

D.R. NO. 89-6

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

ESSEX COUNTY UNIT MANAGERS' AND
SUPERVISORS' ASSOCIATION,

Docket Nos. CU-88-56
CU-88-58

Petitioner,

-and-

OVERBROOK EMPLOYEES' ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation determines that the secretarial assistant to the medical director of the Essex County Hospital Center is a supervisor and includes the position in the unit of supervisors employed by Essex County. The Director determines that the secretarial assistant to the acting director of the Geriatric Center and the administrative secretary to the medical director of the Hospital Center are not supervisors and includes them in the nonsupervisory unit. The administrative secretary to the Department of Health and Rehabilitation prepares correspondence including negotiations counterproposals. The Director finds that position is confidential.

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Appearances:

For the Public Employer
Lucille La-Costa-Davino, Esq.

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

For the Intervenor
Love and Randall, Esqs.
(Melvin C. Randall, of counsel)

DECISION

On April 29, 1988 the Essex Unit Managers' and Supervisors' Association ("Supervisors' Association") filed a clarification of unit petition with the Public Employment Relations Commission ("Commission") seeking to include secretarial assistants and administrative secretaries in a collective negotiations unit of all

supervisors employed by Essex County ("County") at Essex County Hospital Center, Essex County Geriatric Center and Essex County Guidance Center. On May 9, 1988 the Overbrook Employees' Association ("OEA") filed a clarification of unit petition with the Commission seeking to include the same titles in a collective negotiations unit of nonsupervisory employees employed by the County at the same institutions. We consolidate these petitions.

These titles had been designated as confidential and, accordingly, were excluded from all collective negotiations units.

The County no longer asserts that the secretarial assistants and the administrative secretary to the medical director of the Hospital Center are confidential employees. The County asserts that the administrative secretary to the director of the Department of Health and Rehabilitation continues to be a confidential employee. The County is neutral as to the appropriate unit for the remaining titles.

The Supervisors' Association asserts that the secretarial assistants and the administrative secretaries are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and that including them in a unit with nonsupervisors would create a conflict of interest. Therefore, the Supervisors' Association argues that they should be included in the supervisors' unit. The OEA asserts that these titles are not supervisors, do not have a conflict of interest with nonsupervisors and should be included in the nonsupervisory unit.

The Commission has determined that the Act defines a supervisor as one having the authority to hire, discharge or discipline employees, or to effectively recommend these actions. N.J.S.A. 34:13A-5.3 and 6(d); Cherry Hill Bd. of Ed., P.E.R.C. No. 30 (1970). In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court examined some of the factors which govern the structure of negotiations units:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest.

We conducted an administrative investigation into this matter. N.J.A.C. 19:11-2.6. It reveals the following:

Secretarial assistants are personal secretaries for division heads. In addition to doing some clerical work, they may assign work to and supervise the clerical staff. Noreen Landers and Joan Carbone are secretarial assistants.

Noreen Landers is secretary to Dr. Arthur Avella, medical director of the Hospital Center and acting division director. Her responsibilities include directing the work of five clerical employees; arranging for staff to cover committee meetings, vacations and extra duties; and reviewing assignments for completeness and accuracy. She keeps a log book of secretarial

assignments and is responsible for resolving differences between clerical staff members.

Landers evaluates clerical employees represented by the OEA. She and the managers who use the day-to-day services of the clerical employees both sign the evaluations of these employees. Both Landers and Avella state that she makes hiring, discipline and discharge recommendations.

It is undisputed that Landers, the secretarial assistant to the medical director of the Hospital Center, recommends hiring, disciplining and discharging employees when appropriate. She also has a role in evaluation of employees represented by OEA. Based on these facts, we conclude that Landers is a supervisor within the meaning of the Act and that her inclusion in the OEA unit would create an impermissible conflict of interest.

Joan Carbone is secretary to Dr. Russell Greco, acting medical director of the Geriatrics Center. She produces and maintains patient data and performs clerical tasks for Dr. Greco, including typing, filing, opening mail and answering the phone. Carbone also schedules outpatient services, coordinates admissions between hospitals and the Geriatric Center and prepares the monthly schedule for night doctors.

Currently, Carbone is the only secretary assigned to the medical director of the Geriatric Center. While Carbone was the secretarial assistant to the director of the Division of Community Health Services, she assigned work to and evaluated a clerk typist

and temporary secretaries. She was also consulted for hiring, discipline and discharge recommendations.

Though Carbone may have exercised supervisory authority in a previous position, she does not in her current position of secretarial assistant to the medical director of the Geriatric Center. No one now works under Carbone so she does not exercise supervisory authority. Evidence that supervisory authority is regularly exercised is required to show supervisory status. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). For these reasons, we find that Carbone is not a supervisor and that her inclusion in the nonsupervisory unit would not result in an impermissible conflict of interest.

