

D.R. NO. 2019-3

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

In the Matter of

BOROUGH OF ENGLEWOOD CLIFFS,

Public Employer,

-and-

Docket No. CU-2017-030

UNITED SERVICE WORKERS UNION, LOCAL 1N,

Petitioner.

SYNOPSIS

The Director of Representation orders that a collective negotiations unit of non-supervisory white collar employees be clarified to include the title, recreation director. The public employer contested the title's eligibility for inclusion, claiming that the recreation director was a managerial executive within the Act's meaning. The Director determined that the facts --the recreation director's duties and capacity to direct the effectuation of policy--failed to demonstrate managerial executive status.

D.R. NO. 2019-3

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

In the Matter of

BOROUGH OF ENGLEWOOD CLIFFS,

Public Employer,

-and-

Docket No. CU-2017-030

UNITED SERVICE WORKERS UNION, LOCAL 1N,

Petitioner.

Appearances:

For the Public Employer
Ruderman, Horn & Esmerado
(Mark S. Ruderman, of counsel)

For the Petitioner
Rothman Rocco LaRuffa, PC
(Eric LaRuffa, of counsel)

DECISION

On May 24, 2017, United Service Workers Union, Local 1N (Union) filed a clarification of unit petition seeking to clarify a broad-based collective negotiations unit of all regularly employed, non-supervisory white collar personnel employed by the Borough of Englewood Cliffs (Borough), to include the title, recreation director. The Borough contends that the recreation director is a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., rendering it ineligible for inclusion in any negotiations

unit. The Union claims that the title has always been in the unit and nothing has changed to warrant its exclusion.

The parties' current collective negotiations agreement extends from January 1, 2016 through December 31, 2018. The disputed title has existed as a part-time position for many years and has always been included in the unit. We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2.

On August 3, 2017, a Commission staff agent issued a letter to the parties requesting detailed facts about the functions and responsibilities of the recreation director. On August 31, 2017, the Union submitted the job description and an affidavit from Rashard Casey (Casey), Recreation Director. On September 7, 2017, the Borough filed a letter, a copy of the Borough resolution appointing Casey to the position and several bi-weekly reports Casey submitted to the Mayor and Borough Council. The Borough's response did not include any certifications or affidavits.

An investigatory conference was held on September 14, 2017, at which time the Commission staff agent assigned to the matter provided each party with an opportunity to submit supplemental information and/or affidavits. On October 11, 2017, the Borough submitted an affidavit from Catherine Steinel (Steinel), Borough

Administrator. The Union did not submit any additional documents. I find the following facts.

Casey reports directly to Steinel. The job description for the disputed title reveals that some job responsibilities include but are not limited to, ". . . direct[ing] and participat[ing] in the development and implementation of goals, objectives, policies, procedures, and priorities for the Borough's Parks and Recreation Department;" "plan[ning] and manag[ing] a comprehensive Borough-wide recreation program including athletic leagues, instructional programs, day camps, and special events;" "manag[ing] the community center and its programs, including staffing, maintenance and marketing;" "prepar[ing] and manag[ing] annual budget for recreation program functions and approves purchases of supplies and operating inventory for recreation programs;" "perform[ing] public relations duties; respond[ing] to complaints; handl[ing] all league suspension and rule enforcement; prepar[ing] news releases, information and marketing bulletins . . . ;" "direct[ing] and establish[ing] procedures for tasks such as the maintenance of files and records, the collection of fees and charges, [and] manag[ing] recreation program registration, [and] activity and facility scheduling;"

"prepar[ing] reports, attend[ing] meetings of the Borough Council, Borough committees, and community groups as required."

Steinel certifies that on January 13, 2016, the Borough passed Ordinance No. 16-01, creating the full-time recreation director position. Steinel certifies that pursuant to the ordinance, the recreation director independently develops and implements schedules, goals, and programs; prepares and submits budget proposals to the Mayor and Borough council; inspects, manages, and maintains the Borough's recreational facilities and equipment; and may recommend hiring new staff, pursuant to director's determination of need. Steinel certifies that the Borough adopted Resolution 17-46, appointing Casey as recreation director on February 8, 2016, at an annual salary of \$12,000.

Steinel certifies that Casey has in fact ". . . developed a summer program and screened camp counselor applicants." She certifies that Casey submits bimonthly reports to the Mayor and Borough Administrator, who have sole authority to review Casey's decisions as recreation director.

