

D.R. NO. 2002-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

TOWNSHIP OF FRANKLIN,

Public Employer,

-and-

Docket No. RO-2001-77

IBT LOCAL 575,

Petitioner.

**SYNOPSIS**

The Director of Representation directs an election among nonsupervisory blue collar employees of Franklin Township. The Director found that the road supervisor was not a managerial executive or a supervisor within the meaning of the Act. The employer proffered no specific facts concerning the road supervisor's actual exercise of managerial authority, nor suggesting that the road supervisor made any effective personnel recommendations, or in fact hired, fired, or disciplined other employees.

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Appearances:

For the Public Employer  
Broscious, Glynn & Fischer, attorneys  
(James W. Broscious, of counsel)

For the Petitioner  
Albert Tutela, Secretary-Treasurer

**DECISION AND DIRECTION OF ELECTION**

On April 24, 2001, Local 575 International Brotherhood of Teamsters (Local 575) filed a Petition for Certification with the Public Employment Relations Commission. The petition is supported by an adequate showing of interest. Local 575 seeks to represent nonsupervisory blue collar employees of the Township of Franklin (Township), including the road supervisor and road repairers.

The Township does not consent to a secret ballot election. It contends that Road Supervisor Guy Fleming is a managerial executive and/or a supervisor within the meaning of the New Jersey Employer-Employee Relations Act (Act) and, therefore, ineligible for representation in the proposed unit.

Local 575 contends that Fleming is neither a managerial executive nor a supervisor, since he has never had the authority to hire, fire, discipline or submit a budget. Moreover, Local 575 asserts that Fleming's official title is senior road repairer, not road supervisor.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2 and 2.6. On September 10, 2001, I advised the parties that I was inclined to direct an election in the petitioned-for unit and invited the parties to submit additional evidentiary materials and/or briefs in support of their positions. On September 26, the Township submitted Township Resolution 2001-21, adopted April 30, 2001, appointing Fleming to act as the public works director for calendar year 2001 and adding duties to the road supervisor's job description.

No facts have been placed in dispute which would require convening an evidentiary hearing, and therefore, the disposition of this matter is properly based on our administrative investigation. N.J.A.C. 19:11-2.6(b). I find the following facts.

Franklin Township is located in Warren County and is apparently subject to the "civil service" regulations of New Jersey State Department of Personnel. The Franklin Township road department, also known as the department of public works, is composed of three employees: two road repairers and the road supervisor. The Township asserts that the road supervisor "participates in the formulation of the annual budget of the

department of public works, makes recommendations as to which projects should be included annually and has significant input into the process." Moreover, the Township maintains that once the budget is established, it is the responsibility of the road supervisor to assign personnel and oversee them in the completion of these projects. The Township asserts that the road supervisor is "a critical arm in the formulation and implementation of all of the policies of the road department."

The Township also claims that the road supervisor is the direct supervisor of the road repairers and is directly responsible for their performance. The Township has provided job descriptions for the titles of "road supervisor" and "road crew employee." According to the Township's job description, the responsibilities of the road supervisor include: providing instruction to road crew members regarding the proper and safe operation of equipment; certifying the accuracy of all time records for the road crew members to the Township Committee; monitoring vacation schedules to ensure full coverage; reporting infractions of established work hours to the Township Committee; delegating daily work responsibilities to the road crew and overseeing that the work is completed in a timely manner; and reporting to the Township Committee when members of the road crew fail to comply with instruction or carry out assigned work.

The Township alleges that the road supervisor is also responsible for ascertaining and reporting the working conditions of

the road repairers and making recommendations about their performance and pay raises annually. The Township claims that while there have been no actual disciplinary proceedings against any of the road repairers, such proceedings would be initiated by and upon the recommendation of the road supervisor.

By resolution dated April 30, 2001, the Township amended Fleming's job description as road supervisor to add the following duties:

It shall be the responsibility of the Road Supervisor to supervise and direct the employees of the Department of Public Works in the performance of their duties as employees of the Township.

It shall be the responsibility of the Road Supervisor to coordinate the activities of the Department of Public Works with the Mayor and Township Engineer and to assist the Mayor and Township Engineer in the formulation of projects, work schedules and the like.

In addition, the April 30 resolution appoints Fleming to function as the public works director for calendar year 2001.

