

D.R. No. 2009-3

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

In the Matter of

TOWNSHIP OF TEANECK,

Public Employer,

-and-

Docket No. RO-2007-060

LOCAL 108 PUBLIC EMPLOYEE DIVISION
SUPERVISORY GROUP, RWDSU, UFCW,

Petitioner.

SYNOPSIS

Based upon a majority of authorization cards submitted by Local 108 Public Employee Division, Supervisory Group, RWDSU, UFCW, the Director of Representation certifies a unit of supervisory employees of the Township of Teaneck. The Director excludes certain titles as confidential and includes, among others, department head titles which the Township sought to exclude as managerial executives. The Director distinguishes between statutory duties and municipal duties performed by department heads in finding that the performance of statutory duties, without more, does not support a finding of managerial executive status under the PERA. The Director determines that the Township has not demonstrated that department heads actually formulate, direct or effectuate municipal policies and therefore they should not be excluded from the petitioned-for unit.

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SUPERVISORY GROUP, RWDSU, UFCW,

Petitioner.

Appearances:

For the Respondent,
DeCotiis, Fitzpatrick, Cole and Wisler, LLC, attorneys
(Louis N. Rainone, of counsel)

For the Petitioner,
Oxford Cohen, PC, attorneys
(Nancy Iris Oxford, of counsel)

DECISION AND ORDER

On February 5, 2007, and March 5 and March 14, 2007, Local 108 Public Employee Division (Supervisory Group) RWDSU, UFCW (Local 108) filed a representation petition and amendments seeking certification of public employee representative by card check authorization. Local 108 seeks to represent all supervisory employees of the Township of Teaneck (Township) in its welfare, finance, public works, recreation, motor vehicle, system administration, tax collection and health departments.

The Township objects to the proposed collective negotiations unit and does not consent to a stipulation of unit agreement. It contends that certain titles are either confidential or managerial executives within the meaning of the New Jersey Employee-Employer Relations Act, N.J.S.A. 34:13A-1 et seq., and cannot be included in any collective negotiations unit. It alternatively contends that certain titles are non-supervisory and cannot be included in a supervisory unit; or that inclusion of certain department head titles in the petitioned-for supervisory unit will create an impermissible conflict of interest.

Both parties had the opportunity to submit documents and certifications supporting their respective positions. After reviewing the Township's initial arguments, a Commission agent scheduled an investigatory conference for April 25, 2007. The parties requested a postponement and the conference was rescheduled for May 1, 2007. The petitioner requested another postponement; the parties met on June 12, 2007.

At the conclusion of the informal conference, numerous titles remained disputed and others were resolved to be eligible for inclusion in the unit. The parties were asked to submit more documents and certifications. The parties sought and were granted several extensions of time, until August 17, 2007, to submit the materials. On November 12, 2007, Local 108 filed

several documents for the purpose of correcting information it had previously submitted. After conducting a second review of all submissions, the Commission agent requested from Local 108 more fact(s) regarding one disputed title, and its reply was submitted on December 11, 2007. In its correspondence, Local 108 concurred that the specific and disputed title was included in a collective negotiations unit represented by another union. On January 24, 2008, Counsel for Local 108 rescinded Local 108's earlier concession, leaving the title again disputed.

On March 19, 2008, the Commission agent met with counsel for the parties, seeking an informal resolution of the remaining disputed titles. Replies to a proposed resolution were due by April 2, 2008. On April 3, 2008 and May 12, 2008, the Township and Local 108, respectively, replied. The parties did not agree upon an appropriate unit.

The parties have agreed that numerous titles shall be included in the petitioned-for unit. They are set forth within their respective departments:

engineering department/department of public works: assistant director of public works;
assistant public works superintendent;
manager, motor division
finance department: assistant tax collector
building department: assistant construction official
health department: assistant health officer
recreation department: assistant recreation superintendent

The Parties have agreed to the exclusion of the following titles from the petitioned-for unit:

finance department: assistant cfo/accountant
municipal clerks office: senior clerk
municipal court: deputy municipal court
administrator
health office: coordinator of social
services

The parties disagree on the eligibility of several department directors in the petitioned-for unit. The Township maintains that these titles formulate or effectuate policy and have access to confidential information, rendering them managerial executives, and/or confidential employees:

assessor's office: director of department of assessment (tax assessor).
building department: director of department of buildings - construction official/zoning officer.
finance office: director of finance (chief financial officer) (CFO)
health office: director of department of health and human services (health officer)
purchasing department: director of department of purchasing (purchasing agent)
recreation department: director of department of recreation (superintendent of recreation)
department of public works: director of engineering (municipal engineer)

The Township also contends that including the disputed "director" titles in the unit with other supervisors will create a conflict of interest.

