

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-84-36

UNION COUNTY COLLEGE
SECURITY ASSOCIATION,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Petition for Clarification of Unit filed by Union County College seeking to include the title of Evening Supervisor in a unit of non-supervisory security personnel represented by the Union County College Security Association. Subsequent to a Commission Hearing Officer's Report, the employee holding the Evening Supervisor position left the College's employ and the job description for that position was abolished. The Chairman, in agreement with the Association, finds the matter to be moot and dismisses the Petition.

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SECURITY ASSOCIATION,

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Appearances:

For the Public Employer, Yauch, Peterpaul & Clark,
Esqs. (Thomas P. Vitolo, of Counsel)

For the Employee Representative, Leo Galcher,
Field Representative, NJEA UniServ Regional Office

DECISION AND ORDER

On January 9, 1984, Union County College ("College") filed a Clarification of Unit Petition with the Public Employment Relations Commission. The College contends that the title "Evening Supervisor" should be included in the negotiations unit represented by the Union County College Security Association ("Association"). The Association contends that the "Evening Supervisor" position is a supervisory position within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and, consequently, should not be included in its unit of non-supervisory security personnel.

On February 16, 1984, the Administrator of Representation Proceedings issued a Notice of Hearing.

On March 7 and 15, 1984, Hearing Officer Mark A. Rosenbaum conducted a hearing. The parties examined witnesses,

introduced exhibits, and filed post-hearing briefs.

On July 18, 1984, the Hearing Officer issued his report and recommended decision. H.O. No. 85-2, 10 NJPER ____, (¶ ____ 1984). He found that the evening supervisor did not regularly and effectively exercise supervisory responsibilities and was therefore not a supervisor within the meaning of the Act.

The Hearing Officer served a copy of his report on the parties and advised them that exceptions, if any, were due on July 31, 1984. The Association then received an extension of time until August 14 in which to file exceptions.

On August 14, the Association submitted a letter stating that the employee formerly holding the "Evening Supervisor" position had left the College's employ and that the job description for that position had been abolished. Therefore, the Association asserts this matter is moot.

On August 17, 1984, the College submitted a letter agreeing with the Association's representations, but taking no position concerning the question of mootness.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this matter. I agree with the Association that this matter is moot. Accordingly, I dismiss the petition.

ORDER

The petition is dismissed.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
September 4, 1984

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

In the Matter of

UNION COUNTY COLLEGE,

Public Employer,

-and-

DOCKET NO. CU-84-36

UNION COUNTY COLLEGE
SECURITY ASSOCIATION,

Employee Representative.

Synopsis

A Hearing Officer of the Public Employment Relations Commission recommends findings that the Evening Supervisor employed by Union County College is not a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, and that the Evening Supervisor shares a community of interest with security employees represented by the Union County College Security Association. Accordingly, the Hearing Officer recommends that the negotiations unit represented by the Association be clarified to include the Evening Supervisor title.

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 exceptions 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.

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

In the Matter of

UNION COUNTY COLLEGE,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-84-36

UNION COUNTY COLLEGE
SECURITY ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer
Yauch, Peterpaul & Clark, Esquires
(Thomas P. Vitolo, of counsel)

For the Employee Representative
Leo Galcher, Field Representative

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On January 9, 1984, a Clarification of Unit Petition was filed with the Public Employment Relations Commission ("Commission") by Union County College ("College") seeking to clarify the status of the title of Evening Supervisor, which the College contends should be included in the negotiations unit represented by the Union County College Security Association ("Association"). The Association asserts that the Evening Supervisor position is a supervisory position within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and cannot be included in its unit of nonsupervisory security employees.

Pursuant to a Notice of Hearing dated February 16, 1984, hearings were held before the undersigned Hearing Officer on March 7

and 15, 1984, at which time all parties were given opportunities to examine and cross-examine witnesses, present evidence and argue orally. Both parties filed post-hearing briefs.

