

P.E.R.C. NO. 90-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Respondent,

-and-

Docket No. C0-H-89-146

COMMUNICATION WORKERS OF AMERICA,
LOCAL 1085,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses an unfair practice charge filed by the Communications Workers of America, Local 1085 against the Gloucester County Board of Chosen Freeholders. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act when it refused to negotiate over the terms and conditions of employment for the position of Reach Program Coordinator. The Commission finds that the Reach Program Coordinator is a managerial executive and that therefore the County did not violate the Act when it refused to negotiate with CWA over the terms and conditions of employment for that position.

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LOCAL 1085,

Charging Party.

Appearances:

For the Respondent, Gerald L. Dorf, Esq.

For the Charging Party, Richard A. Dann, President

DECISION AND ORDER

On December 2, 1988, the Communications Workers of America, Local 1085 ("CWA") filed an unfair practice charge against the Gloucester County Board of Chosen Freeholders ("County"). The charge asserts that the County violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to negotiate over the terms and conditions of employment for the position of REACH program coordinator.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On February 8, 1989, a Complaint and Notice of Hearing issued. The County's Answer asserted that the County had no duty to negotiate because the REACH program coordinator was a managerial executive under N.J.S.A. 34:13A-3(f) and therefore outside the Act's coverage.

On April 17, 1989, Hearing Examiner Joyce Klein conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by June 15, 1989.

On June 20, 1987, the Hearing Examiner issued her report. H.E. No. 90-2, 15 NJPER 468 (¶20191 1989). She concluded that the REACH program coordinator was not a managerial executive and that therefore the County violated subsections 5.4(a)(1) and (5) when it refused to negotiate with CWA over the terms and conditions of employment for that position.

On August 7, 1989, CWA filed a brief supporting the Hearing Examiner's recommendations, but contesting two findings of fact.

On August 8, 1989, the County filed exceptions. It reasserts that the REACH program coordinator is a managerial executive. It also asserts that the Hearing Examiner erred in concluding that it had agreed that this employee was a supervisor; that it had refused to negotiate, and that the coordinator did not significantly participate in labor relations.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 2-10) are generally accurate. We incorporate them with these modifications and additions.

In finding no. 1, the Hearing Examiner took administrative notice of Commission records of CWA's certification as the majority representative of "[a]ll professional and nonprofessional supervisory employees within the meaning of the Act employed by the County of Gloucester but excluding all nonsupervisory employees, confidential employees, managerial executives, craft and police employees." Department heads were not on the list of eligible employees and did not vote.

We modify finding no. 4 to indicate that R-2 is a proposed organizational plan (T59). The REACH coordinator, Ana Rivera, reports directly to the County Administrator (T74; T81). The County Administrator told Rivera that she did not need to talk with him daily or submit reports monthly (T74). Five County departments have four or fewer people (T50).

We modify finding no. 6 to indicate that the planning committee has become solely an advisory body (T64-T65; T74-T75).

We modify finding no. 10 to indicate that Rivera's spending plans are subject to the freeholders' approval (T34).

We modify finding no. 12 to indicate that Rivera will develop a client orientation program (T79-T80).

When enacted in 1968, the Act excluded "heads and deputy heads of departments and agencies" from the definition of employees entitled to organize. The Act also excluded "managerial executives" from its coverage, but did not define that phrase. Relying on private sector precedents, Commission caselaw filled that gap. In

City of Elizabeth, P.E.R.C. No. 36 (1970), we stated that the term denotes "one who determines and executes policy through subordinates in order to achieve the goals of the administrative unit for which he is responsible or shares responsibility." (Slip op. at 4) We further said: "It is the final responsibility to formulate, determine and effectuate policy and not the initial preparation of a budget or policy proposals that distinguishes the managerial executive from other staff or line positions." Ibid. See also Bergen Cty. Bd. of Freeholders, P.E.R.C. No. 69 (1971); Union Cty., P.E.R.C. No. 48 (1970). Compare NLRB v. Bell Aerospace Co., 416 U.S. 267, 85 LRRM 2945 (1974); Ford Motor Co., 66 NLRB 1317, 17 LRRM 394 (1946).

In 1974, the Legislature made many changes in the Act. One change was to delete the reference in the definition of "employee" to "heads and deputy heads of departments and agencies." A second change was to add this definition of managerial executives:

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 include only the superintendent or other chief administrator, and the assistant superintendent of the district. [N.J.S.A. 34:13A-3(f)]

In light of the Act's policy favoring the organization of all employees desiring it, we have construed this definition narrowly. State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 253 (1974); Bor. of Avon, P.E.R.C. No. 78-21, 3 NJPER 353 (1977).

