

D.R. NO. 90-21

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

In the Matter of

COUNTY OF ATLANTIC  
(DEPT. OF SOCIAL SERVICES,  
DIVISION OF WELFARE),

Public Employer,

-and-

Docket No. RO-89-136

CWA, AFL-CIO, PRIMARY LEVEL  
SUPERVISORS UNIT,

Petitioner.

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COUNTY OF ATLANTIC  
(DEPT. OF SOCIAL SERVICES,  
DIVISION OF WELFARE),

Public Employer-Petitioner,

-and-

Docket No. CU-90-26

AFSCME, COUNCIL 71, LOCAL 2302.

Employee Representative.

SYNOPSIS

The Director of Representation clarifies a unit of primary level supervisors employed by the County of Atlantic (Department of Social Services, Division of Welfare) to exclude senior employment specialists. The employees shall remain in a broad-based non-supervisory unit represented by AFSCME, Council 71. The Director also voids challenged ballots of senior employment specialists who voted in a consent election for primary level supervisors employed by the County. He further declared that the election results are certified based upon the tally.

The Director relied upon the relative absence of "changed circumstances" in facts reported in Atlantic Cty. Dept. of Social Services, P.E.R.C. No. 90-21, 15 NJPER 594 (¶20243 1989).

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Appearances:

For the Public Employer  
Martin R. Pachman, Esq.  
(Evelynn S. Caterson, of counsel)

For the Employee Organization CWA  
Dudley Burdge, Organizer

For the Employee Organization AFSCME  
Emanuel Murray, Staff Rep.

DECISION

On November 3, 1989, the Atlantic County Department of Social Services, Division of Welfare ("County") filed a petition

seeking to clarify the unit of "primary level supervisors" to include senior employment specialists.<sup>1/</sup>

On December 20, 1989, we conducted a consent election in a unit of "primary level supervisors" employed by the County (Docket No. RO-89-136). The Communications Workers of America ("CWA") had petitioned for a unit of primary level supervisors. In the election, 3 votes were cast against CWA, 2 votes were cast for it and 6 votes were challenged. The challenged voters are all senior employment specialists. Their ballots are determinative of the election outcome.

We have conducted an administrative investigation in these matters. N.J.A.C. 19:11-2.6 and 9.2(k). On February 9, 1990, we issued a letter indicating that absent additional information, I might ultimately find that senior employment specialist were not supervisors within the meaning of the Act, that the challenged ballots were voidable and I would not include the specialists in the primary level supervisors' unit. No party filed a response.

In Atlantic Cty. Dept. of Social Services, P.E.R.C. No. 90-21, 15 NJPER 594 (¶20243 1989) ("Atlantic Cty."), the Commission clarified the unit of non-supervisory employees represented by AFSCME, Council 71 to include "case managers, REACH." Senior

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<sup>1/</sup> The cover letter accompanying the petition stated: "the unit for which clarification is requested has not yet been certified and the County [requests that senior employment specialists] be included [in the] primary level supervisors unit."

employment specialists were formerly case managers, REACH. The hearing in that case was conducted on November 3, 1988 and March 6, 1989. The hearing officer issued her report in July 1989; the Commission issued its decision on October 2, 1989. On November 3, the County filed the instant clarification petition.

Along with its petition, the County submitted an affidavit of a "management specialist" and four exhibits. The disputed title was changed from "case manager, REACH" to "senior employment specialist" in late March 1989. The job description states that the senior employment specialist "takes the lead in assessing the education and training needs of participants; assists in their motivation...may supervise other employment specialists...." The affiant also stated that in May and June 1989, two specialists interviewed applicants for four support staff positions and "based on their recommendation, four applicants were hired." An office memorandum addressed to a "supervising employment specialist" from two senior employment specialists memorialized the recommendations. After June 1989, a senior employment specialist recommended that an applicant for a clerk typist position be hired. It appears that the applicant was hired.

Between March and September 1989, three senior employment specialists issued "warning notices" to support staff for "excessive absenteeism." A September 22, 1989 inter-office memorandum from two "REACH case managers" states "...the two case managers will alternate supervisory responsibilities on a quarterly basis. This

system goes into effect on September 25, 1989...." All of the senior employment specialists that were challenged voters at the December 20 1989 election are identified as "case managers" in the memorandum.

On December 20, 1989, AFSCME submitted a letter opposing this clarification petition, stating that the senior employment specialists, among other titles, are not supervisors within the meaning of the Act.

On January 23, 1990, CWA intervened in the clarification of unit case. N.J.A.C. 19:11-2.7.

In Atlantic County, the Commission stated that the case managers' involvement in the hiring of unit employees did not "rise to the level of effective recommendation" because they acted collectively -- they interviewed in pairs and made one joint recommendation. Individual case managers did not appear to be responsible for the hiring recommendation. The Commission also found that the management specialist and supervisory employment specialist had roles in the hiring process and those further diluted the case managers' indirect, "collective input." Finally, the Commission was "unfamiliar" with the County's plan to rotate supervisory responsibility among case managers and was skeptical of whether the case managers (during their two-week supervision rotation) would be able to "independently recommend discipline."

The Commission concluded that the case managers were not supervisors within the meaning of the Act and ordered that the case

managers be included in AFSCME, Council 71's broad-based unit of non-supervisory employees. That decision was issued on October 2, 1989.

One month later, the County filed this petition, alleging that a change in circumstances after March 1989, warrants the removal of the case managers/senior employment specialists from the non-supervisory unit. The County has not demonstrated that circumstances have sufficiently changed to warrant deviation from the recent Commission decision. First, the "specialists" continue to interview in pairs and make joint recommendations. An exhibit shows that they acted by consensus and no individual senior employment specialist is responsible for a specific hiring recommendation. Second, the County has not shown what role, if any, the management specialist and the supervisory employment specialist have in the hiring process. It thus remains difficult to tell if the senior employment specialists' "collective input" warrants a finding of supervisory status. Third, some of the senior employment specialists now presumably supervise on a "quarterly" basis, before their authority passes to others. This arrangement seems to be a reaction to the Commission's statement that it was "unfamiliar" with the County's original "two-week" rotation of supervisory duties. However, the current arrangement still does not clarify the senior employment specialists' role in this regard. I note that these employees continue to identify themselves as "REACH case managers," despite the alleged change in the title. This fact undercuts the

County's argument that a substantive change in circumstances has occurred here.

In Atlantic County, the Commission found that "the day before the hearing started, the case managers were officially informed that they would collectively be interviewing applicants for clerk typist and data entry machine operator." Atlantic Cty. at 595.<sup>2/</sup> While it appears that such interviews have occurred, overall, I am not convinced that the County has proffered facts indicating that circumstances here have sufficiently changed to either conclude that senior employment specialists are supervisors or to warrant convening a formal hearing concerning the responsibilities of senior employment specialists.

I conclude that senior employment specialists are not supervisors within the meaning of the Act; N.J.S.A. 34:13A-5.3; nor are the circumstances materially different now than they were when the Commission issued its decision in October 1989. Changed circumstances are necessary to initiate a clarification of unit determination after a Commission decision issues on a record of the disputed employees' duties. See Clearview Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (¶14106 1977). Based upon the foregoing, I do not clarify the primary level supervisors' unit to include the senior employment specialists. Accordingly, the challenged ballots cast in the consent election for the unit of the County's "primary level

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<sup>2/</sup> The Commission's decision is based upon a hearing which was conducted on November 3, 1988 and March 6, 1989.

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supervisors" are voided and the election results are certified based upon the tally.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director

DATED: February 28, 1990  
Trenton, New Jersey