

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

In the Matter of

GLOUCESTER COUNTY WELFARE BOARD,

Public Employer,

-and-

DOCKET NO. RO-82-174

GLOUCESTER COUNTY WELFARE BOARD
SUPERVISORS, CWA, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, adopting the conclusions and recommendations of a Hearing Officer, finds that the Chief Clerk and Assistant Administrative Supervisor of Income Maintenance employed by the Welfare Board are supervisory employees and not managerial executives. Accordingly, an election is directed among all supervisors of the Welfare Board to ascertain their representational desires.

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Appearances:

For the Public Employer
Cassetta, Brandon Associates
(Daniel Brandon, Consultant)

For the Petitioner
Carol Gay, CWA Representative

DECISION AND DIRECTION OF ELECTION

On June 14, 1982, amended August 4, 1982, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission ("Commission") by the Gloucester County Welfare Board Supervisors, Communications Workers of America, AFL-CIO ("Petitioner") seeking to represent "all supervisory" personnel employed by the Gloucester County Welfare Board ("Board").

Hearings were held before Commission Hearing Officer, Judith E. Mollinger, on October 4 and 14, 1982, in Newark, New Jersey, at which time all parties were given an opportunity to

examine and cross-examine witnesses, to present evidence, and to argue orally. Neither party submitted a post-hearing brief. The Hearing Officer thereafter issued her Report and Recommendations on March 23, 1983, a copy of which is attached hereto and made a part hereof. No exceptions have been filed with respect to the Hearing Officer's Report and Recommendations.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript, and the exhibits and finds and determines as follows:

1. The Gloucester County Welfare Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Gloucester County Welfare Board Supervisors, Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Petitioner seeks to represent a negotiations unit of all supervisory employees. The Petitioner is neither a recognized nor a certified employee representative at the present time. However, another CWA affiliate represents nonsupervisory employees of the Board. ^{1/} The petitioned-for employees are not currently represented for collective negotiations purposes.

^{1/} The Petitioner has complied with the requirements of In re City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶ 13094 1982).

4. The Board concedes that a unit of all supervisory employees is appropriate but objects to the inclusion of the positions of Chief Clerk and Assistant Administrative Supervisor of Income Maintenance ("Assistant Supervisor") in the proposed unit, contending that both are managerial executives within the meaning of the Act and, therefore, are not public employees entitled to collective negotiations rights under the Act.

5. The Hearing Officer found that the chief clerk and assistant supervisor are not managerial executives and may appropriately be included in the petitioned-for unit.

6. N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. Section 13A-3(f) defines managerial executives as:

... persons who formulate policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in a school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980), aff'g D.R. No. 80-32, 6 NJPER 198 (¶ 11097 1980), the Commission endorsed certain guidelines for determining whether an employee is a managerial executive within the meaning of the above definition. The Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission 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. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purpose 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.

Based upon an application of the above principles, the Commission concluded in Montvale that the chief of police was a supervisor but not a managerial executive within the meaning of the Act. This result was based on the finding that formulation and implementation of policy for the police department was essentially exercised by the police committee.

In accordance with Montvale, the undersigned focuses primarily upon "(1) the relative position of [the] employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises," in determining whether the questioned employee "possess[es] and exercise[s] a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes." In re City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980); In re Essex Cty. Welfare Bd., D.R. No. 81-5,

6 NJPER 424 (¶ 11213 1980); In re City of Newark, D.R. No. 82-18,
7 NJPER 640 (¶ 12288 1981).

The Board provides its services through an administrative agency managed by a director and a deputy director. The chief clerk is one of four employees ^{2/} who report directly to the director and his deputy. The chief clerk's duties relate primarily to the clerical operations of the Board, including administrative oversight of clerical methods, operations, and staffing. She supervises 56 clerical employees, interviews all clerical candidates for vacancies, and makes employment recommendations to the director and deputy director who have authority to make appointments subject to Board approval. The chief clerk does not determine whether vacancies should be filled or how many clerical positions should be allocated. While she submits a temporary budget by projecting operating costs based exclusively upon past budgets, responsibility for regular budget proposals rests with the Director and Fiscal Officer.

