

D.R. NO. 96-15

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

In the Matter of

BURLINGTON COUNTY BOARD  
OF SOCIAL SERVICES,

Public Employer/Petitioner,

-and-

Docket Nos. CU-96-9 & CU-96-15

OPEIU LOCAL 153,

Employee Representative/Petitioner.

SYNOPSIS

The Director of Representation orders that the supervisor of accounts shall be removed immediately from the OPEIU supervisory unit. The evaluations performed by this employee on another unit employee, the supervising account clerk, have resulted in merit increases for the clerk. This function creates an impermissible conflict of interest between the two titles.

Additionally, the Director of Representation finds that the senior training technician is not a supervisory employee and cannot be added to the supervisory unit.

Finally, the Director determines that the assistant training supervisor shall remain in the supervisory unit. A conflict of interest does not exist between this title and any others in the unit. Further, the training functions this employee performs on behalf of the Board do not create any conflict of interest with other Board employees.

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Appearances:

For the Public Employer/Petitioner  
Capehart & Scatchard, attorneys  
(Alan R. Schmoll, of counsel)

For the Employee Representative/Petitioner,  
Schneider, Goldberger, Cohen, Finn, Solomon, Leder  
& Montalbano, attorneys  
(James M. Mets, of counsel)

DECISION

On September 22, 1995, OPEIU Local 153 filed a petition for clarification of unit seeking to add a senior training technician title to its supervisory negotiations unit and to retain an assistant training supervisor title in its supervisory negotiations unit. On October 24, 1995, the Burlington County Board of Social Services filed a petition for clarification of unit to remove the positions of assistant training supervisor and supervisor of accounts from the OPEIU supervisory negotiations unit.

OPEIU asserts that the senior training technician performs supervisory duties and shares a community of interest with the other supervisory unit positions. The Board opposes adding the senior

training technician to the supervisory unit. It alleges that 1) a conflict of interest exists between this position and another unit position, the assistant training supervisor and 2) the training duties performed by the senior training technician create a conflict between this position and all other employees in this unit, and in any other negotiations unit.

The Board asserts that the assistant training supervisor should be removed from the supervisory unit because the training duties performed create a conflict of interest with other supervisory unit employees and with those in any other negotiations unit. Additionally, the Board asserts that the assistant training supervisor supervises the senior training technician so they can't be in the same negotiations unit. OPEIU opposes removing the assistant training supervisor from the supervisory unit claiming that this position has historically been in the supervisory unit with no apparent conflict of interest problems.

The Board also seeks to remove the supervisor of accounts from the supervisory unit claiming that this title supervises the supervising account clerk. OPEIU claims that a conflict of interest does not exist between these two titles.

We have conducted an administrative investigation into the issues raised by these petitions. There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The Board employees are organized into two negotiations units. OPEIU Local 153 was certified on March 18, 1991 to represent all 31 supervisory employees. Pursuant to the recognition clause of the expired contract, the assistant training supervisor and supervisor of accounts are specifically included in the unit. The unit's most recent contract ran from January 1, 1993 through December 31, 1995.

CWA was certified on January 9, 1973 to represent all employees excluding professional and craft employees, managerial executives, police, director, deputy director, chief clerk, supervisor of administrative services, and other supervisory employees within the meaning of the Act. The most recent contract in this unit also ran from January 1, 1993 through December 31, 1995.

The contract recognition clause includes the training series titles. Training technician and senior training technician are in the training series; however, at a May 1995 meeting, CWA agreed to exclude the senior training technician from its unit. Subsequently, CWA President Elaine Waller sent a letter to Board Director Ann Saboe confirming that the parties agreed that the position was supervisory, should be included in the OPEIU supervisory unit, and that OPEIU was willing to include this title in their unit. A formal agreement removing the title was signed by representatives of the Board and CWA on August 21, 1995. It was silent as to adding the title to the OPEIU unit.

