

D.R. NO. 79-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

TOWNSHIP OF MINE HILL,

Public Employer,

-and-

DOCKET NO. RO-78-20

TEAMSTERS LOCAL 102,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among blue collar employees of the Township of Mine Hill Road and Water Departments.

The Director finds that CETA employees are public employees within the meaning of the Act and are appropriately includable in the proposed unit of employees. Further, the Director determines that special circumstances do not exist which render appropriate the inclusion of one supervisor in the non-supervisory unit. Accordingly, the Director concludes that the appropriate unit for representation consists of three non-supervisory employees: the Assistant Road Foreman and two CETA employees.

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In the Matter of

TOWNSHIP OF MINE HILL,

Public Employer,

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DOCKET NO. RO-78-20

TEAMSTERS LOCAL 102,

Petitioner. *

Appearances:

For the Public Employer,
Wiley, Malehorn & Siroto, Esqs.
(Frederic J. Siroto, of Counsel)

For the Petitioner
Richard A. Weinmann, Esq.
(Ben Merker, Secretary-Treasurer)

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of public employees, a hearing was held on December 28, 1977, before Hearing Officer Arnold H. Zudick, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. The Township of Mine Hill (the "Township") filed a post-hearing brief on February 16, 1978. On April 26, 1978, the Hearing Officer issued his Report and Recommendations. A copy is annexed hereto and made a part hereof. Exceptions to the Hearing Officer's Report

* As amended, infra, para. 8.

and Recommendations and a brief in support thereof were filed by the Township on May 26, 1978. ^{1/} Teamsters Local 102 has not filed an answering brief to the exceptions; nor has it filed any cross-exceptions.

The undersigned has considered the entire record including the Hearing Officer's Report and Recommendations, the transcript and the exceptions, and on the basis thereof finds as follows:

1. The Township of Mine Hill is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), and is subject to its provisions.

2. Teamsters Local 102 is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Teamsters seek to represent in one proposed unit all blue collar employees employed in the Township's Road and Water Departments, including the Road and Water Department Foreman, the Assistant Road Foreman, and two CETA employees currently assigned to these departments.

4. The Township has declined to consent to an election claiming that the unit petitioned-for is inappropriate. The Township contends that the Road and Water Department Foreman is a supervisor within the meaning of the Act and may not be included in a unit with non-supervisory employees. Further, the Township

^{1/} The Township also filed a request for oral argument. This request is inappropriate since the Commission's Rules and Regulations do not provide for oral argument on a representation question before the Director of Representation.

states that CETA employees are not public employees within the meaning of the Act, and, therefore, are also inappropriate for inclusion in the proposed unit. Accordingly, a question concerning the appropriateness of a unit for collective negotiations exists and the matter is properly before the undersigned for determination.

5. At the hearing the Hearing Officer denied the Township's motion to dismiss the Petition on the procedural ground that Teamsters Local 102 was not a proper Petitioner because it failed to follow Commission Rules and Regulations regarding the filing of a representation petition.

6. The parties stipulated that the Township employs the employees concerned in this Petition; that the two CETA employees are paid primarily through federal funds, although they do receive some additional salary from the Township; that all of the employees in question receive the same benefits; and that the Assistant Road Foreman is not a supervisor within the meaning of the Act.

The parties further stipulated that the two outstanding issues are: whether the Road and Water Department Foreman is a supervisor within the meaning of the Act; and whether CETA employees are public employees within the meaning of the Act.

7. The Hearing Officer found that the two CETA employees are public employees and are appropriate for inclusion in the proposed unit. Further, although the Hearing Officer found that the Road and Water Department Foreman was a supervisor within the

meaning of the Act, he concluded that special circumstances existed which rendered appropriate the inclusion of this supervisory title with the non-supervisory titles. Finally, having denied a Township motion to dismiss the Petition on the procedural ground that the Teamsters had not complied with the Commission's Rules and Regulations regarding the filing of a representation petition, the Hearing Officer recommended that the appropriate unit for representation include the one supervisory title (the Road and Water Department Foreman), the Assistant Road Foreman, and the two CETA employees.