According to the job description which the Township submitted for road repairer, the road crew members are responsible for following instructions provided by either the Township Committee and/or the road crew supervisor regarding job obligations and duties.

Local 575 submits New Jersey State Department of Personnel records indicating Fleming's current title as senior road repairer, along with the Department of Personnel job description for senior road repairer. That job description indicates that the senior road repairer "(m)ay take the lead over one or more road repairers and

reviews their reports." Local 575 asserts that Fleming works alongside the road repairers and argues that although the senior road repairer is a lead worker, it is not a supervisory position.

#### ANALYSIS

N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate but specifically exempts managerial executives from that right. N.J.S.A. 34:13A-3(f) defines managerial executives as:

...persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

Our Supreme Court examined this statutory provision in New Jersey Turnpike Auth. and AFSCME Council 73, 150 N.J. 331 (1997). The Court partially modified but otherwise approved the standards set forth in Bor. of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1981). The revised standard provides:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his

functions and responsibilities; and (3) the extent of discretion he exercises. [N.J. Turnpike Auth., 150 N.J. at 356.]

The Act defines "supervisor" as one having "the authority to hire, discharge or discipline employees or to effectively recommend" these actions. N.J.S.A. 34:13A-5.3 and 6(d); Cherry Hill Tp., P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970). A determination of supervisory status requires more than a mere assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such actions. In Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), we noted:

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.]

Moreover, an "effective recommendation" occurs when the "supervisor's" recommendation is adopted without independent review and analysis by a higher level of authority. See 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); Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp. 465 (¶114 1971). Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not make an employee a statutory supervisor. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985).

Additionally, while the power to evaluate employees by itself is not one of the statutory criteria for determining supervisory status, we have considered its relationship to other personnel actions such as discipline, non-retention, promotions and salary increases and decreases. N.J. Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1997). A "supervisor's" input into subordinates' evaluations alone, however, does not necessarily create a conflict of interest sufficient to exclude the employee from a unit of nonsupervisors. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). See also Milltown Bd. of Ed., D.R. No. 2001-7, 27 NJPER 157 (¶32054 2001).

Here, I find that Fleming is not a managerial executive within the meaning of the Act. Although the Township has asserted that the road supervisor is managerial, it has not articulated precisely what duties Fleming performs which would make him a managerial executive within the meaning of the Act. A determination of managerial status must be based upon specific facts concerning that employee's actual exercise of managerial authority. The additional duties added to Fleming's job description as road supervisor upon his appointment as public works director, which provide that he shall "assist the Mayor and Township Engineer in the formulation of projects, work schedules and the like," shed no additional light upon this issue. The Township's submissions are simply too vague to support such a finding and merely assert generalized conclusions.



I also find that the road supervisor is not a supervisor within the meaning of the Act. While asserting that he has the authority to hire, fire, discipline or effectively recommend those actions, the Township has not submitted a single example of how that power has been exercised or that it has been "exercised with some regularity." Somerset Cty. Guidance Ctr.

"(S)upervis(ing) and direct(ing) the employees of the Department of Public Works in the performance of their duties," and reporting "the performance of personnel" to the Township Committee suggests, at most, that the road supervisor acts "in a lead capacity, overseeing and directing the work of other employees." No facts have been proffered which suggest that this employee has made any effective recommendations concerning subordinates' personnel actions, nor that he has in fact hired, fired or disciplined members of the road crew. Moreover, the Township has not demonstrated that his recommendations to the governing body concerning employee performance and raises are "effective recommendations" as defined above.

Based upon the above analysis, I conclude that Road Supervisor Fleming is neither a managerial executive nor a supervisor within the meaning of the Act. Accordingly, I find that the appropriate unit for collective negotiations is:

Included: All regularly employed blue-collar employees employed by the Township of Franklin (Warren County), including road repairers and road supervisor.

Excluded: Managerial executives, confidential employees, police and supervisors within the meaning of the Act; craft employees, professional employees, casual employees, and all others.

I order that a secret ballot election be conducted among the employees in the unit described above. A mail ballot election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Employees shall vote on whether they wish to be represented for purposes of collective negotiations by Local 575, International Brotherhood of Teamsters. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

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Stuart Reichman, Director

DATED: October 17, 2001  
Trenton, New Jersey