

D.R. NO. 91-28

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

Docket No. RO-91-38

ESSEX COUNTY UNIT MANAGERS &  
SUPERVISORS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among certain hospital supervisors to determine whether they wish to be represented by the Petitioner within its existing hospital supervisors unit.

The County objected to the inclusion of all thirteen titles in the unit. The Director determined that the chief of administrative services, an assistant hospital administrator, and a confidential aide are confidential employees. He also decided that another assistant hospital administrator is a managerial executive, and that the mental health administrator is not a supervisor. Additionally, the Director found that the Senior Clinical Directors may not be included in the supervisors unit because their supervisory and evaluative responsibilities over other unit employees creates a potential Wilton conflict.

The Director finds that there are insufficient facts to decide if the Principal Accountant is a confidential employee. Therefore, she may vote by challenged ballot.

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Appearances:

For the Public Employer  
Lucille LaCosta-Davino, Esq.

For the Petitioner  
Zazzali, Zazzali, Fagella & Nowak, attorneys  
(Robert A. Fagella, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 19, September 27 and October 9, 1990, the Essex County Unit Managers and Supervisors Association ("Association") filed a Petition, and amendments, with the Public Employment Relations Commission ("Commission") seeking to add certain unrepresented supervisors employed by Essex County ("County") to its existing collective negotiations unit of Hospital supervisors.<sup>1/</sup> The petition was accompanied by an adequate

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<sup>1/</sup> The Association initially sought inclusion of these employees through a Clarification of Unit Petition filed May 17, 1990. That petition was withdrawn in favor of this representation petition.

showing of interest from among the employees the Association seeks to add to its unit.

The Association seeks to add about 20 employees in the following titles to its existing unit:

Chief, Administrative Services  
Assistant Hospital Administrator  
Mental Health Center Administrator  
Assistant Clinical Director  
Director, Office on Handicapped  
Confidential Aide  
Principal Accountant  
Mental Health Administrator  
Senior Clinical Director  
Unit Chief  
Alcoholism Coordinator  
Senior Unit Chiefs  
Senior Accountants

The Association contends that each of these positions is supervisory and appropriate for inclusion in its unit.

The County objects to including any of the proposed titles in the Association's unit. It maintains that these employees are confidential or managerial under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

\* \* \*

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, 508-509 (¶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.

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). The key to confidential status is 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 one another. Rather, the Court found that:

...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 that 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.

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In 1981, the Commission certified the Association to represent all professional and non-professional County supervisors employed at the Hospital Center, the Guidance Center, and the Geriatrics Center.<sup>2/</sup> The Association's present unit consists of about 70 supervisors in the County's Department of Health and Rehabilitation. The Health and Rehabilitation Department, which consists of the Division of the Hospital Center, the Division of Mental Health (which includes the Guidance Center) and the Division of Community Services, has traditionally maintained bargaining units separate from the units of other County employees. The Overbrook Employees Association represents about 900 non-supervisory employees, AFSCME represents the Department's non-medical professional and technical employees, and JNESO represents the nursing staff.

#### Chief of Administrative Services

The Chief of Administrative Services, Frank Rovello, reports to the Director of the Department of Health and Rehabilitation, Victoria Keller, and works in her office. He prepares the Department's budget. In addition to his regular responsibilities for processing purchase orders, monitoring budget expenditures and overseeing capital renovations on the Hospital, Rovello makes recommendations for staffing levels and costs out the

County's negotiation proposals in preparation for negotiations with its various units of Hospital employees. He participated in costing out negotiations proposals for the Association's current contract. He has also participated as part of the management teams for negotiations with the Overbrook Employees Association, AFSCME and JNESO.

Based upon his involvement with the County's negotiations teams and his prior knowledge of the County's strategies for negotiations with all of the Hospital units, the Chief of Administrative Services is a confidential employee within the meaning of the Act and cannot be included in any collective negotiations unit.

#### Assistant Hospital Administrators

There are two Assistant Hospital Administrators -- Eleanor Troiano and Marjorie Cappola. They report to the Hospital Division Director/Hospital Administrator, Dr. Arthur Avella, who reports to Keller.

Marjorie Cappola is in charge of the Hospital's support services including housekeeping, printing, landscaping, maintenance, barber services, transportation and communications. She has the power to make decisions in these areas in the absence of the Hospital Administrator. She acts as liason between the Hospital and the laundry supplier. She compiles statistical information in preparation for approval of major renovations. She coordinates the Hospital's renovation projects, oversees the renovation contractors' work and directs the use of Hospital space.

The County argues that Cappola is a managerial employee because she directs the use of Hospital space and argues this authority effectuates hospital policy as to the location of wards, office etc. A grievance was filed by a union concerning space allocated to employees. The County claims that if she were in the unit Cappola would be subjected to pressure based upon loyalty to "union members". The County further argues Cappola acts in the place of the Division Director, during the Director's absence. Finally, it states Cappola participates in labor negotiations.