The assistant supervisor reports directly to the administrative supervisor of income maintenance. The assistant supervisor supervises and evaluates 13 employees, all of whom are included in the nonsupervisory collective negotiations unit. ^{3/} The assistant

^{2/} The parties have agreed to exclude the other three employees -- Fiscal Officer, Training Officer, and Administrative Supervisor of Income Maintenance -- from the unit.

^{3/} The record reveals that the assistant supervisor is responsible for supervising and evaluating one supervisory title. However, that title is presently vacant. Since there is no indication in the record that an actual or potential conflict of interest, as noted in Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971), exists in this case, the undersigned cannot at this time speculate as to what level of conflict, if any, would exist if the vacancy were filled.

supervisor oversees the delivery of a nonassistance food stamps program, and also serves as Fair Hearing Coordinator for Agency clients. The assistant supervisor does not formulate agency or program policies, and does not prepare a budget.

Neither the chief clerk nor the assistant supervisor participate in any labor negotiations. Both individuals, however, function at the first step in the Agency's grievance procedure mechanism.

Given the above and the more fully developed findings of the Hearing Officer, which are not in dispute, the undersigned cannot conclude that the chief clerk and the assistant supervisor exercise a level of authority and independent judgment sufficient to affect broadly the Board's purposes or its means of effectuating these purposes. Accordingly, the undersigned adopts the Hearing Officer's recommendation that the chief clerk and the assistant supervisor are not managerial executives but rather are supervisors who may be represented in a supervisors' negotiations unit. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: All supervisory employees of the Gloucester County Welfare Board (including the following titles: Assistant Administrative Supervisor of Income Maintenance, Chief Clerk, Assistant Training Supervisor, Income Maintenance Supervisors, Social Work Supervisors); excluding managerial executives, confidential employees, nonsupervisory employees within the meaning of the Act, Fiscal Officer, Training Officer, Administrative Supervisor of Income Maintenance and all other employees.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.


Pursuant to N.J.A.C. 19:11-9.6, the Board is directed to file with the undersigned and with the Petitioner an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with Petitioner with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations

by Gloucester County Welfare Board Supervisors, CWA, AFL-CIO.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: June 17, 1983
Trenton, New Jersey

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SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission finds that the Chief Clerk and Assistant Supervisor of Income Maintenance are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, and recommends that they be included in the petitioned-for supervisory unit. Further, she recommends that a secret ballot election be directed wherein eligible employees shall vote as to whether they wish to be represented by Gloucester County Welfare Board Supervisors, CWA, AFL-CIO.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, and exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer
Cassetta, Brandon Associates
(Daniel Brandon, Consultant)

For the Petitioner
Carol Gay, CWA Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On June 14, 1982, amended August 4, 1982, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") (C-1) ^{1/} by the Gloucester County Welfare Board Supervisors, Communications Workers of America, AFL-CIO ("CWA"), seeking to represent a unit of "all supervisory" employees employed by the Gloucester County Welfare Board ("Board").

1/ Commission exhibits will be designated as "(C-)", Joint Exhibits "(J-)", CWA Exhibits "(P-)", and Employer Exhibits "(E-)".

The Board agrees that a unit of all supervisory employees is appropriate but objects to the inclusion of two positions, contending they are managerial executives as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and therefore, excluded from its protections and benefits.

Pursuant to a Notice of Hearing, issued August 11, 1982, by the Director of Representation, a hearing was held before the undersigned Hearing Officer on October 4 and 14, 1982, in Newark, New Jersey, at which time the parties were afforded an opportunity to examine and cross-examine witnesses, to present evidence and argue orally. The parties waived their right to file post-hearing briefs. The record closed upon receipt of the hearing transcripts November 23, 1982. The issue in this proceeding concerns the proper inclusion or exclusion from the collective negotiations unit of two titles -- Chief Clerk and Assistant Administrative Supervisor of Income Maintenance.

