

P.E.R.C. NO. 85-114

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAURICE RIVER TOWNSHIP SCHOOLS,

Public Employer-Petitioner,

-and-

Docket No. CU-84-93

MAURICE RIVER TOWNSHIP
SUPPORTIVE ASSOCIATION,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, clarifies a negotiations unit represented by the Maurice River Township Supportive Staff Association of the Maurice River Township Schools to exclude the positions of Maintenance Supervisor, Transportation Supervisor and Cafeteria Food Service Manager. A Hearing officer found that these three positions are "supervisors" within the meaning of the New Jersey Employer-Employee Relations Act and the Chairman, in the absence of exceptions, agrees.

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Appearances:

For the Public Employer-Petitioner, Milstead & Ridgway,
Esqs. (Jack Kooreman, of Counsel)

For the Employee Representative
Charles Peraset, NJEA Consultant

DECISION AND ORDER

On April 26, 1984, the Maurice River Township Schools filed a Clarification of Unit Petition with the Public Employment Relations Commission. The Board seeks to exclude the positions of Maintenance Supervisor, Transportation Supervisor and Cafeteria-Food Service Manager from a negotiations unit represented by the Maurice River Township Supportive Staff Association ("Association"). The Board alleges that the three positions are "supervisors" within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and that a potential and actual conflict of interest exists between the supervisory and non-supervisory employees in the existing unit.

On October 26, 1984, Commission Hearing Officer Nathaniel L. Fulk conducted the hearing. The Board examined witnesses and introduced exhibits.^{1/} Neither party submitted a brief.

On January 28, 1985, the Hearing Officer issued a report and recommended decision. H.O. No. 85-9, 11 NJPER ____ (Para. ____ 1985). He recommended that the titles of Maintenance Supervisor, cafeteria-Food Service Manager, and Transportation Supervisor be removed from the negotiations unit because of their supervisory responsibilities. He concluded that each title plays a key role in the school district's hiring and disciplinary process, and that each title evaluates the employees of their respective departments. This, the Hearing Officer found, supports a finding of both supervisory status and that a conflict of interest exists between the titles and the remainder of the negotiations unit.

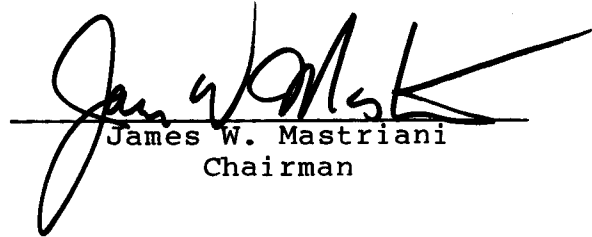
Acting under authority delegated to me by the full Commission, I have reviewed the record. The Hearing Officer's finding of fact (pp. 3-8) are accurate and I adopt and incorporate them here. I agree with the Hearing Officer that the employees in question are supervisors and should be removed from the existing unit.

^{1/} The Association, although given notice of the scheduled hearings, declined to attend.

ORDER

The negotiations unit which the Maurice River Township Supportive Staff Association represents is clarified to exclude the positions of Maintenance Supervisor, Transportation Supervisor, and Cafeteria-Food Service Manager.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 26, 1985

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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Employee Representative.

SYNOPSIS

A Commission Hearing Officer recommends that the titles of Maintenance Supervisor, Cafeteria-Food Service Manager, and Transportation Supervisor be removed from a negotiations unit comprised of full and part-time supportive staff personnel because of their supervisory responsibilities. The Hearing Officer concludes that each title plays a key role in the school district's hiring and disciplinary process, and that each title evaluates the employees with each department. This, the Hearing Officer concludes, supports a finding of both supervisory status and conflict of interest between the titles and the remainder of the negotiations unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exceptions filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's finding of fact and/or conclusions of law.

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Employee Representative.