In Bor. of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, (¶11259 1980), we elaborated on our standards for resolving whether or not an employee formulates or directs the effectuation of policy under the statutory definition. We said:

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 the employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Ibid.

The Appellate Division has approved the Montvale standards. Bergen Pines Cty. Hosp., D.R. No. 83-8, 8 NJPER 535 (¶13245 1982), review den., P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982), aff'd App. Div. Dkt. No. A-564-82T2 (10/18/83).^{2/}

Applying the Montvale standards, we conclude that this record warrants a finding that the REACH program coordinator is a managerial executive under N.J.S.A. 34:13A-3(f). The County

^{2/} We apply these standards case-by-case, with the exception of police chiefs. The Legislature has clothed police chiefs as a class with the authority and responsibility for managing their departments. Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984).

therefore did not have to negotiate over the employment conditions for that position.^{3/}

We first look at the relative position of the REACH coordinator in the employer's hierarchy. She is a department head. The other department heads are apparently not represented. She reports directly to the County Administrator and participates in department head meetings, including meetings to discuss negotiations. While her department is small, it is new and five other County departments have four or fewer employees. Also, employees of other public and private agencies work in the REACH office under Rivera's direction. Rivera's status as a department head does not automatically make her a managerial executive, but it supports such a finding. Contrast City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980) and Bergen Pines Cty. Hosp., where the employees in question were far down the ladder of authority.

We next examine Rivera's functions and responsibilities. Pursuant to State law, she is responsible for centrally managing implementation and operation of the REACH program. She wrote the REACH plan and made the policy choices behind it, including decisions to exceed the services mandated by State regulations. She and a management subcommittee selected the lead agencies to handle each component of the REACH program. Rivera oversees the work of these lead agencies. She also oversees compliance with REACH-funded

^{3/} Given this conclusion, we will not address the County's other exceptions.

contracts. If any modifications to the REACH plan are needed, Rivera must formulate proposals and submit them to the freeholders. Based on this record, she is primarily responsible for defining and implementing the REACH program.

We next examine the discretion Rivera exercises. She effectively made the policy choices which shaped the County's REACH program. She develops her department's budget and supervises the staff. There is no evidence of higher-level interference with her choices of how to realize the goals of her administrative unit.

Contrast Montvale.

As REACH program coordinator, Rivera appears to have the status, responsibility and discretion to be classified as a managerial executive. The Hearing Examiner, however, believed that the REACH program was too small and its impact on the County's overall operation too limited to warrant that classification. For the reasons that follow, we disagree.

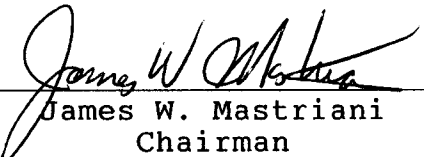
When the Legislature deleted the automatic exclusion of department heads from the Act's coverage, it ruled out deciding cases by titles. But department heads exercising real authority and discretion to make and effectuate policy would still be considered "managerial executives" under the new statutory definition. We have so held. Montvale (police chiefs); Bor. of Madison, P.E.R.C. No. 85-76, 11 NJPER 60 (¶16031 1984) (Superintendent of Public Works); Town of Kearny, P.E.R.C. No. 89-554, 15 NJPER 10 (¶20002 1988) (Superintendent of Public Works and Health Officer). We have not

required a showing that a department is a large one or that it affects an employer's overall operations. What has mattered is whether the employee is really deciding how to accomplish a governmental mission. Here the REACH program coordinator is the person responsible in theory and in fact for the program charged with helping welfare recipients become economically self-sufficient. She is a managerial executive.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Wenzler, Bertolino and Smith voted in favor of this decision. None opposed. Commissioner Ruggiero was not present.

DATED: Trenton, New Jersey
October 27, 1989
ISSUED: October 30, 1989

H.E. NO. 90-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Respondent,

-and-

Docket No. CO-H-89-146

COMMUNICATION WORKERS OF AMERICA,
LOCAL 1085,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that Gloucester County violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Communications Workers of America, Local 1085, over the REACH Program Coordinator's terms and conditions of employment. The Hearing Examiner finds the REACH Program Coordinator is not a managerial executive because her authority is limited to one small County program and she does not have the authority or responsibility to "affect broadly" the County's operations.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 90-2

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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COMMUNICATION WORKERS OF AMERICA,
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Charging Party.

