

D.R. NO. 2020-6

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

In the Matter of

JACKSON TOWNSHIP,  
Public Employer,

-and-

Docket No. RO-2019-053

JACKSON TOWNSHIP MUNICIPAL  
SUPERVISORS,  
Petitioner,

-and-

TRANSPORT WORKERS UNION,  
LOCAL 220  
Intervenor.

**SYNOPSIS**

The Director of Representation dismisses a representation petition filed by Jackson Township Municipal Supervisors (JTMS) seeking to sever four titles from the existing collective negotiations unit of blue collar employees of Jackson Township (Township) currently represented by Transport Workers Union of America AFL-CIO Local 220 (TWU) and to add those titles to JTMS's existing unit of supervisory employees of the Township. JTMS asserted that TWU's unit was inappropriate as to the employees holding the titles because they were supervisors in a unit with non-supervisors and created a conflict of interest. TWU, having validly intervened in the representation processing, asserted that the standards for severance were not present and that the petitioned-for unit was inappropriate because the titles would have a conflict of interest with higher ranking supervisory titles in JTMS's existing unit. The Township took no position.

The Director found that the petitioned-for titles were not statutory supervisors and did not create a substantial conflict of interest under the standards of West Orange Bd. of Educ. v. Wilton, 57 N.J. 404 (1971). In the absence of any other proffered reason for inappropriateness, the Director found TWU's unit to be appropriate and accordingly applied the standards of Jefferson Tp. Bd. of Ed. P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971). As JTMS neither averred nor provided documents showing that TWU's unit had a record of unstable labor-management relations or that TWU had not provided responsible representation, the Director found TWU's unit to be the most appropriate unit and dismissed the representation petition.

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Appearances:

For the Public Employer,  
Apruzzese, McDermott, Mastro and Murphy, P.C.,  
attorneys  
(H. Thomas Clarke, of counsel)

For the Petitioner,  
(Fred Rasiewicz, President)

For the Intervenor,  
(Christina Scott, President)

**DECISION**

On June 7, 2019, Jackson Township Municipal Supervisors (JTMS) filed a representation petition seeking to add certain assertedly supervisory titles to its existing collective negotiations unit of supervisory employees of Jackson Township

(Township).<sup>1/</sup> The petitioned-for titles are currently included in a collective negotiations unit of Township blue collar employees represented by Transport Workers Union of America AFL-CIO Local 220 (TWU). The petition was accompanied by an adequate showing of interest.<sup>2/3/</sup>

On June 11, 2019, I approved TWU's written request to intervene on the basis of its submitted and recently expired CNA covering the petitioned-for employees. N.J.A.C. 19:11-2.7.<sup>4/</sup> On June 14, 2019, the Township submitted copies of the CNAs of TWU and JTMS, a certification that the required Notice to Public Employees was posted on June 11, 2019, and a listing of the

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1/ JTMS was certified in Jackson Tp., D.R. No. 2016-4, 42 NJPER 389 (¶110 2015) (Jackson Tp. I).

2/ Although TWU speculates that some of the petitioned-for employees may have been intimidated to sign authorization cards for JTMS (because JTMS representatives have duties to the Township to supervise or direct them), it has not requested that any election be blocked because of such intimidation.

3/ TWU's most recent collective negotiations agreement (CNA) with the Township is now expired and cannot bar this petition. N.J.A.C. 19:11-2.8(c). The Township has elected not to raise its unexpired CNA with JTMS as a bar. See Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) ("The contract bar rule, because it exists for the protection of the parties, may normally be waived by agreement of both parties to the negotiations relationship.").

4/ The organization name on the CNA is Transport Workers Union of America AFL-CIO Local 225 Branch 4. I take administrative notice that this organization's certification was amended to reflect its change in local number in Jackson Tp., D.R. No. 2018-5, 44 NJPER 64 (¶18 2017) (Jackson Tp. II).

petitioned-for employees, confirming the adequacy of JTMS's showing of interest. At the request of JTMS, the conference originally scheduled for June 20, 2019, was postponed. Due to various conflicting schedules among the parties, the conference was rescheduled with the assigned Commission staff agent on July 29, 2019.