Based upon the entire record in these proceedings, the Hearing Officer finds that:

1. Union County College is a public employer within the meaning of the Act, is the employer of the employee who is the subject of the Petition, and is subject to the provisions of the Act.

2. The Union County College Security Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The College seeks a clarification of the collective negotiations unit of its security officers represented by the Association. The parties have been unable to agree upon the placement of the Evening Supervisor in the unit. Therefore, a question concerning the composition of a collective negotiations unit exists, and the matter is appropriately before the undersigned for Report and Recommendations.

4. Union County College, the product of a merger of Union County Technical Institute and Union College in 1982, ^{1/} has campuses in Cranford, Scotch Plains and Elizabeth. The security function for all three campuses is in the charge of the College's Director (or Chief) of Security, William Connallon. Connallon has an office on the Cranford campus, where he works from 8:00 a.m. until 4:00 p.m., Monday through Friday. The Director of Security reports to the College's Director

^{1/} Legislation enabling the merger of these institutions was adopted June 24, 1982. N.J.S.A. 18A-64A-50 et seq. Appropriate resolutions of the institutions approving a merger were passed on August 17, 1982.

of Plant Operations, who reports to the College's Vice President for Finance. At the College's primary campus, Cranford, the Director is assisted by Timothy Cadigan, who has held the disputed Evening Supervisor title since July, 1982 (T1 at pp. 46-47, 74). ^{2/}

5. The security complements at the respective campuses are: Cranford Campus - nine full-time and four part-time employees; Scotch Plains - four full-time employees; and Elizabeth - one part-time employee. Director Connallon testified that the Elizabeth campus employees work from 5:00 p.m. to 10:00 p.m. and are not evaluated by Cadigan or Connallon. Cranford security personnel work 7:00 p.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. shifts and are not evaluated or supervised by a member of the security hierarchy. Director Connallon testified that night shift security employees at Scotch Plains would report to Evening Supervisor Cadigan if they encounter a special security problem. With the exception of Connallon and Cadigan, Cranford campus security personnel work on one of three shifts: 7:30 a.m. to 3:30 p.m.; 3:30 p.m. to 11:30 p.m.; and 11:30 p.m. to 7:30 a.m. (T2 at pp. 5-13).

6. Evening Supervisor Cadigan reports to Director Connallon at approximately 3:10 p.m., Monday through Friday. At that time, Connallon reviews "...with him, anything that might be going on on his shift, and give[s] him the orders of what to do on that shift." Cadigan then meets with evening shift employees at 3:30 p.m. and conveys the same information to those employees (T2 at pp. 13-14).

^{2/} T1 refers to the Transcript of March 7, 1984; T2 refers to the Transcript of March 15, 1984.

Cadigan may determine who will perform specific responsibilities (T1 at p. 100).

7. Cadigan is responsible for evaluation of employees on the night shift. To that end, the Evening Supervisor completes annual evaluation forms for the three employees on the evening shift, and meets with the employees individually concerning same. In the case of two employees whom Cadigan evaluated in 1983, Cadigan recommended continued employment and in both cases the employees continued their employment. While the evaluation forms provide a space for recommendation of promotion, this category is marked "NA" because there is no open position to which security officers may be promoted. As an evaluation aid, Cadigan maintains a log of comments on day-to-day conduct of the three other security personnel on his shift. Connallon countersigns all evaluations made by Cadigan, and evaluates Cadigan annually (Exhibits A-2, A-3; T1 at pp. 86-104, T2 at pp. 15-20).

8. Cadigan testified that he performs all functions performed by the other security officers at Cranford, except that he patrols on foot rather than in a vehicle and is entrusted with a daily bank drop. In addition to performing security functions, the Evening Supervisor makes three special rounds of the campus most evenings and uses the communications system to determine whether security officers are at their posts. Cadigan testified that each walk around campus takes twenty-five minutes. The Evening Supervisor also reviews reports and interacts with supervisors as necessary. The Evening Supervisor uses the Director of Security's office as necessary, but is rarely at the office (T1 at pp. 94-100).

