

D.R. NO. 92-27

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

In the Matter of

Borough of Edgewater,

Respondent,

-and-

Docket No. RO-92-95

IBT Local 97,

Charging Party.

SYNOPSIS

The Director of Representation orders an election to determine the representational desires of white-collar employees of the Borough of Edgewater.

The Director finds that the municipal court administrator is neither a supervisor nor a managerial executive and that the welfare director is not a managerial executive. Both employees are eligible for inclusion in the petitioned-for unit.

The Director finds that the secretary to the chief of police is a confidential employee and the coordinator of scheduling for recreation activities is a supervisor and both are therefore ineligible for inclusion in the proposed unit.

The Director determines that the job responsibilities of a principal clerk typist remain in dispute. That employee may vote by challenged ballot.

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Appearances:

For the Respondent,  
Robert T. Regan, attorney

For the Charging Party,  
Patrick Nardolilli, Representative

DECISION AND DIRECTION OF ELECTION

On October 21, 1991, the International Brotherhood of Teamsters Local 97 ("Local 97") filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). Local 97 seeks to represent a unit of approximately 15 unrepresented white-collar employees employed by the Borough of Edgewater ("Borough"). Although the Borough consents to an election, it seeks to exclude five positions from the petitioned-for unit.<sup>1/</sup> Local 97 asserts that all of the employees the Borough

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<sup>1/</sup> The Borough originally sought to exclude Board of Health Secretary Mary Jane White. In a subsequent position statement, it agreed to her inclusion in the proposed unit, but raised an additional exclusion - Principal Clerk Typist Virginia Schieli.

seeks to exclude are eligible for representation in the petitioned-for unit. Local 97 also contends that our eligibility determinations should be based on the employees' civil service job descriptions. It states that the employees' duties constitute out-of title work and therefore should not be considered. However, to determine unit eligibility we must examine employees' actual powers and duties rather than their job descriptions. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970).

A Commission staff agent conducted an informal investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. The parties also submitted additional post-conference position statements. It appears that there are no substantial and material factual issues in dispute which would require a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation. These facts appear.

Karen Christiano is the municipal court administrator. Christiano has full purchasing authority for court equipment and materials, and she establishes the hours that the court office will be open for fine collection and payment, subject only to the approval of the municipal judge. The Borough characterizes Christiano as a "totally unsupervised employee", who reports to the municipal judge. The Borough also states that Christiano supervises

the deputy court clerk.<sup>2/</sup> It asserts that the deputy reports to Christiano, who establishes the deputy's job duties, responsibilities and hours of work and oversees her performance. The Borough alleges that Christiano has recommended hiring but has not recommended discipline or discharge.

The Borough contends that Christiano is both a managerial executive and a supervisory employee. The IBT asserts that Christiano does not supervise employees, and is herself directly supervised by the judge. It also states that Christiano does not have the power to effectively recommend disciplinary action.

A managerial executive is an employee who formulates management policies and practices, and who is charged with the responsibility of directing the effectuation of such management policies and practices. N.J.S.A. 34:13A-3(f). Although the Borough asserts that Christiano is a managerial executive, it has not provided specific facts or examples of policies or practices she develops and implements that rise to the level of managerial decisions. Mine Hill Tp., D.R. No. 91-33, 17 NJPER 315 (¶22139 1991). Exercising limited discretion in carrying out the directives of the municipal judge does not constitute the exercise of managerial authority. Commercial Tp., D.R. No. 91-9, 16 NJPER 511 (¶21223 1990).

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<sup>2/</sup> The parties agree that the deputy court clerk position is properly included in the proposed bargaining unit.

The Borough also asserts that Christiano is a supervisory employee. N.J.S.A. 34:13A-5.3 defines a supervisor as "having the power to hire, discharge, discipline, or to effectively recommend the same." The Borough contends that Christiano has recommended hiring. An effective recommendation is one that is adopted without independent review and analysis by a higher level of authority. Teaneck Bd. of Ed., E.D. No. 23 (1971); Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984). The Borough has not provided a specific example of Christiano recommending a hiring nor whether such recommendation was effective.

