

D.R. NO. 89-26

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

In the Matter of

BOROUGH OF CLAYTON,

Public Employer,

-and-

Docket No. RO-89-21

AFSCME COUNCIL #71,

Petitioner.

SYNOPSIS

The Director of Representation determines that a Tax Collector is neither a managerial nor a supervisory employee, that a secretary to the Chief of Police is a confidential employee and that a Court Clerk is a supervisory employee. He directs an election to determine the majority representative of a unit of blue and white collar municipal employees, including the Tax Collector and excluding the secretary to the Chief of Police and the Court Clerk.

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Appearances:

For the Public Employer
Edward A. Bell, Administrator

For the Petitioner
John P. Hemmy, Associate Director

DECISION AND DIRECTION OF ELECTION

The American Federation of State, County and Municipal Employees ("AFSCME") has filed a Petition for Certification of Public Employee Representative (Docket No. RO-89-21), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). AFSCME seeks to represent a unit of all blue collar employees and white collar employees, including police radio dispatchers, employed by the Borough of Clayton ("Borough"). The Borough does not consent to the conduct of a secret ballot election because it alleges that its Tax Collector, secretary to the Chief of Police and Court Clerk are not appropriate for inclusion in the petitioned-for unit.

A Commission staff agent conducted an investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts.^{1/} It appears that there are no substantial and material factual issues in dispute which may be more appropriately resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the Petition is properly based on our administrative investigation. The following facts appear.

Barbara Heller ("Heller") is the Borough's Tax Collector. The Borough objects to her inclusion in the petitioned-for unit on the basis of her status as a revenue officer. Heller collects taxes and prepares bills and delinquency notices. She has not made any recommendations concerning employee hiring, discipline or discharge. If she has a problem with the Deputy Tax Collector (who also functions as the Borough Clerk and Deputy Borough Administrator), Heller would contact the Borough Administrator, who in turn would discuss the matter with the Mayor and Council. Heller is not involved in the decision making process for employee hiring, discharge or discipline. Although she may make recommendations, she has no formal authority and has not made any personnel recommendations in the year that she has worked for the Borough. Heller has no policy making or final decision making authority, does

^{1/} The Borough changed administrators after the initial conference, necessitating further investigation of this matter.

not prepare the budget, administer policies or make purchases other than basic supplies. She is not involved in the negotiations process or the grievance procedure.

The Borough contends that secretary to the Chief of Police Bonnie Streitz ("Streitz") is a confidential employee. Streitz keeps police attendance records and submits them to the payroll clerk. She also types grievances and grievance responses dictated by the Chief, and thus knows the outcome of grievances prior to their receipt by the greivant. Although she is thus involved in the contract administration process, she is not a participant in the contract negotiations process.

The Borough contends that Court Clerk Karen McKay ("McKay") is a supervisory employee. McKay oversees the administrative functions of the court, acts as the secretary to the Municipal Court Judge and supervises the Deputy Court Clerk and the court reporter. She once recommended the discharge of a court reporter because the reporter was not available to work extra days on short notice and had an attitude problem. She also recommended the hiring of a part-time clerical employee to assist with a case backlog. McKay recommended the hiring of an individual who was employed by the Borough in another capacity, and the giving of that employee six additional hours of work per week. McKay's recommendations in these specific incidents of hiring and discharge were made directly to the Mayor and Council and followed by them. There is no intermediate level of authority between McKay and the Mayor and Council.

Analysis

Although the Borough contends that Heller should be excluded from the proposed bargaining unit because she is a revenue officer, the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq. "Act"), contains no such exclusion. Nor can the position of revenue officer be classified as either supervisory or managerial. The Commission has determined that the Act, in effect, defines a supervisory employee as one having the authority to hire, discharge discipline or to effectively recommend any of the foregoing. Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970). There must also be evidence that such supervisory authority is regularly exercised in order to find supervisory status. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). There is no evidence that Heller, as revenue officer, has ever exercised authority to hire, discharge or discipline. Although the Borough said that Heller may make such recommendations, alleged supervisory authority must be exercised with some regularity. Mere possession of such authority is insufficient to sustain a claim of supervisory status. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984), citing Somerset Cty. Guidance Center. 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..." Heller has no policy making authority. See 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). Based on the above, we find that Heller, as revenue officer, is appropriate for inclusion in the petitioned-for unit.

The Borough contends that secretary to the Chief of Police Bonnie Streitz is a confidential employee. N.J.S.A. 34:13A-3(g) defines confidential employees as "...employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties." Although Streitz is not involved in collective bargaining, she does type grievance responses for the Chief and has knowledge of grievance outcomes before they reach the grievant. Typing and filing of labor-related materials such as grievances and knowledge of grievance responses before they are sent to the grievant renders an employee confidential. Tp. of Aberdeen, P.E.R.C. No. 88-95, 14 NJPER 315 (¶19114 1988); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), app. pending App. Div Dkt. No. A-4297-87T1; Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979). We find that Streitz is a confidential employee and thus inappropriate for inclusion in the petitioned-for unit.

The Borough contends that Court Clerk Karen McKay is a supervisory employee. In contrast with Heller, it appears that McKay has both the authority to make effective hiring and discharge recommendations and has exercised that authority on more than one occasion. Cherry Hill, Hackensack Bd. of Ed., Tp. of Teaneck, E.D.

No. 23 (1971). In the examples cited by the Borough, McKay's recommendations were made directly to the Mayor and Council and followed by them without independent review and analysis. Her recommendations are therefore effective. Teaneck, Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), aff'g. H.O. No. 84-11, 10 NJPER 149 (¶15075 1984). We find that McKay is a supervisory employee and ineligible for inclusion in the petitioned-for unit.

Based on the foregoing, the Tax Collector is neither a supervisor within the meaning of the Act nor a managerial executive and is therefore appropriately included in the petitioned-for unit. The secretary to the Chief of Police is a confidential employee and the Court Clerk is a supervisor within the meaning of the Act, and neither is eligible for inclusion in the unit. We direct that an election be conducted in the petitioned-for unit of all blue collar employees and white collar employees of the Borough of Clayton, excluding the secretary to the Chief of Police and the Court Clerk, to determine whether or not they desire to be represented by the petitioner.

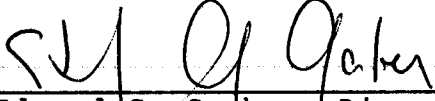
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 12, 1989
Trenton, New Jersey