confidential or managerial, the Association could have prevailed in an unfair practice proceeding. See, e.g., Passaic Cty. Reg. H.S. Dist. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976). But the Association has not claimed the Board refused to negotiate. Unit members thought the directors were being used as assistant superintendents and were concerned that the directors supervised principals. Two director titles were already excluded and the Association simply agreed to exclude the remaining three.

We are sensitive to the charging party's claim that she was left without representation, but on balance and in light of the Board and Association's conduct, we dismiss the allegations that they interfered with her rights under the Act.

We emphasize that the parties' agreement to exclude the directors from the Association's unit did not determine their confidential, supervisory or managerial status. Section 5.3 guarantees the charging party's right to join an employee organization. She and the other excluded directors could have filed a representation petition seeking representation by another employee organization. At that time, we would have investigated and determined whether any or all the director titles were confidential, managerial or supervisory.3/

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained. Commissioner Reid was not present.

DATED: Trenton, New Jersey
July 15, 1988
ISSUED: July 18, 1988

3/ Still pending before us is an an unfair practice charge arising from the charging party's being returned to the Association's unit.

H.E. NO. 88-36

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

In the Matter of

ESSEX COUNTY VOCATIONAL
TECHNICAL BOARD OF EDUCATION,

Respondent-Public Employer,

-and- Docket No. CI-86-76-20

MARIE IADIPAOLI,

Charging Party.

ESSEX COUNTY VOCATIONAL
ADMINISTRATORS AND SUPERVISORS
ASSOCIATION,

Respondent-Employee Representative,

-and- Docket No. CI-86-77-21

MARIE IADIPAOLI,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends dismissal of the Charging Party's Complaint against the Association alleging a violation of subsections (b)(1) and (3) of the Act. The Hearing Examiner found that the Association did not breach its duty of fair representation to the Charging Party when it negotiated an agreement excluding her title from the negotiations unit.

The Hearing Examiner also granted the Board's Motion to Dismiss on the record.

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

H.E. NO. 88-36

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

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ESSEX COUNTY VOCATIONAL
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Respondent-Employee Representative,

-and- Docket No. CI-86-77-21

MARIE IADIPAOLI,

Charging Party.

Appearances:

For the Respondent-Public Employer
Schwartz, Pisano & Simon
(Nathanya G. Simon, of counsel)

For the Respondent-Employee Representative
Wayne Oppito, Esq.

For the Charging Party,
Klausner, Hunter & Oxfeld, Esqs.
(Nancy I. Oxfeld, of counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On April 23, 1986, Marie Iadipaoli ("Iadipaoli" or "Charging Party") filed two Unfair Practice Charges with the Public

Employment Relations Commission ("Commission") against the Board of Education of the Essex County Vocational Schools ("Board")(CI-86-76) and the Essex County Vocational Administrators' and Supervisors' Association ("Association")(CI-86-77) alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (2) and (5)[1/] and 5.4(b)(1) and (3).[2/] Iadipaoli charged that the Board "interfered with her right to be represented by negotiating a collective agreement with the Association which excluded her position of Director from the negotiations unit." Iadipaoli further alleged that by negotiating this agreement, the Association breached its duty to fairly represent her.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

On May 5 and June 20, 1986, the Board filed position statements. It argued that the five Director's positions (including Iadipaoli's) were managerial and/or confidential, and thus should be excluded from the negotiations unit. In any event, the Board maintained that it satisfied its negotiations obligation by bargaining in good faith with the unit's majority representative.

On August 7, 1986, an Order Consolidating Cases and a Complaint and Notice of Hearing issued.

On August 12, 1986, the Association filed an Answer and statement of position. It contended that it acted in good faith and committed no violation when it accepted the Board's position excluding the Directors.

On August 15, 1986, the Board filed a letter requesting that its position statements of May 5 and June 20 be deemed its Answer to the Complaint.

On March 27, March 30 and April 22, 1987[3/], I conducted hearings during which the parties examined and cross-examined witnesses, presented evidence and argued orally. At the close of

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3/ Originally, a pre-hearing conference was scheduled for September 25, 1986, and the hearing was scheduled for October 1 and 2. At the request of the parties, the pre-hearing was rescheduled for October 2, and the October 1 hearing was adjourned. At the request of the parties, the pre-hearing conference was again rescheduled for November 21. On that date, the parties rescheduled the hearing for February 18, 19 and 20, 1987. The Board subsequently found these dates unacceptable, and the hearing was rescheduled for March 11, 12 and 13. Thereafter, due to the personal illness of the Charging Party's counsel, the hearing was rescheduled for March 27, 30 and April 22.

the Charging Party's case on March 30, both the Board and the Association made Motions to Dismiss. For the reasons set forth on the record, I granted the Board's Motion and denied the Association's Motion.

