

D.R. NO. 93-11

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

In the Matter of

COUNTY OF PASSAIC
(PREAKNESS HOPSITAL),

Public Employer/Petitioner,

-and-

NUHHCE, DISTRICT 1199J,

Docket No. CU-92-56

Employee Representative,

-and-

IUPCPE, LOCAL 911,

Employee Representative.

SYNOPSIS

The Director of Representation finds that the supervisory principal personnel technician is a confidential employee within the meaning of the Act and removes the position immediately from Local 911's negotiations unit. Further, the Director adds the Geriatric Nurse Practitioner/Director of Staff Development to an existing Local 1199J negotiations unit. The Director dismisses the rest of the clarification of unit petition finding that nine department head positions are not managerial executives within the meaning of the Act.

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Appearances:

For the Public Employer
Thomas F. Portelli, attorney

For the Employee Representative District 1199J
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

For the Employee Representative Local 911
Schneider, Goldberger, Cohen, Finn, Solomon, Miceli,
Leder & Montalbano, attorneys
(Reba Carmel, of counsel)

DECISION

The County of Passaic (Preakness Hospital) filed a Petition for Clarification of Unit on June 3, 1992, seeking several determinations concerning the composition of three of its negotiations units. The determinations sought by the Hospital are:

- (1) The Director of Nursing and the Assistant Director of Nursing

are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and should be removed from an existing, two-person collective negotiations unit currently represented by District 1199J, NUHHCE, AFSCME, AFL-CIO, (2) The new position of Geriatric Nurse Practitioner/Director of Staff Development is a managerial executive position and should be excluded from all negotiations units, (3) The following positions are managerial executives and should be removed from the IUPCE Local 911 negotiations unit: Director of Therapeutic Services, Director of Dietary/Food Services, Director of Social Services, Executive Housekeeper, Hospital Maintenance Supervisor, Laundry Manager, Supervisory Principal Personnel Technician, Systems Analyst, Gero-Psych Coordinator and Inventory Control and Transportation Supervisor, (4) The duties of nursing supervisors vis-a-vis assistant nursing supervisors create an impermissible conflict of interest requiring the removal of the nursing supervisors from the existing 1199J unit comprised of supervisory nurses.

District 1199J and Local 911 assert that none of the disputed employees are managerial executives.

We have conducted an administrative investigation into the issues raised by this petition.^{1/} There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. The following facts appear.

Preakness Hospital is a Passaic County hospital operated by a Board of Managers who are overseen by the elected County Board of Freeholders. Hospital Executive Director Victor Kattak reports to the Preakness Hospital Board of Managers and is responsible for the daily management of the Hospital. Assistant Administrator Bertha Hudak reports to the Executive Director. Director of Support Services Gregg Finch and Managerial Specialist Joe DeSomma report to the Assistant Administrator. The Director of Nursing reports to the Assistant Administrator. Other department directors report to either the Director of Support Services, the Managerial Specialist or the Assistant Administrator. Some departments have assistant department directors who report to their department director.

All of the disputed titles fall into one of three units. District 1199J has been the exclusive representative for a unit comprised of two persons, the Director of Nursing and Assistant Director of Nursing for over ten years. Their current contract runs from January 1, 1991 through December 31, 1992. 1199J has also been

^{1/} The parties participated in a full day exploratory conference conducted by a Commission staff agent. Subsequently, the staff agent sent a letter requesting specific information from the parties. Our investigation is a result of the parties' submissions and information gathered during the exploratory conference.

the majority representative for a unit of 19 supervisory nurses for over ten years.^{2/3/} The supervisory nurses unit is described as follows:

Included: All nursing supervisory personnel employed by the County of Passaic at Preakness Hospital.

Excluded: All other registered and graduate nurses, managerial executives, confidential employees, other professional employees and other supervisory employees within the meaning of the Act.

Local 911 is the majority representative of approximately 20 non-professional supervisory employees. Their contract runs from January 1, 1991 through December 31, 1992. Employees in this unit have been organized since 1971, when they were first represented by AFSCME Local 2312. The employees changed representatives selecting Local 711 through a Commission-conducted representation election in 1988. Prior to 1991, the majority representative subsequently changed again, apparently through affiliation, to Local 911. The non-professional supervisory employees' unit is described as

^{2/} 1199J also represents a negotiations unit of 100 registered nurses and licensed practical nurses. They were so certified by the Commission on February 7, 1977. AFSCME Local 2273 was certified by the Commission on March 18, 1974, to represent a unit of blue collar and white collar non-supervisory employees. Neither of these units is involved here.