The parties did not consent to an election at the conference. JTMS asserted that its "severance" petition was appropriate because the petitioned-for titles were inappropriately included in TWU's unit, owing to an alleged conflict of interest posed by their supervisory duties. TWU contended that the standards for a severance petition were not present, and that a conflict of interest would exist between the petitioned-for titles and JTMS's unit because of the supervisory duties of higher ranking titles currently in JTMS's unit, including those of the Director of Public Works, Fred Rasiewicz, who is also the President of JTMS. The Township did not object to the petition and took no position regarding the appropriateness of either unit.

On August 1, 2019, the staff agent sent a letter to the parties, scheduling their submission of position statements on whether severance of the petitioned-for titles from TWU's blue collar unit is appropriate and whether JTMS's supervisory unit is an appropriate unit for the petitioned-for titles. The letter

emphasized that the framed issues required discussion of the relevant job duties actually performed (not just in written job descriptions) by the persons holding the petitioned-for titles and other persons in each unit to the extent their job duties were alleged to create a conflict of interest, as well as discussion of any instances of conflicts. The letter also explained that each title should be discussed separately; that all factual assertions should be made through a certification of a person with personal knowledge; and that uncertified facts might not be considered.

The initial position statement of JTMS was due August 8, 2019; responses from TWU and the Township were due August 15, 2019; and a reply from JTMS was due August 19, 2019. On August 8, 2019, JTMS filed and served its position statement, with certifications of Rasiewicz and Robert Stauffer, the Vice President of JTMS and the Supervisor of Public Works for the Township. On August 14, 2019, the Township requested and was given a one-day extension to file a certification, and, in fairness to the parties, the due dates for TWU and JTMS were also extended by one day. On August 15, 2019, TWU filed and served its position statement, along with certifications of its President, Christina Scott, and the four people holding the petitioned-for titles, George Newschafer, Howard Conk, Stephen Cattonar, and Scott Sargent. On August 16, 2019, the Township

advised the staff agent that it would not be taking a position or submitting a certification. On August 20, 2019, JTMS requested a one-day extension for its reply since it had waited for submissions from the Township, unaware that the Township declined to submit anything. JTMS was given until August 21, 2019, to submit a reply, but no reply was filed.

I have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial or disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.

On November 2, 1977, we certified (Dkt. No. RO-78-028) TWU as the majority representative of this collective negotiations unit:

All blue-collar employees employed by Jackson Township but excluding all other employees, professional employees, clerical employees, confidential employees, managerial executives, craft employees, police and supervisors within the meaning of the Act.

In TWU's most recent CNA, executed on May 11, 2015, and extending from January 1, 2015, through December 31, 2018, the recognition provision also excludes "foremen." A schedule of unit titles recognized by TWU and the Township attached to the CNA includes assistant supervising laborer, road repairer 3, assistant maintenance supervisor, and assistant supervisor of motor pool.

TWU's certification was amended to reflect its change in local number on July 21, 2017. Jackson Tp. II.

On December 7, 2015, in Jackson Tp. I, we certified JTMS as the majority representative of this collective negotiations unit:

**Included**: All regularly employed, supervisory employees of the Township of Jackson, including but not limited to the director of community development, director of public works, supervisor of public works, tax assessor, tax collector, zoning officer, construction code official, electrical subcode official, building subcode official, plumbing subcode official, fire protection subcode official, assistant recreation supervisor, recreation program administrator and principal accountant.

**Excluded**: Managerial executives, confidential employees, and non-supervisory employees; craft employees, casual employees, chief financial officer, township clerk, deputy township clerk, municipal judge, business administrator, senior computer service technician, assistant municipal treasurer, personnel officer and all other employees employed by the Township of Jackson.

