

P.E.R.C. NO. 2012-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN,

Petitioner,

-and-

Docket No. CU-2010-025

LINDEN SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the City of Linden's request for review of D.R. No. 2011-12. In that decision, the Deputy Director of Unfair Practices granted the City of Linden's clarification of unit petition to exclude titles in a supervisory unit represented by the Linden Supervisors Association that the City alleges were not supervisory. The Commission holds that the Association did not meet the standard to obtain review as the evidence submitted did not establish the titles were supervisors within the meaning in the Act.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Allan Roth, Labor Relations
Specialist

For the Respondent, Oxfeld Cohen, P.C. (Sanford R.
Oxfeld, of counsel)

DECISION

On June 8, 2011, the Linden Supervisors Association requested review of D.R. 2011-12, ___ NJPER ___ (¶__ 2011). In that decision, the Deputy Director of Representation granted the petition of the City of Linden to clarify a supervisory unit to exclude the titles sanitation inspector, computer service technician, senior sanitary inspector, plumbing inspector, municipal recycling coordinator, systems analyst, senior housing inspector, and electrical sub-code official. The City has not filed a response to the Association's request. We deny review.

Review of a Director's decision clarifying a negotiations unit will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered. [N.J.A.C. 19:11-8.2]

The Association argues that the Deputy Director's findings are erroneous and asserts that the affidavits submitted provide the necessary facts to conclude the disputed titles are supervisors; the result is prejudicial to the Association; and special circumstances and established practice require the Commission to find the titles appropriately in the unit.

There is no compelling reason warranting review of the Director's determination. Our definition of supervisor derives from N.J.S.A. 34:13A-5.3: a supervisor is one who hires, discharges, disciplines or effectively recommends the same. Mere possession of authority to do so is not enough. Westfield Bd. of

Ed., P.E.R.C. No. 88-3, 13 NJPER 358 (¶18237 1987). We must review all the circumstances of a case to determine whether the employee has and regularly exercises such power. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill Tp. DPW, P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970). The Deputy Director applied well-settled case law to determine the Association did not assert facts sufficient to find the employees are supervisors within the meaning of the Act. The affidavits submitted by the Association do not provide the detail required to determine that the employees have and regularly exercise the authority to hire, discharge, discipline or effectively recommend same. The affidavits are vague, speculative, and provide little detail of the employees' specific duties related to their alleged supervisory status. The Deputy Director notified the Association of his intention to clarify the unit by letter and provided an opportunity for it to submit further evidence. The Association did not respond to this opportunity.

The Association has not provided any facts to support its established past practice argument beyond its assertion that the unit was created in 1973. The statutory exception set forth in

N.J.S.A. 34:13A-5.3^{1/} relates solely to a pre-Act (i.e., pre-1968) negotiations relationship between a public employer and a majority representative. Middlesex Cty. College, P.E.R.C. No. 29 (1969); Rutgers, State University, P.E.R.C. No. 90-69, 16 NJPER 135 (¶21053 1990). The historical relationship between the parties alone is not enough to overcome the Act's prohibition.

ORDER

The Linden Supervisors Association's request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: May 31, 2012

Trenton, New Jersey

1/ N.J.S.A. 34:13A-5.3 provides, in part:
nor, 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....