^{3/} It is uncertain how and when 1199J became the majority representative of the supervisory nurses unit. The supervisory nurses' unit was previously represented by the New Jersey State Nurses Association. The Commission certified the NJSNA as the majority representative of this unit in June 1978.

follows:

Included: All non-professional supervisors employed by the County of Passaic at Preakness Hospital.

Excluded: Non-supervisory employees, professional employees, confidential employees, managerial executives, craft employees and police.

Additionally, in 1986, the scope of this unit increased from 7 employees to 13 employees and in 1987 from 13 employees to 17 employees.^{4/}

The Director of Nursing reviews grievances at the first step in the grievance procedure for both the 1199J staff nurses unit and the 1199J supervisory nurses unit. It is unclear who reviews first step grievances in the grievance procedure for the Director of Nursing/
Assistant Director of Nursing unit.

The designated management representative at the first step of the Local 911 grievance procedure is the Assistant Administrator. However, the Director of Support Services has also acted at the initial grievance procedure step. Neither position is included in the Local 911 negotiations unit. The second grievance procedure step is before the Executive Director; the third grievance procedure step is before the County Administrator; and the fourth grievance procedure step is binding arbitration.

^{4/} These increases were by agreement of the parties to settle clarification of unit and representation petition proceedings filed with the Commission. See Cty. of Passaic, D.R. No. 88-25, NJPER Supp. 379 (¶91 1988).

Among the disputed employees, the only one who directly participates in the collective negotiations process is the Supervisory Principal Personnel Technician. None of the other disputed positions directly participate in collective negotiations. However, the Director of Nursing and the Executive Housekeeper may have provided input for changes made through negotiations in rank-and-file unit contracts, although no specific examples were provided.

The Nursing Department provides nursing services to 14 units at Preakness Hospital in three different buildings. The department hierarchy begins with the Director of Nursing followed by the Assistant Director of Nursing, nursing supervisors, assistant nursing supervisors (only on first shift), registered nurses, licensed practical nurses and certified nurses' aides.

Director of Nursing

Elizabeth Palestes has held this position for 12 1/2 years. Her duties include organizing and administering nursing services.^{5/} Approximately 100 nurses, 200 ancillary nursing staff and 2 clerical employees work in the department.

The Director supervises the staff; she interviews and recommends hiring new employees to the Personnel and Hospital administration; she recommends whether to make an employee permanent

^{5/} Director of Nursing job duties are described in a Civil Service job description dated April 19, 1982 submitted by the Hospital and listed on a Preakness Hospital Evaluation Standard form submitted by 1199J.

or terminate employment after the completion of the probation period; she gives oral and written warnings to employees; however, suspensions and terminations are determined by the Executive Director. No examples of hiring or disciplinary incidents were provided. The Director may evaluate the work performance of the nursing staff, but information on the frequency of these evaluations and what they are used for was not provided. The Director also assists in training staff and student nurses and in operating public health programs.

The Director does not directly participate in negotiations for any negotiations units on behalf of the Hospital, but she has provided input to the Hospital administration ("administration") concerning changes sought in the contract covering non-supervisory nurses. No specific details concerning these functions were provided. She is the first step in the grievance procedure for the other two nursing units (i.e., the non-supervisory nurses unit and the supervisory nurses unit).

The Director of Nursing has many administrative responsibilities including preparing and maintaining records, preparing reports for the administration, the State and Medicaid. She also prepares reports on nursing staff levels and schedules.

The Director of Nursing sits on many hospital committees representing the department including the Administrative Health Team Services Committee, the Pharmaceutical Committee and the Inspection Control Committee. She is involved in bi-monthly department head

meetings at which hospital policies may be discussed, but no specific examples of hospital policies evolving from these meetings or her role in developing such policies were provided. The Director also evaluates the quality of nursing services provided to patients and has clinical responsibilities to review pre-admission services and placement of patients.

The Director administers the department budget which is developed and approved by the administration with some input from the Director. No specific examples of the Director's role in budget preparation were provided. The Director can recommend supply and capital purchases to the administration.

Assistant Director of Nursing

Harriet Garatano holds this position.^{6/} She assists the Director in organizing the nursing program. She fills in for the Director in her absence.^{7/} They alternate weekend on-call coverage.

