

D.R. NO. 85-23

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
DIVISION OF REPRESENTATION AND UNFAIR PRACTICES

In the Matter of

CITY OF ORANGE TOWNSHIP,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

DOCKET NO. RO-85-28

Petitioner,

-and-

ORANGE MUNICIPAL EMPLOYEES BENEVOLENT
ASSOCIATION/ESSEX COUNCIL NO. 1,
NEW JERSEY CIVIL SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director determined that with regard to the eligibility of nine voters, the parties did not raise substantial and material factual issues concerning the employees' voting status.

On the basis of an administrative investigation, the Director determines the eligibility of certain voters who participated in a secret ballot election under challenge as confidential and/or supervisory employees, and ordered that their ballots be counted.

Further, the Director voided the ballot of one employee who the employer contended was excluded from the unit due to his status as a managerial executive. With regard to the dispute concerning the eligibility of certain other employees, the Director determines that a factual dispute exists which would warrant the convening of an evidentiary hearing, should these ballots continue to be determinative of the outcome of the election.

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Intervenor.

Appearances:

For the Public Employer
Mulcahy & Wherry, S.C.
(Gary M. Ruesch of counsel)

For the Petitioner
Steven Weissman, Esq.

For the Intervenor
Fox & Fox, Esqs.
(Frederic Knapp of counsel)

DECISION

On January 3, 1985, a secret ballot election was conducted by the Public Employment Relations Commission ("Commission") among nonsupervisory municipal employees employed by the City of Orange Township ("City"), pursuant to a Decision and Direction of Election issued on December 6, 1984 (In re City of Orange Township, D.R. No.

85-10, 11 NJPER 33 (Para 16018 1984)). In that election, challenges were asserted to the eligibility of certain voters and those challenged ballots are sufficient in number to affect the results of the election.

Pursuant to N.J.A.C. 19:11-9.1(k), the Director has caused an investigation to be conducted concerning the challenges. In correspondence from the Administrator of Representation dated January 7, 1985, all parties were advised of their responsibility to present documentary and other evidence as well as statements of position relating to the challenged ballots.

All parties filed statements of position concerning the challenged ballots in response to the Administrator's January 7, 1985 letter. In correspondence dated March 22, 1985, Administrator Charles A. Tadduni, on behalf of the Director, summarized the positions of the parties, made proposed findings of fact, and advised the parties that, while it appears that there are substantial and material factual issues concerning the eligibility of certain voters (hereinafter, "Group A") which require the convening of an evidentiary hearing, the eligibility of certain other voters (hereinafter, "Group B") would be determined based upon the administrative investigation. The Director afforded the parties a further opportunity to submit additional factual proffers, together with documentation in support thereof, raising substantial and material factual issues. (See, N.J.S.A. 19:11-2.6).

Based upon the administrative investigation, I find and determine as follows:

1. The disposition of the question concerning the eligibility of certain voters in this matter (Group B) is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist with regard to Group B, which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6, there is no necessity to submit the question concerning the voting eligibility of the employees in Group B to a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The City of Orange Township ("City") is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is subject to its provisions and is the employer of the employees who are involved in the instant Petition.

3. The Communications Workers of America, AFL-CIO ("CWA") and the Orange Municipal Employees Benevolent Association/Essex Council No. 1, New Jersey Civil Service Association ("OMEBA/Council 1") are employee representatives within the meaning of the Act and are subject to its provisions.

4. OMEBA/Council 1 are joint exclusive negotiations representatives of the petitioned-for employees, and are jointly parties to an agreement with the City covering a negotiations unit described in the recognition clause of the parties' most recent collective negotiations agreement, which expired on December 21, 1984, as follows:

...administrative, clerical and maintenance employees, including school crossing guards, and meter maids, but excluding craft (skilled trades) employees, administrative employees in directorships, and police and firemen.

5. The CWA filed a timely petition on September 10, 1984, supported by an adequate showing of interest, seeking to represent a collective negotiations unit described in the Petition as follows:

Included: All Orange municipal employees currently covered by contract between OMEBA, Essex Council #1, N.J.C.S.A.; Excluded: all supervisors, managerials as excluded by law.

6. OMEBA/Council 1 properly intervened in this matter pursuant to N.J.A.C. 19:11-1.7, based on a collective negotiations agreement then currently in effect between the City of and OMEBA/Council 1.

7. By letters dated September 20 and October 11, 1984, the City supplied two lists describing the employees currently covered by the agreement. On October 2, 1984, the City also supplied a list of employees, together with their titles, which the City believes are statutorily excluded from the negotiations unit.

