

D.R. NO. 88-34

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

In the Matter of

LAKELAND REGIONAL HIGH SCHOOL  
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-88-26

LAKELAND CUSTODIAL ASSOCIATION, NJEA,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the Assistant Supervisor of Buildings and Grounds into the unit represented by the Lakeland Custodial Association, NJEA. The Director rejects the Lakeland Regional High School Board's contention that the Assistant Supervisor is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., based on his finding that the Assistant Supervisor's authority to hire, discharge, discipline, evaluate or effectively recommend those activities has never been exercised.

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Appearances:

For the Public Employer  
Sills, Beck, Cummis, Zuckerman, Radin, Tischman &  
Epstein, Esqs.  
(Lester Aron, of counsel)

For the Petitioner  
Zazzali, Zazzali & Kroll, Esqs.  
(Paul L. Kleinbaum, of counsel)

DECISION

On December 2, 1987 the Lakeland Custodial Association, NJEA ("Association") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to clarify its existing unit of custodial and utility personnel to include the position of Assistant Supervisor of Buildings and

Grounds/Maintenance employed at the Lakeland Regional High School Board of Education ("Board").<sup>1/</sup>

The petitioner claims that the Assistant Supervisor is not a supervisory employee, performs unit work, and should be placed in the unit. The Board claims that the Assistant Supervisor is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and must be excluded from the unit of custodial/utility personnel.

Pursuant to N.J.A.C. 19:11-2.6, we conducted an administrative investigation and make the following:

FINDINGS OF FACT

The Board and Association are parties to a collective negotiations agreement effective July 1, 1987 through June 30, 1989. This agreement, signed on September 4, 1987, covers terms and conditions of employment for "all full-time custodial personnel and utility persons."

On November 24, 1987 the Board created the position Assistant Supervisor of Buildings and Grounds/Maintenance ("Assistant Supervisor"). The position was filled on December 15, 1987. The Assistant Supervisor reports to the Supervisor of

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<sup>1/</sup> The petition originally sought to clarify the status of the Maintenance Man title, which was abolished by the Board on November 24, 1987. The Board created the position at issue on the same date. Accordingly, the petitioner amended its petition and requested that its unit be clarified to include the position of Assistant Supervisor of Buildings and Grounds/Maintenance.

Buildings and Grounds ("Supervisor"), a position which also supervises the Head Custodian. The Supervisor of Buildings and Grounds performs planning and administrative duties and is not able to supervise day-to-day custodial and maintenance operations. The Supervisor reports directly to the Board Secretary/Business Director. The Board asserts that the Assistant Supervisor position supervises two employees: the Utility Person and Assistant Maintenance/Groundskeeper. The Board claims that the Assistant Supervisor assigns and reviews the work of these employees and, in the future, will conduct their annual performance evaluations. The Board stated that there has not been any hiring in this unit since the Assistant Supervisor was hired. However, the Board alleges that the Assistant Supervisor will initially interview and screen future applicants for unit positions and his recommendation will carry substantial weight. The Supervisor and Head Custodian also interview and recommend applicants to the Superintendent who, in turn, recommends applicants to the Board. The Board stated that the Assistant Supervisor will also recommend discharge and disciplinary actions but that the Board makes final decisions on these matters. In the past, disciplinary recommendations were made by the Head Custodian to the Superintendent and by the Superintendent to the Board.

The Board submitted a job description for the Assistant Supervisor which, in relevant part, states:

1. The Assistant Supervisor of Buildings and Grounds will be directly responsible to the Supervisor of Buildings and Grounds.

2. The person shall have the responsibility of establishing thorough and efficient maintenance schedules for himself, the Assistant Maintenance/Groundsman, Utility Person and outside custodians when assigned to him.

3. The person shall recommend to the Supervisor of Buildings and Grounds repairs and maintenance projects, and, when approved, expeditiously complete the same.

