

P.E.R.C. NO. 92-115

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FAIRFIELD,

Petitioner,

-and-

Docket No. CU-H-91-21

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1158,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses an amended petition for clarification of unit filed by the Township of Fairfield. The Township seeks removal of four foremen from a collective negotiations unit of public works employees represented by the International Brotherhood of Electrical Workers, Local 1158. Based on this record, the Commission cannot find that the duties these foremen have performed make them statutory supervisors.

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INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1158,

Respondent.

Appearances:

For the Petitioner, Horowitz & Pollack, attorneys  
(Stuart Bochner, of counsel)

For the Respondent, Carella, Byrne, Bain, Gilfillan, Cecchi  
& Stewart, attorneys (David R. Cosgrove, of counsel)

DECISION AND ORDER

On November 7 and December 27, 1990, the Township of Fairfield filed a petition and amended petition for clarification of unit. The Township seeks the removal of four foremen from the collective negotiations unit of public works employees represented by the International Brotherhood of Electrical Workers, Local 1158. The Township asserts that the foremen are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Local 1158 disputes the employer's claim.

On September 25 and 26, 1991, Hearing Officer Regina A. Muccifori conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by January 8, 1992.

On February 21, 1992, the Hearing Officer recommended dismissing the petition. H.O. 92-1, 18 NJPER 155 (¶23073 1992). She found that the foremen are not supervisors within the meaning of the Act.

On March 25, 1992, the Township filed exceptions. It does not specifically contest any of the Hearing Officer's factual findings. It argues, however, that each foreman effectively recommends discipline and is therefore a supervisor within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-8.8, we transfer this case to ourselves. We have reviewed the record. The Hearing Officer's finding of fact (H.O. at 2-10) are accurate. We adopt and incorporate them with one clarification and one addition. We clarify finding no. 5 to indicate that the record citations do not show that a foreman can discipline an employee under him (1T81-1T82, 1T93). We add to finding no. 9 that although Ronald Karl, foreman for the water and sewer department, recognized that removing an employee from weekend chart duty for three months could be considered discipline, he did not know if he had the authority to do it (2T119). He testified that he might have overstepped his bounds by removing the employee from chart duty for three months, but he was trying to correct him without taking the problem higher and having more stringent action taken against him (2T119-2T120).

Our definition of supervisor derives from N.J.S.A. 34:13A-5.3: a supervisor is one who hires, discharges, disciplines or effectively recommends the same. Mere possession of authority to

do so is not enough. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). We must review all the circumstances of a case to determine whether the employee has and regularly exercises such power. Cherry Hill Tp. DPW, P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970).

These foremen do not hire or fire. The determination of their supervisory status therefore turns on whether they discipline or effectively recommend discipline. The testimony on this issue is conflicting.

Fairfield is governed by a mayor and council. The chain of command runs from the mayor and council, to the Township administrator, to the Township engineer, to the superintendent of public works, to the foremen, to the public works employees.

The mayor, elected 33 months before the hearing, testified that foremen have denied overtime to employees whose performance was not up to par (1T127). The Township administrator, hired just nine months before the hearing and relying primarily on personnel records, testified that foremen make recommendations that are brought up through the chain of command where an ultimate decision is made (1T24).<sup>1/</sup>

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<sup>1/</sup> The administrator also testified that foremen can suspend, on the spot, an employee who shows up for work intoxicated or who creates a safety hazard for other employees or the public. Such action by a foreman, while important, is qualitatively different from a decision to impose a penalty for misconduct. The authority to prevent an unfit employee from working goes hand in hand with the responsibility to see that assigned work is performed correctly and safely. In any event, there is no evidence in the record that any foreman has ever exercised such authority.

The superintendent of public works, on the other hand, testified that the foremen had not recommended discipline, but had simply reported misconduct. At the time of the hearing, he had been superintendent for nine years and an employee for over 24 years. The foremen each testified that they do not effectively recommend discipline. The Hearing Officer found that one foreman denied an employee the right to work overtime. But we have added to the factual findings this foreman's testimony that he believed that he might have been overstepping his authority. The record contains only one other instance where a foreman tried to discipline an employee. The foreman tried to send an employee home for sleeping on the job. The employee refused because, according to the foreman, the employee knew the foreman did not have such authority.