Finding of Fact

Based on the entire record in these proceedings, the Hearing Officer makes the following findings of fact:

1. The Gloucester County Welfare Board is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding (Tr I, 5). ^{2/}

^{2/} Transcript references to October 4, 1982, are indicated as "(Tr I,)" and to October 14, 1982, as ("Tr II,)".

2. The Gloucester County Welfare Board Supervisors, Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions. (Tr I, 6).

3. CWA asserts that the positions of Chief Clerk and Assistant Administrative Supervisor of Income Maintenance ("Assistant Supervisor") are "supervisors" within the meaning of the Act and these titles are properly included within the petitioned-for unit (Tr I, 7, 77).

4. The Board objects to the inclusion of these two titles in the supervisory unit contending the employees are "managerial executives" within the meaning of the Act (Tr I, 9).

5. A question exists concerning the composition of the collective negotiations unit and the matter is properly before the Hearing Officer for report and recommendations.

6. The parties stipulated that the only issues now in dispute are: (a) is the Chief Clerk a supervisor within the meaning of the Act and included in the unit; and (b) is the Assistant Administrative Supervisor a supervisor within the meaning of the Act and included in the unit (Tr I, 7).

7. The Board provides various services through an administrative agency ("Agency") which is managed by a Director and Assistant Director who are accountable directly to the Board (Tr I, 13). According to a recently compiled table of organization reflecting the current lines of authority (ER-1) four

individuals are responsible directly to the Director and/or Assistant Director of the Agency; these positions are: Fiscal Officer, Training Officer, Administrative Supervisor of Income Maintenance, and Chief Clerk (Tr I, 13; ER-1). Three of the four titles (Fiscal Officer, Training Supervisor, Administrative Supervisor) have already been excluded from both the supervisory unit and existing rank-and-file unit of Board employees (Tr I, 16) by agreement of the parties (Tr I, 16). The Assistant Training Supervisor is, by stipulation of the parties, included in the supervisory unit (Tr I, 14; C-1). The Administrative Supervisor of Income Maintenance has an Assistant Administrative Supervisor whose title is in dispute (Tr I, 17). Excluding the Director and Deputy Director, the Board employs approximately 157 employees in its administrative Agency (66 clerical and 91 social services employees) (ER-1). CWA has petitioned for a supervisory unit of 20 of these employees (C-1). The remainder of the employees (not those stipulated by the parties as excluded) are represented by CWA in a nonsupervisory collective negotiations unit (Tr II, 9, 12, 13).

8. The Chief Clerk, Bernadette Wodazik, has held her position for approximately four years. She has been employed by the Board for 19 years (Tr I, 118, 121). The 65 nonsupervisory clerical employees in the Agency (Tr I, 118), work in either social services, income maintenance, food stamps, computer operations, record control, check disbursement or typing. Those clerks who work in the income maintenance or food stamp divisions

are supervised by nonclerical employees (Tr I, 118; ER-1; Tr II, 18, 25). The Chief Clerk is directly responsible for supervising two employees, in the "rank-and-file" collective negotiations unit, viz., the Supervising Account Clerk and Supervising Clerk Typist (Tr I, 17), as well as the work performed by clerical employees in accounts and document control. The Chief Clerk is either directly or indirectly responsible for supervising 56 of the 65 clerical employees (ER-1). Four other clerical employees report directly to the Principal Account Clerk and three other employees report through a Principal Account Clerk to the Fiscal Officer (ER-1). The line of supervision for the eleven employees who work in Computer Operations under the supervision of a Principal Account Clerk or Principal Terminal Operator, is not clear, but they are not directly accountable to the Chief Clerk (ER-1). To insure operational efficiency of the Agency, Wodazik has authority to request temporary reassignments of clerical personnel from their regular duty assignments to another assignment as the workload requires. To accomplish this, she must request the employee's release from their immediate supervisor; none have refused, thereby requiring action by the Director (Tr I, 73, 88; Tr II, 7). She has no authority for overtime assignment without prior authorization of the Director (Tr I, 73). The Chief Clerk is responsible for reviewing clerical evaluations (Tr I, 67) and duty questionnaires (Tr I, 43; ER-3). In cases where professional staff evaluate clerical employees, the Chief Clerk initials the evaluations to

indicate that she has seen and reviewed the material before filing it, but she is not required to sign (Tr I, 118).

