

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-06-370-E
 :
HEMPFIELD SCHOOL DISTRICT :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On August 7, 2006, the Pennsylvania State Education Association (Association) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) seeking to represent a unit of employees of the Hempfield School District (District). On August 23, 2006, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held before a Board hearing examiner on September 8, 2006. At the request of the parties, the hearing was continued to September 27, 2006. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs on or before October 26, 2006.

The examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer for purposes of the Public Employee Relations Act (PERA or Act).
2. The Association is an employee organization for purposes of the Act.
3. The parties stipulated and agreed that the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time blue collar nonprofessional employees, including but not limited to cafeteria employees, maintenance employees and custodial employees; and excluding management level employees, supervisors, first level supervisors, confidential employees, and guards as defined in the Act. (N.T. 5-6)
4. The parties stipulated and agreed that if the positions of cafeteria manager and building custodial supervisor are found not to be supervisory, they should be included in the petitioned-for unit. (N.T. 4-5)
5. The Association has an adequate showing of interest.
6. The District has employed Joan Fitzsimmons as the supervisor of its child nutrition department for two years. (N.T. 7)
7. In addition to Fitzsimmons, the staff of the District's child nutrition department includes eleven cafeteria managers, nine assistant cafeteria managers and ninety-five production employees. The positions held by the production employees include cashier, dish room personnel, servers and production personnel. (N.T. 11-12)
8. The District operates cafeterias at eleven school buildings, including the high school, two middle schools, seven elementary schools and a building utilized by the intermediate unit. Each cafeteria has a cafeteria manager. All but two cafeterias have an assistant cafeteria manager. (N.T. 9, 11, 66)
9. The cafeteria managers report directly to the supervisor of the child nutrition department. (N.T. 11, 17)
10. The number of production employees range from four to six employees at the elementary cafeterias, eight to ten employees at the middle school cafeterias, and twenty-five to thirty employees at the high school cafeteria. (N.T. 29)

11. Production employes serve a probationary period and are evaluated after 30, 60 and 90 days of employment. After completion of probation, the production employes are subject to an annual evaluation. (N.T. 12, 30-32)

12. All employes in the child nutrition department are evaluated on an annual basis. (N.T. 12, 32)

13. The cafeteria managers prepare evaluations for the production employes and the assistant cafeteria managers. The supervisor of the child nutrition department receives the evaluations, initials them, and places them in the employes' personnel files. (N.T. 30-32, 35, 130-131, 154)

14. The supervisor of the child nutrition department is ultimately responsible for making the decision to terminate a cafeteria employe. If there is a difference of opinion, the opinion of the department supervisor is determinative. (N.T. 54-55)

15. The supervisor of the child nutrition department is not aware of any cases where production employes were terminated within the probationary period. Some probationary employes have opted to discontinue their employment with the District. (N.T. 31-32, 64)

16. The supervisor of the child nutrition department conducts yearly audits in the cafeterias to ensure that the cashiers are properly encouraging students to select meals for which the District receives reimbursement under the National School Lunch program, and to ensure that the cashiers are accurately counting the meals served. (N.T. 14-15)

17. The supervisor of the child nutrition department typically visits each cafeteria twice a month during mealtimes to observe the operation and ensure that the cafeterias are in compliance with government standards and guidelines. (N.T. 16, 18-19, 161).

18. On a day to day basis, the cafeteria managers are responsible for ensuring that production employes perform their jobs and report to work on time. A manager may direct a production employe to redo certain work. However, with regard to attendance issues, the cafeteria manager cannot do anything other than counsel the employe to show up on time. If this does not resolve the attendance issue, the supervisor of the child nutrition department needs to become involved in the matter. (N.T. 22-23, 38, 51, 55-56)

19. The supervisor of the child nutrition department interacts with the cafeteria managers anytime there is an issue with the cafeterias regarding staffing, equipment and discipline. She also holds monthly meetings with the cafeteria managers and assistant managers. (N.T. 20)

20. The supervisor of the child nutrition department makes the decision whether to hire or fire a cafeteria employe. (N.T. 54, 68)

21. Cafeteria managers participate in food preparation and cook the food that is served in the cafeterias. (N.T. 19-20, 28, 46, 60)

