

D.R. NO. 82-52

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

In the Matter of

MORRIS SCHOOL DISTRICT,

Public Employer,

-and-

DOCKET NO. CU-81-62

SECRETARIES AND CLERKS ASSOCIATION
OF MORRIS PUBLIC SCHOOLS, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, determines that the newly created title of Accounting Services Supervisor is excluded, as a supervisor within the meaning of the Act, from the Secretaries and Clerks Association of the Morris Public Schools based on her effective hiring of personnel.

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Petitioner.

Appearances:

For the Public Employer
Wiley, Malehorn & Sirota, Esqs.
(Frederic J. Sirota, Esq.)

For the Petitioner
American Federation of Teachers, AFL-CIO
(Fougeres Ferrier, Staff Representative)

DECISION

On April 9, 1981, the Secretaries and Clerks Association of Morris Public Schools, AFT, AFL-CIO ("SCAMPS") filed a Petition for Clarification of Unit with the Public Employment Relations Commission (the "Commission"), seeking to add the newly created title of Accounting Services Supervisor to the negotiations unit which it represents. SCAMPS asserts that the Accounting Services Supervisor position is virtually identical to a "Federal and Special Projects Bookkeeper" position which it previously represented, that the Accounting Services Supervisor shares a community of interest with the members of the negotiations unit represented by SCAMPS, and that the Accounting Services Supervisor is neither a supervisor nor a confidential employee within the meaning of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Morris School District (the "District") asserts that the title is excluded from the unit on the grounds that the functional duties and responsibilities of the position are supervisory and/or confidential in nature.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer, Mark A. Rosenbaum, on September 16, 1981, in Newark, New Jersey, at which time all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties submitted post-hearing briefs prior to November 4, 1981. The Hearing Officer submitted his report and recommendations on December 29, 1981, a copy of which is attached hereto and made a part hereof. Thereafter, SCAMPS filed exceptions to the Hearing Officer's Report and Recommendations, and the District filed cross-exceptions.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript and the exhibits, the exceptions and cross-exceptions to the Hearing Officer's Report and Recommendations, and on the basis thereof, find and determines as follows:

1. The Morris School District is a public employer within the meaning of the Act, is the employer of the employee who is the subject of this petition, and is subject to the provisions of the Act.

2. The Secretaries and Clerks Association of Morris Public Schools, AFT, AFL-CIO is an employee representative within the meaning of the Act, is subject to its provisions, has filed the instant

petition to clarify the status of the title "Accounting Services Supervisor" and requests inclusion of the title in the existing unit.

3. SCAMPS represents a unit consisting of all part-time and full-time Team Teacher Aides, Library Clerks I and II, Clerk Typists, Secretaries I, II and III, Telephone Operator/Receptionists, Data Analysts, Accounting Clerks I, II, III and IV, Computer/Keypunch Operators, Administrative Secretaries I and II, Purchasing Clerks and Purchasing Assistants employed by the District, but excluding Teaching Staff, Police, Managerial Executives, Confidential Employees, Craft Workers, and Supervisors within the meaning of the Act.

4. The title "Accounting Services Supervisor" was created and filled in October 1980, but the District's appointment of Barbara Chelton to this position was made retroactive to July 1, 1980. These events occurred prior to the execution of the current contract between the parties.

5. The Hearing Officer concluded that the Accounting Services Supervisor was not a confidential employee but that she was a supervisor and therefore not includable in the unit. ^{1/}

1/ N.J.S.A. 34:13A-5.3 provides, in pertinent 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 collective negotiations by an employee organization that admits nonsupervisory personnel to membership...

N.J.S.A. 34:13A-6(d) provides:

The division shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

SCAMPS takes exception to the Hearing Officer's finding that the Accounting Services Supervisor is a supervisor based on her role in effectively hiring new personnel. SCAMPS argues that since all three of the hired applicants came from within the district, they were well-known to the Accounting Services Supervisor's superiors, whose acquiescence was required for each hiring. Moreover, SCAMPS asserts that the Board Secretary's decision to acquiesce to the Accounting Services Supervisor's judgment in one of the three hiring instances did not indicate an effective hiring recommendation by the Accounting Services Supervisor. Rather, SCAMPS asserts that the Board Secretary's decision confirms her ultimate authority in the hiring process, although she made an isolated but informed decision not to wield that authority in this particular case.

