

D.R. NO. 95-32

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

In the Matter of

MERCER COUNTY SUPERINTENDENT
OF ELECTIONS,

Public Employer,

-and-

Docket No. CU-94-35

C.W.A., AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation declines to clarify a non-supervisory unit of white-collar employees to include the chief clerk and chief investigator positions. The Director determined, over the union's objection, that these positions are supervisory within the meaning of the Act. There was evidence that both disputed positions have participated in hiring and have authority to effectively recommend the discipline of other employees.

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Appearances:

For the Public Employer
Division of Employee Relations
(Lewis Goldstein, Chief)

For the Petitioner
Paul Pologruto, Local Representative

DECISION

On January 14, 1994, the Communications Workers of America, AFL-CIO, filed a clarification of unit petition with the Public Employment Relations Commission. It seeks to clarify its unit of white collar employees of the Mercer County Superintendent of Elections to include the chief clerk and chief investigator of elections. The superintendent opposes the inclusion of these titles because they are supervisors^{1/} within the meaning of the New

^{1/} It was originally asserted that these employees were confidential within the meaning of the Act, but has abandoned that claim.

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{2/}

Although the superintendent of elections receives funding from Mercer County, and the collective negotiations agreement between CWA and the superintendent was approved by the County Executive and County Board of Chosen Freeholders, it is not disputed that the superintendent is the employer of both disputed positions. The superintendent determines staffing levels and controls hiring, promotional and disciplinary actions within her budget.

The parties' agreement, effective from January 1, 1992 through December 31, 1993, includes the following job classifications:

Registration clerk, senior registration clerk, assistant supervising registration clerk, supervising registration clerk, voting machine technician, senior voting machine technician, supervising voting machine technician, investigator, senior investigator, supervising investigator, and secretarial assistant.

The superintendent created the title, chief clerk, in November 1993. This position reports directly to the superintendent and is modelled on the former supervisor of the registration division. The chief clerk position is occupied by Dot Rober. The supervising registration clerk, senior registration clerk and

^{2/} On December 1, 1994 and March 9, 1994, we notified the parties of our tentative decision. The County responded on December 21, 1994, and March 30, 1995. CWA responded on December 19, 1994 and January 30, 1995. As a result of these submissions, we received examples of the duties performed by the disputed positions relevant to the issues raised, and have incorporated those here.

registration clerks report directly to her. Rober has participated in hiring new registration clerks. The superintendent decides who is hired and may or may not solicit the chief clerk's input. There have not been any disciplinary actions or terminations during Rober's tenure as chief clerk. Rober has been given authority to make effective recommendations on disciplinary matters. No evidence was presented showing any involvement by Rober in the negotiations process or administration of the CWA agreement.

The chief investigator position was also created in November 1993. Kristine Champion, the present chief investigator, reports directly to the superintendent. The investigators, senior investigators and supervising investigator report directly to Champion. She has had input into hiring and promotion decisions; no disciplinary actions have been taken within her section to date. Champion also has been given the authority to make effective supervisory recommendations. No evidence was presented showing Champion's involvement in the negotiations process or administration of the CWA agreement.

Although no formal disciplinary charges were brought against any employee in the superintendent's office, the County supplied copies of memos and performance evaluations prepared by Rober and Champion. These show that in August 1989, Rober sent progress reports on a new employee (Nalbene) which identified potential attendance and performance problems. In 1990 Rober again reported on Nalbene's progress and on her possible return from sick

leave. Also submitted were evaluations showing that both Rober and Champion have rated other unit employees from 1993 to 1994. Finally, the County provided memos dated from 1984 to 1989 from both Rober and Champion regarding the performance and discipline problems of another employee (MacDonald).

* * * * *

The standards to be followed in analyzing whether these titles should be included in or excluded from CWA's non-supervisory unit are well established. N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization..." However, under the Act, supervisors may not be placed into negotiations units with non-supervisory employees.

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....

N.J.S.A. 34:13A-6(d) provides:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, 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....

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry

Hill Twp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend these actions. An indication that the power claimed to be possessed is exercised is needed. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

CWA argues that there is no justification for removing these positions from its non-supervisory unit and the documents submitted by the County are too old to be considered as part of the recent duties of the disputed titles. CWA further argues that these employees have been unit members since its inception, have had the same level of authority and that the only changed circumstance is their placement into new "chief" titles. CWA does not refute that Rober and Champion have prepared the submitted memos and evaluation forms, however, CWA argues that these documents do not show regularity in performing supervisory duties.

Applying the above "supervisory" standards, I find that Rober and Champion are supervisors within the meaning of the Act. The evidence here shows that both Rober and Champion possess the required supervisory authority for a finding of supervisory status. Here, significantly, both Rober and Champion were involved in reporting and investigating the few disciplinary problems which arose. There is no evidence that anyone other than Rober or Champion acted as supervisors of the employees in question. Nor is there evidence that Robert and Champion were excluded from making

effective recommendations in potential disciplinary situations. Both have recommended the hiring of other unit employees. Almost all employees in the superintendent's operation report to either Rober or Champion since they hold the highest level positions in their respective title series. Under these circumstances, the infrequency of disciplinary actions in a stable organization with few disciplinary problems is not fatal to the claim of supervisory status. Their demonstrated authority to report on others' performance and conformity with work rules places them both in the position of making effective disciplinary recommendations. The argument that their authority has not changed significantly while they remained in the non-supervisory unit does not mean that the County has waived its right to raise the issue of supervisory status. The statute prohibits supervisors from being placed into units with non-supervisory employees.

Based on all the above, the positions of chief clerk and chief investigator will not be placed into CWA's nonsupervisory negotiations unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 28, 1995
Trenton, New Jersey