

E.D. NO. 76-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
Public Employer,

-and-

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

Docket No. CU-135

-and-

STATE SUPERVISORY EMPLOYEES ASSOCIA-
TION, N.J.C.S.A.-N.J.S.E.A.,
Intervenor.

SYNOPSIS

Consistent with the findings and recommendations of the Hearing Officer and in the absence of exceptions to his Report and Recommendations, the Executive Director clarifies two units of employees of the State of New Jersey as follows: Cottage Training Supervisors, Head Cook IIs and Head Cook IIIs are included in the Primary Level Supervisors Unit represented by the Intervenor and Senior Therapy Program Assistants are included in the Health, Care and Rehabilitation Services Unit represented by the Petitioner.

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STATE SUPERVISORY EMPLOYEES ASSOCIA-
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Intervenor.

Appearances

For the Public Employer, William F. Hyland,
Attorney General (By Melvin E. Mounts, Deputy
Attorney General)

For the Petitioner, Mark Neimeiser (Associate
Director, Council 1, AFSCME)

For the Intervenor, Fox & Fox, Esqs. (Mr.
David Fox, of Counsel)

DECISION

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission by the American Federation of State, County and Municipal Employees, AFL-CIO ("A.F.S.C.M.E.") seeking a clarification regarding the composition of a unit of employees represented by A.F.S.C.M.E. and employed by the State of New Jersey ("State"). The State Supervisory Employees Association, N.J.C.S.A.-N.J.S.E.A., claims to represent the employees in the disputed titles and has been accorded intervenor status in this

proceeding.

The parties agreed to waive a formal hearing in this matter pursuant to N.J.A.C. 19:14A-3.4. The parties agreed that the assigned Hearing Officer, Bernard J. Manney, should base his Report and Recommendations regarding one of the disputed titles on the record made in an earlier fact-finding proceeding, Docket No. FF-329, involving the State and A.F.S.C.M.E. and that they would submit briefs regarding the other three disputed titles.

The Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof, on March 4, 1976. No exceptions have been filed to the Report and Recommendations of the Hearing Officer. The undersigned has considered the entire record in this matter and the Hearing Officer's Report and Recommendations and, on the basis of the facts in this case, finds:

1. The State of New Jersey is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

2. The American Federation of State, County, and Municipal Employees, AFL-CIO and the State Supervisory Employees Association, N.J.C.S.A.-N.J.S.E.A. are employee organizations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and are subject to its provisions.

3. The parties disagree regarding the unit placement of the following titles: Cottage Training Supervisor, Head Cook II,

Head Cook III, Senior Therapy Program Assistant. Therefore, there is a question concerning the composition of the units represented by the Petitioner and by the Intervenor and the matter is properly before the undersigned for determination.

4. A.F.S.C.M.E. was certified by the Public Employment Relations Commission on April 28, 1971 as the majority representative of employees in the following unit: "All Health, Care and Rehabilitation Services employees employed by the State of New Jersey excluding all office clerical, professional and craft employees, policemen, managerial executives and supervisors within the meaning of the Act and all other employees." Although the parties agreed upon the specific inclusion of a large number of titles in that unit, the unit placement of Cottage Training Supervisors was not agreed to and employees in that title cast challenged ballots.

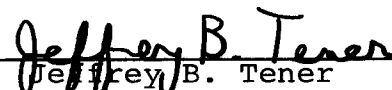
The Intervenor herein was certified by the Public Employment Relations Commission on November 1, 1973 as the majority representative of employees in the following unit: "All Primary Level Supervisors employed by the State of New Jersey including employees in the following classifications:..." The Certification of Representative specifically includes the titles of Head Cook II, Head Cook III, and Senior Therapy Program Assistant. Cottage Training Supervisors voted subject to challenge in this election, also.

5. The Hearing Officer found that employees in the titles of Cottage Training Supervisor, Head Cook II and Head Cook III

are supervisors within the meaning of the Act. Additionally, he found Senior Therapy Program Assistants not to be supervisors within the meaning of the Act. Therefore, he recommended that the units described in the preceding section be clarified as follows: Cottage Training Supervisors, Head Cook IIs and Head Cook IIIs should be included in the Primary Level Supervisors Unit represented by the Intervenor and Senior Therapy Program Assistants should be included in Health, Care and Rehabilitation Services Unit represented by A.F.S.C.M.E.

