

D.R. NO. 88-10

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

In the Matter of

BERGEN COUNTY PARKS,

Public Employer,

-and-

Docket No. CU-87-72

C.W.A, LOCAL 1044, AFL-CIO,

Employee Representative-Petitioner.

SYNOPSIS

The Director of Representation determines that the title Senior Park Naturalist is not a supervisor within the meaning of the Act. The Parks Department has eliminated a formerly supervisory title and replaced it with a title that is not supervisory. The Senior Park Naturalist does not and shall not participate in the hiring or firing processes and shall not have the power of effective recommendation with regard to the evaluation and/or discipline of other Parks Department employees. Accordingly, the Director declines to clarify Local 1044's supervisory/administrative unit to include the Senior Park Naturalist and dismisses the instant petition.

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Appearances:

For the Public Employer
Michael B. Ryan, Esq.

For the Petitioner
Bernice Krawczyk, Staff Representative

DECISION

On May 29, 1987, the Communications Workers of America, Local 1044, filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to clarify its supervisory and administrative negotiations unit in Bergen County Parks to include the title Senior Park Naturalist. Local 1044 contends that the Bergen County Parks Department ("Parks Department") reclassified and renamed the title of Park Supervisor to Senior Park Naturalist, and attempted to strip it of its former supervisory responsibilities. Local 1044 further claims that this title, regardless of the name given to it by the Parks Department, has been and continues to be a supervisory and administrative position which is properly included in its unit.

The Parks Department contends that the title has been reclassified and renamed Park Naturalist, and that all supervisory and/or administrative duties which may formerly have been performed by employees in the Park Supervisor title are no longer and will no longer be performed by the renamed title.

At an informal conference convened on August 5, 1987, the parties were given the opportunity to amend and supplement their positions. The Petitioner continued to argue that the title has historically performed administrative and supervisory duties, continues to perform such duties, is the only employee having the capacity to perform such duties based on education and experience; and, finally, under the new job description promulgated by the Parks Department for the title Senior Parks Naturalist, the title expressly "supervises the work of the Naturalist and Assistant Naturalist." The Petitioner further argues that the Director of the Wildlife Center has relied and will continue to rely on the recommendations of the Senior Park Naturalist to evaluate other employees, based upon the Senior Park Naturalist's extensive background in biology and teaching. Accordingly, Local 1044 argues its administrative/supervisory unit should be clarified to include the Senior Park Naturalist position.

The Parks Department asserts that it did not intend the use of the word "supervises" in its newly-promulgated job description to designate or even imply that the Senior Park Naturalist position has supervisory status within the meaning of the Act. The Parks

Department asserts that until August 23, 1986, the Department employed a Park Supervisor at its Wildlife Center; however, on that date, the person holding that title went on terminal leave. The Parks Department then assigned an employee to the title Park Naturalist to work at the Wildlife Center. On or about March 24, 1987, the Parks Department decided to eliminate the title Park Supervisor and create the new title Senior Park Naturalist. The Parks Department argues that the title Senior Park Naturalist is not involved and will not be involved in the hiring or dismissal of any employees, and will not make effective recommendations in the evaluation and/or discipline processes of the Parks Department employees. Instead, the Parks Department asserts that the Park Manager has and will continue to have responsibility for evaluation and discipline of subordinate employees. Finally, the Parks Department asserts that to the extent that the job description is misleading, it will re-write it to clarify the title's non-supervisory status.

N.J.S.A. 34:13A-5.3 provides in relevant part:

...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....

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

[t]he 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....

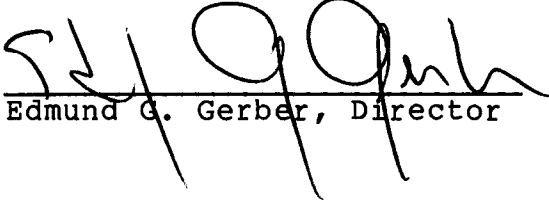
See also Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970).

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court determined that an employee may possess authority from his/her employer that can create a substantial conflict between that individual and others in the same negotiations unit. The Court reasoned that employees should not be placed in a position of choosing between duties required by one's employer and loyalties owed to members of one's negotiations unit.

Here, the Parks Department has chosen to eliminate a formerly supervisory title and replace it with a title that is not supervisory. The Parks Department has the right to establish its organization in any manner it deems appropriate, so long as it is not being done in violation of the Act or is in conflict with public policy. No such motive or purpose has been established here. The Parks Department, both through its promulgated job description and by its statements of position at the informal conference on August 5, 1987 and its written statements of July 21 and August 14, 1987, has established that the title Senior Park Naturalist is not performing and shall not in the future perform supervisory functions within the meaning of the Act. The title shall not participate in the hiring or firing processes and shall not have the power of effective recommendation with regard to the evaluation and/or discipline of other Parks Department employees. On the basis of

what is before us now, the Senior Park Naturalist is a non-supervisory employee within the meaning of the Act. Accordingly, we decline to clarify the Petitioner's supervisory/administrative unit to include the Senior Park Naturalist position and dismiss the instant Petition.^{1/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 21, 1987
Trenton, New Jersey

^{1/} If events subsequently show that the Senior Park Naturalist is functioning as a supervisor, the CWA is free to re-file with the Commission and seek to have its unit clarified to include this position.