

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

In the Matter of

COUNTY OF BERGEN (BERGEN PINES
COUNTY HOSPITAL),

Public Employer,

-and-

DOCKET NO. CU-81-74

COUNCIL NO. 5, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation adopts the recommendation of a Hearing Officer that the Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager are not managerial executives within the meaning of the Act and clarifies the supervisors' negotiations unit to include these titles, effective immediately. The Director further concurs with the Hearing Officer in the finding that the Cost Accountant and Administrative Analyst are not supervisors within the meaning of the Act. Accordingly, the supervisors' negotiations unit is clarified to exclude the two latter titles.

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Petitioner.

Appearances:

For the Public Employer
Ralph W. Kornfeld, Personnel Director

For the Petitioner
Hogan & Palace, attorneys
(Thomas A. Hogan of counsel)

DECISION

On June 5, 1981, Council No. 5, New Jersey Civil Service Association ("Council 5") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"), seeking a determination that employees in the titles of Administrative Analyst, Cost Accountant, Chief Medical Technologist, Chief X-Ray Technician, Respiratory Therapy Supervisor, Physical Therapy Supervisor and Senior EEG Technician, were appropriate for inclusion in a unit of professional and nonprofessional supervisory employees employed by the Bergen Pines County Hospital (the "Hospital"). ^{1/}

^{1/} The instant dispute arose shortly after the Commission's certification of Council 5 as exclusive representative of the above-defined unit.

Council 5 argues that all the above titles are supervisory. The Hospital alleges that the Chief Respiratory Therapist, Physical Therapy Supervisor, and Radiology Department Manager are managerial executives, and that the Cost Accountant and Administrative Analyst are nonsupervisory clerical employees. ^{2/}

Pursuant to a Notice of Hearing issued August 7, 1981, a hearing was held before Commission Hearing Officer Judith E. Mollinger on September 2 and November 9, 1981, at which time all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties submitted post-hearing briefs prior to January 4, 1982. No reply briefs were submitted. The Hearing Officer issued her Report and Recommendations on March 30, 1982, a copy of which is attached hereto and made part hereof. Thereafter, on April 26, 1982, the Hospital filed exceptions to the Hearing Officer's Report and Recommendations. Council 5 has not filed any exceptions.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript and exhibits, the Hospital's exceptions, and on the basis thereof, finds and determines as follows:

1. The County of Bergen, Bergen Pines County Hospital is a public employer within the meaning of the New Jersey Employer-

^{2/} The parties have stipulated that the title Chief Medical Technologist is included in the unit, and have agreed to pend the resolution of the status of the title Senior EEG Technician until the completion of a Department of Civil Service audit.

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. Council No. 5, New Jersey Civil Service Association is an employee representative within the meaning of the Act, and is subject to the provisions thereof.

3. The Hearing Officer identified the following issues: (a) are the Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager included in the unit or excluded as managerial executives? (b) are the Cost Accountant and Administrative Analyst included in the unit or excluded as non-supervisory employees?

4. The Hearing Officer concluded that the positions of Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager were supervisors within the meaning of the Act, were not managerial executives, and therefore were appropriate for inclusion in the collective negotiations unit. The Hearing Officer further concluded that the positions of Administrative Analyst and Cost Accountant were non-supervisory positions within the meaning of the Act, and therefore should not be included in the collective negotiations unit.

The Hospital takes exception to the Hearing Officer's Report and Recommendations insofar as it found the Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department

Manager to be properly included within Council 5's negotiations unit. The Hospital does not except to the finding that these titles are supervisory. It argues instead that they " ... participate in making policy ... as well as setting up the standards for their department and ... [administering] ... [their respective departments]." Thus, the Hospital argues that these titles are managerial, and not properly includable in Council 5's supervisory unit. ^{3/}

The Bergen Pines County Hospital is administered by a Board of Managers, and an Executive Director responsible for day-to-day management. The Hospital is organized into nine major divisions: psychiatric, support services, medical/surgical, long-term care, finance, administrative, personnel and community affairs. Each division is administered by either an Assistant Executive Director (AED), ^{4/} the Administrative Assistant, the Director of Finance or the Personnel Officer, all of whom report directly to the Executive Director. Each division is subdivided into various departments under the direction of department heads, some of whom are responsible for more than one department.

Of initial concern herein are three co-department heads within the medical/surgical division who report to Assistant Executive Director Edward Lewis. The Chief Respiratory Therapist, Physical Therapy Supervisor, and Radiology Department Manager are the non-physician co-department heads of the Department of Respiratory

^{3/} Neither party excepts to the Hearing Officer's finding with respect to the Administrative Analyst, or the Cost Accountant.

^{4/} There are six Assistant Executive Directors.

Therapy, Department of Physical Therapy and Rehabilitation (now known as Physical Medicine) and the Department of Radiology, respectively. Each shares departmental responsibility with a physician. Medical matters, including the direction of physicians, are the responsibility of the physician co-department head. Non-medical matters, including the direction of non-physician personnel, are the responsibility of the non-physician co-department head.

The record reveals that the Chief Respiratory Therapist develops departmental policies and procedures limited to non-medical methodology. Although he prepares the department budget proposals, they are ultimately submitted to the Assistant Executive Director and the Director of Finance for approval. He is authorized to resolve grievances at level 2 of the grievance procedure in the contracts with non-supervisory clerical and technical employees. Additionally, the latest job description for the Chief Respiratory Therapist indicates that he participates, supervises and coordinates the day-to-day activity of the respiratory therapy program and employees, "under [the] direction of [a] physician."

The Radiology Department Manager has general responsibility for the running of the department, for formulating policies and procedures limited to non-medical matters, preparing budget proposals for submission to the Assistant Executive Director and the Director of Finance for final approval, for writing bid specifications, and for making recommendations concerning actions to increase or decrease the staff of the department. He answers

employee grievances at step 2 of the contract grievance procedure for non-supervisory clerical and technical employees. He establishes procedures for processing of patients in his department and makes employee work assignments. The job description for his position, revised August 13, 1981, defines the position as one which works "under the direction of a Radiologist...."

The Physical Therapy Supervisor runs the Department of Physical Therapy and Rehabilitation Services (i.e. Physical Medicine) excluding responsibility for medical decisions. She organizes the department and determines departmental policies and procedures. She reports directly to the Assistant Executive Director unless medical matters are at issue, in which case she consults with the physician co-department head. She prepares the Department's annual budget proposals for submission to the Assistant Executive Director. She writes policies and procedures for her department regarding patient consultations, management of equipment, and safety control for hydrotherapy; however, all policies are submitted to the Assistant Educational Director and the Medical Executive Board for final approval. If policies affect only the internal operation of the department, she may implement changes without prior approval from the Assistant Educational Director or Medical Executive Board, subject to an annual review and approval of the Medical Executive Board. Her job description, revised December 17, 1979, provides for her supervision of the work involved in planning and administering treatment, employing

physical therapy modalities and restorative techniques to patients, all under the direction of a physician.