6. The undersigned finds that the findings and recommendations of the Hearing Officer are supported by the record and he adopts those findings of fact and conclusions substantially for the reasons cited by the Hearing Officer. Accordingly, the units in question are hereby clarified as follows: Cottage Training Supervisors, Head Cook IIs and Head Cook IIIs are included in the Primary Level Supervisors Unit represented by the Intervenor and Senior Therapy Program Assistants are included in the Health, Care and Rehabilitation Services Unit represented by A.F.S.C.M.E.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
March 26, 1976

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

H. O. No. 76-11

In the Matter of

STATE OF NEW JERSEY,

Public Employer

-and-

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

Docket No. CU-135

Petitioner

-and-

STATE SUPERVISORY EMPLOYEES ASSOCIATION,
N.J.C.S.A.-N.J.S.E.A.,

Intervenor

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

On March 15, 1974, the American Federation of State, County and Municipal Employees, AFL-CIO, filed a petition with the Public Employment Relations Commission for Clarification of Unit involving certain employees of the State of New Jersey, to wit, Cottage Training Supervisor, Head Cook II, Head Cook III, and Senior Therapy Program Assistant. This case was originally processed informally by Jeffrey B. Tener and later by Stephen B. Hunter. A Notice of Hearing was issued on May 2, 1975, for hearings to be held on May 29, and June 5, 1975. On May 14, 1975, an Order Rescheduling Hearing was issued for hearings to be conducted from May 29 to June 5, 1975, to June 19, 1975. The case was again rescheduled by Order Rescheduling Hearing dated June 4, 1975, from June 19, 1975, to July 23, 1975. Thereafter, the case was assigned to the undersigned.

On October 16, 1975, at an informal conference held at the PERC Office in Newark, the parties agreed to waive a formal hearing and proceed instead under 19:14-6.3(g) and 19:14-6.7 of the Commission's Rules and Regulations. Specifically, the parties stipulated that the undersigned should base his report and recommendations relating to the Cottage Training Supervisor on a review of the transcript, fact-finder's findings and recommendations, and briefs pertaining to State of New Jersey and Council No. 63, A.F.S.C.M.E., AFL-CIO, Docket No. FF-329. In addition, the parties agreed to submit briefs for consideration by the undersigned vis-a-vis the job titles, Head Cook II, Head Cook III, and Senior Therapy Program Assistant.

Hearings in the instant fact-finding case were held during the months of September, October, November and December, 1972, and the parties were given full opportunity to present evidence, examine and cross-examine witnesses and to argue orally.

Background Information

1. On June 27, 1972, the Petitioner and the State of New Jersey entered into a collective negotiation contract effective July 1, 1972, and expiring June 30, 1974. The negotiating unit included approximately 7800 employees engaged in health care and rehabilitation services in six psychiatric hospitals and eight training schools located throughout the State.^{1/} The Petitioner's unit is described in a certification issued by PERC as follows:

"All health care and rehabilitation service employees employed by the State of New Jersey excluding all office clerical, professional and craft employees, policemen, managerial executives and supervisors within the meaning of the Act and all other employees."^{2/}

It is significant to note in connection with said certification that prior to the election ordered by PERC in this case, the parties reached agreement regarding job titles to be included in the collective negotiation unit "except with respect to Cottage Training Supervisors". In the instant election, the C.T.S.'s^{*} voted challenged ballots; and, since the outcome of the election did not depend on challenged ballots, the C.T.S. issue was not resolved.^{3/}

2. The job titles, Head Cook II, Head Cook III, and Senior Therapy Program Assistant, were included in a unit certified by PERC on November 1, 1973, in Docket No. RO-668, State of New Jersey and State Supervisory Employees Association, CSA/SEA. The certified unit includes,

"all Primary Level Supervisors employed by the State of New Jersey including employees in the following classification:..."**

Issue:

The core question to be resolved relates to the status i.e., supervisory or non-supervisory, of the instant employees in the job titles: Cottage Training Supervisor, Head Cook II, Head Cook III, and Senior Therapy Program Assistant.

^{1/} Fact-finder's Findings and Recommendations, p. 2.

^{2/} Memorandum of Public Employer to Fact-finder, p. 1.

^{3/} Ibid, PP. 3-4.

* Note: Hereafter "C.T.S." will be employed to indicate Cottage Training Supervisors.

** The certification lists numerous job titles including Head Cook II, Head Cook III, and Senior Therapy Program Assistant.

Position of Parties

The Petitioner maintains that the cottage training supervisor's "function is therefore clerical in nature, lead man in character, and certainly not supervisory in nature." Moreover, the petitioner argues that these employees enjoy a community of interest with the "I.A." and "C.T.T." members of Council No. 63, and "should therefore be included in the same AFSCME bargaining unit."^{4/} He holds, too, that instant employees "do not have the ability, nor the authority to hire, fire, they are a working supervisor."^{5/}

The Petitioner argues, too, that Head Cook II, Head Cook III and Senior Therapy Program Assistant "...are not supervisory either by chain of command or by description..."^{6/}, and should, therefore, be included in the current unit.

