

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

In the Matter of

TOWNSHIP OF MANALAPAN,

Public Employer,

-and-

DOCKET NO. RO-79-199

NEW JERSEY ORGANIZING COMMITTEE,
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation resolves challenges to voter eligibility in a Commission representation election conducted among blue-collar road department employees. The Director, agreeing with the recommendations of a hearing officer, finds that (1) the Road Superintendent is a supervisor; (2) the clerk general is a white-collar employee; and (3) the mechanic is a police department employee. Therefore, the ballots of these three employees are void. The Director further determines that the Assistant to the Road Superintendent is not a supervisor and that there is neither an actual or potential substantial conflict of interest to preclude his inclusion in a unit with other blue-collar employees. The Director orders that the Assistant Superintendent's ballot be counted.

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Petitioner.

Appearances:

For the Public Employer
Sonnenblick, Parker & Selvers, attorneys
(Gerald N. Sonnenblick of counsel)

For the Petitioner
Max Wolf, Coordinator

DECISION

Pursuant to a Decision and Direction of Election, ^{1/}
an election was conducted by the Public Employment Relations
Commission (the "Commission") on September 6, 1979, among blue
collar employees in the Road Department of the Township of
Manalapan (the "Township") to ascertain whether the employees
desire to be represented by the New Jersey Organizing Committee,
Service Employees International Union, AFL-CIO (the "Petitioner").

1/ In re Tp. of Manalapan, D.R. No. 80-5, 5 NJPER 367 (¶ 10187
1979)

The Tally of Ballots reveals that four (4) valid ballots were cast for Petitioner, three (3) valid ballots were cast against representation, and four (4) ballots were challenged. The challenged ballots are determinative of the results of the election.

The individuals whose voting eligibility was questioned and whose ballots were challenged occupy the positions of Road Superintendent, Assistant to the Road Superintendent, Clerk General, and Mechanic.

Pursuant to a Notice of Hearing, a hearing was held before Hearing Officer Steven P. Weissman on November 28, 1979, in Trenton, New Jersey to resolve the voting eligibility of the challenged voters. All parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Because of the unavailability of the original Hearing Officer, the Director of Representation, by letter dated November 28, 1979, transferred this matter, pursuant to N.J.A.C. 19:11-6.4, to Hearing Officer Arnold H. Zudick for the issuance of a Report and Recommendations. The Hearing Officer issued his Report and Recommendations on January 30, 1980, a copy of which is attached hereto and made a part hereof. The Petitioner filed exceptions to the Report on February 26, 1980. The Township has not filed exceptions to the Report, nor has it filed an answer to the Petitioner's exceptions.

The Hearing Officer recommended that three of the challenged voters were ineligible and that one challenged voter

was eligible to vote. Accordingly, the Hearing Officer recommended that the ballots cast by the Road Superintendent, the Clerk General and the Mechanic not be counted. The Hearing Officer recommended that the ballot of the Assistant to the Road Superintendent should be counted.

The Hearing Officer found that the Road Superintendent is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), since he makes effective recommendations concerning hiring and firing of employees. With respect to the Clerk General, the Hearing Officer found that the person holding this title performs clerical functions. Since the Commission directed an election in a unit defined as including all blue collar employees of the Road Department, the Hearing Officer found that the inclusion of the Clerk General in this unit would be inappropriate. Concerning the Mechanic, the Hearing Officer found that he is not an employee of the Road Department. Since the defined collective negotiations unit includes Road Department employees only, the Hearing Officer recommended that the Mechanic was ineligible to vote in the election. Finally, the Hearing Officer found that the Assistant to the Road Superintendent is not a supervisor within the meaning of the Act, nor would his inclusion in the unit create a conflict of interest. Therefore, the Hearing Officer recommended that the ballot cast by the Assistant to the Road Superintendent be counted.