22. There is a fair amount of turnover among the District's production employes. (N.T. 24)

23. Cafeteria managers are not usually involved in the hiring of production employes. (N.T. 30, 58)

24. When the District needs to fill an assistant cafeteria manager position, the supervisor of the child nutrition department reviews applications, examines personnel files of existing employes, conducts the initial interviews and narrows the field of potential candidates to typically one or two persons. The cafeteria manager is then asked to sit in on the final interview or interviews and to give his or her input. The supervisor of the child nutrition department then considers the opinion of the cafeteria manager, her own opinion, and other factors such as what may be on a resume, and decides whom to hire. (N.T. 30, 46-47, 58-59, 68)

25. If a cafeteria employe reports to work with medical restrictions, the cafeteria manager adjusts the employe's job duties after discussing the matter with the supervisor of the child nutrition department. The employe's duties may be assigned to another employe or the cafeteria manager may assume those duties. (N.T. 39-40, 63)

26. If a production employe calls in sick, the employe ordinarily contacts the cafeteria manager. The manager then usually contacts the child nutrition department office to obtain a substitute. The child nutrition department is aware that two substitutes on its substitute list have difficulty working with particular cafeteria managers, and has declined to place those substitutes with those managers. (N.T. 44-45, 56-57)

27. Cafeteria managers may permit production employes to leave work early for various reasons (e.g., doctor's appointments, sick children, emergencies) without seeking the approval of the supervisor of the child nutrition department. (N.T. 45, 160)

28. If an employe is absent and the cafeteria manager is not able to obtain a substitute from the child nutrition department office, the manager may temporarily assign the employe's duties to another employe. (N.T. 44, 49)

29. Cafeteria managers may issue commendation forms recognizing good performance by employes. However, the cafeteria managers cannot give the employe a raise or a day off or some other form of a reward. Up to four commendations may be issued per year. A copy of the commendation is placed in the employe's personnel file. (N.T. 47, 57-58)

30. Kay Stank has worked as a cafeteria manager for the District since 1986. Stank reports for work between 6:15 and 6:30 a.m. and works until 2:15 or 2:30 p.m. (N.T. 124)

31. Stank spends about twenty percent of her work time on paperwork, including ordering inventory, completing production reports and entering the employes' time into a computer. Stank spends the remaining eighty percent of her worktime on food preparation and hands-on work in the cafeteria, including organizing the freezer, removing items needed to prepare lunch, cooking the food that is served to the students, ensuring that the cafeteria is stocked with sufficient silverware, straws and napkins, cleaning the cafeteria and putting food away. (N.T. 125-129)

32. If employes in Stank's cafeteria need help completing their duties, all of the employes usually join in and help, including Stank. (N.T. 129)

33. Stank does not currently have an assistant manager working in her cafeteria. At one time she did have an assistant manager and she sat in on an interview. After the supervisor of the child nutrition department gave Stank the impression that she believed that the interviewee was the best person for the job, Stank indicated that she agreed with that assessment. (N.T. 129-130)

34. Some years ago, Stank also sat in on interviews of assistant managers who had already been hired for purposes of determining where to place those persons. Other cafeteria managers also sat in on the interviews. Stank agreed with the department supervisor's decision regarding placement of the assistant managers. (N.T. 138-141)

35. Stank cannot discipline or suspend employes. If there is a problem, she talks to the employe. If that does not resolve the matter, she brings it to the attention of the department supervisor. (N.T. 132)

36. Stank cannot promote anyone. (N.T. 132)

37. Stank does not have to direct the cafeteria employes in the performance of their duties because they know what they have to do and they basically perform the same work all of the time. (N.T. 132-133)

38. Stank had an assistant manager working in her cafeteria whose performance was not adequate. Stank tried to correct the assistant manager's performance, but was unsuccessful. After Stank relayed her concerns about the employe's work performance to

the supervisor of the child nutrition department, the department supervisor transferred the assistant manager to another job at a different location. (N.T. 136-138)

39. Michelle Neff has worked as a cafeteria manager for the District for approximately two to three years. (N.T. 144-146)

40. Neff performs various duties related to food preparation and does most of the cooking in the cafeteria. Neff also helps clean the cafeteria. (N.T. 147-152)