The Assistant Director assists in interviewing nursing staff applicants and in making recommendations concerning retention once new employees complete probation. The Assistant Director counsels or gives oral or written warnings to staff for infractions

^{6/} Her duties were described in a 1979 Civil Service job description submitted by the Hospital and listed on a Preakness Hospital Evaluation Standard Form submitted by 1199J.

^{7/} Their relationship was described as that of "Co-Directors" by the Director during the exploratory conference discussions.

of policies and procedures, although no specific incidents were described. The Assistant Director assists in preparing and reviewing staffing schedules and can sign overtime authorization forms which must be co-signed by the administration. She does not appear to have a role in contract negotiations or act as a step in the grievance procedure.

The Assistant Director participates in monthly staff meetings to review nursing issues. She participates in hospital committees including the Administrative Health Services Team, Infection Control, Quality Assurance and the Interdisciplinary Care Planning Meetings. She may also attend department-head meetings. No examples were provided of any Hospital policies evolving from these meetings.

The Assistant Director also has these administrative duties: she oversees the department's computer work, the central supply nursing duties and procedures relating to the Pharmacy. She assists the Director and nursing supervisors in preparing department reports and records including intershift reports. She also participates in staff training programs.

The Assistant Director assists in administering the budget. She evaluates new products and recommends product purchases to the administration. She also submits requisitions for patient care supplies to the administration for approval.

The Assistant Director assists the Director in evaluating the quality of patient care and developing nursing care strategies.

No examples of any departmental policies evolving from these responsibilities were provided.

Nursing Supervisors

There are ten nursing supervisors, two of whom work on the day shift and four each on the evening and the night shifts. The nursing supervisors report to the Director of Nursing and/or the Assistant Director. They oversee the operations of their assigned patient care units according to established policies and procedures.^{8/} Assistant nursing supervisors who work during the dayshift report to them.

Nursing supervisors appear to have staffing, administrative and direct care duties. They oversee the work performed by the staff in their units. They annually evaluate the work performance of the staff including the work of assistant nursing supervisors. These evaluations are not used for salary determinations, although they may be used for disciplinary purposes or to determine whether to terminate or retain an employee after a probationary period. No specific examples of the use of these evaluations were provided.

Nursing supervisors may discipline staff in accordance with established procedures including counseling or warnings. Nursing supervisors may arrange disciplinary hearings and may present information at the hearing. They make disciplinary recommendations

^{8/} Their job duties were described in a Civil Service job description dated 1969 submitted by the Hospital and in a list of duties submitted by 1199J.

which may or may not be followed. However, no specific examples were provided describing any disciplinary action taken by a nursing supervisor against an assistant nursing supervisor. Nursing supervisors may interview job applicants but have no input into final hiring decisions. The nursing supervisors also have no role in contract negotiations. Their other duties include training staff in nursing techniques and about various illnesses.

Nursing supervisors' administrative duties include overseeing vacation scheduling, sick leave usage and other staff scheduling issues for their units and preparing required reports. They prepare shift reports for the next shift's nursing supervisor and may report on special incidents. They enforce existing policies including those involving dispensing medication. They also provide input into the budget by submitting suggestions concerning their unit's needs. They do not attend department-head meetings.

Nursing supervisors also have direct care duties; they work closely with staff to oversee treatment of patients and patient records, and they contact families and doctors for patients in their units. Nursing supervisors arrange for ambulances and medical tests as required by patients.

Assistant Nursing Supervisors

The seven assistant nursing supervisors work on the day shift overseeing nursing staff on patient units. They report to nursing supervisors.^{9/}

They oversee the professional and non-professional staff in their areas to ensure that patients receive quality care. Assistant nursing supervisors may assist with new employee orientation and update their staff after inservice trainings. They may assist in evaluating new employees and existing staff. Evaluations must be co-signed by the Director of Nursing; however, the purpose of evaluations is unclear. It appears that assistant nursing supervisors have no role in the negotiations, interview or hiring processes. Their disciplinary responsibilities are limited to counselling staff who have taken excessive amounts of sick leave.

The assistant nursing supervisors schedule staff in their areas and can assign staff responsibilities if the nursing supervisor is absent. They oversee unit supplies and equipment and check on units for problems. They prepare various reports, implement established policies and procedures and participate in nursing care committees.