9. All security employees below the level of Director wear uniforms. The Evening Supervisor wears a hat shield, breast shield and band around his hat, which are all gold colored. The shields each read "Supervisor." The remaining security officers wear hat shields, breast shields and bands around their hats which are silver colored (T2 at pp. 50-51).

10. Aside from the Evening Supervisor, the only uniformed employee with responsibilities in addition to security functions is a Mr. Hodge, who receives an additional twenty cents per hour in Director Connallon's absence to "...make sure that the men are on the [day] shifts...." (T2 at pp. 51-55).

11. No security employee has been fired during Timothy Cadigan's tenure as Evening Supervisor (T1 at p. 58). One employee was hired during this period, but the Evening Supervisor had no role in the hiring process (T1 at pp. 57-58, 79).

12. The record reveals that the Evening Supervisor has been involved in two incidents of employee discipline since July, 1982. In one case, Evening Supervisor Cadigan filed three written reports with Director Connallon, culminating in a recommendation that the subject employee receive a three to five day suspension. Connallon issued a one day suspension to the subject employee (T1 at pp. 88-93, T2 at pp. 21-25). The other incident involved a security officer whom the Evening Supervisor reported to the Director of Security for a uniform infraction. The Director subsequently called the security officer concerning the uniform infraction (T1 at p. 21). Other than these incidents, the only other disciplinary matters identified were

minor and did not involve written reports (T1 at pp. 93-94). Both Cadigan and Connallon testified that Cadigan has the authority to discipline employees on site, including to order an employee to go home, but has never exercised that authority (T1 at pp. 81-82, T2 at pp. 44-45).

13. The parties are in the process of negotiating their first agreement. A "Letter of Understanding" between Union College (the previous employer) and its security employees (Exhibit J-1) included the Evening Supervisor within the security employees unit. The Administrative Manual of Union College (Exhibit J-2), which covered all employees at Cranford, contains the grievance procedure observed by the parties. The first formal step involves a written submission to the grievant's immediate supervisor. Director Connallon has been the first step supervisor in that procedure (T1 at pp. 63-64).

ANALYSIS

N.J.S.A. 34:13A provides in pertinent part:

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 a collective negotiations unit by an employee organization that admits non-supervisory personnel to membership.... The negotiating unit shall be defined with due regard for the community of interest among the employees concerned.

6(d) ...the division shall decide in each instance which unit of employees is appropriate for collective negotiations, 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...

It is undisputed that the negotiations unit represented by the Association includes nonsupervisory employees. Accordingly, if the Evening Supervisor is a supervisor within the meaning of the Act, he must be removed from the Association's negotiations unit. ^{3/} If he is not a supervisor, and shares a community of interest with unit employees, the Evening Supervisor should remain in the unit.

Preliminarily, the undersigned notes that a determination of supervisory status requires far more than a job title or description or oral assertion that an employee may have the power to hire, discharge, discipline or effectively recommend the same:

[T]he bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employees in question, 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).

With this caveat in mind, the undersigned reviews the responsibilities and actual job performance of the Evening Supervisor to determine whether or not he is a supervisor within the meaning of the Act. Moreover, given the College's assertion, disputed by the Association, that the Evening Supervisor is, at most, a de minimis supervisor who owes no special loyalty to management which would preclude his representation by the Association, the undersigned reviews the facts in the context of the New Jersey Supreme Court's conflict of interest

^{3/} "Established practice, prior agreement or special circumstances" are clearly inapplicable in this sui generis employer/employee organization relationship.

in Board of Education of West Orange v. Wilton, 57 N.J. 404
(1971):

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 of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present....

While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. 57 N.J. at 425-426.

The record reveals that the Evening Supervisor has no role in the hiring of personnel, nor has he participated in the firing of any employees (See Finding of Fact #11). The record is also devoid of any examples of actual discipline administered by Cadigan to employees represented by the Association (See Finding of Fact #12). Accordingly, the Evening Supervisor may only be found a statutory supervisor if he effectively recommends discipline of employee represented by the Association.