The job descriptions for the foremen do not describe any duties related to disciplining. The Township's Policy and Procedure Manual speaks about disciplinary recommendations from the department head, not from the foremen.

As best we can determine on this record, the mayor and Township administrator believe that the foremen have, or should have, the authority to discipline under limited circumstances and to recommend discipline under broader circumstances. By contrast, the superintendent and the foremen testified that, at most, the foremen were a conduit for information about employee misconduct. They related incidents where foremen filed reports with the superintendent and an investigation continued up the chain of command.

The standard for determining whether an alleged supervisor effectively recommends discipline is well established.

The mere rendering of an opinion which is subject to independent analysis by the hiring authority does not constitute the high order of reliance necessary to meet the test of effective recommendation. [Tp. of Teaneck, E.D. No. 23, NJPER Supp. 465, 466 (¶114 1971)]

In its exceptions, the Township cites specific instances that it believes prove that the foremen have effectively recommended discipline. It claims that foreman Ralph Romano effectively recommended that employee Mark Taylor be discharged. The facts do not bear out that claim. At one point Romano told the superintendent that he wanted Taylor fired. Taylor was not fired then. Romano later complained about Taylor and the administrator put Taylor on probation. Taylor violated the terms of the probation and was terminated without any recommendations from the superintendent or Romano. The Township also claims that Romano is responsible for time sheets and authorizes overtime. Those responsibilities do not make him a statutory supervisor.

The Township claims that foreman Ronald Karl effectively recommended the discipline of employee John Jeczko when he evaluated Jeczko and noted that he would like to give Jeczko ninety days probation to improve his performance. Karl testified that the administrator asked him to fill out a mid-year evaluation for Jeczko. Since Karl did not feel that Jeczko had improved enough to satisfy the administrator, Karl wanted to give Jeczko an additional

chance to improve. No discipline was involved. The Township also claims that Karl disciplined Jeczko and noted that discipline in a memo placed in Jeczko's personnel file. Karl testified that when he excluded Jeczko from weekend overtime for three months, he might have been overstepping his bounds. Based on the record before us, we are not convinced that this single incident represents the normal evolution of disciplinary determinations. More typically, the foreman would report the employee's misconduct, in this case tardiness, and the superintendent and foreman would meet with the administrator who would decide what action to take.

The Township has not specifically claimed that the remaining two foremen have effectively recommended discipline. It does state that Michael deMontaigne effectively recommended the hiring of one employee. It appears, however, that at the time of the recommendation, deMontaigne had been promoted to assistant superintendent of public works which gave him new areas of authority. He no longer holds that position.


We recognize that local government administrations change and that a new mayor, council and administrator may have a different view of the duties that employees, such as these foremen, should have. But we must look at the record before us. Based on that record, we cannot find that the duties these foremen have performed make them statutory supervisors. If their duties change and the

Township so desires, it may file another petition seeking their removal from the unit of public works employees.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: May 15, 1992  
Trenton, New Jersey  
ISSUED: May 18, 1992



H.O. NO. 92-1

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

In the Matter of

TOWNSHIP OF FAIRFIELD,

Public Employer-Petitioner,

-and-

Docket No. CU-H-91-21

IBEW LOCAL 1158,

Employee Organization.

SYNOPSIS

A Hearing Officer of the Commission finds that four public works foremen are not supervisors under the Act. Accordingly, she recommends dismissing the Township's clarification of unit petition seeking to remove them from the bargaining unit of public works employees.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, 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. 92-1

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

In the Matter of

TOWNSHIP OF FAIRFIELD,

Public Employer-Petitioner,

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Docket No. CU-H-91-21

IBEW LOCAL 1158,

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Appearances:

For the Public Employer  
Horowitz & Pollack, attorneys  
(Stuart Bochner, of counsel)

For the Employee Organization  
Carella, Byrne, Bain, Gilfillan, Cecchi & Stewart, attorneys  
(David R. Cosgrove, of counsel)

HEARING OFFICER'S RECOMMENDED  
REPORT AND DECISION

On November 7, 1990, the Township of Fairfield ("Township") filed a Petition for Clarification of Unit (CU) with the Public Employment Relations Commission ("Commission") seeking the removal of the following titles: Foreman, Public Works, Parks and Playgrounds; Foreman, Public Works, Roads, Buildings and Grounds; and Foreman, Public Works, Water and Sewer Division from the collective negotiations unit of public works employees represented by the International Brotherhood of Electrical Workers, Local 1158 ("Local 1158"). On December 27, 1990, the Township amended its petition, seeking to also exclude the title of Foreman, Fleet Maintenance from the unit.