Their direct-care duties involve observing patients on their units daily and evaluating their care needs. They participate in team conferences to discuss patient problems and work closely with patients, families, doctors, nurses and other staff to carry

^{9/} Their duties are described in a 1988 job description submitted by the Hospital and in a list of duties submitted by 1199J.

out treatments. They also supervise patient record documentation and dispensing medications.

Director of Staff Development/Geriatric Nurse Practitioner

This new position was created on June 1, 1992 and is filled by Angela Capo. It focuses on all aspects of patient care within nursing services including clinical responsibilities for certain elderly patients; accordingly, it requires special knowledge about older adult patient care.^{10/}

Her clinical duties as Geriatric Nurse Practitioner involve providing medical services to patients in coordination with the patients' doctors. She performs physical exams, compiles medical histories and dispenses medication. She initiates care plans for patients, working in close cooperation with patients, family and medical staff. She evaluates the effectiveness of the care provided and assesses patients for admissions. Her expertise in geriatric care allows her to be a resource to other hospital staff.

Her duties as Director of Staff Development will involve all health services staff. She will develop materials and programs for nursing staff and other hospital staff. She has no subordinate staff at this time.

Her administrative duties include some role in policy formulation including policies on smoking, lateness and safety;

^{10/} The duties of this position were described in an affidavit submitted by Ms. Capo, a job description submitted by the Hospital and in a Preakness Hospital Evaluation Form submitted by 1199J and the Hospital.

however, her specific role in developing these policies was not indicated. She participates in various hospital committees and while it was indicated that she is involved in developing nursing department policies, no specific facts were provided concerning her role in this activity.

This position has no separate departmental budget to formulate and administer. However, the budget items for this position are included in the Nursing department budget. The Director of Staff Development/Geriatric Nurse Practitioner can make recommendations to the administration about equipment and library resource materials.

Although it was indicated that this position may have some knowledge of the Hospital's position in collective negotiations, no specific examples were provided. She has a beeper for emergencies as does the Director of Nursing and Assistant Director of Nursing.

The Hospital claims that the following positions are managerial and should be removed from the Local 911 negotiations unit.

The first step in the grievance procedure for the employees in this unit is the Director of Support Services. The employees in the disputed positions report to the Assistant Administrator, the Director of Support Services or the Managerial Specialist.

Director of Therapeutic Services

Stacey Wilbur was appointed to this position on July 1, 1992. She reports to the Assistant Administrator.^{11/}

Wilbur has administrative and staff responsibilities. She plans and conducts the therapeutic care activities. She supervises 12 professional and 3 non-professional employees. She has been involved in hiring, disciplining and evaluating staff, but no examples were provided. She prepares staff schedules, but major scheduling and shift changes must be approved by the Assistant Administrator. She can't authorize overtime work. If a position is vacant, she must request administrative approval to fill it. She does not have direct patient care duties except when she needs to provide therapy due to a vacant staff position.

Her duties require her to run her department based on Hospital regulations. She does "advise and recommend policy changes to the Assistant Administrator so the department runs efficiently." Although she participates in department head meetings, no examples of policies developed or effectuated by her were provided. Her hours of work are generally 8:30 a.m. - 4:30 p.m.

She may make recommendations to the Assistant Administrator regarding the department's budget; however, the budget is reviewed by the administration and then is submitted as part of the overall Hospital budget to the County. The budget includes staff and

^{11/} Local 911 submitted an affidavit attested to by Wilbur. The Hospital submitted a job description for the position chief recreation therapist.

equipment items. The Director must seek permission from the Assistant Administrator for any large purchases. She also develops grant proposals and represents the Hospital at professional organization meetings. The Director does not directly participate in the collective negotiations process. She may provide input, however, for changes sought by the Hospital in the rank-and-file unit contracts. No specific examples of such input were provided.

Director of Dietary/Food Services

Charles Kelly was appointed to this position in March 1992. Gregg Finch, the former Director, is now Director of Support Services. Mr. Kelly reports to Managerial Specialist Joseph DeSomma, who reports to the Assistant Administrator. The Director plans, organizes, supervises, and directs all food service activities. This involves the application of the principles of dietetics and nutrition to large scale meal planning and preparation.^{12/}

The Director supervises 100 employees including 5 supervisory employees who report to him. He may interview prospective employees and has the authority to make final hiring selections. Although he handles progressive discipline in the department, no examples of exercising this authority were provided.

