

D.R. No. 2011-10

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

In the Matter of

COUNTY OF HUNTERDON,

Public Employer,

-and-

Docket Nos. RO-2009-039
RO-2009-044

AFSCME COUNCIL 73,

Petitioner.

SYNOPSIS

On the remand of D.R. 2010-001 from the Commission, the Deputy Director of Representation certifies, by card check, AFSCME Council 73 as the exclusive representative of collective negotiations units of primary and secondary level executives (RO 2009-039, RO 2009-44) of Hunterdon County. The Deputy Director concludes that the County's supplemental submission reiterates much of the positions set forth in its previous submissions, and do not warrant a different analysis and conclusion than reached by the Director in D.R. 2010-001. The Deputy Director notes that although the County contends that certification of both units will leave it bereft of managerial executive employees, several previously excluded titles or classifications remain unaffected by this decision.

D.R. No. 2011-10

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

In the Matter of

COUNTY OF HUNTERDON,

Public Employer,

-and-

Docket Nos. RO-2009-039
RO-2009-044

AFSCME COUNCIL 73,

Petitioner.

Appearances:

For the Public Employer,
Law Offices of Gaetano M. DeSapio
(Gaetano M. DeSapio, of counsel)

For the Petitioner,
Pellettieri, Rabstein & Altman, attorneys
(Andrew Watson, of counsel)

DECISION

On November 24, 2009, the Commission issued a decision granting a request for review and remanding for further processing a decision of the Director of Representation ordering certification by card check of collective negotiations units comprised of about 6 primary upper level unclassified supervisory employees (RO-2009-039) and about 16 secondary upper level supervisors (RO-2009-044) of Hunterdon County. Hunterdon Cty., P.E.R.C. No. 2010-36, 35 NJPER 433 (¶142 2009). The Commission specifically wrote that the investigation file did not reveal if the County had been notified that it was required to substantiate claims in a certification and others set forth in a

submitted chart detailing asserted managerial executive duties of contested employees.

The decision of the then-Director of Representation had followed an investigation of petitions for certification filed October 14 and November 6, 2008. D.R. No. 2010-1, 35 NJPER 303 (¶105 2009). AFSCME Council 73 initially filed a representation petition and amended petition (RO-2009-039) seeking certification by card check of a collective negotiations unit comprised of about 25 upper level unclassified supervisory employees of Hunterdon County. On November 6, AFSCME amended its petition to seek card check certification of about 6 primary upper level unclassified supervisory employees, and filed a second petition (RO-2009-044), seeking card check certification of a unit of about 16 secondary upper level supervisors. All of the petitioned-for employees are unrepresented for purposes of collective negotiations. The petitions were supported by a sufficient number of cards warranting certification. N.J.A.C. 19:11-1.2(a)10.

The County opposed certification, asserting that all but three of the petitioned-for employees were ineligible for inclusion in any negotiations unit because they are managerial executives. AFSCME denied that the petitioned-for employees are managerial executives.

In D.R. No. 2010-1, the Director found that none of the petitioned-for employees, in both RO-2009-39 and RO-2009-44, are

managerial executives and that all were eligible for representation.

The Director wrote:

[I]n both petitioned-for units, the disputed County employees' managerial authority is confined to the scope of their respective departments. Their departmental authority is circumscribed by countywide policies set by the Freeholders. Although the Freeholders may rely upon the department heads' 'input' when setting policy, no evidence -- apart from the County's recitation of each employee's responsibilities -- shows that any of the disputed employees has the level of decision making authority which would accord them managerial executive status.
[35 NJPER at 309]

The Director also found:

[B]oth parties had the opportunity to assert, amplify and clarify their respective factual positions by submitting position statements, documents, affidavits and other materials. I find that no substantial material facts are disputed and base my conclusion on the facts revealed by the investigation.
[35 NJPER at 310]

The Director concluded that AFSCME had met the requirements of the Act and was entitled to certification as majority representative in both petitioned-for units. He certified AFSCME Council 73 as the exclusive representative of employees in the units of primary level executives (RO-2009-039) and secondary level executives (RO-2009-044), based upon respective authorization cards. N.J.S.A. 34:13A-5.3. See also Teaneck Tp., P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008), app. withdrawn App. Div. Dkt. No. A-2168-08T3 (2009).

On July 20, 2009, the County requested the Commission's review, arguing that the Director's decision was contrary to the weight of

the evidence, effectively leaving it with only two individuals who could be considered managerial executives: the County Administrator and the County Director of Human Resources. The County reiterated its request for a fact-finding hearing to resolve the issue of the level of discretion exercised by each member of the petitioned-for bargaining unit. The Commission remanded the case to the Director. P.E.R.C. No. 2010-036, 35 NJPER at 435.

We have conducted a supplemental administrative investigation of both petitions. N.J.A.C. 19:11-2.2. The parties filed letters, certifications, and other documents supporting their respective positions. The County relied upon all of its previous submissions, its statement in support of its request for review before the Commission, and an eleven-page supplemental certification of its Administrator, Cynthia Yard. See N.J.A.C. 9:11-8.3. Based upon my review of the materials, I find the following facts.