Appearances:

For the Respondent, Gerald L. Dorf, Esq.

For the Charging Party, Richard A. Dann, President

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On December 2, 1988, the Communication Workers of America, Local 1085 ("CWA") filed an unfair practice charge with the New Jersey Public Employer-Employee Relations Commission ("Commission") alleging that the Gloucester County Board of Chosen Freeholders ("County") violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when it refused to negotiate over the REACH Program Coordinator's terms and conditions of employment.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to

On February 8, 1989, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On April 14, 1989, the County filed an Answer admitting that it refused to negotiate over the REACH Program Coordinator position. The County asserts that the REACH Program Coordinator is a managerial employee within the meaning of N.J.S.A. 34:13A-3(f).

I conducted a hearing on April 17, 1989. The parties examined witnesses, introduced exhibits and filed post-hearing briefs and reply briefs by June 15, 1989.

Based upon the entire record, I make the following

Findings of Fact

1. CWA, Local 1085 is the majority representative of units of both supervisory and non-supervisory professional and non-professional employees employed by the County. ^{2/}

1/ Footnote Continued From Previous Page

negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ Neither party introduced a copy of the parties agreement into the record. Therefore, I have taken administrative notice of the Commission's Certification of Representative records. On November 11, 1980, the Commission certified CWA, Local 1085 as the majority representative of a unit of non-supervisory professional and non-professional employees employed by the County. On January 19, 1981, the Commission certified CWA, Local 1085, Bargaining Unit #5 as the majority representative of all professional and non-professional supervisory employees employed by the County.

2. On October 8, 1987, the State of New Jersey ("State") enacted welfare reform legislation creating the REACH (Realizing Economic Achievement) Program (J-1, p.7).^{3/} REACH uses cooperation between State and County agencies to help welfare recipients become economically self-sufficient.

Implementation of Gloucester County's REACH program was scheduled for July 1, 1989. Rules for implementation of a county REACH program require that each county employ a REACH Program Coordinator, N.J.A.C. 10:81-14.23(c)(1).

3. During June or July 1988, James Cannon, the County's personnel director, advertised in local newspapers for a REACH Program Coordinator (T53-54). At that time, Cannon told Richard Dann, President of CWA Local 1085,^{4/} that the County would be hiring a REACH Program Coordinator and the amount appropriated for the position's salary would be \$25,000 to \$30,000 (T41, T55). Dann requested the REACH Program Coordinator job description to evaluate the position's salary range (T41).

Dann contacted Cannon in July 1988 to discuss a title for the position because REACH Program Coordinator is not an appropriate civil service title. Dann wanted to find a civil service title so he could propose a salary for the position (T42). Cannon initially

^{3/} T refers to the transcript of the April 17, 1989 hearing; C refers to Commission exhibits; J, to joint exhibits; CP, to charging party's exhibits and R, to respondent's exhibits.

^{4/} Dann is employed by the Gloucester County Board of Social Services.

told Dann that the County would advise him what it planned for the REACH Program Coordinator (T54). Dann suggested Program Development Specialist Human Resources at scale 21 of the parties' collective negotiations agreement (T42, T56). Scale 21 starts at \$22,000 and the agreement requires that new employees begin at the first step (T56). Cannon reiterated that the salary should be about \$25,000 and indicated to Dann that he planned to interview candidates for the position in August or September (T42). Cannon told Dann that he hoped to have the CWA's agreement on salary by the time he started interviewing candidates (T42). But, Cannon also told Dann on two separate occasions that the position should not be in the unit (T42).

Dann never formally demanded negotiations, but repeatedly maintained that the position's salary is negotiable (T57). Cannon continually disagreed and acknowledged that no negotiations over the title occurred (T56-T57).

Negotiations for the parties' successor agreement were underway during the summer and fall of 1988. The REACH Program Coordinator position was not discussed at those negotiations (T57).

I find that Dann and Cannon discussed the unit placement and prospective salary of the REACH Program Coordinator, but did not negotiate over it.^{5/}

^{5/} The County admits that it did not negotiate over the REACH Program Coordinator position (C-2).

4. The Board of Chosen Freeholders manages the County. A County Administrator and three assistant administrators oversee daily operations for the Board of Chosen Freeholders. Several department heads work under the assistant administrators (R-2). The REACH Program Coordinator position is a department head by resolution adopted on January 18, 1989 (T-57; R-2). Other small departments include emergency management, weights and measures, consumer affairs (T49, R-2). The REACH Program Coordinator reports directly to the County Administrator.

