

L.D. NO. 2003-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

TOWNSHIP OF MANCHESTER,

Public Employer/Petitioner,

-and-

Docket No. CU-2002-33

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION LOCAL 32,
AFL-CIO,

Employee Representative.

Appearances:

For the Public Employer,
Steven Secare, attorney

For the Employee Representative,
Spear, Wilderman, Borish, Endy, Spear & Runckel, attorneys
(Wendy Chierici, of counsel)

DECISION

On March 21, 2002, Manchester Township (Township) filed a Clarification of Unit Petition seeking a determination whether a unit of supervisory employees represented by Office and Professional Employees International Union Local 32 AFL-CIO (OPEIU) shall be clarified to include or exclude various specified titles. OPEIU represents separate units of supervisory and non-supervisory white and blue collar Township employees. I conducted two informal conferences in this matter on May 7 and July 12, 2002. At both conferences the parties voluntarily clarified the unit regarding

several of the disputed titles. The Township and OPEIU jointly requested that the placement of the remaining disputed titles be decided through the Commission's Litigation Alternative Program (LAP). The parties also requested that the LAP decision be based on information provided at each conference and the parties' submissions. The parties have agreed that this LAP decision is binding and that it resolves the Clarification of Unit Petition filed before the Commission.

On May 7, 2002, the parties agreed to include the position "court administrator" in the OPEIU Local 32 supervisory unit. In its July 26, 2002 submission, the Township asserted that the court administrator should not be included in any collective negotiations unit. No facts suggesting the court administrator's statutory incompatibility with the supervisor's unit were presented to me. If the Township believes this position should be removed from the supervisory unit, they may wish to file a clarification of unit petition at some later date. At the July 12, 2002 conference, the parties agreed that the additional titles set forth below should remain in, or be added to the existing OPEIU supervisory unit:

Department of Public Works

1. Deputy Director DPW
(Ernest Sloan)
2. Office Manager, DPW/Buildings and Grounds
(Marianne Borthwick)
3. Supervisor DPW
(John Underwood)

The parties have also agreed that the following titles shall be included in the OPEIU white collar, non-supervisory unit:

Bureau of Inspections:

1. Officer Manager/Technical Support Staff
(Nancy Jones)

Court Administration:

1. Deputy Court Administrator
(Catherine Smith)

Disputed Titles

At the conclusion of the July 12, 2002 conference in this matter, the following titles remained in dispute as to their appropriate unit placement:

1. Department of Public Works
General Foremen (3)
2. Buildings and Grounds
Foreman (1)
3. Tax Assessor's Office
Deputy Tax Assessor (1)
4. Tax Collector's Office
Deputy Tax Collector (1)
5. Senior Outreach
Office Manager (1)

I have reviewed the positions and all of the information provided by the parties in this matter and make the following determinations as to each of the disputed titles.

1. Department of Pubic Works

General Foreman

To date, the three employees currently holding the general foreman title have been included in the OPEIU supervisory unit. The Township contends that employees in that title do not perform supervisory duties nor have they been given supervisory

authority. Therefore, according to the Township, the title should be excluded from the supervisory unit. The Township submitted a general foreman job description dated April 12, 2001. The document provides that the general foreman position "is that of working general foreman" (emphasis added). The general foreman is supervised by the DPW "supervisor." According to the general foreman job description, the general foreman directs the activities of a work crew and performs the same work as the crew, including construction, maintenance and repair work, and other DPW activities as required. Under the heading "Responsibilities," the job description lists "supervision over a small group of employees . . . maintains daily logs of crew activities, assigning work orders, routine computer calculations, monitors use of material and equipment used along with man hours, and other work to fill-in for absent crew employees and balance workloads." There is no reference in the job description to discipline, evaluation, or hiring as duties of a general foreman.

The Township and OPEIU each submitted summaries of the duties they contend are actually performed by the three current general foremen. The Township's summaries are based on information obtained by the Township from its personnel director and the Township employees who supervise the general foremen. The summaries provided by OPEIU are based upon OPEIU discussions with the general foremen and local union representatives.

General Foreman Chester Hurley

According to the Township, General Foreman Chester Hurley has no authority to discipline members of the DPW crews. However, Hurley forwarded a write-up about a crew member's inappropriate conduct to the director of public works on January 25, 2001. Other than this single instance, there is no evidence that Hurley has formally disciplined any crew members whose work he directs. The Township also asserts that Hurley does not evaluate employees except for doing 30-day evaluations of 90-day probationary employees, does not interview potential employees and does not review job applications or hire employees.