4. The Supervision of Assistant Maintenance/Groundskeepers/Utility persons are his responsibility.

The Association claims that the Assistant Supervisor should be included in the unit because the incumbent spends virtually all of his time working side-by-side with unit members. The Association did not assert any other specific facts in support of its position, but argues that none of the alleged supervisory duties (hiring, performance evaluation, disciplinary authority) have yet been carried out by the Assistant Supervisor.

The Board's job description for the disputed position also requires the Assistant Supervisor to perform other functions. It states:

6. The specific responsibilities of the Assistant Supervisor of Buildings and Grounds shall be to repair and maintain, or cause to be repaired and maintained the following:

A. Building mechanical equipment, plumbing, heating, ventilation and air conditioning equipment.

B. Building and ground equipment and utilities, as well as educational equipment that does not require technical service, i.e., computers.

C. Establishment of periodic maintenance of tractors, trucks, grass cutting, and all related equipment.

D. Establishment of schedules for periodic maintenance of all athletic fields, lawns, shrubs, trees, as well as bleachers, scoreboards and all related equipment.

ANALYSIS AND RECOMMENDATION

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 (1) both supervisors and nonsupervisors.

Consistent with the above, 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).

The Board claims that the Assistant Supervisor will have a role in hiring: he will be the first interviewer and will screen out inappropriate applicants. Significantly, the applicants will also be interviewed and recommended for hire by the Head Custodian,

Supervisor, and Superintendent. The final decision will be made by the Board. Even accepting the Board's assertion that the Assistant Supervisor's recommendation will carry substantial weight, the number of subsequent "approval" levels through which his determination will pass undermines the argument that he has effective recommending power. Further, while the Board asserts that the Assistant Supervisor has the authority claimed, it is undisputed that he has never exercised this authority. Based on these facts, we conclude that the Assistant Supervisor does not have authority to make effective hiring recommendations. Cherry Hill; Township of Teaneck, E.D. No. 23 (1971); and Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984).

The Board asserts that the Assistant Supervisor will effectively recommend discipline and discharge of his subordinates. However, the job description does not enumerate these responsibilities. As with the hiring of new employees, the Assistant Supervisor will make a recommendation which is subject to review and recommendation by several others in the chain of command. Final discipline and discharge decisions are made by the Board upon the recommendation of the Superintendent and presumably, the Supervisor. At the informal conference, neither party reported any instances of disciplinary or discharge recommendations initiated by the Assistant Supervisor. In Hackensack Bd. of Ed., citing Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976), the Commission noted that there should be evidence that the

supervisory authority allegedly possessed is exercised with regularity. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Here, there is no indication that the employee in the Assistant Supervisor position has exercised effective authority to hire, discipline or fire other employees.

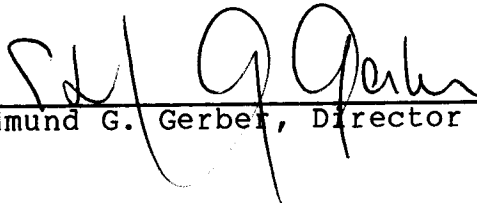
Finally, the Board states that the Assistant Supervisor will evaluate the performance of two employees. This evaluation is done annually but it has never been done by the Assistant Supervisor. Previous Commission decisions have included the conduct of performance evaluations as a factor relevant to establishing a conflict of interest which warrants removing an evaluator from a unit. 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); and Willingboro Tp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984). Conducting employee evaluations can be an indicator of 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. Accepting the Board's assertion that the Assistant Supervisor will perform evaluations, it is unclear what effects those evaluations will have on other employees' terms and conditions of employment.



Based upon the above, we conclude that the position of Assistant Supervisor is not a supervisor within the meaning of the Act and that the presence of this position in the custodial unit will not create an impermissible conflict of interest. There are no examples of the Assistant Supervisor making effective hiring, disciplinary or discharge recommendations concerning other employees. We note that this is a newly created position and that, in the future, if circumstances change, the Commission will review the inclusion of this position in the unit, upon the proper filing of a clarification of unit petition.

In accordance with the above, we clarify the custodial unit to include the position of Assistant Supervisor of Buildings and Grounds/Maintenance.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: May 27, 1988  
Trenton, New Jersey