The Township asserts that the four foremen should be removed from the unit because they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Local 1158 denies that the foremen are supervisors under the Act.

On September 25 and 26, 1991, the undersigned conducted a hearing at which the parties were given the opportunity to examine and cross-examine witnesses, to present evidence and argue orally. Transcripts were received on October 30, 1991.<sup>1/</sup> After an extension of time was granted, the parties filed post-hearing briefs by January 8, 1992.

Based on the entire record, I make the following:

FINDINGS OF FACT

1. Local 1158 was certified by the Commission on January 8, 1990 as the majority representative of all employees of the Department of Public Works. At that time, the Township did not challenge the inclusion of the four foreman in the unit (1T140; 2T142-144).<sup>2/</sup>

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<sup>1/</sup> At the close of the hearing, Local 1158 made a motion to continue the hearing another day, in order for it to call the Township's prior administrator as a witness. By letter dated November 15, 1991, Local 1158's motion was denied.

<sup>2/</sup> "1T" and "2T" refer to the transcripts from the hearing held in this matter on September 25 and 26, 1991, respectively. P- refers to the Petitioner's exhibits placed in evidence at the September 25 and 26 hearing.

2. The Township has a chain of command with the Mayor and Council at the top and the Township Administrator, Francis Bastone, under them. Next in line with respect to the Department of Public Works, is the Township Engineer and then the Superintendent, Lou Batta. Under Batta are the four foremen who each head up a department; Ronald Karl is the Foreman of the Water and Sewer Department, Ralph Romano is the Foreman of the Parks Maintenance Department, Peter Schiffelhuber is the Foreman of the Road Department and Michael deMontaigne is the Foreman of Fleet Maintenance. The line employees are under the foremen (1T13-16, 1T88, 1T139-140).

3. The salary of the foremen is in the mid \$30,000 range while the employees under them earn from \$15,00 to \$30,000 a year. The foremen are evaluated on supervisory evaluation forms which are completed by Batta. The line employees are evaluated on different forms which are completed by the foremen (1T18-19; P-11, P-12, 2T115-117).

4. There is one job description for all four foremen. It does not specify that foremen have the authority to hire, fire or discipline employees under them (1T19-20; P-1). The Township stipulated that the foremen do not hire employees (1T9). The foremen have offices in the Department of Public Works garage (1T20-21).

5. Discipline of an employee is taken up through the chain of command beginning with the recommendation of a foreman (1T24).

Depending on the circumstances, an investigation may be undertaken when a foreman disciplines an employee under him (1T81-82). The foreman, Superintendent and Administrator could be involved in the investigation (1T82).

An employee disciplined by a foreman can appeal to Batta (1T93). Batta can uphold the decision or undertake an investigation on the matter (1T93-94). He can also impose a different discipline or choose not to impose discipline at all (1T95).

If the employee receives an unfavorable decision from Batta, he can appeal to the Township Administrator, who will conduct an investigation. The investigation would entail interviewing the individual, the foreman and Batta. After the investigation, Bastone would make his decision (1T96-97).

If the employee is unhappy with Bastone's decision, he can appeal to the Mayor and Council (1T98). The Council liaison will discuss the matter with the aggrieved employee, and attempt to discover the facts. The Mayor and Council can also undertake their own investigation and make the ultimate decision on the matter (1T100-103).

6. Foremen can suspend an employee on the spot for coming to work intoxicated or engaging in activity that creates a safety hazard for other employees or for the public (1T118). However, foremen do not have the authority to suspend an employee on the spot for tardiness. There was no evidence of a situation where a foreman suspended an employee on the spot (1T117).

The foremen spend the majority of their time working alongside the line employees under them. The four foremen do not believe they have the power to hire, fire, suspend an employee, place an employee on probation or dock an employee's pay (2T6-8; 2T48; 2T96-97; 2T127-128).

