

BOSTON SCHOOL COMMITTEE AND INDEPENDENT BOSTON SCHOOL ADMINISTRATORS ASSOC.,  
MCR-2343 (6/11/76).

- (30 Bargaining Unit Determination)  
34.2 community of interest  
34.5 established practice (history)  
35.7 supervisory and managerial employees

Commissioners participating: James S. Cooper, Chairman; Madeline H. Miceli;  
Henry C. Alarie.

Appearances:

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| Kathryn Noonan, Esq.  | - Counsel for the Commission   |
| John J. Murray        | - Representing the Boston School Committee   |
| Daniel Collins, Esq.  | - Counsel for the Assistant Principals Association   |
| Richard Coleman, Esq. | - Counsel for the Boston Association of School Administrators and Supervisors, SASOC, No. 6, AFL-CIO |
| James J. Grady, Esq.  | - Counsel for the Independent Boston School Administrators Association                               |
| John McMahon, Esq.    | - Counsel for Boston Teachers Union, Local 66, AFT, AFL-CIO  |

DECISION

Statement of the Case

On March 11, 1976, the Independent Boston School Administrators Association ("IBSAA") filed a petition with the Labor Relations Commission ("Commission"), pursuant to Section 4 of General Laws Chapter 150E (the Law), seeking certification as the exclusive representative for the purpose of collective bargaining of certain employees of the Boston School Committee. Specifically, IBSAA sought to represent the following employees: Headmasters; Junior High and Middle School Principals; Elementary School Principals; Assistant Headmasters; Assistant Principals; Directors, Group 10; Directors, Group 8; Directors, Group 7; Associate Directors; Assistant Directors, 11 months; Assistant Directors, 10 months; Assistant in Charge; Co-ordinator Directors; Chief Examiner; Examiners; Shop Superintendent; Chief Supervising Nurse; Any person occupying one of the foregoing positions for 60 or more days.

At present, the petitioned-for unit is represented for purposes of collective bargaining by two separate employee organizations. Boston Association of School Administrators and Supervisors Local No. 6 SASOC, ("BASAS") is the collective bargaining representative for all permanent appointees to the above-listed positions except Assistant Principals. Thus BASAS as a rule does not represent persons occupying any of the foregoing positions who are serving in an acting capacity.<sup>1</sup>

<sup>1</sup> BASAS claims to represent at least one person who has held a position within their unit description for over 3 years in an acting capacity. They differentiated this individual from all others serving in an acting capacity by asserting that service for more than 3 years entitles the employee to tenure in the position regardless of the lack of permanent appointment.

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The Assistant Principals Association ("APA") is the collective bargaining representative for all Assistant Principals.

Pursuant to the Rules and Regulations of the Commission, a copy of the Petition and Notice of Hearing were duly served on all interested parties. BASAS and APA were allowed to intervene. Hearings were conducted before Kathryn Noonan, Hearing Officer on May 3 and 14, 1976. All parties were afforded full and fair opportunity to be heard, to examine and cross-examine witnesses and to introduce testimony. Briefs timely filed by the Petitioner and BASAS have been carefully considered. Accordingly, upon the entire record herein, the Commission makes the following findings of fact.

Findings of Fact

1. The City of Boston is a "Public Employer" within the meaning of Section 1 of the Law.
2. The City of Boston School Committee is the representative of the City of Boston in dealing with school employees within the meaning of Section 1 of the Law.
3. The Independent Boston School Administrators Association is an "Employee Organization" within the meaning of Section 1 of the Law.
4. The Assistant Principals Association is an "Employee Organization" within the meaning of Section 1 of the Law.
5. The Boston Association of School Administrators and Supervisors Local No. 6, SASOC is an "Employee Organization" within the meaning of Section 1 of the Law.

In 1969, the APA was certified by the Commission as the bargaining representative of assistant principals of the Boston School system in case number MCR-418. These employees were originally part of a unit represented by the Boston Teachers Union, Local 66, AFT, AFL-CIO (BTU). However, after hearing, the Commission found them to have been inappropriately grouped with teachers and a separate unit was formed. In 1972, in case number MCR-955, BASAS petitioned for certification of the unit of administrators and supervisors hereinabove described, and a formal hearing was held. In Case No. MCR-955, the School Committee originally requested that the unit include assistant principals, but subsequently withdrew its request and agreed to a consent election. the APA did not intervene in these proceedings.

The Boston School System

The Boston School system is headed by a Superintendent who oversees a staff which currently includes a Deputy Superintendent, five Associate Superintendents and a Community Superintendent for each of the nine districts into which the city is divided for administrative purposes.<sup>2</sup>

<sup>2</sup>The Superintendent presented a reorganization plan for the School (cont'd.)