Appearances:

For the Public Employer-Petitioner
Milstead & Ridgway, Esquires
(Jack Kooreman, of counsel)

For the Employee Representative
Charles Peraset, NJEA Consultant

HEARING OFFICER'S
REPORT AND RECOMMENDATION

A Clarification of Unit Petition was filed on April 26, 1984, with the Public Employment Relations Commission by the Maurice River Township Board of Education ("Board") seeking a clarification of a negotiation's unit represented by the Maurice River Township Supportive Staff Association ("Association"). The Board seeks to exclude the positions of Maintenance Supervisor, Transportation Supervisor, and Cafeteria-Food Service Manager from the Association's negotiations unit because they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and because a potential and actual conflict of interest exists between the supervisory and non-supervisory employees in the mixed unit.

A hearing was held on October 26, 1984, at which time all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. ^{1/} The transcript was received in the Commission's office on December 24, 1984, and both parties were given until January 17, 1985, to submit briefs. Neither party submitted a brief.

1/ The Association did not have a representative at the hearing, and prior to the hearing, requested that it be adjourned. Due to the history of this petition, that request was denied.

The petition was filed on April 26, 1984, and an initial exploratory conference with Richard Gwin, Commission Staff member, was scheduled for June 6, 1984. This conference was postponed at the request of the Association and rescheduled for July 13, 1984. This second conference was also postponed at the request of the Association, and the parties finally met with Mr. Gwin on July 26, 1984. The file was then misplaced, until September 13, 1984 when it was assigned to me for a hearing. The hearing was first scheduled for October 10 and 11, 1984. In a letter dated September 17, 1984, Charles Peraset, N.J.E.A. Consultant, informed the Commission that the Association would be unable to attend a hearing until the third week of November.

Upon receipt of this letter, I called Mr. Peraset and explained that because of the many delays, I was unwilling to postpone the hearing for any more than two weeks. He then agreed to a rescheduled date of October 26, 1984, and the Board's attorney concurred. On October 2, 1984, I sent a letter to both parties confirming the October 26, 1984, date and informing them that this date was peremptory.

On either October 17 or 18, 1984, I received a call from the Board's attorney informing me that this matter might settle. I told him that the hearing date would remain unless both parties informed me that the matter was resolved. On October 23, 1984, I received a call from John Gibison, a UniServ Representative, informing me that no settlement had been reached and that the Association would be unable to attend the hearing. I told him that the hearing date was peremptory and that the hearing would not be postponed. In a letter dated October 25, 1984, Mr. Gibison informed me that no one from the N.J.E.A. office would be attending the hearing.

Based on the entire record in these proceedings, the undersigned finds:

1. The Maurice River Township Board of Education is a public employer within the meaning of the Act, is the employer of the employees involved herein and is subject to its provisions.

2. The Maurice River Township Supportive Staff Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Association is the majority representative of a negotiations unit comprised of full and part-time supportive staff personnel including the titles in question.

4. The Maurice River Township School District is a small district consisting of two schools and 500 students (T-22). ^{2/} The hierarchy within the school system is the Board, the Superintendent, the Business Manager/Board Secretary, the Building Principal, and the three titles currently in dispute. The individuals filling these positions are Elsworth Riley, Maintenance Supervisor, Eleanor Whilden, Transportation Supervisor, and Inge Phillips, Cafeteria-Food Service Manager (T-13). Each of these three report directly to the Business Manager/Board Secretary, Rhua Ernst (T-32).

5. Maintenance Supervisor

The general responsibilities of the Maintenance Supervisor, as found in the job description include:

^{2/} All transcript citations will be noted by a "T" followed by the page number.