8. At a conference convened on October 10, 1984, with a Commission staff agent the parties discussed the appropriateness of the petitioned-for unit and the titles proposed by the City as being statutorily exempt from inclusion in the existing unit. The parties agreed that the following titles should be excluded from the unit:

Director of Public Works/Municipal Engineer
Public Works Superintendent

Superintendent of Parks & Public Property
Street Superintendent
Garage Superintendent
Chief Water Treatment Plant Operator
Director of Building Inspections & Code Enforcement
Planning Director
Court Administrator
Administrative Secretary - Department of Public Works
Affirmative Action-Personnel Officer
Principal Personnel Clerk
Principal Clerk/Secretary to Business Administrator
Administrative Secretary - City Council
Administrative Secretary - Police Department
Administrative Secretary - Fire Department
Accountant
Drug Abuse Coordinator
Senior Citizen Coordinator
Director - Community Center
Municipal Clerk
All Administrative Secretaries not specifically enumerated
herein.

However, the City further contended that the following titles should also be excluded from the unit:

Assistant Municipal Engineer
Water Meter Foreman
Sewer Foreman
Water Foreman
Street Foreman
Meter & Billing Supervisor
Public Health Nurse Supervisor
Registrar of Vital Statistics/Administrative Clerk
Chief Sanitary Officer
Recreation Supervisor
Social Casework Supervisor
City Purchaser

Further, all parties reserved their rights to propose additional titles for exclusion from the unit after review of the revised list of unit employees to be distributed by the City.

9. By letter dated October 11, the City furnished to the Commission and to the employee organizations, the list of employees it believed eligible for inclusion in the unit.

10. By letter dated October 26, 1984, OMEBA/Council 1 advised the Commission that upon review of the City's list of employees included in the unit, it (OMEBA/Council 1) objected to the inclusion in the unit of the thirteen additional employees listed below:

Confidential

Principal Clerk Stenographer	M. Giorgio
Assistant Municipal Clerk	T. Luongo
Principal Account Clerk	T. Carroll
Administrative Secretary*	A. Catalano
Assistant Court Administrator	D. Capozzi
Assistant Program Coordinator	L. Askew

Supervisory

Assistant Water & Sewer Foreman	F. Piccillo
Assistant Chief Water Treatment Plant Operator	T. D'Aloia
Assistant Water & Sewer Foreman	G. Verderame
Assistant Water Meter Repairer- Foreman	B. Ferrante
Supervisor Crossing Guards	L. Vreelande

Managerial

Planning Director*	R. Ringelheim
Director of Community Center	A. Barlow

*These titles appear to be among those which the parties had already agreed were excluded from the unit.

11. On December 6, 1984, I issued a Decision and Direction of Election in this matter and determined that a secret ballot election should be conducted in a collective negotiations unit comprised as follows: "all non-supervisory municipal employees, including administrative, clerical and maintenance employees, school crossing guards and meter maids, but

excluding craft employees, police, firemen, administrative employees in directorships, managerial employees, confidential employees, and supervisors within the meaning of the Act and excluding Director of Public Works/Municipal Engineer, Public Works Superintendent, Superintendent of Parks & Public Property, Street Superintendent, Garage Superintendent, Chief Water Treatment Plant Operator, Director of Building Inspections and Code Enforcement, Planning Director, Court Administrator, Administrative Secretary - Department of Public Works, Affirmative Action-Personnel Officer, Principal Personnel Clerk, Principal Clerk/Secretary to Business Administrator, Administrative Secretary - City Council, Administrative Secretary - Fire Department, Accountant, Drug Abuse Coordinator, Senior Citizen Coordinator, Director - Community Center, Municipal Clerk, all Administrative Secretaries not specifically enumerated herein. I concluded that, while questions had been raised by the City and by OMEBA/Council 1 concerning the status of certain employees as statutory supervisors, managerial executives, or confidential employees, that dispute was not substantial given the size of the overall unit. Further, the Decision and Direction of Election provided that the parties may challenge the ballots of those employees who are alleged to be statutorily inappropriate for continued inclusion in the unit.

12. On January 3, 1985, an election was conducted among the employees in the unit found to be appropriate pursuant to the Decision and Direction of Election. The election provided employees with an opportunity to select either the Communications Workers of

America, AFL-CIO, the Orange Municipal Employees Benevolent Association, or no representative.

13. Of the 106 valid votes counted in the election, 45 votes were cast in favor of representation by "C.W.A., AFL-CIO," 60 votes were cast in favor of representation by "OMEBA/Essex Council No. 1, N.J.C.S.A.," and 1 vote was cast in favor of "no representation." In addition to the 106 valid votes counted in the election, there were 17 unresolved challenged votes cast, which were sufficient in number to affect the results of the election.