N.J.S.A. 34:13A-3(f) defines managerial executives as those " ... 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 include only the superintendent or other chief administrator, and the assistant superintendent of the district." N.J.S.A. 34:13A-5.3 excludes managerial executives from protections and rights afforded by the Act to public employees.

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980) aff'g D.R. No. 82-32, 6 NJPER 198 (¶ 11097 1980), the Commission, applying the definition of managerial executive contained in § 3(f), determined:

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 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.

In decisions applying Montvale the undersigned has focused upon the above three factors in determining whether the questioned employees "possess and exercise a level of authority and independent judgment sufficiently to affect broadly the organization's purposes or its means of effectuation of these purposes." In re City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980), In re Essex Cty. Welfare Bd., D.R. No. 81-5, 6 NJPER 424 (¶ 11213 1980), In re City of Newark, D.R. No. 82-18, 7 NJPER 640 (¶ 12288 1981).

With respect to the matter involved herein it is apparent that the governmental unit concerned is the County's Hospital complex. The employees in dispute are neither the chief executive officer nor the assistant chief executive officers of the hospital. Rather, in the employer's overall hierachy, each of the three titles in question is situated on the fourth tier of the ladder of authority (exclusive of the Board of Freeholders), each subordinate to (1) the Assistant Executive Director, (2) the Executive Director, (3) the Hospital Board of Managers. In addition, the job descriptions indicate that these employees perform their functions under the direction of a physician or a Radiologist, presumably the medical co-department head. Moreover, each of the three employees discussed above possesses authority only at the departmental level and in non-medical matters only. None have the authority to formulate and/or implement medical policies and/or procedures. Additionally, to the extent that each of

these titles possesses authority in the area of implementation of policies and procedures, it appears to be reviewable by a higher authority.

Given the above, the undersigned cannot conclude that the disputed employees, who share responsibility in the administration of their departments, exercise a level of authority and independent judgment sufficient to affect broadly the Hospital's purposes or its means of effectuating these purposes.

Additionally, the undersigned's review of the record confirms the Hearing Officer's finding that the Administrative Analyst possesses no responsibility for overseeing the work of other employees. He does not interview applicants for positions, recommend or participate in discipline or in any other way evaluate the work performance of other employees. With respect to the Cost Accountant, although the record reveals some prior input in the areas of hiring, firing, disciplining and evaluation of employees, the level of input falls short of an effective recommendation. Moreover, the record reveals that the Cost Accountant had no recent involvement in any of these areas. Thus, the undersigned concludes that the Administrative Analyst and the Cost Accountant are not supervisors within the meaning of the Act. ^{5/}

Accordingly, the undersigned clarifies the supervisory unit to include the Chief Respiratory Therapist, Physical Therapy

^{5/} For the purposes herein, the undersigned need not determine whether these individuals are professional or clerical employees.

Supervisor and Radiology Department Manager, effective immediately.
The unit is further clarified to exclude the non-supervisory titles of Administrative Analyst and Cost Accountant, effective immediately. ^{6/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 1, 1982
Trenton, New Jersey

^{6/} Inasmuch as the Petition herein was filed shortly after the certification of Council 5 as exclusive representative and prior to the negotiation of a first collective negotiations agreement, the instant unit clarification determination is effective with the issuance of this decision. See In re Clearview Reg. H/S Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

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Petitioner.

SYNOPSIS

In a Clarification of Unit proceeding a Hearing Officer of the Public Employment Relations Commission recommends that the Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager be included in the negotiations unit represented by N.J.E.L.U. Local #1 (Bergin Pines County Hospital, Supervisory Unit).

The Hearing Officer found that these titles are supervisory within the meaning of the New Jersey Employer-Employee Relations Act, based on the responsibilities to resolve grievances at the second level of the grievance procedure, for the direction of technical and clerical employees all of whom are included in non-supervisory collective negotiations units, and to make recommendations on hiring, firing and disciplining employees.

The Hearing Officer also recommends that the Cost Accountant and Administrative Analyst not be included in the supervisory unit. In so ruling she found that these titles were not supervisory and had no responsibility for the direction of other personnel and did not participate in any way in the hiring, firing or disciplining of other employees. Further, she found both titles were non-professional within the meaning of the Act in that the position did not require employees to have knowledge of an advanced nature in a particular field of learning and the duties were not predominantly intellectual, nor involve the consistent exercise of discretion and judgment.

A Hearing Officer's Report and Recommendation is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties

and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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For the Public Employer
Ralph W. Kornfeld, Personnel Director

For the Petitioner
Hogan & Palace, Esqs.
(Thomas A. Hogan, Esq.)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On June 5, 1981, Council No. 5, N.J.C.S.A. (Association or Council 5) filed a Clarification of Unit Petition with the Public Employment Relations Commission (the Commission) (C-1) ^{1/} seeking to include the titles of Cost Accountant, Administrative Analyst, Chief Medical Technologist, Chief X-Ray Technician, Respiratory Therapy Supervisor, Physical Therapy Supervisor and Senior EEG Technician, in a unit of all professional and nonprofessional supervisory employees employed by Bergen Pines County Hospital (the Hospital). ^{2/} Pursuant to a Notice of Hearing issued August 7, 1981, by the Director

1/ Commission exhibits will be designated C- , Council 5 exhibits P- , Joint exhibits J- , no Hospital exhibits were submitted.

2/ Unit certified 3/9/81, Docket No. RO-81-53. The name of the majority representative has been changed to N.J.E.L.U. Local #1 (Bergen Pines County Hospital, Supervisory Unit).

of Representation, hearings were held September 2 and November 9, 1981. At the hearing on September 2, 1981, the parties stipulated that the title of Chief Medical Technician was included in the supervisory collective negotiations unit and that the supervisory status of the title Senior EEG Technician would be decided by the Civil Service Commission following an audit. The remaining issues before the Hearing Officer, then, concern the appropriate unit designation with respect to five titles, viz: Chief Respiratory Therapist (a/k/a Respiratory Therapy Supervisor); Physical Therapy Supervisor; Radiology Department Manager (a/k/a Chief X-Ray Technician); Administrative Analyst; and Cost Accountant.

The employer, County of Bergen, Bergen Pines County Hospital alleges that the Chief Respiratory Therapist, Physical Therapy Supervisor, and Radiology Department Manager, are managerial executives and that the Cost Accountant and Administrative Analyst are clerical employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act). Therefore, none of the five titles should be included in the supervisory unit.

Council 5 argues that all five titles are supervisory and should be included in the unit.

At the hearing the parties were given an opportunity to examine and cross-examine witnesses, to present evidence and argue orally. A post-hearing letter brief was received from the hospital on December 17, 1981. Council 5 requested an extension for filing its post-hearing brief until December 30, 1981. The brief was received January 4, 1982. No reply briefs were submitted. Following

the receipt of the post-hearing briefs the record was closed.