On April 2, 1987, the Charging Party filed a request with the Commission for special permission to appeal my decision granting the Board's Motion to Dismiss. On April 13, 1987, the Board filed a response, contending that since the Complaint against it was dismissed, it should not have to remain in the case. On April 20, 1987, the Commission Chairman denied the Charging Party's request. He determined that the Commission would "consider the propriety of the dismissal at the conclusion of the entire case if exception was made thereto pursuant to N.J.A.C. 19:14-7.3."

On April 22, 1987, the hearing continued with only the Association and the Charging Party. Upon completion of the hearing, both parties waived oral argument and filed post-hearing briefs by September 9, 1987.

Upon review of the entire record, I make the following:

FINDINGS OF FACT

1. The parties stipulated:

   a. The employment history of the charging party to June 1986. Initial employment as business trades teacher, 1957; guidance counselor position, 1961; Vice Principal position, 1973; Supervisor of Instruction position, 1976 with seniority

credit back to 1972; Acting Principal, April 1977; Director of Curriculum and Instruction, July 1984; Coordinator of Curriculum and Instruction, July 1986.

b. The position of Supervisor of Instruction has been included in the administrative bargaining unit since at least July 1, 1969.

c. The Board of Education created five Director positions effective as follows: Director of Planning and Computer Services effective March 19, 1984; Director of Support Services effective March 19, 1984; Director of Adult and Continuing Education/Evening School effective March 19, 1984; Director of Vocational-Technical Education effective March 19, 1984; Director of Curriculum and Instruction effective March 19, 1984. All above positions, with the exception of the Director of Curriculum and Instruction, were posted and advertised for applications. The charging party was appointed to the position of Director of Curriculum and Instruction effective July 1, 1984.

d. From July 1, 1984 through June 30, 1986, no one held the position of Supervisor of Instruction.

e. For the 1984/85 school year, three of the Director positions, including the Director of Curriculum and Instruction, were included in the administrative bargaining unit.

f. Effective July 1, 1985, the contract between the Essex County Vocational Administrators and Supervisors Association and the Board of Education of Essex County Vocational Schools had expired. The charging party continued to be paid pursuant to the 1983/85 contract between those parties.

g. As a result of negotiations for the successor agreement, the Essex County Vocational Administrators and Supervisors Association and Board of Education of Essex County Vocational Schools modified the recognition clause in the 1985/87 contract to

exclude all Directors from the bargaining unit. In January 1986, the Association and the Board arrived at the new contract retroactive to July 1, 1985 and effective through June 30, 1987.

h. At the Board meeting of February 25, 1986, the Board of Education of the Essex County Vocational Schools set the charging party's salary for the 1985/86 school year at $48,500.

2. Iadipaoli's job duties as Director of Curriculum and Instruction included teacher training (observing and assisting teachers, and conducting in-service workshops), curriculum construction (developing new course outlines, coordinating the efforts of curriculum and text book committees, and supervising the development of instructional materials), and budgetary matters (serving on budget committees regarding text books and instructional material). Iadipaoli's responsibilities were district-wide. She reported to both the Superintendent and Assistant Superintendent. After the reorganization in December 1984, Iadipaoli was also assigned to prepare numerous state and county reports for the district. These statistical reports covered such topics as affirmative action, enrollment, state aid, limited English proficiency, scoliosis, tuberculosis, drop-outs, and the district's five-year action plan. Iadipaoli also coordinated Title 9, monitoring, and federal funding applications (TA20-TA32).[4/]

4/ Transcript references are as follows: TA20-TA32 refers to the transcript dated March 27, 1987, pages 20 through 32; TB refers to the transcript dated March 30, 1987, and TC refers to the transcript dated April 22, 1987.

3. Iadipaoli's office was located in the central office building where cumulative files and all personnel files, including teacher ratings and professional improvement sheets, were kept. Iadipaoli had access to all these files (TA94, TA101).

4. During her tenure as Director of Instruction, Iadipaoli attended numerous cabinet-level meetings with the four other Directors and the Superintendent, Dr. Harvey. Some of these meetings were attended by a consultant hired by the district to develop a five-year long range plan (TA48). Topics discussed at other meetings included teacher vacancies, principals' performances, consolidation of programs, federal funding priorities, and text book and equipment budgets (TA57-TA59). The Directors were provided a gross budgetary figure from which they (after discussions with the principals) allocated funds. (TA98, TA110). Iadipaoli testified without contradiction that at no time during any of these meetings were employee salaries, benefits or vacation, holiday and overtime pay discussed (TA48, TA60). Further, there were no discussions about ongoing negotiations between the Board and the Association (TA58).

