

D.R. No. 2010-17

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

In the Matter of

TOWNSHIP OF MORRIS,

Petitioner,

-and-

Docket No. CU-2009-037

MORRIS COUNCIL NO. 6,
NJSCA, IFPTE, AFL-CIO,

Respondent.

SYNOPSIS

The Director Representation clarifies a negotiations unit of non-supervisory, non-professional white collar employees to exclude the dispatcher/communications officer/records bureau supervisor. The Director found that the employee is a supervisor within the meaning of the Act because he has the power to hire and effectively recommend discipline and, therefore, is inappropriate for inclusion in the non-supervisory unit.

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Appearances:

For the Petitioner,
Knapp, Trimboli & Prusinowski, LLC, attorneys
(Molly S. Marmion, of counsel)

For the Respondent,
Fox & Fox, attorneys
(Jessica Swenson, of counsel)

DECISION

On May 27, 2009, the Township of Morris (Township) filed a clarification of unit petition seeking to clarify a negotiations unit of non-supervisory, non-professional white collar employees. The Township seeks to exclude the title, dispatcher/communications officer/records bureau supervisor from the unit, which is represented by Morris Council No. 6, NJSCA, IFPTE, AFL-CIO (Council 6).^{1/} The Township asserts that the dispatcher/

^{1/} The Township also set forth in the petition two other titles it sought to exclude, the lab manager and assistant assessor. Those titles are no longer disputed.

communications officer/records bureau supervisor is a supervisor within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association disputes that the title is supervisory.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter dated May 25, 2010, I advised the parties of my tentative findings and conclusions and invited responses. Neither party filed additional submissions. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following:

On or about December 17, 2008, the parties stipulated the negotiations unit and signed a side bar agreement, reserving to the Township its right to file this petition. On January 6, 2009, the Director of Representation issued a Certification of Representative to Council 6 (Docket No. RO-2009-045). Robert Case is the only employee who currently holds the dispatcher/communications officer/records bureau supervisor title. He works in the Township's records department.

The Township submitted two certifications from Chief of Police Timothy Quinn and documents to support its petition.

Council 6 filed a certification from its shop steward, Karen Swetz.^{2/}

Quinn certifies that Case supervises four employees who report directly to him. He certifies that Case has the power to effectively recommend the hiring of subordinates, and in at least one instance, effectively recommended discipline of a subordinate.

In the event of a vacancy in the records department, the Township convenes a committee to evaluate applicants. The committee consists of Case, Quinn, and several other officers. At any stage of the hiring process, a negative evaluation from any committee member would eliminate the candidate from the applicant pool.

The Township also submitted documents showing that Case had counseled staff on Township policies and procedures. In one instance, Case corrected two employees who were using incorrect codes in their dispatch reports. In another instance, an employee had not followed the appropriate procedure for requesting a vacation day. Case counseled the employee on the procedure and notified his supervisor of the incident. Case also

^{2/} Swetz certifies that Case cannot independently hire or discipline employees. Council 6, however, has not established how Swetz has personal knowledge of the records department's hiring or disciplinary processes. Council 6 also declined to respond to the Township's documents indicating that Case possesses supervisory authority. Therefore, I am relying upon the Township's submissions.

documented an argument among the employees he supervises, in response to which he called a department meeting, and reminded them that foul language and raised voices were not acceptable behavior, and encouraged them to take a break if tempers flared. Case also sent a memorandum to his staff, directing them how to process discovery requests in criminal cases.

The documents submitted by the Township also show that Case is responsible for assigning tasks and shifts. Case's subordinates submit their shift requests to him. Case then formulates a schedule. In one instance, three of the secretaries Case supervises requested to work the same shift. Case negotiated a viable schedule among the secretaries, wrote a summary of the issue and solution, and notified his supervisor.

Case also produced documents evaluating employee performance and provided them to his supervisor. In two letters, Case wrote of the exemplary performance of a subordinate. In another letter, he wrote about a backlog of discovery requests in his department, naming subordinates who had been delinquent in responding to them. Case asked his supervisor to send a memorandum to the delinquent employees admonishing their performance.

The Township's documents also show that Case effectively recommended discipline. Case issued a letter to a subordinate admonishing the employee's tardiness and suggesting that the

employee leave home earlier in order to punctually arrive at work. He also warned the employee that further tardiness will be documented and forwarded to the Chief's office.

The Township also provided a written "oral reprimand" that issued to one of Case's subordinates following Case's recommendation. The disciplined employee did not report to work. Case attempted to reach the employee without success. Two and one-half hours past the employee's start time, the employee requested that he be given the day off. Case notified his supervisor of the incident. The employee was disciplined for failing to comply with Township policy and regulations regarding absences.

ANALYSIS

A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit. In circumstances where a petition seeks to exclude supervisors from a non-supervisory unit, a clarification of unit petition is appropriate. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977).

Under our Act, supervisors cannot be included in negotiations units with non-supervisory employees. N.J.S.A. 34:13A-5.3 provides:

. . . [N]or, 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.

The Commission has construed a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend those actions. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970); Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984). In Hackensack Bd. of Ed., citing Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358-364 (1976), the Commission noted that there should be evidence that the supervisory authority allegedly possessed is exercised regularly.

Council 6 argues that the dispatcher/communications officer/records bureau supervisor is not a supervisor within the meaning of the Act because he does not have the power to hire, discipline, or to effectively recommend those actions.

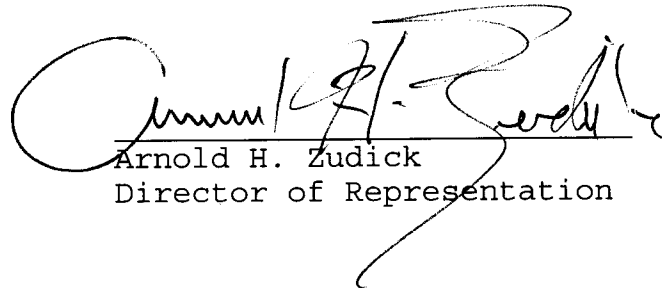
Based upon the Township's documents, however, including Quinn's certification, I find that the dispatcher/communications officer/records bureau supervisor has the power to hire and effectively recommend discipline. As a member of the hiring committee for the records department, Case has authority to reject an applicant for a position in the department. Case also assigns work tasks and shifts to his subordinates without review; counsels subordinates on Township policies and procedures;

evaluates their work; and, in at least one instance, effectively recommended the oral reprimand of a subordinate. I find, therefore, that the dispatcher/communications officer/records bureau supervisor is a supervisor within the meaning of the Act and should be excluded from Council 6's bargaining unit.

ORDER

The unit is clarified to exclude the dispatcher/communications officer/records bureau supervisor, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: June 18, 2010
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 June 28, 2010.