In its brief the Hospital stipulates first that the position of Senior EEG Technician was included in a technical unit currently represented by New Jersey Employees Labor Union No. 1; ^{3/} second, that the position of Chief Medical Technologist is a supervisory title properly included in the supervisory unit. Additionally, the Hospital advises the Commission that there is only one person who currently holds the title of Administrative Analyst. The Hospital reiterated its position that the Chief Respiratory Therapist, Physical Therapy Supervisor, and Radiology Department Manager are "managerial executives" within the meaning of the Act and should not be included in the supervisory unit; and lastly, that the Administrative Analyst and Cost Accountant are clerical employees within the meaning of the Act and should not be included in the unit. The Union contends that none of the titles are managerial executives or clerical employees within the meaning of the Act and all five should be included in the supervisory unit.

FINDINGS OF FACTS

Based on the entire record in these proceedings the Hearing Officer makes the following findings of fact:

1. The County of Bergen, Bergen Pines County Hospital is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding (Tr-I, 4). ^{4/}

^{3/} Docket No. RO-82-50, Certification issued November 23, 1981.

^{4/} Transcript references are as follows: Tr. I, September 2, 1981, and Tr. II, November 9, 1981.

2. Council No. 5, N.J.C.S.A. is an employee representative within the meaning of the Act and is subject to its provisions (Tr-1, 4). Under a certification issued March 9, 1981, Docket No. RO-81-53 Council 5 represents all professional and nonprofessional supervisory employees employed by Bergen Pines County Hospital (C-1).

3. A question exists concerning the composition of the collective negotiations unit and the matter is properly before the Hearing Officer for report and recommendations.

4. In light of the parties' stipulations at hearing and post-hearing concessions, the only issues now in dispute are: (a) Are the titles Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager included in the unit or excluded as managerial executives? (b) Are the titles Cost Accountant and Administrative Analyst included in the unit or excluded as nonprofessional clerical employees?

5. Bergen Pines County Hospital is operated by a Board of Managers which is overseen by the elected County Board of Freeholders. An Executive Director who reports to the Board is responsible for the day-to-day management of the Hospital. The Hospital is divided into nine major divisions which are: psychiatric, support services, medical/surgical, long-term care, finance, administrative, personnel and community affairs. Each division is administered by either one of six Assistant Executive Directors (AED), the Administrative Assistant, the Director of Finance or the Personnel Officer, all of whom report directly to the Executive Director. Each division is subdivided into various departments headed by department heads, some of whom are responsible for more than one department.

6. James F. Gillen, Executive Director at the time, in a memorandum issued March 13, 1978, designated certain personnel as department heads (P-1). The memo listed the following individuals and their respective departments, inter alia: Aaron Schwinger, M.D. - Radiology; Martin Hochstein, M.D. - Medicine; Barry Sakowitz, M.D. - Respiratory Therapy; Barnett Elkin, M.D. - Physical Therapy and Rehabilitation. The current department head in Respiratory Therapy is Dr. Penek; the department of Physical Therapy and Rehabilitation is now known as Physical Medicine. All others remain the same.

Certain departments have two department heads, one who is a physician and one who is a non-physician. The responsibility for supervision of the department involved is shared: medical matters, including direction of physicians, are the responsibility of the physician; non-medical matters, including the direction of personnel (except physicians), are the responsibility of the non-physician (Tr. I, 15). The departments involved and the non-medical co-department heads are: Respiratory Services - Richard Meyer; Radiology - William Toeppe; Physical Medicine - Elizabeth Moore.

7. The Personnel Officer is the designated management representative at the third level in all grievance procedures in the collectively negotiated agreements with the various employee units at the hospital. Each contract grievance procedure culminates at Step 4 with a Civil Service proceeding or binding arbitration. Employees who are not covered by collective agreements have a four-step grievance procedure ending with an appeal to the Executive

Director of the Hospital (Tr. I, 21-24). The Personnel Officer is a member of the Hospital negotiation team; department heads are not (Tr. I, 25). Often department heads are invited by mutual agreement of the parties to attend a particular negotiating session in order to give the parties certain information about that particular department (Tr. I, 25). The Personnel Officer often asks department heads what they want included or excluded in a collective agreement as it relates to their department; he does not consult with them regarding monetary issues nor the feasibility of union proposals.

8. CHIEF RESPIRATORY THERAPIST - Mr. Richard Meyer, hired January 1977, is the Chief Respiratory Therapist in the Department of Respiratory Care Services. This department is divided into four sections: respiratory therapy, pulmonary medicine, pulmonary function lab and rehabilitation programs (Tr. I, 37). Dr. John Penek, a half-time physician (20 hours per week), has responsibilities as medical director of intensive care in addition to his responsibilities for medical matters of this Department. The physician co-department head is Dr. Roger Thurwood (Tr. I, 34). Meyer's immediate supervisor is Edward Lewis, AED.

Policies and procedures concerning non-medical methodology are developed by Meyer; if the procedures involve medical practices or invasive techniques he consults with Dr. Penek before issuing written memos to staff and sending a copy to the AED (Tr. I

37). Meyer also prepares the department budget proposals which are submitted to the AED and Director of Finance for approval.

Since Meyer was hired, no department employee has been disciplined. Meyer is authorized to resolve grievances at level 2 of the grievance/arbitration procedure in the contracts with clerical and technical employees. On one occasion only, approximately three years ago, he responded to a grievance filed in his department; no other grievances have been filed (Tr. I, 37).

Employee salaries are allocated in the department budget approved by the Board of Freeholders (Tr. I, 46). On only one occasion has Meyer requested a salary increase for department employees. His request for an increase in the hourly rate for part-time employees was denied. He may promote employees in title only. He has not, in the past, interviewed candidates for vacancies in his department when they occurred (Tr. I, 46). During the past month, however, he has had occasion to interview some applicants but takes no further action in these matters. Increases or decreases in the number of department personnel are decided by the AED. Meyer may recommend employees for promotion to the AED who has final approval and responsibility for processing them through the Personnel Office (Tr. I, 47).

Meyer ordinarily attends the monthly meetings for department heads.

The job description for this position, revised October 29, 1979 (J-4), includes in the definition "Under direction of physician,

participates and supervises and coordinates the day-to-day activity of the respiratory therapy program and employees...." Under examples of work the description lists, inter alia "Supervises respiratory therapists and/or other technical staff as well as non-technical employees; establishes appropriate work procedures and schedules for them...Prepares financial and statistical reports and budget estimates...Evaluates the work of the staff and recommends hiring, firing, promotion and disciplining of employees...." The job requires four year's experience in providing respiratory care, one of which has been in a supervisory capacity; substitution for two years' experience may be by completion of a four-year course at an accredited college or university with a major course of study in respiratory therapy.

10. RADIOLOGY DEPARTMENT MANAGER - Mr. William Toeppe has been employed by the Hospital for approximately eleven years, the first ten of which he held the same position under the title Chief X-Ray Technician. The position was retitled in September 1981 to Business Manager of Radiology (Tr. I, 50). His immediate superior is AED Edward Lewis. The department is staffed by three physicians, ten technical employees, five clerical employees and two attendants (Tr. I, 59). ^{5/}

Toeppe has general responsibility for the running of the department, for formulating policies and procedures on non-medical matters, preparing budget proposals for submission to the AED and

^{5/} The attendants and technical employees are represented by NJELU Local #1 and clerical employees are represented by AFSCME, AFL-CIO, Council No. 52.

