

D.R. NO. 91-24

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

In the Matter of

LAKEWOOD HOUSING AUTHORITY,

Public Employer,

-and-

Docket No. RO-90-156

TWUA, LOCAL 225, BRANCH 4,

Petitioner.

SYNOPSIS

The Director of Representation sustains a challenge by the Lakewood Housing Authority to the eligibility of the Congregate Services Coordinator to vote in an election of nonsupervisory employees. The Director concludes that the Coordinator's duties are supervisory within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Director further dismisses the TWU's election objections and challenge to the Excelsior list because they are untimely.

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Appearances:

For the Public Employer
Cirvelli & Crivelli
(Dr. Joseph Crivelli, Vice President)

For the Petitioner
Susan A. Resch, Secretary-Treasurer

DECISION

On September 6, 1990, the Public Employment Relations Commission ("Commission") conducted an election among all non-supervisory employees employed by the Lakewood Housing Authority ("Authority"). See Lakewood Housing Authority, D.R. No. 91-5, 16 NJPER 475 (¶21204 1990).

At the election, four votes were cast for the petitioner, TWU, Local 225, Branch 4 ("TWU"), four votes were cast for no representative and one ballot was challenged. The ballot of Bernadette Williams was challenged because her name was not on the voter eligibility list. The challenged ballot may be determinative of the outcome of the election. N.J.A.C. 19:11-9.2(k).

The Authority maintains that Williams is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") because she supervises six employees in the Congregate Services Program. Therefore, she should be excluded from the unit, the challenge to her ballot should be upheld and her vote should not be counted.

The Union asserts that Williams is not a supervisor. It admits she has administrative duties over Congregate Services employees, or homemakers, but argues that those duties are not supervisory within the meaning of the Act and that the homemakers are not employees of the Authority.

We conducted an administrative investigation into the challenged ballot. There are no substantial and material factual issues which may more appropriately be resolved by an evidentiary hearing.

N.J.S.A. 34:13A-5.3 of the Act provides in relevant 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 a collective negotiations unit by an employee organization that admits nonsupervisory personnel to membership.

The Commission has interpreted the statutory definition of supervisor to mean an employee having the authority to hire, discharge, discipline, or effectively recommend those actions. Cherry Hill Department of Public Works, P.E.R.C. No. 30, 114 NJPER Supp 30 (1970). In order to establish supervisory status, it must

be clearly shown that the supervisory authority claimed to be possessed must be exercised with some regularity. The Commission will look beyond the title or the job description in order to ascertain the nature of the authority the employee actually exercises. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). Further, acting in a lead capacity, overseeing and directing the work of other employees does not make an employee a supervisor within the meaning of the Act. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985), Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987).

The part-time employees of the Congregate Services Program report to Williams, submit their time sheets to her and are otherwise supervised by her. Williams does the background checks and gathers information for potential hiring and firing. She also does the actual hiring, training and evaluating Congregate Services employees. The Authority also submitted evidence of two minor, disciplinary actions taken by Williams against Congregate Services employees.

New Jersey Department of Civil Service specifications for Williams' position state "Hires, trains and supervises program staff and volunteers."

The TWU points to an earlier PERC election conducted in October 1988. In that election, Williams was included in the petitioned-for unit, but now the Authority claims she should be

excluded from the unit. The Authority's earlier position is not determinative of the issue of Williams' supervisory status. Given the circumstances of this case, I must look to Williams' actual duties to determine whether she is a supervisor and should be included in or excluded from the petitioned-for unit.

Both parties claimed, for very different reasons, that the Congregate Services employees are not employees of the Authority.

The Housing Authority argued that since the money for the salaries of the Congregate Services employees comes from the State and is kept in an account separate from other funds of the Housing Authority, these employees are not employees of the Housing Authority.

The account for the Congregate Services employees payroll is entitled "The Housing Authority of the Township of Lakewood in the County of Ocean, N.J. Congregate Service Program." The payroll account for other employees of the Authority is entitled "The Housing Authority of the Township of Lakewood in the County of Ocean, N.J. General Fund/Payroll Account."

In determining which entity is the employer, i.e., the State or the Authority, the Commission determines which entity exercises substantial control over personnel determinations: that is, control of hiring, firing, work schedules, promotions, discipline, evaluations, vacation schedules, hours of work, scheduling, wage benefits, personnel funding and expenditures. County of Morris, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985);

Ocean County Prosecutor, D.R. No. 82-29, 8 NJPER 60 (¶13024 1981); Bonnie Brae Child Care Counselors Assn., D.U.P. No. 80-7, 5 NJPER 457 (¶10231 1979); Newark Housing Development & Rehabilitation, D.R. No. 80-2, 5 NJPER 328 (¶10175 1979).

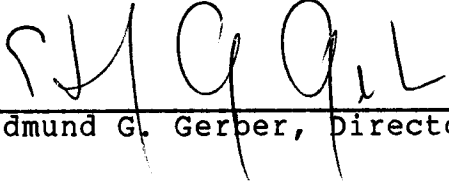
Williams, as an employee of the Authority, maintains official personnel records and files, completes performance ratings and participates in hiring, disciplining and firing of the Congregate Services employees. The salary funding for the disputed employees is not controlling. All other factors indicate that the Lakewood Housing Authority, through Williams, is the employer of the five part-time Congregate Services employees.

After I indicated to the parties that I had preliminarily concluded that Congregate Services employees are employees of the Authority, the TWU objected to the conduct of the election by claiming that the Congregate Services employees should have appeared on the Authority's election eligibility list. However, the dispute over Williams' eligibility arose prior to the election when her name did not appear on the eligibility list. (See TWU letter of August 24, 1990.) At that time, the Authority argued that Williams supervised Congregate Services employees. The TWU had to be aware of these employees at the time the dispute over Williams' status first arose. The Commission rules state that parties to an election have five days from the date of the election to file an objection. See N.J.A.C. 19:11-9.2(h). The TWU did not raise the issue of the omission of the Congregate Services employees from the eligibility

list until January 16, 1991, well after the expiration of the five-day objection period.

Accordingly, I find that the TWU's objection to the omission of the five Congregate Services employees from the eligibility list is untimely. Further, I find that Brenda Williams is a supervisor within the meaning of the Act, and since supervisors are excluded from the unit, her ballot is void and should not be opened and counted. Therefore, I will issue a Certification of Results based upon the Tally of Ballots issued on September 6, 1990.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 28, 1991
Trenton, New Jersey