5. Negotiations for a successor agreement to J-2 commenced in March 1985, and continued until an agreement was reached in January 1986 (TB16, TA20). During the 1985-86 school year, there were approximately four meetings held by the Association to discuss negotiations. All members, including the represented Directors, were sent notifications of these meetings (TB16). Iadipaoli did not attend any Association meetings in 1985-86 (TA68). Moreover, at no time prior

to ratification of the new agreement did Iadipaoli discuss with her Association representative the status of negotiations or her concerns about proposed terms and conditions of employment which would affect her (TA74, TA121, TB16, TC21).

6. Sometime in November 1985, Iadipaoli met with the other Directors to discuss appropriate raises for their positions. Following this meeting, a typed, written proposal was drawn up and presented to Dr. Harvey (TA76, TA77). The Directors communicated their salary proposals directly to the Superintendent to "plead [their] own cause, telling him how many hours [they] were working" (TA83). This was done outside the negotiating process and no Association representative was present.

7. The Association team negotiating the successor agreement consisted of three members: Alex Trento, Association President; Ralph Calderone, Association Vice President; and Clive Krygar (TB19, TC5). Prior to the commencement of negotiations, the Association held a general meeting where all members were asked to submit proposal suggestions. These efforts culminated in the Association's formal submission to the Board (Exhibit RA1, TB21). In that document, the Association proposed that the recognition clause continue to include the three previously-represented Directors (TB14).[5/]

8. On April 18, 1985, the Board submitted its counterproposals (Exhibit RA2), which stated in pertinent part:

5/ Trento testified that the Association did not ask to include the other two Directors because the parties had previously agreed that their positions were managerial and confidential (TB15).

Delete the following titles as confidential and managerial employees; and set forth specifically in the contract the titles that are considered to be confidential and managerial.

Director of Adult Continuing Education/Evening School...

Director of Support Services

Director of Curriculum and Instruction

9. After the Board's proposal was received, the Association negotiations team held a meeting with the membership to explain and discuss the Board's position. At that time, it was made clear to the membership that the Board wanted the Directors out of the unit (TB22).

10. Throughout the remaining negotiation sessions, the Board reiterated its stance on the confidential and managerial nature of the Directors' titles. The Board representatives told the Association negotiations team that the Directors were managerial and confidential because they supervised principals; had access to confidential files and information unavailable to other administrators; made personnel decisions regarding bargaining unit members, including hiring, firing, evaluations and transfers; considered and reviewed grievances submitted by bargaining unit members; assisted in the development of the budget; developed and transferred district programs and participated in negotiations (TB26, TB47, 4TB9, TC8, TC14, TC15, TC29, TC32). Trento testified that the Superintendent specifically stated at negotiations that the Directors were "his team", that "he had to use them in any capacity

he felt appropriate," and that "he had to have a confidential staff to work closely with him" (TB50). All negotiation discussions involving the Directors' positions referred to them as a group (TC15). Moreover, throughout the entire period of negotiations, the Board remained adamant on its position to exclude the Directors. All three Association negotiations team members agreed that the Board took a hard line on this issue and refused to waiver (TB35, TC5, TC7, TC28, TC29).

11. The Association negotiators were aware of the job descriptions (Exhibit 6A-E) and job duties of the Directors (TB33). Specifically, they took notice of the section which stated that the Directors were required to "[perform] such other tasks and [assume] such other responsibilities as may from time to time be assigned by the Superintendent." (TB49). The Association felt that the Board had, essentially, created five Assistant Superintendents who could at anytime be called upon to perform confidential and managerial duties. The Association was also concerned with the supervisory role the Directors had over the principals (TB35). Further, both Trento and Calderone testified that they were aware that at least one of the Directors, Fishbine, had prior knowledge of Board negotiations proposals (TB5, TC8, 19).

12. The Association feared that if all the Directors were excluded from the unit, the Superintendent would be able to give them a higher raise than could be negotiated for the rest of the administrators. Accordingly, it was the Association's strategy to

keep the Directors divided by refusing to remove the represented titles. That way, reasoned the Association, if the administrators got nothing, the Directors would also get nothing. However, this position changed when the Board remained firm on the issue of excluding the Directors. In the end, a deal was struck where the Association agreed to the exclusion of all five Directors in exchange for a salary package which addressed the concerns of the remainder of the unit (TB38, TB39, TC27).

13. After that agreement was reached in December 1985, the Association sent out a notice (Exhibit RA3) to all unit members, including the three Directors, regarding the scheduling of a January 6, 1986, ratification meeting (TB18). At that meeting, the full agreement was discussed, and it was explained that all five Directors were to be excluded from the Association's unit (TB24, TB31). The agreement was ratified by a majority of the Association membership (TB40, TC40).

