

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY WELFARE BOARD

Public Employer

and

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

and

Docket NO. R-134

BERGEN COUNCIL NO. 5, NEW JERSEY
CIVIL SERVICE ASSOCIATION

Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning representation of certain employees of the Bergen County Welfare Board, a hearing was held before Hearing Officer Jeffrey B. Tener on January 8 and February 3, 1970 at which all parties were given an opportunity to examine, and cross-examine witnesses and to present evidence. Subsequently, the petitioner and the public employer filed briefs. On September 21, 1970, Hearing Officer Tener issued his Report and Recommendations. Bergen County Welfare Board filed exceptions to certain findings and recommendations of the Hearing Officer. The Executive Director has considered the record, the Hearing Officer's Report and Recommendations, attached hereto, and the Exceptions and on the basis of the facts in this case finds:

1. Bergen County Welfare Board is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. American Federation of State, County, and Municipal Employees, AFL-CIO and Bergen Council No. 5, New Jersey Civil Service Association are employee representatives within the meaning of the Act.
3. The employer refuses to recognize the petitioner as the exclusive negotiating representative for certain of its employees. Accordingly, a question concerning the representation of public employees exists and the matter is properly before the Executive Director for determination.
4. The Executive Director adopts the Hearing Officer's findings and recommendations except as modified herein.
5. American Federation of State, County and Municipal Employees, AFL-CIO seeks essentially a unit of all Supervisors of Case Work and Caseworkers; Council No. 5 contends that the unit sought is inappropriate but does not set forth any further unit position; the employer takes the position that Supervisors of Case Work are supervisors and may not be included with Caseworkers. The Board also contends that the appropriate unit would be one composed of Caseworkers and clerical employees.
6. The Hearing Officer found that neither the Supervisor of Case Work nor the Caseworker is a "professional". As there were no exceptions to this finding, it is adopted pro forma.
7. The employer excepts to the unit finding by the Hearing Officer, contending 1) the Supervisor of Case Work is a supervisor within the meaning of the Act and should not be included with non-supervisors, i.e. the Caseworkers, and 2) the unit is inappropriate as it fails to include clerical employees.

The record reveals that Supervisors of Case Work have, in fact, effectively recommended the firing of Caseworkers. The uncontradicted

testimony of the Acting Deputy Director is that Caseworkers have been discharged or retained based upon the Case Work Supervisor's evaluation and recommendation. The testimony of the witness who is a Supervisor of Case Work that her function is limited to overseeing the work of the probationary worker and in making progress reports to indicate whether or not further training is indicated while not in conflict with the testimony of the Acting Deputy Director is inapposite as 1) the Supervisor of Case Work has only been employed in that position for a short period of time supervising the probationary employees, and 2) she is only one of 9 in that position. Accordingly, I conclude that the Supervisor of Case Work possesses and exercises the authority to recommend with effect the discharge of employees and is a supervisor within the meaning of the Act. The fact that a dismissal may be appealed to the Civil Service Commission is not controlling. Such an appeal may never be made in which case the employer's decision will have effect.

With regard to the unit question, the record reveals that the duties of the clerks and the Caseworker are dissimilar; the Caseworkers perform investigative and counseling duties including, but not limited to, budgetary matters, as compared to work of a clerical nature performed by the clerks. These respective duties require different skills. The groups have separate supervision, and a separate promotional line, though clerks after passing a test may become Caseworkers. There is no interchange between the employees. The Caseworkers spend a substantial amount of their time in the field whereas the clerks are located in the office. Moreover, there is no petition before

the Commission to include the clerks with the Caseworkers.


Based upon all of the above, the undersigned finds that the following unit is appropriate:

All Caseworkers employed by the Bergen County Welfare Board but excluding office clerical, professional and craft employees, managerial executives, policemen, Supervisors of Case Work and all other supervisors within the meaning of the Act.

Eligible to vote are all the employees in the unit described 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 on leave of absence, 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 quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure, and it shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote shall vote on whether or not they desire to be represented for purposes of collective negotiations by American Federation of State, County and Municipal Employees, AFL-CIO;

Bergen Council No. 5, New Jersey Civil Service Association; 1/
or neither.



