

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

SUPERIOR COURT

(FILED: DECEMBER 20, 2012)

STATE OF RHODE ISLAND, BOARD OF :
GOVERNORS FOR HIGHER EDUCATION :
And RHODE ISLAND COLLEGE :

v. :

C.A. No. 05-1199

PSA @ RIC, Local 3302, AFL/RIFT AFL-CIO :
And RHODE ISLAND STATE LABOR :
RELATIONS BOARD :

- CONSOLIDATED WITH -

PSA @ RIC, Local 3302, AFL/RIFT AFL-CIO :

v. :

C.A. No. 05-1243

RHODE ISLAND STATE LABOR :
RELATIONS BOARD and RHODE ISLAND :
BOARD OF GOVERNORS :
(RHODE ISLAND COLLEGE) :

DECISION

K. RODGERS, J., These consolidated matters are before this Court on appeal from two decisions of the Rhode Island State Labor Relations Board (the "Board") pursuant to G.L. 1956 § 28-7-29 and G.L. 1956 § 42-35-15. In each of the above-captioned cases, the Board considered a Petition for Unit Clarification filed by the Professional Staff Association at Rhode Island College ("PSA," or the "Union") seeking to accrete the positions of Director of Health Services/Nurse Practitioner and Director of User Support Services to the collective bargaining unit, respectively. With respect to the Director of

Health Services/Nurse Practitioner, the Board found that that position was not supervisory, as that term has been adopted by the Rhode Island Supreme Court, and that it shared a community of interest with members of the Union. Accordingly, the Board permitted the Union's petition to accrete the position of Director of Health Services/Nurse Practitioner. With respect to the Director of User Support Services, the Board concluded that the position was supervisory and therefore denied the Union's petition to accrete.

Rhode Island College (the "College") appealed the Board's decision allowing the accretion of the position of Director of Health Services/Nurse Practitioner to the Union; the Union appealed the Board's decision denying the accretion of the position of Director of User Support Services. For the reasons that follow, this Court affirms the Board's decision with respect to the former and reverses the Board's decision with respect to the latter.

I

Facts

A

Director of Health Services/Nurse Practitioner

Prior to 2001, the College's Director of Health Services was required to be a licensed medical doctor with a minimum of five years experience, and the position was established at pay grade 19. At or around that time, the College determined that it was not necessary to have a full-time medical doctor on staff and that a nurse practitioner could more than adequately fill the responsibilities of Director of Health Services. The new position required a Master's degree in nursing, certification as a family or adult

nurse practitioner, and a minimum of three years experience; the position was established at pay grade 17. Additionally, although the prior position did not require any computer skills, the new position required the incumbent to be competent with computers. Lynn Watchel ("Watchel") was hired in 2001 to fill the new position after the retirement of the former Director of Health Services.

Watchel testified before the Board that she spends approximately eighty percent of her workday delivering direct patient care to students and that the remainder of her workday is spent performing administrative duties. Watchel oversees four nurses and one secretary in the Health Services Department, all of whom work in the same office building. She schedules the work shifts for those nurses and assigns work, depending on the needs of the day, although she recognized that the work needs are primarily driven by student-scheduled appointments. Furthermore, Watchel reviews requests for leave for employees in the Health Services Department in accordance with the requirements of their collective bargaining agreements. Watchel has also periodically performed oral reviews or work evaluations for employees in the Health Services Department. She has not, however, prepared any formal written evaluations. Since her hiring, Watchel has participated in interviewing one new employee and making a recommendation for hiring to her supervisor. She has not issued any written reprimands to employees in the Health Services Department, nor has she suspended, demoted, laid off, or fired any employee. Additionally, Watchel has not been involved in any formal grievances, although she has been involved in settling certain issues before they have become formal grievances. Watchel serves no role in establishing the budget of the Health Services.

Watchel also testified regarding her similarities to and interactions with other members of the Union, as did Robert Bower, the President of the Union. Watchel testified that she interacts with other members of the PSA through division meetings, the institutional review board, and through various committees. Concerning her salary and benefits package, Watchel testified that her salary is approximately \$71,000, and that she receives three weeks of vacation and five personal days. She accrues sick days on a monthly basis and is entitled to all state employee holidays. She performs in-service training for professional development of the staff and is responsible for carrying a pager to ensure 24-hour-a-day access to health care for the students.

