

D.R. NO. 97-4

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

In the Matter of

GLOUCESTER BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-96-30

AFSCME COUNCIL 71 LOCAL 3858,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition which sought to add chief custodians to a non-supervisory negotiations unit. The Director found that the chief custodians were supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and were inappropriate for inclusion in the existing unit.

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Appearances:

For the Public Employer  
William D. Dilks, attorney

For the Petitioner  
Emanuel Murray, Staff Representative

DECISION

On January 22, 1996, the American Federation of State, County and Municipal Employees Council 71, Local 3858, AFL-CIO, filed a Petition for Clarification of Unit with the Public Employment Relations Commission seeking to add three "new" chief custodians employed by the Gloucester City Board of Education to its existing non-supervisory negotiations unit. The Board opposes the petition and alleges that these employees are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Based on our administrative investigation, the following facts appear.<sup>1/</sup>

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<sup>1/</sup> On August 19, 1996, we informed the Board and AFSCME of our intended findings. Neither party responded.

On December 9, 1992, the Commission certified the unit represented by AFSCME as follows:

Included: all custodial, maintenance and grounds employees employed by the Gloucester City Board of Education.

Excluded: all supervisors within the meaning of the Act, managerial executives, confidential employees, craft employees, professional employees and all other Board employees.

The Board asserts that the chief custodian is not a new title. In fact, there were two such positions in existence at the time the representation petition was filed. The third chief custodian position was created and filled in November 1995. At the time of its petition, AFSCME did not seek to represent the chief custodian positions. The Board and AFSCME have a collective negotiations agreement, effective from July 1, 1992 through June 30, 1996.

On or about November 1, 1995, the Board consolidated four elementary schools into one new school. Each of the Board's three schools has one chief custodian, as follows:

Junior-Senior High School	Ed Dubois
Mary Ethel Costello School	Ken Settar
Cold Spring School	Chris Kusmanick

The job description for chief custodian states, in relevant part:

**PRIMARY RESPONSIBILITY:** To achieve the highest possible standard of cleanliness and maintenance and to provide safe and orderly surroundings that allow students and teachers to concentrate on their work.

**TASK RESPONSIBILITIES AND PROCEDURES:** The Supervisor shall be the supervisor of the custodians in his school.

Organize and assign work tasks to the custodians under his supervision and provide manning reports on a weekly basis to the Supervisor of Buildings and Grounds.

Be responsible for formally evaluating custodial performance according to the policies of the Gloucester City Board of Education.

Supervise grounds maintenance activities including grass cutting, snow removal, equipment repairs, and shall monitor and eliminate safety hazards.

Be responsible for periodic day custodial personnel supervision.

The chief custodians report directly to the Supervisor of Buildings and Grounds/Director of Facilities and each chief custodian is in charge of a number of custodial and maintenance personnel at his school. There are about 30 members of AFSCME's non-supervisory unit, all of whom report to a chief custodian directly.

The three chief custodians have all warned or informally reprimanded other custodial employees. Dubois has reprimanded or corrected employees on several occasions; Kusmanick warned an employee who had initially refused an assignment; and Settar reprimanded an employee for arriving late to an important meeting. In the two latter incidents, the employees' behavior was corrected or adjusted. Dubois stated that he has the authority to discipline. The chief custodians can give oral reprimands, suspensions, and other forms of discipline without first checking

with a higher level of authority. The Board relies on the recommendation of these three chief custodians when considering reappointments of their subordinates. If a chief custodian does not recommend reappointment, the employee would not be reappointed by the Board, although no examples were given. The chief custodian's power to discipline is not limited to special circumstances.

The Board retains final authority to hire employees, and gives weight to the chief custodian's recommendations. There are some examples which demonstrate that a chief custodian's recommendations for hiring were followed. Chief Custodian Dubois recommended the hiring of Louis Hickson, Richard Hubbs and Ted Restock. The chief custodians can find their own applicants.

\* \* \* \* \*

This case presents two issues: whether a clarification petition is appropriate to add these unrepresented chief custodians to AFSCME's non-supervisory unit, and whether these positions are supervisors within the meaning of the Act; if they are supervisors, the unit may not be clarified to include them.

A clarification petition may be used to add positions to an existing unit; 1) during the period of the parties' first collective negotiations agreement, where those positions were not previously identified by the majority representative but are covered by the scope of the unit description; 2) where new positions have been created; or, 3) where a reorganization has changed the circumstances and job duties of non-unit positions to such an extent that they are

now appropriately included in the unit. See Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) and Wayne Bd. of Ed., D.R. No. 80-94, 6 NJPER 54 (¶11028 1980); and Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980)

It appears the chief custodian is not a new title. Two positions existed at the time AFSCME's non-supervisory unit was created and an additional position was created in November 1995. Here, the chief custodians were not sought by AFSCME in its original petition, but the petition was filed during the life of the parties initial agreement and therefore is timely filed. Clearview and Wayne. A majority representative must exercise diligence in searching for employees who may be properly included within its unit. A clarification of unit petition to include overlooked employees will be denied only where the employees have not been identified before the execution of a second collective negotiations agreement with the employer. Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980). Thus, this petition is procedurally appropriate if the chief custodian title is not supervisory.

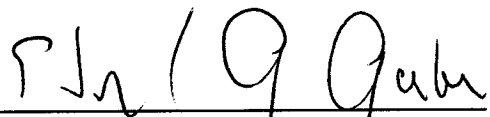
A supervisor is defined as one "having authority to hire, discharge or discipline or effectively recommend the same." N.J.S.A. 34:13A-5.3. Cherry Hill Tp., P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970). Determination of supervisory status requires more than the mere assertion that an employee has the authority to hire, discharge, discipline or effectively recommend such actions. The

Commission requires evidence that the authority is regularly exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER at 360 (1976).

Applying these standards to this case, we find that the chief custodians are supervisors within the meaning of the Act. They are in charge of the other custodial and maintenance employees at each school. Chief custodians assign work, have informally disciplined other custodial employees through warnings and oral reprimands, and have prepared performance evaluations containing reappointment recommendations. Further, there is also evidence that chief custodians have recommended that employees be hired, and that such recommendations were considered by the Board, which has the ultimate authority for hiring.

Based on all the above, the chief custodians employed by the Gloucester City Board of Education are supervisors within the meaning of the Act and are inappropriate for inclusion in the non-supervisory unit represented by AFSCME Council 71, AFL-CIO. Accordingly, the clarification petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: September 17, 1996  
Trenton, New Jersey