

P.E.R.C. NO. 91-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Public Employer,

-and-

Docket No. CU-H-89-34

BUTLER BLUE COLLAR
WORKMAN'S ASSOCIATION,

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority granted to him by the full Commission, dismisses a clarification of unit petition filed by the Butler Blue Collar Workman's Association. The petition sought to exclude the supervising line worker from the Association's unit of non-supervisory, blue collar employees of the Borough of Butler. The Chairman concludes that the supervising line worker is not a supervisor within the meaning of the Act.

P.E.R.C. NO. 91-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Public Employer,

-and-

Docket No. CU-H-89-34

BUTLER BLUE COLLAR
WORKMAN'S ASSOCIATION,

Petitioner,

Appearances:

For the Public Employer,
Frank Bastone, Administrator

For the Petitioner,
Earl William Dean, President

DECISION AND ORDER

On January 30, 1989, the Butler Blue Collar Workman's Association filed a petition for clarification of unit. The Association seeks to exclude the supervising line worker from its unit of non-supervisory, blue collar employees of the Borough of Butler. The Association asserts that the position is supervisory within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Borough asserts that the position is non-supervisory and should remain in the unit.

On July 5, 1990, a Notice of Hearing issued. On August 13, Hearing Officer Illse E. Goldfarb conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument and the filing of post-hearing briefs.

On March 27, 1991, the Hearing Officer recommended dismissing the petition. H.O. No. 91-1, 17 NJPER ____ (¶____

1991). She found no evidence that the supervising line worker has the authority to hire, discharge, discipline, or to effectively recommend the same. Accordingly, she found the position is not supervisory within the meaning of the Act.

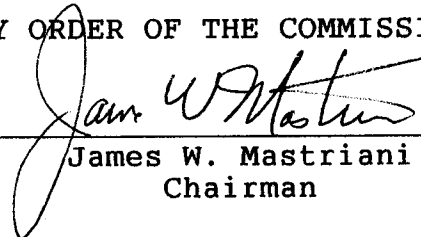
The Hearing Officer served her decision on the parties and informed them that exceptions were due April 10, 1991. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Officer's findings of fact (H.O. at 2-7) are accurate. I incorporate them here. Pursuant to authority granted to me by the full Commission in the absence of exceptions, I find that the supervising line worker is not a supervisor within the meaning of the Act.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: April 23, 1991
Trenton, New Jersey

H.O. NO. 91-1

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

In the Matter of

BOROUGH OF BUTLER,

Public Employer,

-and-

Docket No. CU-H-89-34

BUTLER BLUE COLLAR WORKMAN'S ASSOCIATION,

Petitioner.

SYNOPSIS

The Hearing Officer recommends that the Commission find that the Supervising Line Worker employed by the Borough of Butler is not a supervisor within the meaning of the Act and should remain in the negotiating unit represented by the Bulter Blue Collar Workman's Association. Accordingly, the Hearing Officer recommends that the Commission dismiss the Association's Unit Clarification Petition.

A Hearing Officer's Report and Recommendation is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendation, any exception 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.

H.O. NO. 91-1

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

In the Matter of

BOROUGH OF BUTLER,

Public Employer,

-and-

Docket No. CU-H-89-34

BUTLER BLUE COLLAR WORKMAN'S ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Frank Bastone, Administrator

For the Petitioner
Earl William Dean, President

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On January 30, 1989, the Butler Blue Collar Workman's Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to exclude the position of supervising line worker from its non-supervisory blue collar unit of employees employed by the Borough of Butler ("Borough"). The Association asserts that the supervising line worker is supervisory within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Borough argues that the position is non-supervisory and should remain in the unit.

Pursuant to a Notice of Hearing issued July 5, 1990, a hearing was held on August 13, 1990. At the hearing, the parties had an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Both parties waived oral argument and the filing of post-hearing briefs.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Association is an employee representative within the meaning of the Act, and has been the recognized exclusive representative of a unit of all blue collar employees employed by the Borough's Public Works, Power and Light, Radio Dispatch, Road, Sewer, and Water Departments since 1972. The most recent collective negotiations agreement between the parties (J-1) covers the period January 1, 1989 through December 31, 1991 (T44).^{1/}

2. The Borough is a public employer within the meaning of the Act and employs Craig Marion in the disputed title of Supervising Line Worker located in the Department of Public Works, electrical division (T12).

