

D.R. NO. 95-28

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

In the Matter of

DELRAN SEWER AUTHORITY,

Public Employer,

-and-

Docket No. RO-95-162

C.W.A., LOCAL 1044,

Petitioner.

SYNOPSIS

The Director of Representation orders a mail ballot election among professional and non-professional, non-supervisory employees employed by the Delran Sewage Authority whether they wish to be represented by the CWA, Local 1044. The Director rejects the Authority's claim that the assistant superintendent is a supervisor and finds that the title is appropriate for inclusion in the petitioned-for unit.

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Appearances:

For the Public Employer  
Clark Ladner, attorneys  
(Frank P. Spada, Jr., of counsel)

For the Petitioner  
Florence McNamara, Staff Representative

DECISION AND DIRECTION OF ELECTION

On January 4, 1995, CWA, Local 1044, filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. Local 1044 seeks to represent a negotiations unit of approximately 7 full-time and part-time blue collar and white collar employees employed by the Delran Sewer Authority. The petition is supported by an adequate showing of interest.

The Authority consents to a secret ballot election, but objects to the inclusion of the title of assistant superintendent in the proposed negotiations unit. The Authority argues that the assistant superintendent is a supervisor within the meaning of the

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

An administrative investigation was conducted into this matter. I make the following findings. N.J.A.C. 19:11-2.2.

The assistant superintendent, Richard Janczewski, reports directly to the plant superintendent, George Conard. Janczewski, along with Conard, operates and maintains the sewage treatment plant. Janczewski holds plant operator's licenses required by the State Department of Environmental Protection and Energy: Basic wastewater treatment licenses (S-3 and S-4) and advanced wastewater treatment licenses (C-3 and C-4). He is in charge of plant operations whenever Conard is not on duty. In addition, he records flow meter readings and prepares and submits monthly sludge reports to the DEPE.

Janczewski receives his orders daily from Conard. He, in turn, then gives the five treatment plant operators and the lab technician their daily assignments. Because the plant's operation is small (the Authority has approximately 10 employees), Janczewski works along with the operators performing many of their duties. Specifically they take daily wastewater samples, maintain the wastewater tanks, sludge digesters and related equipment, check and maintain sewer lines and pump stations, clean and maintain the main building and the Authority's trucks, answer phones, perform outside seasonal maintenance work (e.g. cut the grass, remove snow) and arrange for the removal of the Authority's solid waste.

Janczewski does not have a separate office; he shares space in Conard's office. Conard conducts all the regular staff meetings and attends the monthly commissioner's meetings. On those occasions when Conard has been absent because of illness or vacation, Janczewski operates the plant under the direction of a commissioner.

The Authority contends that Janczewski is a supervisory employee because he participated in the recent firing of an employee.<sup>1/</sup> In May of 1994, Conard discussed with Janczewski the faltering performance of a plant operator. Conard felt that he needed to discipline the employee, including the possibility of discharging him. Janczewski, however, submitted a certification stating that he was not involved in the final decision to fire the employee. He states that he and the crew of operators were told that Conard had fired the employee because the Authority was advised by its attorney that such action was appropriate.<sup>2/</sup>

The Authority also asserts that Janczewski is supervisory because he and Conard worked with the commissioners to develop an employee handbook.

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<sup>1/</sup> Although the Authority recently hired two operators, it does not claim that Janczewski participated in this process.

<sup>2/</sup> Janczewski states that this was the second time that the employee was discharged. The first time the employee was told by Conard that he was fired, he immediately went to a commissioner and asked for his job back. He was reinstated that day. Janczewski states that he was not involved in this incident either, as it took place on his day off.

The Commission's definition of supervisor derives from N.J.S.A. 34:13A-5.3: a supervisor is one who hires, discharges, disciplines or effectively recommends the same. Mere possession of authority to do so is not enough. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). All the circumstances of a case must be reviewed in order to determine whether the employee has and regularly exercises such power. Cherry Hill Tp. DPW, P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970); Somerset Cty Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

I find that Janczewski is not a supervisor within the meaning of the Act. The Authority bases its assertion that Janczewski is a supervisor on one disciplinary event. It claims that Conard, the plant supervisor, and Janczewski discussed the appropriate discipline for the employee in question. However, it does not appear that Janczewski effectively recommended the discharge. Deliberations took place at the commissioner's level and it was input from the Authority's attorney that was the deciding factor. The first unsuccessful attempt to terminate the employee demonstrates the Commission exercises independent judgment in such decisions.

Acting in a lead capacity, overseeing and directing the work of other employees does not make an employee a supervisor within the meaning of the Act. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985), Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed.,

D.R. No. 87-22, 13 NJPER 195 (¶18083 1987). Conard, the plant superintendent, decides work assignments. When the plant superintendent is absent, Janczewski must report to a commissioner for necessary approval. I conclude that Janczewski merely directs the work of the plant operators and therefore is acting in a lead capacity.

Janczewski's participation in the development of the Authority's employee handbook is not indicative of supervisory authority. The Authority has not shown how assisting in the development of the handbook is related to the authority to hire, fire or discipline.

Accordingly, I find that the title of assistant superintendent is appropriate for inclusion in the petitioned-for unit and I direct that a mail ballot election be conducted in accordance with the Commission's rules among employees in the following unit:

Included: All full and part-time non-supervisory employees employed by the Delran Sewage Authority.

Excluded: All managerial executives, confidential employees, supervisory employees within the meaning of the Act, police employees and fire employees, craft employees and all other employees employed by the Delran Sewage Authority.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election.

The parties agree that the title of laboratory technician is professional and should vote on whether she wishes to be included in the unit with all full and part-time non-supervisory, non-professional employees. The professional employee (Voting Unit 1) and the non-professional employees (Voting Unit 2) shall vote on whether they wish to be represented for purposes of collective negotiations by CWA, Local 1044. If the professional employee votes for inclusion in a unit with non-professional employees, that ballot shall be tallied together with the ballots of the non-professional employees and an appropriate certification shall issue covering both Voting Units 1 and 2 together.


If the professional employee votes against inclusion in a unit with non-professional employees, then the professional employee's ballot shall not be tallied with those of the non-professional employees, the professional employee shall not be included in the non-professional unit, no certification shall issue covering Voting Unit 1 and the professional employee shall be unrepresented for purposes of collective negotiations.

Eligible voters in Voting Units 1 and 2 are the employees described above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote.

The Authority is directed to simultaneously file with the Commission and with the CWA, Local 1044, an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The Authority shall also file with us an accompanying proof of service. The eligibility lists must be delivered to the recipients stated above no later than ten (10) days prior to the date of the mailing of the ballots. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Ballots shall be mailed by the Commission to the eligible voters on April 17, 1994. Ballots must be received by the Commission by 10 a.m. on May 1, 1995. Ballots shall be counted by the Commission at 11 a.m. on May 1, 1995.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: April 5, 1995  
Trenton, New Jersey