

L.D. NO. 94-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matters of

TOWN OF SECAUCUS,

Respondent,

-and-

Docket No. CO-94-21

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

TOWN OF SECAUCUS,

Charging Party,

-and-

Docket No. CE-94-1

COMMUNICATIONS WORKERS OF AMERICA,

Respondent.

Appearances:

For the Town of Secaucus
Martin R. Pachman, Esq.

For the Communications Workers of America
Timothy Adams, Executive Vice President

LAP DECISION

On July 7, 1993, the Town of Secaucus filed an unfair
practice charge against the Communications Workers of America

(Docket No. CE-94-1). On July 16, 1993, the Communications Workers of America filed an unfair practice charge against the Town of Secaucus (Docket No. CO-94-21). Both charges allege the refusal to bargain in good faith. On September 23, 1993, I conducted an exploratory conference at which the parties resolved the majority of issues raised in both charges. The sole remaining issue is the unit placement of two titles, which the parties agreed to submit to the Commission's Litigation Alternative Program ("LAP"). The parties requested that I issue the LAP decision based upon their position statements and information provided at the exploratory conference. The parties also agreed that this decision is final and binding and that its issuance shall constitute withdrawal of both charges.

CWA was certified as the majority representative of a unit of all professional and non-professional department heads employed by the Town of Secaucus on January 15, 1993. The certification includes the titles of Tax Assessor and Health Officer. In the course of negotiations, the Town believed that both titles were inappropriately included in the department heads' unit. The Town contends that the Tax Assessor is a managerial executive and that the Health Officer is employed by the Board of Health, rather than the Town of Secaucus.

On October 8, 1993, CWA informed Secaucus Counsel Martin Pachman that it no longer contests removal of the Health Officer from its department heads unit. Therefore, the Health Officer is removed from the unit and CWA will cease its demand to bargain over

terms and conditions of employment for that title.

The only issue remaining for my consideration is the unit placement of the Tax Assessor. The Town contends that the Tax Assessor is a managerial executive and is ineligible for representation. CWA contends the Tax Assessor's duties do not support a finding of managerial executive status.

The Tax Assessor locates and appraises property for tax purposes. The Town contends that these duties give the Tax Assessor significant and extensive control over the municipal budget because the amount and value of ratables directly affects the amount of town budget revenues. The Town also contends that the ability of the Tax Assessor to determine property valuation directly involves the effectuation of policy objectives within the community. The Town states that the Tax Assessor has discretionary authority to make policy decisions which affect the overall operation of the municipal government and does not merely implement decisions made by others. The Tax Assessor exercises his statutory authority independently, without review or oversight by any other municipal governmental agency.

N.J.S.A. 34:13A-3(f) defines managerial executives as those employees of a public employer "...who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices..." Managerial executives do not have the right to form, join or assist an employee organization. N.J.S.A. 34:13A-5.3

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

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 effectuation 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).


The statutorily mandated responsibilities of the Tax Assessor do not support a finding that he exercises the scope of authority or independence required by the Act to support a finding of managerial status. Tp. of Ringwood, D.R. No. 93-19, 19 NJPER 196 (¶24093 1993). In Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988), the Commission found that the tax assessor was not a managerial executive because he had no policy-making authority and he was not involved in the effectuation of policy objectives.

Even employees who make policy within their areas of expertise or make budget recommendations to higher levels within an organization may not exercise a level of authority and independent

judgment sufficient to broadly affect the employer's purposes or means of effecting these purposes. New Jersey Turnpike Authority, P.E.R.C. No. 94-24, 19 NJPER ____ (¶ ____ 1993); State of New Jersey (Trenton State College), P.E.R.C. No. 91-93, 17 NJPER 246 (¶22112 1991). The Town's submissions do not show that its Tax Assessor possesses the type of broad discretion over Town policies to support a finding of managerial status. Accordingly, I find that the Tax Assessor is not a managerial executive under the Act and is appropriately included in CWA's department heads unit.

CONCLUSION

The Tax Assessor is not a managerial executive within the meaning of the Act and will remain in the unit of professional and non-professional department heads represented by CWA. Accordingly, the Town will negotiate with CWA over terms and conditions of employment for the Tax Assessor. In accordance with the parties' agreement, both of the above-captioned unfair practice charges, Docket Nos. CO-94-21 and CE-94-1 are withdrawn.



Margaret A. Cotoia
Commission Designee

DATED: October 19, 1993
Trenton, New Jersey