

D.R. NO. 94-18

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

In the Matter of

COUNTY OF PASSAIC,

Public Employer-Petitioner,

-and-

Docket No. CU-93-25

PBA LOCAL NO. 203,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of weights and measures employees to exclude the superintendent. The Director determined that the superintendent was a supervisor and that the title must be excluded because of the existence of and potential for a substantial conflict of interest, pursuant to Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971).

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Appearances:

For the Public Employer-Petitioner
Thomas F. Portelli, Assistant County Counsel

For the Employee Organization
Schneider, Goldberger, Cohen, Finn, Solomon, Miceli, Leder,
Montalbano, attorneys
(Bruce D. Leder, of counsel)

DECISION

On November 19, 1992, the County of Passaic filed a petition for clarification of unit seeking to clarify a negotiations unit of the Superintendent of Weights and Measures, the Deputy Superintendent and two Assistant Superintendents. The unit is represented by PBA Local No. 203. The County seeks to exclude the Superintendent of Weights and Measures because it is a purportedly confidential employee, managerial executive and has supervisory responsibility.

An old job description reveals that the Superintendent's principal duty is enforcing weights and measures laws in the County. Examples of work include formulating and approving

practices and plans of the department; filing appropriate documents with the prosecutor; preparing annual budget; supervising the creations and maintenance of records and files, etc.

The County filed a memorandum from its personnel officer stating that Superintendent Ernest Salerno recently recommended the hiring of John Legge and Ilano Torchani to the title of Assistant Superintendent and both were hired. The County also asserts that Salerno disciplined a member of the unit in September 1992, after consulting the State Superintendent in Trenton and that Salerno initiated the discipline independently. The County also maintains that he prepares the annual budget, makes work assignments and is responsible for scheduling.

In his preparation of the budget, Salerno confers with the County Administrator and is aware of "what funds are available for increases."

The PBA has denied that Salerno is a managerial executive and confidential employee, but has not rebutted the facts proffered by the County.

In County of Warren, P.E.R.C. No. 89-66, 15 NJPER 30 (1988), the Commission clarified a negotiations unit represented by a PBA local organization to exclude the Superintendent of Weights and Measures. Under facts quite similar to those asserted here, the Commission determined first that the Superintendent was not a managerial executive. Under N.J.S.A.

34:13A-3(f), managerial executives are:

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....

Although the superintendent in County of Warren effectively recommended hiring and firing and disciplining, and had authority to evaluate, promote and prepare a budget, the evidence failed to show that he "proposed and exercised the level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes." Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 509 (¶11259 1980).

Superintendent Salerno has authority similar to that of the superintendent in County of Warren. He effectively hires and disciplines, formulates the budget and departmental plans. The facts do not suggest that he has the power to "affect broadly" the organization's purposes. Accordingly, I determine that Superintendent Salerno is not a managerial executive.

The Commission did find that the superintendent in County of Warren was a supervisor within the meaning of the Act. N.J.S.A.

34:13A-5.3 states 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 effectively recommend the same have the right to be represented in a collective negotiations unit by an employee organization that admits non-supervisory personnel to membership.

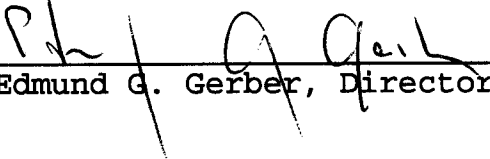
I find that Superintendent Salerno effectively recommends hiring and discipline. Although these recommendations may be reviewed, nothing suggests his decisions are not essentially final. Salerno was responsible for the hiring of the two current assistant superintendents and disciplined a unit employee in 1992. His is a small department and there are undoubtedly few instances when he exercises his supervisory authority. I am satisfied that his efforts so far render his title supervisory and require the unit to be clarified to exclude the Superintendent of Weights and Measures position.

Therefore, based upon the foregoing, the unit is hereby clarified to exclude the Superintendent of Weights and Measures position because of the existence of and the potential for a substantial conflict of interest. Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971).

Finally, I note that the County has not alleged facts sufficient to justify the exclusion of the Superintendent because he is a confidential employee within the meaning of the Act. See N.J.S.A. 34:13-13A-3(g); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 714 (¶16249 1985).^{1/}

I hereby order the unit to be clarified to exclude the Superintendent of Weights and Measures.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February, 14, 1994
Trenton, New Jersey

1/ Superintendent Salerno, like other Weights and Measures law enforcement officials, is a police employee within the meaning of the Act. County of Warren, P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986). As a supervisory employee, he may be eligible for inclusion in a County police supervisory negotiations unit.