As noted above, the record reveals only two examples of actual discipline which resulted from recommendations by the current Evening Supervisor (See Finding of Fact #12). In one case, the resultant discipline consisted of a phone call from the Director of Security to the subject employee. In the other case, the resultant discipline was a one day suspension, in contrast to the three to five day suspension recommended by the Evening Supervisor. These events, standing alone during the nearly two year tenure of the current Evening Supervisor, do not evidence a regular or effective role by the Evening Supervisor in the discipline of employees.

The only other record evidence which would relate to the discipline of employees is the evaluation process. As noted above, the Evening Supervisor has a formal and regular role in the evaluation of employees. Were these evaluations critical in employees' abilities to retain their jobs or secure increments or promotions, statutory supervisory status could be indicated. See, e.g. Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), adopting H.E. No. 84-11, 10 NJPER 149 (¶15075 1984). In the instant matter, however, increments are not available to security employees, promotions rarely so, and job retention is the norm. Indeed, security employees at the Elizabeth and Scotch Plains campuses do not even receive written evaluations. In this context, the Evening Supervisor's annual evaluation of security employees on his shift, subject to countersignature by the Director of Security, is not indicative of statutory supervisor status.

In the final analysis, the Evening Supervisor is a lead security officer who has all the responsibilities of other security officers, as well as additional oversight responsibilities for his shift. He is paid an hourly wage differential for the conduct of these additional duties, as is another security employee for the day shift in the absence of the Director of Security (See Finding of Fact #10). While the additional duties include the authority to discipline employees on site, the Evening Supervisor has not exercised that authority (See Finding of Fact #12). Instead, the additional authority exercised by the Evening Supervisor is almost exclusively in the areas of assignment and monitoring of personnel. While

evidence of an employee with somewhat greater responsibility than his peers, this additional authority does not indicate statutory supervisor status. See, e.g. County of Middlesex, D.R. No. 79-8, 4 NJPER 396, 397 (¶4178 1978), where the Commission's Director of Representation found that certain foremen in a blue and white collar unit did not have "real supervisory authority...." Accordingly, the undersigned concludes that the Evening Supervisor does not regularly and effectively exercise supervisory responsibilities, and is not a supervisor within the meaning of the Act.

Having concluded that the Evening Supervisor is not a statutory supervisor, the undersigned proceeds to consider conflict of interest and community of interest issues. Since the Evening Supervisor is not a supervisor and thus owes no special duty to management, there can be no conflict of interest between the Evening Supervisor's exercise of his responsibilities and the interests of other security employees. In this regard, it is "[o]f special significance..." that "...the employer is content with the existing unit composition and does not allege that the unit structure has created a divided loyalty problem, interfering with the proper administration of the department." Middlesex, supra, 4 NJPER at p. 397.

Indeed, the record indicates that the Evening Supervisor has been most conscientious in the conduct of his oversight functions. In maintaining a log book, monitoring security employees and completing annual evaluations, the Evening Supervisor may appear to lack a community of interest with other security employees. However, the Evening Supervisor's zealously in the conduct of his additional

responsibilities does not overcome the basic community of interest he shares with security employees. Like all security employees, the Evening Supervisor routinely performs uniformed security functions at one of the College's campuses. He works side-by-side with other security officers when controlling traffic at campus events and reacting to emergent situations. Accordingly, with due regard for the community of interest which exists between security employees of the College, the undersigned concludes that the Evening Supervisor should remain in the negotiations unit represented by the Association.

RECOMMENDATIONS

The undersigned recommends that the Commission make the following findings:

1. The Evening Supervisor employed by Union County College is not a supervisor within the meaning of the Act.
2. Since the Evening Supervisor shares a community of interest with employees represented by the Union County College Security Association, and no substantial conflicts of interest exist between the Evening Supervisor and security employees represented by the Association, the negotiations unit represented by the Association should be clarified to include the Evening Supervisor.

Respectfully submitted,



Mark A. Rosenbaum
Hearing Officer

DATE: July 18, 1984
Trenton, New Jersey