The Township and Local 108 also dispute the eligibility of four other titles. The Township asserts that they are

confidential employees, or that their placement in the petitioned-for unit would create a conflict of interest. The titles in their respective departments are:

municipal clerk's office: municipal clerk
finance office: management information systems specialist
municipal court: municipal court administrator
deputy municipal (township) manager: Office of the township manager

In its initial submission the Township asserted that the Deputy Municipal Manager should also be excluded from the petitioned-for unit. At that time, there was no information or argument submitted concerning the duties or responsibilities of that title and therefore we had no reason to conclude that the title was a managerial executive or a confidential employee. In its August 6, 2008 submission, however, the Township provided information intended to support its position with regard to exclusion of that title.

Local 108 contends that none of the disputed titles are managerial executive positions and that employees holding those titles are restricted from exercising any type of managerial authority. Local 108 also asserts that none of the disputed employees perform duties related to labor negotiations or are privy to such strategies, and are not confidential within the meaning of the Act.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. By letter of July 23, 2008, I advised the parties that I was inclined to certify Local 108 as the exclusive collective negotiations representative for a unit of all supervisory employees of the Township, including a number of the disputed titles and excluding others. The parties were provided an opportunity to reply to my letter by submitting documents and other evidentiary materials and a letter brief in support of their positions. On August 7, 2008 the Township filed a response. Local 108 filed no response. Our review of all documents submitted reveals the following facts.

The Township operates as a council/manager form of government and has ten departments, all of which report directly to the Township Manager, except for the municipal court administrator who reports to the Court. The Township Manager is the chief Township executive and administrative officer and reports to the Township council. The Township departments are: assessment, health and human services, municipal clerk's office, finance, public works/engineering, recreation, building, purchasing, manager's office and municipal court.

The Township contends that four titles should not be included in any unit because they are "confidential employees" within the meaning of the Act. Our investigation reveals the following facts about the CFO, the management information system

specialist, the municipal clerk and the deputy municipal (township) manager:

Finance Office - Chief Financial Officer:

The CFO is appointed by the Township Manager and assists the Manager in preparing the annual budget. It is also responsible to Township Council for reports and advice concerning all aspects of Township funding and costs, including matters related to negotiations proposals for all departments. The CFO compiles data relevant to negotiations and is expected to provide his or her professional opinion on how negotiation proposals (before dissemination among the unions) will affect the costs of benefits, increased hiring, reductions of force and restructuring of departments. Among its responsibilities, the CFO "advises and assists the Manager and Council with respect to financial matters" and maintains and preserves all personnel information relating to all Township employees. The CFO maintains the central records of accounts relating to all Township departments and serves on policy-making committees. Finally, and as reflected in the civil service job description, the CFO evaluates the financial conditions of the Township and reviews municipal contract proposals.

Management Information Systems Specialist

(MISS): The MISS provides information directly to the Township manager on personnel costs, health benefits costs and costs of providing additional vacation or sick days in negotiations proposals. The MISS also formulates responses to negotiations demands from each of the various unions representing Township unions.

Municipal Clerk: The Municipal Clerk is appointed by, and acts as secretary to the Township Council. The clerk is required to attend and take notes of all Council meetings, including executive sessions at which employment and labor negotiations

matters are decided. She has attended Council meetings at which specific proposed discipline and employment decisions are discussed before both the involved employee and/or the employee representative are apprised of formal action. She has been present in discussions involving Township labor counsel regarding personnel decisions and litigation of labor matters.

Deputy Municipal (Township) Manager:^{1/} The Deputy Municipal Manager is a qualified administrative officer of the Township and is selected by the Township Manager to exercise all of the powers and perform the duties of the Township Manager if the Township Manager is temporarily absent or unable to perform those duties. The Township council also has the authority to appoint a deputy municipal manager if the Township Manager fails to do so.