ANALYSIS

The issue is whether the Association violated its duty of fair representation to Iadipaoli when it negotiated an agreement with the Board which excluded her and four other Directors from the unit as being confidential and/or managerial employees in exchange for desired salary increases benefiting the remainder of the unit.

In Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953)("Ford"), the United States Supreme Court set forth the

standard for the duty of fair representative in negotiations as follows:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
> (emphasis supplied)

See also Humphrey v. Moore, 375 U.S. 335 (1984)("Humphrey"). Absent clear evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit, while resulting in greater benefits for other members. The mere fact that a negotiated agreement results in the detriment to one group of employees does not establish a breach of the duty of fair representation. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976)("Belen"); Lawrence Tp. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983)("Lawrence"); Union City and F.M.B.A. Local 12, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982)("Union City"); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978)("Hamilton").

In the instant case, it must be determined whether the Association acted within a wide range of reasonableness when it negotiated a contract which excluded the position of Director from the unit. Based on all the facts of this case, I conclude it did, and that no violation occurred.

Prior to the start of negotiations, the Association requested all of its members, including the represented Directors, to submit their concerns regarding positions to be taken at the negotiations table. Throughout the ongoing meetings, the Association kept its members apprised of the proposals being exchanged, including the Board's desire to exclude the Directors. At no time, during this process, were the Directors banned from participating, or were their concerns summarily ignored. In fact, none of the Directors, including Iadipaoli, chose to avail themselves of the opportunity to make their views known. Quite to the contrary, the Directors affirmatively circumvented the Association and the negotiations process by speaking directly with the Superintendent about their salaries for the upcoming year.

The Association's initial proposed recognition clause included the three previously-represented Directors. However, negotiations on this issue proved arduous. It is uncontroverted that the Board took a hard, unwaivering position on exclusion of all the Directors. The Board presented numerous, facially sound and strongly supported facts regarding the managerial and/or confidential nature of the positions in dispute.6/ Realizing that

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6/ Both parties spent considerable time in their post-hearing briefs on the confidential and/or managerial nature of Iadipaoli's position. However, this question need not be reached. In determining whether the Association acted within the wide range of reasonableness, it is unnecessary to address

Footnote Continued on Next Page

an agreement could not be reached without movement on this issue, and having no basis on which to discredit the Board's facts, the Association settled on contract language which excluded the Directors in exchange for salary concessions benefiting the rest of the unit.7/

Further, the record is completely devoid of any evidence that the Association behaved fraudulently or in bad faith. (Compare, Union City). The Charging Party presented no facts which showed that the Association deliberately or arbitrarily discriminated against her or the other Directors in reaching its agreement with the Board. Moreover, Iadipaoli was not singled out by the parties for exclusion from the unit. All of the Directors were discussed as a group. Finally, there was no indication of collusion between the Board and the Association in an attempt to specifically remove Iadipaoli or the other Director's from the unit.

6/ Footnote Continued From Previous Page

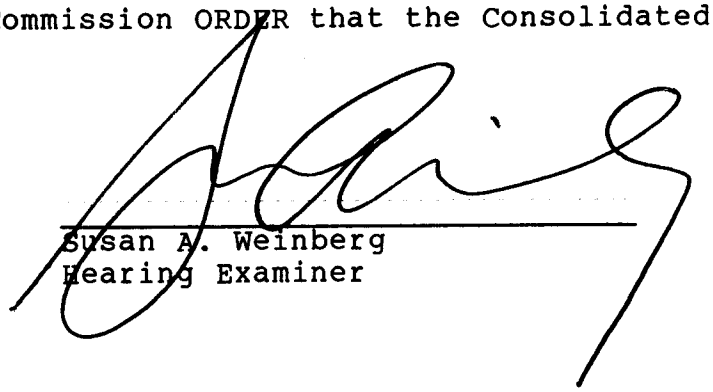
the ultimate legal soundness of the abstract representation issue. Rather, I must only consider whether during the negotiations process, under all the circumstances of this case, the Association's actions were within the broad standard set forth.

7/ As stated above, the mere fact that a negotiations agreement results in a detriment to one group of employees does not establish a breach of the duty of fair representation. Belen. The "detriment" in this matter was that Iadipaoli and the other Directors were no longer represented for purposes of collective bargaining by the Essex County Vocational Administrators and Supervisors Association. (Iadipaoli did receive a salary increase and continued to receive benefits.) However, there was nothing to prohibit these employees from seeking representation elsewhere. Assuming a sufficient showing of interest, a representation petition could have been filed on their behalf.

Accordingly, based on the foregoing and under all the facts of this case, I conclude that the Association did not violate subsections (b)(1) and (3) of the Act.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Consolidated Complaint be dismissed.



Susan A. Weinberg
Hearing Examiner

Dated: January 22, 1988
Trenton, New Jersey