

L.D. NO. 91-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

POMPTON LAKES BOROUGH MUNICIPAL UTILITIES AUTHORITY,

-and-

Docket No. CO-L-90-334

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 418.

Appearances:

For the Respondent
Jeffrey M. Kassover, Esq.

For the Charging Party
Bruce D. Leder, Esq.

DECISION

On July 24, 1990, Pompton Lakes Borough M.U.A. ("M.U.A.") and IBT Local 418 ("Local 418") jointly agreed to submit a dispute concerning the unit placement of the Laboratory Supervisor to the Commission's Litigation Alternative Program. The parties also agreed that this decision is binding and resolves the Unfair Practice Charge filed with the Commission. On September 7, 1990. I, as Commission designee, held an informal hearing. The parties presented their respective positions and submitted supporting documents.

The M.U.A. contends that the title of Laboratory Supervisor is supervisory and should be excluded from the unit. Local 418 disagrees.

The following facts appear. Local 418 represents a collective negotiations unit of approximately nine employees described as all professional and non-professional non-supervisory regular full-time and regular part-time employees performing laboratory operations and maintenance functions employed by the M.U.A.

The M.U.A. operates an on-site laboratory certified by the New Jersey Department of Environmental Protection (D.E.P.) for analyses of parameters required by the New Jersey Safe Drinking Water Act and the New Jersey Water Pollutant Control Act. In order to conform to the regulatory requirements for certified laboratories, the M.U.A. adopted the titles of laboratory manager and laboratory supervisor as specified by N.J.A.C. 7:18-2.7.^{1/}

The M.U.A. has designated its licensed Plant Operator Joseph Green ("Green") as the laboratory manager and, since November 1989, Richard Witzak ("Witzak") as the laboratory

^{1/} N.J.A.C. 7:18-2.7(a)1 states that "...the person in responsible charge, irrespective of any local title or designation, shall be referred to as the laboratory manager."

N.J.A.C. 7:18-2.7(a)2 states that there shall be "...one or more supervisors who shall be qualified in accordance with the provisions of (d) below to perform the tests or analyses required to be performed within the category or categories for which the laboratory is certified..."

N.J.A.C. 7:18-2.7(d) requires that the laboratory supervisor have at least a bachelor's degree in addition to laboratory experience for all categories except for one category of Limited Chemistry.

supervisor.^{2/} In December, 1989, the M.U.A. removed the title of laboratory supervisor from the bargaining unit.

The M.U.A. has a work force of eight employees who report to either Green, the Plant Operator or Dan Durant ("Durant") the supervisor of the water department. Green and Durant report to the M.U.A. Superintendent Frank Swart ("Swart").

Witzak, who reports to Green, describes his job duties as performing the required water and wastewater discharge analyses and tests, recording and analyzing the results, preparing quarterly and yearly self-monitoring reports for D.E.P. and the United States Environmental Protection Agency, and reviewing the work of the laboratory technician who assists him.

Witzak has not been involved in hiring, firing or disciplining M.U.A. employees. In February, 1990, a laboratory technician was hired to assist Witzak. He was interviewed by Green who recommended to Swart that he be hired. If a problem were to arise with the laboratory technician that might result in discipline, Witzak would bring it to Green's attention. If Green does not know about the problem personally, he would investigate it and then recommend to Swart that disciplinary action be taken. The Personnel Chairman of the M.U.A. makes the final decision based on Swart's recommendation.

^{2/} A former employee, Ravi Swami, was designated as laboratory supervisor from July to November 1989 when the M.U.A.'s laboratory was initially certified by the D.E.P.

Because the work force is small, the evaluation procedure is informal. Green or Durant annually request a verbal appraisal of employees under their supervision, which is reported to Swart. Witzak is expected to evaluate the laboratory technician at the end of the year. In the interim, Witzak has given Green an informal opinion of his performance.

Approximately three times a week Green and Durant meet briefly with Swart to discuss daily operational concerns. Witzak has attended these meetings twice to discuss technical problems with certain tests. Only Swart, Green and Durant attend the monthly meetings of the M.U.A. Commission.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") provides at subsection 5.3 that:

...nor, expect 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...

Consistent with subsection 5.3, the Commission has defined a supervisor as an employee possessing the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970). A finding of supervisory status, however, requires more than a job description or an assertion that an employee has supervisory authority. The Commission will look beyond the title or job

description in order to ascertain the nature of the authority the employee actually exercises. Additionally, it must be shown that the supervisory power claimed is exercised with some regularity. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

"Effective recommendation" occurs when the recommendation is adopted without independent review and analysis by a higher level of authority. See Teaneck Bd. of Ed., E.D. No. 23 (1971); Borough of Avalon, P.E.R.C. No. 84-108, NJPER 207 (¶13102 1984).

There is no evidence that Witzak has the authority to hire, fire, discipline or effectively recommend the same. The M.U.A. has the final authority to hire, discharge and discipline. All recommendations to the M.U.A. Commissioners come from Swart who is advised on such actions by Green and Durant. In the one instance when the laboratory assistant was hired, it was Green who conducted the interview and recommended to Swart that the candidate be hired. Swart then made the recommendation to the M.U.A. Commissioners. Witzak did not participate in the process at all.

Neither is there evidence that Witzak possesses the authority to recommend discipline or discharge. If such a need were to arise, the procedure would be for Green to make an independent evaluation of the situation and then make a recommendation to Swart.

The only other evidence that would relate to the authority to discipline employees is the evaluation process. Union Cty. Coll., P.E.R.C. No. 85-22, 10 NJPER 536 (¶15247 1984) (1985). While Witzak is expected to give his verbal evaluation of the laboratory assistant at the end of the work year, it is evident that it is Green, in his capacity as laboratory manager and plant operator, who will make the recommendation to Swart.

The M.U.A.'s reliance on the regulatory designation of "laboratory supervisor" is not dispositive of supervisory authority under the Act. Given Witzak's evident lack of authority to hire, fire, discipline or effectively recommend these actions, I conclude that Witzak is not a supervisor within the meaning of the Act and that the title of laboratory supervisor remain in the collective negotiations unit represented by Local 418.


Illse E. Goldfarb
Commission Designee

DATED: November 28, 1990
Trenton, New Jersey