

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)	
)	
)	
Bowie State University,)	
)	
Petitioner,)	
)	
v.)	SHELRB EL Case No. 2001-12/01
)	Opinion No. 13
Maryland Classified Employees)	
Association, Inc.,)	
)	
Respondent.)	

DECISION AND ORDER

On July 9, 2002, the Maryland Classified Employees Association, Inc. (MCEA), on behalf of sworn police officer Djakarta Hall, filed with the State Higher Education Labor Relations Board (Board) a document styled Petition to Contest Exclusionary Designation (Petition). MCEA contested Bowie State University's (Bowie State) determination that Officer Hall's reclassification from a UPO III to UPO IV police officer made him a supervisor and thereby no longer eligible to be included in the bargaining unit of sworn police officers at Bowie State. MCEA sought a determination by the Board of Officer Hall's supervisory status. On July 26, 2002, the Board's Executive Director issued a written determination finding, based upon the evidence submitted by the parties, that Officer Hall's duties and responsibilities, resulting from his promotion to UPO IV police officer, did not establish that he was a supervisor and thereby properly excluded from the unit.

On August 7, 2002, Bowie State appealed the Executive Director's determination to the Board. On September 26, 2002, the Board held a hearing wherein both parties were afforded a full opportunity to present evidence and closing arguments. Based on the record before us, we find that the evidence does not support a finding that Officer

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Hall's actual duties and responsibilities as a UPO IV sworn police officer at Bowie State establish supervisory status.

Title 3 of the State Personnel and Pensions Article, Annotated Code of Maryland (Collective Bargaining Statute), §3-102(b)(12) excludes from coverage under the Collective Bargaining Statute "any supervisory, managerial, or confidential employee of the State institution of higher education listed in subsection (a)(5) of this section, as defined in regulations adopted by the governing boards of the institution." The governing board of Bowie State University is the University System of Maryland's Board of Regents (BOR). The BOR's definition of supervisor is as follows:

A supervisory employee is an employee who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.^{1/}

As the appellant in this proceeding, Bowie State has the burden of establishing that as a UPO IV police officer, Officer Hall possesses any of the above-prescribed supervisory authority. Evidence concerning Officer Hall's actual duties, responsibilities and authority essentially came from the testimony of Officer Hall and Bowie State acting police chief, Roderick Pullen. A substantial amount of their testimony focused on Officer Hall's responsibilities with respect to the four other officers (below the rank of UPO IV) on his shift as it related to ensuring their proper performance of established duties. A significant amount of testimony and documentary evidence was also presented on Bowie State's reference to Officer Hall as a supervisor in his job description, in his performance evaluation, and on the performance evaluations of the officers he evaluated on his shift. (Bowie State Exh. B, C & D; MCEA Exh. 1)

^{1/} *Collective Bargaining, University System of Maryland, Definitions for Managerial, Supervisory, or Confidential Employees* (Approved by the Board of Regents August 24, 2001).

Bowie State's use of the term "supervisor" as it may relate to the classification of employees (based on duties performed) under its personnel system does not necessarily establish supervisory status within the definition we are bound to apply pursuant to the Collective Bargaining Statute as we interpret that to be under traditional principles of labor law.^{2/} Although this evidence may reflect Officer Hall's status as the lead officer on his shift, the authority to evaluate or direct the work performance of junior co-workers does not establish or constitute any of the prescribed criteria establishing supervisory status.

Moreover, the evidence did not establish that Officer Hall's duties and responsibilities relating to any of the prescribed supervisory indicia were exercised with independent judgment. Specifically, Chief Pullen and Officer Hall gave testimony concerning Officer Hall's participation in the hiring of employees. Officer Hall's role consisted of being a member of a rating panel on which all employees are called upon to participate in assessing a prospective applicant's qualifications and experience. Raters on such panels are not accorded the authority to select who is actually hired. Similarly, other testimony revealed that the extent of Officer Hall's authority with respect to employee discipline consists of directing compliance with established conduct and duty requirements and, in cases of non-compliance, generating incident reports. Although there may be reliance upon the accounts made in Officer Hall's reports, the reports do not reflect independent disciplinary discretion. (Bowie State Exh. N) The reports are reviewed and any imposed discipline is

^{2/} Cf., *Winco Petroleum Co.*, 241 NLRB 1118 (1979) (giving an employee the title "supervisor" or even theoretical power to perform some supervisory functions does not convert a rank and file employee into a statutory supervisor). The BOR's definition of supervisor parallels in all significant respects the definition under the National Labor Relations Act.

We also note that during the hearing, Bowie State intimated that a finding that UPO IV officers are not supervisors could result in a reduction in pay for this classification. We caution Bowie State against taking such action based on the Board's decision. Bowie State defined the duties and responsibilities of UPO IV officers and the corresponding pay for employees so classified and performing the defined duties of a UPO IV officer. The Board's determination that Officer Hall's duties and responsibilities as a UPO IV officer do not meet the criteria for supervisory status under the BOR's definition has no impact on the defined duties and responsibilities of UPO IV officers. As such, as long as Officer Hall continues to perform the defined duties of a UPO IV officer, we would expect our determination to have no impact upon the compensation accorded this employee classification.

authorized by the lieutenant of operations^{3/} or Chief Pullen.

Based on the evidence presented, the Board finds Officer Hall's demonstrated and accorded duties and responsibilities (including in an acting supervisory capacity) to be insufficient to establish supervisory status under the prescribed definition. Therefore, there is insufficient evidence to support Officer Hall's exclusion on this basis from Bowie State's unit of sworn police officers.^{4/}

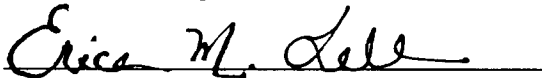
ORDER

IT IS HEREBY ORDERED THAT:

Bowie State University's appeal of the Executive Director's determination in Board Case No. EL 2001-12/01 is denied. The Executive Director's determination is affirmed.^{5/}

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD

Annapolis, MD
October 7, 2002



Erica M. Lell, Assistant Executive Director
On behalf of Jamin B. Raskin, Esq., Board Chairman

^{3/} Under the classification of UPO IV, Officer Hall has the rank of sergeant and reports directly to the lieutenant of operations. (MCEA Exh. 1)

^{4/} Cf. *Quik-Pic Food Stores, Inc.*, 252 NLRB 506 (1980) (assistant manager of food store found not to be a supervisor where he had only insignificant and sporadic opportunities to exercise independent judgment).

^{5/} In view of our determination that Bowie State has not established that Officer Hall is a supervisor as defined under the BOR definition, he continues to be included as a member of Bowie State's bargaining unit of sworn police officers. As such, there is no occasion to reach a secondary issue concerning Officer Hall's right, if found to be a supervisor, to participate in collective bargaining with Bowie State as a designated member of MCEA's collective bargaining team. We note, however, that under the Collective Bargaining Statute, the right to participate in collective bargaining does not extend to employees properly excluded from the Statute's coverage as supervisory, managerial, or confidential pursuant to §3-102(b)(12).

Appeal Rights

Any party aggrieved by this action of the State Higher Education Labor Relations Board may seek review in accordance with Board Regulation 14.30.11.24(C) and as prescribed under Title 10 of the State Government Article, Annotated Code of Maryland, §10-222.