Director of Finance for final approval, writing bid specifications and making recommendations concerning actions to increase or decrease the staff of the department (Tr. I, 51). When an opening occurs in non-medical budgetary positions in the department, Toeppe interviews applicants and makes a recommendation for hiring to the AED; he makes no recommendations concerning vacant medical positions (Tr. I, 53). Of the last eight or ten positions filled, all of Toeppe's recommendations were accepted by the Personnel Office (Tr. I, 53).

He has recommended dismissal of an employee only once, about four years ago in 1977 (Tr. I, 53). This employee failed to successfully complete the initial 90-day probationary period and Toeppe recommended the employee be "let go." The employee was subsequently terminated by the Personnel Office. Toeppe does not have the unilateral authority to dismiss employees; input from the AED, the Director of Personnel and himself is necessary (Tr-I-54). After he makes his recommendation he has no further responsibility in the matter unless the Personnel Officer dictates other alternatives, which has not yet happened (Tr. I, 55).

Toeppe recommends answers to employee grievances at Step 2 of the contract grievance procedure for clerical and technical employees (Tr. I, 56). The first step is a verbal presentation by the employee to their immediate supervisor, and if not resolved the grievance is submitted in writing to Toeppe, who prepares a written recommended response addressed to the Personnel Officer with a copy to the grievant and the appropriate majority representative (Tr. I,

60). The Personnel Officer may concur or suggest other answers. If he concurs the matter ends at this level without further action by Toeppe (Tr. I, 60-61). If the grievance is not satisfactorily resolved it is presented to the Personnel Officer at Step 3 of the procedure.

Toeppe establishes procedures for processing of patients in this department and makes employee work assignments (Tr. I, 61). ^{6/} He and Dr. Schwinger attend department head meetings. If Dr. Schwinger is unable to attend only Toeppe goes (Tr. I, 59).

The job description for this position, revised August 13, 1981 (J-5), defines the position as one which works "under the direction of a radiologist...." Examples of work include, inter alia, "Evaluates all existing radiological equipment,...Establishes a procedural manual for the radiology unit...Responsible for the preparation of the annual budget...Consults with the hospital authorities concerning fee schedules, forms, procedures,... Coordinates and administers the academic and technical activity of the School of Radiological Technology maintained by the institution... Establishes and implements effective procedures for the timely scheduling of patients and the effective utilization of personnel and equipment...Supervises, guides and instructs all personnel in the radiology unit in conjunction with the Chief X-Ray Technician,... Conducts staff meetings; selects, disciplines and discharges employees in accordance with the policies and procedures of the institution...."

^{6/} For example, Toeppe recently issued a policy which directed employees not to accept patient transfers by ambulance from a nursing home unless the patient is accompanied by an attendant. This rule was communicated to the staff by written memo.

9. PHYSICAL THERAPY SUPERVISOR (a/k/a Chief Physical Therapist) - Ms. Elizabeth Moore was hired June 1979 by Dr. Elkin, Director of the Department of Physical Therapy and Rehabilitation Services and Mary Pickford of the Personnel Office. The position had been vacant for "quite a while" before she was hired (Tr. I, 68). Her duties are to "run the department," excluding responsibility for medical decisions, to organize the department and to determine department policies and procedures (Tr. I, 69). She reports directly to AED Edward Lewis, unless medical matters are at issue, in which case she consults with Dr. Elkin (Tr. I, 70). The department is staffed by Senior Physical Therapists, Physical Therapists and Physical Therapy Aides. All persons within the scope of her supervision are represented in non-supervisory collective negotiation units (Tr. I, 79). ^{7/}

Moore has participated in the hiring of six employees since 1979 (Tr. I, 71). Applicants for advertised positions respond directly to Ms. Moore for the initial interview instead of the personnel department for screening. This is by agreement with the Personnel Office for Moore's scheduling convenience (Tr. I, 72). Moore explains the job duties, salary and benefits to the prospective employee. Following the initial interview she makes a selection recommendation including a salary level to the Personnel Office. All of her selection recommendations have been accepted by the Personnel Office; in one instance the recommended salary level was

^{7/} Physical Therapists are represented by CWA in a unit which includes all non-medical professional employees in the following titles: Occupational Therapist, Physical Therapist, Recreation Therapist excluding all other Hospital employees. Certification was issued November 6, 1975, Docket No. RO-710; Aides are represented by NJELU, Local #1 in a technical unit.

lowered. ^{8/} The one promotion Moore recommended was declined by the employee (Tr. I, 74, 75).

On only one occasion has Moore disciplined an employee. This involved a verbal reprimand (Tr. I, 71). Moore has not recommended dismissal nor dismissed any employee (Tr. I, 84). There have been no grievances filed in this department during her tenure (Tr. I, 78).

Moore prepares the department annual budget proposal for submission to the AED and Finance Director (Tr. I, 84); she writes policies and procedures for her department regarding patient consultations, management of equipment, and safety control for hydrotherapy (Tr. I, 84). All policies are submitted to the AED and the Medical Executive Board for final approval before implementation (Tr. I, 81). None have been rejected. If policies affect only the internal operation of the department, Moore may implement changes without prior approval from the AED or Medical Executive Board, subject to an annual review and approval of the Medical Executive Board (Tr. I, 84).

The job description for the position of Physical Therapy Supervisor (a/k/a Chief Physical Therapist) (J-6) revised 12/17/79, defines the position as follows: "Under direction of a physician, supervises the work involved in planning and administering treatment, employing physical therapy modalities and restorative techniques to patients..." Under examples of work the job description lists inter alia, "Supervises the work in administering treatment using the

^{8/} This recommendation concerned an entry level position requiring zero to two years' experience, for which the Personnel Office lowered the salary level recommended by Moore.

therapeutic properties of heat, cold, light, water, electricity and sound... gives suitable assignments and instructions to physical therapists, aides, students and other assigned employees..." The experience required for this job is registration as a Physical Therapist by the State Board of Medical Examiners, two years of experience as a Physical Therapist, and a thorough knowledge and familiarity with approved physical therapy modalities.

11. ADMINISTRATIVE ANALYST - Mr. Matthew Ford has been the incumbent in this position since 1974. From 1974 until 1979 Mr. Ford was assigned by the then Executive Director, Dr. Little, to do independent research for various studies in the business, maintenance, laundry and dietary departments, to identify problems and recommend solutions, and for various correspondence and reports. Additionally, Ford was responsible for the preparation and updating of accreditation manuals (Tr. II, 7-10).

Beginning in 1979 Mr. Ford no longer was assigned special studies and reports. Since 1979, he has been responsible for maintaining subsidiary ledgers; preparing labor distribution reports; and assisting a clerical employee in the administration of patient property accounts (Tr. II, 12-13, 29). Ford is responsible for maintaining a "clean system" on hospital-patient charges and has assisted in initiating a manual billing data collection system (Tr. II, 22, 27).

Mr. Ford works in a cooperative relationship with clerical employees in the business office. No employees work directly under his direction. Ford is not directly or indirectly involved with hiring, firing or disciplining of any employees (Tr. II, 31).