Bower testified that the job description for the Director of Health Services/Nurse Practitioner is similar to the duties and responsibilities of other PSA members in terms of directing day-to-day operations of the Health Services Department and developing standards and that the requirement of having a Master's degree and three years' experience is not uncommon among other PSA members. The 35-hour work week is the same as other PSA members and the pay grade 17 is the same as at least three PSA members. Like the Director of Health Services/Nurse Practitioner, twelve Union members report directly to a College Vice President. Also, like several other PSA members, including members employed in the counseling center, the Director of Health Services/Nurse Practitioner is required to maintain patient confidentiality.

B

Director of User Support Services

From 1987 until 2001, Patricia Hays worked at the College continuously as a full-time employee for information services. During that time, Hays was a member of the

PSA. In October of 2001, she began work as Director of User Support Services. As Director of User Support Services, Hays is responsible for planning, organizing, and maintaining information technology to faculty, staff, and students at the College. She supervises twelve part-time employees and approximately fifty part-time, student-employees. Hays testified that approximately twenty percent of her workday is spent delivering direct technology support to staff, faculty, and students. The remainder of the workday is primarily spent meeting with staff members and members of the College community and updating and managing computer servers.

Further, Hays testified that for the positions that she directly oversees, she sometimes assigns employees their work, but that work orders are primarily assigned through the work order system. Under that system, the employee to whom a particular task would be assigned is largely dependent upon the type of operating system being used on the computer which requires technological service and on the permissions required to perform the task. Some work orders are assigned to individuals by student-employees, and the work order system can also be enabled for self-service, allowing individuals to put the work order on the system itself; few individuals, however, are authorized to access the self-service work-order system.

In addition, Hays approves leave requests for other employees in her Department under the requirements of the collective bargaining agreement. She has periodically engaged in performance reviews of other employees; however, her performance evaluations do not have any effect on any employee's potential pay increase. There has been at least one instance in which, although Hays noted on her performance evaluation form that a particular employee did not meet his goals for the evaluation period—goals

which were established by the employee himself—that employee still received a merit increase. Hays also participated in a hiring committee to identify a candidate for one vacant position. Although Hays forwarded interview candidates to another representative of the College administration, the ultimate hiring decision and offer of employment was made by her superior, Dr. Prull.

Concerning her pay and benefits, Hays testified that her current position is pay grade 17, and that she makes approximately \$65,000 a year. Additionally, the benefits package she enjoys remained the same after promotion to Director of User Support Services.

Bower testified to the commonality of interest shared between Hays' position as Director of User Support Services and other PSA members. The job description for the Director of User Support Services describes similar functions as other professional positions in the Union. The Director of User Support Services is required to have a Master's degree and seven years' experience, which are common to other PSA members' requirements. There are three PSA members at pay grade 17, twelve PSA members who also report to a College Vice President, and twenty-one PSA members whose base rate of pay is \$65,000, all similar to the position of Director of User Support Services. The Director of User Support Services has frequent communications with Union members in the course of daily operation of the Information Services help areas and out in the College community, and the work area for that position is in the same suite of offices as other PSA members.

C

Petitions for Unit Clarification

In October 2001, the Union filed a Petition for Unit Clarification with the Board, seeking to accrete the position of Director of Health Services/Nurse Practitioner. In January 2002, the Union filed a Petition for Unit Clarification with the Board, seeking to accrete the position of Director of User Support Services. A formal evidentiary hearing on the Petition for Unit Clarification relating to both positions commenced on September 20, 2003.¹ The formal hearing was then continued to and concluded on November 25, 2003.

By decision dated February 10, 2005, the Board determined that the Director of Health Services/Nurse Practitioner position was not supervisory in nature, that the position shared a community of interest with other positions held by Union members, and therefore, that that position should be included in the bargaining unit. By a second decision issued the same day, the Board determined that the Director of User Support Services position was supervisory in nature and therefore should not be included in the bargaining unit.

