

D.R. NO. 93-23

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

In the Matter of

OCEAN COUNTY COLLEGE,

Public Employer,

-and-

Docket No. RO-93-130

OCEAN COUNTY COLLEGE ADMINISTRATORS
ASSOCIATION/NJEA, PRIMARY LEVEL SUPERVISORS,

Petitioner.

OCEAN COUNTY COLLEGE,

Public Employer,

-and-

Docket No. RO-93-172

OCEAN COUNTY COLLEGE ADMINISTRATORS
ASSOCIATION/NJEA, HIGHER LEVEL SUPERVISORS,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among two separate units of administrators at Ocean County College. The Director finds that Assistant Deans and Department Heads are not managerial executives and includes them in the proposed unit. The Director also rejects the College's argument that the petitioning organizations are disqualified from representing administrators because they and the faculty representative are affiliated with the same parent organization -- NJEA. The Director is satisfied that the petitioners, by filing Camden certifications, acknowledged their obligations to maintain separate organizational structures.

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Appearances:

For the Public Employer
Berry, Kagan & Sahradnik, attorneys
(Seymour Kagan, of counsel)

For the Petitioner
New Jersey Education Association - Higher Education
Richard Peterson, NJEA UniServ Representative

DECISION AND DIRECTION OF ELECTION

On February 3 and May 7, 1993, the Ocean County College Administrators Association, Primary Level Supervisors, filed a Petition for Certification of Public Employee Representative and an amended Petition. By its amended petition, the Association seeks to represent a unit of the College's lower level administrators in pay

grades A-3 (except the title Manager of Budgets and Audits), A-4 and A-5. On May 7, 1993, the Ocean County College Administrators Association, Higher Level Supervisors filed a Petition seeking to represent a separate unit comprised of the College's higher level administrator titles: those in pay grades A-1 and A-2 and the Manager of Budgets and Audits (in pay grade A-3).^{1/} Both petitions exclude employees in pay grade A-6 and employees in the titles: Dean of Personnel, Assistant Dean of Business and Financial Affairs, Assistant Dean of OCCIN and Associate Dean of Instruction.^{2/}

The College opposes the petition, as amended. It asserts that a potential for conflict of interest and divided allegiance exists if the associations, which are both affiliated with the same parent organization -- NJEA -- are certified. The College is concerned that the representation of administrators by an affiliate of the same parent organization as represents non-supervisory employees will hamper the administrators' abilities to effectively supervise faculty, support staff, and the lower-ranking

^{1/} The Administrators Association originally filed a Petition for a single unit of administrators in all pay grades. The College objected to a top-to-bottom unit of administrators, asserting that a potential conflict of interest exists between higher level administrators and certain lower level administrators because the former evaluate the latter. The Association then amended its original petition to propose two separate units of administrators.

^{2/} The College asserted that most employees in pay grade A-6 are not supervisors and are not regularly employed. It also identified these titles as confidential employees.

administrators, in the case of the higher level administrators. It further argues that the faculty unit representative -- an NJEA affiliate -- may assert effective control over these administrators' associations.

The two petitioning administrators' associations do not deny that they are NJEA affiliates. However, both organizations have submitted certifications acknowledging their responsibilities to create separate organizational entities from any organizations representing non-supervisory employees. Both organizations certify that they have no non-supervisory members. Both certify that they, rather than any other organization, will control the negotiations and administration of their respective separate contracts. In addition, the higher level supervisors association has certified that it agrees to maintain a separate organizational structure from the primary level supervisors group.

N.J.S.A. 34:13A-5.3 provides that, except where exceptional circumstances are present, supervisors are prohibited from representation by an organization that contains non-supervisory employee members. In Camden City, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), aff'g D.R. No. 82-25, 8 NJPER 11 (¶13005 1981), the Commission set forth an organization's responsibility to create a separate organizational structure to represent supervisors. In that matter, the Commission outlined the specific requirements such an organization must comply with to seek certification of supervisors. The certifications submitted by the petitioning organizations in this matter comply with the Camden requirements.

The Commission has previously addressed the kinds of issues which the College raises here concerning the petitioners' ability to adequately separate themselves from organizations representing the College's non-supervisory employees. See Hudson County, D.R. No. 84-21, 10 NJPER 293 (¶15144 1984) (directing an election), req. for rev. den., P.E.R.C. No. 84-131, 10 NJPER 320 (¶15153 1984), and D.R. No. 85-7, 10 NJPER 623 (¶15297 1984) (issuing certification), aff'd App. Div. Dkt. No. A-989-84T7 (11/15/85). In Camden, the Commission observed that once a petitioner satisfies the requirements to create a separate organizational structure from any non-supervisory organization, speculation "...about how a validly organized entity might actually conduct itself if elected..." should not delay representation proceedings. Camden supra. at 227.

Here, the petitioning organizations have satisfied the Camden requirements and are structurally qualified to represent the petitioned-for units of administrators. If the organizations later engage in inappropriate conduct, such claims may be tested through unfair practice proceedings. Camden; Hudson; see also, Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 345 (¶12155 1981).