All applicants for clerical positions are interviewed by Wodazik (Tr I, 43, 70, 81). Wodazik obtains a Civil Service list and interviews all candidates for the advertised position, whether new-hire, promotion or transfer (Tr I, 43), and makes a recommendation directly to the Director and Deputy Director, who have authority to make appointments subject to the Board's approval (Tr I, 49, 70, 71). Two of her recommendations have been rejected; all others have been accepted by the Director (Tr I, 26, 60, 72, 73, 86, 87; ER-4 and ER-5). In instances where two applicants are equally acceptable, seniority is the deciding factor (Tr I, 87).

When job audits are necessary, Wodazik communicates directly with the State Civil Service Personnel Office to schedule the audit (Tr I, 20-22) and after the audit is completed, signs the forms attesting to the accuracy of the duties listed (Tr I, 43).

Ms. Wodazik has not recommended dismissal of employees but did effectively recommend the suspension of a clerical employee during her tenure as Chief Clerk (Tr I, 120-122). She represents the Board at the first step of the contractual grievance procedure for rank-and-file employees (Tr I, 73, 122). She does not participate in the collective negotiations process in any capacity for any reason (Tr I, 74, 119) and does not attend the nonpublic meetings of the Board (Tr I, 40).

Wodazik is consulted by the Director and Deputy Director regarding staffing needs and layoff of clerical employees. By the joint decision of Wodazik and the administration (Director and Deputy Director) no layoff has occurred in the recent past as all cutbacks have been accomplished through attrition (Tr I, 124).

Wodazik attends Supervisors' meetings which are usually held the day after Board meetings. At these meetings, the Director or Deputy Director relays information from the public portion of the Board meetings to supervisory staff (Tr I, 79). Information concerning collective negotiations (usually discussed in the closed, nonpublic, portion of the Board meetings) is not conveyed to Supervisors at the supervisory staff meetings. However, such information is subsequently included in minutes of the Board meetings which are sent to the New Jersey Department of Human Services, Bureau of Business Services in Trenton (Tr I, 18, 79; ER-2). Ms. Wodazik includes these minutes, typed by either of two confidential secretaries (the Secretary to the Director and the Secretary to the Deputy Director) along with various statistical and financial reports which she prepares each month (Tr I, 18). Although not part of her duties, Wodazik may read the minutes, and often does before their submission to Trenton (Tr I, 19, 79). This procedure has been used in the past because the Director's secretaries have the minutes completed about a week before the statistical reports are prepared (Tr I, 123). These minutes are kept in Wodazik's unlocked desk drawer until transmitted (Tr I, 124).

The Director testified that this procedure for transmission of the minutes would be changed if Wodazik is included in the Supervisory unit (Tr I, 50).

At the end of each calendar year, the Director submits a temporary budget for the first three months of the new fiscal year. The information for this temporary budget is collected by Wodazik (Tr I, 22, 83-85). She compiles financial information for the preceding 12 months, divides by 12 and uses the result as the projected monthly operating cost for the Agency. These figures are transferred to a prepared form letter (Tr I, 44, 87), which the Director submits to the Board as the temporary budget (Tr I, 22; ER-2). Wodazik has no responsibility for the regular yearly budget proposals prepared by the Director and the Fiscal Officer (Tr I, 22, 44, 45, 46, 68, 86). The Fiscal Officer may solicit information from Wodazik regarding clerical personnel needs, equipment and materials; other supervisors are polled for equipment and material requirements, but not personnel needs (Tr I, 25, 26, 45, 67, 75).

Wodazik maintains all Board accounts and oversees all fund transfers pursuant to Board authorization (Tr I, 25); she is responsible for the control and maintenance of client records for check disbursements, (Tr I, 26, 27); and supervises clerical aspects of computer operations (Tr I, 33) according to preestablished policies and procedures promulgated by the state and federal governments.