The table of organization submitted by the Board diagrams its structure. Ann Saboe, the director of welfare, reports to the Board. The nine department directors report to Saboe.<sup>1/</sup> Only one of the three disputed titles, the supervisor of accounts, appears on the table of organization.

The training supervisor, who runs the staff development and training department, reports to the director of welfare. The assistant training supervisor reports to the training supervisor. The senior training technician reports to the assistant training supervisor.<sup>2/</sup>

The Board's training plan describes the mission of the training unit as follows:

...to provide employees with the skills and resources they need to carry out the agency's mission... by developing and implementing training in the various programs available in the agency and by developing programs throughout the year for the personal growth of employees. We also provide generic program information for students and the general public when requested.

The training plan is varied and includes clerical, orientation, personal growth, special programs, supervisory and technical training. Staff in this department also schedule

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1/ These departments include personnel, administrative services, social services, office services, income maintenance, child support and paternity, legal unit, staff development and training, and fiscal services.

2/ There are also two systems analysts and two principal clerk typists in this department whose reporting channels are unknown.

conference rooms, act as backup for the switchboard and maintain contact with the public. All new supervisors are trained in agency policy and basic supervisory techniques. Supervisors are also trained on methods of developing written procedures for their unit's operation. Additionally, supervisors are trained in the evaluation procedures used by the Board. Training department staff also conduct refresher courses, follow-up training, or training in conjunction with a corrective action plan if necessary as determined by an employee's supervisor.

At the end of new employee training, the assistant training supervisor or the senior training technician completes an employee evaluation form reviewing the employee's performance. The evaluation goes into the new employee's personnel file.<sup>3/</sup> The employee's supervisor conducts a 60 to 90 day evaluation period and decides if the employee passed the working test period. The training evaluation may be used as a reference for the employee's supervisor, although no evidence was supplied demonstrating that these new employee evaluations were ever used to decide a personnel action. Employees participating in a refresher, follow-up, or corrective action training do so at the decision of their departmental supervisor. They may receive an evaluation at the end

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<sup>3/</sup> This report is not grievable.

of the specific training if requested by the employee's supervisor.<sup>4/</sup>

Two evaluations are conducted every year by each employee's direct supervisor. One is a formal annual evaluation and the other is informal. The formal annual evaluation is used to determine the basis for an employee merit increase. Evaluations may also be used both in the discipline process and in the promotional procedure. Promotions are determined by the employee's direct supervisor, the supervisor's administrator and a disinterested third party at the supervisory level. Training department staff are not involved in promotional decisions nor was evidence provided indicating that evaluations performed by the assistant training supervisor or senior training technician were ever used to make any positive or negative personnel decisions.

Training supervisor Grace Beyranevand plans and supervises the staff development and training program and is excluded from any negotiations unit. According to the examples of work listed in the class specification, Beyranevand supervises the staff development and training unit personnel; submits the unit budget; meets with administrators and supervisors to identify and implement training programs to resolve problems; prepares the annual training plan including budget, content and type of programs; implements continuing programs of staff development including counselling

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<sup>4/</sup> These trainings can be shortened or extended at the discretion of the trainer.

services for employee growth; establishes a manpower needs assessment as part of a management manpower planning system.<sup>5/</sup>

The assistant training supervisor, Royell Simpson, reports directly to Beyranevand as described in the class specifications and in the Board performance standards report. This position assists the training supervisor in developing plans and carrying out staff development and training programs. Examples of work described in the class specification include planning training program content; assisting in supervising training programs; conducting training programs; evaluating learning results in relation to specific performance objectives; revising training programs and developing proposals for new programs; preparing reports of training matters with findings, conclusions and recommendations.

Nothing in her job description includes supervision of employees. However, the performance standards reports submitted include supervision and planning work of the senior training technician and the principal clerk typist. Further, the Board submitted employee performance appraisals prepared by the assistant training supervisor concerning the senior training technician Ruth Hallowell for 1993/1994 and 1994/1995. Simpson has evaluated R. Hallowell on her job performance. These evaluations have resulted in merit increases for R. Hallowell.<sup>6/</sup> The assistant training

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<sup>5/</sup> The manpower system is designed to ensure qualified people will be available to fill vacancies.