14. Of the 17 challenged ballots, one voter, Rudolph Aquino, Water Treatment Plant Operator, was challenged by the CWA. The CWA has since withdrawn its challenge to Aquino.

15. Robert Ringleheim, Planning Director, was challenged by the Commission election agent because his name did not appear on the eligibility list supplied by the City. (See, N.J.A.C. 19:11-9.2(e)).

16. The City challenged the ballot of the Social Casework Supervisor Willa Whitted, consistent with its continuing position that the title was a supervisor within the meaning of the Act, and is therefore, appropriately excluded from this unit.

17. The City and OMEBA/Council 1 jointly challenged the ballot of the Public Health Nurse Supervisor, Mary Holland.

18. The remaining 13 challenges were asserted by OMEBA/Council 1, and are as follows:

Anne Rappaport, Water Billing & Meter Supervisor;
Challenged as a supervisory employee

Edith Battista, Reg. of Vital Statistics/Administrative Clerk; Challenged as a supervisory employee.

Anthony Marucci, Assistant Municipal Engineer; Challenged as a supervisory employee.

Diletta Matascio, Purchaser; Challenged as a managerial executive.

Teresa Luongo Assistant Municipal Clerk; Challenged as a supervisory employee.

Milton Peters, Chief Loan Advisor Challenged as a supervisory/confidential employee.

Ursula Kalinowski, Assistant Violations Clerk; Challenged as a supervisory employee.

Maria Giorgio, Principal Clerk Steno; Challenged as supervisory/confidential employee.

Roella Manganelli, Principal Clerk Typist; Challenged as a supervisory/confidential employee.

Elizabeth Cudgel, Principal Account Clerk; Challenged as a supervisory/confidential employee.

Thomas Carroll, Principal Account Clerk; Challenged as a supervisory/confidential employee.

Alvenia Jones, Principal Account Clerk; Challenged as a supervisory/confidential employee.

Diane Anderson, Principal Clerk Typist/Deputy Registrar; Challenged as a supervisory/confidential employee.

19. No objections have been filed to the results of the election or conduct affecting the results of the election.

Based upon the materials presented to us by the parties, it appears that there are substantial and material factual disputes concerning the unit status of the following voters (hereinafter, "Challenge Group A"): Rappaport (Water Billing/Meter Reading Supervisor), Holland (Public Health Nurse Supervisor), Battista

(Administrative Clerk & Vital Statistics Registrar), Marucci (Assistant Municipal Engineer), Whitted (Social Case Work Supervisor), Matascio (Buyer), Luongo (Assistant Municipal Clerk) and Carroll (Principal Account Clerk). Accordingly, should the parties continue to hold their present positions with respect to the eligibility of the above voters, then pursuant to N.J.A.C. 19:11-9.1, no further determination may be made regarding their voting eligibility until a hearing concerning that issue has been completed.

However, it would appear that the eligibility of the following voters may be determined based upon an administrative investigation (hereinafter "Challenge Group B"): Kalinowski (Assistant Violations Clerk), Aquino (Water Treatment Plant Operator), Peters (Chief Loan Advisor), Manganelli (Principal Clerk Typist), Giorgio (Principal Clerk Stenographer), Cudgel (Principal Account Clerk), Jones (Principal Account Clerk), Anderson (Principal Clerk Typist/Deputy Registrar) and Ringelheim (Planning Director).

I find and determine the eligibility of these voters as follows:

RUDOLPH AQUINO: -- Rudolph Aquino is employed in the title of Water Treatment Plant Operator. Mr. Aquino was challenged at the polls by the CWA. However, that challenge was subsequently withdrawn. The title which Mr. Aquino holds would appear to be included in the unit in which we directed the conduct of an election and further, Mr. Aquino was placed on the eligibility list by the public employer. Based upon the foregoing I determine that employee Aquino

is an eligible voter in this election and that his ballot shall be counted.

ROBERT RINGELHEIM -- Robert Ringleheim was not included on the eligibility list by the public employer. Hence, Mr. Ringleheim was challenged by the Commission staff agent who conducted the election herein. See, N.J.A.C. 19:11-9.2 and N.J.A.C. 19:11-9.6. Mr. Ringleheim was included on the initial list submitted by the employer (September 21, 1984) which enumerated the employees described in the Petition. Mr. Ringleheim was therein designated as "Planning Director." At the investigatory conference conducted on October 10, 1984, the City submitted a list of proposed exclusions from the petitioned-for unit. That list designated Robert Ringleheim as the Planning Director. The City took the position that the title of Planning Director (then filled by Mr. Ringleheim) in fact had never been included in the petitioned-for unit. Further, the City contended that the Planning Director is a supervisor within the meaning of the Act and accordingly is properly excluded from the unit. At that conference, both the CWA and OMEBA/Council 1 agreed that the Planning Director should be excluded from the petitioned-for unit. Accordingly, the eligibility list prepared by the Public Employer did not include the Planning Director title or its then current holder, Mr. Ringleheim.

