

D.R. NO. 87-3

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

In the Matter of

COUNTY OF BERGEN  
(OPERATING THE BERGEN PINES HOSPITAL),

Public Employer,

-and-

DOCKET NO. RO-86-38

UNITED SALARIED PHYSICIANS AND  
DENTISTS,

Petitioner.

SYNOPSIS

The Director of Representation finds a unit of physicians and dentists to be an appropriate unit for purposes of collective negotiations. He orders an election to be conducted among those who met the sufficient regularity and continuity of employment threshold as agreed upon by the parties.

The employer's argument that this residual unit should be combined with an existing unit of non-medical professionals is rejected. The formation of a twelfth and final unit of Hospital employees would not lead to unit fragmentation. Further, the employer's claims that all assistant departmental directors and section chiefs are either managerial or supervisory is unsupported by any evidence or factual proffers. The supervisory status of two physicians (one assistant department director and one section chief) is found to be the subject of a legitimate factual dispute. Those employees comprise an insubstantial fraction of the unit, and may be challenged at the election directed herein.

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Appearances:

For the Public Employer,  
Melli & Doyne, Esqs.  
(Janice Gatto, of counsel)

For the Petitioner,  
Irwin Geller, Esq.

DECISION AND DIRECTION OF ELECTION

The United Salaried Physicians and Dentists ("U.S.P.D.") filed a Petition for Certification seeking to represent certain physicians and dentists employed by Bergen Pines County Hospital ("the Hospital"). The Hospital declined to consent to a secret ballot election among the employees. The matter is properly before me for a decision.

Pursuant to N.J.A.C. 19:11-2.6, I directed an administrative investigation into the matter. Based upon that investigation, I find and determine as follows:

1. The parties have stipulated that the public employer of these employees is the County of Bergen, which operates the Bergen Pines County Hospital.

2. The United Salaried Physicians and Dentists, an employee organization within the meaning of the Act, has filed a valid petition, accompanied by an adequate showing of interest. By its petition, filed on October 4, 1985, and the amendment filed on January 24, 1986 to clarify the scope of the unit, the U.S.P.D. seeks to represent:

all regularly and recurrently employed physicians and dentists employed at the Bergen Pines County Hospital, including assistant directors, associate directors, unit chiefs/section chiefs; but excluding department directors, physicians and dentists employed as interns, residents or fellows; all non-physician/dentist employees, executives, managerials, confidentials, and supervisory employees.

The approximate number of employees in the petitioned-for unit is 40: 2 assistant directors, 1 associate director, 10 section/unit chiefs, and approximately 27 physicians and dentists.

3. At one of the two informal conferences conducted by the assigned staff agent, the parties stipulated that the petitioned-for unit was limited by the Commission's relevant case law<sup>1/</sup> regarding

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<sup>1/</sup> See, State of New Jersey, P.E.R.C. No. 86-24, 11 NJPER 556 (¶16193 1985); Township of Mt. Olive, P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982); Rutgers University, P.E.R.C. No. 76-49, 2 NJPER 229 (1976), affm'g E.D. No. 76-35, 2 NJPER 176 (1976) and D.R. No. 77-5, 3 NJPER 12 (1976) (dismd. elec. objections), aff'd App. Div. Docket No. A-1652-76 (1977),

the regularity and continuity of the employment relationship. Thus, the parties agreed that the unit sought may appropriately be defined as follows:

all regularly scheduled full-time and part-time physicians and dentists and per diem physicians and dentists who work at least 1/6 (.16) of a regular work year (at least 345 hours in a calendar year) and who continue to be on the active payroll in the next succeeding calendar year.

However, the Hospital contends that Department Directors, Assistant Directors, and Section/Unit Chiefs are managerial executives or supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and should be excluded from the unit. The U.S.P.D. agrees to exclude Department Directors from the proposed unit and it has excluded Department Directors from its petition, as amended. The U.S.P.D. disagrees that the Assistant Directors and/or Section/Unit Chiefs are supervisors or managerial executives within the meaning of the Act.

