

D.R. NO. 91-25

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

In the Matter of

OGDENSBURG BOROUGH BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-91-99

EDUCATIONAL SUPPORT STAFF
ASSOCIATION OF OGDENSBURG,

Petitioner.

SYNOPSIS

The Director of Representation finds that the Supervisor of Buildings and Grounds is a supervisor and cannot be included in the petitioned-for unit of custodial and maintenance personnel and paraprofessionals. An election is ordered for the custodial and maintenance personnel and paraprofessionals employed by the Ogdensburg Borough Board of Education.

D.R. NO. 91-25

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

In the Matter of

OGDENSBURG BOROUGH BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-91-99

EDUCATIONAL SUPPORT STAFF
ASSOCIATION OF OGDENSBURG,

Petitioner.

Appearances:

For the Public Employer
Yauch, Peterpaul, Clark & Vitolo, attorneys
(Thomas Vitolo, of counsel)

For the Petitioner
New Jersey Education Association
John Davis, UniServ Field Rep.

DECISION AND DIRECTION OF ELECTION

On October 30, 1990, the Educational Support Staff Association of Ogdensburg ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent all custodial and maintenance personnel and paraprofessionals employed by the Ogdensburg Borough Board of Education ("Board").

The Board will not consent to an election contending that the Supervisor of Buildings and Grounds is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The inclusion of this position in a unit with nonsupervisory employees would make the unit inappropriate.

Further, because of the supervisory duties, including the position in the unit would create an impermissible conflict of interest.

The Association seeks a secret ballot election among the petitioned-for employees including the Supervisor of Buildings and Grounds arguing that the duties of this position do not include supervisory responsibilities. Therefore, the position should be included in the petitioned-for unit which is an appropriate unit.

These facts appear.^{1/}

There are 17 employees in the unrepresented petitioned-for unit; 13 of whom are paraprofessionals and four hold custodial positions. The parties agree that a unit of custodial and maintenance personnel and paraprofessionals is an appropriate unit. The sole issue is whether the Supervisor of Buildings and Grounds is a supervisor within the meaning of the Act and should be excluded from the petitioned-for unit. The petition is supported by an adequate showing of interest.

The Supervisor of Buildings and Grounds Robert Mason ("Mason") holds the disputed position and has since 1984. The Board provided his job description. This position reports to the Chief Administrator of the Ogdensburg School. Duties of this position include scheduling custodial work shifts; assessing custodial workloads and assigning duties; conducting inventories of materials

^{1/} We conducted an administrative investigation to determine the relevant facts. There are no substantial and material facts in dispute which warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6.

and supplies; ordering, storing and using supplies; procuring and monitoring outside services necessary for repair and maintenance less than \$500; and appraising and evaluating the performance of custodians annually in April. All custodians report to Mason according to the job description for custodians provided by the Board.

Mason, is one of four custodial employees. Mason works 6 a.m. - 2 p.m. and a second custodian works a day shift of 7 a.m. - 3 p.m. Two custodians work a 3 p.m. - 11 p.m. night shift. Mason can schedule overtime for the custodians when necessary. All custodians work in one building which houses the entire school district. Mason is paid \$12,000 - \$14,000 more than the other custodians and has held the positions of custodian, head custodian and his current title. Mason maintains a desk for his use when preparing paperwork related to his administrative functions.

Although not articulated in the job description, Mason plays a role in the hiring process. When a position is vacant, the Board advertises for the position. Applications for the position are received by the Board Secretary who forwards them to Mason. He screens the applications. He also interviews applicants. Affidavits submitted by Mason, Superintendent Patricia Dolan ("Dolan"), and Board Member Charles Tevan ("Tevan") conflict over whether he interviews applicants alone or jointly with Dolan and other Board members. They also disagree on his ability to recommend the final hiring of employees. Mason was involved somehow in the

hiring process and selection of the two most recently hired custodians.

Mason is also involved in the grievance procedure and the disciplinary process, although this is not indicated in his job description. The three step grievance procedure has been in place since Mason was hired by the Board as a custodian in 1983. He is level one of the procedure. The Chief Administrator is level two and appeals of the Chief Administrator's decision go to level three which results in a final and binding decision made by the Board. No formal grievances have ever been filed.

Disciplinary action was imposed on a custodian in 1987 who was not performing his duties properly. Mason brought this to the attention of the Chief Administrator and the Board Building Committee. The solution reached was to give the employee a warning.^{2/} The employee also successfully completed a rehabilitation program and then returned to work. Mason independently changed his work assignment from night shift to day shift so he could be closely supervised. This employee continues to hold his custodial position.