Wodazik serves as a permanent member of the Income Maintenance Advisory Committee along with the Training Supervisor, Administrative Supervisor of Income Maintenance, and several members rotating from various departments (Tr I, 31). This committee may only implement changes to internal procedures for work flow and production that are within preestablished guidelines (Tr I, 32, 115).

In 1981, Wodazik served on a strike planning committee with other supervisory and management personnel; each employee, not a member of the CWA rank-and-file unit, was assigned by the Director to specific duties in the event of a strike by the non-supervisory employees of the Board (Tr I, 37; ER-6).

The Civil Service job description, dated May 25, 1979, defines this position as follows: "Under direction, has charge of the clerical and related activities of an officer or department;" Examples of work include, inter alia: "... plans the details of clerical procedures; ... plans and revises clerical procedures and office routines and sees that suitable systems are put into action; ... interviews employment candidates; trains new employees, when so directed; ... performs highly responsible and varied clerical and related work requiring thorough knowledge of department rules and regulations and the frequent exercise of independent judgment; ... makes decisions requiring thorough knowledge of the organization or related organizations, supervises the maintenance, classification indexing and cross referencing of records and files."

income maintenance, (Tr II, 41; ER-1). Brommund oversees the delivery of non-assistance food stamps pursuant to established procedures and policies promulgated by the United State Department of Agriculture and New Jersey State Division of Public Welfare (of the Department of Human Services) (Tr II, 33, 41, 42). He implements these policies and has no authority to make changes except as to internal agency processing methods to comply with federal regulations (Tr II, 35, 36). He determines and assigns duties to his unit staff (Tr II, 50). If he has questions concerning program regulations, he consults with a State liaison person, Baldasari (Tr II, 50, 51).

Currently, all personnel within the scope of his supervision are represented in a nonsupervisory collective negotiations unit (Tr II, 54). These fourteen employees include three Income Maintenance Specialists, six Income Maintenance Workers and Technicians, one Principal Clerk Typist, three full-time clerical employees and one part-time clerical employee (Tr II, 25, 47, 53). He has no personal secretary (Tr II, 54). Previously, his unit included one Income Maintenance Supervisor but this position has been vacant since August 1981 (Tr II, 33, 47, 58).

Brommund has no role in the following functions: formulation of agency or program policies; preparation of either the temporary or regular budget (Tr II, 54); collective negotiations on behalf of the employer; formulation of management labor relations positions or proposals (Tr II, 56). In 1981, he served on the strike planning committee (Tr II, 39; ER-6).

Requirements for the Chief Clerk position include five years clerical supervisory experience; thorough knowledge of modern office methods and established policies, procedures and regulations relative to the work of the unit, the problems involved in planning the details of the established clerical work program; the ability to organize assigned clerical and supervisory work, to develop effective work methods, to give suitable assignments and instructions to individuals and groups; and to check their work to see that proper procedures are followed.

9. The Assistant Administrative Supervisor of Income Maintenance, George Brommund, has held this position since April 1981 (Tr II, 69). He was originally hired February 2, 1970, as a Social Worker in the Service Department and was subsequently promoted to Income Maintenance Supervisor for Food Stamps where he served for seven or eight years before promotion to his current job (Tr II, 18, 69, 70). Brommund is the fifth level in the Agency chain of command, and fourth in the order of persons who serve in the Director's absence with responsibility for Agency operations. Those who precede him in this responsibility are the Deputy Director, Administrative Supervisor of Income Maintenance, and Training Supervisor (Tr II, 38). No others have been delegated this authority (Tr II, 45).

Brommund's immediate supervisor, the Administrative Supervisor of Income Maintenance, in conjunction with the Training Supervisor, has responsibility to implement policy concerning

He does not hire or fire employees nor effect involuntary transfers (Tr II, 54, 55, 62). He is not consulted prior to changes in personnel (Tr II, 55) but he has some independent authority to orally discipline employees to correct work performance or other behavior; but he has not prepared written reprimands (Tr II, 54, 70).