The Petitioner excepts to two of the findings and conclusions of the Hearing Officer. With respect to the eligibility

of John Lewis, Assistant to the Road Superintendent, the Petitioner alleges that there is a conflict of interest between the Assistant Superintendent and the other employees in the unit. More specifically, Petitioner asserts that the Assistant to the Road Superintendent can recommend the discipline and hiring of employees, and, in the absence of the Superintendent, the Assistant Superintendent is in full and undisputed charge of the Road Department. With respect to the voting eligibility of James Allen, the Mechanic, the Petitioner urges that this title should be included in the unit.

After an independent review of the entire record in this matter, including the Hearing Officer's Report and Recommendations, and the exceptions, the undersigned adopts the findings of fact, conclusions of law and recommendations of the Hearing Officer.

The record establishes that the Superintendent of the Road Department is a supervisor and that the Clerk General is a white collar employee. No exceptions were filed concerning the Superintendent and the Clerk General. Accordingly, the undersigned determines that these individuals were not eligible voters in the election and their ballots are void.

With respect to the Assistant to the Road Superintendent, the Petitioner argues that the Hearing Officer was incorrect in finding that he does not effectively recommend the discipline and hiring of employees. Nothing in the record supports a finding

that the Assistant to the Road Superintendent plays any part in the hiring, discharge or discipline of employees. While he may be in charge when the Road Superintendent is not present, the record does not establish that a conflict of interest would arise if he was included in the unit. In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court held:

... where the performance of the obligations or the powers delegated by an 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 the inclusion of such supervisor is not present.

at 425.

The undersigned is convinced that the duties of the Assistant to the Road Superintendent, the second person in charge, are not the duties envisioned by the Court which create a substantial conflict of interest. The occasional responsibility of the deployment of personnel by the Assistant to the Road Superintendent is insufficient to find an actual or potential substantial conflict of interest which negates the community of interest which the Assistant shares with the other blue collar employees.

With respect to the Mechanic, the Hearing Officer found that he is, and on the date of the election was, an employee of the Police Department, and not the Road Department. The Petitioner

excepts to the Hearing Officer's recommendation that the Mechanic was not an eligible voter, arguing that: (1) the unit definition which appears on its Petition for Certification of Public Employee Representative was modified by the Commission; and (2) notwithstanding the Mechanic's transfer from the Road Department payroll to the Police Department payroll before the date of the election, the work location and the work performed by the Mechanic is still the same with the exception that work on police cars is now given greater priority than work on Road Department vehicles. The Petitioner states that the Hearing Officer erred in finding that the Township was not required to advise the Petitioner and the Commission of the Mechanic's transfer, and the Petitioner suggests that this finding by the Hearing Officer is "very much akin to a collusive effort to deny the rights of an employee to representation."

Regarding the claim that the language of the direction of election which defined the unit was not consistent with the intent of the Petitioner, the record in the administrative investigation of this matter reveals that the Petitioner originally filed on April 5, 1979, for a unit described as included: "All Blue Collar employes of the Department of Public Works, janitorial staff, repair and maintenance." An informal conference was convened among the parties on May 14, 1979, at which disputes concerning the unit eligibility of certain employees were discussed. On July 20, 1979, the undersigned advised the parties of the results of the administrative investigation, and listed among the administrative

findings that the Petitioner had filed a Petition seeking a unit comprised of all blue collar employees of the Road Department of the Township. The undersigned stated an intent to direct an election among the employees in that unit in the absence of substantial and material disputed factual issues which might be presented to the undersigned by either or both of the parties. The Petitioner did not advise the undersigned that the definition of the unit which would be involved in the direction of an election was not consistent with the unit for which it petitioned. Accordingly, in the absence of any substantial and material disputed factual issues the undersigned proceeded to direct an election in the unit which the undersigned had previously identified. The parties were served with a decision directing an election and the employer was directed to post a Notice of Election in which the employees were advised that an election would be directed among the employees in the Road Department. The Petitioner did not come forward either subsequent to the direction of election or following the posting of the Notice of Election to dispute the definition of the unit. Accordingly, there is ample evidence to support the Hearing Officer's finding that the challenged individual was not included in the unit as defined in the direction of election.

