

P.E.R.C. NO. 87-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOWER ALLOWAYS CREEK TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-50

LOWER ALLOWAYS CREEK SUPPORT
STAFF ASSOCIATION/NJEA,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, dismisses a clarification of unit petition filed by the Lower Alloways Creek Board of Education. The Board sought to exclude the cafeteria manager from a negotiations unit of non-supervisory employees represented by the Lower Alloways Creek Support Staff Association. A Hearing Officer rejected the Board's claim that the employee was a supervisor. Neither party filed exceptions.

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Respondent.

Appearances:

For the Petitioner, Jordan & Jordan, Esqs.
(John D. Jordan, of counsel)

For the Respondent, Selikoff & Cohen, P.A.
(Carol Finkelstein Laskin, of counsel)

DECISION AND ORDER

On March 5, 1986, the Lower Alloways Creek Township Board of Education ("Board") filed a clarification of unit petition. The Board seeks to exclude the Cafeteria Manager^{1/} from the negotiations unit represented by the Lower Alloways Creek Support Staff Association, NJEA ("Association"). This unit consists of the Board's full and part-time support staff. The Board contends the Cafeteria Manager is a supervisor within the meaning of the Act.

On September 12, 1986, a Notice of Hearing issued.

On November 5, 1986, Hearing Officer Stuart Reichman conducted a hearing. The parties examined witnesses and introduced

^{1/} The Board also sought to remove the Secretary to the Chief School Administrator, Secretary to the Board Secretary, Maintenance Supervisor and Bus Driver Supervisor. The parties, however, agreed on the status of these positions.

exhibits. On December 15, 1986, they stipulated certain facts. They waived post-hearing briefs.

On January 23, 1987, the Hearing Officer issued a report recommending the petition's dismissal. H.O. No. 87-9, 13 NJPER ____ (¶ ____ 1987). He found that the Cafeteria Manager was not a statutory "supervisor" because she currently does not hire, evaluate or discipline employees.

The Hearing Officer served his report on the parties and informed them that exceptions were due on or before February 11, 1987. Neither party filed exceptions or requested an extension.

I have reviewed the record. The Hearing Officer's findings of fact (pp. 3-9) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree with the Hearing Officer that the Cafeteria Manager is not a supervisor within the meaning of the Act and that the petition should be dismissed.^{2/}

ORDER

The clarification of unit petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 3, 1987

^{2/} The Cafeteria Manager, under the collective negotiations agreement, would be responsible for hearing first step grievances. To protect against the possibility that she would resolve the grievance of another unit member, the Board may condition any such resolution on the administrator's approval. See Mainland Reg. Bd. of Ed., P.E.R.C. No. 87-79, 13 NJPER ____ (¶ 1987).

H.O. NO. 87-9

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

In the Matter of

LOWER ALLOWAYS CREEK
TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-50

LOWER ALLOWAYS CREEK
SUPERIOR STAFF ASSOCIATION/NJEA,

Respondent.

SYNOPSIS

A Hearing Officer for the Public Employment Relations Commission found that the employee serving in the title Cafeteria Manager is not a supervisor within the meaning of the Act. The Hearing Officer found that the Cafeteria Manager does not have the authority to hire, discharge, discipline, or effectively recommend the same.

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 exception 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.

H.O. NO. 87-9

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

In the Matter of

LOWER ALLOWAYS CREEK
TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-50

LOWER ALLOWAYS CREEK
SUPERIOR STAFF ASSOCIATION/NJEA,

Respondent.

Appearances:

For the Petitioner
Jordan & Jordan, Esqs.
(John D. Jordan of counsel)

For the Respondent
Selikoff & Cohen, P.A.
(Carol Finkelstein Laskin of counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On March 5, 1986, the Lower Alloways Creek Township Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Board contends that employees serving in the titles Secretary to the Chief School Administrator and Secretary to the Board Secretary are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), that employees serving in the titles of Custodian/Maintenance (sometimes also referred to as

Maintenance Supervisor), Bus Driver Supervisor (sometimes also referred to as Bus Mechanic) and Cafeteria Manager are supervisors within the meaning of the Act. The Petition filed by the Board seeks to have the employees serving in the titles listed above excluded from the negotiations unit comprised of all full-time and part-time support staff employed by the Board and represented by the Lower Alloways Creek Support Staff Association/NJEA ("Association").