Hurley "considers himself a supervisor" inasmuch as he directs the work of a DPW crew on a daily basis and he believes he has the right to discipline, which he normally does verbally. Hurley admits that he is not involved in evaluating, hiring or interviewing. He does, along with other foremen, provide information on workers' performance which is then put in written format by another general foreman.

General Foreman Harry Wright, Jr.

Wright has submitted a single evaluation concerning a probationary employee. Wright does not sit in on interviews and does not have the power to hire. He is responsible for directing an assigned crew to make sure the work gets done. Wright asks the DPW deputy director for direction on how to deal with a crew member if a problem arises. Wright believes he has the authority to recommend discipline. It appears that he participates in

discussions with "all foremen" concerning his crew members' work performance. However, there is no evidence that he formally evaluates crew members' performance, or that his input has resulted in any personnel action.

General Foreman Ray Sloan, Jr.

Based upon the Township's summary of General Foreman Sloan's authority, Sloan has the authority to issue verbal or written reprimands to his DPW crew. However, he has not had the occasion to do so. According to the Township, Sloan also prepared in written format all of the evaluations for the DPW road crew. The Township asserts that Sloan does not review job applications or attend interviews for new employees. In OPEIU's submission, however, Sloan asserts that within the last year and one-half he sat in on an interview and recommended hiring of an employee. He has also submitted reports and made hire recommendations on probationary employees.

2. DPW, Buildings and Grounds

Foreman

The written job description provided by the Township entitled "Foreman" is apparently applied to the position at issue here for building and grounds. It mirrors the Township's general foreman description except in compensation, and years of experience preferred for the position. The employee currently holding the foreman position is Richard Rider. The Township's summary of Rider's duties and authority is brief. Based upon

information from DPW Director S. Stanziano, the Township essentially asserts that Rider has no authority to discipline or recommend discipline for employees and that he does not participate in interviewing, evaluating, or hiring employees.

According to OPEIU's summary, based upon its discussions with Rider, Rider reports to Supervisor John Hurley. Rider asserts that he believes he can effectively recommend new employee hires inasmuch as he and Hurley review applicants' data together and make a recommendation to the DPW director. OPEIU provided one example where Rider was part of the hiring process within the last year and one-half with regard to employee R. Nash. Rider asserts that he reviews employee evaluations with Hurley and that he participates in the one-on-one interview with the evaluated employee and Hurley. No specific examples were provided on this point. Director Stanziano is not aware of Rider's participation in these interviews. On a daily basis Rider directs a crew of five employees and if a work problem arises with regard to these employees he addresses it with them and reports it to Hurley if necessary. Rider believes he acts as a supervisor, particularly when Hurley is absent.

Rider was transferred to buildings and grounds from the larger DPW division where he also held the foreman title. He is currently part of the supervisory unit along with the general foremen discussed previously.

3. Office of the Tax Assessor

Deputy Tax Assessor

The deputy tax assessor position is currently included in the OPEIU white-collar unit. The employee in that position is Raymond Hall. The Township asserts that this position has the authority to, and is expected to recommend discipline. Hall agrees that he has the authority to recommend discipline inclusive of discharge. However, to date, he has not done so. There are four (4) employees besides the tax assessor and deputy tax assessor in this office and Hall regularly directs their responsibilities. The tax assessor seeks the deputy tax assessor's review and evaluation of employees' performance, including suggestions on how the four employees might improve their performances. Beyond these informal reviews, Hall has not written formal evaluations. Hall has been asked to monitor one employee's progress and review her work and report his findings and recommendations to the tax assessor. It appears that the tax assessor relies on Hall's monitoring of and recommendations about the employee. The Township has provided a document which acknowledges that the tax assessor intends to consider Hall's recommendations on discipline, hire and discharge.

The Township's submission shows that the tax assessor may delegate some responsibility to the deputy tax assessor in the interview process. No evidence suggests that Hall has participated in the hiring process.

4. Office of the Tax Collector

Deputy Tax Collector

The deputy tax collector title is currently included in the OPEIU white-collar unit. The position is held by Barbara Carter. In its submission, the Township asserts that the title has no authority to hire, discharge or discipline and does not participate in the evaluation or interview process.

OPEIU submits that Carter believes she is a supervisor inasmuch as she has been told by the head of the department, the tax collector, that she has "control over the floor." There are five other employees in the department. Carter asserts she was told that she would be expected to "supervise" those five employees. Generally, Carter asserts she has nothing to do with the hiring process, has given "input" for evaluation purposes, and "feels" she has the power to verbally discipline employees. She reports all of her actions to the tax collector when she corrects employees who make errors. The tax collector then decides whether to note the incident in an employee's file and gives the deputy tax collector feed back on how to deal with the employees. There have been no disciplinary discharges in the office of the tax collector.