41. Neff spends approximately twenty percent of her work time on completion of paperwork, such as production records and inventory. She spends the remaining portion of her work time "helping out" in the cafeteria. (N.T. 152-154)

42. Neff cannot promote or terminate employees. If she has an issue with an employee, she discusses the matter with the employee and that usually resolves it. If the issue persists, she ordinarily brings the matter to the attention of the supervisor of the child nutrition department. (N.T. 154-155, 160)

43. The employees in Neff's cafeteria are assigned to particular jobs (e.g., cashier, server). She does not have to direct the employees because they know their jobs. (N.T. 155)

44. During Neff's tenure as a cafeteria manager, one of the production employees in her cafeteria was promoted to an assistant manager position. The department supervisor asked Neff if promoting that employee would be a good decision and Neff answered in the affirmative. (N.T. 161)

45. Neff permitted an employee with medical problems to work a flexible schedule, and distributed that employee's duties among the cafeteria staff when she needed to leave work. (N.T. 159-160)

46. The District has employed Ralph Hinkle as the director of its maintenance and custodial department for five years. (N.T. 70)

47. In addition to Hinkle, the staff of the District's maintenance and custodial department includes eleven maintenance workers, fifty-two custodians and eleven building custodial supervisors. (N.T. 72)

48. There are three custodians at the elementary schools, three to four at the middle schools and approximately twenty at the high school. (N.T. 72)

49. The building custodial supervisors work the first shift during the school day from approximately 7:00 a.m. to 3:30 p.m. (N.T. 107-108)

50. All but one of the custodians work one of two shifts: either the second shift from 3:00 p.m. to 11:30 p.m. or the third shift from 11:00 p.m. to 7:30 a.m. (N.T. 73, 108-109)

51. One custodian at the high school works the same shift as the building custodial supervisor (the first shift from 7:00 a.m. to 3:30 p.m.). At all other schools, the building custodial supervisor is the only custodial employee working the first shift during the school day. (N.T. 108-109)

52. While working during the school day with no other custodial help (except a single custodian at the high school), the building custodial supervisors perform routine maintenance and custodial duties such as locking and unlocking doors, distributing mail, cleaning the schools, putting hand soap in the bathrooms, opening or fixing lockers, and setting up tables. (N.T. 108-109, 164-165)

53. When there is a vacant custodial position, the director of the maintenance and custodial department initially attempts to hire in-house. If there are no current District employees who are interested in the vacancy, the director posts the position, reviews applications, and narrows down the field of candidates. The director then asks

the building custodial supervisor to sit in on the interviews and to provide input. After the interviews are completed, the director and the building custodial supervisor discuss the matter and try to pick the best candidate. Although the director cannot recall a situation where he and the building supervisor disagreed regarding the best candidate for a custodial position, the director would not pick a candidate for a custodial position if he did not think they were a good hire. (N.T. 75, 114-115)

54. If a custodian will be absent, the custodian is supposed to call the building custodial supervisor. The building supervisor will then call the director's secretary to see if there is a substitute who is available. If there is a substitute, the director's secretary will direct the substitute to report to the building supervisor. If no substitute is available, the building supervisor and his or her crew are responsible for getting the job done. (N.T. 80, 85-86)

55. Custodians are evaluated annually. At some schools, building custodial supervisors prepare the evaluations. At other schools, building principals prepare the evaluations. The evaluations are placed in the custodians' personnel files. The director of the maintenance and custodial department does not review the evaluations before they are placed in the employees' files. (N.T. 81-83, 166, 170)

56. Before becoming director of the maintenance and custodial department, Ralph Hinkle was a building custodial supervisor for six years. During that six-year period, Hinkle only issued two "write-ups." One of those documents was addressed to the director of the department, and not to the employe, and described Hinkle's efforts to improve the employe's work performance, with no indication that the employe had been disciplined or that Hinkle was recommending that the employe be disciplined. The other document was addressed to the director of the department and to the employe and indicated that after Hinkle discussed the employe's work performance with the director, the director advised Hinkle to give the document to the employe "as your first official warning in writing." (N.T. 70-71, 93-96, 110-112; Employer Exhibit 10)