In the decision, the then-Director explained that JTMS had sought certification as the majority representative of an "unrepresented

group of about 17 supervisory employees" of the Township.<sup>5/</sup> In

Footnote 2 of Jackson Tp. I, the Director wrote:

The petitioner describes the petitioned-for employees as "supervisors" and the Township does not object to this unit description. Our administrative investigation does not establish that these employees are statutory supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq. (hereinafter "Act"). See N.J.S.A. 34:13A-5.3. That is, these employees do not have the authority to hire, fire or discipline other employees, or effectively recommend the same.

On August 22, 2016, JTMS filed a representation petition seeking to sever the titles of assistant supervising laborer, road repairer 3, assistant maintenance supervisor, and assistant supervisor of motor pool from TWU's unit and add them to its unit. On November 14, 2016, that petition was dismissed, pursuant to N.J.A.C. 19:11-2.3 because JTMS had not expressed interest in correcting procedural deficiencies in the petition. JTMS's subsequent requests to reopen or refile the petition were denied; we advised that any such petition must be timely filed.

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<sup>5/</sup> I take administrative notice that the original and first amended petition of JTMS in that case (Dkt. No. RO-2015-004) explicitly described the petitioned-for unit as excluding existing represented employees. TWU did not intervene despite our solicitation that it may have an interest in the case. We did not solicit TWU's interest again following our receipt of JTMS's second amended petition, which no longer explicitly described the petitioned-for unit as excluding existing represented employees. Jackson Tp. I clarifies that only unrepresented supervisory employees were sought, not supervisory employees that may have been in other units.



N.J.A.C. 19:11-2.8. Additional unrepresented supervisory titles were clarified as being within JTMS's unit, pursuant to our decision in Jackson Tp., D.R. No. 2018-17, 44 NJPER 335 (¶96 2018) (Jackson Tp. III). In JTMS's current agreement with the Township, executed on January 19, 2019, and extending from January 1, 2016, through December 31, 2019, the recognition provision refers to "supervisors" as defined and set forth in JTMS's December 7, 2015, certification, and other "supervisory" titles added in accordance with Commission rules.

The current representation petition identifies the titles sought as assistant supervising laborer, assistant maintenance supervisor, road repairer 3, and assistant supervisor motor pool. All are included in TWU's unit and each title is held by only one person. They are respectively, Scott Sargent, Steve Cattonar, George Newschafer, and Howard Conk.

Scott Sargent holds the permanent civil service title of maintenance worker 2 grounds. He holds the provisional civil service title of laborer 3, which, in TWU's CNA is identified as assistant supervising laborer. His duties as a laborer 3 have included: interacting with the Department of Labor and Ocean County Health Department; maintaining reports; interfacing with OSHA, PEOSHA, DEP, EPA, FEMA, Qual-Links, and IAQ; maintaining ICS (emergency management) reports, incident reports, IOD reports, drivers license reports, fuel tank inspection reports,

boiler inspection reports, and generator and elevation inspection reports; managing storm water; conducting job site, playground, and fire inspections; and maintaining the department of public works phone contact list, HVAC log, equipment schedule inventory, and MSDS sheets. According to Stauffer, Sargent's duties also include: assigning work, assigning equipment; overseeing the proper completion of assigned work; maintaining records; submitting reports on work completed; and ordering materials.

Steve Cattonar holds the civil service and TWU CNA title of assistant maintenance supervisor. His duties have included: filling out work orders for employees everyday and helping out when staffing is short; making sure employees get copies of sign out slips; checking parks and buildings; receiving complaints from homeowners regarding trees; taking down trees or referring the task to the Tree Commission; inspecting homes for storm damage caused by trees from Township easements; grass whipping; dealing with contractors for building air conditioning and plumbing; performing fire inspections of buildings; obtaining pricing information; running a backhoe and loader; ordering supplies for cleaning; requisitioning supply wood; ordering flags; calling in mark outs for digging; setting up events for "Jackson Day" and July fireworks; filling out building permits for renovations; and signing when contractors complete jobs. Cattonar has 12 TWU unit members assigned to him. According to

Stauffer, Cattonar's duties include: assigning work, assigning equipment; overseeing the proper completion of assigned work; maintaining records; submitting reports on work completed; and ordering materials.

