

D.R. NO. 92-30

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

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Public Employer,

-and-

Docket No. CU-92-34

UNITED SALARIED PHYSICIANS
AND DENTISTS,

Petitioner.

SYNOPSIS

The Director of Representation finds that chief psychiatrists are not supervisors within the meaning of the Act because their role in the hiring process does not rise to the level of effective recommendations. Accordingly, the unit of physicians and dentists is clarified immediately to include the chief psychiatrists.

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Appearances:

For the Public Employer
Eastwood & Scandariato, attorneys
(Edwin C. Eastwood, of counsel)

For the Petitioner
Carol G. Dunham, attorney

DECISION

The United Salaried Physicians and Dentists ("USPD") filed a Petition for Clarification of Unit on January 16, 1992, seeking to clarify its existing unit to include the position of chief psychiatrist. The USPD asserts that the chief psychiatrist position is not supervisory within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act") and should be included in the unit. Bergen Pines County Hospital ("Bergen Pines") opposes including the chief psychiatrist position in the unit, contending that the duties of this position are supervisory within the meaning of the Act.

We conducted an administrative investigation into the issues raised by the petition. There are no substantial and material facts in dispute which warranted a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

Subsequent to a representation election, I issued a Certification of Representative on September 22, 1986, to the USPD.^{1/} The unit is comprised as follows:

Included: all regularly scheduled full-time and part-time Physicians and Dentists and per diem Physicians and Dentists who work at least 1/6 (.16) of a regular work year (at least 345 hours in a calendar year) and who continue to be on the active payroll in the next succeeding calendar year, including Assistant/Associate Directors and Section/Unit Chiefs.

Excluded: managerial executives, supervisors within the meaning of the Act (Department Directors), non-medical professional employees, non-professional employees, residents, interns and fellows, casual employees (those working fewer than the requisite number of hours as described above), confidential employees, and all other employees of the Hospital.

Their first contract which USPD and Bergen Pines negotiated expired on December 31, 1990. The parties are currently in fact-finding for a successor agreement.

When the unit was formed, employees in the positions of Attending Psychiatrists, Section/Unit Chiefs and Assistant/Associate

^{1/} See Bergen Pines Cty. Hosp., D.R. No. 87-3, 12 NJPER 619 (¶17234 1986), where Section/Unit Chiefs and Assistant Department Directors were determined to be neither supervisory employees nor managerial executives within the meaning of the Act.

Directors all performed the same job duties. They participated in direct patient care. Each was assigned to clinical inpatient units and had a patient caseload. Their responsibilities were indistinguishable from unit employees; they lacked supervisory responsibilities. Their official Civil Service title was "Physician". They reported to the Medical Director of Psychiatry, who had full authority for hiring, discipline and discharge.^{2/}

In fall 1987, Dr. Peter Martindale was appointed Medical Director of Psychiatry. As part of a reorganization instituted by Martindale, the title chief psychiatrist was created to serve as an intermediate supervisory position. The titles of Section/Unit Chief and Assistant/Associate Directors were abandoned.

There is currently one full-time and three part-time chief psychiatrists as well as 12 full-time and 10 part-time attending psychiatrists. The duties of chief psychiatrists differ from those of the attending psychiatrists.

Chief psychiatrists report to the Medical Director. They oversee clusters of the 14 psychiatric units. Chief psychiatrists do not have clinical caseload assignments, but oversee the attending psychiatrists by reviewing patient charts. The Medical Director and chief psychiatrists meet weekly to discuss activities of the various

^{2/} Two former Assistant Directors and Section/Unit Chiefs, Dr. Waldinger and Dr. Rosendale, assert that the chief psychiatrists do the same work which they did and that they never had any authority regarding hiring, disciplining or discharging employees.

psychiatric units. Chief psychiatrists participate in internal psychiatry department committees with head nurses and program directors. These committees develop budgets for units, define staffing needs and prepare strategic long-term and short-term planning goals and objectives for the units.

According to Bergen Pines, the chief psychiatrists participate in the hiring process. The Medical Director initially reviews resumes and then forwards them to the chief psychiatrist for the unit which has a vacancy. Chief psychiatrists and attending psychiatrists can also advise the Medical Director of psychiatrists who are interested in positions at Bergen Pines. A meeting is scheduled by the Medical Director's secretary between the applicant and the chief psychiatrist. The chief psychiatrist may take the applicant on a tour of Bergen Pines and generally discuss the workplace with the applicant. After the chief psychiatrist meets with the applicant, the chief psychiatrist discusses the applicant with the Medical Director. The Medical Director then interviews the applicant independently and after another discussion with the chief psychiatrist, the Director would make the job offer, if appropriate. Bergen Pines asserts that 20 people were interviewed during the past seven years for jobs. However, the USPD asserts that the last seven psychiatrists hired only had interviews with the Medical Director. One full-time chief psychiatrist, Dr. Greenberg, has met applicants and has given them a tour. The three newer chief psychiatrists have not yet participated in interviews.