II

¹On May 13, 2003, after an informal hearing, the Board made a preliminary determination that the Director of User Support Services should be accreted to the bargaining unit. The Board scheduled a formal evidentiary hearing for August 8, 2003. While the formal hearing on that matter was pending, however, the Union learned that the College had placed Hays on the College's negotiating team for upcoming collective bargaining negotiations with the Union. The Union, through its President, met with College officials and requested that Hays be removed from the College's negotiating team; the College refused. The Union filed two charges of unfair labor practices, asserting that the College acted in bad faith (1) by appointing Hays to its negotiating team in the first instance, and (2) by refusing to remove her from the negotiating team. In a June 23, 2004 decision, the Board concluded that the College's appointment of Hays to the negotiating team constituted an unfair labor practice, but that its refusal to remove Hays did not. The College appealed the former and the Union appealed the latter. See Rhode Island Board of Governors for Higher Education, et al. v. PSA @ RIC, Local 3302, AFT/RIFT, AFL-CIO, PC 04-4122, consolidated with PSA @ RIC, Local 3302, AFT/RIFT, AFL-CIO v. Rhode Island State Labor Relations Board, et al., PC 04-4142. This Court's decision therein is filed contemporaneously herewith.

Standard of Review

The Superior Court's review of an appeal of a decision by the Labor Board is governed by § 42-35-16 of the Administrative Procedures Act (APA), which provides:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or [sic] law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted use of discretion.”

This Court may not substitute its judgment for that of the Board with regard to the credibility of witnesses or the weight of the evidence about questions of fact. Ctr. for Behavioral Health v. Barros, 710 A.2d 680, 684 (R.I. 1998); Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). Rather, it “is confined to a determination of whether there is any legally competent evidence to support the agency’s decision.” Env’tl Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993). If the Board decision was based on sufficient competent evidence in the record, the reviewing court is obliged to affirm the agency’s decision. Johnston Ambulatory Assocs., Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000). An agency’s decision may be reversed, however, when “the conclusions and the findings of fact are ‘totally devoid of competent evidentiary support in the record’ or from the reasonable inferences that might be drawn from such evidence.” Bunch v. Bd. of Review, R.I. Dep’t of Employment & Training, 690 A.2d

335, 337 (R.I. 1997) (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)).

III

Analysis

A

Supervising Roles

In these consolidated cases, the College challenges the inclusion of the positions of Director of Health Services and Director of User Support Services in the Union. The College argues that both positions are supervisory in nature and, as a result, are ineligible for inclusion within the collective bargaining unit. In contrast, the Union argues that neither position is supervisory, and accordingly, that neither is barred for inclusion within the Union. Specifically, the Union argues that: (1) neither position has authority to engage in any of the twelve actions indicative of supervisory status as defined by the Rhode Island Supreme Court; (2) neither exercises that authority; and (3) to the extent that either may exercise that authority, neither uses independent judgment in doing so.

The Rhode Island Supreme Court has relied on federal labor law in determining whether a particular individual qualifies as a “supervisor,” as that term has been defined in the National Labor Relations Act, 29 U.S.C. § 152(11). Bd. of Trustees., Robert H. Champlin Mem’l Library v. RISLRB, 694 A.2d at 1185, 1189-90 (R.I. 1997) (quoting 29 U.S.C. § 152(11)); see also DiGuilio v. R.I. Bhd. of Corr. Officers, 819 A.2d 1271, 1273 (R.I. 2003). Under the NLRA, an individual has supervisory status if that individual satisfies three criteria. 29 U.S.C. § 152(11); NLRB v. Health Care & Ret. Corp. of Am., 511 U.S. 571, 573-74 (1994). First, the employee must have authority to engage in at

least one of the twelve actions articulated in the statute: that is, “to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action.” 29 U.S.C. § 152(11); Health Care & Ret. Corp. of Am., 511 U.S. at 573-74. Second, the employee must exercise that authority with “the use of independent judgment.” Health Care & Ret. Corp. of Am., 511 U.S. at 573-74. Third, the employee must hold that authority “in the interest of the employer.”² Id.

In interpreting the first element, courts have noted that the twelve articulated statutory indicia of supervisory status are disjunctive; therefore, satisfying any one of the listed actions is sufficient to place that employee in a supervisory class. NLRB v. Ky. River Cmty. Care, Inc., 532 U.S. 706, 713 (2001); Hosp. Gen. Menonita v. NLRB, 393 F.3d 263, 267 (1st Cir. 2004). Nonetheless, even if an employee seems to have authority to engage in one of the statutory actions, that employee will not be deemed to have supervisory status if he or she fails to actually exercise that authority. See Capital Transit Co., 114 N.L.R.B. 617, 619 (1955); see also Jochims v. NLRB, 480 F.3d 1161, 1168 (D.C. Cir. 2007) (“Statements by management purporting to confer authority do not alone suffice.”) (citing Beverly Enters.-Mass, Inc. v. NLRB, 165 F.3d 960, 963 (D.C. Cir. 1999)). This requirement—that the employee actually use the supervisory authority—serves to distinguish those employees who are vested with “genuine management prerogatives” such that their interests would conflict with those of the union, with

² There is no dispute in this case that any authority held or exercised by the employees was “in the interest of the employer.” This Court, therefore, will not engage in a lengthy analysis of that element.

employees who are supervisors in name only. NLRB v. Bell Aerospace Co. Div. of Textron, Inc., 416 U.S. 267, 280-81 (1974).