^{12/} Mr. Kelly attested to his duties in an affidavit submitted by the Hospital along with a job description and a Civil Service job description. This position was the subject of a 1986 unit clarification petition at which time the parties agreed to include this position in the Local 911 unit.

He may review employee job performances, but no specific details were provided as to what purposes the reviews serve. He reviews staff schedules, approves leaves and can approve overtime. He develops and conducts new employee orientation and staff training. He has no role in collective negotiations. The Hospital asserts that a conflict of interest exists between the Director and the supervisory staff members who report to him, but no specific examples describing such conflict were provided.

The Director has extensive administrative departmental duties. He prepares and submits a departmental budget covering food, supplies, equipment and staff totaling \$4.5 million. It is unclear if this budget is changed by the Managerial Specialist. The Director can purchase supplies and prepare food and equipment needs. He oversees a cost control system and compiles reports on food quality, special menus, safety, and sanitary regulations. He confers with other department directors regarding dietetic services.

The Director can develop departmental policies and has done so on issues regarding dress codes, changes of shifts and restructuring meal services. He participates in department head meetings where hospital policies may be developed, but no examples were provided of the Director's development or effectuation of policies.

Director of Social Services

Gail Mendheim holds this title. She reports to the Assistant Administrator. Under direction, this position organizes, develops and directs the social services program.^{13/}

She supervises two social workers and a senior clerk typist. She determines her staffing needs and can recommend staffing revisions to the Assistant Administrator. She is authorized to hire, discipline and discharge employees, but no examples of her exercising these authorities were provided. She maintains and schedules staff to meet state requirements. She may perform annual staff evaluations.

She assists in preparing the department's budget and administers the \$200,000 budget which covers equipment and salaries. While it was alleged that she formulates departmental policies or other Hospital policies, no examples of her role in the policy formulation process on the policies themselves were provided. Nor were any examples provided of any "confidential knowledge she may have about Hospital administrative decisions" as asserted by the Hospital. She has no role in collective negotiations. She does prepare departmental reports and serves on several committees including: (1) Dementia Task Force, (2) Sick/Late Time and (3) Evaluation. She attends department head

^{13/} She attested to her duties in an affidavit and a job description submitted by the Hospital. This position was the subject of a unit clarification petition in 1986 at which time the parties agreed to include the position in the Local 911 unit.

meetings, but no specific details were provided as to what is discussed there.

The Director also has clinical duties. She must perform the most difficult office and field work, perform abuse investigations and handle various Medicaid inquiries.

Executive Housekeeper

Darrell Sturtz has held this position since 1989. He reports to the Director of Support Services. Under direction, he plans, organizes, and directs the institutional housekeeping program in order to insure and maintain the sanitary conditions, cleanliness and attractiveness of the institution.^{14/}

Stutz supervises 31 employees including 2 foremen. He plans work schedules and approves leaves. It is alleged that he is authorized to hire, discipline and terminate employees; however, no examples of his involvement in these duties were provided. He initiates training programs and demonstrates new equipment for staff.

Executive Housekeeper Stutz works the 7 a.m. - 3 p.m. shift and inspects the staff's work for quality. He developed a departmental policy manual. He participates in department head meetings and has input into formulating administrative policies; however, no examples were provided of his policy formulation activities.

^{14/} He described his duties in two affidavits; one submitted by the Hospital and the other submitted by Local 911. Additionally, the Hospital submitted a DOP class specification.

His role in developing the department's budget is unclear. He may inventory supplies and equipment and approve purchases.

The Hospital asserts that a conflict of interest exists between the Executive Housekeeper and the foremen, however, no examples of actual or potential conflict were submitted. He does not participate in collective negotiations; however, he may have input into contract changes sought by the employer in negotiations with the non-supervisory unit. No specific examples of his activities in this regard were provided.

Hospital Maintenance Supervisor (Chief Engineer)

William Dop has held this position since 1977 and reports to the Management Specialist. He plans and supervises the Hospital maintenance program including maintaining the physical plant.^{15/}

He supervises 34 employees including 2 foremen. He is authorized to hire, discipline and terminate employees, but no examples of exercising these duties were provided. Additionally, he does not have final authority for making such decisions. He may evaluate the maintenance repairer supervisors, but what these evaluations are used for is unclear. No examples of conflicts of interest were provided. He can set schedules and work assignments, but can't authorize overtime without prior permission. He works a 6 a.m. - 2 p.m. shift, but is on call 24 hours per day and has a beeper.