Cappola states that she only makes recommendations as to the allocation of space to the Medical Director/Acting Division Director who makes the final determination. She admits she does act in lieu of the Acting Division Director in his absence but this is infrequent and the decisions made in that capacity are only routine determinations. Determinations which are not routine must be approved by the Department Director. However, she did not dispute that she participates in labor negotiations. Cappola's participation in negotiations alone excludes her from the proposed unit as a confidential employee.

Eleanor Troiano is in charge of nursing and medical support services. The Director and Assistant Directors of Nursing Services report to her. She initiates budget requests for Nursing Services and administers that budget. She can recommend staffing levels, hiring or layoffs within the nursing services budget. She coordinates the volunteers under her.



The County argues that Troiano is a managerial employee and by way of example stated when the hospital decided to sub-contract for nursing care she researched and prepared the specification for the contract with the outside contractor as well as the affected bargaining unit. She also consulted county counsel as to the legal implication of outside contracting. The Association has not disputed that Troiano has such functions. As she has directed the effectuation of management policies Troiano is a managerial employee and may not be included in the proposed unit.

Mental Health Center Administrator

The Mental Health Center Administrator, Christa Eckerlin, is in charge of the County Guidance Center, which operates an outpatient clinic offering counseling and therapy services. Eckerlin supervises the Center's approximately 25 to 30 employees. She reports to Dr. Avella, the Hospital Administrator. She schedules the Center's clinicians, decides patients' ability to pay and does patient billing.

There is no evidence that she sets County policy or is in any way involved in labor relations. Further, there is no evidence that her roles as supervisor of the Guidance Center places her in a conflict of interest with other unit supervisors. Although the County objects to her inclusion into this unit because she has supervisory duties, the proposed unit is a unit of all supervisors. Certain ministerial duties of supervisors including assignment of personnel and the creation of a budget are not by themselves

sufficient for finding an employee to be managerial. Therefore, such functions would not exclude an employee from representation rights under the Act. Eckerlin is appropriate for inclusion in the supervisors' unit.<sup>2/</sup>

Director, Office on the Handicapped

The Director of the Office on Handicapped, Joy Pellegrino, reports to Health and Rehabilitation Department Director Keller. She runs the Office on Handicapped, including a staff of five employees. The Office on Handicapped provides home care for handicapped persons, designs barrier free accesses, coordinates with State, local and private housing groups. Pellegrino also develops Federal and State grant proposals and monitors expenditures of the grant funds.

The County contends Pellegrino possesses "confidential" information regarding client services. This type of confidential information does not prohibit inclusion in a negotiations unit since the information is not labor-related. The County alleges that Pellegrino establishes a budget for the office of the handicapped and determines the priority of programs. Pellegrino certified that although she does the planning for the office, she must first make recommendations to the Director of Health and Rehabilitation and can only implement programs upon approval.

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<sup>2/</sup> However the Hospital states that this position will be eliminated. If it is eliminated, the position would not be part of the unit.

Pellegrino is not a confidential employee and therefore he is appropriate for inclusion in the unit.

#### Confidential Aides

There are two Confidential Aides -- Chi Chen and Yolanda Casale. Chen, a recent appointment, reports to the Hospital Administrator. Chen is involved with Hospital admissions. The County contends that Chen is confidential because she determines administration policy. The policies for admission were created by Hospital Director Dr. Avella and Chen merely carries out these policies. No information has been proffered to date which would indicate Chen has knowledge of confidential labor relations information. Chen states she supervises the staff of the admitting room of the hospital.

Chen is not a confidential employee and therefore is appropriate for inclusion in the hospital.

The Association concedes that Casale's involvement in negotiations makes her a confidential employee. Accordingly, Casale is excluded from the unit.

#### Mental Health Administrator

The Mental Health Administrator, Charlotte Cunningham, is responsible for evaluating and monitoring the Hospital's programs to assure effective delivery of mental health care services. She recommends funding levels for the County mental health programs and acts as a liason to State agencies. She reports to Keller. She does not supervise other employees.

Cunningham is not a supervisor within the meaning of the Act and, therefore, she is not appropriate for inclusion in this unit.

Senior Clinical Directors

The two Senior Clinical Directors -- Theresa Bielowski and Susan Skalsky -- report to Avella. Bielowski is in charge of the Hospital's Psychiatric Services and Skalsky is in charge of the Hospital's other medical services.

Bielowski is in charge of patient psychiatric care in the Hospital Administrator's absence. She decides treatment plans, handles family complaints, develops medical policies, handles patient discharge and transfer and coordinates with the Office of the Public Advocate. She supervises the Hospital Center Library, 16 full-time psychologists, 3 unit chiefs, a patient representative, approximately 30 consulting psychiatrists and the assistant Clinical Director. Bielowski has input into staffing levels and administrative policy.