Regarding the transfer of the Mechanic to the Police Department payroll, the record amply supports the findings of the Hearing Officer that the Mechanic is not an employee of the

Road Department. The Mechanic was transferred to the Police Department orally in July 1979, and by formal resolution on August 8, 1979 retroactive to August 6, 1979. The record supports the Hearing Officer's conclusion that the Petitioner had ample opportunity to ascertain the status of eligible unit employees prior to the election. ^{2/} The suggestion that the Hearing Officer's finding that the Township was not specifically required to advise the Petitioner of the transfer may have constituted a collusive effort to deny this employee's right to choose representation is entirely unfounded. Accordingly, the undersigned concludes that the Mechanic was ineligible to vote in the September 6 election.

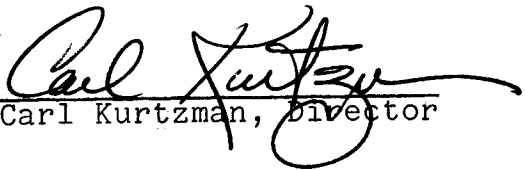
Accordingly, for the above reasons the undersigned determines that the ballots cast by the Road Superintendent, the Clerk General and the Mechanic are void since these employees are not eligible for inclusion in the proposed unit. It appears that the sole valid ballot herein is that of the Assistant to the Road Department. In view of the disposition of the challenges herein, and the Tally of Ballots which indicates that four unchallenged ballots were cast in favor of the Petitioner and three

^{2/} The Petitioner did not file timely post-election objections regarding the transfer of the Mechanic prior to the election. See In re Cty. of Ocean, D.R. No. 79-34, 5 NJPER 220 (¶ 10121 1979), request for review den. P.E.R.C. No. 80-12, 5 NJPER 305 (¶ 10166 1979). This would have been the appropriate procedure to place before the Commission the issue of what effect, if any, the transfer may have had on the outcome of the election. The issue of whether the Township was required to notify the Petitioner of the transfer has no bearing upon the question presented in the challenge proceeding herein i.e., the Mechanic's status as a blue collar employee of the Road Department on the date of the election.

unchallenged ballots against representation, the disposition of the ballot cast by the Assistant to the Road Superintendent is determinative of the result of the election.

The undersigned directs that the ballot be opened and that a Revised Tally of Ballots be issued.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: April 11, 1980
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANALAPAN TOWNSHIP,

Public Employer,

-and-

Docket No. RO-79-199

N.J. ORGANIZING COMMITTEE S.E.I.U., AFL-CIO,
Petitioner.

SYNOPSIS

A Commission Hearing Officer, considering the challenge to four voters in a Commission conducted election in a blue collar unit limited to employees of the road department recommends that the challenge to three voters be sustained and that the challenge to the remaining voter be overruled and the vote counted. Of the sustained challenges one voter was found to be a supervisor within the meaning of the Act and inappropriate for inclusion in the unit; another voter was found to be a "white collar" employee and not appropriate for inclusion in a unit limited to "blue collar" employees; and a third voter was found not to be an employee of the petitioned-for department.

A 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.

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANALAPAN TOWNSHIP,
Public Employer,

-and-

Docket No. RO-79-199

N.J. ORGANIZING COMMITTEE S.E.I.U., AFL-CIO
Petitioner,

Appearances:

For the Public Employer
Sonnenblick, Parker and Selvers, Esqs.
(Renee Ferretti, of Counsel)

For the Petitioner
Max Wolf, Coordinator
S.E.I.U.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on April 5, 1979, by the New Jersey Organizing Committee, Service Employees International Union (the "Petitioner") for a unit of all blue collar employees of the department of public works employed by Manalapan Township (the "Township").