7. Ralph Romano has been the foreman of Parks and Playgrounds for four to five years. He has two line employees under him. Approximately 75% of his time is spent working with the line employees maintaining athletic fields and recreation buildings and performing other departmental functions. The rest of the time Romano handles complaints about work that needs to be done (1T110; 2T5-6). When Romano is absent from work, the most senior employee takes over Romano's duties (2T11).

If an employee under Romano is not performing his job properly, Romano will call the employee in and discuss the problem with him. If the problem persists after two meetings, Romano will take the matter to Batta. Then he, Batta and the employee discuss the matter. He would then be informed by Batta to keep a log on the employee in the future (2T7-8). If Batta thinks the matter is serious, he'll take the problem to the Township Engineer or the Administrator (2T9). Romano could voice his opinion on whether the employee should be disciplined, but Batta makes the decision on the matter (2T12-13).

Romano caught an employee, Mark Taylor, sleeping on the job and told him to go home. However, the employee refused since he

knew Romano did not have the authority to issue such an order (2T9-10, 2T30).

Romano continued to have problems with Taylor and complained to Batta about him. In March 1989, Batta, the Assistant Superintendent and the then Township Administrator, Charles Burns, told Romano to keep a log on Taylor. He was told by Batta that "a log was necessary if anything was to come of Taylor" (2T23-29).

On January 10, 1990, Batta and Romano caught Taylor sleeping. While arguing with Taylor, Romano blurted out to Batta that he wanted Taylor discharged. Romano recorded this incident in the log. Taylor, however, was not discharged (1T169, 2T39-40).

In February 1990, Romano complained again to Batta about Taylor. Batta, the Township Administrator, Spencer Tafuri, and Romano then met about the matter (1T14-15). Romano handed Tafuri the log (P-5). Tafuri asked Romano what he wanted him to do about Taylor, to which Romano responded "That's your problem." (1T17). Tafuri then decided to put Taylor on probation (1T18).

Tafuri then called Taylor into the meeting and told him about the probation (1T18). About a week later, Taylor violated the terms of the probation. Romano brought this to Batta's attention and the two brought this to Tafuri's attention. After consulting with the Mayor and Council, Tafuri decided to terminate Taylor. He did not ask for any suggestions or recommendation from Batta or Romano before making his decision (2T19-20, 2T22-23).

Romano has never been involved in the hiring of an employee. He currently has an employee working under him who he did not meet until the employee was already hired (2T16).

8. Michael deMontaigne has been fleet maintenance foreman for approximately the last 10 or 11 years. In September 1987, he also held the position of Assistant Superintendent of Public Works (2T43). He has two line employees under him (1T110). deMontaigne does the same duties as the line men (2T46). When on vacation, the senior employee basically take over deMontaigne's duties (2T55-57). Batta takes over duties involving a sizable purchase or questionable repair (2T57).

If deMontaigne observes an employee doing a job improperly, he will call him in, discuss the problem and recommend any changes or improvements the employee could make. If the problem remains unresolved, he takes the problem to Batta (2T49, 71). If an employee committed an act that warranted suspension, probation, or termination, he would take the problem to Batta (2T55).

deMontaigne brought a chronically late and absent employee, Tom Taylor, to Batta's attention. Batta warned Taylor, but the problems continued. Batta eventually went to the Township Administrator who penalized Taylor (2T50-51).

Sometimes deMontaigne sits in on job interviews with Batta and questions the candidate on his technical ability. He explained that the three best candidates are chosen and then presented to the Township Engineer. The Township Engineer then interviews the



candidates. The Engineer then discusses the candidates with Batta and the Township Administrator. Finally, the Administrator makes the decision who to hire (2T58-59).

deMontaigne sat in with Batta on an interview with John Sessock and asked Sessock questions on his technical knowledge and experience. He does not remember making a recommendation that Sessock should be hired. He did say to Batta that Sessock was good for the job. Sessock was also interviewed by the Township Engineer. The Administrator decided to hire Sessock (P-7; 2T62-66). deMontaigne explained that regardless of what he thought about a particular candidate, if the candidate did not score high enough on a mechanical aptitude test, he would not be hired. He remembers times where the man he thought was best for the job was not hired (2T59-60).