Accordingly, the Hearing Officer recommended that an election be directed among employees in a unit consisting of all blue collar employees of Township of Mine Hill Road and Water Departments, as described immediately above.

8. The Township, in its first exception, contends that the Hearing Officer acted incorrectly in refusing to grant its motion to dismiss. The Petition, with the accompanying showing of interest, identified International Brotherhood of Teamsters, Local 37 as the Petitioner. However, subsequent to the filing of this Petition, Local 102 was substituted for Local 37, the latter Local having been merged into the former organization. The Township contended that Local 102 was a different organization which should be required to file its own representation petition, submit a showing of interest in its own name, and otherwise comply

with the full petitioning procedure.

The undersigned, in the first instance, notes that under N.J.A.C. 19:11-2.1 the adequacy of the showing of interest is to be determined by the Director of Representation and is not subject to collateral attack at a hearing. Accordingly, the Township's motion before the Hearing Officer was misdirected. Nevertheless, the undersigned agrees with the Hearing Officer's analysis that Local 102 is the successor to Local 37 with which it merged, and, as the successor organization, is not required to submit a new showing of interest even though the initial showing of interest cards were obtained by the union's predecessor -- Local 37 -- and designated this predecessor Local as the desired negotiations representative. ^{2/} As the National Labor Relations Board stated in General Dynamics:

"...Furthermore, despite all of the Employer's arguments, the record leaves little doubt that the showing of interest evinces an underlying substantial employee intent to acquire a bargaining representative or, at the very least, an employee desire of being placed in a position to cast a ballot. The mere existence of the showing of interest is prima facie evidence thereof. We cannot assume, therefore, that these employee intents and desires have been blunted by the wording on the cards. Moreover, since all of the unions involved herein are members of the same International Union, and since Petitioner is, in effect, a successor to Local 1794 and NEPA San Diego Chapter and seeks merely to substitute its name for that of its predecessors, it is doubtful that the card subscribers would be affected in their desire

2/ General Dynamics Corp. and National Engineers and Professionals Association, 213 NJRB No. 124, 87 LRRM 1705 (1974).

for representation simply by the substitution of Petitioner's name on the petition. In any event, the employees will have an opportunity to accept or reject Petitioner in an election. Accordingly, we find that a new showing of interest is not required herein. [87 LRRM at page 1712].

The undersigned, consistent with Board policy, determines that the Petitioner's showing of interest is adequate to support the further processing of this matter.

The Township also excepts to the Hearing Officer's finding that CETA employees are public employees within the meaning of the Act, and are appropriate for inclusion in the proposed unit. This exception is based primarily on the grounds that CETA employment is temporary in nature and that these employees, not being permanently assigned to the specific departments included in this Petition, do not have a community of interest with the other permanent employees. The undersigned rejects this exception and adopts the Hearing Officer's finding.

The factors cited by the Township in its exception have previously been addressed by the undersigned in In re Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4066 1977), which the Hearing Officer cited as controlling authority for his finding concerning the CETA employees. In Passaic the undersigned determined that as CETA employees perform substantially the same work under the same working conditions as

"regular" blue collar employees, ^{3/} and receive equivalent pay and other benefits, ^{4/} they share a community of interest with "regular" employees which is not outweighed by the temporary nature and transferability of CETA employment. The undersigned also determined that CETA employment provided sufficient continuity to entitle CETA personnel to rights under the Act.

The additional fact that the two CETA employees are not permanently assigned to the Road and Water Departments does not negate the finding of a community of interest. The unit petitioned-for consists of blue collar employees and there was testimony that, while CETA employees may perform many different tasks, they are all basically laborers. ^{5/} The Commission's policy is to approve only broad based units including all municipal blue collar employees. ^{6/} Since the proposed unit includes all the Township's blue collar employees, the undersigned finds the unit to be appropriate, and such unit would remain appropriate if CETA employees

3/ The undersigned adopts the Hearing Officer's finding that CETA employees perform the same work as the other employees in the instant unit. In addition to the Hearing Officer's transcript references, the undersigned notes the testimony of Mayor Ryan wherein he first stated that the Department Foreman uses the CETA personnel as he sees fit for the maintenance of the municipal physical plant and subsequently testified that the complete upkeep of municipal facilities falls within the responsibility of the Road and Water Departments (T. pp. 26-27).