After the Township refused to enter into a consent election agreement in this matter the Director of Representation by a decision and order dated August 9, 1979^{1/} directed an election in the following unit:

"All blue collar employees of the Road Department employed by the Township of Manalapan, but excluding managerial executives, confidential employees, professional employees, craft employees, police and supervisors within the meaning of the Act." The New Jersey Employer-Employee Relations Act

1/ See In re Township of Manalapan, D.R. No. 80-5, 5 NJPER 367 (Para. 10187 1979).

On September 6, 1979, an election was conducted in this matter and the results of the election as set forth in the Tally of Ballots indicated that the Petitioner received 4 votes, that 3 votes were cast against representation, and 4 votes were challenged. Therefore the challenged ballots were determinative of the outcome of the election.

Thereafter, pursuant to a letter and a Notice of Hearing from the Director of Representation dated October 17, 1979, a hearing was held before Hearing Officer Steven P. Weissman on November 28, 1979, in Trenton, New Jersey, only on the issues relevant to the instant challenges. All parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Subsequent to the close of the hearing the Petitioner submitted a written brief in this matter which was received on December 27, 1979. The transcript was received on January 3, 1980.

Because of the unavailability of the original Hearing Officer the Director of Representation by letter dated November 28, 1979 and pursuant to N.J.A.C. 19:11-6.4 transferred this matter to the undersigned Hearing Officer for the issuance of the Report and Recommendations.

Upon the entire record in this proceeding, the undersigned Hearing Officer finds:

1. That the Township is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.
2. That the Petitioner is an employee representative within the meaning of the Act and is subject to its provisions.
3. That the parties to a Commission conducted secret ballot election are unable to resolve challenges which are determinative of the outcome of the election resulting in the continued existence of

a question concerning representation. This matter is therefore appropriately before the undersigned for report and recommendations concerning the challenges to the election.

4. That the results of the election indicate that the Petitioner challenged 3 voters, Robert Paulsen, Barbara Paulsen and John Lewis; and the Township challenged one voter, James Allen.

The Petitioner alleged that Robert Paulsen and John Lewis were supervisors within the meaning of the Act and therefore not appropriate for inclusion in the unit, and that Barbara Paulsen was not a blue collar employee and therefore could not be included in the unit. The Township alleged that James Allen had been transferred to the police Department and was not an employee of the Road Department and was therefore ineligible to vote in the election.

5. The parties stipulated that the issues relevant to the instant challenges are:

- a. Whether Robert Paulsen and John Lewis are supervisors within the meaning of the Act.
- b. Whether Barbara Paulsen is a blue collar employee, and,
- c. Whether James Allen should be included in the unit as petitioned for.

ANALYSIS

Robert Paulsen

Robert Paulsen holds the position of Superintendent of the Road Department. He is charged with the overall responsibility of the Road Department including directing and assigning work, and he is considered a department head.

Although the evidence produced at hearing supports the Township's contention that Mr. Paulsen does not directly hire or fire employees of the department, the undersigned is convinced that the evidence supports the Petitioner's contention that Mr. Paulsen does have the authority to effectively recommend hiring and firing. Since the Act defines supervisors as those employees who hire, fire or effectively recommend the same, Mr. Paulsen's duties and responsibilities present a noticeable conflict of interest with other employees thereby justifying his exclusion from the unit.

Arnold Grill, Township Administrator, provided significant testimony regarding Mr. Paulsen's position. He testified that generally a department head can recommend disciplinary action,^{2/} that Mr. Paulsen has actually interviewed individuals and made recommendations concerning hiring,^{3/} and that Mr. Paulsen has on occasion provided written evaluations concerning employees in his department.^{4/} Moreover Mr. Grill testified that Mr. Paulsen has recently made a recommendation concerning disciplinary action.^{5/}

Mr. Paulsen testified that in the past he has prepared written evaluations^{6/} and he also testified that he has suspended or at least sent home an employee who was acting improperly on the job.^{7/}

