

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Public Employer,

-and-

HACKENSACK HEAD CUSTODIANS AND
MAINTENANCE SUPERVISOR ASSOCIATION,

Docket No. RO-84-46

Petitioner,

-and-

HACKENSACK CUSTODIAL AND MAINTENANCE
ASSOCIATION, NJEA,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a representation petition which the Hackensack Head Custodians and Maintenance Supervisor Association filed. The Association sought to represent a negotiations unit of six head custodians and one maintenance supervisor employed by the Hackensack Board of Education and at present included in a nonsupervisory support staff unit represented by the Hackensack Custodial and Maintenance Association, NJEA. A Hearing Officer found that the head custodians were not supervisors within the meaning of the New Jersey Employer-Employee Relations Act and that the petitioned-for unit was inappropriate. The Commission, in the absence of exceptions, agrees and dismisses the Complaint.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Public Employer,

-and-

HACKENSACK HEAD CUSTODIANS AND
MAINTENANCE SUPERVISOR ASSOCIATION,

Docket No. RO-84-46

Petitioner,

-and-

HACKENSACK CUSTODIAL AND MAINTENANCE
ASSOCIATION, NJEA,

Intervenor.

Appearances:

For the Public Employer, Peter J. Capone, Assistant
Superintendent for Business

For the Petitioner, Carey McCall, Jr., Supervisor
of Maintenance

For the Intervenor, Vincent Giordano, Field Representa-
tive, NJEA UniServ Regional Office

DECISION AND ORDER

On October 17, 1983, the Hackensack Head Custodians and Maintenance Supervisor Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association seeks to represent a negotiations unit of six head custodians and one maintenance supervisor employed by the Hackensack Board of Education ("Board"). The employees are at present included in a nonsupervisory support staff unit represented by the Hackensack Custodial and Maintenance Association, NJEA ("Custodians Association").

The Custodians Association has intervened in this litigation.

On January 4, 1984, the Administrator of Representation Proceedings issued a Notice of Hearing.

On May 7, 1984, Commission Hearing Officer Richard C. Gwin conducted a hearing. The parties examined witnesses and introduced exhibits. The parties waived oral argument and post-hearing briefs.

On August 29, 1984, the Hearing Officer issued his report and recommended decision. H.O. No. 85-3, 10 NJPER ____ (¶ ____ 1984). He recommended that the petition be dismissed. He specifically found that head custodians were not supervisors within the meaning of the Act and therefore the petitioned-for unit was inappropriate.

The Hearing Officer served his report on the parties and informed them that exceptions, if any, were due on or before September 13, 1984. Neither party filed exceptions or requested an extension of time.

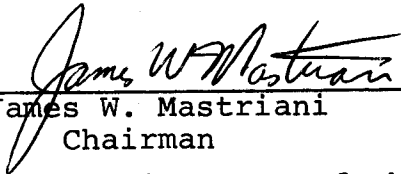
We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-6) are accurate. We adopt and incorporate them here. Based on all the circumstances of this particular case, and in the absence of exceptions, we agree with the Hearing Officer that the petitioned-for unit is inappropriate. Accordingly, we dismiss the petition.^{1/}

^{1/} We note that the Board is apparently redefining the disciplinary and evaluation roles of head custodians. When it implements any changes in these roles, the Commission would entertain a clarification of unit petition or other representation petition seeking a reexamination of these titles.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani and Commissioner Butch voted in favor of this decision. Commissioner Suskin voted against the decision. Commissioners Hipp and Newbaker abstained. Commissioners Graves and Wenzler were not in attendance.

DATED: Trenton, New Jersey
November 29, 1984
ISSUED: November 30, 1984

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Public Employer,

- and -

HACKENSACK HEAD CUSTODIANS AND
MAINTENANCE SUPERVISOR ASSOCIATION,

Docket No. R0-84-46

Petitioner,

- and -

HACKENSACK CUSTODIAL & MAINTENANCE
ASSOCIATION, NJEA,

Intervenor.

SYNOPSIS

A Hearing Officer recommends dismissal of a Petition for Certification of Public Employee Representative which sought to create a collective negotiations unit of head custodians and a supervisor of maintenance employed by the Hackensack Board of Education. The Hearing Officer concludes that, while the supervisor of maintenance may be a statutory supervisor, head custodians are not. The Hearing Officer also concludes that neither head custodians nor the supervisor of maintenance possess a conflict of interest with other members of the Hackensack Custodians and Maintenance Association, the collective negotiations unit in which the disputed titles have remained for at least the past ten years.