5. Ana Rivera, the County's REACH Program Coordinator, began work on the REACH Program on October 24, 1988.^{6/} State guidelines require each county to employ a REACH Program Coordinator "who will be responsible for centrally managing implementation and operations of the REACH program...and coordinating the planning process" (J-2). The guidelines include a job description requiring that the REACH Program Coordinator have the following skills:

Ability to plan, organize, develop, operationalize, coordinate, manage and integrate a county-based welfare to work system.

Wide knowledge of organizational planning, principles, practices and theories. (J-2).

6. The REACH Planning Committee, created in early 1988, is composed of 24 members as required by N.J.A.C. 10:81-14.23(b)(1) (T16; J-1; J-2). The Planning Committee's purpose is to "determine

^{6/} Rivera was employed by the County and had been a member of CWA's negotiations unit before her appointment as REACH Program Coordinator.

the most effective way to plan and organize services for REACH participants in that county." (J-2). Rivera is not a member of the Planning Committee (T25). Under the "County Plan Guidelines" prepared by the State Department of Human Services the committee is "the primary vehicle for ensuring the planning, coordination and integration of services to the REACH target population." (J-2, p. 12).

The Planning Committee began studying the County welfare clients' needs and other issues, but had not determined policies before Rivera was hired (T21). Rivera drafted the REACH Plan with input from the Committee (T17). Rivera often made recommendations which the Committee followed (T17). Rivera told the Committee that funds allotted for a specialized educational component were insufficient (T18). At her behest, the Committee allowed Rivera time to research and negotiate with the State Department of Education for additional funding. The County's plan exceeds State minimum guidelines as a result of Rivera's recommendations (T27). The State's guidelines permit placing clients in any job, but the County's plan allows placement only in jobs enabling the clients to be self-sufficient.

7. The REACH Plan designates lead agencies to handle the case management, employment and training and child care components

of the Program. Rivera and the management subcommittee selected the agencies (T29-T30; J-2).^{7/}

The lead agencies will hire, employ and supervise the staff implementing the program (T78). Some lead agency employees will continue to report to the lead agency. Up to five employees from the lead agencies will work in the REACH office once the program is operational (T77). The directors of the lead agencies will hire or assign employees to work on the REACH Program (T78). Rivera is developing specifications for these positions (T79). For example, Rivera developed the client orientation program. Lead agency staff will implement it.

Rivera and the lead agencies have cooperated throughout the planning stage (T32). Rivera discusses minor problems with the supervisors in the lead agencies (T69). If serious problems arise, Rivera reports them to the Board of Chosen Freeholders (T33, T69).

8. Rivera interviewed and recommended hiring her secretary (T60). The Board of Chosen Freeholders followed her recommendation. Rivera schedules leave time for her secretary (T61). If Rivera has a slot in her budget for additional staff and wishes to hire, Cannon will give her a list of candidates to interview. She will make a recommendation to the Board of Chosen

^{7/} The Gloucester County Board of Social Services will provide case management. The Employment and Training Administration will be responsible for employment and training and the Education Information Resource Center, a private agency, will provide child care.

Freeholders (T60-T61). If Rivera wanted to discharge her secretary, she would make a recommendation to Cannon (T62). The Board of Chosen Freeholders delegated the responsibility to terminate employees to Cannon (T62).

9. After Rivera completed the REACH Plan, the Planning Committee adopted it and forwarded it to three advisory bodies for endorsement (T22). The Human Services Advisory Council, Gloucester County Board of Social Services and the Private Industry Council approved the Plan (T22). On March 15, 1989, the County Board of Chosen Freeholders adopted a resolution approving the Plan and submitting it to the State Department of Human Services for its final approval (J-1).

When the Program became operational on July 1, 1989, the Planning Committee was scheduled to become an advisory committee (T64-T65, T75).

10. The County will receive almost two million dollars from the State for the REACH Program. Rivera will allocate the portion of that money not designated for specific services (T31). Funding is allocated for each function in specific amounts (T34). Rivera has some discretion to allocate REACH funds.^{8/} Rivera will

^{8/} In developing a budget for the Program, Rivera testified that she has discretion to allocate fifteen thousand dollars in County matching funds and fifty-five thousand dollars for implementation, marketing and advertising (T34). Rivera will determine how to spend the marketing money. She testified

review REACH Program spending to insure that the funds are used as required by the State regulations and the County's plan (T76). To receive REACH funds, Rivera submits a request for the money, with a letter from the County, to the Commissioner of Human Services (T84).