4/ It was stipulated that the Township supplements the salaries of the CETA employees and that they receive the same benefits as the Township's other blue collar employees. There was further testimony on that point (T. pp. 41-42)

5/ T. p. 26, T. p. 41, T. pp. 88-90.

6/ In re Borough of New Milford, E.D. No. 76-42, 2 NJPER 199 (1976); In re Township of Franklin, P.E.R.C. No. 75 (1973); In re City of Camden, D.R. No. 78-26, 3 NJPER 396 (1977).

were given blue collar job assignments which are outside the purview of the Road and Water Departments. 7/

In its final exception the Township excepts to the Hearing Officer's finding that special circumstances exist which render appropriate the inclusion of the supervisory title -- Road and Water Department Foreman -- in the proposed unit with non-supervisory personnel. Since the Department Foreman is the only full-time supervisor, the Township contends that, to insure effective organization and management, it must be able to rely on his independent ability to supervise the physical maintenance of the Township's facilities.

The Hearing Officer's finding of special circumstances was based on three considerations: (1) that a community of interest existed with the other employees since they all receive the same benefits, work the same hours, and perform many of the same functions; (2) there is an absence of any actual or potential conflict of interest between the supervisor and the other employees; (3) since there is no other unit to which the supervisor could belong, a decision which would not allow this employee the opportunity to exercise the rights guaranteed to him would be contrary to the policies of the Act.

7/ The Township in its exception also argued that since CETA employees are paid primarily with federal funds and are not covered by Civil Service protections, they should not be considered public employees within the meaning of the Act. These arguments were also considered by the undersigned in Passaic and were specifically rejected.

After careful consideration of these factors the undersigned finds that they do not constitute special circumstances.

In Board of Education of West Orange v. Wilton, 37 N.J. 404 (1971), the Court stated that:

"One underlying concept which emerges from a study of statutes, texts and judicial decisions in employer-employee relations, whether in the public or private employment sector, is that representatives of the employer and the employees cannot sit on both sides of the negotiating table. Good faith negotiating requires that there be two parties confronting each other on opposite sides of the table. Obviously both employer and employee organizations need the undivided loyalty of their representatives and their members, if fair and equitable settlement of problems is to be accomplished. Unless the participation is of that calibre, the effectiveness of both protagonists at the discussion table would be sharply limited."

All of the Township's governing officials devote only part-time service to the municipality and there is no full-time general supervisory official. Accordingly, if the Department Foreman was included in the unit with non-supervisory personnel the Township's management would have no full-time employee on whom it could rely to represent, with undivided loyalty, the employer's interest in its relations with its employees. The factors cited by the Hearing Officer to justify the inclusion of the supervisory title do not outweigh this basic and overriding need of management. ^{8/} Therefore, the undersigned, contrary to the

8/ Although the Hearing Officer found that there had been no actual conflicts of interest in the past, the unique position which the Foreman holds in the Township creates the substantial potential for conflict in a formalized collective negotiations relationship.

Hearing Officer's recommendation, determines that special circumstances do not exist which render appropriate the inclusion of this supervisory title with the non-supervisory titles in the proposed unit. Accordingly, the Director concludes that the appropriate unit for representation consists of three non-supervisory employees: The Assistant Road Foreman, and two CETA employees. An election shall be directed among the employees described immediately above in the proposed unit consisting of all blue collar employees employed in the Road and Water Departments of the Township of Mine Hill

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid-off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Township is directed to file with the undersigned and with Teamsters Local 102 an election

eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Teamsters with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote whether or not they desire to be represented for the purposes of collective negotiations by the Teamsters Local 102.

The exclusive representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the Commission's Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: July 27, 1978
Trenton, New Jersey

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

In the Matter of

TOWNSHIP OF MINE HILL,

Public Employer,

-and-

DOCKET NO. RO-78-20

TEAMSTERS LOCAL 102 (LOCAL 37),

Petitioner.