Louis Aronin
Executive Director

DATED: November 6, 1970
Trenton, New Jersey

1/ At the hearing the intervenor indicated it could not state whether or not it wished to appear on the ballot, if any election was so directed. If it does not notify the Executive Director within five days from the issuance of this decision of its desire to appear on the ballot, it will be concluded that it does not desire to do so.

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Appearances :

For the Bergen County Welfare Board

Michael J. Ferrara, County Counsel

By Edwin C. Eastwood, Jr., Assistant County Counsel

For the American Federation of State, County and
Municipal Employees, AFL-CIO

Coleman, Lichtenstein, Levy and Segal

By Mark Z. Segal, Esq. (second day of hearing and brief)

Charles Keller and Patrick Nardolilli (first day of hearing)

For Bergen Council No. 5, Civil Service Association

Paul Giblyn, Esq.

By Seymour Cohen, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition for certification of public employee representative was filed with the Public Employment Relations Commission by the American Federation of State, County, and Municipal Employees, AFL-CIO on August 22, 1969 and subsequently amended first on October 22, 1969 and again on November 13, 1969. Pursuant to a Notice of Representation Hearing dated

December 10, 1969 and two Orders Rescheduling Hearing dated December 22, 1969 and January 8, 1970, hearings were held before the undersigned Hearing Officer on February 3, 1970 in Trenton, New Jersey and on April 8, 1970 in Newark, New Jersey, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Two of the parties submitted briefs by April 30, 1970. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Bergen County Welfare Board is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The American Federation of State, County, and Municipal Employees, AFL-CIO and Bergen Council No. 5, New Jersey Civil Service Association are employee representatives within the meaning of the Act.
3. The public employer having refused to recognize petitioner as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the undersigned for Report and Recommendations.

ISSUES

1. Are supervisors of case work "supervisors" within the meaning of the New Jersey Employer-Employee Relations Act?
2. Are supervisors of case work and caseworkers "professional" employees?
3. Is the unit of caseworkers and supervisors of case work which is sought by petitioner an appropriate unit?

POSITIONS OF PARTIES

The public employer contends that supervisors of case work are supervisors within the meaning of the Act and, therefore, that they may not be included in a unit with nonsupervisors. The public employer maintains that caseworkers are not professionals but takes no position regarding the professional or nonprofessional status of supervisors of case work. The Board also contends that the unit sought by petitioner is inappropriate and that the appropriate unit would be one composed of caseworkers and clerical employees of the Bergen County Welfare Board.

Intervenor's position is that the supervisors of case work are not supervisors within the meaning of the Act and that neither caseworkers nor supervisors of case work are professional employees. On the unit issue, intervenor disputes the appropriateness of the unit sought by petitioner but was precluded from setting forth its position by the inadequacy of its showing of interest. Intervenor's showing of interest met the standard 10% of the employees in the unit involved set forth in Section 19:11-13 of the Commission's Rules and Regulations but intervenor did not submit a 30% showing of interest necessary to support a contention that a different and larger unit is appropriate.

Petitioner's position is that supervisors of case work are not supervisors within the meaning of the Act and that both caseworkers and supervisors of case work are professional employees. Petitioner maintains that an appropriate unit is one consisting of caseworkers and supervisors of case work.

SUPERVISORS OF CASE WORK

Section 7 of Chapter 303, Laws of 1968, refers to a supervisor as one "...having the power to hire, discharge, discipline, or to effectively recommend the same..." Thus, the question is whether or not supervisors of case work have these powers.

An examination of the Department of Civil Service job description for this position does not resolve this issue. The job description does not specifically confer the above-listed powers but, arguably, the exercise of such powers would not be inconsistent with the job description. Therefore, it is necessary to look at the testimony to determine whether supervisors of case work in fact do have the attributes of a supervisor within the meaning of the Act.

The title, alone, does not make an individual a supervisor within the meaning of the Act. ^{1/} Furthermore, the term "supervisor" is used in a narrower sense in Chapter 303 than that term is used in the National Labor Relations Act and in a number of state statutes covering public employees. An individual must have the power to "hire, discharge, discipline, or to effectively recommend the same" to be a supervisor for these purposes.