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 thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Public Employer,

-and-

HACKENSACK HEAD CUSTODIANS AND
MAINTENANCE SUPERVISOR ASSOCIATION,

Docket No. R0-84-46

Petitioner,

-and-

HACKENSACK CUSTODIAL & MAINTENANCE
ASSOCIATION, NJEA,

Intervenor.

Appearances:

For the Public Employer
Peter J. Capone, Assistant Superintendent for Business

For the Petitioner
Carey McCall, Jr., Supervisor of Maintenance

For the Intervenor
Vincent Giordano, UniServ Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATION

On October 17, 1983, the Hackensack Head Custodians and Maintenance Supervisor Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The Association seeks to represent a unit of six head custodians and one maintenance supervisor employed by the Hackensack Board of Education ("Board"). The employees are currently included in a nonsupervisory support staff unit represented by the Hackensack Custodial and Maintenance Association

NJEA ("Custodians Association"). ^{1/}

The Association contends that the employees are supervisors under the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. and should not be included in a unit with non-supervisors. The Board supports the Association's contention.

On November 3, 1983, the Custodians Association submitted a request to intervene, complying with N.J.A.C. 19:11-2.7. It asserts that the titles are not supervisory and should remain in the unit.

On January 4, 1984, the Administrator of Representation Proceedings issued a Notice of Hearing designating Lawrence Henderson as Hearing Officer. On January 31, 1984, Hearing Officer Henderson left the employ of the Commission and the Administrator designated the undersigned as Hearing Officer pursuant to N.J.A.C. 19:11-6.4.

On May 7, 1984, the undersigned conducted a hearing at which the parties were given the opportunity to examine and cross-examine witnesses, to present evidence and argue orally. The parties waived oral argument and post-hearing briefs. Transcripts were received on June 29, 1984.

FINDINGS OF FACT

1. The Board is a public employer under the Act and is subject to its provisions.
2. The Association is an employee representative under the Act and is subject to its provisions.

1/ The recognition clause in the contract between the Board and the Custodians Association reads in pertinent part, as follows:

The Hackensack Board of Education recognizes the Custodial and Maintenance Association of the Hackensack Public Schools, hereinafter referred to as the Association, as the exclusive representative designated for the purposes of collective negotiations by a majority of the Custodians and Maintenance employees employed by the Board excluding any employees whose duties, all or in part, are of supervisory nature within the meaning of the New Jersey Employer-Employee Relations Act.

3. The Custodians Association is an employee representative under the Act and is subject to its provisions.

4. The Custodians Association was recognized by the Board approximately ten years ago as the majority representative of custodial and maintenance employees. Prior to this proceeding no one has challenged the inclusion of head custodians and the supervisor of maintenance in the unit. Head custodians have held office in the Custodians Association, have served on its negotiations team, and have enjoyed the same rights as other unit members. (Transcript ("T") pp. 19-22, 32, 33, 62-65).

5. The Board employs approximately 66 custodial and maintenance employees: six are head custodians, one is the supervisor of maintenance. The District has four elementary schools, a middle school and a high school. A head custodian is assigned to each. (T. pp. 7, 8, 44-46, 75). The Supervisor of Maintenance has his own office. (T. p. 86).

6. Head custodians are responsible for maintaining school buildings and grounds. They plan, schedule and assign janitorial and minor maintenance tasks. They receive instructions from their school principal or vice-principal (their immediate supervisors) and occasional direction from the supervisor of maintenance. They perform janitorial work. They assign overtime, if their immediate supervisors approve it. (T. pp. 8, 9, 46-48; J2-A, B and C).

7. The supervisor of maintenance plans, schedules and oversees janitorial and heating services for all school buildings and grounds. He reports directly to the assistant superintendent of schools. He plans alteration, improvement, and repair projects. He assigns work to his maintenance group, a crew of maintenance employees with specialized skills in carpentry, electrical work, etc. He

determines department needs for supplies and equipment. He inspects school facilities and occasionally gives instructions to head custodians. He approves overtime projects. He also approves sick and vacation leave and reviews department time sheets. (T. pp. 73-77; J-2d).

8. Head Custodians have a limited role in hiring.

Vincent A. Valentine, head custodian at the Jackson Avenue Elementary School, testified that applications for openings in his school are made in the central office. The assistant superintendent for business interviews and screens applicants. Mr. Valentine is presented with the applications found acceptable by the Board. He conducts his own interviews and sends a report to the assistant superintendent. The school principal then interviews those applicants who received favorable reports from Mr. Valentine. Applicants receiving a favorable report from Mr. Valentine are usually hired. (T. pp. 15, 16, 109).