On one occasion Brommund suggested to the Director that an employee would be "good for" the particular position of Food Stamp Supervisor; this employee was later appointed to that position (Tr II, 58). He has not been asked to make a recommendation for the current Food Stamp Supervisor vacancy (Tr II, 74). Brommund may recommend retraining staff in his unit if necessary and may request an increase in staff complement within the minimum and maximum set according to caseload figures and guidelines set by federal and state regulations (Tr II, 62, 64).

Brommund is authorized to resolve grievances at the first step of the Agency grievance procedure; he does not recall any such grievances (Tr II, 55).

Brommund serves as Fair Hearing Coordinator for the Agency (Tr II, 36). His role in this capacity is to set up hearings (Tr II, 52); to attend hearings along with the supervisor and employee assigned to the case who are directly responsible for the presentation (Tr II, 53); to hold prehearing conferences with aggrieved clients to determine whether the Agency erred and if so, to make recommendations to the Administrative Supervisor and

Director for appropriate corrective action (Tr II, 37, 53). He is also responsible to clear information requests by the public (Tr II, 37); to submit quality control reports to DPW (Tr II, 35); to respond on VIMS (wage reports)(Tr II, 57, 59). Additionally, he supervises a voluntary food stamp outreach program run by the Agency (Tr II, 40), and is authorized to issue ATP's (coupons for food stamp purchases) (Tr II, 41). During the summer of 1982, Brommund and the Administrative Supervisor of Income Maintenance attended a three week management seminar sponsored by the American Public Welfare Association (Tr II, 38). This survey course provided work shops on leadership training, the effects of various management operations, work functions, computers, quality control, labor relations, and affirmative action (Tr II, 65, 66). Other employees, the Deputy Director and Training Supervisor, did not attend as the Director determined those employees had sufficient knowledge in management techniques as evidenced by their Masters Degrees (Tr II, 43).

The job description (P-2) states:

Definition

Under the supervision of an Administrative Supervisor of Income Maintenance and/or the Director or Deputy Director of Welfare, supervises and assists in planning and coordinating the activities of a group of Income Maintenance Supervisors and assigned para-professional staff; does related work as required.

Examples of work include:

When the work program has been established and approved, assists in organizing assigned work

and supervises the work activities of a group of Income Maintenance Supervisors.

Assists Income Maintenance Supervisors in planning and conducting staff meetings of [sic] policy and procedures.

Makes appraisals and evaluations of the work efficiency of individual staff members and of the quality of the professional service provided by the Income Maintenance staff.

Prepares suitable reports.

Supervises the maintenance of essential records and files.

Analyzes, comprehends and interprets laws, rules, regulations and policies regarding financial eligibility and applies them with reasonable consistency.

The experience and knowledge required for this position include graduation from a four year course at an accredited college or university or substitution of appropriate work experience on a year-for-year basis plus two years experience in a similar agency, one year of which has been in a "supervising capacity".

Conclusions of Law and Analysis

1. Conclusions of Law

N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. ^{3/} Managerial Executive is defined in § 13A-3(f), added to the Act January 20, 1975, as those "persons who formulate management

^{3/} N.J.S.A. 34:13A-5.3 provides in pertinent part: "... provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives or confidential employees ...".

policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district, this term shall include only the superintendent or other chief administrator and the assistant superintendent of the district."

The Commission, in affirming the Director of Representation, in In re Borough of Montvale, D.R. No. 80-32, 6 NJPER 198 (¶ 11097 1980), aff'd P.E.R.C. No. 81-52, 6 NJPER 507 (¶ 11259 1980), developed standards for examining whether an employee is a managerial executive within the statutory definition:

A person formulates policies when he develops a particular set of objectives designed to further the mission 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. 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 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. 6 NJPER 508

Applying these standards in a case-by case examination, the Commission has kept in mind its call for a narrow construction of the term managerial executive. Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

Additionally, the Director of Representation found that "those chosen for 'directing the effectuation' of policy must be empowered with a substantial measure of discretion in deciding precisely how the policy should be effectuated." D.R. No. 80-32, Slip opinion p. 22 (emphasis added). Further, policy in a public employment context is defined as: "the development of particular sets of objectives of a governmental entity designed to further the mission of the agency ... Those who formulate policy are those who select a course of action from among the alternatives and those who substantially and meaningfully participate in the essential processes which result in the selection of a course from the alternatives." D.R. No. 80-32 Slip opinion pp. 21-22, P.E.R.C. No. 81-52 Slip opinion p. 87.