In correspondence dated April 7, 1986, we afforded the parties 7 days within which to proffer additional statements of position, together with relevant documentation in support thereof,

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1/ Footnote Continued From Previous Page

certif. den. 76 N.J. 243 (1978); Ocean County College, D.R. No. 83-4, 8 NJPER 476 (¶13222 1982); County of Ocean, D.R. No. 79-25, 5 NJPER 128 (¶10076 1979); Bridgewater-Raritan Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978).

and that in the absence of disputed factual issues being raised, a decision would issue based upon the administrative investigation.

In response to our letter, the Hospital submitted an additional statement of position raising other arguments as to why an election should not be conducted among the employees in the petitioned-for unit. Specifically, the Hospital argues (a) the showing of interest submitted by the union in support of its petition has not been verified to the Hospital's satisfaction; (b) the petitioned-for unit is inappropriately narrow - these employees should be combined with other professional hospital employees; (c) the unit sought is inappropriate in that it seeks to include certain section chiefs and assistant division directors who are alleged to be managerial executives and/or supervisors within the meaning of the Act; and (d) a hearing is necessary to resolve ambiguities as to which employees are appropriate for inclusion in the unit.

#### Showing of Interest

N.J.A.C. 19:11-1.2 provides that petitions for certification of public employee representative shall be accompanied by a showing of interest of not less than 30% of the employees in the petitioned-for unit. N.J.A.C. 19:10-1.1(a)(25) requires that

When requesting certification, a showing of interest shall consist of authorization cards or petitions, signed and dated by employees normally within six (6) months of the filing of the petition, and shall authorize that employee organization to represent them for purposes of collective negotiations.

The purpose of the showing of interest requirement is to enable the Commission to assure itself that there is a sufficient demonstration of employee interest to warrant the processing of the matter by the Commission. See Woodbridge Twp. Board of Education, D.R. No. 77-9, 3 NJPER 26 (1977). Note that N.J.A.C. 19:11-2.1 specifically provides that:

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such determination shall not be subject to collateral attack.

I am satisfied that the Petitioner has fulfilled the showing of interest requirement contained in the Commission's rules.

### Unit Appropriateness

The Hospital alleges that the petitioned-for unit is inappropriately narrow because there are other units of professional employees with which the petitioned-for employees should be combined. Thus, the Hospital argues that permitting this group of physicians to organize as a separate unit would result in an unduly fragmented unit structure at the Hospital.

The Hospital's employees are presently organized into 11 separate bargaining units<sup>2/</sup> including a non-medical professionals'

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<sup>2/</sup> The units are: blue-collar unit; clerical unit; engineers' unit; licensed practical nurses' unit; registered nurses' unit; head nurses' unit; first-line supervisors' unit; security officers' unit; technical services unit; interns' and residents' unit; and a non-medical professionals' unit.

unit, which is represented by Communications Workers of America. The existing professional unit, represented by Communications Workers of America, is described in its certification (dated November 6, 1975) as "all non-medical professional employees." Clearly, doctors and dentists are excluded from that unit. The CWA has not sought to add this residual group to their existing unit nor has it sought to intervene in this proceeding. As the Commission noted in University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983):

...It is necessary to balance the need to find the most appropriate collective negotiations unit against the right of the public employees who desire to obtain such representation.

In that matter, the Commission found that, as here, the representative of the existing collective negotiations unit did not seek to represent the employees in dispute. To deny the employees representation indefinitely because an existing negotiations unit does not desire to represent them is inconsistent with the purposes of the Act. University of Medicine & Dentistry, supra. Here, on balance, I find that the right of representation outweighs the employer's concern for undue unit fragmentation.

Moreover, unit fragmentation is a relative consideration depending upon the circumstances in which it arises. See, Salem County College, P.E.R.C. No. 85-20, 10 NJPER 532(¶15244 1984); New Jersey State College of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977) Here, except for managerial and confidential personnel, virtually all employees in the Hospital's work force are

already included in one of the 11 existing collective negotiations units. It would not seem an undue hardship on the employer to have a 12th and final bargaining unit established.

Assistant Directors/Associate Directors

The Act provides that the rights of public employees to organize and negotiate collectively are not extended to managerial executives (see N.J.S.A. 34:13A-5.3). N.J.S.A. 34:13A-3(f) defines managerial executive 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, except that in any school district this term shall only include the superintendent of other chief administrator, and the assistant superintendent of the district.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), 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 for 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 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. Id. at 509.