There is a Policy and Procedure Manual which sets forth a set of procedures to follow if a foreman has a disciplinary problem with an employee. According to deMontaigne, the foreman may speak to the individual first and try to resolve the matter. If the infraction is not resolved, the matter is taken to the Superintendent. If the Superintendent believes that a written reprimand should issue, he must bring the matter to the Administrator's attention. The Administrator then decides what disciplinary action is to be taken (2T72-75; P-13).

9. Ronald Karl has been foreman for the Water and Sewer Department since June 1986. He has two line employees under him

(2T95-97). While he is on vacation, the senior repairman takes over his duties (2T105-107).

In a mid-year performance evaluation of line employee John Jeczko, Karl wrote that he "would like give John 90 days to improve his evaluation" (2T116-117; P-2).

Karl testified about problems he had with Jeczko. He explained he called Jeczko in his office to speak to him about the problems and then discussed Jeczko with Batta. Jeczko's performance, however, did not improve. In February 1990, he arrived late for an overtime assignment - weekend chart duty. Karl spoke to Jeczko about his lateness, but he arrived late a second time in March 1990 (P-3; 2T97-102, 120). Karl removed Jeczko from weekend chart duty for three months to try to correct the problems. Karl recognized this could be considered discipline (2T118-120; P-3). Karl then spoke to Batta about Jeczko. Karl and Batta then met with Tafuri, to discuss Jeczko. (2T101-102). Tafuri was looking for Karl to recommend Jeczko's dismissal, but Karl told Tafuri that he was not going to recommend any action (2T103). He did not give his opinion on what disciplinary action should be taken because he did not believe that his opinion would have any weight (2T113-114). Jeczko was then brought into the meeting. After a disciplinary hearing, the Administrator decided to put Jeczko on probation (P-4).

10. Peter Schiffelhuber has been a foreman for the Township nineteen years. He started out as foreman in the Water Department until his transfer to the Roads Department where he

currently works (2T126-128). Schiffelhuber has six line employees under him (1T126). He performs the same duties as the line employees. When Schiffelhuber is on vacation, the men under him perform his duties (2T126-129).

In 1983, Schiffelhuber made a recommendation in line employee John Hanlon's evaluation that Hanlon be promoted and Hanlon was, in fact, promoted. Schiffelhuber explained that Hanlon was the only one in line for the promotion. He was there a number of years and thus his promotion was "automatic" (2T132-133; P-14). No other evidence was presented on supervisory duties performed by Schiffelhuber.

#### ANALYSIS

The Township did not waive its right to now attempt to clarify the foremen out of the unit, simply because they did not object to their inclusion in the unit when it was organized. A CU petition claiming that the foremen are supervisors and thus are statutorily prohibited from remaining in a unit with nonsupervisory employees is always appropriate for Commission review. See Clearview Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977). Based on the record, however, I find that the Township's four Public Works foremen are not supervisors within the meaning of the Act.

The Act in pertinent part 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. N.J.S.A. 34:13A-5.3.

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

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Twp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status, however, requires more than a job description or assertion that an employee has the power to hire, discharge, discipline or effectively recommend. An indication that the power claimed to be possessed is exercised with some regularity is needed. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

#### Hire

The record shows that the foremen do not hire employees. Moreover, I find that the foremen do not effectively recommend hiring. "Effective recommendation" occurs when the recommendation is adopted without independent review and analysis by a higher level of authority." Borough of Manasquan, D.R. No. 90-28, 16 NJPER 353 (¶21143 1990). Although Mike deMontaigne, Foreman of Fleet

Maintenance, was involved in the hiring of John Sessock, his involvement does not rise to the level of an effective recommendation. deMontaigne simply sat in on the interview of the employee and told the Superintendent that Sessock was "good for the job." The Superintendent and the Township Engineer also interviewed the candidate. The Superintendent, the Engineer and the Administrator then reviewed and discussed the candidate and finally, the Administrator made the decision to hire Sessock. There have been times where the man deMontaigne thought was best for the job was not hired. Moreover, Foreman of Parks and Playground Ralph Romano currently has an employee working under him who he did not meet until the employee was already hired. Based on the above, I conclude that the record does not support a finding that foremen make effective recommendations to hire. Hackensack Board of Education, P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984) adopting H.O. No. 85-3, 10 NJPER 527 (¶15241 1984).