57. David Pott has worked as a building custodial supervisor for six years. (N.T. 162-163)

58. At the middle school where Pott works, no other custodians work during his shift. (N.T. 163-164)

59. The custodians who work the second and third shifts after Pott's daytime shift have their routines and essentially follow them, unless there is a special activity scheduled after school hours. (N.T. 163-165)

60. If there is a special activity scheduled after school hours, Pott discusses the activity with the custodians, and they split up the tasks. (N.T. 166)

61. Pott does not evaluate employes. At Pott's school, the building principal prepares the evaluations. (N.T. 166)

62. Pott sat in on interviews to hire two employes. After the interviews, he was asked what he thought of the candidates. He was not told who would be hired, and only found out after the fact. (N.T. 166-167)

63. If Pott is concerned with a custodian's attendance or work performance, Pott usually approaches the employe and discusses the issue. If the problem persists, Pott contacts the director of the maintenance and custodial department and brings the matter to his attention. The director usually tells Pott what course of action to follow, such as "writing up" the employe. (N.T. 167-168, 171-172)

64. Pott has not terminated or suspended anyone. He refers such issues to the director of the maintenance and custodial department. (N.T. 168)

65. Special activities or events include basketball, teachers' meetings and parent conferences. The number of special events varies from month to month, and there may be

several events per month. Basketball is always set up the same way. Generally, Pott does not have to show employees what to do to set up for special events. (N.T. 174)

66. If building custodial supervisors observe a pattern of sick leave abuse by custodians, they contact the director of the maintenance and custodial department. The director may suggest having the employee bring in a doctor's excuse for every absence. (N.T. 90-91, 98-99)

67. In December 2005, a building custodial supervisor issued a verbal warning and a written warning to a custodian for work performance issues at the instruction of the director of the maintenance and custodial department after discussing the situation with the director. (N.T. 96-97; Employer Exhibit 11)

68. After a building custodial supervisor warned a custodian and issued several "write-ups" to her, the building supervisor was of the opinion that the custodian should be terminated. The director of the maintenance and custodial department decided instead to transfer the employee to another building to see if she would improve her work performance. However, the custodian's work performance continued to deteriorate, and she was terminated after the building principal became involved. (N.T. 99-101, 109-110)

69. The director of the maintenance and custodial department attempts to visit each school twice a week. The director informs the building custodial supervisor of any safety issues or other issues that he observes, and may direct the building supervisor to document the director's observations. (N.T. 106-107)

70. When the director of the maintenance and custodial department is considering terminating an employee, he discusses the matter with the District's superintendent and makes a recommendation. (N.T. 112, 116)

71. Gene Crites is the building custodial supervisor at the District's high school where approximately twenty custodians work. (N.T. 119-120)

72. On September 24, 2001, Crites documented his discussion with an employee regarding the procedure for calling in sick. Later on February 5, 2002, Crites informed the employee in writing that further action may be taken if she continued to call in sick after the deadline for such calls. (N.T. 120-121; Employer Exhibit 12)

73. Between December 2002 and April 2006, Crites documented four discussions with employees where he advised them of deficiencies in their work performance. (N.T. 120-121; Employer Exhibit 12)

74. If custodians need to leave work early because of illness or a family emergency, they are supposed to contact the custodial building supervisor. The building supervisor does not need to contact the director of the maintenance and custodial department before permitting the custodians to go home. (N.T. 97-98)

DISCUSSION

The District argues that the cafeteria managers and the building custodial supervisors should be excluded from the bargaining unit that the Association seeks to represent because the positions are supervisory. The Association contends that the positions are not supervisory and should be included in the unit.

The District notes that in prior cases, the Board has found that employees with the same or similar job titles as the employees at issue here are either supervisory or non-supervisory, depending upon the facts of the particular case. Thus, whether the positions at issue here are supervisory under PERA depends upon the particular evidence adduced in this case, and not on the result reached in prior cases involving employees of other school districts.

As the party seeking to exclude positions from the unit, the District has the burden of proving by substantial record evidence that the statutory exclusion applies.

School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998). Section 301(6) of PERA provides as follows:

"'Supervisor' means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment."

