

D.R. NO. 98-14

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

In the Matter of

COUNTY OF PASSAIC
(PREAKNESS HOSPITAL),

Public Employer,

-and-

Docket No. CU-98-18

IUPC&PE LOCAL 911,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the food service director employed at Passaic County's Preakness Hospital into a supervisory unit represented by Local 911, International Union of Production, Clerical and Public Employees. The Director finds that the food service director shares a community of interest with other unit positions and is not a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(f). The food service director does not exercise sufficient independent authority, formulate management policies or direct the effectuation of such policies to be considered a managerial executive.

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Appearances:

For the Public Employer
Nancy Ackerman, Personnel Officer

For the Petitioner
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(Robert C. Gifford, of counsel)

DECISION

On September 18, 1997, Local 911, International Union of Production, Clerical and Public Employees ("IUPCPE" or "911"), filed a clarification of unit petition with the Public Employment Relations Commission. The petition seeks to clarify the food service director, employed at Passaic County's Preakness Hospital, into the supervisory unit represented by Local 911, IUPCPE. The County opposes the petition. It asserts that the food service director is a managerial executive and inappropriate for inclusion in Local 911's unit.

We have conducted an administrative investigation concerning the petition. N.J.A.C. 19:11-2.2.1/ The following facts appear.

The parties' most recent agreement, effective from January 1, 1995 to December 31, 1997, states:

The... County recognizes the Union as the exclusive bargaining agent for all Directors, Assistant Directors, Supervisors, Assistant Supervisors, Executive Housekeeper, Assistant Executive Housekeeper, Assistant Chief Recreation Therapy, Coordinator of Volunteers, Systems Analyst, Principal Personnel Technician, Foreman, Assistant Foreman and all other Supervising Personnel in Preakness Hospital. (emphasis added)

The County and Local 911 are currently engaged in wage reopener negotiations.

Robert Bontatibus currently serves as the food service director. He reports to the assistant hospital administrator who reports to the hospital administrator. The hospital administrator reports to the County Executive and Board of Freeholders. Bontatibus supervises several employees.

Bontatibus directs the food service programs at the hospital, the Youth Center, and the Office on Aging. He also coordinates other catering projects on an "as needed" basis. The hospital's program is the most comprehensive of all the County's food service programs, and, by law, the hospital is required to have a food service director.

1/ On February 18, 1998, we informed the parties of our findings and invited them to respond. Neither the County nor Local 911 responded.

For approximately ten years, Local 911 represented the hospital's food service director in its supervisory unit. Within the past five years, the County consolidated the food service programs at the hospital, youth center and Office on Aging ("Meals on Wheels" and nutritional center). The County attempted to reclassify the food service director to a "chief", a title not included in Local 911's unit. However, the State Department of Personnel recently conducted a job audit and found that food service director was the correct title for the duties performed by Bontatibus. The parties' recognition clause includes all directors employed at Preakness Hospital. Bontatibus continues to report to the Hospital administrator. The addition of the youth center, Office on Aging and miscellaneous catering projects has not altered the community of interest this position shares with other hospital directors. Therefore, I find that the food service director continues to be appropriate for inclusion in Local 911's hospital supervisors unit.

The New Jersey Employer-Employee Relations Act, 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,...

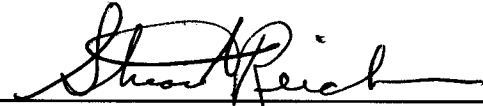
Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980) set forth a test by which to evaluate claims that employees are managerial executives and exempt from the Act's protections. The Commission held:

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 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), the Supreme Court modified the N.J. Tpk. Auth. standard by excising that part of the standard which required that an employee exercise organization-wide power. Applying the standard here, the County has not submitted any facts to support a finding that the food service director exercises sufficient independent authority, formulates management policies or directs the effectuation of such policies and practices to be considered a managerial executive.

Accordingly, based upon the above, I conclude that the food service director is appropriately included in Local 911's supervisory unit and order that it is clarified into the unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: March 30, 1998
Trenton, New Jersey