

P.E.R.C. NO. 88-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLLAND TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-62

HOLLAND TOWNSHIP PARA-PROFESSIONAL
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, clarifies a negotiations unit to exclude the cafeteria manager, head bus driver/mechanic and the supervisor of maintenance and custodial services from a negotiations unit of custodial and cafeteria workers represented by the Holland Township Para-Professional Association. The Chairman, in agreement with a Commission Hearing Officer and in the absence of exceptions, finds that these employees are supervisors and therefore should not be in a negotiations unit with non-supervisors.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLLAND TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-62

HOLLAND TOWNSHIP PARA-PROFESSIONAL
ASSOCIATION,

Employee Representative.

Appearances:

For the Petitioner, McDonald, Rogers & Rizzolo, Esqs.
(Michael Rogers, of counsel)

For the Respondent, John Thornton, Jr., UniServ Field
Representative, New Jersey Education Association

DECISION AND ORDER

On May 7, 1986, the Holland Township Board of Education ("Board") filed a Clarification of Unit Petition. The Board seeks to exclude the cafeteria manager, head bus driver/mechanic and the supervisor of maintenance and custodial services from a negotiations unit of custodial and cafeteria workers represented by the Holland Township Para-Professional Association ("Association"). The Board contends these employees are "supervisors" within the meaning of N.J.S.A. 34:13A-5.3 and therefore should be removed from the Association's unit. The Association contends these employees are not supervisors and should remain in the unit.

On August 22, 1986, the Director of Representation issued a Notice of Hearing.

On October 22, 1986 and June 3, 1987, Hearing Officer Lorraine H. Tesauro conducted hearings. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On November 25, 1987, the Hearing Officer recommended that the unit be clarified to exclude the three positions. H.O. No. 88-3, 14 NJPER ____ (¶ ____ 1988). She found that all the employees were supervisors because each made effective hiring recommendations to the Board and evaluated and disciplined employees.

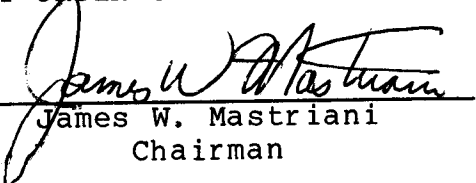
The Hearing Officer informed the parties that exceptions were due on or before December 11, 1987. Neither party filed exceptions.

I have reviewed the record. The Hearing Officer's findings of fact (pp. 2-5) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree that the cafeteria manager, head bus driver/mechanic, and supervisor of maintenance and custodial services should be excluded from the negotiations unit of custodial and cafeteria workers.

ORDER

The Holland Township Para-Professional Association's negotiations unit of custodial and cafeteria workers is clarified to exclude the cafeteria manager, head bus driver/mechanic and the supervisor of maintenance and custodial services.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 8, 1988

H.O. NO. 88-3

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

In the Matter of

HOLLAND TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

- and -

Docket No. CU-86-62

HOLLAND TOWNSHIP PARAPROFESSIONAL
ASSOCIATION,

Employee Representative.

Appearances:

SYNOPSIS

A Hearing Officer recommends that the Commission find the cafeteria manager, supervisor of custodial and maintenance services, and head bus driver/mechanic are supervisors within the meaning of the Act. She finds that they effectively recommend hiring and have disciplined members of the staff. Accordingly, she recommends their immediate removal from the support staff unit.

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. 88-3

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

In the Matter of

HOLLAND TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

- and -

Docket No. CU-86-62

HOLLAND TOWNSHIP PARAPROFESSIONAL
ASSOCIATION,

Employee Representative.

Appearances:

For the Petitioner
McDonald, Rogers & Rizzolo, Esquires
(Michael Rogers of counsel)

For the Respondent
John Thornton, Jr., UniServ Field Representative

HEARING OFFICER'S
REPORT AND RECOMMENDED DECISION

On May 7, 1986, the Holland Township Board of Education ("Board") filed a petition to clarify a collective negotiations unit represented by the Holland Township Para-Professional Association ("Association"). The Board asserts that the cafeteria manager, the head bus driver/mechanic, and the supervisor of maintenance and custodial services are supervisors and should be removed from a unit of custodians and cafeteria workers. The Association asserts that the titles are not supervisory and should remain in the unit.

On August 22, 1986, the Director of Representation issued a Notice of Hearing. On October 20, 1986, I conducted a hearing and the parties examined witnesses and introduced documents. After receiving an extension, the parties filed briefs which I received by April 10, 1987. On June 3, 1987, I advised the parties that it was necessary to reopen the record and that I would subpoena the three individuals holding the disputed titles. On June 17, 1987, I conducted a second day of hearing.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Board is a public employer within the meaning of the Act and is subject to its provisions.
2. The Association is an employee organization within the meaning of the Act and is subject to its provisions.
3. The Association represents a collective negotiations unit containing the following titles: head custodian, head bus driver-mechanic/groundsman, cafeteria manager, custodians and cafeteria workers. After the petition was filed the head custodian title was changed to supervisor of maintenance and custodial services, and the head bus driver-mechanic/groundsman title was changed to head bus driver/mechanic. These titles, as amended, have been in the unit since July 1, 1974.
4. The incumbent supervisor of maintenance and custodial services has worked for the Board since November 1, 1986. He oversees the work of five full-time custodians. He prepares work

