

D.R. NO. 89-31

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

In the Matter of

WASHINGTON TOWNSHIP BOARD  
OF EDUCATION,

Public Employer,

-and-

Docket No. RO-89-46

WASHINGTON TOWNSHIP  
EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation directs an election to determine whether cafeteria workers and cafeteria managers employed by the Washington Township Board of Education wish to be represented in a collective negotiations unit presently composed of teachers, secretaries and custodians. The Director finds that the cafeteria managers are not supervisory employees within the meaning of the Act and are appropriately includable in the unit.

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Appearances:

For the Public Employer  
Paul E. Griggs, Esq.

For the Petitioner  
Joseph Vender, Field Representative

DECISION AND DIRECTION OF ELECTION

On October 11, 1988, the Washington Township Education Association ("Association") filed a timely Petition for Certification of Public Employee Representative ("Petition") seeking to add all full-time cafeteria workers to an existing unit of teachers, secretaries, and custodians. The cafeteria workers are currently unrepresented. The petition is supported by an adequate showing of interest.

On October 26, 1988, a commission staff agent conducted an investigatory conference attended by representatives of Washington Township Board of Education and the Washington Township Education Association. The Board asserted that

cafeteria managers are supervisory employees and therefore inappropriate for inclusion in the unit.

Thereafter, the parties filed written statements of position, job descriptions and other materials in support of their respective positions. The Board claims that cafeteria managers observe and evaluate cafeteria workers on a daily basis and effectively recommend the discipline and discharge of employees. The Association disputes these claims by the Board and maintains that these functions, to the extent that they are performed, are performed by the Food Service Director.

On April 6, 1989, we sent the Board and the Association a letter indicating that on the basis of the facts before us, we were inclined to order an election. The parties were given an opportunity to submit additional position statements, supporting affidavits and other documentary materials. Neither party responded.

There are no substantial or material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. See N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the Association's petition is properly based on our administrative investigation.

N.J.S.A. 34:13A-5.3 states:

...[nor] except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an

employee organization that admits non-supervisory personnel to membership....

A supervisor is an employee who has the authority to hire, discharge or discipline or effectively recommend the same. Cherry Hill Tp., P.E.R.C. No. 30 (1970). In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), the Supreme Court held that employees who exercise significant authority over the terms and conditions of employment of other personnel should not be included in the same negotiations unit as their subordinates due to the conflict of interest between the employees exercising such authority and other unit employees.

The job description of cook/cafeteria manager does not state any supervisory function for the position other than the day-to-day direction of cafeteria operations. The Board admits that no formal evaluations of cafeteria employees are performed. Moreover, the Board has not provided any specific evidence that the cook/cafeteria managers have ever exercised their alleged authority to hire, discharge or discipline employees.

In Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), we held that in order to find that an employee is a statutory supervisor there must be evidence that supervisory authority is exercised with some regularity. "...the mere 'possession' of the authority is a sterile attribute unable to sustain a claim of supervisory status." 2 NJPER at 360. See also Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984). Here, there is no specific factual indication that the


disputed employees exercise supervisory authority. Further, the allegations in this record are insufficient to support a finding that the cook/cafeteria managers exercise such significant authority over other unit employees as to create a conflict of interest. Accordingly, we are inclined to include the cook/cafeteria manager position in the petitioned-for unit. See Lakeland Reg. H.S. Bd. of Ed., D.R. No. 88-34, 14 NJPER 417 (¶19169 1988).

Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid-off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees resigned or who 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 Board is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the

employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director

DATED: May 1, 1989  
Trenton, New Jersey