Ford's immediate supervisor is the Business Manager. He does not substitute for the Business Manager in his absence (Tr. II, 37).

There are four positions in the Business Office, Administrative Analyst (Ford); Cost Accountant (Fanzslau); and two clerical employees, Ms. Hundly, the patient property clerk and Ms. Nancy Wilson, the bookkeeper (Tr. II, 39 & 40).

The job description (J-1) for Administrative Analyst (Hosp) defines the position as one which "under direction, analyzes and provides information for evaluation and revision of hospital management and supervisory activities, regulations, procedures and practices,..." As examples of work the job description lists, inter alia, "Is responsible for the hospital's in-service training program,...Makes periodic surveys of the operations of the various hospital divisions and presents reports thereto,... Assembles data relative to various phases of hospital activities,...Investigates and reports on patient and visitor complaints,...Analyzes admission procedures to formulate plans for more efficient admitting methods, develops more effective systems of handling hospital details,... Prepares statistical and other special reports,...Is responsible for verification of receipt of materials and supplies and compliance with established procedures in connection therewith,...Recommends changes in administrative policies to carry out objectives of hospital more efficiently, gives suitable assignments and instructions to assigned personnel, establishes and maintains suitable records and files."

Since 1979, Ford has performed only two of the duties listed under examples of work, namely preparing statistical and other reports and establishing and maintaining suitable records and files.

The requirements for the job are graduation from a four-year course at an accredited college or university or substitution of additional work experience as described on a year-for-year basis, and two years' experience in a hospital or other health care facility involving the review, analysis and evaluation of budget, organization and administrative practices, or the substitution of a master's degree in hospital administration for one year of the work experience. Ford has a Master's Degree in Public Administration.

12. COST ACCOUNTANT - Mr. Edward Fanzslau has been the Cost Accountant at the hospital for approximately 13 years. He reports directly to the Business Manager (Tr. I, 47). Prior to 1978 he was assisted by a Senior Clerk Bookkeeper but has had no employee directly under his supervision since then (Tr. II, 54). Between November 1, 1968 and 1979, Fanzslaw gathered statistical data and prepared documents for Medicaid and Medicare reports, State payments for Psychiatric patients, Blue Cross and Blue Shield, AMA and the National Psychiatric Association (Tr. I, 56). In 1979 duties connected with Medicare, Medicaid and State Psychiatric reimbursements were reassigned to Mr. Klos and Mr. Warren Beck (Tr. II, 56). He continues to perform this work with respect to the other reports.

Often, at the request of the patient property clerk, Fanzslau assists in the reconciliation of those accounts. Since 1970, Mr. Fanzslau has been custodian of the hospital's petty cash fund of \$2,500, with total disbursements of approximately \$40,000 per year (Tr. II, 57). He prepares disbursements, files the necessary copies of vouchers, makes payments and generally oversees fund disbursements which have been approved by the Finance Director if

more than \$20 or the Business Manager if \$20 or less. He is also responsible for signing checks as one of the two authorized signatories, the other being the Finance Director. Fanzslau audits and reconciles all Hospital checking accounts (Tr. II, 53), he costs out the annual budget monthly, showing month-to-month expenditures and receipts (Tr. II, 64); is responsible for compilation of this report from various journals and ledgers (Tr. II, 56); makes quarterly reports directly to the Finance Director on special accounts including donations and employee benefit payments (Tr. II, 67); and currently is custodian of the Hospital investment account. He makes no investment decisions on behalf of the Hospital (Tr. II, 76). The bookkeeper is the only other person with access to this account (Tr. II, 72).

For the first six years of his employment he had authority to hire and fire or make effective recommendations on the hiring and firing of personnel (Tr. II, 67) and supervised the bookkeeper when she worked on specific account projects which he managed (Tr. II, 70). At present, he has no responsibility for hiring, supervising or firing personnel although on occasion he has interviewed applicants for the other clerical jobs in the business office (Tr. II, 73). On one occasion, since 1974, Fanzslau advised the Business Manager that a particular probationary employee (2-1/2 months) was not "doing a good job" and that "we couldn't use her any longer." The employee was subsequently transferred to the Pension Division (Tr. II, 74). Fanzslau has not prepared evaluations for clerical employees in the business office since 1977 and has only occasionally, upon request of McCarthy, reviewed the specific performance of another employee

(Tr. II, 75 & 76).

The job description for Hospital Cost Accountant (J-2) defines the position as one which "Under direction, installs and maintains a detailed cost accounting system for the Hospital." Under examples of work the following are listed, inter alia, "Plans, installs, and directs cost accounting and reporting systems regarding specific and detailed cost records of items and services necessary in the overall operation of a hospital...Determines per diem costs and per visit costs for services rendered...Gathers and tabulates information regarding elements of direct and indirect cost of services,.. Breaks down patient service information as to in-patient, out-patient, medicare or non-medicare services and tabulates same...Allocates costs such as salaries, purchases, depreciation and medical household and county administration costs to each cost center based on the most appropriate cost allocation basis,..." The education required for this position is graduation from a four-year course at an accredited college or university with 18 credits in accounting and one year varied experience in hospital cost accounting work. Certification as a Certified Public Accountant issued by the New Jersey State Board of Certified Public Accountants may be substituted for the education requirement. Additional approximate work experience may be substituted on a year-for-year basis for the education requirement. Mr. Fanzslau graduated from LaSalle, non-degreed, in 1942 (Tr. II, 66 & 67).

CONCLUSIONS OF LAW AND ANALYSIS

I. MANAGERIAL EMPLOYEES

N.J.S.A. 34:13A-5.3 excludes managerial executives from

the protections and rights afforded by the Act to public employees. Section 13A-3(f), added in 1974, defines managerial executives as those "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 include only the superintendent or other chief administrator, and the assistant superintendent of the district." ^{9/}

The Director of Representation applied this definition of managerial executive in In re Borough of Montvale, D.R. No. 82-32, 6 NJPER 198 (¶11097 1980), affm'd P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980) where he established guidelines for determining whether an employee is a managerial executive within the meaning of the Act. In affirming the Director, the Commission determined that an employee is a managerial executive when he/she formulates policy or directs its effectuation. The Commission held that

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. 6 NJPER at 508-509.

^{9/} The Act, as amended, Law 1968, Chap. 303 § 4 effective July 1, 1968; Law 1974, § 123, subsection 2.

In Montvale, the Director of Representation and the Commission found that the chief of police was a supervisor who performed a wide range of duties, but the mayor and the commissioner of police exercised almost complete control over the chief in the daily operation of the department. The chief's recommendations in a variety of matters were not followed; he could not deploy personnel, plan duty or vacation schedules, assign overtime, conduct discipline investigations or discipline personnel. He played no role in formulation of policy.

Similarly, In re Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977), the lifeguard captain was found to be a supervisor notwithstanding his responsibility to prepare the budget, promulgate certain rules and regulations, change work schedules, direct work on a day-to-day basis and in an emergency, hire additional guards. The Commission in affirming the Hearing Examiner said:

We agree that the term 'managerial executive' shall be narrowly construed and that the relevant National Labor Relations Board precedent as cited by the Hearing Examiner indicates that a wider range of discretion than that possessed by [captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives - excluded from coverage - from supervisors - eligible to be represented in an appropriate unit. At page 374.