SYNOPSIS

A Commission Hearing Officer, in a Petition for Certification of Public Employee Representative proceeding, recommends that an election be directed in a blue collar unit in the Township of Mine Hill Road and Water Departments.

The Hearing Officer recommends that a motion to dismiss the Petition be denied, and that certain CETA employees be found to be public employees within the meaning of the Act and appropriate for inclusion in the proposed unit. The Hearing Officer also recommends that the Road and Water Department Foreman be found to be a supervisor within the meaning of the Act, but recommended that due to special circumstances said title be found appropriate for inclusion with the non-supervisory titles in the proposed unit.

The Hearing Officer recommends that the appropriate unit for representation includes one supervisor, the Road and Water Department Foreman, and three non-supervisory titles, the Assistant Road Foreman and two CETA paid employees.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report and Recommendations, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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

In the Matter of

TOWNSHIP OF MINE HILL,

Public Employer,

-and-

DOCKET NO. RO-78-20

TEAMSTERS LOCAL 102 (LOCAL 37),

Petitioner.

Appearances:

For the Public Employer
Wiley, Malehorn & Sirota, Esqs.
(Fredric J. Sirota, of Counsel)

For the Petitioner
Richard A. Weinmann, Esq.
(Ben Merker, Secretary Treasurer)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on August 2, 1977, originally by International Brotherhood of Teamsters, Local 37, but subsequently assumed by Teamsters Local 102 (the "Petitioner"), seeking to represent a unit of all blue collar employees employed by the Township of Mine Hill (the "Township") in the Department of Public Works. ^{1/} The Town-

1/ The Petitioner petitioned to represent all blue collar employees employed by the Township in the Department of Public Works. The facts in this matter revealed that the Township has no Department of Public Works, but does have Road and Water Departments in which the employees in question are employed. The record herein established that for the purpose of this Petition the Departments in question are the Road and Water Departments.

ship argues that the proposed unit is inappropriate because it alleges that one of the four employees in question is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, (the "Act") ^{2/} and, therefore, inappropriate for inclusion in a unit with non-supervisory employees. The Township further argues that two of the remaining three employees in question are paid primarily through federal funds provided by the Comprehensive Employment and Training Act ("CETA"), and that these employees are, therefore, not employees within the meaning of the (New Jersey) Act.

Pursuant to a Notice of Hearing dated November 14, 1977, a hearing was held before the undersigned Hearing Officer on December 28, 1977 in Newark, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. At the conclusion of the hearing only the Township elected to file a written brief in this matter. Upon the entire record in this proceeding, the Hearing Officer finds:

1. That the Township is a public employer within the meaning of the Act and is subject to its provisions.
2. That the Petitioner is an employee representative within the meaning of the Act and is subject to its provisions.
3. That the Petitioner is seeking to represent in one unit the employees employed in the Township's Road and Water Departments including the positions of Road and Water Department

2/ N.J.S.A. 34:13A-1 et seq.

Foreman, Assistant Road Foreman, and the two CETA employees assigned to the Road and Water Department Foreman. ^{3/}

4. That the Township made a motion to dismiss the Petition based on procedural grounds. Furthermore, that the Township believes that the Road and Water Department Foreman is a supervisor within the meaning of the Act and inappropriate for inclusion with non-supervisory titles, and, that the CETA employees are not employees within the meaning of the Act and are, therefore, also inappropriate for inclusion in the proposed unit.

5. That the parties stipulated the following information.

a. That the Township employs the employees concerned in this Petition.

b. That the two CETA employees are paid primarily through federal funds, but also receive some additional salary from the Township.

c. That all of the employees in question receive the same benefits.

^{3/} There was considerable testimony and disagreement about the titles used for the two foreman positions. The Petitioner contends, and submitted some supporting evidence, that the foreman titles were the Working Road and Maintenance Foreman, and the Assistant Road and Maintenance Foreman. See Exhibits P-1 and P-2. The Township, however, submitted evidence to support its position that the titles were the Road and Water Department Foreman, and the Assistant Road Foreman. See Exhibit E-1.