Maintenance and repair of all buildings and equipment; interviewing and recommending for hire all subordinate maintenance and custodial personnel; training and supervision of personnel; assignment of duties and evaluation of performance (P-1). 3/

a) Assignments

It is the Maintenance Supervisors' responsibility to assign the daily duties of the maintenance and custodial staff. He dictates the working schedules for each member of his staff and arranges the schedule of performance for each task. He also is responsible for seeing that each duty is performed in a proper and timely manner (T-15, 18, 26, 27).

b) Hiring

While there have been very few job openings in the school district in recent years, the Maintenance Supervisor is expected to take a key role in the hiring process. When an opening occurred for an Assistant in the Maintenance Department, applications were received by the Business Manager/Board Secretary who in turn, scheduled the interviews with the Maintenance Supervisor. Four candidates were interviewed by the Maintenance Supervisor and the Business Manager/Board Secretary. When the interviews were completed, the Maintenance Supervisor was asked which candidate, if any, he thought best for the position, and his recommendation was accepted. This assistant worked for a ninety (90) day trial period and at the end of this period, the Maintenance Supervisor evaluated his work and recommended that his status be changed from provisional to permanent. This recommendation was also followed (T-16, 19, 20).

3/ All Board exhibits are designated with a "P".

c) Evaluations and Discipline

Since the Maintenance Supervisor is responsible for the assignment of duties and for insuring that each duty is performed appropriately, he is in the best position to evaluate the overall performance of each member of his staff. He performs written evaluations at least once a year. These evaluations are discussed with the individuals and then made a part of the individual's personnel file (T-16, 33). While it has yet to occur during the time the present Business Manager/Board Secretary has held the position, she stated that a poor evaluation could result in an increment withholding (T-40).

Most of the discipline which has occurred in the past few years has been informal. When there is a problem, the Maintenance Supervisor has the authority to work it out with the individual (T-18). When the problem cannot be resolved, the supervisor submits a written report to the Business Manager/Board Secretary with a recommendation as to appropriate action. The Business Manager/Board Secretary testified that she would support the recommendations of her supervisors 100 percent (T-42). In 1980, a member of the Maintenance Department took a vacation without authorization from the supervisor and the Business Manager/Board Secretary and personnel committee suspended him for three days based upon the recommendation of the Maintenance Supervisor (T-17).

6. Cafeteria-Food Service Manager

The general responsibilities of the Cafeteria-Food Service Manager, as found in the job description include:

Planning for a cost efficient service through task analysis and staff assignment. Interviewing, hiring, training, supervision and evaluation of all food service staff... (P-11).

a) Assignments

The Cafeteria-Food Service Manager is responsible for the entire food service operation. She assigns and trains the employees in all areas of the operation, including meal preparation, organization of inventory, and clean up and kitchen maintenance.

b) Hiring

The Cafeteria-Food Service Manager has been solely responsible for the interviewing of candidates for positions in the department. The Business Manager/Board Secretary has given her free reign to advertise for positions, receive applications, and conduct interviews. In the last two years she has interviewed several candidates and has recommended for hire, an Assistant Food Service Manager and two Cafeteria Monitors. These recommendations have been followed (T-35, 36, 37, 44, 45).

c) Evaluations and Discipline

The Cafeteria-Food Service Manager evaluates the employees within her department twice a year (T-44). These evaluations have resulted in altering the status of recent hirees from provisional to permanent. A negative evaluation can result in an increment denial (T-30,40). While the Cafeteria Manager has yet to formally discipline an employee, she believes that she has the authority to commence suspension proceedings and that her recommendations would be followed (T-47).

7. Transportation Supervisor

The general responsibilities of the Transportation Supervisor, as found in the job description include:

Establish and coordinate transportation routes; interview and recommend for hiring omnibus operators; train, supervise and evaluate; schedule and assign drivers for regular and extra runs; coordinate maintenance of omnibus fleets...(P-15).

a) Assignments

The Transportation Supervisor is responsible for making up bus routes and assigning those routes to the drivers. In emergency situations she reassigns drivers, and also insures that the buses are functioning properly and supervises their maintenance. She also hires substitute drivers (T-49, 51).

b) Hiring

The Transportation Supervisor has been solely responsible for the review of candidates for permanent positions within her department and every recommendation she has made has been followed. (T-49, 50). There has been no interviewing process for new bus drivers, rather these drivers have been hired from a list of substitute drivers which is in the possession of the Transportation Supervisor. She bases her recommendation on her evaluations of the past performances of these substitutes (T-52).

c) Evaluations and Discipline

The Transportation Supervisor performs an annual written evaluation of all employees in the Transportation Department (T-45, 53). She testified that in the years that she has performed evaluations, she has never found that an employee has performed inadequately, however, she did state that if she did write a negative

evaluation she would talk with the Business Manager/Board Secretary and together they would formulate a course of action for that employee (T-54). She also testified that she had yet to discipline an employee, but stated that she would make a recommendation to the Business Manager/Board Secretary if the need every arose (T-55, 56).