Prior to her appointment as Township Manager on June 1, 2001, the current Township Manager served as the Deputy Municipal Manager from November 16, 1998 through May 31, 2001. In this position she attended and participated in all Council meetings including closed sessions. She assisted the Council in preparation of meeting agendas and reviewed all minutes of the sessions prepared by the municipal clerk. As Deputy Municipal Manager she had access to salary, personnel and discipline records of all employees. She assisted the then-Township Manager in preparing the Township's negotiations proposals and strategies including all costing out of those proposals. She assisted the Township Manager in budget preparation including budgeting of salaries for contract negotiations. She also attended all negotiations sessions between the Township and the collective negotiations representatives. As the Deputy Municipal

^{1/} At the time of the filing of the petition and during the investigation of this matter, the title was vacant.

Manager she also participated in disciplinary proceedings for subordinate employees including assisting department heads in personnel matters arising among the employees they supervised.

ANALYSIS

Confidential Discussion

Confidential employees do not have representation rights under the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.3. N.J.S.A. 14:13A-3(g) defines confidential employees as:

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

The Commission's policy is to narrowly construe the term "confidential employee." Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd. NJPER Supp. 2d 186 (¶165 1988); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985). In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

[W]e scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and what [the employee] knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the

employee [were] included in a negotiating unit. [Id. at 510]
In N.J. Tpk. Auth. and PERC and AFSCME, P.E.R.C. No. 94-24, 19 NJPER 461 (¶24218 1993), rev'd and rem'd 289 N.J. Super. 23 (App. Div. 1996), aff'd as mod. 150 N.J. 331 (1997), our Supreme Court approved the standards articulated in State of New Jersey and explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g); see also State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (holding that final determination is 'whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit.') Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358]

Applying these standards to the facts, I find that the chief financial officer, the management information systems specialist, the municipal clerk and the deputy municipal manager are all confidential employees and must be excluded from the petitioned-for supervisory unit. Specifically, the CFO and MISS have access to and knowledge of significant economic data which may be used in labor negotiations. Beyond mere access, these employees have been asked to advise Council and the Township Manager on the economics of negotiations proposals in preparation for collective negotiations. They also evaluate possible restructuring of the several departments' work force(s), which may lead to negotiations proposals for reduction in force, changes in benefits and other economic changes affecting departmental employees. Considering the extensive economic data compiled and analyzed by these employees, which is used to advise Council in preparation of the Township's negotiations strategies and proposals, I find that inclusion of the CFO and MISS titles in the collective negotiations unit will compromise the Township in negotiations and in administering the contract if that data is shared with employee representatives, including Local 108. Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988); River Dell Regional Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affmng. D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

For these reasons, I am excluding the CFO and MISS from the petitioned-for unit.

Likewise, the Deputy Municipal (Township) Manager has access to and knowledge of significant economic data which may be used in negotiations. The Deputy Municipal Manager has been required to cost out the Township's negotiations proposals, assisted the Township Manager and Council in preparation of negotiation proposals and strategies and attended negotiations sessions between the union and the Township as a Township representative. Additionally, the Deputy Municipal Manager is required to attend executive sessions of the Council where personnel matters and labor negotiations are discussed. The Deputy Municipal Manager also participates in disciplinary proceedings of unit employees and advises department heads in personnel matters. Therefore, as in the case of the CFO and MISS, inclusion of the Deputy Municipal (Township) Manager title in the collective negotiations unit would compromise the Township in negotiations and in administering of the contract. The position must be excluded from the proposed unit.^{2/}

The municipal clerk does not appear to have access to and knowledge of economic data in the same context as do the three

^{2/} If the Deputy Municipal Manager title is filled in the future and the duties and responsibilities seem to be other than set forth here, Local 108 may choose to file a Clarification of Unit Petition with PERC based on a change in circumstances.

other positions, but is still a confidential employee. The clerk is required to and consistently does attend Council meetings, including executive sessions, where that body discusses employee personnel matters, employee discipline, and labor negotiations. In these meetings, the clerk takes notes, learns of employee discipline before the subject employee or employee representative learns of such decisions. The clerk also communicates with and has knowledge of the Township labor counsel's recommendations in these matters. Accordingly, I find that the municipal clerk's job responsibilities are incompatible with that title's inclusion in any collective negotiations unit and must be excluded from the proposed unit. Borough of Glassboro, D.R. No. 2008-12, 34 NJPER 127 (¶55 2008).

