

D.R. No. 2011-12

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

In the Matter of

CITY OF LINDEN,

Public Employer,

-and-

Docket No. CU-2010-025

LINDEN SUPERVISORS ASSOCIATION,

Employee Representative.

SYNOPSIS

The Deputy Director of Representation clarifies a supervisory unit to exclude the titles sanitation inspector, computer service technician, senior sanitary inspector, plumbing inspector, municipal recycling coordinator, systems analyst, senior housing inspector, and electrical sub-code official, effective immediately. The Deputy Director found that although many of the contested employees oversee and direct the work of others, the certifications filed by the Association contain no specific facts which demonstrate that any of them regularly exercise the power to hire, discharge, discipline or to effectively recommend those actions. The Deputy Director further found no facts which indicate that the parties have a pre-1968 collective negotiations relationship nor any facts which constitute "special circumstances" warranting an exception to the general rule against mixed units.

D.R. No. 2011-12

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

In the Matter of

CITY OF LINDEN,

Public Employer,

-and-

Docket No. CU-2010-025

LINDEN SUPERVISORS ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer,
Allan Roth, of counsel

For the Employee Representative,
Oxfeld Cohen, P.C.
(Sanford R. Oxfeld, of counsel)

DECISION

On June 17, 2010, the City of Linden (City) filed a clarification of unit petition seeking to clarify a collective negotiations unit of supervisors to exclude eight nonsupervisory titles. The unit is represented by the Linden Supervisors Association (Association). The Association objects to the petition, asserting that many of the titles are supervisory within the meaning of the Act and that established practice and special circumstances permit the titles which are not supervisors to remain in the unit.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:1-2.2 and 2.6. The parties filed letters and exhibits supporting their respective positions. On March 15, 2011, I wrote to the parties, advising of my tentative findings and conclusions and inviting responses. The Association was given an extension of time to file a response. On April 12 and 14, the Association filed certifications of seven unit members. The disposition of the petition is properly based upon our administrative investigation. No substantial material facts in dispute require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following findings:

The City and the Association are operating under an expired collective negotiations agreement, which extended from January 1, 2005 through December 31, 2008. The agreement defines the unit to include "all supervisory personnel employed by the City." It does not set forth any specific titles that are included in the unit. The titles that the City seeks to exclude are:

- 1) sanitation inspector
- 2) computer service technician
- 3) senior sanitary inspector
- 4) plumbing inspector
- 5) municipal recycling coordinator
- 6) systems analyst
- 7) senior housing inspector
- 8) electrical sub-code official

The titles are presently included in the Association's unit, as evidenced by the City's deduction of union dues from the employees' paychecks for the purpose of remitting them to the Association. The Association does not dispute that the enumerated titles are included in the unit.

Craig Beecher is a sanitation inspector for the City. His title ensures that businesses and residents comply with trash and recycling ordinances. He investigates complaints concerning the commingling of trash and recyclables and illegal trash dumping. He issues written warnings and summonses to violators. Beecher sometimes directs the work of others, assigns crews, and ensures compliance with safety standards. In 2006, Beecher issued a written reprimand to an unspecified employee. In April 2011, Beecher recommended the removal of an unspecified employee in training and the hiring of a new employee to fill the vacancy. Both recommendations were accepted.

Charles Crane is a computer service technician for the City. His job is to manage the day-to-day operation of computers, peripherals, software, networking, radios, and audio and video systems for the City. His duties include assigning work to staff. One of the staff members to whom he assigns work is Glenn Matuska, Jr., a clerk in the police department's computer services division. At an unspecified time in 2004 or earlier,

Crane interviewed Matuska for the job and recommended his hiring. The City hired Matuska.

Joseph Labiak is also a computer service technician for the City. His duties are substantially similar to Crane's. Labiak has not certified of any instance in which he has hired, discharged, disciplined employees, or effectively recommended those actions.

John LaPlaca is a senior sanitary inspector for the City. He inspects retail food-handling establishments, tattoo parlors, and recreational bathing facilities for compliance with applicable laws. He also investigates public health nuisances, food-borne illness outbreaks, and citizen complaints. He issues summonses to violators. Although LaPlaca lists, "oversee and supervise support staff as necessary" as one of his duties and certified that he "would recommend discipline" if a secretary who processes his inspection reports performed negligently, he has not certified of any instance in which he hired, discharged, disciplined, or effectively recommended any of those actions.

Mark Ritacco is a plumbing inspector and zoning officer for the City. Among his duties, he reviews land use applications and enforces zoning ordinances. Ritacco also lists, "supervision of clerical assistants and housing inspectors as it relates to zoning ordinance compliance" as one of his duties. He assigns the housing inspectors their daily work, but has not certified

any instance of hiring, discharging, disciplining employees, or effectively recommending those actions. If the City construction official is away for any reason, Ritacco assumes his duties as head of the department.

Richard Sparks is a municipal recycling coordinator for the City. No certification indicates that he hires, discharges, disciplines employees, or effectively recommends those actions.