During the prehearing conference the Parties reached a tentative settlement concerning the employees serving in the titles Secretary to the Chief School Administrator, Secretary to the Board Secretary, Head Custodian/Maintenance and Bus Driver Supervisor. In correspondence dated December 5, 1986, I was formally advised that the terms of the settlement were acceptable to all Parties, consequently, it is only necessary for me to render a recommended determination regarding the title Cafeteria Manager.

On September 12, 1986, a Notice of Hearing was issued in the above-captioned matter. The hearing date was scheduled for October 29, 1986. At the request of the Association, the Board agreed to reschedule the hearing to November 5, 1986, in Trenton, New Jersey, at which time the hearing was conducted and the Parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to make oral arguments. The Parties mutually agreed to rely upon closing oral arguments contained in the record and did not file post-hearing briefs. It was agreed that the record in this matter would remain open in order to provide the Association

with an opportunity to review the Board's Policy Manual. On December 15, 1986, the Parties jointly moved for the admission of a stipulation of certain facts and documents. On December 23, 1986, I granted the Parties motion and formally closed the record.

Upon review of the entire record developed in this proceeding, I make the following:

FINDINGS OF FACT

The Lower Alloways Creek Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., is the employer of the employee involved in this matter and is subject to the provisions of the Act (T6).^{1/}

The Lower Alloways Creek Support Staff Association/NJEA is an employee representative within the meaning of the Act and is subject to its provisions (T6).

The Board called Mr. Gary Myers as a witness. Myers was appointed to the position of Chief School Administrator in June, 1986 (T13). Myers stated that all of the school district's preschool through 8th grade students (approximately 215) are housed in the single school building under the Board's jurisdiction. The high school students go to Salem High School (T13-14). The Board employs approximately 25 full-time and part-time teaching staff and an equivalent number of support staff (T14).

^{1/} Transcript designations are as follows: "T6" refers to the Transcript dated November 5, 1986 at page 6.

The school serves approximately 195 lunches to students and staff each day (T15). Ms. Doris Hutton serves in the position of Cafeteria Manager ("Manager") and is one of four employees who work in the cafeteria (T14-15; T52-53). Also working in the cafeteria are two employees serving in the title Cafeteria Worker and one employee serving in the title Cafeteria Worker/Baker (T19).

Myers was questioned concerning the official job description for Cafeteria Manager (P-1).^{2/} The job description states that the Cafeteria Manager supervises cafeteria workers. The description also states that the Manager "Interview[s] and recommend[s] to the Superintendent the employment of all food service employees." However, Myers testified that during his tenure as Chief School Administrator (which in Lower Alloways Township is the same thing as school principal and superintendent of schools (T27-28)), Hutton had not recommended the hire of any cafeteria employee. Myers stated that the only new employees who were hired to work in the cafeteria were "substitutes", and he did all the interviewing and hiring for those positions. Moreover, in terms of Hutton's participation in the hiring process, Myers said that he would draw no distinction between the procedure used to hire substitutes and the procedure used to hire regular full-time

^{2/} Documents in evidence offered by the Board are marked as "P-1", "P-2" and so forth. Commission exhibits are marked with a letter prefix "C" and joint exhibits are marked with a letter prefix "J".

employees. Myers did not know how the hiring process worked before he became Chief School Administrator (T22-23).

Myers was also questioned regarding Hutton's role in evaluating the other employees working in the cafeteria. The Cafeteria Manager's job description states that the Manager "Evaluate[s] all cafeteria personnel twice each year" (P-1). However, Myers testified that Hutton has not evaluated any employees since he has become Chief School Administrator (T24), nor has he ever discussed the evaluation of other employees with Hutton (T43). Myers concluded that the responsibilities set forth in the Manager's job description pertaining to hiring and employee evaluation were not a part of Hutton's actual job duties (T29), however, the other duties shown are generally accurate (T24).

