

L.D. 92-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HAZLET,

PUBLIC EMPLOYER,

-and-

Docket No. L-92-1

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1032,

EMPLOYEE ORGANIZATION.

Appearances:

For the Public Employer,
Jerome A. Cevetello, Jr., Municipal Administrator

For the Employee Organization,
Nicholas Gallichio, Representative
Evelyn Cranwell, Shop Steward

LAP DECISION

The Township of Hazlet and the Communications Workers of America Local 1032 have jointly agreed to submit this dispute to the Public Employment Relations Commission's Litigation Alternative Program. The record consists of joint submissions filed by the parties on March 26, 1992 and April 28, 1992. The parties agreed that a hearing was unnecessary and that my determination could be based upon the joint submissions.

The issue is whether a supervisor of seasonal employees who also holds a full-time non-supervisory position can be included in a unit of other non-supervisory employees. Specifically, I must determine whether Vikki Olsen, the seasonal swim club manager and a

full-time 12-month clerk-typist, can be included in the C.W.A. represented non-supervisory unit.

The Township argues that an employee who is a supervisor for at least part of the year should be excluded from a non-supervisory unit, despite also holding a non-supervisory position. The Township contends that the supervisory role creates an impermissible conflict of interest between supervisory and non-supervisory employees.

C.W.A. argues that the full-time non-supervisory clerk-typist position is eligible for inclusion in the non-supervisory unit. Olsen's supervisory responsibilities over seasonal employees do not create a conflict of interest with the non-supervisory unit members.

FINDINGS OF FACT

The parties' March 26, 1992 and April 28, 1992 joint submissions contain, the following facts:

The Township and C.W.A. are parties to a collective bargaining agreement which expired on December 31, 1991. They have not executed a successor agreement, but the C.W.A. membership has ratified a Memorandum of Agreement for the period of January 1, 1992 through December 31, 1994. The Recognition Clause of the contract (Article I) states that:

The Township recognizes Local 1032, C.W.A.,^{1/}as

^{1/} In the 1992-1994 Memorandum, C.W.A. Local 1032 was inserted for C.W.A. Local 1044.

the agent in matters pertaining to wages, hours of work and other conditions of employment for all regularly scheduled white collar employees, scheduled to work not less than three (3) work days per week, employed by the Township. Excluded are all professional employees, supervisors, craft, police, firefighters, confidential employees and managerial executives within the meaning of the Act and all other employees".

The parties agree that the swim club manager is not included in the negotiations unit because it is a seasonal, supervisory position.

The parties agree that the clerk-typist is included in the unit because it is a white-collar non-supervisory position.

The Township operates a swim club whose season extends from Memorial Day through Labor Day. For three years, Olsen has been the swim club manager and she was re-appointed to the position for the 1992 season early this year. This position reports to the municipal administrator and also to a liaison for the township committee. The manager has responsibility for the overall supervision of the club's daily operations. During the season, her duties include hiring, disciplining, evaluating, and terminating swim club employees. She also schedules the employees, purchases supplies, and makes recommendations about the staff and activities of the club. Her recommendations on hiring and disciplining staff have been followed by the municipal administrator and by the township committee. During the 1992 pre-season and in other prior seasons, Olsen has interviewed and recommended hiring approximately 60 employees. Her recommendations were followed. In 1991, she recommended terminating several employees and these recommendations were also followed by the township committee.

The swim club manager begins pre-season planning, interviewing, purchasing and facility preparation duties in March. After the season, the manager handles the post-season shutdown and maintenance of the facility through October. Olsen spends about 30-40% of her time performing swim club manager duties for the Township.

Seasonal swim club employees are not represented in any collective negotiations unit. The employees work three months per year (Memorial Day through Labor Day) for 35-38 hours per week. They do not receive benefits or pension status. Approximately 70% of the employees are re-employed season to season. They are interviewed annually by the swim club manager who makes hiring recommendations to the municipal administrator and the township committee.

The job titles and duties of the 61 swim club employees vary. The swim club manager directs the entire operation. Two on-site swim club supervisors work shifts overseeing the club's operations. Two clerk-typists handle office work, correspondence, member registration and the telephone. Five gate attendants check passes and collect guest admissions. A snack bar manager and 15 snack bar employees cook, clean and operate the cash register. Nineteen lifeguards work at the club. Seven maintenance employees clean, paint, landscape, and maintain the facility. An activities director and an assistant activities director coordinate arts and crafts and sports programs. There is a swim team coach. Five substitutes fill in as needed.