43 P.S. § 1101.301(6).

The Board will find that an employe is a supervisor under PERA if the employe has the authority to perform the functions listed in Section 301(6), actually exercises that authority on a regular basis, and uses independent judgment when so acting. City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988); McKeesport Area School District, 14 PPER ¶ 14165 (Final Order, 1983). The Board has found that the right to order the work force and the ability to reward or sanction employes is what distinguishes a supervisor from a lead worker. Danville Area School District, 8 PPER ¶ 195 (Order and Notice of Election, 1977). Thus, if an employe exercises authority to direct other employes, but does not effect reward or sanction, the employe is not a supervisor. Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER ¶ 20126 (Final Order, 1989). Moreover, in accordance with Section 604(5) of PERA,¹ the Board may consider such factors as the frequency, duration and importance of the alleged supervisory duties in deciding whether the positions are supervisory. West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 675, 795 A.2d 984 (2000); State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999). A mere job title or appellation, such as supervisor or manager, is not determinative of an employe's status under PERA. West Perry, supra.

The District contends that the cafeteria managers are supervisors because of their role in hiring, directing and assigning work, adjusting grievances, and rewarding, evaluating and promoting employes. With regard to hiring, cafeteria managers have no demonstrated involvement in hiring production employes, who hold nearly all of the positions which the cafeteria managers allegedly supervise. Although the District suggests that cafeteria managers determine whether new hires are terminated before completion of the ninety day probationary period, the District's own witness (Child Nutrition Department Supervisor Joan Fitzsimmons) testified that she decides whether to hire or fire cafeteria employes, and that she is not aware of any cases where production employes were terminated within the ninety-day probationary period (FF 14, 15, 20).

Most, but not all, of the cafeteria managers also have an assistant cafeteria manager working in their cafeteria. The District claims that the cafeteria managers "effectively recommend" the hiring of assistant managers. However, the testimony upon which the District relies in making this claim is marred by leading questions directed at its own witness (Fitzsimmons). Also, when Fitzsimmons was permitted to offer her own testimony regarding the procedure in filling assistant cafeteria manager positions, her testimony belied any claim that cafeteria managers effectively recommend the hiring of assistant managers.

To constitute an effective recommendation for purposes of Section 301(6) of PERA, the recommendation must not only be followed, but must be accorded controlling weight and cannot be subject to independent investigation by higher authority. See Chester County Solid Waste Authority, 18 PPER ¶ 18021 (Order Directing Submission of Eligibility List, 1986) and cases cited therein. Here it is clear that Fitzsimmons independently investigates the fitness of candidates for assistant cafeteria manager positions because

¹ Section 604(5) of PERA provides that "[i]n determining supervisory status, the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5).

it is Fitzsimmons, rather than the cafeteria managers, who reviews applications, examines personnel files of existing employees, conducts the initial interviews and narrows the field of potential candidates to typically one or two persons (FF 24). Although cafeteria managers are asked to sit in on final interviews with Fitzsimmons and to provide their input, it is Fitzsimmons who decides whom to hire after considering the opinion of the cafeteria manager, her own opinion, and other factors such as what may be on a resume. Id. Given Fitzsimmons' extensive involvement in all phases of the hiring process and her testimony that the opinion of the cafeteria manager is but one factor in her decision whom to hire, the substantial, credible evidence of record simply does not support any claim that cafeteria managers make hiring recommendations which are accorded controlling weight and are not subject to independent investigation by higher authority. Indeed, the testimony of both Department Supervisor Fitzsimmons and Cafeteria Manager Kay Stank indicates that cafeteria managers are only called in at the very end of the interview process, after the department supervisor has already narrowed the field to typically one or two candidates (FF 24, 33), so that there is little or no choice to be made.