^{15/} He attested to his duties in two affidavits, one submitted by each party. The Hospital also submitted a job description.

He submits a budget of approximately \$800,000 to the Managerial Specialist for review by the administration. He requisitions materials and supplies and creates and maintains departmental reports.

He may recommend departmental policies to the Managerial Specialist, but no examples were provided of policies which he recommended and which were subsequently implemented. He has had input into Hospital decisions regarding building renovations and safety codes. He does attend department head meetings, but it is unclear what matters are discussed at those meetings.

Laundry Manager

Frank Petriello has filled this title since March 1978. He reports to the Managerial Specialist. He is responsible for laundry services for the Hospital, Passaic County Children's Shelter, Camp Hope and the Homeless Shelter. He supervises staff, controls inventory, submits required reports and records.^{16/}

He oversees scheduling and work assignments of 19 laundry employees including a foreman. He can recommend hiring, discipline and discharge of staff, but no examples of his actual exercise of such authority were provided. He may also evaluate staff, but the use of the evaluations is unclear. The Hospital asserts that a conflict of interest exists between the Laundry Manager and the

^{16/} He attested to his duties in affidavits submitted by both Local 911 and the Hospital. The Hospital also submitted a Civil Service class specification.

foreman, but no examples of such a conflict were provided. The Laundry Manager can authorize overtime, but only with prior approval. He works a 7 a.m. - 3 p.m. shift, but has been called in at other times in an emergency.

The Laundry Manager administers a \$500,000 budget developed by describing his needs in a document submitted to the Managerial Specialist. He can purchase equipment after conferring with the administration.

Any departmental procedures he wants to implement are subject to approval by the administration. No examples of policies which he recommended and which were subsequently implemented were provided. He was involved in formulating the Hospital policy on smoking and he sits on committees on Late/time and Evaluations. He attends department head meetings, but it is unclear what is discussed there. He has no role in collective bargaining.

The Laundry Manager prepares reports and oversees laundry security. He also supervises the washing formulas and prepares detergent mixtures and performs chemical tests.

Supervising Principal Personnel Technician

Nancy Ackerman has held this position for 12 years. She acts as the Director of Human Resources/Personnel and reports to Hospital Executive Director Victor Kattak. Under direction, she

supervises employees in performing highly responsible technical duties in all phases of personnel work.^{17/}

She supervises at least three clerical employees, an unknown number of staff in payroll and several telephone operators. She oversees the hospital's staffing needs, conducts preliminary job interviews and then refers applicants to appropriate department directors. She oversees the \$20,000,000 salary and overtime budget.

Many of her duties involve employees and employment matters. She investigates employee complaints and grievances. She conducts desk audits and implements Department of Personnel rules. She acts as the Hospital's Administrative liaison at Administrative Law hearings, PERC matters (including this case), labor mediations and disciplinary hearings. She has been a negotiator for the Hospital in the 1199J and AFSCME contract negotiations. She maintains grievance and negotiations files in her office. She is privy to Hospital strategies regarding staff reductions. She has prepared reports on staffing, overtime, holiday pay and uniform allowances used in negotiations.

She attends department head meetings bi-monthly and monthly administration meetings; however, the policies discussed at those meetings are unknown. She chairs the Sick-Time, Late-Time and Performance Evaluation committees.

^{17/} She attested to her duties in an affidavit submitted by the Hospital which also submitted a 1974 job description.

Systems Analyst

The duties of this position were described in a 1970 job description submitted by the Hospital. However, the parties never informed us who currently fills this position.

The employee filling this position works "under direction, planning, conducting and developing analytic studies of existing operations and programs to determine the feasibility of conversion to a data processing system". This appears to be a position with an expertise in data processing.

This position works with operating supervisors and administrative staff in developing, installing, evaluating and updating computer equipment, records and procedures. We were not provided with any other information about this position.

Gero-psych Coordinator

This position is filled by Sharon Link and appears to be in the Geriatric-Psychiatric Department. She reports to the Assistant Administrator. She coordinates, plans and implements specific care, custody and rehabilitation services for patients.^{18/}

Her supervisory duties apply to an unknown number of staff. She may be authorized to hire, discipline and discharge staff, but no examples were provided. She maintains staffing schedules and may conduct annual performance evaluations, but who she evaluates and what the evaluations are used for is unclear. She

^{18/} The Hospital submitted a 1985 Civil Service job classification for program coordinator, mental health, an unofficial evaluation standard form and an affidavit attested to by Ms. Link.

may assess training needs. She has no role in collective negotiations.