In Avon the Hearing Officer noted at Footnote 7 that the holding in Montvale did not require an employee to have final responsibility for decisions but that the title must meet the criteria established in Montvale. ^{10/}

Following Montvale, the Director consistently applied the

^{10/} See State of New Jersey and Council of New Jersey State College Locals, D.R. No. 82-35, 8 NJPER 87 (¶13036 1982).

same standards in similar situations. In Essex County Welfare Board, D.R. No. 81-5, 6 NJPER 424 (§11213 1980), the Director found that the County Board Field Office Supervisors were not managerial executives where they were the fifth level in the Board's management chain and each were assisted by two or three supervisors who, in turn, each supervised two to five line supervisors. The field office supervisors were responsible for the maintenance of day-to-day operations of field offices, coordinated the dispensing of service to clients but could not change Federal or State regulations, had no input regarding the budget other than reporting the projected needs of each office for supplies and equipment, and had no authority to hire or fire employees. They could, however, discipline personnel, develop intra office work assignments or locations, and enforce board policy, but could not participate in the development of the same. The Director found that the Field Office Supervisors had "little, if any" input into the formulation of management policy and although responsible for effectuating policy, were not allocated a substantial amount of discretion in this regard. The individuals in question exercised supervisory duties, at a high level, as defined in N.J.S.A. 34:13A-5.3 but not the responsibilities of managerial executives. 11/

11/ See also In re City of Newark, D.R. No. 82-21, 7 NJPER 644 (§12291 1981), in which the Director of Representation, in adopting the Hearing Officer's recommendations found that deputy chiefs in the Newark Fire Department were managerial executives because the size of the city's department dictated a need for various levels of managerial authority and the deputy chief closely exercised a level of authority and independent judgment with respect to policy formulation and effectuation distinguishable from the level of authority exercised by the lifeguard captain in Avon and police chief in Montvale, supra. The Newark department consisted of 839 uniformed employees, 748 of which were actively engaged in fire fighting, plus one fire director, one fire chief, and 14 deputy chiefs, six of whom had administrative duties and eight who acted as firefighters.

Again In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶111132 1980), in the context of election challenges, the Director and Assistant Director of the Public Health Nursing Service were found not to be managerial executives. The Public Health Nursing Service is a bureau within the Department of Health in the Jersey City Department of Human Resources. Employees in the disputed positions were responsible for overseeing the day-to-day operation and administration of home nursing services. The director also supervised the facilities and staff, planned, coordinated and directed ongoing training, resolved grievances (other than monetary disputes) at the second step of the grievance procedure, and prepared initial budget proposals which were then forwarded to the director of the department of Human Resources for final action. Neither the director nor assistant director participated on the city's negotiating team and/or evaluated the feasibility of union contract proposals. The primary function of these employees was to assure the planning of patient care and maintenance of professional standards in effectuation of these practices. The Director of Representation found that both the director and assistant director of nursing services exercised supervisory and administrative functions at a high level but did not formulate management policy.

In reaching his conclusions in Montvale, the Director considered the policies and decisions of the National Labor Relations Board ^{12/} in respect to managerial executives. He said,

The NLRB has developed a definition of managerial employees through numerous adjudications. Mana-

^{12/} Lullo v. Int'l Assn of Fire Fighters, 55 N.J. (1970), Bd/Ed of W. Orange v. Wilton, 57 N.J. 404 (1971) and In re State of New Jersey and Prof. Assn of N. J. Dept. of Ed, 64 N.J. 231 (1974).

gerial employees have been defined as (1) executives who formulate, determine and effectuate management policies by expressing and making operative the decisions of their employer or (2) those employees who have discretion in the performance of their job independent of their employer's established policy or (3) those employees who are so integrally related to or so closely aligned with management as to place the employee in a position of potential conflict of interest between the employer on the one hand and his fellow workers on the other. (Footnotes omitted 6 NJPER 201). 13/

The Commission has accepted the NLRB precedents as guides within the above narrow construction. In the instant case it is also appropriate to consider decisions of the NLRB which, pursuant to the 1974 amendments of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2) 14/ has jurisdiction to determine the appropriate collective bargaining unit for employees of private nonprofit hospitals which otherwise meet NLRA jurisdiction requirements. In Grey Nuns, 221 NLRB No. 201 (1975), 91 LRRM 1099 (1975), the board found the head of the hospital's X-ray department and the head of the hospital's laboratory department to be supervisory employees, not managerial, notwithstanding that both employees interviewed and recommended job applicants for employment positions, disciplined or discharged employees, scheduled the work of other employees and completed employee evaluations and performance reviews where necessary.

13/ NLRB v. Bell Aerospace Co., Div. of Textron, Inc., 416 U.S. 269, 85 LRRM 2945 (1974); Palace Laundry Dry Cleaning Corp., 75 NLRB No. 40, 21 LRRM 1039 (1947); Eastern Camera and Photo Corp., 140 NLRB No. 58, 52 LRRM 1068 (1963).

14/ The 1974 amendments to § 2(2) read in relevant part: "the term 'employer' includes ...any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual..." P.L. 93-360(a), 8 U.S. Congressional News 2458 (1974).

Additionally, decisions from other states interpreting similar provisions in their statutes governing public sector labor relations as applied to similar situations may serve as guidance in deciding the issues in this case. ^{15/} The New York Public Employment Relations Board in applying § 201.7 of the Act in In the Matter of the Hospital, ¶13-4066 (12/4/80) determined as not managerial the head of the hospital's purchasing department notwithstanding that his duties included responsibility for development of policies and procedures for purchasing and travel expense reimbursement for all employees; submission of suggestions for possible revision of collective bargaining agreements. The agent's policy-making functions "were essentially of a technical nature" and "his role at the first level of the contract grievance procedure is merely supervisory." *Id.*

^{15/} Pennsylvania: 43 P.S. § 1101.301 reads:

"'Management level employee' means any individual who is involved directly in the determinations of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision."

New York: § 201.7 of the Public Employees' Fair Employment Act (Taylor Law):

Section 201.7 defines the term "public employee" as "any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, ...persons...who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board....Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment."

at 4108. The Pennsylvania Labor Relations Board, applying the statutory definitions of "management level employee" in § 301(16) in Charleroi-Monessen Hosp., PERA-P-R 2025, 2 PPER 120 (1972) found the position of Chief Inhalation Therapist to be supervisory, not managerial, where the Chief was a department head; was responsible for disciplinary actions; directed an assistant and exercised authority which was neither routine nor clerical.

It is clear that to be a managerial executive, employees must have power to exercise substantial discretion independent of the employer's established policies and procedures and must have authority to set policy governing the objectives of a governmental entity and fashion methods of achieving such objectives. Final authority for all decisions is not necessary but employees must substantially participate in these processes. The definition of managerial executive must be narrowly construed because these employees are excluded from the protections of the act. The managerial authority to make operative decisions on behalf of the employer is clearly distinguishable from mere discretion exercised by supervisory employees. The determination of managerial status to some extent necessarily turns on the degree of authority exercised. Montvale, Avon and Grey Nuns, supra.