<sup>6/</sup> Currently, the senior training technician is at the maximum salary step so merit increases are no longer available to her.



supervisor has never had any role in hiring, discharges, or discipline of any employees including the senior training technician.<sup>7/</sup>

The assistant training supervisor has been involved with all aspects of the Board's training plan. Simpson has completed evaluations for employees upon completion of their initial training period. Simpson may have also prepared evaluations, at the request of an employee's supervisor, if a refresher or corrective training has been conducted. However, no examples of these or how any training evaluations were used to make personnel decisions were provided. No examples of conflicts between the assistant training supervisor and other supervisory unit employees were described.

Ruth Hallowell's duties as senior training technician are described in the job class specifications. Under direction, she assists with the planning, development and administration of a designated portion of the employee development training program. The work described includes taking the lead in the assigned phase of a training activity once the training program has been established; visiting offices and sub-units to discuss varied operating problems with a view towards training employees; giving appropriate assignments and instructions to unit employees and supervising performance of their work; devising training plans, coordinating,

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<sup>7/</sup> Simpson didn't hire R. Hallowell because Hallowell had already served in the position when Simpson was employed by the Board. The Board asserts that a role in discipline could occur in the future.

overseeing and conducting topical seminars and preparing the materials for the sessions; and assisting in establishing evaluation procedures to determine the progress of participants and the effectiveness of the training program.

In addition to the class specification, performance appraisals and performance standards reports were submitted describing the job duties. This position primarily directs training of new, reassigned and promoted employees in programs and assists in developing and upgrading technical expertise and training materials needed by employees.

During a training program, she authorizes employee breaks and lunch times and may counsel trainees regarding their training. R. Hallowell does not actually supervise anyone. She is not responsible for hiring, discharging or disciplining any employees.

R. Hallowell prepares end of training program reports, which may be included in an employee's personnel file and are available as a reference to the employee's supervisor. No examples were provided describing how evaluations prepared by the senior training technician were used for personnel decisions. While an employee is participating in a training program, R. Hallowell may provide input to the employee's supervisor regarding the employee's progress. No evidence indicates that R. Hallowell's position on the employee's progress has been used to decide the discipline, promotion, or demotion of a trainee or employee.

The supervisor of accounts works in the fiscal services department. The organizational chart indicates that the head of the department, fiscal services officer T. Fillmyer, reports to the director of welfare.

The fiscal services officer is excluded from both negotiations units and is viewed by the Board as a member of management.<sup>8/</sup> The fiscal officer, the director of welfare and the Board handle hiring, discharge and discipline duties for this department. There are four supervising account clerks in the department. Three of these employees have their evaluations performed by the fiscal officer.

Anne Holloway, the supervisor of accounts, heads the administration/payroll section in the fiscal services department. This title has been included in the supervisory unit since its inception and appears in the recognition clause. According to the class specification, under direction, this employee supervises

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<sup>8/</sup> The duties of the fiscal officer are described in a class specification. This employee plans, organizes, coordinates and directs a system for managing the financial resources of a department, agency or governmental agency. This employee develops, coordinates and maintains an integrated system of financial staff services including at least accounting, budgeting and financial reporting; exercises effective control over the organization's financial resources; coordinates and synthesizes financial and management data so as to interpret the composite financial results of operations to all levels of management; advises on, develops, coordinates and carries out fiscal policies, procedures and plans; reviews, analyzes, evaluates and reports on program accomplishments in financial terms; advises and assists management officials by supplying financial management advice required to make decisions.

and/or performs highly responsible and difficult clerical work involved in keeping extensive financial accounting records and reports. This position reports to the fiscal services officer. A. Holloway's work assignments generally include complicated features in reconciling, preparing, analyzing and maintaining accounts and financial records. She provides general guidance and advice and suggests techniques for handling unusual situations. She may also spotcheck others' work for technical soundness and conformity to agency requirements. This position may involve supervision over activities of a clerical unit, but this "is not the paramount or primary function of this position." As indicated in the class specification, supervisory responsibilities are "generally limited to such matters as issuing work assignments, reviewing work of staff for completeness and accuracy and providing guidance, instruction, and some training on complex matters. The work performed at this level does not entail the performance of the full range of supervisory responsibilities."