William Polcari, head custodian at Hackensack High School, described a slightly different hiring process. Applications are submitted to the assistant superintendent for business. They are screened and sent to Mr. Polcari and the high school vice principal. Together, they conduct interviews and submit a joint recommendation to the assistant superintendent. Mr. Polcari's role during the interviews is to advise applicants of job benefits and qualifications. All recommendations to hire made by Mr. Polcari and the vice principal have been followed. (T. pp. 52-57, 109).

9. The Supervisor of Maintenance, Carey McCall, participated in hiring one head custodian. He received six applications from the assistant superintendent. He interviewed all six and made his

recommendation. It was followed. (T. pp. 82-84). His job description provides that he "screen applicants for departmental jobs." (J-20, p. 2).

10. Mr. McCall is also involved in filling vacancies in his maintenance group by promoting custodians to the higher grade. A vacancy is posted and Mr. McCall interviews applicants. He submits a report to the assistant superintendent with a recommendation. Two openings in the maintenance group have been filled this way. Mr. McCall's recommendations have been followed both times. (T. pp. 84-86).

Head custodians are consulted by the Board when employees in their crews are considered for promotion. Mr. Capone, the Board's Assistant Superintendent for business, testified that the Board consults head custodians to "affirm...that the person is qualified." (T. p. 108).

11. Both head custodians and the supervisor of maintenance evaluate employees. Forms are provided by the Board. Non-tenured employees are evaluated yearly; tenured employees every three years. Head custodians do not recommend retention or dismissal of non-tenured employees on the evaluation form. They may comment that a custodian has leadership skills or has potential for advancement. There is no indication on the record that an evaluation completed by a head custodian has ever been used as the basis to withhold an increment. (T. pp. 12, 13, 50-52; J-3, 4).

While the supervisor of maintenance has been assigned the responsibility to evaluate head custodians and the maintenance group, at the time of hearing in this matter he has not yet performed this

function because the employees are all tenured and the three year evaluation period has not ended. (T. pp. 76, 77).

12. To date, one grievance has arisen involving actions taken by a head custodian with a member of his crew. The grievance was verbal, involved overtime assignment, and was submitted to a school principal. The grievance was resolved by the school administration. (T. pp. 22-24). On another occasion a head custodian grieved with custodians about lifting heavy wrestling mats. (T. p. 61).

The contract between Custodians Association and the Board does not include head custodians as a step in the grievance procedure. Grievances are first presented to school principals (or vice-principals). The supervisor of maintenance, however, is the first step for maintenance group grievances but none have been filed. (T. pp. 15, 49, 80; J-1, pp. 2-7).

13. Head custodians have, to a limited extent, recommended that employees in their crews be disciplined. Mr. Polcari recommended that a custodian receive a written reprimand for tardiness. He also recommended an employee be transferred. Both recommendations were followed. No head custodian has recommended suspension or termination. They do not have the authority to suspend. Under a new Board policy they have the authority to send a unfit employee home, but have not had to do it. (T. pp. 26, 29, 59; J-4).

ANALYSIS

The undersigned concludes that the unit sought by the Association is inappropriate and that the petition should be dismissed. While the supervisor of maintenance may meet the statutory definition

of supervisor, head custodians do not. Nor do they have an actual or potential conflict of interest with Custodians Association members.

The relevant subsections of the Act provide that:

Nor, except where established practice, prior agreement or special circumstances dictate to the contrary shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership.
N.J.S.A. 34:13A-5.3.

The division shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes both supervisors and nonsupervisors. 2/ N.J.S.A. 34:13A-6(d).

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. In re Cherry Hill Twp. Dept. of Public Works, P.E.R.C. No. 30 (1970). A determination of supervisory status, however, requires more than a job description or assertion that an employee has the power to hire, discharge, discipline or effectively recommend. An indication that the power claimed to be possessed is exercised with some regularity is needed. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

2/ The Custodians Association clearly includes nonsupervisory employees. The Association does not contend nor does the record suggest, that "established practice, prior agreement or special circumstances" exist, which might permit supervisors in the Custodian Association unit.