Link administers a \$200,000 budget including salaries and equipment, but how the budget is developed is unclear. She may help formulate departmental and Hospital policies, but no examples were provided. She attends department head meetings and Medical Services meetings, but the topics discussed at those meetings were not indicated. She also prepares department reports.

She also has clinical responsibilities. She monitors psychiatric patients and in the absence of the attending psychiatrist, is responsible for the care of and certain decisions concerning psychiatric patients. She acts as a liaison to local acute care facilities and other psychiatric facilities including Greystone Hospital. She performs pre-admission screening of applicants for residential placement. She may also act as a patient advocate.

Inventory Control and Transportation Supervisor

Michael Atich has held this position since 1987, reporting to the Director of Support Services. Under direction, he plans, organizes, and directs activities of the purchasing and transportation units.^{19/}

Atich supervises two transportation employees and five purchasing staff. However, he asserts that he has no authority to

^{19/} He attested to his duties in an affidavit submitted by Local 911. The Hospital submitted a 1978 job description.

hire, discipline, or discharge those employees. Although he can make hiring, discipline and discharge recommendations, no specific examples were provided and therefore, it is uncertain whether these recommendations are effective. He schedules transportation staff and assigns inventory unit work to staff. He has no role in collective bargaining.

He reviews purchase requisitions against a County bid list. For purchases not on the list, he contacts vendors to discuss prices. He consults with the Director if he thinks a price is inappropriate or unusual. He oversees purchases and repairs for the transportation section, but these must be authorized by the Director.

Any departmental changes which he wants to implement must be approved by the Director. He may prepare purchase contracts and manage the central supply storeroom. He prepares required reports and files on purchases and requisitions. He may also prepare temporary and final appropriation budgets and fund transfers.

ANALYSIS

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 only include the superintendent or other chief administrator, and the assistant superintendent of the district.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), the Commission elaborated on the types of responsibilities necessary for a finding of managerial executive status:

A person formulates policies when he develops a particular set of objectives designed to further the mission 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 for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. 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.

Id. at 509.

The Appellate Division has approved the Montvale standards. Bergen Pines Cty. Hosp., D.R. No. 83-8, 8 NJPER 535 (¶13245 1982), rev. den., P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982), aff'd App. Div. Dkt. No. A-564-82T2 (10/18/83). In Bergen Pines, three co-department directors were found not to be managerial executives because they were situated on the fourth tier of the Hospital's hierarchy and possessed authority only at the departmental level. See also State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991); Cty. of Essex, D.R. No. 91-28, 17 NJPER 256 (¶22118 1991). The Commission has construed this definition narrowly. See State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 253 (1974); Bor. of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977); cf. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1987).

N.J.S.A. 34:13A-3(g) defines confidential employees as those:

...whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.

The Commission has narrowly construed the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). Determination of confidential status requires consideration of an employee's access to and knowledge of, materials used in labor relations processes including contract negotiations, contract administration, grievance handling and the preparation for these processes. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood.

The Act excludes managerial and confidential employees from inclusion in any collective negotiations unit. Additionally, the

New Jersey Supreme Court in Bd/Ed of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") determined that various levels of supervisory employees may not be automatically included in the same unit with which other. The Court stated:

...where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and...a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. 57 N.J. at 427.

The Court added that each case needs to be examined on its own facts, and that only where such a conflict was "de minimis" or tolerable, would the unit combination be permissible.

Additionally, conducting employee evaluations can be an indicator of significant conflict of interest where the evaluation plays an important role in other personnel actions such as employment renewal, receiving a salary increment or promotions. Emerson Bd. of Ed., 7 NJPER 571 (¶12255 1981); and Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984).

Based upon the entire record in this matter, I do not find that any of the ten disputed titles in the Local 911 unit are managerial executives within the meaning of the Act.