The managerial authority to make operative decisions on behalf of the employer is clearly distinguishable from the discretion exercised by supervisors. The Act describes supervisory employees as "any supervisor having the power to hire, discharge, discipline or to effectively recommend the same." N.J.S.A. 34:13A-5.3. In establishing the standard by which supervisory status can be measured the Director of Representation is guided by prior judicial and administrative decisions. Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 419 (1971) wherein a broad definition of supervisor was applied. See also, N.J.S.A. 34:13A-6(d); In re Borough of Metuchen, D.R. No. 78-27, 3 NJPER 395 (1977); In re Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976); In re

Cherry Hill Tp. D.P.W., P.E.R.C. No. 30 (1970); In re Middlesex Cty. Welfare Bd., P.E.R.C. No. 10, (1969).

In In re Essex Cty. Welfare Board, D.R. No. 81-5, 6 NJPER 424 (¶ 11213 1980), The Director of Representation concluded that field office supervisors were not managerial executives within the meaning of the Act. These employees reported directly to the Administrative Supervisor of Income Maintenance and were the fifth level in the Board's management chain. Each was assisted by two or three supervisors who, in turn, each supervised two to five income maintenance and social service line supervisors who directed the line staff. These field office supervisors were responsible for directing the day-to-day operation of the field office, coordinating service to clients in accordance with regulations promulgated by federal and state agencies, and directing the work assignments of staff to ensure that the policies are implemented. They had little input regarding the operating budget beyond reporting projected needs for office supplies and equipment, they had no authority to hire or fire employees, no authority to make permanent duty or work location assignments, and no authority to impose discipline beyond a reprimand. Often, their personnel or discipline recommendations were not followed. The Director of Representation found that the individuals in question exercised supervisory duties at a high level but had little, if any, input into the formulation of management policy and had limited discretion in effectuating policy.

In another case, In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980), the Director of Representation found that both the Director and Assistant Director of Nursing in the City Public Health Nursing Service were not managerial executives. These individuals were responsible to assure the planning of patient care and maintenance of professional standards; to direct the day-to-day operation and administration of Home Nursing Services of a bureau within the Department of Health in the Jersey City Department of Human Resources; to supervise the facilities and staff; to plan, coordinate and direct ongoing training; to resolve grievances (other than monetary disputes) at the second step of the contract grievance procedure for rank-and-file employees. Although they prepared the initial budget proposals for the Director of the Department of Human Resources they had no role in the process of finalizing the budget and had no role in the collective negotiations process.

The Director of Representation concluded that these employees exercised high level supervisory authority but did not formulate management policy, nor exercise discretion in effectuating policy.

Clearly, to be a managerial executive, employees must have the power to exercise substantial discretion independent of the employer's established policy and procedures, must have authority to determine policy governing the objectives of a governmental entity and to fashion methods of achieving such objectives. Final

authority is not always necessary, but the employees must be closely involved with these processes. The managerial authority to make operative decisions on behalf of the employer is clearly distinguishable from mere discretion exercised by supervisory employees who hire, fire, or discipline employees or effectively recommend these actions. The determination of managerial status necessarily turns on the degree of the authority exercised. ^{4/}

2. Analysis

A. The Chief Clerk reports directly to the Director or Deputy Director but holds no position in the Board's hierarchy of employees who serve in the Director's absence with responsibility for Agency operations. Her sphere of responsibility encompasses only the clerical functions of the Agency. She directly supervises clerical employees assigned to accounts, document control, and typing functions; she indirectly supervises other employees for their time and leave allowances, but not for work assignments, which they receive from professional employees. All of these clerical employees are included within a nonsupervisory collective negotiations unit.