Department heads, including Rivera, meet individually with the budget officer and the County administrator to discuss the department's budget (T59). According to the budget transmittal memo Rivera sent to the County Budget Committee, her 1989 budget request for a variety of administrative expenditures was \$7,560 (R-3). Her request did not include other program funds or a salary request for her position (T92-T94; R-3). Department heads do not determine salary (T94).

11. At department head meetings, Cannon gets their input for negotiations (T59). Rivera's only input at these meetings concerned out-of-title compensation (T69).

12. In addition to developing the REACH Plan, Rivera must decide how to make the program accessible to County welfare recipients who lack their own transportation (T85). The

8/ Footnote Continued From Previous Page

that she is responsible for about \$100,000 in State funds plus \$83,000 for child care administrative funds (T76). She does not have the authority to reallocate funds designated for certain components of the REACH Program. Rivera's testimony concerning budgetary matters is confusing. It is apparent from her testimony that money will be allocated by the State for each component of the REACH Program. The extent of Rivera's discretion over this money, however, is not clear.

transportation allowance is insufficient to cover travel by taxi cab. Rivera will also determine office hours and must determine how to provide care for 1500 children (T91).

ANALYSIS

The County created the REACH Program Coordinator position in October 1988. After the County refused to negotiate over the position's terms and conditions of employment, CWA filed this charge. The County defends its refusal to negotiate by asserting that the position is managerial and therefore not eligible for inclusion in any unit.

The Commission addressed the circumstances under which an employer could refuse to negotiate over an employee's terms and conditions of employment in Passaic Cty. Regional H.S. Dist. No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976). There, the Commission found the employer did not violate the Act when it refused to negotiate over terms and conditions of employment for an employee it believed became confidential when circumstances changed. The Commission based its finding on the fact that the employee was confidential. The Commission cautioned:

It should be noted that a public employer's refusal to negotiate with the majority representative of a public employee in a collective negotiations unit is an act that a public employer takes at his peril. The legality of this action is wholly dependent upon the propriety of the public employer's judgment that the employee in question is not entitled to the protections of the Act. In the event that the public employer's judgment proves faulty in this regard, he will have committed a violation of the Act, regardless of any good faith belief that the

action was justifiable. Any such violation of the Act may be fully remedied by the filing of an unfair practice charge and the issuance of a Decision and Order by the Commission, pursuant to its broad remedial authority.

On the other hand, even if the employer's judgment is correct, he still subjects himself to the inconvenience and expense of vindicating his action in an unfair practice proceeding if that action is challenged. If the matter is resolved by means of a unit clarification proceeding pursuant to N.J.A.C. 19:11-1.5 as opposed to an unfair practice proceeding, the possibility of an adverse decision in an unfair practice proceeding would be precluded and the dispute would be resolved in the context of a non-adversarial representation proceeding.

See Morris School Dist. Bd. of Ed. and Ed. Ass'n of Morris, P.E.R.C. No. 89-42, 14 NJPER 681 (¶19287 1988), app. pending App. Div. Dkt. No. A-2191-88T2. This standard has previously been applied to confidential employees. Since both confidential employees and managerial executives are excluded from the Act's protection, I apply that standard here. See N.J.S.A. 34:13A-3(d). Essex County Vocational Schools Board of Education (Iadipaoli), P.E.R.C. No. 89-6, 14 NJPER 508 (¶119214 1988).

I must determine whether the REACH Program Coordinator is managerial. N.J.S.A. 34:13A-3(f) defines managerial executives as:

[P]ersons 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 include only the superintendent or other chief administrator, and the assistant superintendent of the district.

This definition was applied initially in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, a lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the work week, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough and mayor's policies, trained and scheduled all guards, managed the beach and supervised guards daily.

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 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. Id. at 509.

In Montvale, the Commission found the Borough's police chief was not a managerial executive.^{9/} The Borough's mayor and commissioners had almost complete control over the department. The chief had no discretion to hire, assign overtime, promulgate policies or plan schedules. He did not have effective control over the budget and deployment and discipline of personnel. The Commission concluded that the chief played no role in policy formulation and little role in directing its effectuation in any but routine matters.

The parties agree that the REACH Program Coordinator is supervisory (CWA's brief at 9; County's brief at 15). Department head status, however, does not automatically make an employee a managerial executive. Borough of Leonia, D.R. No. 86-24, 12 NJPER 488 (¶17186 1986) rev'd on other grounds P.E.R.C. No. 86-143, 12 NJPER 523, (¶17195 1986).

