

D.R. NO. 87-29

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

In the Matter of

UNION COUNTY BOARD OF SOCIAL SERVICES,

Public Employer,

-and-

Docket No. RO-87-143

C.W.A., LOCAL 1080, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation directs that an election be conducted among certain eligible employees employed by the Union County Board of Social Services in order to determine whether such employees should be added to the extant non-supervisory unit represented by the Communications Workers of America. The Director finds, on the basis of an administrative investigation, that the petitioned-for employees are not supervisors within the meaning of the New Jersey Employer-Employee Relations Act, and, therefore, are appropriately includable in the extant unit.

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Appearances:

For the Public Employer
Miller and Menaker, Esqs.
(Laurence M. Miller, of counsel)

For the Petitioner
Communications Workers of America
(Carol Gay-Fantini, Area Director)

DECISION AND DIRECTION OF ELECTION

On March 30, 1987, Local 1080, Communications Workers of America, AFL-CIO ("CWA") filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission") seeking to add the titles training technician, principal clerk transcriber, principal data entry machine operator, principal clerk typist, principal account clerk, principal clerk, and building maintenance worker to the existing unit of all non-supervisory employees employed by the Union County Board of Social Services ("Board"). Employees serving in the titles listed above are currently unrepresented. On April 27, 1987, a Commission

staff attorney conducted an investigatory conference attended by representatives of the CWA and the Board in order to determine the relevant facts pertaining to the petition. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6.

In correspondence dated May 6, 1987, we advised the parties that on the basis of the information before us, it appears that a valid question concerning representation exists and, consequently, we are inclined to direct the conduct of a secret ballot election among the petitioned-for employees. We provided the parties with an opportunity to submit relevant documentary materials and additional argument in support of their respective positions regarding the conduct of an election in this matter. Neither party has chosen to respond to our letter and has made no additional submission in support of its contentions expressed during the informal investigatory conference.

The disposition of the CWA's petition is properly based on our administrative investigation. We have not found any substantial and material factual disputes which may be more appropriately resolved through an evidentiary hearing. The administrative investigation conducted regarding the CWA's petition found the following facts:

Local 1080, CWA, is the certified representative of a collective negotiations unit consisting of all non-supervisory employees employed by the Board. On December 5, 1986, the CWA filed a Clarification of Unit Petition (Docket No. CU-87-31) wherein it

sought to include the same titles involved in the above-captioned matter into its extant collective negotiations unit. In response to the CWA's Clarification of Unit Petition, the Board took the position that the employees serving in the titles training technician, principal clerk transcriber, principal data entry machine operator, principal clerk typist, principal account clerk and principal clerk are supervisors within the meaning of the New Jersey Employer-Employee Relations Act ("Act") and, therefore, should not be included in the extant unit. The issue regarding the propriety of including the title building maintenance worker in the unit arose during the course of the informal investigatory conference, consequently, the Board took no formal position regarding that title at that time. As the result of the investigatory conference, the CWA withdrew its Clarification of Unit Petition in anticipation of filing the instant Petition for Certification of Public Employee Representative.

With regard to the above-captioned matter, the CWA takes the position that employees serving in the petitioned-for titles are not supervisors within the meaning of the Act and, consequently, may appropriately be included in the extant unit. The CWA urges that an election among the employees in the petitioned-for titles be directed immediately.

The Board takes the position that the employees serving in the petitioned-for titles, with the exception of the building maintenance worker, are supervisors within the meaning of the Act

and, consequently, should not be included in the extant non-supervisory unit. The Board contends that the petition filed in the above-captioned matter should be dismissed.

In support of its position, the Board adopts the statement of position it filed in the related Clarification of Unit matter, Docket No. CU-87-31.

With respect to the title principal account clerk, the Board emphasizes in its statement of position that the employee serving in that title "has charge of a small account clerical unit", "relieves the supervisory officer of office details", "must have one year of supervisory experience or two years of experience in clerical work", and "must have the ability to 'give suitable assignments and instructions to individuals and groups and to supervise the maintenance of suitable records and files" (emphasis in the original). Regarding employees serving in the title principal clerk transcriber, the Board emphasizes that such employees "[have] charge of small transcribing clerical unit[s]" and that the job specification for the title requires that individuals "have the ability to 'organize assigned work and develop effective work methods; to give suitable assignments and instructions to individuals and groups.'" With respect to the title principal clerk typist, the Board emphasizes that employees "[have] charge of a small clerical unit", "[relieve] the supervisory officer of office details" and "must have the ability to comprehend established office routine, and rules and regulations of complexity. To organize

assigned work and develop effective work methods. To give suitable assignments and instructions to individuals and groups. To supervise the maintenance of suitable records and files" (emphasis in original). Regarding the principal clerk, the Board emphasizes that employees serving in that position perform "frequent exercise[s] of independent judgment and/or [have] charge of a small clerical unit", "[relieve] the supervisory officer of office details", and "must have the ability to 'organize the assigned work and develop effective work methods; to give suitable assignments and instructions to individuals and groups, and to supervise the maintenance of suitable records and files" (emphasis in original). The Board also notes that employees serving in the principal clerk title must have "two years of experience in clerical work or one year of supervisory clerical experience."

The Board contends that while the training technician is not a "principal" title, the nature of the position is supervisory in capacity. The training technician "prepares and conducts in-service training and compiles information and data into manual form required for courses." Additionally, the training technician "[assists] in developing standard operating procedures for training purposes devising measurable course objectives...."

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

...nor, 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 a collective negotiations unit by

an employee organization that admits nonsupervisory personnel to membership.

The above-quoted provision of the Act has been interpreted to contain the statutory definition of supervisor; that being an employee having the authority to hire, discharge, discipline, or effectively recommend. Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). In order to establish supervisory status, it must be clearly shown that the supervisory authority claimed to be possessed must be exercised with some regularity. It is well established that the Commission will look beyond the title or the job description in order to ascertain the nature of the authority the employee actually exercises. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

We have closely reviewed the Board's statement of position and supporting job descriptions. While the above indicia of the employees' work responsibilities are not wholly irrelevant to the determination of whether an employee is a supervisor within the meaning of the Act, it is nonetheless clear from the Board's statement of position and the job descriptions submitted in support thereof, that employees serving in the petitioned-for titles do not hire, discharge, discipline, or effectively recommend same. Accordingly, we find that the employees serving in the petitioned-for titles are not supervisors within the meaning of the Act and should be added to the extant collective negotiations unit.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), we direct that a mail ballot election be conducted in a unit comprised as follows:

Included - all employees serving in the titles training technician, principal clerk transcriber, principal data entry machine operator, principal clerk typist, principal account clerk, principal clerk, and building maintenance worker to be added to the collective negotiations unit of all nonsupervisory employees presently represented by Local 1080, Communications Workers of America, and employed by the Union County Board of Social Services; Excluded - all managerial executives, confidentials, police, craft, and supervisory employees within the meaning of the Act, all employees included in any other collective negotiations unit and all other employees employed by the Union County Board of Social Services.

Those eligible to vote are the employees set forth 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.

We direct the Board to simultaneously file with us and with the Petitioner, 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 Board 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 June 12, 1987. Ballots must be received by the Commission by 2 p.m. on June 26, 1987. Ballots shall be counted by the Commission at 3 p.m. on June 26, 1987.

Those eligible to vote shall vote on whether they wish to be represented for the purpose of collective negotiations by Local 1080, Communications Workers of America, AFL-CIO, or no employee organization.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting 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: May 21, 1987
Trenton, New Jersey