Three other disciplinary incidents were described in Dolan's affidavit in which Mason gave verbal reprimands to custodians. These occurred when a custodian failed to call in an absence; a custodian left a bucket and mop in a hallway creating an

^{2/} This incident was described in Mason's and Tevan's affidavits.

unsafe environment; and two custodians neglected to close all the windows when the school building was closed. Mason gave these reprimands independently without prior discussion with Dolan. There have been no terminations or demotions. Dismissal is after review of circumstances and conditions by the Board, per section VI C of the Board Policy for Custodians.

Mason appraises and evaluates the performance of custodians annually in April as indicated in his job description and according to both his and Dolan's affidavits. There is no Board evaluation form. Mason indicates that he develops his own form to use to evaluate the custodians, but does not include recommendations for action in the evaluations. After he completes each evaluation, it is forwarded to the Chief Administrator.

In the "other considerations" section of the Board Policy for Custodians, VI B states that,

"a custodian whose work fails to indicate a conscientious regard for his duty, and the maintenance of good work habits, or whose work for any other reason, fails to receive the approval of the Supervisor and/or the Chief Administrator, shall be promptly notified of the areas in question and may be subject to the withholding of his normal increment."

Dolan further states in her affidavit that evaluations are used to correct deficiencies in employee's work and to have a record of job performance.

N.J.S.A. 34:13A-5.3 provides that "...nor except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire,

discharge, discipline or effectively recommend the same have the right to be represented in collective negotiations by an employee organization that admits non supervisory personnel to membership."

N.J.S.A. 34:13A-6(d) states that "...except where dictated by established, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors...."

Relying on these statutory requirements, the Commission has defined a supervisor as one having the authority to hire, discharge, discipline or to effectively recommend any of these actions. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, N.J. Supp 114 (¶30 1970). We must review all the circumstances of a particular case to determine whether the employee has and regularly exercises such powers. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill; Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

The power to evaluate may also indicate the existence of a conflict of interest where a position is primarily responsible for evaluating subordinates and where evaluations are instrumental in making significant personnel decisions. Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER 571 (¶12255 1981). The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) held:

If performance of the obligations or powers 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. [Id. at 425].

I find that Mason's duties are supervisory within the meaning of the Act and his inclusion in the petitioned-for unit would create an impermissible conflict of interest.

Although the steps of the hiring process are not clearly discernible, it is clear that Mason screens applications and actively participates in the interviewing process. These duties are indicia of supervisory responsibilities. Manalapan Tp., D.R. No. 80-34, 6 NJPER 241 (¶11117 1980); Morris School District, D.R. No. 82-52, 8 NJPER 297 (¶13130 1982); Maurice River Tp. School, P.E.R.C. No. 85-114, 11 NJPER 312 (¶16113 1985); Holland Tp. Bd. of Ed., P.E.R.C. No. 88-80, 14 NJPER 225 (¶19082 1988).

It has been demonstrated that Mason participates in the disciplinary and grievance procedure. There have not been any formal grievances filed; however, he is the first level of the grievance procedure. He has been involved in at least three incidents where employees received verbal reprimands initiated solely at his discretion and in reaction to inappropriate work situations. A fourth incident resulted in the issuance of a warning by the Board to an employee for whom Mason recommended disciplinary action because the employee's work performance was inadequate. Active involvement in the disciplinary process is indicia of supervisory authority. Manalapan; Maurice River; Clark Tp., P.E.R.C. No. 85-105, 11 NJPER 283 (¶16104 1985).

Further, Mason performs annual evaluations in April of custodians. These evaluations make a record of an employee's job performance and can also be used to deprive an employee of an increment. The performance of these evaluations creates an impermissible conflict of interest between Mason and the custodians. Wilton; Manalapan; Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶12221 1981); Maurice River; Holland.

Accordingly, I conclude that Mason, in the position of Supervisor of Buildings and Grounds, is a supervisor within the meaning of the Act and is excluded from the petitioned-for unit. I direct that an election be conducted among the other custodial and maintenance personnel and paraprofessionals in the petitioned-for unit as follows:

Included: All custodial and maintenance personnel and paraprofessionals employed by the Ogdensburg Borough Board of Education.

Excluded: All managerial executives, confidential employees, police employees, craft employees, supervisory employees within the meaning of the Act, professional employees and all other employees employed by the Ogdensburg Borough Board of Education.

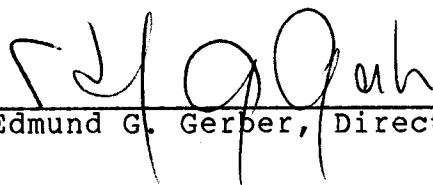
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid

off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 4, 1991
Trenton, New Jersey