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The Deputy Superintendent supervises the activities of the nine Community Superintendents and the administrative assistants for elementary, middle, secondary and private schools. He/she develops policies and procedures for the operation of the schools in conjunction with the Associate Superintendents; reviews plans and objectives for the schools presented by the Community Superintendents; monitors school operations; and reviews applications for approval to operate a private school.

The Associate Superintendents have responsibility for various central administrative positions, grouped together generically. In the Superintendent's reorganization these are: the Office of Personnel, Department of Pupil Services, Department of Vocational-Occupational Education, Office of Special Funding and Programs, Department of Support Services and Department of Instruction. For example, the Associate Superintendent for Instruction is responsible for designing, developing and assisting in the initiation, implementation and evaluation of educational programs for adoption by the schools. He/she supervises Directors of several central offices, reviews instructional programs and recommends new curriculum. All of the other Associate Superintendents and the Superintendent's assistants coordinate their functions with one another.

About thirty-five Central administrative offices are grouped together into the six Departments described above under the direction of a specific Associate Superintendent. These offices are responsible for such areas as adult education, bilingual education, data processing, fine arts, guidance, home economics, music, reading, safety and transportation, and others. Virtually all of these are headed by a director and have one or more assistant directors.<sup>3</sup>

Using the Department of Instruction as an example, the general duties of the directors are as follows: to develop effective programs in their specifically

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2(cont'd.)

Committee in September, 1975. Its overall content was approved in December, 1975, but it has not yet been fully implemented. Many of the positions in the system are filled on a temporary basis or are only in the planning stage. We have attempted to determine an accurate overall picture of the school system, but are necessarily hampered to some degree by the fluctuation in positions and personnel reflected in the exhibits submitted by the parties at the hearing.

<sup>3</sup>A number of the offices, such as the Implementation Office, are direct outgrowths of the federal desegregation order. Some of these are temporary offices which may not be made permanent after the court mandate for them expires. The temporary offices, or those proposed offices of the Superintendent's reorganization plan do not yet have salary groupings assigned to them. The salary groupings of the directors determine which collective bargaining unit represents them. The current BASAS unit, and the unit petitioned for, include Directors in salary groups 10, 8 and 7. Directors in the majority of the offices fall into one of these groups. Certain Assistant Directors are termed "Assistants-in-Charge", and are also currently in the BASAS unit.



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assigned areas; to plan and implement any necessary testing programs; to maintain resource centers, promote student participation in competitions and fairs; to develop lists of books and other materials; to coordinate activities of supervisors and teachers in specific areas; to prepare budgets and seek special funding; to cooperate with principals and headmasters; and to be available to aid teachers and other staff with specific problems in the particular area.

Associate and Assistant Directors, supervised by the Director, in turn supervise other staff; coordinate their activities with other departments; and prepare reports and surveys on problem areas, working generally on a system-wide basis.

A Board of Examiners, reporting to the Associate Superintendent of Personnel, establishes ranked lists for hiring and promotion of staff and the admission of students to the examination schools. The Board, comprised of a Chief Examiner and Examiners, collaborates with the various testing services; counsels teachers on career development; prepares circulars about eligibility requirements; checks teaching candidates' credentials; monitors the promotional rating process and prepares and maintains a manual of job descriptions for administrative and supervisory positions.

A Chief Supervising Nurse, in the Special Services Department, supervises nursing personnel throughout the school system; assists in the development of the School Health Program; interviews prospective school nurses; and prepares in-service training programs.

Other administrative positions include executive assistants, administrative assistants and special assistants to the Superintendent, none of which are represented by any organization for the purposes of collective bargaining.

The executive assistant to the Superintendent supervises the activities of a planning, fiscal and evaluation specialist; maintains and periodically reviews records of current procedures and plans for all operations of all departments, areas and schools; advises the Superintendent on the cost-effectiveness of various activities; reviews and recommends changes in school procedures, and coordinates with the Superintendent's secretary in respect to personal and mail communications and the scheduling of the Superintendent's activities.

An Administrative Assistant, Liaison, reporting to the Superintendent, in turn supervises seven employees who are specialists in the business field, community relations, and other areas. This Assistant carries out a program to keep the media advised of school operations; maintains relationships with District Councils operating in each of the nine school districts; prepares a newsletter; seeks material support for school programs from private, business and other sources; and reports on community participation, business involvement and university pair programs under the federal court order.

The specialists who report to the Administrative Assistant, Liaison, work as liaisons with the business community, the media, the community, and universities. They serve on Task Forces and Committees set up in response to the Court Order, prepare reports and seek material support for school programs.