In correspondence dated January 7, 1985, concerning the employees challenged at the election, the Administrator wrote the parties and indicated that Mr. Ringleheim appears to occupy the title of Planning Director, a title which is excluded from the

unit. The Administrator further indicated that "...in the absence of a factual proffer, together with supporting documentation to the contrary, the undersigned is inclined to conclude that the employee, in his present position, is ineligible to vote in this election and thus, to void the ballot." (Letter dated January 7, 1985, from the Administrator to the parties, p.2).

By January 22, 1985, the parties had filed their responses to the above-referenced correspondence. In its answer, the CWA asserted that Mr. Ringleheim is employed as an Assistant Planner and thus should be included in the petitioned-for unit. The CWA proffered no documentation or other explanation of their bare assertion that Mr. Ringleheim is an Assistant Planner.^{1/} At no time during the investigation of this Petition, during the investigatory conference or in response to any of the correspondence exchanged herein did CWA come forth to contest the designation of Mr. Ringleheim as Planning Director. Further, CWA raised no objection to the exclusion of Mr. Ringleheim from the election eligibility list.

Based upon the material presented herein and the foregoing, it appears that Robert Ringleheim is employed as Planning Director by the City and that title is excluded from the petitioned-for unit. Accordingly, I determine that employee

^{1/} It is further noted that on the City's list dated October 11, 1984, wherein employees were set forth by department and title, Mr. Ringleheim is listed as Planning Director in the Department of Administration. That list indicates no title in the Department of Administration designated "Assistant Planner."

Ringleheim is an ineligible voter in this election and that his ballot shall be voided.

* * *

The remaining challenged voters on the list set forth at page 7, supra, were challenged on the grounds that they are confidential employees and/or supervisors within the meaning of the Act. All seven of these challenges were lodged by OMEBA/Council 1; in three instances, the City agreed with the challenges; in four instances, the City disagreed with OMEBA/Council 1's challenges. The CWA disagreed with all seven of these challenges.

N.J.S.A. 34:13A-5.3 provides in part that "...nor except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership."

N.J.S.A. 34:13A-6(d) states that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors..."

The Commission has determined that the Act, in effect, defines supervisor as one having the authority to hire, discharge, discipline, or to effectively recommend any of the foregoing. See In re Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970) and In re Ridgewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (Para 11102 1980).

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.

Underlying all of the Commission's confidential employee status determinations is the requirement that the alleged confidential employee be linked in some manner -- directly or indirectly -- to management's workings vis-a-vis the collective negotiations process. See, In re State of New Jersey, D.R. No. 84-9, 9 NJPER 613 (Para 14262 1983). The person for whom the alleged confidential employee works must be closely involved in the collective negotiations process on behalf of the employer and the alleged confidential employee must, in the normal course of his/her duties, have access to and knowledge of confidential labor relations materials. What is required for a finding of confidentiality is an involvement with the collective negotiations process to such an extent so as to render the confidential's membership in any collective negotiations unit incompatible with his/her job duties.^{2/}

URSULA KALINOWSKI -- Ursula Kalinowski is employed by the City as the Assistant Violations Clerk in the Department of Administration

^{2/} This labor relations nexus imperative is consistent with the statutory definition of confidential employees and with the approach which has been taken by the NLRB to this issue for over 40 years. See NLRB v. Hendricks County Rural Electric Corp., ___ U.S. ___, 108 LRRM 3105 (1981).

(Municipal Court). Ms. Kalinowski's name and title appeared on both lists of employees submitted by the City to the Commission's investigating agent, which lists designated employees described in the petitioned-for unit.^{3/} Ms. Kalinowski's name and title do not appear on the City's list of employees and titles to be excluded from the petitioned-for unit. Finally, Ms. Kalinowski's name and title appear on the election eligibility list submitted to the Commission by the City.

Ms. Kalinowski was challenged at the poll by OMEBA/Council 1, which contended that Kalinowski is a supervisor within the meaning of the Act. The City agreed with the challenge at the election count.