II. SUPERVISORY EMPLOYEES

The New Jersey act describes supervisory employees as "any supervisor having the power to hire, discharge, discipline or to effectively recommend the same." N.J.S.A. 34:13A-5.3. In establishing the standard by which supervisory status can be measured the

Director of Representation is guided by prior Commission decisions. ^{16/}
In County of Middlesex and Middlesex County Health Inspectors Super-
visors Assn, 5 NJPER 517 (¶ 10267 1979), the Director found that
 the county chief sanitary inspector and senior sanitary inspectors
 were excluded as supervisory employees from the collective unit of
 sanitary inspectors. The senior inspectors effectively recommended
 discipline and imposed certain discipline and the chief inspector
 was next in line over the senior inspectors.

The NLRB in Grey Nuns, supra, found two department heads
 to be supervisory and certain other positions neither supervisory
 nor managerial within the meaning of the NLRA. These latter posi-
 tions included the heads of the hospital's pharmacy department,
 purchasing department, anesthesiology department, laundry department
 and engineering department because any duties performed by those
 individuals in supervision of work by other employees was connected
 with either their status as professional employees or was at best
 sporadic.

Additionally the NLRB has upheld the exclusion of business
 office manager as a supervisor from a hospital business office cler-
 ical unit. Sisters of St. Joseph and Retail Clerks Local 240, AFL-
CIO, 217 NLRB No. 135, 89 LRRM 1082 (1975), at p. 1082, fn. 2. In
Bay Medical Center, Inc. and Teamsters Local 486, 218 NLRB No. 100,
89 LRRM 1310 (1975), section heads in a laboratory were excluded as
 supervisory employees from an overall unit of technical employees

^{16/} See also N.J.S.A. 34:13A-6(d) and Bd. of Ed. of West Orange v. Wilton. (57 N.J. 404, 418 (1971)) wherein a broader definition of supervisor was applied; In re Metuchen Boro, D.R. No. 78-27, 3 NJPER 395 (1977); In re Cherry Hill Twp DPW, P.E.R.C. No. 30 (1970); In re Middlesex County Welfare v. C.W.A., P.E.R.C. No. 10, August 20, 1969.

because they participated in hiring, evaluation and promotion of employees by recommendations and gave verbal warnings concerning tardiness and absenteeism. In the same decision the Senior X-ray Technician and Assistant Supervisors were included in the nonsupervisory technical unit because any direction of other workers in this same unit was performed in the capacity of lead man, not as supervisor. Id. at 1313.

Pennsylvania, in applying its statutory definition of supervisor ^{17/} found in, In re Wilkes-Barre General Hosp., PERA-R-2022, 3 PPER 30 (1973) that certain lab technicians were not supervisors within the meaning of the statutory definition because they did not have "power to assign duties nor to hire and fire employees and their pay was computed on the basis of their longevity not their duties."

The Director and the Commission in applying the definition of supervisor within the meaning of the New Jersey Act, look to whether the incumbent employees have the authority to hire, discharge or discipline or effectively recommend these actions. The power claimed must also be exercised with some regularity. Middlesex and State of New Jersey and Middlesex County Welfare, supra; State of New Jersey and Council of New Jersey State College Locals, supra. See also Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1977).

^{17/} PA-43 P.S. § 1101.301 reads:

"(6) 'Supervisor' means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment."

III. ANALYSIS

Three of the disputed positions, the Chief Respiratory Therapist, the Physical Therapy Supervisor, and the Radiology Department Manager, function at the fourth level from the top in the organization scheme. Each of these employees reports directly to the same assistant executive director. The labor relations function at the hospital is performed by the Personnel Officer, who is responsible for all collective negotiations contract administration and grievance resolution at the third level of a four-step procedure, the fourth step being binding arbitration or a Civil Service appeal. None of the employees in the disputed titles participate in collective negotiations on behalf of the employer as part of the team itself or on the management committee responsible for preparation of the Hospital position, analysis of union proposals and decisions in the collective negotiations process.

A. CHIEF RESPIRATORY THERAPIST - The present incumbent, Meyer, heads the Department of Respiratory Care Services which is divided into four sections; reports directly to an Assistant Executive Director; supervises employees, all of whom are included in non-supervisory units of technical or clerical employees; and develops non-medical, non-invasive procedures relating to the technical operation of the department in providing respiratory care to patients. The medical administration of the department is delegated to Dr. Penek.

Meyer participates in interviewing candidates for department vacancies but makes no decision regarding hiring, salaries, promotions or staff increases or decreases; he makes no final decisions regarding

budget allocations or employee discipline. Final authority in the decision-making process for these matters lies with the assistant executive director. He does have authority to resolve grievances at the second step of the procedure but not as to monetary disputes. Based on the foregoing, it is clear that the direction of the department provided by the incumbent relates to the technical aspects of the delivery of services in the department and that Meyer does not formulate policies relating to the operation of the hospital or labor-management relations. Therefore, I find this position supervisory.

B. RADIOLOGY DEPARTMENT MANAGER - The incumbent, Toeppe, reports directly to the Assistant Executive Director; directs the work of employees all of whom are included in nonsupervisory units of technicians or clerical employees; develops procedures related to non-medical matters in the delivery of service to patients; and makes personnel duty assignments. He may make budget and staff recommendations to the assistant executive director who has final authority along with the Finance Director and Personnel Officer for approval of the department budget. He makes effective recommendations for hiring and firing non-medical employees; he makes no recommendations for hiring medical staff. While he is responsible at Step Two for resolving employee grievances, he has not exercised this responsibility, instead recommending the response to the Personnel Officer, who makes the final decision. In September of 1981, Mr. Toeppe's position was retitled Radiology Department Manager. The job description for this position clearly states that the duties performed

are under the direction of a radiologist. Therefore his supervisory responsibilities relate to the general direction of personnel but responsibility for the overall management as well as medical matters is the responsibility of the physician. The duties performed by Toeppe evidence responsibility for the direction of employees related to the services provided by that particular department, not authority to formulate and effectuate policy relating to the overall goals of the hospital. Therefore, based on the foregoing I find this position supervisory.

C. PHYSICAL THERAPY SUPERVISOR - Moore, the incumbent in this position, is responsible directly for the work of employees, all of whom are represented in a nonsupervisory, non-medical professional collective negotiations unit. She has interviewed applicants for each of six non-medical vacancies and made recommendations for selection, all of which have been accepted by the Personnel Officer. She made only one promotion recommendation but the employee declined. No grievances have been filed in this department and only one disciplinary action was taken by the incumbent.

The supervisor makes recommendations for the department budget, subject to approval of the Finance Director and Assistant Executive Director; writes procedural policy relating to the delivery of physical therapy to patients; manages equipment; provides overall supervision to employees in the department, and makes duty assignments. Approval and implementation of policies which involve other departments is vested with the Finance Director or the Assistant Executive Director; policies which relate only to intradepartment

procedure may be instituted without prior approval but are subject to annual review and approval of the medical executive board. Although the incumbent exercises supervisory and administrative duties at a high level, she does not have the discretion to formulate or effectuate policy on behalf of the hospital to implement its overall management goals; she has significant input as to personnel matters but no final decision-making power. Therefore, I find this position supervisory.