Natalie Marucci and Barbara Galioto are administrative secretaries. The administrative secretaries assist division directors and supervise office staff.

Marucci works for Dr. Avella and the Assistant County Counsel assigned to the Hospital Center. She prepares and reviews decision memoranda and contractual packets. She grades and reviews merit evaluations for Hospital Center employees. Marucci is the liaison to the Office of the Essex County Counsel and oversees the daily operation of the assistant county counsel's office. She has the authority to recommend disciplinary actions.

There is no evidence that Marucci has ever exercised her authority to discipline. Somerset Cty. Guidance Center. Nor is there evidence that her role in grading evaluations results in

personnel actions. Marucci grades evaluations that are completed by other staff members. The grading is merely a ministerial act. There is no indication that she actually evaluates employees. Evaluating personnel is not among the statutory criteria for determining supervisory status. The Commission examines employees' evaluation functions as they impact upon other personnel decisions. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). Even if the evaluations affect personnel matters, Marucci is a grader, not an evaluator. Therefore, we find that Marucci is not a supervisory employee and that her inclusion in the nonsupervisory unit would not result in an impermissible conflict of interest.

Galioto is administrative secretary to Health Department Director Victoria Keller. She prepares correspondence and memoranda, manages the office, collects information and investigates data needed for administrative meetings and decisions. Correspondence Galioto prepares includes internal memoranda regarding fiscal proposals and counterproposals. She also prepares documents involving salary increases and merit pay adjustments.

Galioto attends meetings with Keller, takes the minutes and transcribes them. Meeting topics include labor relations. Galioto also maintains leave time records and keeps the director and other staff members informed regarding this information; answers phones; prepares requisitions and reimbursements; orders office supplies and assists the director and manager of employee services with

department projects which may involve labor relations matters. She is also a liaison with the County Executive's Office and other county agencies and departments.

As a result of Galioto's responsibilities, she is privy to the processing of employee grievances and disciplinary actions. She also sees correspondence, including personnel recommendations from supervisors, and employee attendance and personnel records.

The County asserts that Galioto's position remains confidential. N.J.S.A. 34:13A-3(g) defines confidential employees as:

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

The key to confidential status is an employee's access to and knowledge of the issues involved in labor relations processes, including negotiations, contract administration, grievance handling and the preparation for these functions on management's behalf.

State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983); County of Essex, D.R. No. 84-7, 9 NJPER 574 (¶14239 1983).

The County points out that Galioto is aware of confidential information concerning labor relations materials. As administrative secretary to Victoria Keller, Galioto works with negotiations proposals and counterproposals and prepares documents concerning salary and merit pay increases. Additionally, she is aware of

supervisors' personnel recommendations to Director Keller.

Galioto's knowledge of this information renders her inclusion in any negotiations unit incompatible with her official duties. Brookdale Community College, D.R. No. 78-10, 4 NJPER 35 (¶4018 1977). Therefore, we find that the administrative secretary to the director of the Department of Health and Rehabilitation is a confidential employee and should not be included in any unit. Because we find Galioto's position confidential, we do not determine whether she would appropriately be included in the supervisory unit or the nonsupervisory unit.

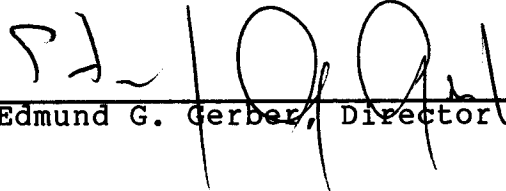
Accordingly, based upon the foregoing, we conclude that:

(a) the secretarial assistant to the medical director of the Hospital Center is a supervisor within the meaning of the Act and should appropriately be included in the supervisory unit; (b) the secretarial assistant to the acting director of the Geriatric Center is not supervisory and should appropriately be included in the nonsupervisory unit; (c) the administrative secretary to the medical director of the Hospital Center and the Assistant County Counsel is not supervisory and should appropriately be included in the nonsupervisory unit; and (d) the administrative secretary to the director of the Department of Health and Rehabilitation is a confidential employee within the meaning of the Act and is appropriately excluded from all units.

In accordance with the above, we clarify the supervisory unit to include the secretarial assistant to the medical director of

the hospital center. We clarify the nonsupervisory unit to include the secretarial assistant to the acting director of the Geriatric Center and the administrative secretary to the medical director of the Hospital Center. We dismiss the petitions with respect to the administrative secretary to the director of the Department of Health and Rehabilitation.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: October 5, 1988
Trenton, New Jersey