There is no evidence that supervisors play any role in hiring new employees. They neither hire nor do they recommend. They are not even involved in interviewing candidates for employment except in isolated circumstances where those at the top of the hierarchy are unavailable to interview candidates. In the typical situation, interviews are conducted by the Training Supervisor - a position not in dispute

1/ P.E.R.C. No. 10, Middlesex County Welfare Board and Communications Workers of America, AFL-CIO, p.3.

in these proceedings - and by others above this position but not by supervisors of case work.

The Acting Deputy Director of the Welfare Board testified that she had recommended that two people be discharged when she was a supervisor of case work and that these people were in fact discharged (T. 137 and 138) and, further, that, "We have both kept workers because of supervisor evaluations and we have fired workers because of supervisor evaluations". (T. 107) She also provided several examples of instances in which individuals were both retained and released on the basis of the recommendations of the supervisors of case work. (T. 110)

The fact that someone was discharged and that a supervisor of casework had recommended such action does not necessarily make that recommendation "effective". The relationship does not establish causality. Assuming that there have been recommendations to retain or discharge employees by supervisors of case work, there is no evidence that the supervisors of case work were involved beyond the making of a recommendation. That is, the supervisor of case work may make a recommendation but this recommendation is subject to an independent investigation by the Director or the Board. It is the Director or the Board which makes the final decision and this decision may be based in part upon the recommendation of the supervisor of case work. This also applies to the evaluations of supervisors of case work regarding probationary employees. Evaluations and recommendations are made by the supervisors of case work but these are subject to independent review. This procedure reduces the recommendation of the supervisor to little more than the possible first step in the initiation of an investigation of an employee. This investigation does not involve the supervisor of case work.

The individual, of course, may be entitled to a hearing before the Civil Service Commission if he so desires. In that case, it is obvious that an independent review and determination is made with final authority vested in the Civil Service Commission.

Based upon the above, the undersigned does not find that supervisors of case work have the power to discharge or to effectively recommend discharge.

Finally, there is the matter of discipline. Petitioner's witness, a supervisor of case work, testified that she has never been given the authority to recommend discipline. (T. 34)

The public employer attempted to establish that supervisors of case work have such authority. Little of the testimony, however, bore directly on discipline. Such matters as vacation schedule, sick leave, expense records, and approval of caseworkers' applications are not within the scope of the definition of supervisor. The record reveals that in several specific instances of a "disciplinary" nature, the supervisor of case work discussed the problem in advance with a superior before taking any action. The action taken was at the suggestion of the superior. (T. 109 and 160 to 161)

A careful reading of all the evidence leads to the conclusion that what supervisors of case work do is to oversee the activities of caseworkers. They see that caseworkers do their jobs and they check on the work output of the caseworkers. However, they do not hire, discharge, discipline, or effectively recommend the same regarding caseworkers. The relationship between the caseworker and the supervisor of case work was conveyed quite meaningfully by petitioner's witness, a supervisor of case work, who, in describing an evaluation of a probationary employee, indicated that it consists of:

Their general knowledge, what her general knowledge of her duties seem to be, where it should be strengthened, how she performs, her relationships to her clients, her attitude towards them, whether she has kept up to the schedule of work assigned to her, whether she should receive any special training or reinforcement in any given area.
(T. 74 and 75)

Based upon all of the above, the undersigned finds that supervisors of case work are not "supervisors" within the meaning of the Act.

PROFESSIONALS

The second issue in this case concerns the status of supervisors of case work and caseworkers: specifically, whether or not they are professional employees. This question is germane because the Act in relevant part provides that :

The division [of Public Employment Relations] shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes....(2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit..." (Section 6(d))

Thus, in order to combine professionals with nonprofessionals in a single unit, absent established practice, prior agreement or special circumstances, the professional employees must vote to be included in a unit with nonprofessional employees.

The Act does not define a "professional" employee nor has the Commission or the Executive Director set forth through a prior decision a definition of a professional employee.