The College also asserts that the following six administrators in pay grade 1 are managerial executives within the meaning of the Act: Assistant Dean of Humanities (Martin Novelli); Assistant Dean of Engineering, Mathematics and Science (Enid Akhurst); Assistant Dean of Business Studies and Computer Science (Francis Polk); Assistant Dean of Health, Physical Education and

Athletics (John Stauff); Department Chairperson, Social Sciences (Peter Smith); and Department Chairperson, Engineering Technologies (Marshall Boggio).

N.J.S.A. 34:13A-3(f) defines managerial executives as:

[P]ersons 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 include only the superintendent or other chief administrator, and the assistant superintendent of the district.

In Borough of Montvale, P.E.R.C. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), the Commission stated:

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 of 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 its 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.

Here, the College asserts that the assistant deans and department heads, all in pay grade 1,^{3/} are managerial because they each assist the dean of instruction in the formulation of academic policies, and they each effectuate management policies and practices within their respective academic departments.^{4/}

Each academic department is headed by an assistant dean or a department head. The titles are functionally equivalent. The assistant deans/department heads report to the dean of instruction; the dean of instruction reports to the College President and the President reports to the College Board of Trustees. Additionally, two associate deans of instruction also report to the dean of instruction and make recommendations on academic policy issues. However, the associate deans do not supervise the assistant deans. According to the job descriptions provided, the assistant deans "exercise primary leadership" in their respective departments; evaluate departmental employees; make appropriate recommendations

^{3/} The College recently created new assistant dean positions to replace old department head positions and is gradually replacing the department head positions with the assistant dean positions. The remaining department head positions will be abolished as the positions become vacant.

^{4/} In 1988, the Association filed a similar representation petition for administrators. After I advised the parties that I had tentatively concluded that department chairpersons (as well as other titles) were appropriate for inclusion in the petitioned-for unit and intended to direct an election in the unit sought, the parties entered into a consent election agreement and stipulated the appropriateness of the unit, which included department chairpersons. The association did not prevail in the secret ballot election that followed.

regarding retention, promotion, and tenure according to established policies and procedures; supervise the support staff's performance of duties in accordance with approved job descriptions; screen new candidates for hire and make hiring recommendations to the dean of instruction; make recommendations to college committees and, through the College Assembly, assist in developing grant funding proposals; assist the Dean in developing departmental growth projections; and organize, supervise and coordinate instructional programs of the department.

Based upon the facts presented here, I find that the assistant deans are not managerial executives within the meaning of the Act. It appears that assistant deans have no College-wide responsibilities to administer policies; their responsibilities are limited to their respective departments. They are the fourth layer in the chain of command. The dean of instruction is ultimately responsible to the College President and Board of Trustees for implementing the College's academic policies, not the assistant deans. The facts presented do not show that the assistant deans have effective control over the College's budget process or broad discretion over the commitment of College funds. They have no broad discretion to unilaterally determine staffing levels or personnel policies. While they assign faculty schedules, they must do so within the parameters set by the College's policies and applicable collective negotiations agreements. While the assistant deans handle administrative matters, they do not possess the requisite

independent discretion to formulate College policies -- which is essential for a finding of managerial executive status; nor do they, on their own, devise strategies, methods and means to implement College policies. Accordingly, I find that the assistant deans (and the department chairperson for Health, Physical Education and Athletics, who is functionally equivalent to an assistant dean) are not managerial executives and, therefore, are appropriate for inclusion in the petitioned-for higher level administrators' unit.

The department chairperson of engineering, science and technology reports to the assistant dean in that department. As this department chairperson is further down the chain of command and has less authority to implement policies than do the assistant deans, I also find that this title is not managerial, and may be included in the higher level unit.

I direct that a secret ballot election be conducted among the administrators in each of the following appropriate units:

Primary Level Supervisors Unit:

Included: All primary level administrators in pay grades 3, 4 and 5 employed by Ocean County College.

Excluded: Manager of Budgets and Audits,^{5/} non-supervisory teaching faculty, support staff, higher level administrators (in pay grades 1 and 2), confidential employees (Assistant Director of Personnel, Assistant Dean of Business and

^{5/} This employee, Ronald Velardi, supervises and evaluates other primary level administrative employees and cannot be included in the same unit with them. See Bd. of Ed. of W. Orange v. Wilton, 55 N.J. 404 (1971).

Financial Affairs, Assistant Dean of OCCIN and Associate Deans of Instruction), managerial executives, police employees, craft employees and non-professional employees.

Higher Level Supervisors Unit:

Included: All higher level administrators in pay grades 1 and 2, including assistant academic deans and department chairpersons, and the Manager of Budget and Audits employed by the Ocean County College.

Excluded: Primary level administrators (those in pay grades 3, 4 and 5, except the Manager of Budgets and Audits), non-supervisory teaching faculty, support staff, confidential employees (Assistant Director of Personnel, Assistant Dean of Business and Financial Affairs, Assistant Dean of OCCIN and Associate Deans of Instruction), managerial executives, craft employees, police employees, and non-professional employees.


The elections 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 a separate eligibility list for each unit described above, consisting of an alphabetical listing of the names of all eligible voters in each unit, together with their last known

mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility lists shall be simultaneously provided to the respective associations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: June 7, 1993
Trenton, New Jersey