A. Holloway's performance standards reports delineate her objectives and standards. She is responsible for all aspects of administration accounts, payroll, fixed asset, grant money, requisition of funds from the county treasurer, compliance with Civil Service regulations and agency policies, and supervises and motivates staff.

A. Holloway has never hired, disciplined or discharged anyone. The Board asserts she could be responsible for disciplining

one supervising account clerk if necessary. The Board asserts that A. Holloway does make recommendations to a committee involved in hiring and promotions, but no specific examples were cited. A. Holloway has performed annual performance appraisal evaluations on one supervising account clerk. This employee has now reached the maximum salary for the title so the evaluation can't be used to result in a merit increase. No negative personnel actions have resulted from the evaluations performed by the supervisor of accounts on the supervising account clerk.

The employees in the three disputed titles require special areas of expertise and knowledge achieved through years of experience and education. Other supervisory unit positions also require advanced expertise and education. They are all administrative white collar employees. These employees work similar hours, either 8:00 a.m. - 4:00 a.m. or 8:30 a.m. - 4:30 a.m. They share the same benefits and salary ranges.<sup>2/</sup> The supervisor of accounts and the assistant training supervisor prepare performance evaluations on employees which are used to make personnel decisions, like the other supervisory unit employees do. The senior training technician does not. The three disputed titles share the same goals and contribute to the Board's mission to provide quality social services to the public.

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<sup>2/</sup> The senior technician's salary and benefits are established by the CWA contract. The other two disputed titles have salaries and benefits set by the OPEIU contract.

Analysis

A clarification of unit petition is used to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification or as set forth in the parties recognition agreement. The Commission will accept a clarification petition filed by parties any time during the life of their contract which seeks to exclude personnel whom the parties by mutual agreement had previously included in the contract even though, at the time of the inclusion, they were statutory supervisors or police and notwithstanding the existence of substantial, actual or potential substantial conflict of interest. Where appropriate, the Commission may make determinations to exclude personnel from a unit for the reasons stated above. However, the mutual agreement of the parties to include these categories under the contract has created "special circumstances" which dictate that these categories continue to be included in the unit during the life of the contract.<sup>10/</sup> Additionally, where the clarification determination involves a newly-created job title, a change of circumstances or the creation of an operation or facility any one of

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<sup>10/</sup> N.J.S.A. 34:13A-5.3 provides: 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 non-supervisory personnel to membership....

which has occurred after the execution of the parties' most recent contract, a Commission determination to include these titles in the unit shall be effective immediately. Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Both of these clarification of unit petitions are properly filed. Because the senior training technician was recently removed from the rank and file unit, a change of circumstances necessitates addressing the unit placement of this title. As for the supervisor of accounts and the assistant training supervisor, they have historically been voluntarily included by the parties in the supervisory unit. However, now the Board is asserting that a substantial conflict of interest exists between these employees and others in the supervisory unit. Pursuant to Clearview, a clarification of unit petition is the appropriate vehicle to use to address this issue.

The statutory definition of a supervisor is found in N.J.S.A. 34:13A-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 non-supervisory personnel to membership...

and also in N.J.S.A. 34:13A-6(d):

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 (a) both supervisors and nonsupervisors.

The Commission has construed a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970); Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984). Further, in Hackensack Bd. of Ed., citing Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358-364 (1976), the Commission noted that there should be evidence that the supervisory authority allegedly possessed is exercised with regularity.