In City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980), the Director of Representation found the Director and Assistant Director of Nursing Services of the Public Health Nursing Service were not managerial executives. The Public Health Nursing Service is a bureau within a larger department. Though both employees were high level supervisors who developed and administered

9/ The Legislature later amended N.J.S.A. 40A:14-118 to broaden police chiefs' powers and duties. The Commission then held that police chiefs are, as a matter of law, managerial executives. Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984); Jersey City, D.R. No. 85-22, 11 NJPER 341 (¶16124 1985).

bureau policies and assured compliance with State and federal regulations, the Director found they did not possess sufficient authority over the City's entire operation.^{10/}

Rivera has been instrumental in developing the REACH Program. She guided the Planning Committee through the planning process and will or has already begun to implement the program. Rivera gave the committee guidance and advice. They accepted her recommendations and permitted her to draft the plan. The Plan, for the most part, tracks the requirements of the REACH Act, the rules and the State guidelines. While most of the program is required by the State and must fit within state guidelines, Rivera has exercised the County's discretion to provide services and benefits that exceed State mandates. She has also developed the procedures for the REACH office as well as for the lead agencies to use for REACH clients.

Once the REACH Plan is operational, Rivera will direct the work of up to five employees of the lead agencies, as well as her

^{10/} The director and assistant director oversaw the daily operations and administration of home nursing services; assured compliance with state licensing rules and regulations and federal funding requirements; planned patient care and assured maintenance of professional standards. Both were used as resources for clarification of professional matters at negotiations but neither participated in negotiations or knew the employer's proposal. They could only recommend discipline, but had the discretionary authority to transfer. The Director of Nursing Services supervised the facilities and staff performance and planned and coordinated training. She was also the second step of the grievance procedure, but could not resolve monetary and certain other grievances. The director prepared an initial budget proposal for the Nursing Service, which was modified by the department director before inclusion in the department's budget proposal.

secretary. Though some of the employees of the lead agencies are public employees, they are employed by public employers other than the County.

As a department head, Rivera reports directly to the County Administrator. She is responsible for planning and implementing a county-wide program. The REACH program, however, is simply one small County program. She supervises one County employee and develops a budget for the REACH department. Her budget request for 1989 was under \$8000. The record does not reflect whether her budget request was adopted or modified. She has not had significant participation in labor relations. She attended department heads meetings where department heads discussed ongoing negotiations and results they would like from the negotiations process. Rivera asked a question about out-of-title work. There is no evidence that Rivera learned confidential information or that her input was followed.

Rivera drafts a budget and presents it to the budget officer and the County Administrator. There is no evidence that her departmental presentation is the final budget amount for the REACH department. The REACH department budget (under \$8000 in 1989) has little impact on the County's budget. Rivera has no ability to affect County labor relations and affects and implements policy for one County program.

Without minimizing the extent of Rivera's responsibilities, I find the REACH Program Coordinator is not a managerial executive.

While Rivera has the responsibility and authority to affect broadly the REACH Program's purposes, she does not have the authority or responsibility to "affect broadly" the County's purposes and objectives. Like the director and assistant director in City of Jersey City, Rivera supervises a small segment of the County's operation. Her planning, coordination, and eventual implementation of the REACH Program are one small part of the County's operations. Rivera's responsibilities for the REACH Program have little or no impact on the other County departments.

I recommend the Commission find the County violated subsections 5.4(a)(5) and derivatively (a)(1) when it refused to negotiate over terms and conditions of employment for the REACH Program Coordinator.^{11/}

Recommended Order

I recommend that Gloucester County:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by refusing to negotiate over the REACH Program Coordinator's terms and conditions of employment.

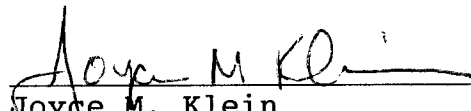
^{11/} Since the parties agree that the REACH Program Coordinator is a supervisor within the meaning of the Act, it appears that she should be appropriately included in the supervisory unit.

2. Refusing to negotiate in good faith with the Communication Workers of America, Local 1085 particularly concerning terms and conditions of employment of the REACH Program Coordinator.

B. Take the following affirmative action:

1. Negotiate with the Communication Workers of America, Local 1085 over the REACH Program Coordinator's terms and conditions of employment.^{12/}

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Joyce M. Klein
Hearing Examiner

Dated: July 20, 1989
Trenton, New Jersey

^{12/} A posting is not necessary to effectuate the policies and purposes of the Act.