Furthermore, an employee with only limited authority, and who has little or no opportunity to affect the employment status of other employees, will not be a supervisor within the meaning of the NLRA. See ITT Lighting Fixtures, Div. of ITT Corp. v. NLRB, 658 F.2d 934, 939 (2d Cir. 1981). For example, in Passavant Health Center, the NLRB found that nurses were not supervisors within the meaning of the statutory scheme because they did not possess the authority to discipline, evaluate, or adjust grievances. 284 N.L.R.B. 887, 892 (1987). In that case, although the nurses did complete written evaluations of other employees, and did issue both oral and written reprimands, the Board concluded that such actions were not sufficient to render those employees supervisors under the statutory scheme. Id. In arriving at that conclusion, the Board reasoned that the record failed to demonstrate that those actions meaningfully affected the tenure or status of the evaluated employees. Id.; see also Beverly Enters.-Penn., Inc. v. NLRB, 129 F.3d 1269, 1270-71 (D.C. Cir. 1997) (holding that employees' evaluations did not manifest authority to "promote" and "reward" because the wages and benefits of the employees being evaluated were governed by a collective bargaining agreement); Beverly Enters. v. NLRB, 148 F.3d 1042, 1047 (8th Cir. 1998) (concluding that employees did not exercise power to "reward" where "[t]heir evaluatory function was . . . primarily a reporting function").

In interpreting the second element—that the employee use independent judgment—courts have required, at a minimum, "that an individual 'act, or effectively recommend action, free of the control of others and form an opinion or evaluation by

discerning and comparing data.” Frenchtown Acquisition Co. v. NLRB, 683 F.3d 298, 304 (6th Cir. 2012) (quoting In re Oakwood Healthcare, Inc., 348 N.L.R.B. 686, 692-93 (2006)). That is, the authority must not be of a “merely routine or clerical nature.” Bd. of Trustees., Robert H. Champlin Mem’l Library, 694 A.2d at 1189; Bell Aerospace Co. Div. of Textron, 416 U.S. at 275; Ky. River Cmty. Care, 532 U.S. at 713. An employee’s judgment will not be considered “independent judgment” if it is strictly limited or controlled by detailed instructions as established in company policies or rules, the instructions of a higher authority, or the provisions of a collective bargaining agreement. Frenchtown Acquisition Co., 683 F.3d at 304.

Performing nominally supervisory functions, without exercising independent judgment, is not sufficient to render an employee a supervisor. Ky. River Cmty. Care, 532 U.S. at 713-14; Weyerhaeuser Timber Co., 85 N.L.R.B. 1170, 1173 (1949). In NLRB v. Meenan Oil Co., for example, the Second Circuit Court of Appeals concluded that dispatchers who assign routes to other drivers were not supervisors. 139 F.3d 311, 321-22 (2d Cir.1998). The court reasoned that although the dispatchers assigned routes to other drivers, “neither the determination of the most efficient route, nor the assignment of jobs as they come in during the day, requires [the employee] to exercise independent discretion.” Id.; see also Springfield Jewish Nursing Home for the Aged, Inc. & Prof’l & Health Care Div., 292 N.L.R.B. 1266, 1267 (1989) (“[R]outine assignment and direction of employees regarding patient care does not confer supervisory status on a charge nurse.”); see also Providence Alaska Med. Ctr. v. NLRB, 121 F.3d 548, 552-53 (9th Cir. 1997) (concluding that assignment of nurses at the beginning of each shift was routine activity done within the parameters of a set schedule and did not require independent

judgment); Panaro & Grimes, 321 N.L.R.B. 811, 812 (1996) (holding that individual who exercised supervisory authority only in routine, clerical, or perfunctory manner was not a supervisor).