3. The Borough is organized under a Mayor/Council form of government. The Business Administrator, Frank Bastone, reports to the Mayor and Council. The Director of the Department of Public

^{1/} Exhibits are designated as follows: Joint exhibits are designated as "J", the Association's exhibits are designated as "P", and the Borough's exhibits are designated as "R". 'T' refers to the August 13, 1990 transcript of the hearing.

Works, Richard J. Negran, reports to the Business Administrator. Negran has served as Director for seven months (T10-T12).

4. The Department of Public Works is divided into four divisions: electric, water, sewer and roads. Each division is headed by a supervisor who reports directly to Negran (T11).

5. The supervisor of the electrical division is Line Superintendent Raymond Whritenour (T11-T12). Whritenour has been employed in the electrical division for 14 years and, with the exception of one year, has served as supervisor of the division since 1983 (T23). Marion has been Whritenour's immediate subordinate since he was appointed to the position of supervising line worker in August 1986 (T12; T23-T24).

6. The supervising line worker title was originally known as assistant lineman foreman when it was created by the Borough in 1983 (T47).^{2/} The following year the title appeared in the 1984 collective bargaining agreement between the Borough and the Association (T46; P-1).

The title was created as a way to provide extra compensation for the senior lineman appointed to fill in for the foreman whenever the foreman was absent (T47-49; T53; T55). The position was usually given to the senior lineman closest to

^{2/} In 1987 the Borough, a civil service municipality, adopted the New Jersey Department of Personnel's gender neutral designation of supervising line worker. The Borough also changed the title foreman to line superintendent (T24; T42).

retirement (T41).^{3/} The responsibilities of the position increased as the customer service needs and the size of the division grew. By 1986, when Marion was appointed as supervising line worker, the title had evolved from a senior lineman position with occasional additional duties into a full-time position with distinct responsibilities assisting the line superintendent (T50-T51; R-1).

7. Marion's job duties are equally divided between field and office responsibilities (T12; T16; T36). He is primarily responsible for customer service which involves: (1) supervising and working with line workers in the installing and maintaining of electrical services such as new service hook-ups and meter repairs; (2) installing and repairing street lighting; and (3) responding to customer complaints (T24; R-1; J-2). In addition, Marion maintains computer records for the division's personnel actions (payroll, vacation and sick leave) and customer service responses (billing for services performed, customer complaints, and emergency call-ins) (T31; R-1; J-2).

8. Marion works with Whritenour in assigning and directing the daily work within the division. Every day Marion completes work schedules for the crews, completes any recordkeeping duties and supervises the work of the crews in the field (T12; T31). Marion gives initial approval, subject to Whritenour's review, for vacation and other leave requests. Final approval is granted by Negran

^{3/} However, Whritenour testified that he was an assistant lineman foreman in 1983 before he was appointed foreman (T48).

(T52). Marion assumes responsibility for supervising the division whenever Whritenour is on vacation or on sick leave (T12). During periods of peak construction activity in the Borough, when Whritenour is particularly busy, Whritenour has sent Marion to represent the electrical division at meetings with developers (T24; T26-T27). Except for one instance, Marion does not attend internal meetings for Whritenour, such as the monthly division supervisors' safety meeting (T37-T38).

9. Bastone, as Business Administrator, makes the final recommendations to the Borough Council on hirings and discharges (T15). He bases his determination upon recommendations from Negran (T18-T19; T25). In the most recent instance of hiring, Whritenour reviewed the applications, conducted the interviews and made his recommendation to Negran (T25).^{4/} There have been no instances of discharge in the division since Negran was Director (T18).

Negran has authority to implement disciplinary actions at his level (T19). The one recommendation for a disciplinary action made since he was appointed Director came from Whritenour (T18; T29). I find that Marion was not directly involved in either instance of hiring or disciplining (T13; T24; T32).

I also find that Marion has not made effective recommendations concerning the hiring or disciplining of any employees. Negran and Whritenour stated that they are regularly

^{4/} Whritenour referred to a second hire made since 1986 for which he also made the recommendation (T28).

involved in discussions with Marion (T16; T25-26) and therefore, according to Negran's testimony, Marion is "aware of all the problems concerning the division." (T17). Negran testified that Marion is capable of making recommendations and that he seeks Marion's input into these discussions (T13; T15). However, Marion testified that he was not involved in any discussions, nor did he make any recommendations concerning the recent hiring or disciplinary action (T37). Although Negran seemingly contradicted Marion's statement by testifying that Marion had made recommendations on the recent hiring, I cannot credit Negran's testimony because he could not identify the way in which Marion was involved (T15-T17).