George Newschafer holds the civil service and TWU CNA title of road repairer 3 (formerly known as assistant supervisor roads) is duties have included: scheduling leaf, bulky, and brush collections; scheduling snow operations; scheduling operations for the compost site and transfer station; setting up repairs; ordering materials; calling in for mark-outs; utilizing equipment for jobs involving sinkholes, catch basins, storm drain pipe installation, washouts, potholes, and small paving jobs; preparing work orders; watching over zones and personnel; handling resident complaints; cutting grass in development and rural areas; and keeping records of road opening permits. Newschafer has 20 TWU unit members assigned to him. According to Stauffer, Newschafer's duties include: assigning work, assigning equipment; overseeing the proper completion of assigned work; maintaining records; and submitting reports on work completed.

Howard Conk provisionally held the civil service title of assistant supervisor motor pool but was not awarded that title permanently. His current civil service title is Senior Mechanic. However, he holds the TWU CNA title of assistant supervisor motor pool in Township payroll records and performs work in this role.

As an assistant supervisor motor pool, Conk's duties have included: supervising the motor pool, which is responsible for maintenance, servicing, and repairs to Township equipment and vehicles; being on call 24/7 to respond to calls requiring motor pool personnel for emergency repairs; supervising and coordinating assignments for "Streets and Roads" or "Buildings and Grounds" when no supervisor is available; periodically operating loaders, roll-offs, dump trucks, and snow plows; reviewing maintenance and service manuals for equipment and vehicles; instructing mechanics on preventive maintenance and services for new equipment and vehicles; scheduling training and operation of new equipment from vendors; scheduling and assigning repairs, preventative maintenance, and servicing to mechanics and welders; answering phones and emails; prioritizing work assignments; dispatching mechanics to road service repairs; dispatching duty wrecker when towing service is needed; preparing vehicle inspection and maintenance logs for each unit; reviewing logs, records, and files; scheduling repairs with mechanics; assisting workers with repairs and fabrications; assisting mechanics with diagnosis of mechanical failures; evaluating whether to rebuild parts or purchase new parts; assisting mechanics in the absence of repair manuals or schematics for technical specifications; evaluating mechanical deficiencies for the type of repair or fabrication needed and whether a warranty

claim can be submitted; training workers on shop equipment; establishing proper procedures with mechanics for submission of repair orders and preventative maintenance forms; supervising all repairs and preventative maintenance; creating preventative maintenance service and inspection check off work sheets; recording and filing all work orders; evaluating major repairs and scheduling repairs with department heads and supervisors; inspecting and testing drive equipment and vehicles to evaluate if repairs were made properly and if the discrepancies were corrected; evaluating conditions of equipment and vehicles and recommending replacements if needs; assisting departments with capital budgets pertaining to equipment and vehicles; evaluating department needs for equipping equipment and vehicles with accessories; attending council or mayor's meetings; assisting in FEMA reports pertaining to equipment or vehicle categories; preparing bid specifications for new equipment and vehicles; reviewing and inspecting new purchases to confirm compliance with bid specifications; procuring title and registration from state motor vehicle services; checking vehicles for proper documentation required by various agencies; arranging insurance coverage on new vehicles and submitting to the clerk's office; obtaining vehicle accident reports, arranging estimates, and submitting claims to the clerk's office; scheduling repairs to body shops and reviewing to confirm that repairs were made as

claimed by the estimate; scheduling annual state-required admissions test on all diesel-powered vehicles over 26,000 pounds; scheduling state-required compliance inspections for underground storage and fueling dispensers; confirming that tank monitor systems are functional and accurate; monitoring fuel inventory and ordering fuel as needed; programming vehicle refueling keys and issuing keys to departments; submitting renewal forms for DEP solid waste transporter decals and registrations; inventorying all transporter trucks and containers; scheduling negotiations for new equipment, vehicles, parts, and supplies; compiling and submitting price quotes with requisition requests for purchase orders; maintaining inventory of parts and supplies for motor pool functions; reviewing invoices to purchase orders; and submitting invoices for the payment process.