Since the Township is the party most likely to know the official titles of the employees in question, and since it is actually more important what these employees' duties are rather than their titles, then the undersigned finds that the titles used by the Township are the appropriate titles to be used herein.

d. That the Assistant Road Foreman is not a supervisor within the meaning of the Act. 4/

e. That one issue herein is whether the Road and Water Department Foreman is a supervisor within the meaning of the Act.

f. That another issue herein is whether CETA employees are employees within the meaning of the Act. 5/

BACKGROUND AND ANALYSIS

I. The Township's Motion to Dismiss

At the beginning of the hearing 6/ and in its legal brief filed subsequent to the close of the hearing, the Township made a motion to dismiss the Petition based on procedural grounds. The Township argued that Teamsters Local 102 was not a proper Petitioner herein because it failed to follow certain Commission Rules and Regulations regarding the filing of a representation petition.

The facts in this regard show that on August 2, 1977, the International Brotherhood of Teamsters, Local 37, filed the

4/ The Township initially stipulated that the Assistant Road Foreman was not a supervisor at Transcript (T.) p. 13. However, at T. p. 93, the Township changed its position and argued that that title was a supervisor. Finally, at T. p. 119, the Township corrected its position, and agreed that the Assistant Road Foreman was not a supervisor within the meaning of the Act. The undersigned, therefore, accepts the parties' stipulation that the Assistant Road Foreman is not a supervisor within the meaning of the Act.

5/ Stipulations found at T. pp. 12-15.

6/ T. p. 6.

instant Petition, accompanied by a sufficient showing of interest, to represent the instant employees in one negotiations unit. Thereafter, by letter dated October 24, 1977, an official of Teamsters Local 102 notified the undersigned that the International Union assigned Local 37's responsibilities to Local 102, and that Local 37 had been merged into Local 102. ^{7/} Subsequently, by letter dated October 31, 1977, the President of Teamsters Joint Council No. 73, informed the Director of Representation for the Commission that all public employees previously represented by Local 37 were thereafter to be represented by Local 102. ^{8/} After considering the above mentioned letters, the Director of Representation informed the undersigned that the above letters constituted sufficient notice that Local 102 had been substituted for Local 37 in the instant matter, and the Director directed the undersigned to continue processing the instant Petition. Thereafter, by letter dated November 14, 1977, the undersigned informed the parties of the Director's determination and scheduled the hearing date herein. ^{9/}

The Township argued that to permit the substitution herein would be a disregard of Commission procedure. The Township argued that Local 102 was required to begin the petitioning procedure on its own, from the beginning, and submit a showing

^{7/} Commission Exhibit C-2.

^{8/} Commission Exhibit C-3.

^{9/} Commission Exhibit C-4.

of interest in its own name. The Township based that argument on its contention that Local 102 was a different "unit" than Local 37 which originally petitioned to represent the employees in question.

In opposition to the Township's motion, Local 102 argued that Local 37 went out of existence as of October 1, 1977 and that it was effectively merged with Local 102 through procedures set forth in the constitution of the International Brotherhood of Teamsters. Moreover, Local 102 argued that letters were submitted on its behalf establishing it as the successor to Local 37.

The undersigned has considered the motion and the position of both parties and recommends that the motion be denied. Commission Rules and Regulations provide the Director of Representation with a certain degree of discretion in the investigation and processing of representation petitions. 10/ In a normal situation, the Director, or staff personnel under his direction, will have determined prior to the issuance of a Notice of Hearing whether a Petitioner satisfied the rules and had a sufficient showing of interest.

In the instant matter, the Director considered the effect of the merger of Local 37 into Local 102, and considered the two letters mentioned above, and communicated to the undersigned that the letters adequately established Local 102 as the

10/ N.J.A.C. 19:11-2.2; 19:11-2.6.

Petitioner herein, and the undersigned was directed to continue processing the Petition. Moreover, the undersigned notes that although the Township questioned the showing of interest herein, N.J.A.C. 19:11-2.1 specifically provides that the showing of interest shall be determined by the Director and shall not be subject to collateral attack.