Whritenour testified that he makes up his mind first and doesn't seek out Marion's recommendations (T28-29). Whritenour stated that he talks with Marion as he would with a senior line worker and that his discussions with Marion are "off the cuff." (T29) I credit the corroborating testimony of Whritenour and Marion. Both men have an established, four-year work relationship whereas Negran has been the division director for just seven months.

Thus, I find that Marion's involvement in the discussions with Whritenour and Negran was, as Whritenour characterized it, informal in nature; and that Marion is included merely because he shares an office with Whritenour and is present when the discussions take place (T16-T17; T29; T36).

Marion's only involvement in the the evaluation process is informal discussions with Whritenour (T26-T27; T35). Whritenour makes all the recommendations to Negran (T19; T27).

Analysis

The Association contends that the Supervising Line Worker is a supervisor within the meaning of the Act and therefore should be removed from its unit of nonsupervisors. The Borough argues that Marion is not a supervisor. It contends that Marion has neither interviewed, hired or disciplined an employee in the electrical division, nor effectively recommended the same.

I now consider whether Marion is a supervisor within the meaning of the Act. N.J.S.A. 34:13A-5.3 defines a supervisor as "having the power to hire, discharge, discipline, or to effectively recommend the same." All the circumstances of a particular case must be reviewed in order to determine whether the employee has and regularly exercises such power. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill Tp. DPW, P.E.R.C. No. 30, NJPER Supp. 30 (1970); Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

There is no evidence that Marion has the authority to hire or fire personnel. The Borough Council has the final authority to hire and discharge employees and does so on recommendations from the Business Administrator. The Business Administrator, in turn, is advised on such actions by Negran. There have been no instances of

discharge in the electrical division. In the recent instances of hiring and disciplining, Whritenour made the formal recommendations to Negran. Because he does not participate in the formal hiring and disciplining process, Marion may only be found to be a statutory supervisor if he makes effective recommendations.

"Effective recommendation" occurs when the recommendation is adopted without independent review and analysis by a higher level of authority. Township of Teaneck, E.D. No. 23, NJPER Supp. 114 (1971). The only indication that Marion is involved in the hiring and disciplinary process is the fact that he participates in informal discussions with Whritenour and Negran. Marion's participation is due only to his being present when Negran and Whritenour are deliberating and not to his being responsible for providing effective input. The recommendations for the division's hiring and disciplining originate with Whritenour, who clearly relies on his own judgment. Whritenour seeks input, if he needs it, not only from Marion but from senior line workers who report to Marion. Based upon the above, I conclude that Marion's participation does not constitute regular and effective recommendations in either the hiring or disciplinary process. See Township of Teaneck and Borough of Avalon, supra.

Negran's assertion that Marion is capable of making recommendations is not enough to support a finding of supervisory status. The mere assertion of supervisory authority without more is insufficient to sustain a claim of supervisory status within the meaning of the Act. Somerset Cty. Guidance Center.

The only other evidence that might relate to the authority to discipline employees is the evaluation process. Effective recommendations may be found where an employee has primary responsibility for evaluating employees and those evaluations are instrumental in various personnel actions, such as decisions to withhold increments. Paramus Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶12247 1981). However here, Whritenour, not Marion, makes all formal evaluations.

Accordingly, I conclude that the supervising line worker is not supervisory within the meaning of the Act. Absent a showing that a conflict of interest exists between the supervising line worker and other Association positions, the petition must be dismissed. Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971). Since I find no evidence of actual or potential substantial conflict of interest in the record, I conclude that the title supervising line worker should remain in the Association's negotiations unit.

The Borough suggested an alternative argument that statutorily defined exceptions existed which could permit a supervisor to be represented by the Association pursuant to N.J.S.A. 34:13A-5.3 and 6(d).

N.J.S.A. 34:13A-5.3 provides, in pertinent part: " . . .
Inor, 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-5.6(d) provides in pertinent part: ". . .except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors. . ." (emphasis added)

I find this argument is not applicable in this case. There was no established negotiations relationship between the Borough and Association prior to the passage of the Act in 1968. West Paterson Board of Education, P.E.R.C. No. 79, NJPER Supp. 79 (1973). Thus, I conclude that the exceptions found in N.J.S.A. 34:13A 5.3 and 6(d) do not apply.

RECOMMENDATION

I recommend that the petition be dismissed.


Illse E. Goldfarb
Hearing Officer

DATED: March 27, 1991
Trenton, New Jersey