

D.R. NO. 90-28

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

In the Matter of

BOROUGH OF MANASQUAN,

Public Employer,

-and-

Docket No. RO-90-97

MANASQUAN BOROUGH SUPERVISORS'  
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a representation petition seeking to represent "supervisors" employed by the Borough of Manasquan. The Director finds that none of the four petitioned-for employees are supervisors within the meaning of the Act.

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Appearances:

For the Public Employer  
Sinn, Fitzsimmons, Cantoli, West & Pardes, attorneys  
(Kenneth B. Fitzsimmons, of counsel)

For the Petitioner  
Mark J. Blunda, attorney

DECISION

On November 30, 1989, the Manasquan Borough Supervisors' Association ("Association") filed a representation petition with the Public Employment Relations Commission ("Commission"). The petition is supported by an adequate showing of interest. The Association seeks to represent supervisory employees of the Borough of Manasquan ("Borough"), including the Superintendent and Assistant Superintendent of Public Works, the Superintendent of Buildings and Grounds and the Court Clerk.<sup>1/</sup> The employees are currently

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<sup>1/</sup> The original petition also sought to include the Assistant Borough Clerk and Collector of Water and Sewer Rents. The Association has withdrawn these titles from the petition.

unrepresented. On December 13, 1989, the Borough filed a letter opposing the petition, asserting that the proposed unit contains a combination of managerial and supervisory employees; the title of Collector of Water & Sewer Rents is held by the same person who is Municipal Treasurer and Tax Collector and in that capacity, the individual is a confidential employee; that the Deputy Borough Clerk is a confidential employee; the Court Clerk is a confidential employee; that the proposed unit would consist of a managerial employee and a supervisor; that a community of interest does not exist in the proposed unit.

We have conducted an administrative investigation into the issues raised by the petition to determine the facts. N.J.A.C. 19:11-2.2.

The petitioner seeks to represent the Superintendent of Public Works, the Assistant Superintendent of Public Works, the Superintendent of Buildings and Grounds and the Court Clerk in a supervisory unit.

The Borough currently negotiates with three collective negotiations units composed of police officers, public works employees and dispatchers, respectively. About 14 employees are in the public works employees' collective negotiations unit. The Superintendent of Public Works signed a 1983 individual employment agreement which was modified by memoranda in 1986, 1987 and 1988. The agreement sets various conditions of employment for the Public Works Superintendent but reserves to the Borough these rights:

a) the right to determine the care, maintenance and operation of equipment and property used for and on behalf of the employer; b) the right to establish or continue policies, practices and procedures for the conduct of the employer's business and from time-to-time to change or abolish policies or procedures; c) the right to discontinue processes or operations or to discontinue their performance by employee; d) the right to select and determine the number and types of employees required to perform the employer's operations; e) the right to employ, transfer, promote or demote employees, or to lay-off, terminate or otherwise relieve employees from duty for lack of work...; f) the right to prescribe and enforce reasonable rules and regulations for the maintenance of discipline and for the performance of work in accordance with the requirements of the employer...

The contract also contains an hours and workweek article setting the workweek at eight hours per day, Monday to Friday, and providing the Public Works Superintendent two 15-minute breaks in a workday and compensatory time off. The contract also contains clauses concerning holidays, longevity, hospitalization and dental plan, jury duty, personal days, bereavement days, vacation time, sick leave, work clothes, car allowance and salary.

Both the employer and the petitioner have submitted "job descriptions" for the Superintendent of Public Works. The Borough asserts that the Public Works Superintendent "establishes policy procedures"; "has the authority to transfer and assign personnel"; has the "effective authority to hire, fire and discipline municipal employees"; and "formulates, recommends and implements management policies." The petitioner's job description states that the Public Works Superintendent "supervises, organizes and develops work

programs of the Public Works department, including the water, street and parks department." The position also deploys employees to respective jobs, and is responsible for all recordkeeping.

The Borough asserts that the Assistant Superintendent of Public Works "carries out various assignments" of the Superintendent concerning the water/sewer, street and parks departments. This position assists in the planning, installation, maintenance and repair of facilities and in the deployment of personnel. The Assistant Superintendent purportedly reports "the performance of personnel" to the Public Works Superintendent "on a daily basis". The Association asserts that the Assistant Superintendent performs "essentially the same functions" as the Public Works Superintendent and has never been evaluated by the Public Works Superintendent.

The Borough contends that the Public Works Superintendent is a managerial executive and alternatively a supervisor within the meaning of the Act. It also asserts that if the Public Works Superintendent is deemed to be managerial, then the Assistant Superintendent is purportedly a supervisor. If the Commission determines that the Public Works Superintendent is a supervisor, then the Assistant Superintendent would "appropriately be eligible for inclusion in the municipal workers' bargaining unit."

The Borough has also submitted a job description for the Building and Grounds Superintendent. This position maintains and cleans the municipal building, i.e., empties trash receptacles, cleans floors and lavatories, performs minor repairs and other

varied functions. The Borough denies that this title has any supervisory powers and concedes that the position is eligible for inclusion in the Department of Public Works nonsupervisory unit.

The Association submitted a copy of an ordinance passed in December 1985, establishing the Building and Grounds Superintendent position. According to the ordinance, the person in the title "shall work under the supervision of the Chairman of the Public Property and Parks Committee and shall perform such duties as the Mayor and Council may from time-to-time direct." The Association also submitted a Department of Personnel job description for Building and Grounds Superintendent. The job description states that the position "under direction, has charge of and supervises the cleaning and maintenance of buildings and grounds, and the operations of elevators; does related work as required." Under the heading "Examples of Work" the job description states that the Building and Grounds Superintendent "supervises the work involved in the cleaning and maintenance of desks, chairs, rugs, etc."; supervises...the maintenance and care of grounds adjacent to public buildings, supervises sweeping, washing, sanding and waxing of floors, gives suitable assignments and instruction to assigned employees and supervises the establishment of suitable records and files." The job description also states that the employee must have two years of supervisory experience.