Conk has 7 TWU unit members assigned to him. Robert Stauffer is the Vice President of JTMS and has held the position of Supervisor of Public Works with the Township since January 2016. Stauffer is the "direct supervisor" of Sargent, Cattonar, Newschafer, and Conk. (Stauffer Cert. ¶2). According to Stauffer, Cattonar's duties include: assigning work, assigning equipment; overseeing the proper completion of assigned work; maintaining records; submitting reports on work completed; and ordering materials.

Fred Rasiewicz is the President of JTMS and has held the position of Director of Public Works with the Township since March, 2017. He certifies that he was instrumental in the formation of JTMS. He submitted a document that he certifies to be a letter from TWU to the Township stating TWU's refusal to have a supervisory function in TWU's unit. The submitted letter is dated January 10, 2007, and is unsigned. It is addressed to Municipal Administrator Bill Santos. The letter requests that the Township cease assigning TWU unit members to the title, "Crew Chief" because it was not in the CNA and because it functioned in the capacity of a foreman title and could make "above class assignments."

Christina Scott is the President of TWU Local 220. The President of the local at the time of the January 10, 2007 letter is deceased. Scott certifies that since January 10, 2007, the titles that JTMS now seeks to represent have been subject to the terms and conditions of employment in at least 3 TWU CNAs. Scott also certifies that Stauffer has disciplined TWU unit members.

#### **ANALYSIS**

The Commission is responsible for determining the appropriate collective negotiations unit when questions concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest

among the employees concerned." N.J.S.A. 34:13A-5.3. When more than one unit is potentially appropriate, the Commission must decide which unit configuration is the most appropriate. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974).

When a petitioner seeks only some but not all of the employees in an existing unit, the Commission applies different standards for "severance," depending on whether the existing unit is an appropriate or inappropriate unit. If the existing (i.e., targeted) unit is prima facie appropriate, we will not "disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation," even where "a community of interest exists for the unit sought" by the petitioner. Jefferson Tp. Bd. of Ed. P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971).

If, however, the existing unit is inappropriate due to a statutory exclusion or a substantial conflict of interest, a severance petition may be valid even in the absence of the Jefferson showing. See Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987) (finding a petition to sever superior officers from an existing unit that included patrol officers was appropriate due to a substantial conflict of interest); Bergen Pines Hosp., D.R. No. 80-20, 6 NJPER 61 (¶11034 1980) (explaining that a representation petition seeking to sever



a professional title from a non-professional unit where no professional option had been exercised would be appropriate); Essex Cty., H.O. No. 77-3, 3 NJPER 55 at n.12 (1976) ("[W]here the Commission has found that the preservation of a unit comprised of supervisors or near-supervisors and non-supervisory titles is not to be sustained, it has applied only the [Wilton] criterion to its analysis. . . . [T]he standards for the severance of non-supervisory employees from a broad-based, rank and file unit enunciated in [Jefferson], are not dispositive of the evaluation of a mixed unit."), adopted D.R. No. 77-14, 3 NJPER 97 (1977); Cumberland Cty. Sheriff, D.R. No. 91-17, 17 NJPER 73 (¶22034 1991) (noting that an argument that a mixed unit is inappropriate under Wilton standards and should be severed into separate units of all supervisory officers and all non-supervisory officers would be "compelling," but a petition to sever only some of each is analyzed under Jefferson standards and only appropriate where the existing unit is unstable or has not been provided responsible representation.)