The Public Employer

The Public Employer maintains "...that the Cottage Training Supervisors are supervisors within the meaning of NJSA 34:13A-5.3 and 34:13A-6(d)."^{7/} The Public Employer contends, too, that the instant employees have the power to hire, and to effectively recommend the same;^{8/} Moreover, he holds that the C.T.S.'s have the power to discipline employees and to effectively recommend the same;^{9/} and too, under the rationale of Wilton,* the inclusion of C.T.S.'s in the requested unit would create a conflict of interest..."^{10/}

Similarly, the Public Employer maintains that the titles, Head Cook II and Head Cook III "...are supervisory in nature and should properly be included in the Primary Supervisors Unit..."^{11/} and, too, that N.J.S.A. 34:13A-5.3, "...provides that units of non-supervisory employees shall not include persons who have "the power to hire, discharge, discipline or to effectively recommend the same."^{12/} The Public Employer maintains too, that Head Cook II and III

^{4/} "I.A." refers to Institutional Attendants and "C.T.T." to Cottage Training Technician. p. 14 of brief submitted by AFSCME in instant fact-finding case.

^{5/} Fact-finding transcript of 10/6/72, p. 383, Docket No. FF-329.

^{6/} See AFSCME letter of stipulation to undersigned dated 2/13/76.

^{7/} "Memorandum of Public Employer to Fact-finder," p. 2.

^{8/} Ibid, p. 14.

^{9/} Ibid, p. 17.

^{10/} Ibid, p. 20.

^{11/} State of New Jersey's brief, December 29, 1975, p. 1.

^{12/} Ibid, p. 2.

* Board of Education of West Orange v. Elizabeth Wilton, 57 N.J. 404.

are properly included in a unit which was certified by PERC on November 1, 1973, after a mail ballot election. With regard to the job title, Senior Therapy Program Assistant, the Public Employer agrees to abide by PERC's decision based upon the submissions of AFSCME, AFL-CIO, and the State Supervisory Employees Association, NJCSA/NJSEA.^{13/}

The Intervenor

The Intervenor maintains that all of the job titles in question should be included within the instant primary level supervisory unit.^{14/}

Discussion and Findings

Chapter 34:13A-5.3 provides in part: "...nor, except where established practice, prior agreement, or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership." Assuming arguendo that the disputed job titles and employees were to be found to have supervisory status, the record does not indicate any established practice, prior agreement or special circumstances to warrant a finding that they be represented by an employee organization comprised of non-supervisory personnel.

With regard to the C.T.S. position, the instant fact-finder permitted extensive testimony and oral argument; however, he failed to make a recommendation other than to remand the entire record to PERC for eventual disposition.^{15/} Pursuant thereto, the undersigned has reviewed the entire record and finds that the C.T.S.'s are supervisors within the meaning of the Act and, therefore, should be included in the primary level supervisors unit of State employees as per PERC certification dated November 1, 1973.^{16/}

Witness Gallimore, Supervisor of Cottage Life at the Woodbridge State School, testified that the C.T.S.'s interview applicants for positions

^{13/} See State's letter of stipulation to undersigned dated 11/21/75.

^{14/} See letter to Executive Director from David I. Fox, Attorney for the Intervenor, dated 4/15/74.

^{15/} Fact-finder's "Findings and Recommendations", p. 24-26.

^{16/} State of New Jersey and State Supervisory Employees Association, NJCSA/NJSEA, Docket No. RO-668.

"...and approve or disapprove of that employee being hired in that specific unit." Moreover, he stated, that an applicant would not be hired if the C.T.S. disapproved.^{17/} He testified, too, that the C.T.S. makes written reports of all cases wherein other employees are insubordinate, display offensive conduct or physically abuse patients.^{18/} In the transcript of 10/30/72, p. 964, he gives an example of a C.T.S.'s effective recommendation of disciplinary action; to wit, a one-day suspension against a subordinate employee for chronic tardiness.^{19/} The witness testified, too, that C.T.S.'s "...can recommend any action from institutional reprimand to termination of services;" and, he stated that he knew of a case where a C.T.S. recommendation for discharge was implemented by his superiors.^{20/} In addition, he explained the method by which the C.T.S. evaluates employees under her supervision; and, an "unsatisfactory" rating would deprive an employee of his increment.^{21/} In transcript of 11/1/72, p. 1029, the witness cited a case wherein an employee was denied an increment after an unfavorable evaluation by a C.T.S.^{22/} Witness Hanson, a Cottage Training Supervisor at the Vineland State School, testified that she interviewed applicants and would recommend whether to hire any of them; and in each case, the applicant favorably recommended by her was hired.^{23/} Witness D'Hulster, a C.T.S. at the Hunterdon State School, explained how she interviewed applicants, and recommended whether or not to hire. Here, too, each applicant favorably recommended was hired.^{24/} Moreover, she was involved in disciplining employees; in one case, she recommended the dismissal of an employee and in other cases she recommended disciplinary action against other employees for excessive absenteeism.^{25/} These recommendations were implemented.