In correspondence to the parties dated January 7, 1985, the Administrator wrote to the parties and indicated that in the absence of factual proffers (together with documentation) which support the conclusion that Ms. Kalinowski's title is excluded from the unit, and considering the long history of unit inclusion, the

^{3/} The City submitted three lists of employees to the Commission's investigating agent during the investigation of this matter. List I was submitted by the City on September 21, 1984, in response to correspondence dated September 12, 1984 from the Director and which requested, inter alia, "...an alphabetized list of employees described in the Petition, together with their job classifications..." List II, submitted by the City's labor counsel on October 5, 1984, is a listing of employees (and their titles) which the City contended should be excluded from the petitioned-for unit. List III was submitted by the City on October 18, 1984, in response to a request made by the Commission investigating agent at the conference held on October 10, 1984. Finally, the election eligibility list was submitted to the Commission and the employee organizations on December 24, 1984.

Commission is inclined to determine that said employee is an eligible voter. In response to the January 7 correspondence, OMEBA/Council 1 submitted no documentation or legal argument concerning the challenge raised to Ms. Kalinowski's eligibility to vote in the instant election. The City submitted no material concerning Ms. Kalinowski; CWA argued that Ms. Kalinowski is an eligible voter.

Based upon the foregoing, I determine that employee Kalinowski is an eligible voter in this election and that her ballot shall be counted.

MILTON PETERS -- Milton Peters is employed by the City as the Chief Loan Advisor. Mr. Peters' name and title appeared on both lists of eligible employees submitted by the City to the Commission's investigating agent, Neither Mr. Peters' name nor his title appeared on the City's list of titles and employees to be excluded from the unit; said list was submitted at the investigatory conference conducted on October 10, 1984 and was made known to all parties. Further, Peters does not appear on the list of proposed exclusions submitted by OMEBA/Council 1 on October 26, 1984. Mr. Peters' name and title were included by the City on the election eligibility list submitted to the Commission's election agent on December 24, 1984 and no party raised objection to his appearance therein. At the election, OMEBA/Council 1 challenged Mr. Peters' ballot on the grounds that Mr. Peters is a supervisor within the meaning of the Act and a confidential employee. The City subsequently agreed with that challenge; CWA disagreed.

In correspondence to the parties dated January 7, 1985, the Administrator indicated that in the absence of factual proffers (together with documentation) which support the conclusion that Mr. Peters is excluded from the unit, and considering the long history of unit inclusion, the Commission is inclined to determine that said employee is an eligible voter. All of the parties -- the CWA, the City and OMEBA/Council 1 -- responded to the January 7 correspondence. In its submission, OMEBA/Council 1 contends that Mr. Peters "supervises property improvement..." and "deals with sensitive financial information." The City contends that Mr. Peters "coordinates the activities of employees engaged in various types of loan assistance programs to rehabilitate housing"; "directs the work activities of employees in this Department and supervises the performance of their work." The City also submitted a job description. In its statement of position dated February 1, 1985, the OMEBA/Council 1 agreed with the factual assertions made by the City; it further urged that the facts be considered sufficient to determine that Mr. Peters is a supervisor within the meaning of the Act and thus excluded from the extant unit

None of the materials submitted by the City and OMEBA/Council 1 support the assertion that Mr. Peters is a supervisor within the meaning of the Act or a confidential employee within the meaning of the Act. ^{4/} Making work assignments,

^{4/} All of the materials submitted in response to the January 7
(Footnote continued on next page)

"coordinating activities of employees engaged in various types of loan assistance programs" and "[reviewing] the work of loan advisors to insure that proper procedures are followed in processing loans" (job description) is simply insufficient to qualify an employee as a supervisor within the meaning of the Act. No facts have been presented which rise to the level of the statutory criteria, that is, "...the authority to hire, discharge, discipline, or to effectively recommend the same." (See N.J.S.A. 34:13A-6(d)). Further, there is no indication whatever in the submissions that Chief Loan Adviser Peters is a confidential employee within the meaning of the Act -- asserting that he has access to sensitive financial data is not sufficient.^{5/}

Accordingly, based upon the foregoing, I determine that employee Peters is an eligible voter in this election and that his ballot shall be counted.

ROELLA MANGANELLI -- Roella Manganelli is employed by the City in the title of Principal Clerk Typist in the Department of Public Works. Ms. Manganelli's name and title appear on both lists of

(Footnote continued from previous page)

correspondence are quite general in tone. However, for some of the challenged voters -- such as Thomas Carroll -- the employer has at least submitted material which make relatively specific factual assertions, e.g., "has access to confidential materials that would include information on the employer's strategy [for] ...collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations between the bargaining representative and the employer."

^{5/} See discussion at pp. 13-14, supra.

employees submitted by the City which designated employees described in the petitioned-for unit. Ms. Manganelli's name does not appear on either the City's proposed list of exclusions (submitted on October 10, 1984) or OMEBA/Council 1's proposed list of exclusions from the unit (submitted October 29, 1984).