Since there is no showing by the Township that Local 102's status as Petitioner would create any additional burdens on itself or the employees in question, and since the dismissal of the Petition at this time would not effectuate the purposes and policies of the Act, then it is the undersigned's recommendation that the motion be denied.

Based upon the foregoing discussion, the undersigned recommends that the Township's motion to dismiss the Petition be denied, and that Teamsters Local 102 be found to be the Petitioner herein.

II. The CETA Question

Throughout the processing of the instant Petition, the Township argued that CETA employees were not public employees within the meaning of the Act, and that such employees should not be entitled to vote in a representation election. The Township indicated that it took this position because it believed that CETA employees were not permanent employees and could lose their positions any time federal funding was eliminated. Finally, the Township contended that CETA employees were inappropriate for

inclusion in the proposed unit because their concerns were different and contrary to that of other employees.

Prior to the commencement of the hearing herein, the undersigned provided both parties with copies of In re Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8, (Para. 4006 1977), wherein the Director of Representation for the Commission found that CETA employees were public employees within the meaning of the Act and were entitled to vote in a representation election. Despite the Director's decision in Passaic, supra, the Township maintained that the instant matter was distinguishable from Passaic and that, therefore, Passaic did not apply.

The Township argued for example, that unlike the Passaic case, the CETA employees in the instant matter do not perform the same work as the other employees proposed to be in the instant unit. However, a review of the transcript herein reveals quite the contrary. Mayor Ryan specifically testified that the CETA employees are assigned to the Road and Water Department Foreman to be used "as he sees fit". ^{11/} The Assistant Road Foreman testified that in the performance of his, and the Foreman's overall duties, the CETA employees would do the same work. ^{12/} In addition, the Road and Water Department Foreman testified that he continues to do the work on a day-to-day basis with the other employees. ^{13/}

^{11.} T. pp. 26, 28.

^{12/} T. pp. 89-91.

^{13/} T. pp. 109-110.

Having reviewed the Township's legal position on the CETA issue, and after studying the Director's decision in Passaic, supra, the undersigned is convinced that the principals and holdings enunciated in Passaic apply in the instant matter. Although the Township argues that the existence of federal funding eliminates the CETA employees from coverage under the (New Jersey) Act, the Passaic case considered that very issue and found that funding alone does not establish that such employees are not public employees within the meaning of the Act. ¹⁴ Moreover, in Passaic and several other recent cases, the Director of Representation has determined that funding is not the only element to be used to decide such labor relations matters. ^{15/}

In sum, the CETA employees in question perform substantially the same work, receive substantially the same benefits, and work substantially the same hours as the other employees in question and are otherwise appropriate for inclusion in the petitioned-for unit.

Based upon the foregoing discussion and decisions, the undersigned recommends that the instant CETA employees be found public employees within the meaning of the Act, eligible to vote in a secret ballot election, and appropriate for inclusion in the proposed unit.

^{14/} In re Passaic County Bd. of Chosen Freeholders, D.R. No. 78-29, at pp. 5-9, 4 NJPER 8, 10 (Para. 4006 1977).

^{15/} See In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977); In re Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER ____ (1978).

III. Supervisor Issue -- Road and Water Department Foreman

The Township has taken the firm position that the Road and Water Department Foreman is a supervisor within the meaning of the Act. 16/ The Township alleged that the foreman can hire, has some role in the possible dismissal of employees, and at least has the authority to effectively recommend either. But the Union, and the Foreman himself, allege that the Foreman cannot hire or fire, and that any one of the employees can recommend any such action.

A review of the transcript on this issue reveals that the Township gives the Foreman wide latitude in the operation of the Road and Water Departments. Mayor Ryan testified that there is little or no direct input from the governing body, and in fact, that in the absence of the governing body, the Road Department would continue to function under the Foreman's control. 17/ Moreover, Mayor Ryan testified that the Foreman would have authority to hire any additional manpower needed in his departments for purposes of snow removal and summer employment. 18/ Finally, the Mayor testified that the Foreman did provide certain facts to the Township which led to the dismissal of another employee. 19/

Contrary to the Mayor's position, the Foreman did not believe that he had the authority to hire or fire an employee,

16/ N.J.S.A. 34:13A-5.3 contains the definition of a supervisor.