For an employee organization to continue to have standing to request the Commission to remove employees from a unit represented by another organization, it must demonstrate that those employees would appropriately be included in its own (petitioned-for) unit, pursuant to a timely-filed petition. See Cumberland Cty., D.R. No. 88-24, 14 NJPER 90 (¶19032 1988)

(representation petition seeking to sever certain supervisor and non-supervisor titles from an existing unit was dismissed because petitioned-for unit was inappropriate due to statutory exclusions and a substantial conflict of interest; sought supervisor and non-supervisor titles thus remained in existing unit); Bergen Pines Hosp. (concluding that although petitioned-for title was wrongfully included in existing unit, petitioning organization's clarification of unit petition seeking the title's inclusion in its own unit was dismissed as untimely filed; title thus remained in existing unit).<sup>6/</sup>

JTMS does not assert or provide documents showing that TWU's existing unit is unstable or that TWU has not provided responsible representation. Assuming that the units represented by TWU and JTMS are both appropriate for the petitioned-for employees, Jefferson dictates that I find that the existing unit represented by TWU would be the most appropriate unit and that JTMS's petition be dismissed, accordingly.

JTMS, however, argues that TWU's existing unit is inappropriate for the petitioned-for titles because employees in

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<sup>6/</sup> By contrast, an employer continues to have standing to request removal of titles from an existing unit even when its request to include them in a different unit is denied. See Egg Harbor Tp., D.R. No. 2005-4, 30 NJPER 391 (¶126 2004) (clarifying the exclusion of supervisors from a unit with non-supervisors, but dismissing the part of employer's petition seeking to include those supervisors in an existing supervisors unit).

those titles are supervisors and because the inclusion of those titles in TWU's unit creates a conflict of interest.<sup>7/</sup>

N.J.S.A. 34:13A-5.3 provides, in pertinent 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 collective negotiations by an employee organization that admits nonsupervisory personnel to membership....

N.J.S.A. 34:13A-6(d) provides, in pertinent part:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

The Commission has held "that the Act does, in effect, define a supervisor to be one having authority to hire, discharge, discipline or to effectively recommend the same."

Cherry Hill Tp., Dep't of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970). However, "[a] determination of supervisory status . . . requires more than a job description or assertion

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<sup>7/</sup> JTMS also appears to argue that its petition for certification is proper because supervisors and foremen are explicitly excluded from the recognition provision of TWU's CNA. However, the parties acknowledge that TWU is the current representative of the petitioned-for employees. The recognition provision argument may be relevant, if at all, to a clarification of unit petition, the purpose of which is to resolve the scope of existing certified or recognized units. Clearview.

that an employee has the power to hire, discharge, discipline or effectively recommend." Hackensack Bd. of Ed., H.O. No. 85-3, 10 NJPER 527 (¶15241 1984), adopted P.E.R.C. No. 85-50, 11 NJPER 21 (¶16010 1984). "An indication that the power claimed to be possessed is exercised with some regularity is needed" because "[t]he mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status.'" Id. (quoting Somerset Cty. Guidance Ctr., D.R. No. 77-4, 2 NJPER 358 (1976)); see also Butler Bor., H.O. No. 91-1, 17 NJPER 209 (¶22088 1991), adopted P.E.R.C. No. 91-99, 17 NJPER 260 (¶22119 1991) (holding that "[a]ll of the circumstances of a particular case must be reviewed in order to determine whether the employee has and regularly exercises such power"); Trenton Comm. Charter School, D.R. No. 2000-10, 26 NJPER 187 (¶31076 2000) (finding that in the absence of "specific examples of any hiring decisions and methods," having "attended interviews and made recommendations to school administrators, who, as the ultimate decision-makers, adopted their recommendations," was "too attenuated to be indicative of supervisory authority.")

"Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not render an employee a statutory supervisor." City of Linden, D.R. No. 2011-12, 38 NJPER 159, 160 (¶46 2011). A "bare" authority to "assign," "schedule," "evaluate," "authorize payment(s)," and "direct and

guide work" does not implicate supervisory status under the Act. Academy Urban Leadership Charter High School, D.R. No. 2018-16, 44 NJPER 253 (¶72 2018).