SCAMPS relies upon the undersigned's decision In re Brookdale Community College, D.R. 78-10, 4 NJPER 932 (¶ 4018 1977), in which, by SCAMPS's own admission, "the established hiring practice....was more complex and more formal than the established hiring process presented in the instant matter." In Brookdale, the hiring process involved the necessity of review and input on an applicant by various officials within the College hierarchy, to such degree that the initial recommendation became attenuated. Moreover, in most cases approval of an applicant at various stages of the hiring process was required to be evidenced in writing and contained in an employment recommendation form which proceeded through the various levels of authority. Here, no such formal or even written approval of an applicant was required. It is clear that the ultimate hiring decision is made by


the Board. However, in all three instances contained in the record, the Board's approval appeared to be based primarily upon the Accounting Services Supervisor's recommendation.

An examination of the record reveals that the Accounting Services Supervisor plays a formal and regular role in the hiring process which requires her to interview all candidates for positions in her department and to recommend particular candidates. Her recommendations are forwarded to the Assistant Board Secretary, who forwards them to the Board Secretary, who forwards them to the Board for the final hiring determination. Each participant in the hiring process may offer her own comments or recommendations. To date, all three candidates recommended for hire by the Accounting Services Supervisor were ultimately hired by the Board of Education. Furthermore, the Board Secretary testified that in one instance she disagreed with the recommendation of the Accounting Services Supervisor, but nonetheless the individual recommended by the Accounting Services Supervisor was hired.

Under the circumstances herein, which indicate deference by the district and its agents to the hiring recommendations of the Accounting Services Supervisor, the undersigned concludes that the Accounting Services Supervisor manifests the power to make effective hiring recommendations, and is thus a supervisor within the meaning of the Act. Accordingly, based upon her effective hiring of personnel, the undersigned concludes that the Accounting Services Supervisor is a supervisor within the meaning of the Act. She may

not be represented within the Association's non-supervisory negotiations unit. 2/

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: May 3, 1982
Trenton, New Jersey

2/ Because of the determination that the Accounting Services Supervisor is a supervisor within the meaning of the Act and may not be included in the Association's unit, the undersigned need not consider the additional issue raised in this proceeding concerning her alleged confidential status.

STATE OF NEW JERSEY
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SECRETARIES & CLERKS ASSOCIATION
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Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that the Accounting Services Supervisor employed by the Morris School District must be excluded from a collective negotiations unit represented by the Secretaries and Clerks Association of Morris Public Schools.

The Hearing Officer recommends a finding that the Accounting Services Supervisor, while not a confidential employee within the meaning of the Act, is a supervisor within the meaning of the Act. The Hearing Officer further recommends that neither established practice, prior agreement nor special circumstances exist which would permit the inclusion of the Accounting Services Supervisor in a negotiations unit which includes non-supervisory personnel.

The Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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(Fougeres Ferrier, Staff Representative)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On April 9, 1981, the Secretaries and Clerks Association of Morris Public Schools, AFT, AFL-CIO ("SCAMPS") filed a Petition for Clarification of Unit with the Public Employment Relations Commission (the "Commission"), seeking a clarification of a negotiations unit employed by the Morris School District (the "District"). The negotiations unit represented by SCAMPS consists of all part-time and full-time Teacher Team Aides, Library Clerks I and II, Clerk Typists, Secretaries I, II and III, Telephone Operator/Receptionists, Data Analysts, Accounting Clerks I, II, III and IV, Computer/Key punch Operators, Administrative Secretaries I and II, Purchasing Clerks and

Purchasing Assistants. 1/

SCAMPS urges that the newly created title of Accounting Services Supervisor should be included within the negotiations unit which SCAMPS represents. Specifically, SCAMPS asserts that the Accounting Services Supervisor position, held by Barbara Chelton, is virtually identical to a "Federal and Special Projects Bookkeeper" position which it previously represented, that the Accounting Services Supervisor shares a community of interest with the members of the negotiations unit represented by SCAMPS, and that the Accounting Services Supervisor is neither a supervisor nor a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). The District contends that the Accounting Services Supervisor is both a supervisor and a confidential employee within the meaning of the Act, and therefore cannot be represented by the Association for the purposes of collective negotiations under the Act.

Pursuant to a Notice of Hearing dated June 19, 1981, a hearing was held before the undersigned on September 16, 1981. At the hearing, all parties were given opportunities to examine and cross-examine witnesses, present evidence and argue orally. 2/ Both parties submitted post-hearing briefs.

Based on the entire record in these proceedings, the Hearing Officer finds that:

1/ Exhibit J-1, Article I.

2/ At the hearing, the District moved to dismiss the petition after SCAMPS had finished presenting its witnesses. The undersigned reserved ruling on the motion at that time. N.J.A.C. 19:11-6.2(c) provides: "Hearings under this section of these rules are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record upon which the director of representation or the commission may discharge the duties under N.J.S.A. 34:13A-6." The undersigned concludes that, given the investigatory nature of a representation hearing, such a motion is not appropriate and is hereby denied.