Managerial Executive Discussion

The Township objects to the inclusion of six other titles identified as department heads or department "directors"^{3/}, contending that they are managerial executives and therefore must be excluded from any collective negotiations unit. N.J.S.A.

3/ Local 108 disputes the accuracy of the title "Director" and asserts that no such titles exist in the Township. Ordinances setting forth titles which appear to be the same as those described by Local 108 refer to "supervisor," "officer," "director" and/or "superintendent." The DOP job descriptions offered by the Township in support of its argument also refer to "director," "engineer," "assessor," "official" and "superintendent." The Township Manager refers to director, department head, officer and official, interchangeably. For purposes of consistency, the term "department head" is used herein.

34:13A-5.3. In an August 6 filing, the Township contends that the Township's "council-manager" form of government requires a finding that department heads are managerial executive employees.

The contested department head titles are:

- tax assessor, assessor's office;
- municipal engineer, department of public works;
- superintendent of recreation, recreation department;
- construction official/zoning officer, building department;
- purchasing agent, purchasing department; and
- health officer, department of health and human services

The Township contends the tax assessor, construction official, municipal engineer, health officer and municipal court administrator hold specific statutory duties and act in part as agents of the State Legislature. According to the Township, these titles have complete discretion in exercising their legislative duties.

The Township Manager is responsible for hiring, firing, reviewing job classifications, salary ranges, and negotiating contracts. The Manager also establishes the organizational structure, duties, and responsibilities of all departments. She delegates administrative duties as appropriate.

The Township has issued descriptions of each of the department head titles and they are similar to the descriptions generated by the State Department of Personnel for those same

titles. The Township Manager's certification of the duties and responsibilities of each of the disputed department heads repeats, for the most part, the duties set forth in the job descriptions. The Township Manager's certification identifies the department heads' daily tasks, record keeping duties, direction and supervision of staff, and administration of departmental programs. Neither in its initial submission nor in its response to my July 23rd letter has the Township provided any specific examples of employees in the disputed titles actually formulating policy or directing or effectuating management policies. The Township Manager has authority to appoint department heads to be acting municipal manager in her absence. The Township has provided no instances where the Manager has done so.

Local 108 submitted a certification from the health officer that the Township has identified as the department head of health and human services. The health officer contests the Manager's certification that department heads are managerial executives or that they have been given the discretion to perform any managerial executive functions. The health officer wrote several examples of circumstances when the Township Manager has restricted or reversed attempts by department heads to effectuate policy, make personnel decisions or authorize budget expenditures. In July 2007, the Township Manager denied a

request from the construction official for a department-related expenditure, even though the construction official had approved it, because she (the Township Manager) had not initially been told of the request. Employee attendance at seminars or courses are included in each department's budget, but those requests must be approved by the Township Manager regardless of the department head's approval. Some department heads seeking access to work-related websites were "blocked" until the MISS opened the sites. Finally, and contrary to the Manager's assertion that department heads are invited to attend and become involved in Council meetings and in labor negotiations, the evidence suggests that participation rarely occurs. One department head has not been invited to attend or has attended a Council meeting since 1996. Similarly, he has not been solicited to participate, nor has he participated in any negotiations sessions for the Township.

Finally, on three occasions in 2006 and 2007, the Township Manager temporarily appointed the municipal clerk and the police chief as acting municipal manager in her absence. Local 108 asserts that no disputed department heads have ever been appointed to act as a municipal manager.

N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate, but specifically exempts managerial executives from that right. N.J.S.A. 34:13A-3(f) defines managerial executives as:

. . .persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices. . . .