Prior to the election herein, no contention was ever made that Ms. Manganelli's clerical position was confidential or that she was considered to be an "administrative secretary". Ms. Manganelli's name and title were included by the City on the election eligibility list submitted to the Commission on December 24, 1984. At the election, OMEBA/Council 1 challenged Ms. Manganelli's ballot, contending that she was a confidential employee. The City subsequently agreed with that challenge; CWA disagreed.

In correspondence to the parties dated January 7, 1984, the Administrator indicated that in the absence of factual proffers (together with documentation) which support the conclusion that Ms. Manganelli is excluded from the unit, and considering the long history of unit inclusion, the Commission is inclined to determine that said employee is an eligible voter. In its response to the January 7 correspondence, OMEBA/Council 1 asserted that Ms. Manganelli is a secretary to the Director of Public Works and both the City and OMEBA/Council 1 stated that she occupies a title classified as an administrative secretary (which titles are excluded from the unit in which the election was directed.)

In its statement of position of April 1, OMEBA/Council 1 asserts that as the secretary assigned to the Director of Public

Works, Ms. Manganelli functions as an administrative secretary, and is a confidential employee since she "has access to knowledge in the course of her everyday duties concerning issues involved in collective negotiations." However, in its list of employees submitted to the Commission on October 18, 1984, the City lists a different employee, H. Schanbacher, in the title of Administrative Secretary --Department of Public Works", and lists Roella Manganelli as Principal Clerk Typist.

No evidence has been presented to support the claim that Ms. Manganelli holds the excluded title of "Administrative Secretary." Further, I note that while for the first time, OMEBA/Council 1 makes a claim that "all administrative secretaries have access to knowledge in the course of their everyday duties concerning issues involved in collective negotiations," there is no evidence to support the claim that Ms. Manganelli either holds the title Administrative Secretary or that in her present position she has access to confidential labor relations materials.

No documentation was submitted in support of the foregoing contention that Mangnelli is an Administrative Secretary or that she has access to and knowledge of confidential labor relations materials; and there is nothing in the investigatory file in this matter which would support these contentions. In fact, the investigation herein would support the opposite conclusion -- at no time (prior to the election) and in no document was Ms. Manganelli ever identified as an administrative secretary and/or as a confidential employee. No facts have been proffered -- much less

documented -- which would indicate that Ms. Manganelli is a confidential employee.

Accordingly, based upon the foregoing, I determine that employee Manganelli is an eligible voter in this election and that her ballot shall be counted.

MARIA GIORGIO -- Maria Giorgio is employed by the City in the title of Principal Clerk Stenographer in the Department of Building Inspections & Code Enforcement. Ms. Giorgio's name and title appear on both lists of employees submitted by the City which designated employees described in the petitioned-for unit. Ms. Giorgio's name does not appear on the proposed list of exclusions from the unit submitted by the City on October 11, 1983. Ms. Giorgio's name and title were included on a proposed list of exclusions (confidential) from the unit submitted by OMEBA/Council 1 on October 24, 1984. Ms. Giorgio's name and title were included by the City on the election eligibility list submitted to the Commission's election agent on December 24, 1984. OMEBA/Council 1 challenged Ms. Giorgio's ballot contending that she is an administrative secretary and thus is excluded from the unit under the terms of the Decision and Direction of Election issued herein (In re City of Orange Tp., supra.) The City disagrees with OMEBA/Council 1's challenge to Ms. Giorgio's unit eligibility. The CWA has contended that Ms. Giorgio is not a confidential employee.

In correspondence dated January 7, 1984, the Administrator indicated that in the absence of factual proffers (together with documentation) which support the conclusion that Ms. Giorgio is

excluded from the unit, and considering the long history of unit inclusion, the Commission is inclined to determine that such employee is an eligible voter. In response to the January 7 correspondence from the Administrator and the Director of March 22, OMEBA/Council 1 submitted statements of position wherein it contended that Ms. Giorgio is an administrative secretary and is thus excluded from the unit. The City submitted nothing concerning Ms. Giorgio's unit eligibility. The CWA argued against exclusion.

Although, in its statement of position dated April 1, OMEBA/Council 1 contends that the City agrees that "...among the challenged ballots are those of Administrative Secretarial positions specifically exempted by P.E.R.C. in the decision and direction of election in this matter." While all parties have agreed that employees holding the title Administrative Secretary are excluded from the unit, the City has not taken a position with respect to Ms. Giorgio's eligibility. Further, and contrary to OMEBA/Council 1's assertions, the City has not alleged that Giorgio is an administrative secretary or functions as a confidential employee.