In a letter dated March 19, 1992, I indicated to the parties that I intended to find Christiano is not a statutory supervisor. The Borough filed a response stating that Christiano establishes the duties and responsibilities of the deputy clerk on a regular basis. It contends that Christiano must be found to supervise the deputy clerk because no other municipal employee supervises her.<sup>3/</sup>

Christiano's relationship with the deputy clerk appears to be no more than direction of the deputy's work, which is not sufficient to support a finding of supervisory status under the

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<sup>3/</sup> The Borough cites Borough of Barrington, P.E.R.C. No. 90-20, 15 NJPER 556 (¶20230 1989) in support of its supervisory conflict of interest arguments. Barrington is not applicable to this case. In Barrington, the court clerk evaluated the deputy court clerk, had the power to make effective discharge recommendations and had exercised that power on at least one occasion.

Act. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985); Middlesex Cty. Welfare Bd. and CWA, P.E.R.C. No. 10, NJPER Supp. 10 (1969); Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987); County of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶4178 1978). I find that Christiano is neither a managerial executive nor a supervisory employee and is therefore eligible for inclusion in the petitioned-for unit.

Maureen Hennessey is secretary to the chief of police, as well as code enforcer and police department matron. Approximately 50% of her duties are as secretary to the police chief. The chief is involved in bargaining with the police officers' union. He also hears and decides grievances filed by the officers' union. Hennessey types the chief's responses to officers' grievances, and sees those responses before the affected employees do.

The Borough contends that Hennessey is a confidential employee. The IBT contends that the negotiations and grievance information Hennessey is privy to is that of another separate bargaining unit of employees that the IBT does not desire to represent.

N.J.S.A. 34:13A-3(g) defines confidential employees as those: "...whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties." Confidential

employees may not appropriately be included in any negotiations unit. Typing and filing of labor-related materials such as grievances and knowledge of grievance responses before they are sent to the grievant renders an employee confidential. Tp. of Aberdeen, P.E.R.C. No. 88-95, 14 NJPER 315 (¶19114 1988); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979). This also applies to employees who are privy to confidential information from a bargaining unit other than the one they seek to join. Borough of Clayton, D.R. No. 89-26, 15 NJPER 233 (¶20093 1989); Dover Tp., D.R. No. 79-19, 5 NJPER 61 (¶1040 1979).<sup>4/</sup> The Borough asserted that Hennessey is aware of the chief's "viewpoint" during the collective negotiations process. Such an assertion is not sufficient to support a finding of confidential status. I find that Hennessey's typing and advance knowledge of grievance responses renders her a confidential employee and is not eligible for inclusion in the proposed unit.

Dorothy Nolting is the welfare director. She is certified by the State of New Jersey but does not hold a college degree. Nolting was hired by, and reports to, a municipal assistance board. Nolting devises her own budget, establishes the hours the welfare office will be open and the hours she will work and exercises complete purchasing authority for her office. She "establishes

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<sup>4/</sup> Both Clayton and Dover address exclusion of a police chief's secretary from bargaining units.

rules and practices concerning the department in accordance with applicable federal and state regulations." Examples given include ensuring administration of assistance in the Borough and determining applicants' eligibility for assistance and formulating the Borough's response for the assistance of persons in need. Nolting is the only welfare department employee. She is not involved in negotiations or the grievance process.

The Borough contends that Nolting is a managerial executive. The IBT contends that Nolting does not manage or direct borough employees, but merely screens welfare recipients for eligibility.

Although the Borough asserts that Nolting is a managerial executive, it has not provided any facts to demonstrate that she has broad discretion in the area of budgeting or determining the amount to be budgeted for the welfare department. There is also no allegation that Nolting formulates policies that broadly affect the employer's mission. Establishing office and work hours and exercising purchasing authority are administrative functions that are not indicative of managerial status. Administering assistance and determining eligibility for assistance is governed by state or federal guidelines. Ensuring enforcement or compliance with existing guidelines without independent discretion does not constitute effectuating management policies. Borough of Leonia, D.R. No. 86-24, 12 NJPER 488 (¶17186 1986). I find that Nolting is not a managerial executive within the meaning of the Act and is therefore eligible for inclusion in the petitioned-for unit.



