

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE

Petitioner

and


Docket No. CU-50

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Certified Representative

DECISION

Pursuant to a Notice of Hearing to resolve the unit status of Street Foremen, Sewer Foremen, and Traffic Maintenance Foremen, a hearing was held on June 29, 1971, before Hearing Officer Bernard J. Manney. All parties were given an opportunity to examine and cross-examine witnesses, present evidence, to argue orally and to file briefs. Thereafter, on August 16, 1971, the Hearing Officer issued his Report and Recommendations. Neither party filed exceptions to that Report. The undersigned has considered the record and the Hearing Officer's Report and Recommendations and on the facts in this case finds.

1. The City of East Orange is a public employer within the meaning of the Act and is subject to the provisions thereof.
2. The Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act.
3. The Employer seeks clarification of a unit previously certified by the Commission, which unit excluded supervisors. Specifically the question is whether certain "foremen" titles are supervisory within the meaning of the Act. Because the parties are unable to resolve this unit question, the matter is properly before the undersigned for determination.
4. In the absence of exceptions to the Report and Recommendations, the undersigned adopts the Hearing Officer's findings and recommendations pro forma. The titles Street Foreman, Sewer Foreman, and Traffic Maintenance Foreman are supervisory and excluded from the certified unit.


Maurice J. Nelligan, Jr.
Executive Director

DATED: September 17, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE

Petitioner

and

Docket No. CU-50

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Intervenor

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

On February 16, 1971, the City of East Orange filed a petition with the Public Employment Relations Commission for Clarification of Unit. A Notice of Representation Hearing was issued to the parties and a hearing was scheduled for March 31, 1971. At the request of the parties, the case was twice rescheduled, to April 15, 1971 and to June 29, 1971. Pursuant to the pertinent Order Rescheduling Hearing to resolve a question concerning the representation of certain employees of the City of East Orange a hearing was held on June 29, 1971 before the undersigned. All parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Appearances were recorded as follows:

For the Public Employer:

Jacob Green, Esquire

For the Intervenor:

Joseph M. Clarkin

Witnesses testifying in this hearing were:

John W. Dean, Street Foreman

Julius Fielo, Esquire, City Counsel

Michael D. D'Altillo, Head of Engineering Dept.,
City of East Orange.

The record of the proceedings establishes that:

1. The City of East Orange is a public employer within the meaning of the Act.
2. The Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act.
3. The Intervenor opposes modification of the unit which it claims to represent, and therefore, a question concerning employee representation is involved, and the matter is appropriately before the Commission for adjudication.

QUESTION AT ISSUE:

Are the Street Foremen, Sewer Foremen and the Traffic Maintenance Foremen supervisors within the meaning of the Act?

BACKGROUND:

The parties herein are in the process of negotiating a contract, and among the union's original demands was a request for inclusion of foremen in the unit to be covered. During the course of negotiations, the parties were able to agree to the designation of certain foremen as supervisors within the meaning of the Act, and to their exclusion from the unit. However, the status of three foremen job titles, to wit, Street Foreman, Sewer Foreman, and Traffic Maintenance Foreman remained unresolved. (T9-11) As to the latter three job titles, the union was prepared to agree that they should be excluded from the unit provided that their salaries would be modified to reflect commensurate duties and responsibilities (T-10), and, secondly, that their actual supervisory responsibilities be more clearly defined vis-a-vis the Civil Service job descriptions (T-11). The public employer granted salary increases to the foremen (higher than to other employees) but apparently was unable to satisfy the union with respect to the supervisory functions of said foremen (T-11). The authenticity of the above background recitation by the public employer (T-9) was approved without change by the Intervenor (T 11-12). The undersigned notes, too, that six of the eight foremen in dispute signed a statement (Exhibit P-3) in which they indicated a desire to be excluded from any non-supervisory unit.

DISCUSSION AND FINDINGS:

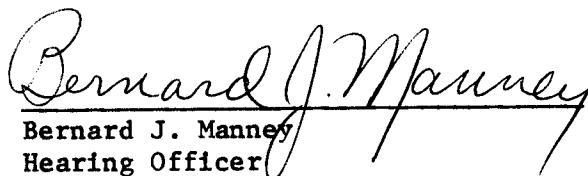
C34:13A-5.3 provides in part: "...not except where established practice, prior agreement, or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership." Assuming a statutory, supervisory status for the instant foremen, the record does not reveal any degree of established practice, prior agreement, or special circumstances to warrant a recommendation favoring their right to be represented by an employee organization comprised of nonsupervisory personnel. Instead, however, the record clearly delineates that they do discipline, and effectively recommend discharge. Witness D'Altillo, Head Engineer, testified that the foremen "has the right to suspend without review up to and including five days. The foreman has the right to recommend, and I say effectively recommend dismissal." (T-27) On T-28, the witness stated that this description of foremen's authority applied to the instant foremen at issue. Exhibit P-2, a survey of suspensions of nonsupervisory employees made in the street, sewer, shade tree, and traffic divisions during 1968-1970, reveals

that 10 of 26 suspensions were ordered by foremen. (T-29) Witness D'Altillo stated, too, that a foreman's recommendation pertaining to the retention of temporary employees was never rejected by the superintendent or the assistant superintendent (T-31). No part of this testimony was contradicted by the Intervenor. *

The undersigned believes that the record adequately satisfies the pertinent requirements of C34:13A-5.3 vis-a-vis the power to discipline and effectively recommend discharge. Accordingly, the Hearing Officer finds that the instant foremen, to wit, five Street Foremen, two Sewer Foremen, and one Traffic Maintenance Department Foreman are supervisors within the meaning of the Act and shall be excluded from the instant collective negotiation unit as hereinafter defined.

RECOMMENDATIONS:

1. The foremen in the Street Department, Sewer Department and the Traffic Engineering Department shall be found to be supervisors within the meaning of the Act, and shall not have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.
2. The appropriate unit for purposes of collective negotiation shall be: All employees of the City of East Orange in the Department of Recreation; Building Maintenance; Engineering; Dog Warden, Division of the Health Department; excluding officers, clericals, professional and craft employees, managerial executives, ;police and supervisors within the meaning of the Act.


Bernard J. Manney
Hearing Officer

DATED: August 16, 1971
Trenton, New Jersey

* Emphasis added.