Hutton makes daily job assignments to the other cafeteria workers and directs the manner in which they do their work (T38). Hutton prepares the work schedules (T24-25). However, Myers has never given Hutton authority to discipline or discharge any of the other employees in the cafeteria (T35; T38-39), nor does Hutton have authority to issue letters of reprimand (T41).

The grievance procedure applicable to employees working in the cafeteria calls for the Cafeteria Manager to hear first step grievances (T26; P-7).^{3/} However, there has never been a formal

^{3/} Although P-7 appears to apply to only the years 1982 through 1985, testimony indicates that it is still effective (T21).

written grievance filed by a cafeteria employee (T27; T80). In the 23 years she worked in the cafeteria (T87), Hutton was involved in only two incidents in which employees registered complaints.

The first incident involved two kitchen staff employees. Hutton heard that one of the employees thought that the baker's job was the easiest in the kitchen. The employee took her complaint directly to the principal. The principal asked Hutton how to resolve the problem, and Hutton suggested that the employees rotate between jobs. After eight weeks of job rotation, the employee who initially raised the complaint went back to the principal and asked not be assigned the baking responsibility again. The employee was no longer assigned baking responsibilities, and the issue was not raised again (T87). The second incident involved a kitchen employee and a Dining Room Aide. The kitchen employee thought that the Dining Room Aide was treating her grandson, a student at the school, unfairly. The two employees "had words." Since the Dining Room Aide reported directly to Myers, Hutton suggested that she and the two employees meet with Myers to discuss the incident. During the meeting with Myers, it was agreed that the incident occurred as a result of the "heat of the moment" and the entire matter was dropped (T64). Myers testified that the incident was informally addressed and did not go through the grievance procedure (T27).

Doris Hutton testified regarding her job duties. Hutton has worked for the Board in the cafeteria for 23 years (T51).

As previously indicated, Hutton currently works with three other employees in the cafeteria. When Hutton became Manager in January, 1964, there was one other full-time employee working with her (T67). As the result of increases in the number of daily lunches served, Hutton thought that additional cafeteria staff was needed. Hutton spoke to the school principal and they jointly approached the Board in order to request additional staff. Subsequently, the Board hired a baker (T69-70). Later, Hutton again decided that additional cafeteria staff was necessary. Hutton told Mr. Lamade, the school principal at that time. Lamade went to the Board for authorization to hire another employee in the cafeteria. The Board gave its authorization and another employee was hired (T70). Hutton testified that all of the employees working in the cafeteria were hired by the Board (T55) and that she neither interviewed any of the applicants nor had any other input into the hiring process (T85).

Cafeteria employees receive one personal leave day per year (P-7). Employees seeking personal leave ask Hutton for a leave request form. The employee fills out the form and submits it to the principal (T62). If the principal approves the leave, the appropriate notation is made on the form, and it is returned to Hutton for her signature. Hutton signs the form, places it in a file and advises the employee that the leave has been approved by the principal. Hutton stated that while the form calls for the "supervisor's" signature, she signs the form as "manager" since that

is her title (T83). Hutton does not approve leave requests. Chief School Administrator Myers has told Hutton that since his approval of a leave is subject to obtaining appropriate coverage, if there is ever a coverage problem due to a requested leave, she should advise him of the problem (T84).

There has never been a problem arranging from a substitute when one of the regular employees is absent due to approved personal leave or illness (T84). If an employee is absent, Hutton is responsible for calling a substitute to replace the worker. Substitutes are hired by the Board (T34). Myers gives Hutton a list of substitutes, and she calls them in the order in which they appear on the list. A substitute's name has never been removed from the list and Hutton feels obligated to use the people shown on the list, notwithstanding the quality of their work performance (T71-73).

Hutton testified concerning the development of her job description. Mr. Livingston, one of the school principals prior to Myers, asked Hutton to prepare a job description reflective of her duties. Hutton prepared a description and gave it to Livingston. The formal job description Livingston returned to Hutton (P-1) contained a requirement that Hutton evaluate the other cafeteria employees. Advising Livingston that she had never evaluated any of the employees previously, Livingston told Hutton she would be evaluating the cafeteria employees under his administration (T61-62). During the 1983-1984 school year, Hutton prepared two evaluations. In the 1984-1985 school year, Hutton submitted an

evaluation on one employee, but Livingston reevaluated the rating upward. Hutton told Livingston that since he was independently evaluating cafeteria employees, there was no need for her to evaluate them as well. Hutton did not evaluate employees thereafter (T76-77). Hutton has not evaluated employees, nor has she been directed to do so, since Myers has been Chief School Administrator (T29; 40; 43).