Where one employee conducts employee evaluations of another, there may be a significant conflict of interest where the evaluation plays an important role in other personnel actions such as employment renewal, achieving tenure, or receiving a salary increment. See Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971); Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987); Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985); Willingboro Tp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984); Cty. of Essex, D.R. No. 91-28, 17 NJPER 256 (¶22118 1991); Emerson Bd. of Ed., D.R. No. 82-13, 7 NJPER 571 (¶12255 1981); and Salem Community College, D.R. No. 88-35, 14 NJPER 426 (¶19173 1988).

Finally, 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].

In Bd. of Ed. of West Orange v. Wilton, the Court determined that various levels of supervisory employees may not be automatically included in the same unit with one another. Rather, the Court found that:

...where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and that a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. 57 N.J. at 427.

The Court added that each case needs to be examined on its own facts, and that only where such a conflict was "de minimis" or tolerable, would the unit combination be permissible.

I find that the supervisor of accounts should be removed immediately from the supervisory unit because an actual conflict of interest exists between this title and the supervising account clerk.<sup>11/</sup> The supervisor of accounts has completed annual performance appraisal reviews and evaluations on one supervising account clerk that have been used to grant merit increases. This

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<sup>11/</sup> The supervisory contract expired December 31, 1995. See Clearview.

duty is significant enough to warrant the removal of the evaluator. OPEIU asserts that negative situations have not resulted from having these two employees in the same unit for five years. That may be true only because the employee received satisfactory evaluations. Sometime in the future, a problem might arise in this unit if these two titles remain in the unit together.

I also will not include the senior training technician in the supervisory unit. The senior training technician is not a supervisor within the meaning of the Act because she doesn't supervise any employees. The class specification mentions supervision of work performance of unit members as a possible example of work. However, R. Hallowell doesn't supervise anyone. Certainly, in her training function, she is a knowledgeable resource person teaching new employees their duties and instructing current employees in new topics or refresher areas. She may prepare evaluative reports at the end of training sessions, but these reports are not used to make personnel decisions. Training tasks do not make her a supervisor within the meaning of the Act.

Finally, the assistant training supervisor will remain included in the supervisory unit. The assistant training supervisor has conducted annual performance appraisal evaluations of the senior training technician which have been used to award merit increases. Additionally, the assistant training supervisors' performance standards report directly includes supervision and planning work of the senior training technician and the principal clerk typist.

Therefore, this title performs responsibilities like other positions in the supervisory unit. Further, I find that the training function of this title does not create a conflict of interest with other titles in this unit. This title has been in this unit for five years with no examples of conflict. No evidence shows that any training session evaluations performed by this position have been used to decide any personnel actions.

The Board asserts that the training department's function is so aligned with management that both contested training titles should not be in units. The Board cites Mercer Cty. Welfare Bd., D.R. No. 83-28, 9 NJPER 298 (¶14138 1983), aff'd P.E.R.C. No. 84-56, 9 NJPER 707 (¶14308 1983), in which the Director found that training technicians could not be added to a non-professional and professional non-supervisory unit as a reason to find a conflict with the training department and all other employees. The Mercer Cty. case involved employees never in a unit performing duties historically done by employees outside of the unit. Here the training technician<sup>12/</sup> and the senior training technician have been included in the CWA rank and file unit since 1973. The assistant training supervisor has also historically been included in the supervisory unit. No examples of conflict have arisen.

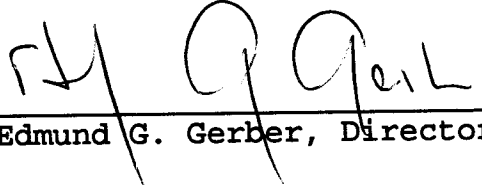
Therefore, based upon the facts discussed, the supervisor of accounts will be removed immediately from the supervisory unit; I

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12/ Not a disputed title and still in CWA's unit.

will not add the senior training technician to the supervisory unit;<sup>13/</sup> and the assistant training supervisor shall remain in the supervisory unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: April 24, 1996  
Trenton, New Jersey

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<sup>13/</sup> I am not directing that the senior training technician be put back into the rank and file unit at this time.