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Unit Status of Supervisors in Public Education: An Introduction

BY HUGH D. JASCOURT*

Who should be treated as a "supervisor" and should such a person be entitled to representation by a union? And, if so, should supervisors be allowed to be in the same unit of bargaining as non-supervisors? These are basic, fundamental questions that have been asked ever since the advent of public sector collective bargaining. There are several reasons for asking them again at this time. One reason is that despite a remarkable coalescence of viewpoints that has evolved in public sector labor relations on a number of subjects, there has yet to be a consensus on the status of supervisors. A second reason is that due to the diminishing probability of a federal law to establish standards for state and local collective bargaining or of standards to be tied to dwindling federal funds funneled through revenue sharing, states and local governments will have to answer these questions themselves.

Perhaps the most important reason is that there appears to be increasing pressure to answer these questions. Obviously, in the states which do not accord by law collective bargaining the question looms larger since the likelihood of a federal statute will not allow legislators to pass the buck outside the state and since fiscal crisis has increased the visibility of unions where de facto bargaining exists or where collective bargaining agreements are disguised as school board resolutions. The fuel provided by fiscal crisis also is powering a drive to re-examine the conventional wisdom in states which answer in their laws the questions concerning unit status of supervisors. Where the questions may have not been critical to supervisors in the past, they are now becoming significant and major issues when school boards engage in reductions-in-force, layoffs, school closings or take other cost cutting measures to cope with lack of funds or declining

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enrollments. In addition, there has been a trend toward consolidation of school districts in states with very small local school districts, with the result that "middle management" is pushed further away from top management and at the very same time is transformed into a more vital link to those below.

Emotionalism has been a major factor in preventing a consensus concerning unit status. Traditional labor law, aimed more at industrial rather than professional settings, views as a basic axiom that supervisors should not be mixed with the rank and file and that anyone who exercises any supervisory function is a "supervisor." This is reflected in the receptivity of the courts to such a perspective, as in the case of *Norbeck v. Davenport Community School District*,¹ in which the Court of Appeals for the Eighth Circuit found that a school board did not infringe the constitutional rights of a principal who was not renewed as the result of his lack of sound judgment exhibited by his acting as the chief negotiator of the teachers union which represented the unit which encompassed him.

Equally triggering an emotional response is that many teacher organizations have included as members for a long period of time personnel who have been acknowledged to be supervisors. Moreover, as school administration has become more complex, various titles have been used accompanied by a wide range of supervisory indicia. In other words, as is typical in much of the public sector, many individuals possess some elements of the accepted supervisory indicia, but the authority is scattered along a hierarchical scale. Sometimes actual power of authority is fortuitous, depending upon the personality, aggressiveness or relationship between the individuals affected. For example, a superintendent or a deputy superintendent by dint of personality may have usurped much of the authority intended to be exercised by principals. For the same reasons of fortuitous circumstances, the loyalties to management expected of principals or others sometimes become counterbalanced by upper management doing little to tend to or care for the needs of individuals who could be truly characterized as being in the middle.

In hope of providing a basis for a more rational response to the questions concerning unit status we have prevailed upon Charles E. Mullins, a former teacher and union activist in Kentucky, and Louis D. Beer, a leader of the bar who once acted as counsel to Michigan teacher unions but now represents school management in that state. They have described not only the legal framework for dealing with

¹ 545 F.2d 63 (8th Cir. 1976).

these issues, but also the pragmatic factors that must be addressed. They also suggest solutions or strategies for dealing with the problems involved.