No documentation was submitted in support of the contentions that Giorgio is an administrative secretary or that she performs functions as a confidential employee. The investigation has not revealed any facts which would support such contentions; in fact, the investigation would appear to indicate that Ms. Giorgio has not been classified as an administrative secretary. Ms. Giorgio was placed on the eligibility list and on both lists submitted by the City which designated the employees in the petitioned-for unit.

No facts have been proffered -- or documented -- which would indicate that Ms. Giorgio is an administrative secretary or a confidential employee.

It is noteworthy that PMEBA/Council 1, the incumbent, raises the contention that Ms. Giorgio is an administrative secretary (confidential employee) and thus excluded from the unit: It is our experience that such contentions -- that an employee is (or should be) excluded from a negotiations unit because that employee is a confidential employee -- are usually raised by the employer. The employer has neither contended nor agreed that Ms. Giorgio is an administrative secretary or a confidential employee -- despite having had numerous opportunities to do so.^{6/} In fact, when reviewing the challenges at the election site after the polls had closed, the City disagreed with OMEBA/Council 1's challenge of Ms. Giorgio's ballot.

Based upon the foregoing, there appears to be no factual basis for the exclusion of Giorgio from participation in the instant election. Accordingly, I determine that Ms. Giorgio is an eligible voter in this election and that her ballot shall be counted.

^{6/} While an employee organization is not technically precluded from arguing such an exclusion, actions to exclude confidential employees from a bargaining unit almost always originate with the employer, as it is the employer's interests which may be compromised by having a confidential employee included in the negotiations unit. The employer is in the best position to determine if it is disadvantaged by having a confidential employee in a negotiations unit and if the union may otherwise gain access to confidential labor relations information of the employer to which it would not otherwise have access.

DIANE ANDERSEN -- Diane Andersen is employed by the City as a Principal Clerk Typist & Deputy Registrar of Vital Statistics in the Department of Health. Ms. Andersen's name and title appear on both lists of eligible employees submitted by the City to the Commission's investigating agent submitted during the investigation of the instant Petition. Ms. Andersen does not appear on the lists of proposed unit exclusions submitted by either the City or OMEBA/Council 1. Ms. Andersen's name and title appear on the election eligibility list submitted to the Commission by the City.

Ms. Andersen was challenged at the election by OMEBA/Council 1, which contended that employee Andersen was a supervisor and a confidential employee within the meaning of the Act. The City disagreed with the challenge when it was discussed at the election site after the polls closed, as did the CWA.

In correspondence dated January 7, 1984, the Administrator indicated that in the absence of factual proffers (together with documentation) which support the conclusion that Ms. Andersen is or should be excluded from the unit, and considering the long history of unit inclusion, the Commission is inclined to determine that said employee is an eligible voter. In response to the January 7 correspondence, OMEBA/Council 1 submitted a statement of position wherein it is contended that Ms. Andersen is responsible for the operation of the Registrar's office in the absence of its chief officer and that she has access to confidential Health Department records. Additionally, by its statement of position dated April 1, OMEBA./Council 1 contends that Ms. Andersen supervises the Senior

Clerk Typist in the absence of the Registrar. The City submitted nothing concerning Ms. Andersen and CWA argued against exclusion.

OMEBA/Council 1 submitted no documentation in support of its contentions. OMEBA/Council 1 provided no materials to indicate that Ms. Andersen possesses the "authority to hire, discharge, discipline or effectively recommend the same..." Further, Ms. Andersen's appearance on the eligibility list and both lists which designated the employees in the petitioned-for unit and the failure of OMEBA/Council 1 or the City to include her on their proposed lists of exclusions mitigate against now excluding her from the unit.

Finally, it must again be noted here (as with Ms. Giorgio) that the party raising the contentions of exclusion -- Andersen's supervisory and confidential status -- is the incumbent OMEBA/Council 1. Such contentions are usually raised by the employer, which as here, along with the CWA, specifically disagreed with those contentions.

Based upon the foregoing, there appears to be no factual basis for the exclusion of employee Andersen from participation in the instant election. Accordingly, I determine that Ms. Andersen is an eligible voter in this election and that her ballot shall be counted.

ALVENIA JONES AND ELIZABETH CUDGEL -- Alvenia Jones is employed by the City in the title of Principal Accounts Clerk in the Department of Finance. Elizabeth Cudgel is employed by the City in the title of Principal Assessing Clerk in the Department of Finance.