5. Office of Social and Senior Services

Office Manager

The Township asserts that the job title, "Office Manager" in this specific department does not actually discipline or recommend discipline, evaluate employees, or become involved in

the hiring process and therefore the position should remain in the white collar OPEIU unit. The employee currently holding this position is Carol Jamieson. She reports to the director of social and senior services and is responsible for supervising the daily work of approximately 10 other employees.

OPEIU asserts that Jamieson has in fact been asked for, and has provided input with regard to hiring of potential employees on frequent and recent occasions. Additionally, OPEIU has asserted that Jamieson is asked for and provides recommendations with regard to evaluations of current employees.

Jamieson believes she has the authority to discipline and discharge. OPEIU's submissions refer to a specific incident where the office manager discharged an employee within the last year and it appears that the discharge was upheld by a higher ranking Township official. The Township has not provided evidence to the contrary.

ANALYSIS - PART 1

General Foremen

The Township's petition raises the issue of whether the job titles of general foreman and foreman described above should be excluded from the existing supervisory negotiations unit represented by OPEIU because the duties and authority inherent in those positions are non-supervisory.

Initially, it is appropriate to recognize that the parties in this matter have attempted to exchange sufficient information to enable them to voluntarily resolve their dispute. To a significant degree the parties have accomplished that goal. From the information provided for my determination of the unresolved titles it is clear that there remains some dispute between the facts presented by the parties and the perceptions of the subject employees concerning the extent of the authority of the general foremen and foreman to hire, discharge, discipline or to effectively recommend the same.

The Act provides at N.J.S.A. 34:13A-5.3 that supervisors shall not be included in units with non-supervisory employees. A statutory supervisor has the authority to hire, discharge, discipline or effectively recommend the same. N.J.S.A. 34:13A-5.3. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). Supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend these actions. There must also be an indication that the power claimed to be possessed is actually exercised. See Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976) and City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987).

In the instant case, no facts support the claim that General Foremen Chester Hurley, Henry Wright, Jr., or Ray Sloan, Jr. have either been given statutory authority to supervise others

or have actually exercised that authority, including effectively recommending the hiring, firing or disciplining of other employees. While I recognize that all of the general foremen are responsible for assuring that employee work crews are given their daily work assignments and complete specific work duties, these responsibilities represent the functions of a work leader, not a supervisor, as defined by the Act.

The single incident provided with regard to General Foreman Hurley's write up of a crew member is insufficient evidence of disciplinary authority to support a finding of supervisory status. Additionally, there were no specific examples provided of any of the "verbal" discipline referred to by Hurley in OPEIU's submission. Finally, Hurley admits that he is not involved in evaluating, hiring or interviewing employees. Although Hurley may discuss employee performance with the other general foremen there is no indication that any formal recommendation comes from Hurley as a result of these discussions.

As to General Foreman Ray Sloan, Jr., while the Township admits that Sloan has the authority to issue verbal or written reprimands to his crew members, there is no evidence that he has ever exercised that authority. See Somerset County Guidance Center, infra. Sloan has asserted that he "sat in on" an interview of a potential hire sometime within the last year and one-half and at some point recommended hire of a probationary

employee, however, there is no evidence that the Township gave any weight either to Sloan's presence at the new hire interview or to his recommendation for hire of the probationary employees. Finally, Sloan's "completion" of the evaluations for the DPW road crew appears to have been merely an administrative duty rather than a supervisory one.

Thus, even though there is some evidence that these general foremen have had input into employee evaluations, there are no examples of them having evaluated specific employees nor is there evidence of that input being used in connection with any adverse personnel actions regarding DPW crew members. See Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) (Commission found that business administrator's secretaries were not supervisors based solely on their input into a clerk's performance evaluation). Absent this specificity, the evidence of input into evaluations is insufficient to support a conclusion that Hurley, Wright or Sloan are supervisors within the meaning of the Act.

Based upon the above facts and applicable standards, I conclude that the general foreman title does not carry with it the authority to hire, fire, discipline or effectively recommend the same. I conclude based upon the parties arguments and submissions that Hurley, Wright and Sloan are not supervisors within the meaning of the Act. They should be excluded from OPEIU's supervisory unit and be placed in the existing blue-collar OPEIU unit.