Witness Williams, Head Cottage Training Supervisor at Vineland State School Colony, testified that C.T.S.'s recommend hiring and, too, that he never hired an applicant rejected by a C.T.S.^{26/}

Witness Pullen, Cottage Training Supervisor at Woodbridge, explained her role in the hiring process i.e., applicants favorably recommended were hired and the one she rejected was not hired.^{27/}

- ^{17/} Transcript of 10/30/72, p. 943-944.
^{18/} Ibid, p. 953.
^{19/} Ibid, p. 964.
^{20/} Ibid, p. 966-967.
^{21/} Ibid, p. 997.
^{22/} Transcript of 11/1/72, p. 1029.
^{23/} Transcript of 11/21/72, p. 1215-1216.
^{24/} Ibid, pp. 1224-1225.
^{25/} Ibid, p. 1226.
^{26/} Ibid, p. 1240.
^{27/} Transcript of 11/22/72, pp. 1359-1361.

Witness Cobb, Cottage Training Supervisor at Johnstone Training and Research Center, Bordentown, testified that she recommended a disciplinary action against an employee and her superior issued a written reprimand. Moreover, she stated that her instructions mandate written reports in all cases of misconduct.^{28/} Under cross-examination, she explained her role in evaluating subordinate employees.^{29/}

Witness Anderson, Cottage Training Supervisor at Farmingdale, testified that another CTS recommended discharge of an employee with an option of resigning and the recommendation was followed.^{30/} He stated, too, that the CTS evaluates other employees.^{31/} From all of the above, the undersigned concludes that CTS's are supervisors within the meaning of the Act and should be included in the Primary Level Supervisory unit as described in the certification issued on November 1, 1973 by Public Employment Relations Commission.*

Next, the undersigned addresses himself to a review of the job descriptions** of Head Cook II and Head Cook III; and, in addition, the undersigned considered the unit description in the instant certification.

Among their other duties, Head Cooks II and III supervise "the work operations and/or functional programs and has (sic) responsibility for effectively recommending the hiring, firing, promoting, demoting and/or disciplining of employees."^{32/} Moreover, the above-mentioned certification includes Head Cook II and Head Cook III in the collective negotiation unit.

With regard to the Senior Therapy Program Assistant, the undersigned finds that the assigned duties and responsibilities are not supervisory within the meaning of the Act. Accordingly, employees with this job title should be included in the petitioner's unit i.e., the Health, Care, and Rehabilitation Services unit.

Recommendations:

1. The Cottage Training Supervisors shall be found to be supervisors within the meaning of the Act and shall be included in the State's Primary Level Supervisory unit represented by CSA/SEA.

^{28/} Transcript 12/1/72, pp. 1481-1482.

^{29/} Ibid, p. 1485.

^{30/} Ibid, p. 1501.

^{31/} Ibid, p. 1512.

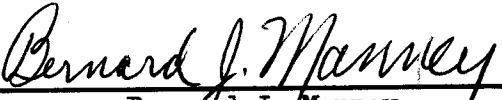
* See Docket No. RO-668, In the Matter of State of New Jersey and State Supervisory Employees Association, CSA/SEA.

** Note: Instant job descriptions were furnished by the New Jersey Department of Civil Service.

^{32/} See New Jersey Department of Civil Service job descriptions for Head Cook II and Head Cook III.

2. Head Cook II and Head Cook III shall be found to be supervisors within the meaning of the Act and shall be included in the State's Primary Level Supervisory unit represented by CSA/SEA.

3. The Senior Therapy Program Assistant shall be found to be non-supervisory and shall be included in the State's Health, Care and Rehabilitation Services unit represented by AFSCME, AFL-CIO.


Bernard J. Manney
Hearing Officer

DATED: Trenton, New Jersey
March 4, 1976