While head custodians do participate in hiring, their involvement in the process is not indicative of supervisory status. At the Jackson Avenue Elementary School, Mr. Valentine receives applications only after they are screened by the central office. His interview is the second in a series of three. He submits a report to the principal, who then conducts his own interview. Mr. Valentine's recommendations are not always followed. Mr. Polcari has an even more limited role in the hiring process at the high school. When an opening occurs he and the vice principal request applications from the central office. His function during the interview is simply to advise the applicant of qualifications for the job and benefits offered by the Board. Recommendations submitted to the Board are signed by the vice principal and Mr. Polcari. Based on the above the undersigned concludes that the record does not support a finding that head custodians make effective recommendations to hire. ^{3/} Township of Teaneck, E.D. No. 23 (1971).

The record reveals that neither head custodians nor the supervisor of maintenance have been involved in firing personnel. The remaining indicator of supervisory status is discipline.

The record contains only two examples of a head custodian recommending discipline: a recommendation that a custodian receive a letter of reprimand for tardiness, and a recommendation that a custodian be transferred. In light of a negotiations history

^{3/} In contrast to head custodians, the supervisor of maintenance's role in the hiring process is significant. Evidence of Mr. McCall's involvement in hiring a head custodian is suggestive of supervisory status. (See finding of fact no. 9).

exceeding ten years, during which head custodians have remained in the unit, the undersigned cannot conclude that they exercise this supervisory function with any degree of regularity. Without more, these two examples cannot form the basis for a finding of supervisory status. Somerset Cty. Guidance Cntr., supra, see also Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶ 15102 1984) adopting H.O. No. 84-11, 10 NJPER 149 (¶ 15075 1984); County of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶ 4178 1978).

Effective recommendation of discipline may also be found where an employee has primary responsibility for evaluating and his evaluations are instrumental in various personnel actions. Avalon, supra; Emerson Board of Education, D.R. No. 82-13, 7 NJPER 571 (¶ 12255 1981). Supervisory status has been found where evaluations formed the basis of decisions to withhold increments, renew contracts, or terminate employment. In re Paramus Board of Ed., D.R. No. 82-7, 7 NJPER 556 (¶ 12247 1981); In re Waldwick Bd. of Ed., D.R. No. 82-5, 7 NJPER 498 (¶ 12221 1981); In re Cinnaminson Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981).

Application of this principle does little to support the Association's contention. There is not one clear example in the record that an evaluation has been used by the Board as the basis for denying an increment, not renewing a contract, or discharging an employee.

The undersigned concludes that the record does not sustain a finding that head custodians are statutory supervisors under section 5.3. Therefore, absent a showing that a conflict of interest exists between the disputed titles and other Custodians Association

positions, the petition must be dismissed.

The principles of conflict of interest were explained by the New Jersey Supreme Court in Board of Education of W. Orange v. Wilton, 57 N.J. 404 (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 supervisors is not present.

While a conflict of interest which is de minimus or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. 57 N.J. at 425-426.

Employees have been removed from collective negotiations units where their involvement in discipline placed them in a position of divided loyalty. Ridgewood Bd/Ed and Ridgewood Ed/Assn., D.R. No. 80-33, 6 NJPER 209 (¶ 11102 1980); Paramus Bd/Ed, supra. Based on the limited involvement of head custodians and the supervisor of maintenance in disciplinary matters, however, the undersigned concludes that an actual or substantial conflict of interest has not been demonstrated. See also City of Trenton and AFSCME Local 2281, A.R. No. 83-33, 9 NJPER 382 (¶ 14172 1983; In re West Paterson Bd. of Ed., P.E.R.C. No. 77 (1973).

The only other testimony suggestive of a conflict was a single grievance filed by a custodian against a head custodian. (See finding of fact no. 12). The grievance was verbal and was resolved informally by the school administration. The undersigned concludes

that a record demonstrating one informally resolved grievance in a unit of this size, over a period exceeding ten years, does not demonstrate a conflict of interest.

In light of the findings that head custodians are not statutory supervisors and do not have an actual or potential substantial conflict of interest with Custodians Association members, the undersigned finds the petitioned-for unit inappropriate and recommends that the petition be dismissed. ^{4/}

RECOMMENDATION

The petitioned-for unit is inappropriate and the petition should be dismissed.


Richard C. Gwinn
Hearing Officer

Dated: August 29, 1984
Trenton, New Jersey

^{4/} The undersigned notes the testimony of assistant superintendent Capone indicating that the Board is redefining the disciplinary and evaluation roles of head custodians. (T. pp. 98-102). Should this redefinition be implemented and have an affect upon the status of the disputed titles, either the Custodians Association or the Board could initiate a reexamination of the titles by filing a Clarification of Unit petition with the Commission.