Nancy Gomes is a systems analyst for the City. She is responsible for maintaining the City's computer system and network. She also has some duties related to municipal finance, including supervising accounts. Gomes has not certified any instance in which she has hired, discharged, disciplined employees, or effectively recommended those actions.^{1/}

Gregory Imbriaco is a senior housing inspector for the City. He has not certified any instance in which he has hired, discharged, disciplined employees, or effectively recommended those actions.

Lou Milonas is a an electrical sub-code official employed by the City. He directs the work of the electrical inspection staff. He has not certified that he hires, discharges, disciplines employees, or effectively recommends those actions.

^{1/} Christine Figueiredo is a systems analysts for the City who also holds the title of assistant municipal treasurer. The City concedes that she serves in a supervisory capacity when the municipal treasurer is absent or unavailable. The City is not seeking to clarify the unit to exclude Figueiredo.

ANALYSIS

A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit. In circumstances where a petition seeks to exclude non-supervisors from a supervisory unit, a clarification of unit petition is appropriate. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977). If the petition regarding the asserted non-supervisors is filed during the term of a collective agreement, and the disputed employees are found to be nonsupervisors, the negotiations unit will be clarified when the agreement expires. Clearview.

Under our Act, supervisors cannot be included in negotiations units with non-supervisory employees. N.J.S.A. 34:13A-5.3 provides:

. . . [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 nonsupervisory personnel to membership.

A determination of supervisory status requires more than the assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such action. The Commission has held:

. . . [T]he bare possession of supervisory authority without more is insufficient to

sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employee in question, the mere 'possession' of the authority is a sterile attribute unable to sustain a claim of supervisory status.

[Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976)]

The Commission will look beyond the title or job description to ascertain the nature of the authority the employee actually exercises. Evidence that the authority is exercised with some degree of regularity is required. Somerset County.

An "effective recommendation" occurs when the "supervisor's" recommendation is adopted without independent review and analysis by a higher level of authority. See Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), adopting H.O. No. 84-11, 10 NJPER 149 (¶15075 1984); Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp. 465 (¶114 1971). Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not render an employee a statutory supervisor. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985).

The Association asserts that "many" of the disputed titles are supervisory within the meaning of the Act. It did not specify which titles are supervisors. Although many of the contested employees oversee and direct the work of others, the certifications filed by the Association reveal no specific facts

showing that any of them regularly exercise the power to hire, discharge, discipline, or to effectively recommend those actions. For example, if I assume that employee Crane provided facts demonstrating that his recommendation to hire Matuska was an "effective recommendation," no facts suggest that he has hired, discharged, disciplined employees, or effectively recommended any of those actions since 2004.

Beecher's disciplining of an employee in 2006 also fails to demonstrate that he regularly exercises supervisory authority. His bald assertion that in April 2011 the City accepted his recommendations about firing an employee and the hiring of his or her replacement, does not, standing alone demonstrate that his recommendation was adopted without independent review and analysis by a higher level of authority, and does not establish that he effectively recommended those actions.

The Association did not provide any evidence which demonstrates that the construction official, (whose duties are assumed by Ritacco in the construction official's absence), is a supervisor within the meaning of the Act. Nor do any facts establish the frequency with which Ritacco assumes the duties of the construction official or that he exercises supervisory authority when he serves in that capacity. Ritacco's assertions that he would supervise a plumbing inspector "if there were one" and that he is certain he would "be involved" in hiring an

inspector if one were needed are insufficient to confer supervisory status.

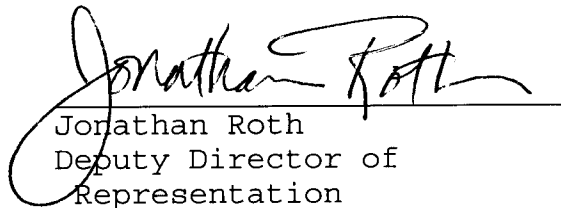
Under all these circumstances, I cannot find that any of the petitioned-for titles are supervisors within the meaning of the Act.

The Association argues that to the extent any of the disputed titles are nonsupervisory, "established practice" and "special circumstances" permit their continued inclusion in the unit because the City assertedly determined on an unspecified earlier date that each member of the Association was a supervisor and placed him or her in the unit.

Under Section 5.3 of the Act, an "established practice" relates solely to a pre-Act (i.e., before 1968) negotiations relationship between a public employer and a majority representative. Rutgers Univ., P.E.R.C. No. 90-69, 16 NJPER 135 (¶21053 1990). Even if the City's governing body specifically found that each contested employee was a supervisor and agreed to include them in the unit for that reason, these facts do not qualify as an "established practice" under 5.3. No facts indicate that the parties have a pre-1968 collective negotiations relationship. Nor would the actions of the governing body, if true, constitute "special circumstances," warranting an exception to the general rule against mixed units.

I order that the supervisory unit is clarified to exclude the titles, sanitation inspector, computer service technician, senior sanitary inspector, plumbing inspector, municipal recycling coordinator, systems analyst, senior housing inspector, and electrical sub-code official, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Jonathan Roth
Deputy Director of
Representation

DATED: May 31, 2011
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by June 13, 2011.