The National Labor Relations Act does provide a definition of "professional employee" which, while not controlling, is informative and does provide some basis for discussion. That definition follows:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgement in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes. 2/

Under the criteria of that definition, the record in this case including the job description of both caseworkers and supervisors of case work does not support a finding that either supervisors of case work or caseworkers are professional employees. The Civil Service job requirement and the academic backgrounds of the occupants of the positions in question are too general to fall under the definition of the Labor-Management Relations Act.

The record reveals that the academic training of caseworkers is varied: their degrees are in a number of disciplines, many quite unrelated to the field of social work. To become a supervisor of case work, one must, in addition to passing the Civil Service examination, have a certain amount of experience as a caseworker. Graduate work in a field related to social work can be substituted for some of the experience requirement but some experience is a prerequisite and experience alone without further education is sufficient.

2/ Labor-Management Relations Act, 1947, as Amended, Section 2 (12).

In the opinion of the undersigned, it would not be unreasonable for the Commission to adopt the definition of a professional quoted above. If this definition were applied, neither the caseworkers nor the supervisors of case work would be professional employees.

Based upon the assumption that the Commission will accept the definition of a professional employee which is used in the Labor-Management Relations Act, 1947, as Amended, or a definition which is similar to that one, the Hearing Officer finds that neither the caseworkers nor the supervisors of case work are professional employees.

APPROPRIATE UNIT

The unit of caseworkers and supervisors of case work sought by petitioner covers approximately 60 employees. The public employer favors a unit of all nonsupervisory employees of the Welfare Board including the approximately 40 clerical employees which would result in a negotiating unit of about 100 persons.

The only unit sought 3/ is that petitioned for by AFSCME. It is not necessary to rule on the appropriateness of the unit which the public employer contends is appropriate because no employee organization seeks recognition in such a unit. Therefore, the question before the Hearing Officer is whether or not, giving due regard for the community of interest among the employees concerned as provided in Section 7 of the Act, caseworkers and supervisors of case work do constitute an appropriate

3/ Council No. 5, as noted above, is on record as favoring a larger unit but was unable to support this contention due to the inadequacy of its showing of interest. Therefore, they simply disputed the appropriateness of the unit sought by petitioner and urged the dismissal of that petition.


unit. In the opinion of the undersigned, evidence that one unit of employees might be appropriate does not, by itself, establish the inappropriateness of another unit.

Caseworkers and supervisors of case work have much in common. They work for the same employer - the Bergen County Welfare Board. This fact does not establish a community of interest but it is regarded as a minimal requirement. The only difference in the job requirements for the two jobs are experience as a caseworker and a second Civil Service examination. Thus, the skills, education and requirements are closely related and overlapping. Caseworkers and supervisors of case work work out of the same office and are subject to the same hierarchy of supervisors although, of course, the caseworkers are one line lower than supervisors of case work on the organization chart. The work of the caseworkers and supervisors of case work is almost totally integrated in that the supervisors of case work check on and approve the work of the caseworkers. Furthermore, the record indicates that the supervisors of case work, in emergencies, perform some case handling activities that case workers ordinarily perform. (T. 85) Finally, the benefits of the supervisors of case work and the caseworkers as well as other agency employees are the same except that caseworkers receive automobile insurance.

In light of the above facts which do point toward a community of interest among the employees concerned and in the absence of evidence of any conflict of interest among the employees in the unit sought by petitioner, the undersigned finds a unit of caseworkers and supervisors of case work to be an appropriate unit.

RECOMMENDATIONS

Based upon the above findings that supervisors of case work are not supervisors within the meaning of the Act, that neither caseworkers nor supervisors of case work are professional employees, and that a unit of caseworkers and supervisors of case work in an appropriate unit, it is recommended that an election be directed among the employees in a unit of caseworkers and supervisors of case work of the Bergen County Welfare Board to determine whether the employees wish to be represented for purposes of collective negotiations by the American Federation of State, County, and Municipal Employees, AFL-CIO, Bergen Council No. 5, Civil Service Association, or neither organization. The election should be conducted in accordance with the Rules and Regulations of the Public Employment Relations Commission.



Jeffrey B. Tener
Hearing Officer

DATED: September 21, 1970
Trenton, New Jersey