Although the evidence produced at hearing does not concentrate on the effectiveness of Mr. Paulsen's actions, the evidence clearly establishes that Mr. Paulsen's inclusion in the unit would create an actual conflict of interest with other employees and therefore his exclusion

^{2/} Transcript ("T") pp 48-49

^{3/} T. pp 55,80

^{4/} T. p 55

^{5/} T. p 84-85

^{6/} T. p 105

^{7/} T. pp 101-102

from the unit is justified.^{8/} Based upon the foregoing discussion, the undersigned recommends that the challenge to Robert Paulsen's vote be sustained.

John Lewis

John Lewis holds the position of Assistant to the Road Superintendent and is generally responsible for assisting Robert Paulsen in assigning work. Lewis testified that he does not discipline or evaluate employees nor does he make recommendations concerning hiring or firing.^{9/}

The Petitioner has alleged that Lewis performs essentially the same duties as Robert Paulsen and therefore is a supervisor within the meaning of the Act. However, as evidenced by Lewis' own testimony and by a review of the entire record it is clear that Lewis does not normally make recommendations or evaluations. Moreover, the evidence does not support a finding that Lewis' inclusion in the unit would establish a conflict of interest nor does it justify finding that there are two supervisors in such a small unit.

After reviewing the entire record and based upon the foregoing discussion, the undersigned recommends that the challenge to John Lewis be overruled and his vote counted.

Barbara Paulsen

Barbara Paulsen holds the position of Clerk General to the Road Department. She keeps the same hours and works in the same location as other Road Department employees, and her duties are different than other clerical employees who work for the Township.^{10/}

^{8/} See Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

^{9/} T. pp 96-97

^{10/} T. p. 59

The Petitioner maintains that Mrs. Paulsen's duties are of a clerical nature and that her duties do not include functions that would justify her inclusion in a blue collar unit. The Township argues that Mrs. Paulsen's duties go beyond clerical functions and that she has a community of interest with the instant unit.

The evidence to some degree supports the contentions of both parties. By her own testimony Mrs. Paulsen acknowledged that she does general secretarial work, and answers the phone and the radio.^{11/} However, Mr. Grill's and Mrs. Paulsen's testimony also clearly established that Mrs. Paulsen performs radio dispatching functions for the Road Department separate and apart from her normal clerical duties.^{12/}

The issue concerning Mrs. Paulsen however is not whether her job is similar to those of other clerical employees in the Township, rather it must be determined whether her overall duties justify her classification as a "blue collar" employee. In that regard the evidence shows that Mrs. Paulsen's primary duties include clerical and dispatching functions. Although she performs these functions in the road department garage office, that does not prevent a finding that the her work is inherently "white collar" in nature. White collar positions are generally defined as those which include clerical, administrative and professional work, whereas blue collar positions are generally manual labor positions that involve only a very minimum of clerical work.

In the instant matter Mrs. Paulsen's duties are clearly predominantly white collar. Although she occasionally drives and washes trucks, she testified that she does not do that often and that it was her own

^{11/} T. p 90

^{12/} T. pp 57-59,90-93

idea and was not assigned work.^{13/}

Since Mrs. Paulsen is actually a "white collar" employee, and since the unit as described in the direction of election includes only "blue collar" employees of the Road Department, then Mrs. Paulsen cannot be included in the instant unit. Based upon the foregoing discussion it is recommended that the challenge to Barbara Paulsen's vote be sustained.

James Allen

James Allen is a mechanic employed by the Township. Prior to July 7, 1979 he was a mechanic in the Road Department and predominantly serviced Road Department vehicles although he occasionally worked on police and other vehicles. On July 7, 1979^{14/} Allen was verbally transferred to the Police Department to work predominately on police vehicles. The transfer was made official on August 8, 1979.