Casey certifies that upon information and belief, the Borough has maintained the recreation director position for over nineteen years, and that his immediate predecessor, Paul Duffy, was a unit employee during his tenure in the part-time title from 2014-2017. Casey certifies that he supervises volunteers

and several part-time Borough employees, who are not included in the petitioned-for unit. Casey also certifies that he has not formulated or created any Borough policies, and lacks the authority to direct the effectuation and/or implementation of any Borough policy. Casey certifies that any and all Borough policies affecting his position and duties would have to be reviewed and approved by the Borough manager prior to implementation.

ANALYSIS

Under N.J.S.A. 34:13A-3(f), a "managerial executive" of any public employer other than the State is defined as follows:

[M]anagerial executives of a public employer means 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 New Jersey Turnpike Authority v. AFSCME Council 73, 150 N.J. 331 (1997), the New Jersey 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. [Turnpike Authority at 356]

The term "managerial executive" is narrowly construed because the consequence of finding that an employee is a managerial executive is to deny that employee the benefits and protections of the Act. N.J.S.A. 34:13A-5.3; State of New Jersey (Trenton State College), P.E.R.C. No. 91-93, 17 NJPER 246, 247 (¶22112 1991).

The burden of demonstrating that an employee is a managerial executive falls "on the party seeking to place an employee outside the Act's protection." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 510 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Willingboro Bd. of Ed., D.R. No. 97-15, 23 NJPER 358 (¶28169 1997). We have applied strict standards of proof to managerial executive status claims: absent a proffer of specific duties and a demonstration that the purported managerial duties are actually performed, we will not find managerial executive status. Teaneck Tp., D.R. No. 2009-3, 34 NJPER 268 (¶96 2008), req. for rev. den. P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008) (employer's certification lacked sufficient, specific examples of department heads actually formulating or directing the effectuation of policies); City of

Newark, D.R. No. 2000-11, 26 NJPER 234 (¶31094 2000), req. for rev. den. P.E.R.C. No. 2000-100, 26 NJPER 289 (¶31116 2000), aff'd 346 N.J. Super. 460 (App. Div. 2002) (employer claiming managerial executive status must make a particularized showing that employees actually perform those duties which make the titles managerial); City of Camden Housing Authority, D.R. No. 2014-7, 40 NJPER 219 (¶84 2013) (Director rejects the employer's managerial executive and confidential status claims because the employer did not produce affidavits setting forth sufficient facts and examples of work performed by the petitioned-for employees that demonstrated managerial authority or confidential status).

Applying these standards to the facts of this case, I find that the recreation director is not a managerial executive within the meaning of the Act. The Township has not submitted specific facts demonstrating that Casey performs duties that can be classified as managerial executive in nature.

Steinel's certification regarding duties that Casey has actually performed provides only that he submits bimonthly reports to the Mayor and Borough Administrator, who have sole authority to review and approve his decisions, and that he developed a summer program and screened camp counselor applicants. Steinel's certification does not indicate that Casey has formulated or created any policy(ies). This omission is

consistent with Casey's certification providing that he has never formulated a Borough policy, and has no authority to direct the effectuation or implementation of any policies. Also, none of Casey's bimonthly reports submitted to the Borough indicate that he performs managerial executive duties. These reports generally update the Mayor, Borough Administrator, and Borough Council about Casey's continuing efforts in the recreation department, identify issues that need to be addressed, and describe upcoming recreation department programs.^{1/} The facts do not demonstrate that the recreation director, paid an annual salary of \$12,000, possesses the discretion and control over Borough policy objectives to be considered a managerial executive.

Accordingly, I find that the Borough has not met its burden of demonstrating that the recreation director is a managerial executive under the Act. Accordingly, the collective

^{1/} Some examples include, 1) a report that the number of applications decreased for cheerleading, tennis, and the Tae Kwon Do classes (4/19/17 report); 2) an update about how people were illicitly gaining access to "locked" tennis courts without keys; how non-Borough residents were using the batting cages (5/3/17 report); 3) an update about how both gyms will be unavailable for summer camp use but that Casey was seeking alternative usable outdoor space(5/17/17 report); and 4) an update from Casey about how summer camp registrations were lagging, and a dispute over a payment (6/6/17). Several other reports were submitted, none of which demonstrate that Casey creates, or directs the effectuation of any Borough policies.

negotiations unit of the Borough's non-supervisory white collar employees is clarified to include the title, recreation director.

/s/Jonathan L. Roth
Jonathan L. Roth
Director of Representation

DATED: August 3, 2018
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 August 13, 2018.