N.J.S.A. 34:13A-5.3 defines a supervisor as an employee having the power to hire, discharge, discipline or effectively recommend the same. See Township of Cherry Hill, P.E.R.C. No. 30 (1970).

There are two assistant department directors in dispute. The first is the Assistant Director of the Department of Anesthesiology, Dr. Heljo Tannberg. The County alleges that "he fills in" for Dr. Sosa, the Director of the Anesthesiology Department, in the Director's absence. The second disputed employee is the Assistant Director of Psychiatry (Dr. Stanley Waldinger). The County contends that

He is responsible for the supervision of professional activities within the department of psychiatry. [He] monitors compliance with regulatory agency standards and quality assurance plan. [He] assumes clinical responsibilities of the Director in his absence.

While the County alleges that the Assistant Directors take over for their respective Department Directors when the Directors are absent, the County has proffered no evidentiary materials or specific factual allegations to support its contention that the Assistant Directors exercise managerial and/or supervisory authorities. By letter of May 28, 1986, we gave the Hospital an additional opportunity to present such facts. The Hospital was also told that unless there are specific, substantial and material factual issues in dispute, we would make our determination based upon our administrative investigation. No additional facts have

been proffered. Therefore, I find that there is no basis to conclude that the Assistant Directors are managerial executives or supervisors within the meaning of the Act. Accordingly, they are eligible for inclusion in the proposed unit.

The Hospital did submit an affidavit from Associate Director of the Department of Psychiatry, Dr. Igbal.<sup>3/</sup> In his affidavit, Igbal states that he "has the power to recommend and effectuate the hiring, firing and discipline of approximately 25 employees under [his] jurisdiction..." Specifically, he recommends the creation of positions, he screens applicants, interviews and effectively recommends candidates. He indicates that his recommendations are consistently accepted and he has the discretion to discipline employees, including verbal counselling of employees, the issuance of warnings, letters of reprimand and/or suspensions. He further states that it is within his discretion to recommend that an employee's relationship with the Hospital be terminated. Accordingly, there is a question as to whether Igbal is a supervisor within the meaning of the Act and accordingly, his placement in the unit is in doubt.

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<sup>3/</sup> Dr. Igbal was formerly listed only as the "Chief of the Psychiatric Education Section"; the position is now known as "Director of Psychiatric Education"; however, Psychiatric Education is not listed as a "department" within the Rules and By-Laws of the Hospital's Medical Code.

Section/Unit Chiefs

The Hospital also contends that the Section/Unit Chiefs are supervisors. The USPD disagrees. In the submission provided by the Hospital, listed under "duties" for each section chief, it indicates that the section/unit chief is responsible for the "overall supervision of the unit, and provide direct patient care".

In its memo of law submitted in response to our April 7 letter, the Hospital states that,

By virtue of the certifications submitted herewith, it is clear that Doctors Mark Adler, Hormoz Ashtyani, John Pantazopolous, Martin Carlton, Juvad Igbal, Gerald Meyerhoff, and Arthur Rubin should not be part of the bargaining unit, which is requested.<sup>4/</sup>

The only section chief for whom any substantive factual information was presented is Hormoz Ashtyani, Chief of Pulmonary Medicine. The Hospital submitted an affidavit executed by Ashtyani in which he asserts that, "As Chief of Pulmonary Medicine, I have the power and authority to recommend and effectuate the hiring, firing and discipline of approximately 8 to 10 employees under my jurisdiction." He goes on to specifically aver that he recommends the creation of positions, screens applicants, interviews and

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<sup>4/</sup> Drs. Adler, the Director of Internal Medicine, Carlton, the Director of Clinical Psychiatry and Rubin, the Director of Long Term Care, are not in dispute, since the parties agreed to exclude Department Directors. Dr. Pantazopolous (Section Chief of Cardiology) is not included in the unit because he does not meet the requisite regularity and continuity of employment test agreed upon by the parties for determining unit inclusion. In the event that his regularity of employment increases to the point of meeting the standard, then his supervisory status can be challenged.

effectively recommends candidates. He indicates that his recommendations are consistently accepted. He states that he has discretion to discipline employees, including verbal counselling of employees and the issuance of warnings, letters of reprimand and/or suspensions. Accordingly, there are substantial and material factual issues concerning the supervisory status of Ashtyani and the unit status of this position remains in dispute.