1. The Morris School District is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

2. The Secretaries and Clerks Association of Morris Public Schools, AFT, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

3. SCAMPS has filed a Petition for Clarification of Unit seeking a determination that the title of Accounting Services Supervisor be included within their collective negotiations unit. The District disputes this inclusion. Accordingly, there is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for a report and recommendations.

4. N.J.S.A. 34:13A-5.3 excludes confidential employees from having the right to collective representation. A confidential employee is defined at N.J.S.A. 34:13A-3(g) as one:

...whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate unit incompatible with their official duties.

5. N.J.S.A. 34:13A provides, in pertinent part:

5.3...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 collective negotiations by an employee organization that admits nonsupervisory personnel to membership....

6(d)...The division shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

6. The instant petition concerns a position, Accounting Services Supervisor, held at all times relevant hereto by Mrs. Barbara Chelton. Chelton was appointed to the position in October, 1980, and the appointment was made retroactive to July 1, 1980. ^{3/} Prior to her appointment as Accounting Services Supervisor, Chelton was employed by the District as Federal and Special Projects Bookkeeper. ^{4/}

7. Chelton testified that her new position differs from her previous job in that she now has responsibilities in the processes of hiring, evaluating and disciplining the three employees in the Accounting Services Department. ^{5/} She testified that she interviewed all applicants and recommended the appointment of three applicants for positions in her department. ^{6/} She further testified that all three of her recommendations were adopted by the District, even though the Board Secretary did not agree with all of her recommendations. ^{7/} Chelton also testified that she completed evaluations for employees in her department in March 1981, that those evaluations were forwarded to the Assistant Superintendent without alteration, ^{8/} and that, while she may have responsibilities for disciplining employees, she has not had occasion for such actions. ^{9/}

8. Mrs. Nancy Dusenberry, the Secretary to the Board of Education, confirmed Chelton's role in the hiring and evaluation processes, ^{10/} as did Mrs. Keane, the Assistant Board Secretary who is Chelton's

^{3/} Transcript at pp. 19 and 63.

^{4/} Tr. at pp. 18 and 56.

^{5/} Tr. at pp. 20 and 73-74.

^{6/} Tr. at pp. 20-21 and 73.

^{7/} Tr. at p. 74.

^{8/} Tr. at p. 74.

^{9/} Tr. at pp. 74, 77.

^{10/} Tr. at pp. 66-68.

immediate supervisor. ^{11/} Concerning the applicant whom Chelton recommended and Dusenberry objected to, Dusenberry testified: "I had recommended that one to the Board for appointment over my objections. I felt that if the supervisor was satisfied that she would have to work with that person." ^{12/}

9. Chelton testified that she has made calculations for budget proposals, that some of those calculations were relevant to the District's negotiations with its collective bargaining units, and that "[a]ll I did was calculate them arithmetically. I did not have anything to do with which of those percentages were put into the budget. I don't know where their negotiations were at the time." ^{13/}

ANALYSIS

The District asserts that the Accounting Services Supervisor, Barbara Chelton, is a confidential employee under the Act because of her role in budgeting process of the District. Chelton's testimony on her role in the budgeting process, as it relates to negotiations with collective negotiations units, indicates that she has neither access to nor knowledge of sensitive labor negotiations material. She works up figures for the District, but is not familiar with the or status of such information in the negotiations process. In this regard, the Accounting Services Supervisor's role in collective negotiations in the District is comparable to the roles of certain clerical employees found not to be confidential employees in In re Board of Education of West Milford, P.E.R.C. No. 56 (1971):

^{11/} Tr. at pp. 40 and 69-70.

^{12/} Tr. at p. 67.

^{13/} Tr. at pp. 79-83.

It may be that the lowest level clerk would, as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collective function should disqualify one from the possibility of representation. Mere knowledge of raw information acquired in this process would not ordinarily tend to compromise management's right to confidentiality in matters of policy affecting negotiations or contract administration. Nor is there any discernible reason why this same clerk would, because of her function, owe a greater measure of allegiance to the employer or conversely why her performance would affect conflict with the interests of those in the existing unit to whom the data might relate but not yet affect a policy matter.

The District also argues that the Accounting Services Supervisor is a supervisor within the meaning of the Act and therefore may not be represented for the purposes of collective negotiations by SCAMPS. It is undisputed that SCAMPS does not represent supervisory personnel. ^{14/} SCAMPS does not contend, nor does the record suggest, that "established practice" or "prior agreement" exist herein which could permit a supervisor to be represented by SCAMPS pursuant to N.J.S.A. 34:13A-5.3 and 6(d). Nor do "special circumstances" exist which would allow a supervisor to be represented by SCAMPS pursuant to the same statutory provisions. Thus, the undersigned considers below whether or not the Accounting Services Supervisor is a supervisor within the meaning of the Act.