D. ADMINISTRATIVE ANALYST--HOSPITAL - This position is located in the business office of the Hospital. The incumbent, Ford, reports directly to the Business Manager. There are a total of four positions in the office: the Administrative Analyst, Cost Accountant, Patient Property Clerk and Bookkeeper. Ford has no direct responsibility for overseeing the work of any other employees. His chief duties for the last two years involve the maintenance and posting of the patients' property account and subsidiary ledgers and dissemination of the information regarding new data processing procedures. He does not interview applicants for positions, recommend or participate in discipline or in any other way evaluate the work performance of other employees. Since the Administrative Analyst does not directly participate in or effectively recommend hiring, firing or discipline of other employees, I find this position to be nonsupervisory.

E. COST ACCOUNTANT - The incumbent in this position, Fanzslau, reports directly to the Business Manager. At present he gathers statistical data which is compiled into reports and dis-

tributed to other departments. Although he originally had responsibility for reports regarding Blue Cross, Blue Shield, Medicare, Medicaid and State payments, since 1978 he no longer performs these duties. His major work tasks include the maintenance of the Hospital's petty cash funds with disbursements of approximately \$40,000; maintenance of certain special accounts including donations and employee benefits; maintenance of the Hospital investment account. He makes no decisions as to investments or financial management.

He performs no evaluative functions over other employees nor does he participate in any way in their hiring, firing or discipline.

Based on the foregoing I find this position nonsupervisory.

IV. PROFESSIONAL EMPLOYEES

The Hospital has argued that two of the disputed positions, Cost Accountant and Administrative Analyst, are nonsupervisory clerical positions. There is not sufficient evidence in the record nor did all interested parties participate in the proceedings for the Hearing Officer to make a determination as to this issue. However, there is sufficient recorded evidence to make a determination as to the professional-nonprofessional status of the two disputed positions.

The New Jersey Act defines professional employees in N.J.A.C. 19:10-101 as follows:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an

advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

In the one case applying this definition to hospital personnel the Director of Representation found the "medical librarian" to be a non-medical professional, In re Bergen Pines Hospital and CWA and Local 549, Council 52, AFSCME, AFL-CIO, D.R. No. 80-20, NJPER 61 (¶ 11034 1980). In that case the Director found:

It is clear from stipulations number seven and thirteen 18/ and the jointly submitted job description that the Medical Librarian is required to and does possess knowledge of an advanced nature in the fields of medical and library science. Since AFSCME and CWA have stipulated that the job description is an accurate statement of the functions actually performed by the Medical Librarian on a day-to-day basis, the undersigned concludes that the Librarian is a professional employee. The Librarian's authorities and responsibilities, to plan and organize the work of the library, assist and instruct individuals on research methods, perform searches and researches for medical personnel, and aid in the selection of materials for the library, are clearly and predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgment.

There are no other decisions of the Director or the Commission applying this definition to hospital employees similarly situated to employees in the instant case.

Since 1974 the NLRB has made numerous determinations as to the professional/nonprofessional status of hospital employees, some of whom hold the same or substantially the same positions as the

18/ "Stipulation 7: The employee in question has a college degree and also holds a Master's Degree in Library Science....Stipulation 13: The parties also agree that the current Medical Librarian holds a professional librarian's certification issued by the State of New Jersey Department of Education." At p. 62.

disputed positions in the instant case. The NLRA in § 2(12) defines "professional employees" as follows:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

In Samaritan Health Services, Inc. and National Economic Council of Scientists, 238 NLRB No. 56, 99 LRRM 1551 (1978), the Board determined the following positions to be non-managerial (nonsupervisory), nonprofessional and thereby excluded from a professional unit.

Property Control Officer, who is responsible for the employer's system-wide inventory, management of capital assets, and coordination of equipment leasing agreements. There is no evidence that the job requires specialized knowledge of an advanced type referred to in § 2(12) of the act.

Senior Accountant, who is responsible for monthly review of the accounting staff's work, gathering financial statistics, making journal entries for financial statements, assisting department heads in explaining variances from the budget, rescheduling expenditures and training the accounting staff; who must have a bachelor's degree in accounting or equivalent knowledge; but does not clearly require knowledge of an advanced type.

Accountants (3) who have an associate degree or the equivalent in course work or accounting experience and who perform daily accounting duties in that hospital and control its financial books.

Patient Representative, a recently created position in which incumbents serve as ombudsmen in handling complaints and concerns of patients, about their hospitalization. A bachelor's degree is preferred but not required; incumbents have backgrounds in psychology, sociology and finance.

Medical Photographer II, who photographs surgical procedures, pathology specimens and patients; an associate's degree or equivalent experience is required. Id. at 1564-65.

In applying the definition of professional employee in the New Jersey Act to the facts of this case, it is necessary to determine the extent to which the duties performed by the incumbent in the disputed positions are predominantly intellectual, involve the consistent exercise of discretion and judgment and whether the position requires advance knowledge in a particular field of learning. It is important to note that it is necessary to find that the work is of such a character that the output produced or the result cannot be standardized in relation to a given period of time.

In applying this standard to the facts in the instant dispute I find that the positions of Cost Accountant and Administrative Analyst are not professional positions within the meaning of the Act.

The duties performed by the Cost Accountant involve maintenance of account ledgers and require knowledge of general book-keeping and accounting methods. The job requires either a bachelor's degree or equivalent experience in accounting procedures, but the

specific duties do not involve the exercise of discretion or judgment as no decisions are made concerning Hospital investments or disbursements. This position does not require knowledge of an advanced nature in a particular field of learning and for these reasons I find the position of Cost Accountant to be nonprofessional.

The duties performed by the Administrative Analyst require skills and knowledge relating to statistics, general bookkeeping, and accounting. It is true that the incumbent has an advanced degree in business administration but this degree is not a requirement of the position. The duties performed relate to the maintenance of the patients' billing system and accounting ledgers but do not involve the consistent exercise of discretion and judgment or knowledge of an advanced nature in a particular field of learning. Therefore I find this position to be nonprofessional.

RECOMMENDATIONS

Based on the foregoing discussion I recommend the following:

1. The positions of Chief Respiratory Therapist, Physical Therapy Supervisor and Radiology Department Manager are supervisory positions within the meaning of the Act and are appropriate for inclusion in the collective negotiations unit.
2. The positions of Administrative Analyst--Hospital and Cost Accountant are nonsupervisory positions within the meaning of the Act and should not be included in the collective negotiations unit.
3. The positions of Cost Accountant and Administrative

Analyst are nonprofessional positions within the meaning of the Act.

Respectfully submitted,

A handwritten signature in cursive script that reads "Judith E. Mollinger". The signature is written in black ink and is positioned above a horizontal line.

Judith E. Mollinger
Hearing Officer

DATED: March 30, 1982
Trenton, New Jersey