Even units with no statutory supervisors or consisting entirely of statutory supervisors may be inappropriate if there is nevertheless a substantial conflict of interest. In West Orange Bd. of Educ. v. Wilton, 57 N.J. 404, 425-427 (1971), the Supreme Court of New Jersey explained that "representatives of the employer and the employees cannot sit on both sides of the negotiating table" because "both employer and employee organization need the undivided loyalty of their representatives and their members . . . if fair and equitable settlement of problems is to be accomplished." It determined:

If performance of the obligations or power delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.

The Commission has also analyzed whether a conflict of interest may exist even among employees who are not statutory supervisors. City of Camden and Int'l Ass'n of Fire Fighters, Local 788, P.E.R.C. No. 52, NJPER Supp. 195 (¶52 1971), aff'd

NJPER Supp.2d 12 (¶4 App. Div. 1972), certif. den. 62 N.J. 70

(1972). The Commission wrote:

The supervisor versus non-supervisor distinction is not the only boundary to be considered when diagramming the area of common interest on an organization chart. One may have various authorities over other employees, still not be a supervisor as the Commission defines that term, yet be disqualified from the unit inclusion because by their nature and exercise such authorities preclude a common bond. Seen from another view, such authorities, though not legally supervisory in character, may nevertheless be so intimately related to service of the management interest that failure to recognize such in making a unit determination would tend to or would in fact compromise that interest. [Id. at NJPER Supp. 196]

In Monmouth Cty. Sheriff's Office, D.R. No. 2015-16, 41

NJPER 508, 513 (¶159 2015), the Director of Representation wrote:

[In order] [t]o determine whether such conflicts exist, we must examine the facts of each particular case. Any conflicts greater than peripheral or de minimis are against the public interest. An employee's role in evaluations or grievance procedures is a significant factor in determining whether an actual or potential substantial conflict exists. Our case law requires evaluations to be closely connected to personnel actions. Another consideration in determining if an actual or potential substantial conflict exists is whether the historical relationship between the superior and other included employees reveals compromised interests or rights. (citations omitted).

The Commission has "consistently held that supervisor's evaluations must be closely tied to a personnel action or

disciplinary decision in order to find a Wilton conflict." State of New Jersey (Montclair State University), D.R. No. 2018-15, 44 NJPER 244, 250 (¶70 2018), adopted P.E.R.C. No. 2018-42, 44 NJPER 398 (¶111 2018). "Evaluations alone, however, do not necessarily create a conflict of interest sufficient to exclude the evaluator from a unit of non-supervisors." New Jersey Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1997). "Recommendations for another's evaluations which might then serve as recommendations for another's personnel decisions are too far removed from the personnel decisions to create a conflict of interest substantial enough to remove [a] title[] from the unit." Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987).

A "bare" authority to "assign," "schedule," "evaluate," "authorize payment(s)," and "direct and guide work" does not demonstrate a Wilton conflict. Academy Urban Leadership Charter High School. See also State of New Jersey (Dept. of Law and Public Safety), D.R. No. 93-25, 19 NJPER 385 (¶24169 1993) ("Shift supervisors are limited in the scope of their authority to merely directing routine duties and performing administrative functions. Therefore, I find no impermissible conflict.")

If JTMS's assertion that the petitioned-for employees are supervisors means that they are statutory supervisors within the meaning of the Act, I disagree. No facts show that their duties

include the ability to hire, discharge, discipline, or effectively recommend those actions. The certifications presented by JTMS do not provide that these employees perform such duties. Although Stauffer certifies that the four employees "cannot and will not recommend disciplinary action against fellow union members" and are "restrained from investigating" or "speaking against" fellow unit members based on the "code of conduct of the union," Stauffer has not certified that recommending discipline is a required duty of any of the petitioned-for titles. Even if there had been a bare assertion of such authority in a certification or job description, it would not be enough to establish status as a statutory supervisor without documentary evidence that such authority has been regularly exercised and that those recommendations were effective, as opposed to triggering independent review by an employee with higher supervisory authority outside of TWU's unit.