Cafeteria managers do prepare evaluations for assistant cafeteria managers and production employees. However, in order for performance evaluations to support a supervisory exclusion, they must be given controlling weight and normally result in either reward or discipline. Philadelphia Housing Authority, 32 PPER ¶ 32046 (Final Order, 2001). There is no evidence that the evaluations prepared by the cafeteria managers normally result in either reward or discipline. Rather, Department Supervisor Fitzsimmons testified that "[t]he evaluations are sent to our office, [where] I initial them, we send copies back to the school and the original is maintained in the personnel file in the human resources department" (N.T. 35). Nor did the District demonstrate that the evaluations are accorded controlling weight in decisions regarding promotion or discipline. Instead, Fitzsimmons testified that the evaluations are "part of the package" that is considered in such decisions. Id. Thus, the record evidence falls short of establishing that cafeteria managers reward or sanction employees or effectively recommend such action through issuance of performance evaluations.²

In claiming that the cafeteria managers reward employees, the District also relies on commendations that they issue. However, Fitzsimmons' testimony indicates that commendations are issued infrequently, and she conceded that the cafeteria managers cannot give the employee who receives a commendation a raise or a day off or some other form of a reward (FF 29). The occasional issuance of commendations providing no actual reward to the employees does not evidence supervisory status. Bucks County, 35 PPER 22 (Proposed Order of Dismissal, 2004).

The record evidence also fails to show that the cafeteria managers sanction cafeteria employees or effectively recommend such action. Rather, the record indicates that the cafeteria managers discuss performance issues or attendance issues with the cafeteria employees and if such discussions do not resolve the matter, it is then referred to Department Supervisor Fitzsimmons (FF 18, 35). The District contends that cafeteria managers effectively recommend termination of employees, but the cited testimony (N.T. 52) does not indicate that cafeteria managers have ever made such recommendations, or that such recommendations have been accorded controlling weight. The District also contends that the cafeteria managers issue "write ups" (brief at 18), but the cited testimony does not indicate that managers have actually issued written reprimands or warnings to employees, or do so with any frequency (N.T. 39, 50-51). Finally, the District notes that Cafeteria Manager Kay Stank testified that an employee was transferred after she brought her concerns about the employee's work performance to the attention of the department supervisor (N.T. 136-138), but Stank did not testify that she recommended the transfer, which would prevent any finding that she effectively recommended such action. In sum, the District has failed to demonstrate that cafeteria managers reward or sanction employees or effectively recommend such action, or do so with such a frequency that they should be deemed to be supervisors.

² Although a cafeteria manager testified that the child nutrition department supervisor promoted an employee after soliciting the manager's input (FF 44), her testimony does not demonstrate that her input was given controlling weight, nor indicate that cafeteria managers effectively recommend promotions with any frequency.

With regard to the District's reliance on the cafeteria managers' authority to direct personnel, there was no showing that such direction is anything but routine or requires exercise of independent judgment. The nature of the work is certainly routine (e.g., preparing food, serving it, collecting payment for it, cleaning up the cafeteria). Moreover, the cafeteria managers testified that they do not have to direct the cafeteria employees in the performance of their duties because they know what to do and basically perform the same work all of the time (FF 37, 43). The record evidence also indicates that if cafeteria employees need assistance in completing their duties, other employees join in and help, including the manager (FF 32). While cafeteria managers may receive "call offs" from employees, may permit employees to leave work early for medical appointments or emergencies, and may need to distribute the duties of absent employees among the other staff of the cafeteria (FF 25-28, 45), there is no indication in the record that performance of such duties is more than routine or requires exercise of independent judgment. Thus, the direction that the cafeteria managers provide to other cafeteria staff does not warrant a finding that they are supervisors. See School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998)(employees are not supervisors under PERA where they assign work to other employees but there is no evidence that the assignments are other than routine in nature or call for the use of independent judgment). Moreover, as stated above, mere authority to direct personnel without proof of the ability to effect reward or sanction does not demonstrate supervisory status. Pennsylvania State University, supra.

In arguing that cafeteria managers have the authority to adjust grievances, the District relies on testimony that employees may bring interpersonal disputes to the attention of cafeteria managers (N.T. 50-51). However, to find that an employee has the power to adjust grievances for purposes of Section 301(6) of PERA, there must be proof that the employee may bind the employer to a specific settlement. Bucks County, supra. The District failed to prove that the cafeteria managers have such authority. Furthermore, Department Supervisor Fitzsimmons' testimony indicates that any response by a cafeteria manager to an employee complaint about other employees is non-binding and subject to further discussion between the employees and Fitzsimmons (N.T. 50-51).

