

L.D. NO. 98-2

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Public Employer/Respondent,

-and-

Docket No. CU-L-97-17

LOCAL 153, OFFICE OF PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,

Employee Representative/Petitioner,

-and-

EAST BRUNSWICK MUNICIPAL EMPLOYEES
ASSOCIATION/SEIU,

Employee Representative/Intervenor.

Appearances:

For the Public Employer/Respondent:
Genova, Burns & Vernoia
(James J. McGovern, III, of counsel)

For the Employee Representative/Petitioner:
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano (James M. Mets, of counsel)

For the Employee Representative/Intervenor:
SEIU
(Edward T. Kahn, Business Agent)

LAP DECISION

The above-named parties are engaged in a dispute over whether the position of Records Bureau Supervisor is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act (Act). The parties have requested that this dispute be resolved through the Commission's Litigation Alternative Program

(LAP) and that I serve as the LAP Hearing Officer. The parties have also agreed that my decision will be final and binding.

OPEIU Local 153 (OPEIU) is the certified bargaining agent for all professional and non-professional primary level supervisors employed by the Township of East Brunswick (Township). On November 26, 1996, OPEIU filed a clarification of unit petition with the Commission seeking to represent eleven employees, nine of whom were represented by East Brunswick Municipal Employees Association/SEIU (SEIU). SEIU is the exclusive negotiations representative of non-supervisory employees employed by the Township.

By letter dated January 10, 1997, SEIU requested to intervene in this matter. The Director of Representation approved this request on January 24, 1997.

On October 24, 1997, the parties entered into a settlement agreement clarifying all titles in question except the Records Bureau Supervisor. That title is currently represented by SEIU. OPEIU asserts, however, that the Records Bureau Supervisor is a supervisor within the meaning of the Act and belongs in its bargaining unit. The parties have agreed that if I determine that the Records Bureau Supervisor is a statutory supervisor, then that title will be removed from the non-supervisory unit represented by SEIU and placed in the supervisory unit represented by OPEIU.

Pursuant to the settlement agreement, the parties submitted a stipulated record which I received on April 9, 1998.

Based upon the entire stipulated record, I find that the Records Bureau Supervisor is a supervisor within the meaning of the Act.

Ms. Phyllis Piloto is the Records Bureau Supervisor. She reports directly to the Police Captain or Director of Public Safety. Her job description provides in part:

Supervise all support personnel and clerical staff within the Records Bureau to ensure accuracy and compliance with proper procedures. Evaluate the office production, recommend procedural revisions, establish workloads, assign tasks and review results. Evaluate and determine needs of personnel. Identify and resolve problems and conflicts within the Records Bureau. Responsible for input into Records Bureau staff evaluations and review such information with the Administration Officer or his designee.

Ms. Piloto has been involved in the performance evaluation process and the disciplinary process of subordinate staff in the records bureau. The record before me includes recent memoranda from 1997, which illustrate her ability to recommend discipline and evaluate job performance of persons in her bargaining unit. These persons were in the job titles of Records Processing Clerk and Office Coordinator, who, like Piloto, are represented by SEIU.

Examples consisted of memoranda to her staff concerning tardiness; abuse of personal telephone calls; professionalism in the office, including an incident where a Records Processing Clerk used profane language in front of a Township resident; and five different performance appraisals and improvement plans.

N.J.S.A. 34:13A-5.3 provides in part:

...nor...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 non-supervisory personnel to membership....

Under the Act, supervisors may not be placed into the same negotiations unit as non-supervisory employees. N.J.S.A. 34:13A-6(d).

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status requires more than an assertion that an employee has the power to hire, fire, discipline or effectively recommend these actions. An indication that this power is exercised with some regularity is necessary. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

One factor looked to in determining supervisory status is whether the employee claimed to be a supervisor evaluates the job performance of other employees. While evaluating alone is not one of the statutory criteria, the Commission has looked to it as it relates to other actions such as removal, tenure, promotion and salary. An employee's role in evaluations is considered because evaluations can serve as effective recommendations for the statutorily mandated criteria. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987).

Here, the parties have stipulated that the Records Bureau Supervisor is involved in the discipline and evaluation of subordinate staff. The evidence showed that Piloto has issued memoranda which are critical of employee conduct. Some memoranda were disciplinary in nature while other memoranda were evaluations that could lead to adverse personnel action.

Accordingly, I find that the Records Bureau Supervisor is a statutory supervisor and must be removed from SEIU's non-supervisory unit. In accordance with the parties' settlement agreement, the Records Bureau Supervisor shall be immediately placed in OPEIU's supervisory unit upon receipt of this decision, and OPEIU's clarification of unit petition, docket number CU-97-17, is deemed withdrawn.

By:

Perry O. Lehrer, LAP Hearing Officer
Public Employment Relations Commission

Dated: May 4, 1998