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The Administrative Assistant-Education Exploration, reporting to the Superintendent, supervises the librarian of the Professional Library and educational specialists who are assigned for specific projects and then returned to regular school operations. This Assistant prepares reports, develops research and development proposals, and supervises and evaluates programs that are subsequently funded.

Special Assistants to the superintendent are responsible for specific projects she assigns which are concerned basically with projects resulting from the federal court desegregation order.

Three of the Associate Superintendents have Administrative Assistants assigned to them on a temporary basis. These positions may be permanent once the reorganization is put into effect.

Separate from the central administrative offices, there exists an organizational structure in each of the nine community districts. Each of these nine districts is supervised by a Community Superintendent.

The Community Superintendent is responsible for supervision of headmasters, principals and acting principals<sup>4</sup> in the schools of the district. He/she assists principals in developing objectives and plans for individual schools; initiates and carries out approved programs; and meets organizations and community representatives to explain policies and procedures, to hear about problems and grievances and proposed solutions and to elicit the support and participation of the community in school programs.

Principals and Headmasters<sup>5</sup> are responsible for management of their respective schools in accordance with approved plans, budgets, School Committee policies and professional standards. They supervise and evaluate all staff members within the schools; organize and coordinate all student and staff activities; and meet with parent and community groups. The multiple record-keeping functions of a school, including certification of the payroll, budget development, inventory maintenance, and submission of reports required for compliance with city,

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<sup>4</sup>The Boston school system under a federal district court desegregation order Morgan v. Hennigan, 379 F.Supp. 410 (D.Mass. 1974), was required to place a person in charge of each elementary school, abolishing the practice where a principal may have been in charge of two or three schools. These persons had been termed "building administrators" by the Court. In its Order for Desegregation of Administrative Staff on February 24, 1976 sub nom Morgan v. Kerrigan, \_\_\_ F.Supp. \_\_\_ (D.Mass. 1976), the Court specifically discontinued use of this term. We will refer to such persons as "acting principals."

<sup>5</sup>"Headmaster" is the title of the administrator in charge of a high school. The term "principal" is used to designate persons in charge of elementary and middle schools.





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state and federal regulations are under the direct control of the principal or headmaster. In addition, he or she is responsible for implementing the Boston Public Schools Code of Discipline and maintaining policies and procedures for school safety.

Another specifically mandated principal/headmaster function is to provide training for assistant principals in all phases of administration.

Within the high school, the Headmaster is aided by an Assistant Headmaster who assumes the Headmaster's duties in his/her absence. The Assistant Headmaster aids in the daily school operation; supervises all staff; visits and evaluates all provisional and substitute teachers and those permanent teachers designated by the Headmaster. He/she is responsible for supervision of volunteers, bus monitors and aides; administers all student discipline; is responsible for building security and serves as coordinator of parent and student councils. The Assistant Headmaster also provides assistance in public relation efforts, in data collection and report development and in the formulation of school policies and programs. Under the federal desegregation order, he/she also serves as liaison between the Headmaster and the representatives of court-assigned universities and businesses.

Other Assistant Headmasters, called Assistant Headmaster-subject, are specifically responsible for specific educational subject areas. These persons assist the Headmaster in administering the school with the particular responsibility for organizing a subject Department and supervising the personnel therein. Such Assistant Headmasters teach assigned subject classes, prepare training materials and establish programs and new courses. They carry out routine department tasks in cooperation with the Headmaster, and make up an advisory cabinet which discusses school policy. Assistant Headmasters-subject are represented by the BTU for purposes of collective bargaining.

Boston Trade High School has a Shop Superintendent, a position represented by BASAS. Several other high schools have a Coordinator-Director, a Salary Group 7 position also represented by BASAS.

In elementary and middle schools, an Assistant Principal is responsible for the operation of the school when the principal is not there. Where there is more than one Assistant Principal at the school, the Community Superintendent recommends the Assistant Principal who will replace the Principal. When the Principal is present in the school, Assistant Principals perform supervisory duties over teachers, and may coordinate the recruitment of substitute teachers. Prior to the desegregation order, many elementary schools were in multi-school districts, and a Principal may have had responsibility for two or more schools. An Assistant Principal would manage the schools where the Principal was not located. Exhibits presented by the School Committee showed that there are 104 permanent and 16 acting assistant Principals. About 72 of these Assistant Principals are now acting principals under the desegregation order. The Federal Court has ordered that by August 1, 1976, all school buildings be headed by a permanently appointed Principal, thus eliminating the use of acting principals. Persons acting as principals will be eligible to be rated for the permanent



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appointment. Other Assistant Principals are serving as assistant directors, coordinators, specialists, and teachers in charge in the central administrative department of the school system.