B

Community of Interest

If an employee does not satisfy the three criteria, that employee is not a supervisor within the meaning of the NLRA and may be accreted into a bargaining unit if that employee shares a “community of interest” with other members of the bargaining unit. R.I. Pub. Telecomms. Auth. v. RISLB, 650 A.2d 479, 487 (R.I. 1994). Whether parties share a community of interests is determined by evaluating:

- “1. Similarity in scale and manner of determining earnings,
2. Similarity of employment benefits, hours of work, and other terms and conditions of employment,
3. Similarity in the kind of work performed,
4. Similarity in the qualifications, skills, and training of the employees,
5. Frequency of contact or interchange among employees,
6. Geographic proximity,
7. Continuity or integration of production processes,
8. Common supervision and determinations of labor relations policy,
9. Relationship to the administrative organization of the employer,
10. History of collective bargaining,
11. Desires of the affected employees; and
12. Extent of union organization.” Id.

The absence of one or more of these factors does not preclude the Board from finding a community of interest in the bargaining unit. Libbey-Owens-Ford Co. v. NLRB, 495 F.2d 1195, 1200 (3d Cir.), cert. denied, 419 U.S. 998 (1974). Furthermore, “[i]n making such a determination, the board is not required to choose *the* most appropriate bargaining unit but only *an* appropriate bargaining unit.” R.I. Pub. Telecomms. Auth., 650 A.2d at 486.

C

Director of Health Services/Nurse Practitioner

In the underlying case, the Board found that there was insufficient evidence to support a finding that the Director of Health Services/Nurse Practitioner exercised supervisory authority. In this appeal, the College alleges that the Board erred in concluding that the position is not supervisory because the individual recommends the hiring, assigns, disciplines, and directs other employees. The Union argues that the Board was correct in its determination that there was insufficient evidence to find that Watchel was a supervisor, and that the Board's decision is supported by legally competent evidence.

There is legally competent evidence in the record to conclude that Watchel did not actually have authority to engage in any of the twelve indicia of statutory status. Specifically, there is no evidence that Watchel had authority to hire employees, as only one employee had been hired since she was hired to her position, and that the decision to hire was made by another employee. Additionally, there is not legally competent evidence to support the conclusion that Watchel has the authority to discharge, lay off, recall, discipline, or suspend other employees. Watchel testified that she never issued any written reprimands, and that she did not lay off, demote, or suspend any employee. Similarly, neither party presented evidence on Watchel's authority to transfer, promote, or reward other employees, or to adjust their grievances.

Although some evidence demonstrates that Watchel had authority to assign and to responsibly direct other employees, there is not legally competent evidence in the record to conclude that any authority potentially exercised affected the tenure or status of the

other employers. See Passavant Health Ctr., 284 N.L.R.B. at 892. Furthermore, to the extent that Watchel did, in fact, exercise authority to assign or responsibly direct other employees, that exercise of authority did not involve the use of independent judgment. See Home for the Aged, Inc. & Prof'l & Health Care Div., 292 N.L.R.B. at 1267. At most, her routine assignment and direction of other employees, which was primarily driven by student-scheduled appointments, was of a clerical or perfunctory nature. See Providence Alaska Med. Ctr., 121 F.3d at 552-53; Panaro & Grimes, 321 N.L.R.B. at 812.

Accordingly, the Court finds that the Board did not err by finding that there was insufficient evidence to conclude that Watchel exercised sufficient authority to render her a supervisor. This Court cannot say that “the conclusions and the findings of fact are ‘totally devoid of competent evidentiary support in the record’ or from the reasonable inferences that might be drawn from such evidence.” See Bunch, 690 A.2d at 337; Milardo, 434 A.2d at 272.

Furthermore, after concluding that Watchel was not a supervisor, the Board properly analyzed the evidence of record that Watchel shares a community of interest with members of the Union. See R.I. Pub. Telecommuns. Auth., 650 A.2d at 486. Watchel often interacted with other members of the Union in division meetings and through various committees. She earns a comparable amount to other members of the Union, and her benefits package is roughly equivalent to that of other members of the Union. See id. Furthermore, as the President of the Union testified, there are other employees with the title “Director” in the bargaining unit, and Watchel’s duties did not differ substantially from those of other individuals who were included in the unit. See

NLRB v. Walker Cnty. Med. Ctr., Inc., 722 F.2d 1535, 1540 (11th Cir. 1984). Accordingly, there was legally competent evidence in the record to uphold the Board's finding of a community of interest.

For these reasons, this Court affirms the Board's decision in its entirety with respect to the Union's Petition for Unit Clarification relating to the position of Director of Health Services/Nurse Practitioner.