The assigned staff agent wrote to the parties after the case was remanded, advising of our Supreme Court's articulation of a test determining "managerial authority" under the Act. N.J. Tpk. Auth. and P.E.R.C. and AFSCME, D.R. No. 94-29, 20 NJPER 295 (¶25149 1994), rev'd and rem'd 289 N.J. Super. 23 (App. Div. 1996), aff'd as mod. 150 N.J. 331 (1997). That test provides in a pertinent part:

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. Tpk. Auth., 150 N.J. at 356]

See also N.J.S.A. 34:13A-3(f); 5.3. The parties were asked to provide letters, certifications, etc., explaining whether the disputed employees in both cases are managerial executives within the meaning of the Act.

County Administrator Cynthia Yard provided a supplemental certification responding to our inquiry. She certifies that each of the petitioned-for employees administers the primary functions of their Department/Division, including developing the annual objectives of the department; develops the annual budget for the Department; formulates management policies and procedure, develops and implements the methods and techniques for accomplishing the Department's objectives or statutory functions; supervises employees; directs operations, establishes policies and procedures specific to their Department; establishes a work program and work protocols; establishes an employee performance system and is responsible for the discipline, hiring and firing of all subordinate employees. Each of the petitioning employees ". . . select(s) the projects and objectives which will be pursued within [his/her] area of operation

and establishes and [is] responsible for, the manner methods and techniques to be used to accomplish [his or her] mission." [Yard Supplemental Certification at ¶8 - 10]

Yard also certifies:

[T]he individuals named in the petition play a role comparable to the role Department heads or Agency heads perform in State government. While these managers are evaluated and are accountable for their performance, they are not supervised. Their day to day performance is not monitored, controlled, or observed. They are not directed as to how to do their work. They each set their departmental and policy objectives and decide how to reach them.

[Yard Supplemental Certification at ¶11]

The County also asserts that twelve of the subject employees are managerial executives because they are unclassified employees serving at the pleasure of the Freeholder Board and are limited to twenty in number under N.J.S.A. 11A:3A-51. These employees were specified by name and title in the Director's decision. The County also lists several other employees in job titles which are classified by the Civil Service Commission. The County contends that the Civil Service Job Specifications for each employee's title ". . . reflect(s) their status as a managerial executive."

The County reiterates that all of the petitioned-for individuals, except the project management confidential aide, prepare or provide input for the Department/Division budget, although the ultimate decision on allocation rests with the Freeholders; that several Department heads administer trust and grant funds solely

within their discretion, and without oversight. [Yard Supplemental Certification at ¶14 - 19]

Yard also certifies:

[T]he employees who seek to organize are not entitled to do so, since they are the managerial executives who run the County of Hunterdon for and on behalf of the County elected officials and the public. To fail to recognize them as such is not warranted by the facts. It would also make the statute that recognizes the existence of managerial executives a nullity since it would reach a determination that no one who works for the County of Hunterdon is a managerial executive.

[Yard Supplemental Certification at ¶21]

AFSCME asserts that the County's supplemental submissions add nothing new nor materially differ from its previous submissions. AFSCME asserts the Director's initial decision was correct and that the petitioned-for units should be certified.

The County summarizes and reiterates many of the facts about the disputed employees set forth in its previous submissions. The County in this instance has recategorized disputed employees based upon Civil Service classifications, and has enclosed generic job descriptions. It suggests that County employees have a managerial executive status equivalent to State department heads and managers. These arguments considered separately or together do not warrant a different analysis and conclusion than reached by the Director in D.R. 2010-001. Although the County contends that certification of both units will leave it bereft of managerial executive employees, several titles or classifications, including the County

Administrator, the County collective negotiations team, the County's Department Head/Finance, the County's Treasurer/CFO, and other officials remain unaffected by this decision.

I find that the following units are appropriate:

Primary Level Executives (RO-2009-039):

Included: All primary level executives including Department Head, Health; Division Head, Project Management; Department Head, Human Services; Library Director; Manager 1, Information Technology.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees, secondary level executive employees, employees in other bargaining units, and all other employees employed by the County of Hunterdon.

Secondary Level Executives (RO-2009-044):

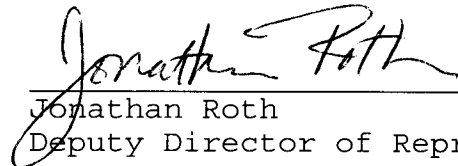
Included: Department Head, Purchasing; Planning Director; Planning Department; Assistant Superintendent, Public Safety; Environmental Health Coordinator (Division Head), Health; Department Head, Solid Waste and Recycling; Assistant Library Director; Department Head, Parks and Recreation; Division Head, Human Services; Division Head, Information Technology; Confidential Assistant, Human Services; Project Management, Confidential Aide; Executive Director Office on Aging.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees; primary executive level employees, employees in other bargaining units, and all other employees employed by the County of Hunterdon.

ORDER

I certify AFSCME Council 73 as the exclusive representative of the units described above, based upon its authorization cards^{1/}.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION



Jonathan Roth
Deputy Director of Representation

DATED: May 5, 2011
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 May 16, 2011.

^{1/} The formal certifications are attached.