Louise Principe is coordinator of scheduling for recreation activities. She reports to the mayor and council. Principe has recommended hiring summer employees to the mayor and council and those recommendations are followed. Principe has terminated her assistant Maryanne Zavodsky, who submitted an affidavit stating that the termination was by letter directly from Principe. Principe approves employees' time off, recommends salaries to the mayor and council, who follow these recommendations and evaluates employees. She is not involved in the negotiations or grievance process. Principe formulates recreation department policies, including whether the department should institute a particular program. If there is not sufficient interest in a particular recreation program, Principe will decide whether to cancel it. The Borough further states that Principe has total responsibility for the assignment and development of other employees in the recreation department.

The Borough contends that Principe is a managerial executive and supervisory employee. The IBT contends that Principe supervises seasonal employees who are not contemplated for inclusion in the petitioned-for unit and is therefore not a supervisory employee.

Supervisory employees have the power to hire, discharge, discipline, or to effectively recommend the same. N.J.S.A. 34:13A-5.3 Nolting has terminated an assistant and recommended hiring summer employees. Those recommendations were followed. An effective recommendation is one that is adopted without independent

review and analysis by a higher level of authority. Teaneck Bd. of Ed., E.D. No. 23 (1971); Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984). I find that Principe is a supervisory employee and is therefore not eligible for inclusion in the petitioned-for unit. Since Principe's supervisory status renders her ineligible for unit inclusion, I make no determination on the managerial status issue.

Virginia Schieli is a principal clerk typist who is secretary to the borough clerk. She opens and dates mail, is involved in preparing the agenda for council meetings and prepares the meeting minutes from the borough clerk's notes. The Borough contends that Schieli has access to minutes of meetings at which the governing body's collective negotiations strategy is discussed, and that she thus has advance knowledge of the council's position in the negotiations process. The Borough also contends that Schieli opens mail from its attorney. This mail contains information on the the Borough's negotiating position.

The Borough contends Schieli is a confidential employee. In a supplemental position statement, the Borough states that Schieli serves as acting borough clerk in the clerk's absence on an average of two or three times a year. The Borough states that Schieli attends closed sessions of the governing body as acting borough clerk, and that labor relations matters are discussed at those sessions. The IBT asserts that Schieli's duties do not render

her a confidential employee and that she should be eligible for inclusion in the unit. In a response to the Borough's supplemental position statement, the IBT reiterates that Schieli's title is principal clerk typist. It states that her job description is that of a principal clerk typist and does not contain the duties of an acting borough clerk.

Schieli's job responsibilities remain in dispute. However, Schieli is the only employee in a proposed unit of 13 employees whose duties remain in dispute. Where the number of employees in disputed titles is small relative to the total number of eligible voters in the unit and the unit sought is otherwise appropriate, we will conduct an election with the understanding that the employee(s) in the disputed position(s) may vote subject to challenge. Bor. of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 41, 45 (¶12019 1980); County of Morris Park Commission, D.R. No. 80-17, 6 NJPER 37 (¶11019 1979); Tp. of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977). So too here. Schieli may vote subject to the Commission's challenged ballot procedure.

If the challenged ballot is determinative of the election results, post election mechanisms are available to resolve the challenge, including an investigation to determine the status of the challenged voter. If the challenged ballot is not determinative and assuming that a certification of representative issues, the parties may voluntarily resolve the status of the challenged employee or either party may file a petition for clarification of unit to

determine the proper unit placement of challenged employees.

Leonia.

Accordingly, I direct that an election be conducted to determine the representational desires of the petitioned-for employees in the unit described as follows:

Included: All regularly employed white-collar employees employed by the Borough of Edgewater.

Excluded: Secretary to the Chief of Police, Coordinator of Scheduling for Recreation Activities, confidential employees, managerial executives, craft employees, professional employees, police and supervisors within the meaning of the Act.

Principal clerk typist Virginia Schieli may vote by challenged ballot.

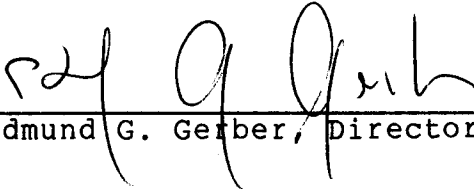
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an

alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: April 8, 1992  
Trenton, New Jersey