Skalsky is in charge of the Hospital's other medical services. She is responsible for fiscal analysis of patient costs, handling payments of non-covered costs, the upkeep of physicians' credentials and physical arrangement for patient comfort. She acts as liason between the Hospital medical staff and outside Hospitals. She supervises 18 physicians and 1 unit chief.

Bielowski and Skalsky are supervisors. Neither are involved in any way with the negotiations or administration of the

Hospital's labor contracts. Nor do they possess the authority to set the Hospital's medical or administrative policy. Both are higher level supervisors, however. Each has supervisory authority over at least one unit chief, a title also proposed for inclusion in the unit. Skalsky supervises three unit members. Bielowski supervises eight unit managers. Bielowski and Skalsky do evaluations of these unit employees.

Accordingly, each would have a Wilton conflict if they were included within the unit.<sup>3/</sup> They are excluded from the unit.

#### Assistant Clinical Director

The Assistant Clinical Director, Wayne Young, assists the Clinical Director (Bielowski) in direct care medical decisions regarding patient transfers. He does patient chart review and in-service training. He supervises the psychologists (who are in the AFSCME unit), and acts as a liason between them and the physicians. The Assistant Clinical Director is supervisory and is appropriate for inclusion in the Association unit.

#### Unit Chiefs/Senior Unit Chiefs

The three Unit Chiefs -- Angela Aricauyos, Nimer Iskandarani and Priscilla Ilem -- are psychiatrists. Each is in

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<sup>3/</sup> The Association argues that since the current contract provides that an employee cannot perform an evaluation of a fellow employee in the same negotiations unit they may be included in the unit. However, these employees are currently not in the unit and this provision cannot be interpreted to limit the County's managerial authority to assign supervisory duties.

charge of a team of three or four psychiatrists. Each team is responsible for a psychiatric program. The Unit Chiefs monitor the performance of the psychiatrists assigned to them. They make recommendations concerning staffing levels and patient distribution. They sit on a medical task force. Although the County alleges there would be a Wilton conflict if these employees were included in the unit, these employees do not supervise employees in the supervisory unit. The three Unit Chiefs are appropriate for inclusion in the unit.

The Association also seeks to represent Senior Unit Chiefs. The Hospital employs two or three Senior Unit Chiefs. The Association asserts the Senior Unit Chiefs have responsibilities identical to the Unit Chiefs' but have longer service with the County. The Senior Unit Chiefs are also appropriate for unit inclusion.

#### Alcoholism Coordinator

The Alcoholism Coordinator, Jack King, works for the County Division of Community Health Services. He reports to Keller and supervises a small support staff. King is responsible for coordinating the County's alcohol and drug treatment program.

The program acts as a pass-through for State funds and grants to non-profit agencies. King develops the program's budget. He also addresses sponsors and community groups about the program. He runs the County's Employee Assistance Program.

The Alcoholism Coordinator is appropriate for inclusion in the Association's unit. He is a supervisor with the meaning of the Act. His duties do not suggest managerial or confidential status, nor does he possess any supervisory conflict with other unit employees.

Principal Accountants/Senior Accountant

The Association seeks to represent the Principal Accountant -- Mady Kasper.<sup>4/</sup> The County states that Kasper prepares documents for the preparation of the Department's budget and prepares financial documents which are to be used for labor relations. It is not clear if Kasper provides raw data to the County or has actual knowledge of the County's positions. I cannot make a determination as to Kasper's unit placement this time and will allow her to vote subject to challenge.<sup>5/</sup>

Based upon the foregoing, I find that the appropriate unit for collective negotiations is:

Included: Mental Health Center Administrator,  
Director of the Office on Handicapped,  
Confidential Aide Chi Chen, Assistant Clinical  
Director, Unit Chiefs, Senior Unit Chiefs and

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<sup>4/</sup> The Association withdrew it's earlier claim to also represent Accountants - Theodore Cielecki, Joseph Lovallo and Senior Accountant, Lane Curtis. These three employees do not supervise other employees. They are not appropriate for inclusion in this supervisors' unit.

<sup>5/</sup> If Kasper's vote is not determinative of the outcome of the election, her ballot will not be considered. If her vote is determinative, I will then conduct an investigation to determine her unit status to see if her ballot should be counted.

Alcoholism Coordinator to be added to the existing collective negotiations unit of professional and non-professional supervisors currently represented by Essex County Unit Managers and Supervisors Association.

Excluded: Chief of Administrative Services, Assistant Hospital Administrators, Senior Clinical Directors, Confidential Aide Yolanda Casale, Mental Health Administrator, Principal Accountants (Ted Cielecki and Joseph Lovallo), Senior Accountant, managerial executives, confidential employees, non-supervisory employees within the meaning of the Act, craft employees, and all employees represented in other collective negotiations units.

The Principal Accountant in the Department of Health & Rehabilitation may vote subject to challenge.

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

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be



received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: March 26, 1991  
Trenton, New Jersey