

D.R. NO. 90-23

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

In the Matter of

COUNTY OF MIDDLESEX,

Public Employer,

-and-

Docket No. RO-90-85

CWA, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation finds that two challenged ballots which determine the outcome of a representation election shall be opened and counted in the election results. He concludes that the two voters are not supervisors or confidential employees and are appropriately included in CWA's petitioned-for unit.

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Appearances:

For the Public Employer  
Henry Orszulski, Sr. Labor Relations Specialist

For the Petitioner  
Ed Sabol, District Organizer

DECISION

On February 2, 1990, we conducted a secret ballot election among "all regular part-time and full-time Employment and Training Department employees" of the County of Middlesex ("County"). The election was the result of a consent agreement signed by the County and the petitioner, Communications Workers of America ("CWA").

At the election, 9 votes were cast for CWA, 8 votes were cast against it and 2 votes were cast by challenged ballots. CWA challenged the eligibility of the Supervisor - Field Operations and Supervisor, Planning and Management Information Systems; it asserts that the employees are supervisors or confidential employees. These challenged ballots are determinative of the outcome of the election.

CWA asserts that the Supervisor - Field Operations calls meetings, delegates assignments, monitors employment specialist performance, approves vacation and leave requests and monitors attendance. It further asserts that this employee has authority to adjust grievances. It cites the operations manager's statement in response to a June 26, 1989 grievance - the operations manager purportedly stated that the grievance should be moved to the next step - i.e., the Supervisor - Field Operations and Supervisor, Planning and Management Information Systems.

CWA also states that the Supervisor, Planning and Management Information Systems is a supervisor or confidential employee. This title also has the responsibility to call meetings, delegate assignments, etc. This title was also involved in "the one documented discipline case" in which the operations manager "instituted the discipline" but wanted [the Supervisor, Planning and Management Information Systems] present when the discipline was administered.

CWA asserts that the two titles are confidential because they received "all subsequent correspondence" concerning the June 26, 1989 grievance.

The County maintains that the titles are not supervisory and should be included in the petitioned-for unit. It also filed job descriptions. Under the direction of the operations manager, the Supervisor - Field Operations "maintains" and "operates" the employment and training delivery system. It also "directs a

professional and clerical staff." About midway through a list of 17 "examples of duties" appears, "supervises staff that provide counseling..." None of the qualifications listed under "knowledge, skills and abilities" refer to the skill or ability to supervise fellow employees. The Supervisor, Planning and Management Information Systems is "responsible for grant development administration and automated management information systems." It directs a professional and clerical staff," and performs other tasks as assigned by the operations manager."

On March 14, 1990, I issued a letter tentatively concluding that on the basis of our investigation, neither title was supervisory and/or confidential, the positions were eligible for inclusion in the petitioned-for unit and accordingly, we would open and count the challenged ballots. Neither party filed a response.

N.J.S.A 34:13A-5.3 provides in relevant part:

...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or to effectively recommend the same, have the right to be represented in a collective negotiations unit by an employee organization that admits nonsupervisory personnel to membership.

The Commission has interpreted the statutory definition of supervisor to mean an employee having the authority to hire, discharge, discipline, or effectively recommend those actions. Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). In order to establish supervisory status, it must be clearly shown that the supervisory authority claimed to be possessed must be exercised

with some regularity. The Commission will look beyond the title or the job description in order to ascertain the nature of the authority the employee actually exercises. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). Further, acting in a lead capacity, overseeing and directing the work of other employees does not make an employee a supervisor within the meaning of the Act. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985), Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987).

Neither of the disputed titles regularly exercises supervisory authority. While both positions act in a "lead capacity" and "direct the work of subordinates," neither effectively recommends hiring, discharging or disciplining of employees. It is the operations manager who apparently performed these functions. I conclude that nothing in the record supports a finding of supervisory status for either title.

N.J.S.A. 34:12A-3(g) defines confidential employees as those employees of a public employer "whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties." In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained how we determine whether an employee is confidential:

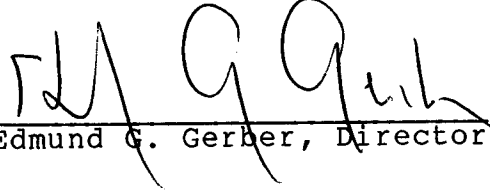
We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit [Id. at 510]

See also Ringwood Bd. of Ed. v. Ringwood Educational Office Personnel Ass'n, NJEA, App. Div. Dkt. No. A-4740-8677 (2/18/88), aff'g P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987).

The mere fact that the disputed titles received correspondence about one grievance falls far short of establishing their "responsibilities and knowledge" about the "collective negotiations process." Moreover, nothing in the record established how knowledge of this particular grievance makes these employees inappropriate for inclusion in the petitioned-for unit. Accordingly, I find that neither title is confidential.

Based upon the above analysis, I determine that Supervisor - Field Operations and Supervisor, Planning and Management Information Systems are eligible for inclusion in the petitioned-for unit, that their ballots shall, on a date to be scheduled, be opened and counted in the secret ballot election, and a final tally and certification shall issue.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: March 30, 1990  
Trenton, New Jersey