The District also relies on other alleged grounds for determining that the cafeteria managers are supervisors (e.g., differences between the cafeteria managers and the other cafeteria employees in job duties, benefits and hours). However, the additional grounds cited by the District are not set forth in Section 301(6) of PERA, which enumerates the criteria for statutory supervisors. Nor does the District's concern that there would be no "supervisors" on site warrant a finding that the cafeteria managers are supervisors for purposes of PERA where, as here, they do not meet the statutory definition. The record indicates that the cafeteria managers spend most of their work time performing routine cafeteria work and the District failed to prove that they exercise supervisory functions to any significant extent. Therefore, the cafeteria managers are not supervisors for purposes of PERA, and will be included in the petitioned-for unit.

Turning to the building custodial supervisors, the District contends that they are supervisors because of their role in hiring, directing and assigning work, adjusting grievances, and evaluating and disciplining employees. With regard to hiring, the director of the maintenance and custodial department initially attempts to fill custodial vacancies in-house (FF 53).³ If the director is unable to do so, he posts the position, reviews applications and narrows down the field of candidates. Id. The director then asks the building supervisor to sit in on the interviews and after the interviews are completed, the director and the building supervisor discuss the matter and try to pick the best candidate. Id. Although the director cannot recall a situation where he and the building supervisor disagreed regarding the best candidate for a custodial position, the

³ In making the pertinent finding of fact, I have declined to rely on the portion of the record (N.T. 76) where the District, in examining its own witness, used leading questions and a question that assumed a fact not in evidence (i.e., that building custodial supervisors make hiring recommendations which are accorded "great weight"). I have relied instead on the portions of the record where the witness was permitted to offer his own substantive testimony regarding the details of the hiring process.

director would not pick a candidate for a custodial position if he did not think they were a good hire. Id.

Thus, although the building custodial supervisors provide input in hiring of custodians, it is the director of the maintenance and custodial department, and not the building supervisor, who conducts the initial winnowing out of candidates. Moreover, the department director participates in the interviews, and has the final say regarding who is hired. Given these facts, I cannot find that the building supervisors make hiring recommendations that are accorded controlling weight and are not subject to independent investigation by higher authority. To the contrary, the testimony of the department director indicates that he does independently investigate the fitness of candidates for custodial positions, and accords controlling weight to his own view regarding who should be hired. Consequently, the testimony of the District's own witness undermines its claim that building supervisors effectively recommend hiring.

In arguing that building custodial supervisors have the authority to adjust grievances, the District relies on testimony that indicates only that building supervisors may attempt to resolve interpersonal disputes between employees (N.T. 89-90). The cited testimony does not indicate that building supervisors have the authority to bind the District to a specific settlement of a grievance. Thus, the District has failed to prove that the building supervisors adjust grievances for purposes of Section 301(6) of PERA.

The District has also failed to prove that building custodial supervisors reward or sanction employees through issuance of performance evaluations. Indeed, at some schools, the evaluations of custodians are prepared by the building principal rather than the building custodial supervisor (FF 55, 61). Also, the director of the maintenance and custodial department does not review the evaluations before they are placed in the employees' personnel files. Id. There is no evidence that the evaluations that are prepared by the building supervisors are given controlling weight and normally result in either reward or discipline. Accordingly, the fact that some building supervisors prepare performance evaluations does not show that they are statutory supervisors.

With regard to discipline, the District contends that building custodial supervisors have issued verbal and written warnings and effectively recommend disciplinary action if warnings do not produce the desired result. However, the record indicates that the alleged warnings are issued infrequently. Ralph Hinkle, who is the current director of the maintenance and custodial department, was a building supervisor for six years, and only issued two "write-ups" of employees during that six-year period (FF 56). One of these documents was not even issued to the employee, but rather informed the department director of Hinkle's efforts to improve the employee's work performance, with no indication that the employee had been disciplined or that Hinkle was recommending that the employee be disciplined. Id. The other "write-up" was addressed to the employee, but indicated that Hinkle had discussed the employee's work performance with the department director and that the director had advised Hinkle to give the employee a written warning. Id. Thus, in six years as a building custodial supervisor, Hinkle never issued a written warning of his own volition.