Stauffer's certification provides almost exactly the same one-sentence list of generalized duties for each petitioned-for title, namely: assigning work, assigning equipment; overseeing the proper completion of assigned work; maintaining records; submitting reports on work completed; and ordering material. A repetitive list does not appear to reflect a case by case evaluation of specific work actually performed by each of the separate titles. Even acknowledging these duties as asserted,



together with the more detailed listing of duties provided by TWU, I find that the petitioned-for titles do not perform statutory supervisory duties. Assigning, scheduling, directing, and overseeing the work of others; authorizing payments; and submitting reports of work completed without effective recommendations for personnel actions do not implicate supervisory status under the Act. City of Linden; Academy Urban Leadership Charter High School.<sup>8/</sup>

I also do not find that the petitioned-for titles create a substantial conflict of interest in TWU's unit. No document(s) submitted show(s) that the petitioned-for titles represent management in disciplinary or grievance matters concerning other TWU unit employees, let alone that such duties are regularly exercised in a manner that would create a conflict of interest greater than peripheral or de minimis. To the extent any title's duties can be described as evaluating the performance of other

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<sup>8/</sup> Even if the petitioned-for titles perform statutory supervisory duties, JTMS's own unit is likely inappropriate. The Director in Jackson Tp. I noted that the administrative investigation did not establish that the employees in JTMS's unit were statutory supervisors and found that they do not have the authority to hire, fire, discipline, or effectively recommend the same. If even one employee currently in JTMS's unit or organization continues to have no statutory supervisory duties, and if the petitioned-for titles perform statutory supervisory duties, then the petition seeks an inappropriate unit of supervisors and non-supervisors and must be dismissed. N.J.S.A. 34:13A-5.3, 6(d); City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982). The petitioned-for titles would remain in TWU's unit. Cumberland Cty.

TWU unit employees, no document(s) show(s) that such evaluations are closely tied to disciplinary or personnel actions. No documentary evidence of specific instances of actual compromised interests has been submitted. Assigning, scheduling, directing, and overseeing the work of others; authorizing payments; and submitting reports of work completed (unrelated to disciplinary or personnel actions) do not create a substantial conflict of interest. Academy Urban Leadership Charter High School, State of New Jersey (Dept. of Law and Public Safety).<sup>2/</sup>

Inasmuch as these titles do not perform statutory supervisory duties nor create a substantial conflict of interest in TWU's unit, and in the absence of any other proffered reason why TWU's unit is inappropriate, I find TWU's unit to be appropriate. In light of TWU opposing severance of its appropriate unit, the Jefferson standard applies in this case. JTMS has neither averred nor provided documents showing that

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<sup>2/</sup> If I were to find that the petitioned-for titles' duties, as articulated by the parties, create a substantial conflict of interest in TWU's unit, and if I were to apply the same standard to JTMS's unit, then I would likely find that JTMS's own unit is inappropriate. Stauffer certifies that he is the Supervisor of Public Works and is the direct supervisor of the petitioned-for titles. Scott certifies that discipline of TWU unit members has come from Stauffer in the past and suggests that Stauffer and Rasiewicz would continue to be responsible for issuing discipline to employees holding the petitioned-for titles even if they were placed in JTMS's unit. Such duties would likely create a conflict of interest and make JTMS's petitioned-for unit inappropriate, requiring that its petition be dismissed and leaving the titles in TWU's unit. Cumberland Cty.

TWU's existing unit is unstable or that TWU has not provided responsible representation. Accordingly, I find that TWU's existing unit is the most appropriate unit and dismiss the representation petition.

**ORDER**

Jackson Township Municipal Supervisors' representation petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

/s/ Jonathan Roth  
Jonathan Roth  
Director of Representation

DATED: September 9, 2019  
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 September 19, 2019.