

D.R. NO. 90-24

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

In the Matter of

MORRIS COUNTY BOARD OF SOCIAL SERVICES
(MORRIS VIEW NURSING HOME),

Public Employer,

-and-

MORRIS COUNCIL NO. 6, NJCSA,

Docket No. CU-90-6

Petitioner,

-and-

DISTRICT 1199J, NUHHCE,

Intervenor.

SYNOPSIS

The Director of Representation clarifies a unit of non-supervisory employees of Morris View Nursing Home to exclude the recreation program specialist. The Director also clarifies a unit of supervisory employees to include the recreation program specialist. The Director finds the recreation program specialist is a supervisor within the meaning of the Act because she effectively recommends whether to make provisional employees permanent.

D.R. NO. 90-24

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

In the Matter of

MORRIS COUNTY BOARD OF SOCIAL SERVICES
(MORRIS VIEW NURSING HOME),

Public Employer,

-and-

MORRIS COUNCIL NO. 6, NJCSA,

Docket No. CU-90-6

Petitioner,

-and-

DISTRICT 1199J, NUHHCE,

Intervenor.

Appearances:

For the Public Employer
O'Mullan & Brady, Esqs.
(Daniel J. O'Mullan, of counsel)

For the Petitioner
Fox & Fox, Esqs.
(Stacey B. Rosenberg, of counsel)

For the Intervenor
Balk, Oxfeld, Mandell & Cohen, Esqs.
(Arnold S. Cohen, of counsel)

DECISION

On August 11, 1989, Morris Council No. 6, N.J.C.S.A. ("Council 6") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to clarify its unit of all supervisors employed by Morris County Board of Social Services at Morris View Nursing Home ("County") to include the recreation program specialist. District 1199J, NUHHCE

("District 1199J") is the current majority representative of all non-supervisory employees at Morris View Nursing Home, including the recreation program specialist. On September 21, 1989, District 1199J intervened in this matter. N.J.A.C. 19:11-2.7.

Council 6 asserted that the newly created title of recreation program specialist is supervisory and should be included in its supervisory unit. District 1199J asserted the recreation program specialist is a non-supervisory position and should remain in its unit. The County took no position.

We conducted an administrative investigation in this matter.^{1/} On March 13, 1990, I sent a letter advising the parties that, based upon an affidavit filed by Council 6, I was inclined to find that the recreation program specialist is a supervisor within the meaning of the Act and that the Council 6 supervisory unit should be clarified to include that position. I indicated that absent additional evidence or argument to the contrary, I would issue a decision clarifying the non-supervisory unit to exclude the recreation program specialist and clarifying the supervisors' unit to include the position. I did not receive a response.

Based upon our entire investigation, these facts appear.^{2/}

1/ N.J.A.C. 19:11-2.2 and 2.6.

2/ In the absence of a substantial and material factual dispute, a decision may be rendered without a hearing, based upon our administrative investigation. Rochelle Park Tp. and Rochelle

The recreation program specialist position was created in July 1988. As created, the position was considered non-supervisory and the title was placed in District 1199J's unit. The job description provides that the recreation program specialist organizes and supervises a variety of recreational programs. The recreation program specialist implements and supervises recreational activities; organizes trips and special events; oversees recreation areas; prepares reports concerning programming proposals and their progress; oversees the use and maintenance of equipment and supplies and keeps records and files.

Mary Quick, the present recreation program specialist, was appointed in June 1989. Quick trains new recreation department staff, including recreation therapy aides. She directs new trainees in planning and implementing activities to insure that they are structured to meet patients' needs. She works with the aides individually and instructs them in record keeping and helps them understand the purpose and goals of the recreation department.

After a trainee completes a three-month training period, Quick submits a progress report and recommendation to Joan Brown,

2/ Footnote Continued From Previous Page

Park Superior Officers Ass'n and Rochelle Park PBA Loc. #102, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90) and Morris Cty. Bd. of Social Services and Morris Coun. No. 6, NJCSA and District 1199J, D.R. No. 89-27, 15 NJPER 237 (¶20097 1989) req. for rev. den. P.E.R.C. No. 89-124, 15 NJPER 331 (¶20147 1989) aff'd App. Div. Dkt. No. A-4931-88T5 (3/22/90).

the recreation director. Quick recommends whether the aide should become a permanent employee. Since March 1989, Quick has recommended the termination of three provisional aides. Her recommendation was followed in each instance. In one instance, Quick recommended the termination of a trainee before the end of her three-month training period. The assistant personnel director suggested that the trainee be transferred to another location at Morris View. Quick disagreed and suggested her termination. The trainee was terminated before the end of her three-month training period.