17/ T. p. 32.

18/ T. p. 38.

19/ T. p. 48.

but he did testify that he had assisted in the hiring of summer or part-time employees, and that he knew that he could make recommendations regarding the hiring or firing of employees. 20/ In fact, the Foreman admitted that he recommended the hiring of the now Assistant Road Foreman, 21/ and he recognized that he did have the opportunity to recommend hiring or firing of other employees. 22/

Despite the Foreman's testimony the Petitioner maintains that he is not a supervisor because all employees can make recommendations and the Foreman's is no more effective than the other employees. The facts, however, do not support that contention. The record shows that the Foreman, Bill Baldwin, has been employed by the Township for almost 19 years, that he is well known in the community, and that he has considerable knowledge of the Township's operation. By contrast, the second most senior man to Mr. Baldwin is the Assistant Road Foreman who has only been employed 6 years, and who in fact was hired pursuant to Mr. Baldwin's recommendation. The undersigned believes that it is reasonable to conclude that Mr. Baldwin's recommendation -- the recommendation of the Road and Water Department Foreman -- would be considerably more effective than the other employees in question.

Based upon the foregoing discussion and the testimony as a whole, the undersigned is convinced that the Road and Water Department Foreman has the authority to effectively recommend

20/ T. pp. 102-106.

21/ T. p. 107.

22/ T. pp. 116-117

hiring and firing of employees. Therefore, the undersigned recommends that said title be found to be a supervisor within the meaning of the Act.

IV. The Appropriate Unit

Having recommended that the instant CETA employees are appropriate for inclusion in the proposed unit, and cognizant of the parties' stipulation that the Assistant Road Foreman is not a supervisor, the undersigned recommends that the appropriate unit includes at least the Assistant Road Foreman and the CETA employees.

The unit placement of the Road and Water Department Foreman, however, remains unresolved. The Township contends that the Foreman, as a supervisor, is inappropriate for inclusion in the proposed unit. The Act at N.J.S.A. 34:13A-5.3 states in pertinent part:

"...(N)or 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 non-supervisory personnel to membership..."

The key words for the purpose of these proceedings is "special circumstances". Are there special circumstances which would warrant or justify as appropriate, the Foreman's inclusion in the proposed unit despite his supervisory capacity? The undersigned believes that in order to answer that question it is

necessary to examine all of the facts relevant to the appropriate unit concept.

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court discussed several criteria used in determining the appropriate unit. The Court indicated that there should be a clear and identifiable community of interest among the employees in question; that a determining factor should be whether the inclusion of the title in question would serve and not subvert the purpose of the Act; and, there must not be a substantial actual or potential conflict of interest between a title sought to be included and those titles otherwise included. ^{23/}

In considering whether the Foreman has a community of interest with other employees in the proposed unit the record reveals that all employees in question receive the same benefits, work approximately the same hours, and that they perform many of the same functions. ^{24/} Moreover, Mr. Kehoe, the Assistant Road Foreman, testified that he and the Foreman do much of the same work. For example, Kehoe testified that he and the Foreman operate the same machinery, that either of them can direct the CETA employees, and that either of them might call additional personnel for snow removal. ^{25/} Although Mr. Baldwin can make a more effective recommendation than Mr. Kehoe, and is thereby

^{23/} Bd. of Ed. W. Orange v. Wilton, 57 N.J. 404, 425, 427 (1971).

^{24/} T. pp. 44-45, 78, 79.

^{25/} T. pp. 79-81, 84.

a supervisor, in all other respects the Foreman's position substantially parallels the Assistant Foreman's position (or vice versa) yet the Township agrees that the Assistant Foreman is not a supervisor and is thereby appropriate for inclusion in a proper unit.