ANALYSIS

N.J.S.A. 34:13A-5.3 states in pertinent part that:

...public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided however that, ...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...

There has been no contention by the Association that established practice, prior agreement or special circumstances exist regarding these three positions which would permit their continued inclusion within the unit. Its sole argument is that the Board unilaterally modified the job description and that under Civil Service Regulations it had no authority to do so. The Association has taken no position as to the supervisory status of the titles.

Based upon the evidence before me and my observance of the witnesses as they testified, I have no doubt that the Maintenance Supervisor, Cafeteria-Food Service Manager, and Transportation Supervisor are supervisors within the meaning of the Act and should be

excluded from the Association's negotiations unit. Each title plays a key role in the hiring process. In some instances, only the supervisor has any contact with prospective employees before a recommendation for hire is made and these recommendations have always been followed.

While no employee has been dismissed in either the Maintenance, Cafeteria or Transportation Departments, I have no reason to believe that the three supervisors would not also play a key role in such a decision. The Business Manager/Board Secretary testified credibly that she would fully back a supervisor's recommendation to dismiss an employee under their supervision. There has also been very little discipline of any employee other than an occasional verbal reprimand by one of the supervisors. I am convinced however, that even though there has been little need for discipline, this cannot be interpreted to mean that the supervisors role in the disciplinary process would not be significant. The testimony revealed that the Business Manager/Board Secretary expected the supervisors to come to her and discuss any problem he or she may be having with an employee and that a supervisor's recommendation would be followed. The superintendent testified as well that only under extenuating circumstances would a supervisor's recommendation not be followed. ^{4/}

The Board also asserts that a conflict of interest exists between the supervisory positions and those other positions within the Association's unit. This argument is based on the conflict of

^{4/} Although previous Commission decisions have held that the mere possession of supervisory authority is insufficient to sustain a claim of supervisory status, I do not consider the present instance as one in which the three supervisors have mere possession of supervisory authority. In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

interest identified by the Supreme Court in Board of Education of West Orange v. Wilton, 57 N.J. 404, 425 (1971):

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.

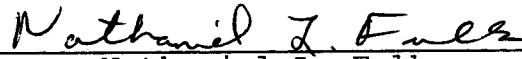
The supervisors responsibilities in the hiring and evaluation processes, as reviewed supra, are extensive. The performance of these responsibilities could often put the supervisors at odds with those employees affected by their recommendations. Clearly, a potential conflict of interest exists and precludes these titles from remaining within the negotiations unit represented by the Association.

For the above reasons, I recommend the following findings:

1. The Maintenance Supervisor, Cafeteria-Food Service Manager, and Transportation Supervisor are supervisors within the meaning of the Act.
2. The Maurice River Township Supportive Staff Association is an employee representative which does not represent supervisors within the meaning of the Act.
3. Neither established practice, prior agreement nor special circumstances exist which could allow the Association to represent supervisors within the meaning of the Act.

4. Potential conflicts of interest exist between the Maintenance Supervisor, Cafeteria-Food Service Manager, and Transportation Supervisor and the members of the negotiations unit represented by the Association.

5. Accordingly, the negotiations unit represented by the Association should be clarified to exclude the Maintenance Supervisor, Cafeteria-Food Service Manager, and Transportation Supervisor.



Nathaniel L. Fulk
Hearing Officer

DATED: January 28, 1985
Trenton, New Jersey