In Turnpike Authority, our Supreme Court adopted this test to determine managerial authority:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment 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. 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. [N.J. Turnpike Auth., at 150 N.J. 356]

Sustaining the lower court's holding that a managerial executive need not possess organization-wide power, the Supreme Court rejected other portions of the lower court's opinion that would have expanded the managerial executive definition to exclude all employees above first-line supervisors and to adopt the private sector exclusion of all managerial employees who effectuate managerial policies. The Supreme Court reasoned that the problem of divided loyalties is of less concern in the public sector than in the private sector because public employees do not have a

right to strike; public employees have a much narrower scope of negotiations; public employers are not seeking to maximize profits; and public employers and public employees share a stronger common interest in the mission of the organization. The Court stressed that the Legislature had rejected a managerial executive definition that would have excluded persons "effectuating and making operative" management policies and practices and had instead confined that part of the exclusion to persons "directing the effectuation" of such "policies and practices." The Court concluded that "directing the effectuation" connotes a higher level of authority than does "effectuating and making operative." Id. at 355.

Under Turnpike Authority, the Commission delineates managerial executives from lower-level employees on a case-by-case basis. The analysis in each instance focuses on the weight and interplay of the employee's position in the hierarchy, his or her functions and responsibilities, and extent of discretion. The goal is to determine whether the employee has the authority and accountability of a managerial executive to formulate or direct the effectuation of management policies and practices.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), the Commission adopted a standard for determining whether a person formulates policy or directs its effectuation

(and therefore, is a managerial executive). The Commission wrote:

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 effectuating of these purposes. Whether or not an employee possess 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]

The Commission narrowly construes the term "managerial executive" and claims of managerial status are reviewed on a case-by-case basis. Borough of Avon, P.E.R.C. No.78-21, 3 NJPER 373 (1977).

In this matter, the relative position of the department heads requires that they report directly to the Township Manager. We must also examine the functions and responsibilities and the extent of discretion exercised by the employees in the department head positions. The Township's mere recitation of functions set forth in job descriptions does not demonstrate that the department heads exercise the scope of authority or independent discretion demanded of employees asserted to be managerial executives. Ringwood Tp., D.R. No. 93-19, 19 NJPER 196 (¶24093 1993). The same is true for the narrative certification submitted by the Township Manager. Nothing in it shows that the department heads formulate policy or possess and exercise the

broad discretion over Township policies demonstrating managerial executive status.

The cases and statutes relied upon by the Township in its August 6 submission seeking exclusion of department heads, specifically the tax assessor, construction official, municipal engineer, health officer and municipal court administrator do not support a finding that these employees should be denied representational rights merely because they perform certain specific legislative tasks. A distinction can be made between legislative duties and other municipal duties. Jeffers v. City of Jersey City, 8 N.J. Tax 313 (Law Div. 1986), aff'd o.b., 214 N.J. Super 584 (App. Div. 1987). Performance of statutorily mandated duties, without more, does not support a finding of managerial executive status under our Act. (A statute will preempt employee rights guaranteed by our Act only when it sets terms and conditions of employment expressly, specifically and comprehensively. See, e.g., Bethlehem Tp. Ed., 91 N.J. 38, 44 (1982)). No evidence has been submitted which demonstrates that these department heads formulate municipal policies which effect the Township mission.^{4/} See Tp. of Eastampton, D.R. No. 94-1, 19 NJPER 404, 406 (¶24178 1993) (Eastampton I) cited in Tp. of

^{4/} The application of the PERA criteria as established in Commission case law for determining managerial executive status of department heads also does not turn on what form of government a municipality has adopted, as the Township appears to argue.

Eastampton D.R. No. 2000-5, 26 NJPER 43, 44 (¶31014 1999)
(Eastampton II), Town of Kearny, Supra, Township of Clark,
P.E.R.C. No. 85-105, 11 NJPER 283 (¶16104 1985).

The Township Manager certified that department heads are requested to provide "input" to management on labor matters relating to labor negotiations and grievances, thereby demonstrating that they are confidential employees. No facts support that assertion; a conclusory statement cannot prove confidential status. The Township has not demonstrated that any of its department heads have advisory functions in negotiations or knowledge of the Council's negotiations proposals before they are disclosed to majority representative(s), or that they have access to any other confidential labor information. I find that the department heads are neither confidential employees nor managerial executives under the Act.

The Township also seeks to exclude the municipal court administrator from the petitioned-for unit. It contends that inclusion of this title will violate guidelines prescribed by the State Office of the Courts; will create inappropriate conflicts of interest and will lead to claims by court participants that the court's objectivity has been undermined. The Township has not submitted any facts demonstrating that this title's inclusion in the unit should be prohibited. As to the Township's argument that statutory obligations of the municipal court administrator

require exclusion of that title, limited exercise of statutory obligations or discretion in carrying out the directives of a municipal judge is not an exercise of managerial authority. Tr. of Eastampton I and II. Therefore, I find that the court administrator should be included in the petitioned-for supervisory unit.