Hutton works side-by-side with the other cafeteria employees (T36-37). However, if Myers has a problem concerning the cafeteria he discusses it with Hutton (T36;41). While only Hutton is responsible for preparing the menu (T57; 58), ordering food (T24) and paying the vendors' bills (T60-61), she also works on the serving line at meal time, helps with the cooking, cleans the kitchen and takes her turn on the dishwasher (T56-57). Hutton receives the same benefits as the other cafeteria employees (T62). Hutton receives a higher hourly pay than the other cafeteria workers (T79).

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in relevant 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 a collective negotiations unit by an employee organization that admits non-supervisory personnel to membership.

The above-quoted provision of the Act has been interpreted to contain the statutory definition of supervisor; that being an

employee having the authority to hire, discharge, discipline, or effectively recommend. Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970). However, it must also be noted that a determination of supervisory status requires more than a job title or description or mere assertions that an employee may have supervisory authority. In Sommerset County Guidance Center, D.R. No.77-4, 2 NJPER 358 (1976) it was found that:

...the bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employees in question, the mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status. Id. at 360.

Thus, it is clear that the primary investigation in determining whether Doris Hutton is a supervisor within the meaning of the Act must focus on whether she actually exercises supervisory authority.

Doris Hutton is not involved in the hiring process for either the regular full-time employees serving as Cafeteria Aides or the substitutes who work in the cafeteria. While Hutton may have been responsible for identifying the need for additional cafeteria staff, her role ceased after communicating that need to either the school principal or the Board. Thereafter, appointments were made solely by the Board and Hutton was neither consulted nor otherwise involved.

The responsibility to evaluate employees is an indication of supervisory authority. Since Hutton had become Cafeteria Manager in 1964, she evaluated two employees during school year 1983-1984

and one employee in school year 1984-1985. However, Hutton has not evaluated any employees nor has she been asked to undertake that function since Myers has been Chief School Administrator. Consequently, I find that Hutton currently possesses no responsibility to evaluate employees' work performance.

While Hutton, as Cafeteria Manager, would hear the grievances of the Cafeteria Aides at the first step, a formal grievance has never been filed, and, consequently, Hutton has never been called upon to act in that capacity. Thus, assuming Hutton would be viewed as a supervisor in light of any role in the grievance procedure, she has never actually exercised any authority in this respect. See, Somerset County Guidance Center, supra.

The record is also clear with respect to Hutton's disciplinary authority. She has never disciplined an employee. Myers' testimony establishes that Hutton does not have authority to discipline or discharge another employee nor is there a procedure in place by which she can effectively recommend the same. Hutton cannot issue a letter of reprimand. Hutton does not even exercise any disciplinary authority with respect to substitutes in the cafeteria, since all of the substitutes are offered work on the basis of their placement on the call roster given to her by the principal.

The most that can be said is that Hutton acts in the capacity of a lead employee, in recognition of her seniority and

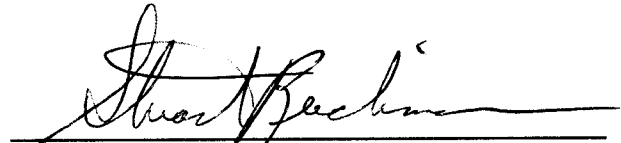
experience in the cafeteria. Accordingly, I find that Doris Hutton is not a supervisor within the meaning of the Act.

RECOMMENDATIONS

I recommend the following:

(1) The Commission find that Doris Hutton is not a supervisor within the meaning of the New Jersey Employer-Employee Relations Act.

(2) The Clarification of Unit Petition filed by the Lower Alloways Creek Board of Education seeking to have the title Cafeteria Manager removed from the collective negotiations unit represented by the Lower Alloways Creek Support Staff Association be dismissed and the title be included in the unit.



Stuart Reichman
Hearing Officer

DATED: January 23, 1987
Trenton, New Jersey