schedules, assigns jobs, records absences, secures substitutes when custodians call in sick, receives requests for personal days, and assigns overtime subject to available funds. Consistent with his job description he also reviews employment applications, interviews candidates and makes hiring recommendations to the Board. During the 1986-87 school year he prepared a proposal to hire an additional full-time custodian and presented it to the Board. The supervisor of maintenance and custodial services then interviewed an employee who had been working as a temporary custodian and recommended to the Board that he be hired full-time. His hiring recommendation was followed.

The supervisor of maintenance and custodial services also disciplines and evaluates custodians. In his brief tenure in the title, he has prepared one written reprimand which was signed by himself and the custodian and placed in the custodian's personnel file. Following the instruction of the business administrator, the supervisor of maintenance and custodial services completed performance evaluations of the custodial staff for the 1985-86 school year. The last performance evaluations of Association unit members were completed in 1982. Last year, the business administrator has implemented a policy whereby yearly performance evaluations are required.

5. The cafeteria manager has held the title for nine years and has worked for the Board for approximately 25 years. She is responsible for planning menus, maintaining inventory, ordering,

overseeing a staff of three full-time cafeteria workers and four part-time cafeteria workers, and maintaining the financial records of the cafeteria budget. She has effectively recommended that a part-time cafeteria worker be given a full-time position and that a substitute part-time cafeteria worker be given a permanent part-time job. Those recommendations were approved by the Board. She reviews job applications, interviews candidates and makes recommendations to the business administrator (who passes those recommendations onto the Board) about who should be hired. Like the supervisor of maintenance and custodial services, she has been instructed to complete yearly performance evaluations of her staff and has completed those evaluations.

6. The head bus driver/mechanic was hired in June 1986. He maintains the buses, supervises the garage and oversees nine regular and six substitute drivers. He schedules the bus drivers and oversees the bidding process for extra work. Prior to the recent title change, the head bus driver/mechanic was also responsible for maintaining school grounds. This responsibility now belongs to the supervisor of maintenance and custodial services. When bus drivers are ill they call the head bus driver/mechanic and he obtains a substitute driver.

The head bus driver/mechanic interviews and tests candidates for available jobs and makes hiring recommendations to the business administrator. He has disciplined bus drivers. The most recent incident involved a driver who was speeding. He spoke

with the driver about the incident, counseled her, wrote a report which they both signed, and put the report in the driver's file.

Like the cafeteria manager and the supervisor of custodial and maintenance services, the head bus driver/mechanic now completes yearly performance evaluations of his staff.

7. Persons hired into full-time positions on the custodial, cafeteria and bus driver staffs are typically senior part-time or substitute employees.

8. Neither bus drivers, part-time nor substitute employees are in the Association's unit.

ANALYSIS

The Board claims that the three disputed titles are supervisory and should be severed from the Association's unit. The Association disagrees.

N.J.S.A. 34:13A-5.3 provides that "...nor except were established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or 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-6(d) states that "...except were dictated by established, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors...."

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. In re Cherry Hill Twp. Dept. of Public Works, P.E.R.C. No 30 (1970).

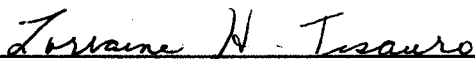
Determining supervisory status requires a finding of regularity in the exercise of the power to effectively recommend. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." See Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976); and Hackensack Board of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶ 16010 1985).

Each individual has contributed significantly to the hiring process in their capacity as head bus driver/mechanic, cafeteria manager and the supervisor of maintenance and custodial services. They solicited candidates, conducted interviews and made effective recommendations to the Board which led to the hiring of their candidates for the respective departments. Their functions exceed the limits of "lead persons" and are suggestive of supervisory status. Their evaluations were instrumental in various additional personnel actions with regard to their departments.^{1/} Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶ 15102 1984).

^{1/} I.e., on the occasion of disciplining a driver, the head bus driver/mechanic made the determination as to the proper course independent of the Board and the administrators.

Based on this standard, I conclude that each of the disputed titles is supervisory and should be clarified from the unit represented by the Association. Each of the individuals holding the disputed titles has effectively recommended that part-time, substitutes, and full-time employees be hired. This alone is sufficient for a finding of supervisory status. In addition, both the supervisor of custodial and maintenance services and the head bus driver and mechanic have disciplined members of their staffs.

Accordingly, I recommend that the Commission issue an ORDER clarifying the unit represented by the Association to exclude the titles of cafeteria manager, supervisor of custodial and maintenance services, and head bus driver/mechanic, effective immediately.^{2/}



Lorraine H. Tesauro
Hearing Officer

DATED: November 25, 1987
Trenton, New Jersey

^{2/} See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).