Conflict of Interest

The Township contends that the inclusion of department heads in a unit with other supervisors will create an inherent conflict of interest. It appears that the Township is claiming that the department heads have initial disciplinary responsibilities and an unspecified involvement in grievance processing. No specific facts support this contention and no examples were provided in any of the Township's submissions showing when, if ever, the department heads have disciplined or evaluated other supervisors in the petitioned-for unit. Even if department heads recommend hiring, firing and discipline, no facts suggest that the Township Manager is bound by or follows such recommendations. It more likely appears that the Manager has final discretion on these matters. Under the mandate of our State Supreme Court in Board of Education of West Orange v. Wilton, 57 N.J. 404, 427 (1971), a "substantial actual or potential conflict of interest among supervisors with respect to their duties and obligations to the employer in relation to each other. . . ." must be shown to

warrant the creation of separate supervisory units. The Court noted that each case must be examined on its own facts. In this matter no facts supporting an actual or potential conflict of interest have been furnished by the Township. Accordingly, I determine that department heads shall be included in the petitioned-for unit.^{5/}

Based upon all of the foregoing, I find that the following unit is appropriate:

Included: All supervisory employees of the Township of Teaneck including tax assessor, construction official/zoning officer, assistant construction official, tax collector, assistant tax collector, health officer, assistant health officer, municipal court administrator, municipal engineer, assistant director public works, manager motors, assistant public works superintendent, purchasing agent, superintendent of recreation and assistant supervisor of recreation.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees, deputy municipal manager, chief financial officer, assistant chief financial officer, municipal clerk, senior clerks, management information systems specialist and all other employees employed by the Township of Teaneck.

The Association has apparently met the requirements of the Act and is entitled to certification based upon its authorization

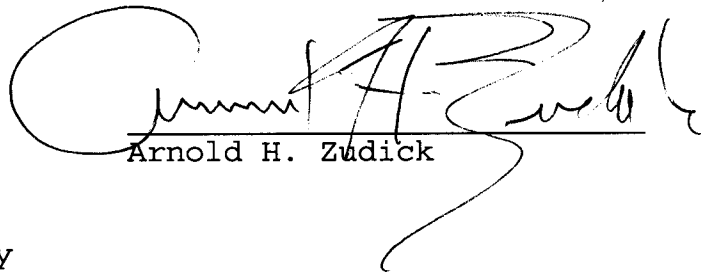
^{5/} The Township may, on its own, initiate a request that the inclusion of department heads in the unit be re-examined by filing a Clarification of Unit Petition, should circumstances change.

cards from a majority of the unit employees. N.J.S.A. 34:13A-5.3.

ORDER

I certify Local 108 Public Employee Division (Supervisory Group) RWDSU, UFCW, as the exclusive representative of the unit described above, based upon its authorization cards.^{6/}

BY ORDER OF THE DIRECTOR OF
REPRESENTATION



Arnold H. Zudick

DATED: September 2, 2008
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by September 12, 2008.

^{6/} An appropriate Certification of Representative will issue with this decision.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of	>	
	>	
TOWNSHIP OF TEANECK,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2007-060
	>	
RWDSU LOCAL 108 PUBLIC EMPLOYEES DIVISION (SUPERVISORY GROUP),	>	
Petitioner.	>	

**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

LOCAL 108 PUBLIC EMPLOYEE DIVISION (SUPERVISORY GROUP), RWDSU, UFCW

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All supervisory employees of the Township of Teaneck including tax assessor, construction official/zoning officer, assistant construction official, tax collector, assistant tax collector, health officer, assistant health officer, municipal court administrator, municipal engineer, assistant director public works, manager motors, assistant public works superintendent, purchasing agent, superintendent of recreation and assistant supervisor of recreation.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees, deputy municipal manager, chief financial officer, assistant chief financial officer, municipal clerk, senior clerks, management information systems specialist and all other employees employed by the Township of Teaneck.

DATED: September 2, 2008
Trenton, New Jersey

/s/ Arnold H. Zudick

Director of Representation