Although Wodazik screens job applicants from the Civil Service list, interviews all clerical candidates for vacancies, and makes employment recommendations, she does not determine whether vacancies shall be filled, how many clerical positions will be allocated, or whether a reduction in staff is necessary.

^{4/} Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

The Director solicits her opinion as to whether staff reductions shall be by layoff or attrition. In most instances her personnel recommendations are accepted by the Director who has authority for final decisions. Wodazik does not, in any way, participate in collective negotiations with nonsupervisory staff on behalf of the Board. She does represent the Board at the first level of the grievance procedure.

As part of her responsibility to oversee clerical operations she must effectuate temporary transfers of clerical employees from one program area to another as needed; overtime assignments require the Director's prior approval.

The Chief Clerk is primarily responsible for the clerical operations necessary to the delivery of services to agency clients; secondarily for all accounts, statistical reports and Agency fund transfers. In this regard she has access to information not routinely made available to the staff or the public. Although the Director relies heavily on Wodazik's input regarding clerical methods, operations, staffing, and the preparation of the temporary budget, her discretion to act in these areas is limited by federal and state program regulations, Civil Service requirements and established policies and procedures found in the Agency operations manual. Clearly, others, namely the Fiscal Officer and Administrative Supervisor for Income Maintenance, have responsibility for Agency fiscal matters and service programs respectively. Final authority for action in all these areas rests with the

Director, subject to the limits set by governmental program regulations.

The Chief Clerk does not have the requisite authority of a managerial executive to formulate policy. Based on the foregoing, I find the position of Chief Clerk to be supervisory and recommend inclusion of the position in the collective negotiations unit.

B. The Assistant Administrative Supervisor of Income Maintenance reports directly to the Administrative Supervisor of Income Maintenance and serves at the fifth level in the Agency chain of command. He directly supervises a unit of 13 employees all of whom are included in a nonsupervisory collective negotiations unit. He does not participate in collective negotiations or the budget preparation, hire, fire, or involuntarily transfer employees, interview job applicants, or make recommendations prior to personnel changes in his or other service units. He does prepare written evaluations for his unit employees and may verbally discipline employees when necessary. He is the Board's designee at the first step of the contract grievance procedure for certain rank-and-file employees.

Primarily his responsibilities encompass Food Stamp Program Services to clients, (including the outreach program) fair hearing procedures, quality control and statistical reporting.

He does not supervise Income Maintenance Supervisors or coordinate the activities of employees outside the food stamp program nor exercise the requisite independent judgment of a managerial executive to formulate policy or direct its effectuation.

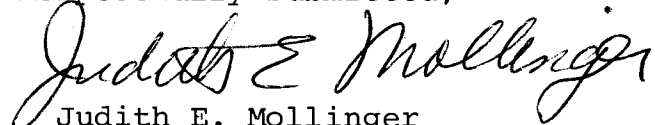
Based on the foregoing I find this position supervisory and recommend its inclusion in the collective negotiations unit.

Recommendations

Based on the foregoing discussion, I recommend the following:

1. The positions of Chief Clerk and the Assistant Administrative Supervisor of Income Maintenance are supervisory employees within the meaning of the Act and appropriately included in the petitioned-for unit.
2. The appropriate supervisory collective negotiations unit is: All supervisory employees of the Gloucester County Welfare Board (including the following titles; Assistant Administrative Supervisor of Income Maintenance, Chief Clerk, Assistant Training Supervisor, Income Maintenance Supervisors, Social Work Supervisors); excluding managerial executives, confidential employees, nonsupervisory employees within the meaning of the Act, and all other employees.
3. That a secret ballot election be directed wherein eligible employees shall vote as to whether they wish to be represented by the Petitioner.

Respectfully submitted,


Judith E. Mollinger
Hearing Officer

DATED: March 23, 1983
Trenton, New Jersey