None of the disputed positions has the authority to broadly affect the Hospital's mission. In the overall Hospital hierarchy, the Director of Social Services, Gero-psych Coordinator and the Director of Therapeutic Services who all report to the Assistant Administrator are on the fourth tier of authority. (exclusive of

the Freeholders).^{20/} Another six employees appear to be on the fifth tier of authority. These are the Executive Housekeeper, Inventory Control and Transportation Supervisor, Hospital Maintenance Supervisor, Laundry Manager, Director of Dietary/Food Services and the Systems Analyst. They report to the Director of Support Services or Managerial Specialist.

Each department director is a high level supervisor/administrator in their own department. Each may develop departmental policies and budgets, but these are reviewed by higher level administrators. None have any clearly indicated role in developing hospital wide policies. While the Hospital has made generalized claims about the managerial nature of these positions' duties, no specific evidence to support these claims was provided. Even when the Hospital asserted that a conflict of interest existed between two positions in a department with both titles in the Local 911 or 1199J units, no actual or potential examples of conflict were described.

However, I am clarifying the Local 911 unit to exclude the position of Supervising Principal Personnel Technician because this position is extensively involved in the collective negotiations process, including contract negotiations and grievance administration. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3

^{20/} The Executive Director, the Assistant Administrator, the Director of Support Services and the Managerial Specialist are all above the Director.

NJPER 248 (1977). These functions make it a confidential position within the meaning of the Act. None of the other positions in this unit have significant involvement in the collective negotiations process.

I will not disturb the two 1199J supervisory units. The Director of Nursing is not a managerial executive. She, like the other Department Directors, can develop departmental policies and budgets. However, any policies developed are subject to review by higher levels of Hospital administration. She does not formulate policies which broadly affect the Hospital's mission. She appears on the fourth tier of authority, reporting to the Assistant Administrator. Further, although the Hospital asserts that a conflict of interest exists between the Director and Assistant Director of Nursing, no examples were provided.

The Hospital also asserts that a conflict of interest exists between Nursing Supervisors and Assistant Nursing Supervisors. Although Nursing Supervisors may evaluate assistant nursing supervisors, how the evaluations are used is unclear. No specific examples were provided indicating that Nursing Supervisors have regularly exercised supervisory duties over assistant nursing supervisors. Based upon the record in this case, I do not find that a conflict of interest exists which is sufficient to warrant the removal of the nursing supervisors from the unit. Although the job description appears to indicate that nursing supervisors evaluate assistant nursing supervisors, it is not clear from the materials

submitted as to whether such evaluations have actually been performed and if so, whether they have resulted in adverse consequences to the assistant nursing supervisors. Absent this type of specific information, I will not conclude that having the nursing supervisors and the assistant nursing supervisors in one unit gives rise to a conflict of interest warranting the removal of the nursing supervisors from the unit.

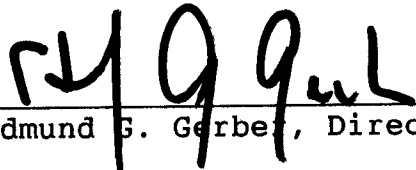
The final area of dispute involves the unit placement of the Geriatric Nurse Practitioner/Director of Staff Development. This is a new position and no evidence has been presented to support a determination that this position is a managerial executive. She carries a beeper like the other two positions. The employee in this position has a specific area of expertise for application within the Nursing Department.^{21/} Accordingly, I am clarifying 1199J's unit comprised of the Director of Nursing and Assistant Director of Nursing to include the Director of Staff Development/Geriatric Nurse Practitioner.

Accordingly, I make the following findings: exclude the Supervising Principal Personnel Technician, effective immediately; clarify the 1199J unit (Director of Nursing and Assistant Director of Nursing) to include the new title of Director of Staff Development/Geriatric Nurse Practitioner, effective immediately; determine that the Director of Nursing and Assistant Director of

^{21/} State of New Jersey, P.E.R.C. No. 91-93, 17 NJPER 246 (¶22112 1991).

Nursing are not managerial executives within the meaning of the Act and that no conflict of interest exists which warrants the removal of the Director of Nursing from the existing unit; determine that the positions of Director of Therapeutic Services, Director of Dietary/Food Services, Director of Social Services, Executive Housekeeper, Hospital Maintenance Supervisor, Laundry Manager, Systems Analyst, Gero-Psych Coordinator and Inventory Control and Transportation Supervisor are not managerial executives within the meaning of the Act; and determine that no actual or potential substantial conflict of interest exists in 1199J's extant unit of supervisory nurses and assistant nursing supervisors.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 29, 1992
Trenton, New Jersey