### Bargaining History

Both BASAS and the APA have successfully negotiated several collective bargaining agreements with the School Committee, with the most recent agreements due to expire on August 31, 1976. In 1973, discussions were held between representatives of the two organizations on the feasibility of a merger. However, mutual agreement could not be reached and these discussions were terminated.

Currently, BASAS does not admit to membership nor claim to represent those persons who are filling a position in the BASAS unit on a temporary or acting basis. Once such a person has a claim to tenure under Massachusetts law, (on the first day of their fourth year in a position), BASAS then claims they are eligible for memberships and will represent them.

### The Positions of the Parties

The timely-filed petition of IBSAA is not opposed by the APA, which has taken the position that the petitioned-for unit is appropriate and that it does not wish to appear on the ballot of an election this Commission may order for the combined units. The School Committee has neither opposed nor favored the petition and has indicated that they will abide by the decision of the Commission in this matter. BASAS opposes the petition, urging that the two bargaining units remain separate and that in any event any election should be delayed until September.

After some discussion, the parties stipulated that no positions currently represented by the BTU would be affected by the decision in this case. These include the following: Reading Specialist, 766 Coordinator, Vocational-Occupational Coordinator, Research Assistants, Supervisors, Pupil Adjustment Counselor, Assistant Headmaster-Subject, Department Head, and Guidance Counselor. The parties also stipulated that the positions of Superintendent, Deputy Superintendent, Associate Superintendent and Personnel Assistant and Administrative Assistant to Associate Superintendent would not be appropriately included in a bargaining unit.

### OPINION

The foremost concern of the Commission in the area of bargaining unit determination is whether the petitioned-for unit is an appropriate one. General Laws, c.150E, Sec.3 states that:



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"The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation ...." 6

The legislative mandate has been interpreted in many Commission decisions. The "community of interest" test has been consistently applied in dealing with school system cases to place supervisory employees in units separate from those they supervise. See City of Chicopee School Committee, 1 MLC 1195 (1974) and cases cited therein. The "efficiency of operations and effective dealings" criteria have evolved into the policy of including employees in the largest practicable bargaining unit, Community Colleges, 1 MLC 1426, 1434 (1975).

Tensions have necessarily developed between these tests. The Commission faced these issues recently in its determination of appropriate units for state employees, where a balance was struck between the needs of the employer to negotiate with a manageable number of employee representatives and the rights of the employees to bargain collectively with those whose interests are not inherently in conflict with theirs. Statement in Support of Adoption of Amendment to Rules and Regulations of the Commission Creating Statewide Occupational Units (Statement) 1 MLC 1319 (1975).

In addition to balancing the factors of community of interest and efficiency of operations, the Commission also considers other factors, including the previous bargaining history of the parties and the established bargaining practices of other similar groups of employees. While it is true that the Commission has given weight to an existing bargaining relationship when combined with other factors, Wilmington School Committee, MCR-1045 (1972), it has always been our position that "(f)lexibility and change in bargaining unit composition is both necessary and proper in dealing with the changing needs and patterns of public employee bargaining." City Manager of Medford v. Labor Relations Commission, 353 Mass. 519, 526 (1968). "...[S]tability of labor relations neither requires nor contemplates permanence or rigidity." Statement, 1 MLC 1319, 1327 (1975).

BASAS urges that the bargaining history of the parties and the fact that this Commission had determined that the two existing units were appropriate outweigh other considerations. However, in 1969, when the APA petitioned for certification of an assistant principal's unit, the only issue presented to the Commission relating to scope of the unit involved the question of whether the

<sup>6</sup>We note for the record that this section of G.L. c.150E substantially changed the Commission's obligation with respect to appropriate unit determinations when compared with the prior law, G.L. c.149, Section 178H, repealed by Section 1 of c.1078 of the Acts of 1973.





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assistant principals were appropriately included in a unit with teaching personnel. Were the issue of an overall unit including assistant principals with principals, headmasters, assistant headmasters and others, presented at that time, the Commission may have decided the matter differently. In addition, the BASAS unit certified in 1972 was the result of a consent election where the standards of the Commission at that time were whether the unit is repugnant to the Act. This is the first time there has been a petition before us for a unit including assistant principals with other supervisors. Although we give serious consideration to the previous bargaining history and unit determinations, these factors alone are not controlling.

As City of Chicopee, *supra*, indicates, the position of this Commission has been to move toward two units of academic school personnel wherever feasible. Most other large school systems in the Commonwealth are structured along these lines for collective bargaining purposes.