DPW/Buildings and Grounds: Foreman

The employee currently holding the position of Foreman, Building and Grounds is Richard Rider. There is no dispute that Rider does not have, nor has he exercised disciplinary authority. Rider has corrected employees when he believed they were "doing something wrong." If the performance problem persisted, he referred the matter to his supervisor, John Hurley. DPW Director Stanziano asserts that Rider is not involved in the hiring or evaluation process. However, Rider's relationship to supervisor Hurley apparently allows Rider to assist Hurley in interviewing and jointly recommending potential employees to the DPW director. There is one example of Rider's participation in an interview which occurred approximately one year ago. Likewise, with regard to evaluations, Rider may provide input and assist Hurley in reviewing an employee's evaluation. He also may be present at the evaluation meeting with the employee. There is no evidence, however, concerning whether Rider's input has led to any negative personnel action for an employee. With regard to both new hires and evaluations, there is no evidence that Rider's input or recommendation is dispositive of the outcome as to either existing or potential employees. In fact, DPW Director Stanziano has not been made aware of Rider's participation in evaluations.

Based upon all of the foregoing, I conclude that Rider's duties as foreman do not connote supervisory responsibility; and he is not a statutory supervisor. I conclude that the position of

Foreman, Buildings and Grounds is not a statutory supervisory position and should be removed from the supervisory unit and placed in the existing blue collar unit.^{1/}

Office of the Tax Assessor

Deputy Tax Assessor

The Township expects the employee holding the title, Raymond Hall, to recommend discipline. No facts suggest that an occasion for meting out discipline has arisen. Hall has been called upon to monitor and at least informally report on the work performance of four other office employees with recommendations for action to be taken to improve their performance. In one recent case, as a result of Hall's recommendation, there is the potential for an adverse personnel action if the employee's work does not meet Hall's and the tax assessor's expectations. The parties agreed that at the time of the conference in this matter no discipline had been necessary.

The Township admits that it expects the deputy tax assessor to recommend discipline and has given him the authority to do so. While an assertion that an employee has the authority to discipline is generally not enough to conclude supervisory

^{1/} Should the duties of any of the general foreman or foreman positions set forth herein be expanded to include the exercise of the authority to hire, discipline or discharge or effectively recommend the same, the positions would be appropriate for inclusion in the supervisory unit. If the positions as identified here are moved to the blue collar unit, the Township may wish to develop titles more reflective of the duties performed.

status, in the instant case the potential for discipline of an employee currently exists, and Hall has been heavily involved in evaluating the work performance of that specific employee.

I conclude based on all of these factors that the job title, deputy tax assessor should be placed in the OPEIU supervisory unit.

Office of the Tax Collector

Deputy Tax Collector

The information provided by OPEIU concerning the duties carried out by the deputy tax collector is insufficient to support a conclusion that the position should be removed from the white-collar unit and placed in the supervisory unit. Barbara Carter, who currently holds the position relates being told that she has "control over the floor" and is expected to "supervise" five other employees. No facts suggest that having control over the floor includes the authority to discipline or evaluate employees beyond verbally correcting their mistakes and providing some input to the tax collector concerning their work performance. Without more, "controlling the floor" and generic "supervision" do not support a finding of statutory supervisory status. I find that the job title deputy tax collector should remain in the OPEIU white collar unit.

Office of Social and Senior Services

Office Manager

The evidence of supervisory status for the title of office manager for this department reveals that the employee holding the title, Carol Jamieson has recently exercised disciplinary authority by discharging a member of the office staff. Moreover, the exercise of that authority was supported by the Township. Also, she recently recommended a potential employee and the applicant was hired. Thus, while the Township has asserted that the office manager here does not actually discipline, nor review or recommend applicants, it has not provided any evidence to contradict OPEIU's information concerning Jamieson's recent discharge of an office staff employee and effective recommendation for hire of another.

The Township has provided no other information to support its assertion that this office manager does not engage in any supervisory activities. Therefore, based upon the office manager's exercise of discipline, particularly the recent discharge of an office employee and her recent recommendation on hiring, I conclude that this specific office manager position should be placed in the OPEIU supervisory unit.^{2/}

^{2/} Should there be no further exercise of statutory authority duties by the office manager, the Township can file a subsequent clarification of unit petition.

In summary, the following disputed job titles are not statutory supervisory positions and should be removed from the OPEIU supervisory unit and placed in the appropriate OPEIU rank-and-file unit:

Department of Public Works

General Foremen (3)

Buildings and Grounds

Foreman (1)

The following positions should be added to the OPEIU supervisory unit:

Office of Social Services

Office Manager

Tax Assessor Office

Deputy Tax Assessor

The following disputed job title should remain in the OPEIU white-collar unit:

Office of the Tax Collector

Deputy Tax Collector

Susan L. Stahl
LAP Umpire

DATED: November 21, 2002
Trenton, New Jersey