The only assertions submitted by the Hospital as to the duties of Dr. Meyerhoff (Chief of Child and Adolescent Psychiatry) was an affidavit signed by Dr. Carlton which simply restates the statutory criteria for supervisory status and ascribes those to Meyerhoff. By our letter of May 28, 1986, we advised the Hospital that these were mere conclusions of law and they were not sufficient to either establish that Dr. Meyerhoff was a supervisor or to warrant the convening of an evidentiary hearing on the unit status of Meyerhoff's position. No further facts have been proffered with regard to Meyerhoff. Therefore, I find that there is no sufficient basis upon which to exclude him from the unit.

No facts have been asserted with regard to any of the other section chiefs. Accordingly, I find that the other section chiefs who met the regularity and continuity of employment test established by the Commission<sup>5/</sup> are eligible for inclusion in the unit.<sup>6/</sup>

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<sup>5/</sup> There are seven other section chiefs who do not meet the regularity and continuity standard and thus are excluded from consideration herein on that basis.

Based upon the foregoing, I find that the following collective negotiations unit is appropriate:

Included: All regularly scheduled full-time and part-time physicians and dentists and per diem physicians and dentists who work at least 1/6 (.16) of a regular work year (at least 345 hours in a calendar year) and who continue to be on the active payroll in the next succeeding calendar year, including assistant/associate directors and section/unit chiefs.

Excluded: Managerial executives, supervisors within the meaning of the Act (including Department Directors), non-medical professional employees, nonprofessional employees, residents, interns and fellows, casual employees (those working fewer than the requisite hours as described above), confidential employees, and all other employees of the Hospital.

The number of employees whose supervisory status is in dispute (two -- Igbal and Ashtyani) is not significant in comparison to the size of the overall unit. That dispute not being "substantial", I conclude that the purposes of the Act will be best effectuated by promptly conducting a secret ballot election among the employees in the proposed unit and permit Igbal and Ashtyani to vote subject to challenge. See, N.J.A.C. 19:11-2.6 and Township of

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6/ The names and titles of those section chiefs eligible for unit inclusion are:

Dr. Richard Rosendale -- Adult Psychiatry  
Dr. Eugene Gersh -- Geriatric Psychiatry  
Dr. Gerald Meyerhoff -- Child and Adolescent Psychiatry  
Dr. Dr. Raymond Porzio -- Adolescent Psychiatry  
Dr. Doulat Keswani -- Addiction (Alcohol/Drug Abuse)  
Dr. Andrew Bender -- Neurology  
Dr. Norman Reigel -- Gastroenterology  
Dr. Usha Setia -- Infectious Diseases

North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). Accordingly, I direct that an election be conducted among the employees in the unit described above. Those eligible to vote are: All regularly scheduled full-time and part-time physicians and dentists who were employed by the Hospital during the payroll period immediately preceding the date of this decision; and all per diem physicians and per diem dentists who worked at least 1/6 (.16) of a regular work year (at least 345 hours during calendar year 1985) and who continue to be on the active payroll as of the payroll period immediately preceding the date of this decision, including assistant/associate directors and section/unit chiefs. Included are section/unit chiefs in titles appearing at footnote 6 of this decision, and assistant directors.


Those not eligible to vote are managerial executives, supervisors within the meaning of the Act (Department Directors), non-medical professional employees, nonprofessional employees, residents, interns and fellows, casual employees (those working fewer than the requisite hours as described above), confidential employees, and all other employees of the Hospital and those who quit or were discharged since the designated payroll period who were not rehired or reinstated prior to the election.

Those eligible to vote subject to challenge are: The Associate Director of Psychiatry and the Chief of Pulmonary Medicine.

I direct the Public Employer to simultaneously file an election eligibility list with this office and with the Petitioner. The eligibility list shall consist of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, in accordance with N.J.A.C. 19:11-9.6. The Public Employer shall also file with this office an accompanying proof of service of the eligibility list upon the Petitioner. The eligibility list must be received no later than ten (10) days prior to the date of the election. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The election shall be conducted in accordance with the Commission's rules and will be conducted within 30 days of the date of this decision.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: July 25, 1986  
Trenton, New Jersey