Disciplinary responsibilities of chief psychiatrists for attending psychiatrists are minimal. Once, a chief psychiatrist made a recommendation to the Medical Director to reassign an attending psychiatrist who was under a lot of stress. Another time, a chief psychiatrist intervened in a psychiatrist's handling of a case after a patient's family expressed concern. In a third incident, involving the inappropriate use of shock therapy, the attending psychiatrist resigned before any discipline was initiated.

There has never been a discharge of an employee in this unit, nor are there formal evaluation procedures. The Medical Director makes annual reappointment recommendations.

Analysis

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), sets forth the circumstances under which a unit clarification petition is appropriate:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected.... Occasionally, a change in circumstances has occurred, a new title may have been created...[or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate.... Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above. 3 NJPER at 251.

This petition is timely filed. The title chief psychiatrist was created in 1987 during a contract period which

ended December 1990 and a successor agreement has not yet been executed.^{3/}

Based upon the foregoing, I find that the chief psychiatrists are not supervisors within the meaning of the Act.

N.J.S.A. 34:13A-5.3 provides 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...."

Relying on these statutory requirements, the Commission has defined a supervisor as one having the authority to hire, discharge, discipline or to effectively recommend any of these actions. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970).

^{3/} Commission cases have addressed unit clarification petitions filed by a majority representative seeking to include or exclude a particular title from a unit, or by a public employer seeking to remove a title(s) from a unit. A clarification of unit petition for a title created during a particular contract period must be filed prior to the execution of a successor agreement. See Teaneck Tp., D.R. No. 91-34, 17 NJPER 317 (¶22140 1991); Ridgewood Bd. of Ed., D.R. No. 88-16, 14 NJPER 19 (¶19006 1987); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15139 1984); Bergen Pines Cty. Hosp., D.R. No. 80-20, 6 NJPER 61 (¶11034 1980).

A determination of supervisory status requires that the authority to hire, discipline or discharge, or to effectively recommend those actions, actually be exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." See Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976); and Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985); N.J. Institute of Technology, D.R. No. 80-37, 6 NJPER 304 (¶11145 1980); Lakeland Reg. H.S. Bd. of Ed., D.R. No. 88-34, 14 NJPER 417 (¶19169 1988).

"Effective recommendation" occurs when a recommendation for hire, discharge or discipline is adopted without independent review and analysis by a higher level of authority. See Salem Community College, D.R. No. 88-35, 14 NJPER 426 (¶19173 1988); Thomas Edison College, P.E.R.C. No. 87-147, 13 NJPER 502 (¶18185 1987), adopting H.O. No. 87-10, 13 NJPER 182 (¶18078 1987); Hackensack; Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp 465 (¶114 1971).

Chief psychiatrists do play some role in the hiring process, but as discussed above, they are not regularly involved in the hiring process. The Medical Director always conducts his own independent interview with each applicant. He does not rely on recommendations concerning hiring made by any of the chief psychiatrists. Thus, the role of the chief psychiatrist in the hiring process does not rise to the level of effective recommendation. See Bor. of Manasquan, D.R. No. 90-28, 16 NJPER 353 (¶21143 1990); compare Holland Tp., P.E.R.C. No. 88-80, 14 NJPER 225

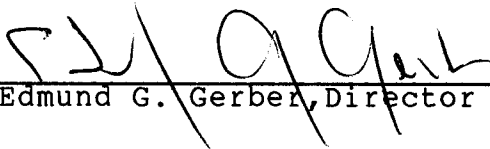
(¶19082 1988); Maurice River Tp. Schls., P.E.R.C. No. 85-114, 11 NJPER 312 (¶16113 1985); Morris Schl. Dist., D.R. No. 82-52, 8 NJPER 297 (¶13130 1982).

There were three disciplinary incidents which involved a chief psychiatrist; however, they never resulted in any disciplinary action being taken against an attending psychiatrist. These incidents do not demonstrate a regular and effective involvement in the disciplinary process by the chief psychiatrists. See Hackensack; compare Ogdensburg Bd. of Ed., D.R. No. 91-25, 17 NJPER 175 (¶22075 1991); Atlantic City Convention Center, P.E.R.C. No. 85-108, 11 NJPER 303 (¶16107 1985).

The other duties of the chief psychiatrist -- including overseeing the patient charts, preparing budgets, and involvement in planning committees -- do not involve the supervisory functions required by the Act for a determination of supervisory status. These appear to be administrative duties which may make the chief psychiatrists analogous to "lead workers." However, acting in a lead capacity and directing work of other employees does not make an employee a supervisor within the meaning of the Act. See Lakewood Housing Auth., D.R. No. 91-24, 17 NJPER 170 (¶22070 1991); City of Paterson, P.E.R.C. No. 90-79, 16 NJPER 175 (¶21074 1990); Bor. of Mt. Ephraim, D.R. No. 87-31, 13 NJPER 562 (¶18206 1987); Union Cty. Bd. of Soc. Serv., D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Hackensack.

Based upon the foregoing, I conclude that chief the psychiatrists are not supervisors within the meaning of the Act. Accordingly, I clarify the existing USPD unit of physicians and dentists to include the position of chief psychiatrist, effective immediately.^{4/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 7, 1992
Trenton, New Jersey

^{4/} If additional supervisory duties are assigned to the chief psychiatrist, the Hospital is free to file a new clarification of unit petition.