In December 2005, a building custodial supervisor issued a verbal warning and a written warning to a custodian, but he did so at the instruction of the director of the maintenance and custodial department (FF 67). Building Custodial Supervisor David Pott similarly consults the department director before writing up employees (FF 63). Although Building Supervisor Gene Crites indicated that he issued six write-ups between September 2001 and April 2006 without being directed to do so by Department Director Hinkle (N.T. 120-121; Employer Exhibit 12), review of the actual documents shows that they do nothing more than counsel employees on work performance or attendance issues, with only one of the documents even indicating that further action may be taken if the conduct continues. Thus, at best, one of the documents constitutes a written warning of possible future discipline and the other documents essentially counsel employees regarding deficiencies in their work performance or attendance. The ability to counsel employees does not evidence supervisory status. Hazleton Area School District, 34 PPER 71 (Proposed Order of Unit Clarification, 2003), citing Lawrence County, 22 PPER ¶ 22120 (Proposed Decision and Order, 1991). In sum, the record does not indicate that building custodial supervisors

issue written warnings to any significant extent, nor that they do so with any frequency without first consulting the department director.

I must also reject the claim that building custodial supervisors effectively recommend disciplinary action beyond a warning for lack of proof. Indeed, in the only specific example of such discipline that is of record, the department director declined to terminate a custodian consistent with the wishes of the building supervisor, and instead transferred the employe to another building to see if she would improve her work performance (FF 68). Although that employe was eventually terminated, such action only occurred after the employe's work performance continued to deteriorate and the principal of the school to which she was transferred became involved. Id. Thus, the District has failed to prove by substantial and legally credible evidence that building custodial supervisors issue serious discipline to employes or effectively recommend such action, and has clearly failed to show that they exercise such authority to any significant extent.

Even if the building custodial supervisors direct custodians in the performance of their duties, such action does not evidence supervisory status without the demonstrated ability to effect reward or sanction, which was not established here. Pennsylvania State University, supra. Nor was there any showing that such direction is anything but routine or requires exercise of independent judgment, which further undermines the claim that these employes are supervisors for purposes of Section 301(6) of PERA. School District of Philadelphia, supra. To the extent that the District relies on factors beyond the statutorily-enumerated criteria set forth in Section 301(6) in arguing that the building supervisors should be excluded from the bargaining unit, that reliance is misplaced.

Despite the District's claim that the building custodial supervisors are supervisors of custodians for purposes of PERA, there are no custodians working the same shift as the building supervisors at ten of the eleven school buildings (FF 47-51). Although there is one custodian working the same shift as the building supervisor at the high school, the other nineteen custodians at that school work a different shift. Id. Thus, the custodians and the building custodial supervisors do not have a significant amount of interaction on a daily basis. Moreover, while working during the school day with no other custodial help except a single custodian at the high school, the building custodial supervisors perform routine custodial duties (FF 52). In view of the District's failure to prove that the building supervisors perform supervisory functions to a significant extent, they do not qualify as supervisors for purposes of PERA, and will be included in the petitioned-for unit.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The District is a public employer within the meaning of Section 301(1) of the Act.
2. The Association is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The positions of cafeteria manager and building custodial supervisor are not supervisory within the meaning of Section 301(6) of the Act and are included in the appropriate unit herein.
5. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time blue collar nonprofessional employes, including but not limited to cafeteria employes, maintenance employes and custodial employes; and excluding management level employes, supervisors, first level supervisors, confidential employes, and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the District shall within ten (10) days of the date hereof submit to the Board and the Union an alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the order of the Board's representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED AND MAILED this twelfth day of January, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, HEARING EXAMINER

January 12, 2007

Michael J. O'Connor, Esquire
KILLIAN & GEPHART LLP
218 Pine Street
PO Box 886
Harrisburg, PA 17108-0886

Eric N. Athey, Esquire
KEGEL KELIN ALMY & GRIM LLP
24 North Lime Street
Lancaster, PA 17602

HEMPFIELD SCHOOL DISTRICT
Case No. PERA-R-06-370-E

Enclosed please find a copy of the order directing submission of eligibility list issued in the above-captioned matter.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Lorenzo Canizares
Dr. David E. Poore Jr.
Joe Bugden