The Association also contends that the Superintendent of Buildings & Grounds supervises a community service program over

which he has the authority to "terminate individuals on public assistance grants who do not properly perform directed work." Such authority, it maintains, is set forth in N.J.S.A. 44:8-114. Under that statute, persons receiving public assistance are required to "perform such public works as shall be assigned to them by the Division of Employment Services in the Department of Labor or...by the Director of Welfare of the municipality providing public assistance." The statute also states that the Commissioner of Labor establishes regulations concerning the appropriateness of work site assignments and that "employees" work only the number of hours equal to "the amount of their grant divided by an hourly wage rate commensurate with beginning regular employees similarly employed." The statute also provides the terms by which someone is ineligible for public assistance under the program and a 90 day period for which that period of ineligibility continues. The employer contends that this individual neither supervises other employees nor oversees the work of municipal court offenders assigned to community service programs.

The Association submitted a job description for the Court Clerk. The description provides that the Clerk, under direction, performs specialized clerical work requiring knowledge of laws, ordinances, rules, regulations and procedures relating to the operation of the municipal court.... The description also states that the Clerk must be able to "give suitable assignments and instructions to others and supervise their work."

The Borough maintains that the Court Clerk is not a supervisory employee but is a confidential employee within the meaning of the Act because she "directly participates in the administration of justice under the director of the municipal court judge." The Borough also alleges that if this individual is not confidential, then the title should be included in the white collar workers association. The employer does not collectively negotiate with a white collar unit; rather, the employer negotiates separate, individual employment contracts with employees whom it classifies as white collar employees.

#### Analysis

The Act defines managerial executives as:

...persons who formulate management policies and practices, and persons who are charged with responsibility of directing the effectuation of such management policies and practices...

N.J.S.A. 34:13A-3.

In City of Jersey City, D.R. No. 85-22, 11 NJPER 341 (¶16124 1985), the Director of Representation stated that a managerial executive does not have rights to organize, negotiate or have a majority representative negotiate on his behalf. In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), the Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy



objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of the employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

6 NJPER at 508, 509.

A supervisor has the authority to hire, discharge or discipline employees or to effectively recommend these actions. N.J.S.A. 34:13A-5.3 and 6(d); Cherry Hill Tp., P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970). Further, a determination of supervisory status requires more than an assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such actions. In Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), we noted:

The 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 employees in question, the mere "possession" of the authority is a sterile attribute unable to sustain a claim of supervisory status.

Somerset at 360.

"Effective recommendation" occurs when the recommendation is adopted without independent review and analysis by a higher level of authority. See Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp 465

(¶1114 1971); Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), aff'g H.O. No. 84-11, 10 NJPER 149 (¶15075 1984). Acting in a lead capacity, overseeing and directing the work of other employees, without more, does not make an employee a supervisor. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985).

The power to evaluate may indicate the existence of a conflict of interest where a position is primarily responsible for evaluating subordinates and where the 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 (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.

The Superintendent of Public Works is not a managerial executive within the meaning of the Act. Although the job description provides the Superintendent with managerial "duties", we cannot tell precisely what those duties are or whether the Superintendent in fact has exercised them. Finding a position to be managerial denies that employee of almost all rights under the Act; a determination of managerial status must be based upon specific instances of that employee's exercise of managerial authority. The Borough's submissions are simply too vague to support that finding.

The Superintendent of Public Works is not a supervisor. While asserting that he has the authority to hire, fire, discipline or effectively recommend those actions, neither party has submitted a single example of how that power has been exercised or that it has been "exercised with some regularity" Somerset Cty. Guidance Ctr.

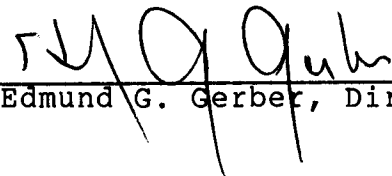
Even assuming that the Superintendent of Public Works is a supervisor, I find that the Assistant Superintendent is not a supervisor. Reporting "the performance of personnel" to the Superintendent of Public Works suggests, at most, that the Assistant Superintendent acts "in a lead capacity, overseeing and directing the work of other employees." The Assistant Superintendent has not exercised any effective authority in the hiring, disciplining or firing of other employees.

The Building and Grounds Superintendent is not a supervisor. No facts have been proffered which suggest that this employee has in fact hired, fired, disciplined or effectively recommended such actions. The statute upon which the Association relies (N.J.S.A. 44:8-114) states that the "Director of Welfare of the municipality providing public assistance" has the authority to assign "public works" to people receiving public assistance. The Association's submissions do not show how the Building and Grounds Superintendent has been vested with the authority statutorily granted to the "Director of Welfare" and how this employee exercised supervisory authority with any regularity.

Finally, I find that the Court Clerk is not a supervisor - no information shows that this position regularly exercises the authority to hire, fire, discipline or effectively recommend these actions.

Based upon the above analysis, I conclude that none of the petitioned-for employees are supervisors and that the Superintendent of Public Works is not a managerial executive within the meaning of the Act. Accordingly, the petitioned-for unit is not appropriate and the petition is dismissed.

Very truly yours,

  
Edmund G. Gerber, Director

DATED: May 18, 1990  
Trenton, New Jersey