On August 9, 1979, the Director of Representation issued his direction of election in this matter^{15/} and ordered that the Township provide an eligibility list of employees in the unit. The Township was required to include on its list all employees who were employed in the Road Department as of the last payroll prior to August 9 which was August 3, 1979. By letter dated August 17, 1979, the Township complied with the Director's request and submitted an eligibility list which included the name of James Allen. However, in its August 17 correspondence the Township clearly advised the Director that Mr. Allen had been transferred to the Police Department by resolution of August 8, retroactive to August 6, 1979 and therefore his vote in the election would be challenged.

^{13/} T. pp 94-95

^{14/} T. p 29

^{15/} See note 1, supra.

The Petitioner acknowledges that Mr. Allen was transferred to the Police Department but contends that he still performs the same work, he works in the same location (the road department garage), and that he occasionally still reports to Mr. Paulsen for additional work. The Petitioner further contends that it was not provided sufficient notice of Mr. Allen's transfer in August 1979 to afford it the opportunity to amend its petition to include his new position. For all of these reasons the Petitioner argues that Mr. Allen is appropriate for inclusion in the petitioned-for unit.

The evidence produced at hearing substantiates the Township's argument that Mr. Allen was transferred to the Police Department in July/August 1979. Mr. Allen actually acknowledged the transfer^{16/} and testified that he now reports to the police duty commander and takes direction from the police captain or lieutenant.^{17/} Mr. Grill testified that Mr. Allen was transferred because the Police Department needed a full-time mechanic for its own vehicles.^{18/} Mr. Grill also testified that Mr. Allen's salary had to be transferred from the road department budget to the police department budget.^{19/} Despite the fact that Mr. Allen still works in the same location with the same duties and with the same hours, it is clear that he performs his work as a Police Department employee.

Since Mr. Allen is not a Road Department employee he does not fit the definition of the unit as set forth in the direction of election and therefore cannot be included in the petitioned-for unit. Moreover,

^{16/} T. p. 29
^{17/} T. pp 32, 38
^{18/} T. pp 64-65
^{19/} T. pp 54-55

the Petitioner's argument that it failed to receive notice of Mr. Allen's transfer does not now justify his inclusion in the unit. The facts show that the transfer actually occurred in July 1979 which was prior to the direction of election herein, and that Mr. Allen, Mr. Paulsen, Mr. Grill, and the Police Department were aware of the transfer. The Petitioner had adequate time prior to the direction of election to ascertain the status of the employees in the proposed unit. Furthermore, it must be noted that the Township had no actual duty to advise the Petitioner of Mr. Allen's transfer. The Township complied with the Director's request for an eligibility list and properly advised the Director of its intent to challenge Mr. Allen. Under these circumstances the Township acted in an appropriate manner.

Based upon the foregoing the undersigned recommends that the challenge to James Allen's vote be sustained and his vote not counted.

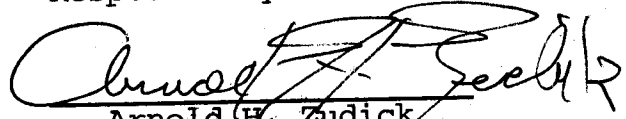
RECOMMENDATIONS

Accordingly, upon the entire record herein and for the above stated reasons the undersigned Hearing Officer recommends the following:

1. That Robert Paulsen is a supervisor within the meaning of the Act and is not appropriate for inclusion in the petitioned-for unit therefore the challenge to his vote should be sustained.
2. That Barbara Paulsen is not a "blue collar" employee and cannot be included in a unit limited to blue collar employees therefore the challenge to her vote should be sustained.
3. That James Allen is not an employee of the Road Department and cannot be included in a unit limited to Road Department employees therefore the challenge to his vote should be sustained.

4. That John Lewis is not a supervisor within the meaning of the Act and is otherwise appropriate for inclusion in the petitioned-for unit therefore the challenge to his vote should be overruled and his vote counted.

Respectfully Submitted


Arnold H. Zudick
Hearing Officer

DATED January 30, 1980
Trenton, New Jersey