Preliminarily, the undersigned notes that a determination of supervisory status requires far more than a job description or verbal assertion stating that an employee may have the power to hire, discharge, discipline or effectively recommend the same:

14/ Exhibit J-1; Tr. at p. 44.

[T]he 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 County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360

(1976). With this caveat in mind, the undersigned reviews the responsibilities and actual job performance of the Accounting Services Supervisor to determine whether or not she is a supervisor within the meaning of the Act. 15/

The Accounting Services Supervisor testified that she evaluates employees in her department annually, and that those evaluations have been forwarded without alteration to the Assistant Superintendent for review. However, the record does not establish that these evaluations were part of an established procedure potentially leading to discipline or discharge of employees. Instead, the Accounting Services Supervisor testified that there is no written procedure for the graduated discipline of an employee and further, that she has had no occasion to give oral or written warnings to subordinates. 16/ The undersigned concludes that the Accounting Services Supervisor has not exercised the power to discipline, discharge or effectively recommend the same

15/ SCAMPS argues that the Accounting Services Supervisor is performing the same duties that she performed as Federal and Special Projects Bookkeeper, and thus the new position should be included in SCAMPS' negotiations unit. Assuming, arguendo, that Chelton's duties have not changed due to her reassignment, such a finding would not compel the inclusion of the new title in SCAMPS' negotiations unit. Instead, an examination of the Accounting Services Supervisor's present duties and actual job performance alone determine whether or not that title belongs in SCAMPS' negotiations unit.

16/ Tr. at p. 77.

for employees under her charge.

The remaining issue impacting on the asserted supervisory status of the Accounting Services Supervisor is whether or not the Accounting Services Supervisor can hire employees or effectively recommend the same. Since the District does the actual hiring, the undersigned focuses on the effective recommendation of hiring herein. Again, the undersigned notes the stringent standards required for such a finding:

The mere rendering of an opinion, which is subject to independent analysis by the hiring authority, does not constitute the high order of reliance necessary to meet the test of effective recommendation.

Township of Teaneck, E.D. No. 23 (1971); See also Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977).

The Accounting Services Supervisor plays a formal and regular role in the hiring process which requires her to interview all candidates for positions in her department and to recommend particular candidates. ^{17/} Her recommendations are forwarded to the Assistant Board Secretary, who forwards them to the Board Secretary, who forwards them to the Board for the final hiring determination. ^{18/} Each participant in the hiring process may offer her own comments or recommendations. ^{19/}

At first glance, the Accounting Services Supervisor's participation in the hiring process would appear to be at the "initial level," compelling a finding that effective recommendation cannot be found based on a recommendation "which requires approval of three additional

^{17/} Tr. at pp. 20-21.

^{18/} Tr. at pp. 63-68.

^{19/} Tr. at pp. 67 and 70.

levels of authority." Brookdale, supra. However, the record reveals that, to date, all three candidates recommended for hire by the Accounting Services Supervisor were ultimately hired by the Board of Education. Furthermore, the Board Secretary testified that, in one instance, she disagreed with the recommendation of the Accounting Services Supervisor, but nonetheless the individual recommended by the Accounting Services Supervisor was hired. The Board Secretary testified: "I had recommended that one on to the Board for appointment over my objections. I felt that if the supervisor was satisfied that she would have to work with that person." 20/ Under the circumstances herein, which indicate routine deference by the District and its agents to the hiring recommendations of the Accounting Services Supervisor, the undersigned concludes that the Accounting Services Supervisor manifests the power to make effective hiring recommendations, and is thus a supervisor within the meaning of the Act.

RECOMMENDATIONS

For the above stated reasons, the undersigned recommends the following:

1. That the Accounting Services Supervisor is a supervisor within the meaning of the Act.
2. That the Secretaries and Clerks Association of Morris Public Schools is an employee organization which does not represent supervisors within the meaning of the Act.
3. Neither established practice, prior agreement or special

20/ Tr. at p. 67.

circumstances exist which could allow SCAMPS to represent supervisors within the meaning of the Act.

4. Accordingly, the negotiations unit represented by SCAMPS should be clarified to exclude the Accounting Services Supervisor from that negotiations unit.

Respectfully submitted



Mark A. Rosenbaum
Hearing Officer

DATED: December 29, 1981
Trenton, New Jersey