D

Director of User Support Services

With respect to the Director of User Support Services, the Board found that Hays exercised authority sufficient to render her a supervisor. Concerning Hays' authority to discipline, Hays testified that she has not formally disciplined any of the employees she oversees. See Passavant Health Ctr., 284 N.L.R.B. at 892. Further, she testified that she only had a vague recollection about the extent of her authority, demonstrating that she has not actually used that authority. In the three incidents of formal disciplinary action against Union members of which she was aware, the discipline was issued not by Hays but by a College Vice President, a College employee with significantly greater authority than Hays. Concerning Hays' authority to hire, although there is evidence in the record that Hays served on search committees to find appropriate candidates for recommendation, all final decisions for hiring in the department were made by her superior, Dr. Prull, and Dr. Prull did not always follow the recommendations of the search committees. There was no evidence in the record to establish that Hays transferred, laid off, recalled, or promoted any employee, nor was there evidence that she played any role in the grievance process. Indeed, Hays testified that there have been no

grievances filed by the employees she oversees, and that even if there had been, she would not have played a formal role in the grievance procedure. See Beverly Enters.-Penn., Inc., 129 F.3d at 1270. Further, there is no evidence that Hays had budgetary authority. Not only did Hays testify that she did not know what the budget for her area was, but also she testified that all purchases made were made in accordance with product guidelines set by a Microsoft Campus Agreement.

Although there is some evidence that Hays had some authority to assign and to responsibly direct other employees, there is not sufficient competent evidence in the record to support the conclusion that any authority she may have exercised affected the tenure or status of other employees. See Passavant Health Center, 284 N.L.R.B. at 892. At most, her assignment and direction of other employees was supervisory authority of a clerical or perfunctory manner. See Providence Alaska Med. Ctr., 121 F.3d at 552-53; Panaro & Grimes, 321 N.L.R.B. at 812. Hays testified that assignments are primarily self-assigned, are based on the employee working the help-desk when the order comes in, and are assigned by student employees and others, not just herself. She further testified that she does approve vacation requests, but that she does so under the collective bargaining agreement or other contracts governing the respective employees. Additionally, to the extent that Hays actually engaged in an exercise of authority to hire, that authority was circumscribed not only by the College's affirmative action policies, but also by Dr. Prull, who by Hays' own testimony, made final decisions on hiring in the department. Therefore, even if she did exercise authority in hiring, assigning and/or responsibly directing other employees in her department, it was not exercised with independent judgment as required to confer upon her supervisory status.

Accordingly, this Court finds that the Board's conclusion that there was sufficient evidence to support a finding that Hays exercised sufficient authority to confer upon her supervisory status was affected by error of law. The Board's conclusion that Hays actually exercised any one of the twelve indicia of supervisory status is devoid of legally competent evidentiary support in the record. Furthermore, even if the record did support such a conclusion, there is insufficient evidence in the record to conclude that that exercise of authority affected the tenure or status of employees, or that the exercise of that judgment involved the use of independent judgment on the part of Hays. See Bunch, 690 A.2d at 337; Milardo, 434 A.2d at 272. This Court therefore reverses the Board's finding with respect to Hays' supervisory status.

As the Board's finding on Hays' supervisory status preempted any further consideration of the community of interest shared with Union members, this Court remands the matter to the Board for further findings of fact on the existence of any community of interest shared between the position of Director of User Support Services and the Union membership.³

Conclusion

For the reasons set forth above, this Court affirms the Board's decision in its entirety on the Union's Petition for Unit Clarification concerning to Director of Health Services/Nurse Practitioner, and reverses the Board's decision denying the Union's

³The Court notes that Board's analysis of the community of interests that exists between the position of Director of User Support Services and other positions of Union members may likely parallel the findings the Board made in its community-of-interest analysis relating to the Director of Health Services/Nurse Practitioner as both Director positions at issue herein require a Master's degree, a 35-hour work week and daily interaction with other PSA members. "...Practitioner. At least some of the community-of-interest factors are the same with respect to both Director positions at issue herein, including, for instance, both require a Masters' degree, a 35-hour work week, and daily interaction with other PSA members, and are at pay grade 17."

Petition for Unit Clarification concerning the Director of User Support Services and remands that Petition for further findings as to any community of interest shared between that position and members of the bargaining unit.

Counsel for the Board shall prepare an appropriate Judgment for entry consistent with this Decision.