Both Ms. Jones' and Ms. Cudgel's names and titles appear on both of the eligibility lists. Neither Jones' nor Cudgel's name

and title appear on either the City's or OMEBA/Council 1's lists of proposed exclusions from the unit submitted during the investigation of the instant Petition. Finally, both Jones' and Cudgel's name and title appear on the election eligibility list submitted to the Commission by the City.

Both Jones and Cudgel were challenged at the election by OMEBA/Council 1, which contended that Ms. Jones is a supervisor within the meaning of the Act. The City disagreed with the challenges when they were discussed at the election site after the polls had closed, as did CWA.

In correspondence from the Administrator dated January 7, 1985 and correspondence from the Director dated March 22, 1985, the Administrator indicated that in the absence of factual proffers (together with documentation) which support the conclusion that employees Jones and Cudgel are excluded from the unit, and that considering the long history of unit inclusion, the Commission was inclined to determine that said employees were eligible voters. In response to the January 7 correspondence, OMEBA/Council 1 submitted a statement of position wherein it contended that Jones and Cudgel had access to confidential records. Thus, it made no submissions upon the topic of their formerly alleged supervisory status and apparently contended for the first time that employee Jones is a confidential employee. The City submitted nothing concerning these employees; CWA argued against their exclusion.

In its April 1 submission, OMEBA/Council 1 alleges that, as employees in the Department of Finance, they would be

confidential because, "...the Finance Department is involved with information of a nature which could concern the collective negotiations process. Specifically, the formulation of the budget is, of course, of major concern in the public employment relations sphere. Having access to information necessary for the preparation and submission of the budget would, of course, be relevant to positions taken in negotiations." OMEBA/Council 1 appears to suggest that, since the Finance Department is involved with the budget process, and because these employees work within that Department, therefore, they are confidential. However, OMEBA/Council 1 fails to provide any reasonable specific linkage between the functions performed by employees Cudgel and Jones and managements workings vis-a-vis the collective negotiations process (See discussion at pp 13-14, supra).

OMEBA/Council 1 has submitted no documentation in support of its contentions that these employees are confidentials nor has the investigation revealed any facts which would support those contentions. Further, the appearance of employees Jones and Cudgel on the election eligibility list and on the two lists which designated the employees in the petitioned-for unit and the failure of OMEBA/Council 1 or the City to include them on their proposed lists of exclusions mitigate against excluding them from the unit.

Finally, it is again noted (as with Giorgio and Andersen) that the party raising the contentions of exclusion -- the supervisory and confidential status of employees Jones and Cudgel -- is the incumbent OMEBA/Council 1. Such contentions are usually

raised by the employer, which has here, along with the CWA, specifically disagreed with those contentions.

Based upon the foregoing, there appears to be no factual basis for the exclusion of Jones and Cudgel from participation in the instant election. Accordingly, I determine that Ms. Jones and Ms. Cudgel are eligible voters in this election and that their ballots shall be counted.

Accordingly, it would appear that the disposition of the challenged ballots in Challenge Group B herein is appropriate for determination based upon the administrative investigation, it appearing that no substantial and material factual issues have been placed in dispute by the parties which would warrant the convening of an evidentiary hearing. In accordance with the foregoing, I find and determine that the following employees are eligible voters in this election and direct that their ballots be counted:

Rudolph Aquino
Milton Peters
Ursula Kalinowski
Roella Manganelli
Maria Giorgio
Diane Andersen
Alvenia Jones
Elizabeth Cudgel

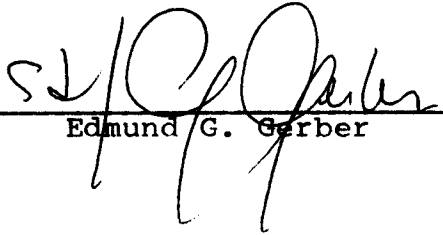
Further, I determine that the following employee is ineligible to vote and that employee's ballot shall be voided:

Robert Ringleheim

It appears that there are substantial and material factual issues concerning the unit status of the challenged ballots in Challenge Group A. Accordingly, a Notice of Hearing has been issued

in order to resolve the dispute concerning the voting eligibility of said employees (see N.J.A.C. 19:11-9.2). This matter will proceed in accordance with the Notice of Hearing issued on March 22, 1985.^{7/}

BY ORDER OF THE DIRECTOR


Edmund G. Gerber

DATED: April 25, 1985
Trenton, New Jersey

^{7/} The election officer is directed to open and count the challenged ballots determined herein, on May 10, 1985. In the event that the remaining challenges are no longer determinative of the results of the election, this would obviate the need to resolve any of the challenged ballots in Challenge Group A, in which case of course, the Notice of Hearing would be rescinded.