#### Discharge

None of the foremen have discharged employees. They do not have such authority, nor have they effectively recommended discharging an employee. At one point, while arguing with Mark Taylor, Romano advocated his discharge, but Taylor was not discharged as a result. A month later, the Township Administrator decided to put Taylor on probation. Taylor was eventually discharged for violating his probation terms, but Romano did not recommend or suggest it. The Township Administrator, after consultation with the Mayor and Council, decided to terminate Taylor.

Discipline

There was one occasion where one of the foremen denied an employee an overtime assignment. The foreman, Ronald Karl, recognized it could be considered discipline. This is the only instance in the record of a foreman performing an act of discipline on his own. When another foreman, Ralph Romano, tried to send an employee home for sleeping on the job, the employee refused because he knew Romano did not have such authority.

There are two instances in the record where an employee was disciplined - the cases involving John Jeczko and Mark Taylor. In both instances, the foremen brought the problematic employee to the attention of the Superintendent. However, in neither case did the foreman recommend or suggest the probation given the employees. In both cases, the matter was reviewed by the Superintendent and the Township Administrator who ultimately decided to place the employee on probation.

Based on the above, I find that the foremen do not have the authority to discipline employees. Only one isolated act of discipline was revealed between all four foremen. This is not enough to establish any regular pattern of disciplinary action. County of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶4178 1978), adopting H.O. No. 78-13, 4 NJPER 143 (¶4067 1978); Hackensack. I further note that the discipline imposed was the denial of the opportunity to earn overtime and did not involve loss of the employee's regular pay. Although the foremen may have the authority

to suspend an employee for intoxication or creating a hazard to the public, there is not one instance in the record of a foreman exercising such authority and the bare possession of such authority does not rise to the level of a supervisor within the meaning of the Act. Somerset.

Moreover, there is no evidence that the foremen effectively recommend discipline. Neither Karl nor Romano recommended the discipline meted out to Taylor and Jeczko. They simply reported employee misconduct and described discipline problems. The Superintendent and the Administrator reviewed the matters and the Administrator made the decisions to place Jeczko and Taylor on probation. Neither Karl nor Romano's actions amounted to an effective recommendation. Borough of Manasquan; Middlesex; Camden County Mosquito Extermination Commission, P.E.R.C. No. 24, NJPER Supp. 86 (1969).

Effective recommendation of discipline may also be found where an employee has primary responsibility for evaluating, and his evaluations are instrumental in various personnel actions, such as the denial of a raise or the termination of employment. Hackensack. Here, while the foremen have completed evaluations for line employees over some of the years there is not one clear example in the record where an evaluation was instrumental in an adverse

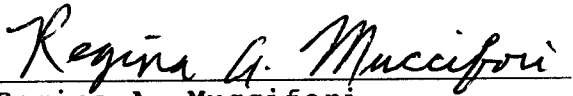
personnel action such as denying a raise or terminating employment.<sup>3/</sup> Hackensack.

As described in their job descriptions, foremen act in a lead capacity. They oversee and direct the work of the line employees, resulting in their receiving a higher salary. But that is not enough to find them supervisors. Hackensack; Manasquan; Cherry Hill.

Based on the record, I find that the foremen are not supervisors under the Act and thus recommend that the Township's petition be dismissed.<sup>4/</sup>

RECOMMENDATION

I recommend that the Township's petition be dismissed.

  
Regina A. Muccifori  
Hearing Officer

DATED: February 21, 1992  
Trenton, New Jersey

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- <sup>3/</sup> There is one instance in the record where foreman Peter Schiffelhuber recommended an employee's promotion in his 1983 evaluation and that employee was promoted. However, the Township presented no evidence that the evaluation was relied upon in its decision to promote the individual. To the contrary, the foreman explained that the employee was the only one who had the requisite number of years to be promoted and that the promotion was thus "automatic".
- <sup>4/</sup> I note that if the foremen regularly exercise the power to hire, discharge, discipline or effectively recommend the same in the future, the Township could initiate a reexamination of the titles by filing another Clarification of Unit petition.