The crucial issue here then, must be whether the assistant principals share a sufficient community of interest with the other employees in the petitioned-for unit to warrant their inclusion in an overall unit. In Statement, 1 MLC 1319, 1332 (1975), we defined community of interest. It requires a similarity of interests and working conditions, predicated on common supervision, similar work environment, similar job requirements, education, training and experience, as well as interchange and work contact. A comparison of the job duties of assistant principals and assistant headmasters reveals marked similarities and it therefore is especially anomalous to have assistant principals in one bargaining unit and assistant headmasters in another. The regular duties of the assistant principals can be characterized as supervisory and administrative. Additionally, the fact that the school system is under a federal desegregation order has meant that assistant principals have regularly functioned in an acting capacity in positions normally represented by BASAS. This indicates to us that the skills of the employees occupying these positions are sufficiently comparable with those of the employees in the BASAS unit to meet the requirement of the "community of interest" test relating to similarity of job requirements, education, training and experience. Coupled with all of the other evidence, the fact that the job description of the principals includes the specific mandate to train assistant principals in all phases of administration leads us to conclude that there is a strong community of interest between assistant principals and the supervisors in the BASAS unit. The policies of the Act would be effectuated by combining these positions into one unit.

While the parties have stipulated that certain positions, including those represented by the BTU, were to be excluded from any unit determination by this Commission, there were several other positions which were not stipulated to and which are not currently represented by any employee organization for the purpose of collective bargaining. These include executive, administrative and special assistants to the Superintendent, the Community Superintendents and several other newly created directorships. After a careful review of the job descriptions of Community Superintendent and the Superintendent's Assistants, we have determined that none of these positions has a sufficient community of interest with the other employees in the petitioned-for unit to warrant their inclusion.



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The Community Superintendents should be excluded from the unit since their interests are more in concert with the Associate Superintendents and the Superintendent who function on a central administrative level. Although policy-making functions are coordinated in one central office in Boston, we agree with the petitioner that the Community Superintendents should not be included in the unit.

BASAS has argued that even if we decide that the petitioned-for unit is an appropriate one, the election for the selection of representatives should be delayed until September. BASAS takes this position because of changes which may occur in the composition of the unit when the federal desegregation order for administrative staff is fully implemented on August 1, 1976. While we are sympathetic to these arguments we are reluctant to delay any election. Collective bargaining agreements between the School Committee, BASAS and the APA expire on August 31, 1976. Regardless of the outcome of the election, any contract which is negotiated will necessarily be delayed and the employees would be working without an agreement. We are concerned both with the rights of the employees to an orderly transition to a new unit and the delicate circumstances of the Boston School System as it copes with a federal court order. Delay would threaten the rights of the employees and the citizens of Boston.

The test utilized by the National Labor Relations Board in determining when to direct an election in cases where an expansion of the work force is planned is whether there presently exists a substantial and representative complement of the anticipated work force. If so, an election will be directed immediately, Libbey Glass Division, Owens-Illinois Inc., 211 NLRB 939, 86 LRRM 1647 (1974). This is the test we adopt, and the facts of the instant case satisfy these requirements.

ORDER

Wherefore, on the basis of the foregoing, the Commission concludes:

1. That a question has arisen concerning the representation of certain employees of the City of Boston School Committee.
2. That the unit appropriate for the purpose of collective bargaining consists of:

"all headmasters; junior high and middle school principals; elementary school principals; assistant headmasters; assistant principals; directors, group 10; directors, group 8; directors, group 7; associate directors; assistant directors, 11 months; assistant directors, 10 months; assistant in charge; co-ordinator directors; chief examiner; examiners; shop superintendent; chief supervising nurse; any person occupying one of the foregoing positions for 60 or more days, excluding all other employees.



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3. That an election shall be held for the purpose of determining whether or not the majority of the employees in said unit have designated or selected Independent Boston School Administrators Association or Boston Association of School Administrators and Supervisors, Local No. 6, SASOC as their representative for the purposes of collective bargaining.
4. That the eligible voters shall consist of all those persons included within the above-described unit whose names appear upon the payroll of the Employer as of the payroll date ending immediately prior to March 11, 1976 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws as aforesaid,

IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining unit at such time and place and under such conditions as shall be contained in Notice of Election issued by the Commission and served on all parties and posted on the premises of the Employer together with copies of the specimen ballot.

In order to assure that all eligible voters will have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to this election should have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts, 02202 no later than 5:00 P.M. on Monday, June 14, 1976.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

Henry C. Alarie, Commissioner



