

D.R. No. 2005-12

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

In the Matter of

BOROUGH OF RUNNEMEDE,

Petitioner,

-and-

Docket No. CU-2004-023

CWA LOCAL 1034,

Respondent.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by the Borough of Runnemede seeking to exclude the Court Administrator from a unit of white collar employees represented by CWA Local 1034. The Borough asserted that the court administrator supervised the deputy court administrator, and was inappropriately included in CWA's unit at the time the unit was formed. The Director found that the Borough had not demonstrated that the court administrator had ever exercised any true authority to hire, discharge, or discipline any employee.

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Appearances:

For the Petitioner,
Capehart and Scatchard, attorneys
(Michael Heston, of counsel)

For the Respondent,
Paul Alexander, CWA Staff Representative

DECISION

On June 1, 2004, the Borough of Runnemeade filed a clarification of unit petition seeking to exclude the court administrator from a negotiations unit of white-collar employees currently represented by CWA Local 1034. The Borough asserts that the court administrator is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and was inappropriately included in CWA's unit at the time the unit was formed.

CWA opposes the petition. It asserts that the court administrator does not perform any supervisory duties, and that

there has been no change in her job duties since the formation of the unit. CWA requests that the Borough's petition be dismissed.

We have conducted an administrative investigation of facts regarding the petition. On February 10, 2005, we notified the parties of our tentative findings and invited responses. Neither party filed a response. N.J.A.C. 19:11-2.2 and 2.6. There being no substantial or material factual issues in dispute, the disposition of this matter is based on the following:

FINDINGS OF FACT

CWA represents all regularly employed, nonsupervisory white collar employees of the Borough, including the court administrator and the assistant court administrator. The negotiations unit was formed by the parties' consent agreement, and CWA was certified on June 28, 2002 (Commission Docket No. RO-2002-81). There are approximately 12 employees in the unit. The parties are currently concluding negotiations for their first collective agreement.

Martha Shaw serves as the Borough's court administrator, also known as the court clerk. The Borough asserts that Shaw is a supervisor within the meaning of the Act, in that she has the authority to hire, fire, discipline and effectively recommend the same for another unit employee, the assistant court administrator.

Bob Brown is the current assistant court administrator, also termed assistant court clerk. He has held that position for

approximately three years. Shaw and Brown are the only unit employees assigned to the municipal court. The Borough asserts that Shaw assigns Brown's work, sets his work hours, monitors his use of personal and sick time, has the authority to discipline him if necessary, and that Brown would be fired upon Shaw's recommendation. CWA asserts that Shaw and Brown work side by side and that Shaw only "directs Brown's work" by opening the mail and dividing it according to the matters for which each is responsible.

Brown was hired in 2001. The Borough Council interviewed Brown. The Borough asserts that it then referred Brown's candidacy to Shaw for her "final approval."

There were at least two assistant court administrators prior to Brown. One informed Shaw that he wished to leave employment. The Borough asserts that Shaw verbally informed Frank Kelly, a council member, that the clerk was "not working out" and should be fired. The Borough asserts that it treated Shaw's statement as a "verbal recommendation" to fire the employee. The Borough took no action; two weeks later, the employee resigned.

The other former assistant clerk, Joanne Austin, was employed for approximately four years. The Borough verbally asserted that when Austin's work performance became deficient, Shaw made a "verbal recommendation" that she be fired. The Borough Council took no action to terminate Austin's employment.

Austin resigned several weeks later, however, for other employment.

The Borough asserts that in both these instances, the employees simply resigned voluntarily before the Borough was able to take action to terminate their employment on Shaw's recommendation. Neither recommendation was ever submitted in writing for the Council's consideration.

Martha Shaw participated in the secret ballot election that lead to the formation of the unit. The Borough asserts that it was not aware at the time the unit was formed that supervisors should not be included with nonsupervisory employees. The Borough acknowledged that no documentation exists to support its assertion of Shaw's supervisory authority including that she made "verbal recommendations." It merely asserts that since it is a "loose" operation, all recommendations have been verbal. CWA does not concede that Shaw even made verbal recommendations.

ANALYSIS

CWA's certification describes the collective negotiations unit as,

Included: All regularly employed white collar employees of the Borough of Runnemede.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees and all other employees of the Borough of Runnemede.

The Borough contends that the court administrator is a supervisor within the meaning of the Act, despite her history of

inclusion in the white collar unit. An employer may seek to remove statutorily exempt employees from a unit at any time, not withstanding the parties' prior acquiescence to the title's unit inclusion. Borough of Madison, D.R. No. 99-1, 24 NJPER 441 (¶29203 1998); Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

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

. . . 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.

A determination of supervisory status requires more than the assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such action.

The Commission has consistently held that:

. . . the 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 employee 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).

It is well established that the Commission will look beyond the title or job description to ascertain the nature of the authority the employee actually exercises; evidence that the authority is exercised with some degree of regularity is required. Somerset County.

Moreover, an "effective recommendation" occurs when the "supervisor's" recommendation is adopted without independent review and analysis by a higher level of authority. See Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), adopting H.O. No. 84-11, 10 NJPER 149 (¶15075 1984); Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp. 465 (¶114 1971). Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not make an employee a statutory supervisor. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985).

In this matter, the Borough has not demonstrated that the court administrator has ever exercised any true authority to hire, discharge, or discipline any employee. Shaw has not, to date, made effective recommendations to hire, discharge or discipline any employees. Rather, the facts of this case suggest that the Borough Council, not Shaw, retains the ultimate power to hire, discharge or discipline the assistant court administrator. Here, all activities normally exercised by "supervisors" are exercised by the Borough Council. While the Borough has asserted that Shaw is responsible for making recommendations concerning hiring, firing and discipline of the assistant court administrator, the Borough did not provide evidence of such recommendations, although it asserts there have been at least three employees in the position during Shaw's tenure. Even assuming Shaw made verbal recommendations for employee

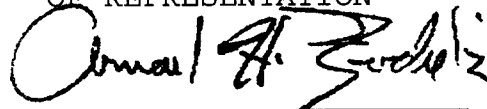
terminations, it is apparent that those recommendations were not effective since the employees voluntarily resigned and no adverse employee actions were taken. In fact, the information provided by the Borough suggests that the Borough Council made the primary decision that Brown be appointed before referring that appointment to Shaw. Therefore, I cannot conclude that Shaw exercised independent review or analysis of Brown's candidacy. Avalon.

Accordingly, there are insufficient facts before us to establish that the court administrator is a supervisor within the meaning of N.J.S.A. 34:13A-5.3. I, therefore, find that the court administrator is not a statutory supervisor and decline to remove her from the white-collar unit.

ORDER

The court administrator is not a supervisor. The Borough's clarification of unit petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: March 2, 2005
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 15, 2005.