Brown reviews the evaluations. Marshall Sayre, the patient activities recreation specialist, Ciel Braun, Tammi Brown and seasonal employees work under Quick's general direction. According to Quick, "[g]iven my close supervision and one-to-one training with the aides, my recommendation usually carries a lot of weight with my supervisor, Ms. Jones, who then makes the final determination with regard to each aide."^{3/}

Quick trained Braun and Elizabeth King when they were hired by Morris View. At the end of their training period, she recommended that both should be made permanent employees. Her recommendation was followed and she evaluates them yearly. Quick meets with Recreation Director Joan Brown to discuss evaluations of recreation department employees for salary increases. Brown generally follows Quick's recommendations.

^{3/} Jones' title is not apparent.

Quick asserts that she has "input" into discipline and termination decisions concerning recreation staff. Quick also asserts that she has the authority to "hire, fire or effectively recommend the same."

Quick works under Joan Brown and Isabel Simon, the director of volunteer services. Brown and Simon are in the supervisory unit. According to the job description, the recreation director administers the recreation program; demonstrates, teaches and leads recreational activities; assigns duties to subordinates and supervises their work; assures proper use and maintenance of the recreation area and equipment, prepares and submits personnel and other records; analyzes the recreation needs of patients and submits recommendations and cooperates with groups and agencies to develop programs.

On May 1, 1989, Brown sent a memo to Assistant Administrator Jack Deniz stating Quick would be assigned to train and supervise new recreation staff. Quick supervises and conducts planned activities with assigned staff members. Quick prepares activities progress reports and performance reports for other staff members.

Since this petition was filed, the County proposed reclassifying the recreation program specialist position to assistant patient activities coordinator. It is the Commission's policy not to issue clarification of unit decisions concerning proposed titles, but rather to wait until a title is actually

created and filled. Accordingly, I will not consider the proposed new title and will consider only the existing title of recreation program specialist.^{4/}

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

...The division shall decide in each instance which unit of employees is appropriate for collective negotiation, 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,...

The Commission has found that an employee having the authority to hire, discipline or discharge other employees or to effectively recommend any of these actions, is a supervisor within the Act. N.J.S.A. 34:13A-5.3 and Tp. of Cherry Hill, P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970).

However, a determination of supervisory status requires more than the assertion that an employee has or will have the authority to hire, discipline, discharge or effectively recommend such action. In Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

The pivotal issue here is whether the recreation program specialist has "effectively recommended" hire, discipline, or discharge actions. "Effective recommendation" occurs when a recommendation is adopted without independent review and analysis by

^{4/} This determination does not limit the filing of a clarification of unit petition for the assistant patient activities coordinator if the recreation program specialist position is reclassified.

a higher level of authority. See Teaneck Tp., E.D. No. 23, NJPER Supp 465 (¶114 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). Further, 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).

Employees may also be excluded from a negotiations unit when their inclusion in the unit would create a conflict of interest. The Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) held:

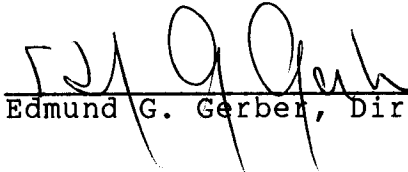
If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [Id. at 425].

Council 6 asserts that the recreation program specialist is a supervisor because she trains and evaluates new recreation staff.

Quick recommends whether to make provisional recreation department employees permanent. In the past year, because of Quick's recommendations, three trainees were terminated before the end of the training period. She has effectively recommended discipline and discharge actions. Accordingly, I find the recreation program specialist is a supervisor within the meaning of the Act. Somerset Cty. Guidance Center.

Therefore, I clarify District 1199J's non-supervisory unit to exclude the recreation program specialist and clarify Council 6's supervisory unit to include the recreation program specialist.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 4, 1990
Trenton, New Jersey