Regarding actual or potential conflict of interest, the record shows no contention by the Township that the inclusion of the Foreman into a unit including the other employees would create a conflict of interest. In fact, Mayor Ryan testified that he was not aware of any conflict that might exist between the Foreman and the individuals he supervises. 26/ Moreover, the Assistant Foreman testified that neither he nor the CETA employees ever had a conflict with the Foreman, 27/ and, finally, the Foreman, himself, testified that he feels no conflict or pressure as the Foreman or senior man of the other individuals. 28/

The undersigned further believes that Mr. Baldwin's view of his own position is a relevant factor herein. Mr. Baldwin testified that he has never disciplined another employee and could only do so by going to the Township Committee, and that he does not believe he could fire a full time employee. 29/ Such information is one factor why no conflict of interest may exist between the Foreman and the other employees.

26/ T. pp. 43-44.

27/ T. p. 81.

28/ T. pp. 108-109.

29/ T. p. 106.

In considering whether the Foreman is appropriate for inclusion in a unit with the other employees it is further necessary to review the Township's position. Although the Township argued that the Foreman was inappropriate for inclusion because of his supervisory capacity, it never argued or suggested that there might be another unit appropriate for the Foreman's inclusion. In fact, if Mr. Baldwin was not included in the proposed unit he would face the possibility of only having the opportunity to belong to a one person unit. Although this is not the proper time or matter within which to resolve the question of whether a one-person unit is appropriate within the meaning of the Act, the undersigned is aware that the Foreman in the instant matter could be left with no appropriate unit within which to exercise the rights provided in the Act.

The undersigned has considered the positions of the parties and the testimony relevant to this issue, and would recommend that the Foreman be included in the proposed unit. The weight of the evidence established that a community of interest, but no conflict of interest, exists between the Foreman and the other employees in question. It is the undersigned's contention that the purposes and policies of the Act envision that public employees in New Jersey be provided with a reasonable opportunity to exercise the rights guaranteed to them by the Act. In that regard, the undersigned believes that absent an actual or potential conflict of interest between the instant employees, that the Act will be best effectuated by the inclusion of the Foreman in the proposed unit.

Therefore, in answer to the earlier question, the undersigned believes that special circumstances do exist warranting the inclusion of the Foreman in the instant unit. The special circumstances are the sum total of the above discussion, specifically, that despite his supervisory status, the Foreman performs substantially the same work as unit employees, he has a community of interest and no conflict of interest with said employees, and no evidence was presented to show that any other appropriate unit does exist where the Foreman may have the opportunity to exercise his rights under the Act.

In reaching the above conclusion the undersigned also notes that a mechanism exists in Commission Rules and Regulations which would permit the Township to raise anew, at an appropriate time, the issue of the supervisors' appropriateness in the proposed unit based upon new circumstances and/or new evidence. This might be especially important if there was new evidence during the course of the proposed negotiations relationship that an actual or potential conflict of interest existed with the Foreman's inclusion in the proposed negotiations unit.

RECOMMENDATIONS

Based upon the entire record herein, and for the above stated reasons, the undersigned Hearing Officer recommends the following:

1. That the Township's motion to dismiss the Petition be denied and that Teamsters Local 102 be found to be the Petitioner herein.

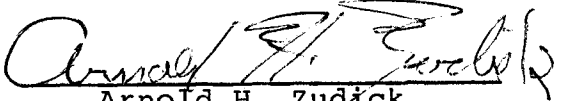
2. That the instant CETA employees be found to be public employees within the meaning of the Act, appropriate for inclusion in the proposed unit, and able to vote in a secret ballot election.

3. That the Road and Water Department Foreman be found to be a supervisor within the meaning of the Act, but nevertheless be found to be appropriately included -- because of special circumstances -- with non-supervisors in the proposed unit.

4. That the appropriate unit for representation includes all blue collar employees in the Township of Mine Hills' Road and Water Departments including the Road and Water Department Foreman, Assistant Road Foreman, and employees paid through CETA funds. Excluding managerial executives, confidential employees, clerical employees, professionals, police and craft employees.

5. That pursuant to N.J.A.C. 19:11-5.1, an election be directed in the above described appropriate unit, and that those employees eligible to vote shall vote as to whether they desire to be represented for the purpose of collective negotiations in the above unit by Teamsters Local 102, or whether they wish no representation.

Respectfully Submitted,


Arnold H. Zudick
Hearing Officer

DATED: April 24, 1978
Trenton, New Jersey