In December 1991, Olsen was hired as an entry level full-time clerk-typist in the Finance Department reporting to the Township Chief Finance Officer Patricia Frank. The clerk-typist duties include typing purchase orders, posting to accounts payable and receivable, and preparing bill lists and vouchers. The position has been in the non-supervisory white-collar unit since the unit's inception in 1981. This is the first year that Olsen holds the clerk-typist and swim club manager positions.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides that

"... 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 nonsupervisory personnel to membership ..."

N.J.S.A. 34:13A-6(d) states that

"...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors,...."

Relying on these statutory requirements, the Commission has defined a supervisor as one having the authority to hire, discharge, discipline or to effectively recommend any of these actions. Cherry Hill Tp. DPW, P.E.R.C. No. 30, N.J. Supp. 114(¶30 1970). We must review all circumstances of a particular case to determine whether the employee has and regularly exercises such powers. Atlantic Cty. Div. of Soc. Serv., D.R. No. 90-21, 16 NJPER 191 (¶21080 1990);

Salem Comm. College, D.R. No. 88-35, 14 NJPER 426 (¶19173 1988); Hackensack Bd. of Ed., P.E.R.C. No. 85-89, 11 NJPER 21 (¶16010 1984); Somerset Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

The Commission has not addressed the specific question of the unit placement of an individual acting as a seasonal supervisor who also holds a non-supervisory unit position. The New Jersey Supreme Court has determined that experiences and adjudications under the National Labor Relations Act ("NLRA"), 29 USCA 151 et seq., should be a guide in the public sector. Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409, 424 (1970). The issue has been addressed by the National Labor Relations Board ("NLRB") and by the Courts.

Private-sector case law requires that the facts in each case be examined to determine if a sharp demarcation exists between the time the individual performs the duties of a seasonal supervisor and the duties of a non-supervisory unit position. If the rank and file position clearly comes within the scope of the negotiations unit, and if the individual spends the bulk of her time performing unit duties, she will be included in the unit, but only while performing rank and file duties. Thus, the employee may participate in collective bargaining affecting terms and conditions of her non-supervisory employment. However, no bargaining representative may represent the individual with respect to the employee's supervisory duties. During the discernible period when the individual performs supervisory duties, the individual is excluded

from the unit. See Whitmoyer Laboratories Inc., 114 NLRB No. 749, 37 LRRM 1047 (1955); Great Western Sugar Comp., 132 NLRB No. 936, 48 LRRM 1462 (1962), mot. for recon. 137 NLRB No. 551, 50 LRRM 1186 (1962); Florida Agricultural Supply v. NLRB, 328 F.2d 989, 55 LRRM 2663 (5th Cir. 1964); Westinghouse v. NLRB, 424 F.2d 1151, 74 LRRM 2070 (7th Cir. 1970); GAF Corp. v. NLRB, 524 F.2d 492, 90 LRRM 3295 (5th Cir. 1975).

The shifting unit status of the individual accommodates the situation that the employer established when assigning one individual to two positions. In Great Western, the NLRB called this limited inclusion a "practical adjustment to the realities of the situation". 50 LRRM at 1188. The individual's loyalties to the employer and to the union are not compromised as a result of the employee's shifting status because, as stated in Great Western,

"These employees will not be 'serving two masters' at the same time. They will be serving them at different times." 50 LRRM at 1187-1188.

Here, the Township and C.W.A. agree that Olsen is a supervisor when managing the swim club and that swim club employees are seasonal and not included in any bargaining unit. The swim club operates from Memorial Day through Labor Day and some of Olsen's duties extend from March through October.

This case presents a special circumstance in that I must look at the unit placement of an individual rather than the unit placement of a title. Based on private-sector case law, Olsen, as a seasonal supervisor, should be excluded from the non-supervisory

unit, at least for the period when the swim club is in operation. From Memorial Day through Labor Day, her supervisory responsibilities are sharply demarcated. Great Western.

The parties have also stipulated that there are pre-season and post-season supervisory responsibilities which she performs as well. I find that the total period of time that Olsen should be excluded from the unit should be extended to cover the entire time swim club employees are actually on staff and are under the supervision of Olsen. I do not think it is necessary to exclude her from the unit during times when she is performing pre-season or post-season administrative responsibilities related to the swim club, and is not actually supervising staff. During that time and also when Olsen is only performing clerk-typist duties, she can be included in the non-supervisory unit, where the title of clerk-typist clearly is included. The C.W.A. may not, however, represent her at anytime in any grievance arising from her responsibilities as the swim club manager.

My determination may require the parties to develop some procedures related to Olsen's shifting unit status (i.e. how to address agency fee or dues deductions). However, I believe that my determination accommodates the needs of the Township, C.W.A., and the individual involved.


Elizabeth B. Carroll
Commission Designee

DATED: May 15, 1992
Trenton, New Jersey