

D.R. NO. 96-16

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

In the Matter of

BOROUGH OF CARTERET and  
CARTERET PUBLIC LIBRARY,

Public Employers,

-and-

AFSCME, LOCAL 3850,

Docket No. RD-96-5

Employee Representative,

-and-

VINCENT MANETTA,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among non-supervisory white collar employees employed by the Borough of Carteret. The Director found that the Carteret Free Public Library Board of Trustees was the employer of certain disputed employees, because of the substantial control the Library exercises over their labor relations. Accordingly, the Director found that these employees are ineligible to vote in the election.

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Appearances:

For the Public Employer Borough  
Robert A. Hedesh, attorney

For the Public Employer Library  
Greco & Baker, attorneys  
(Joseph Baker, of counsel)

For the Employee Representative  
Paul Mercatanti, Staff Representative

For the Petitioner  
Vincent Manetta, pro se

DECISION AND DIRECTION OF ELECTION

On October 2, 1995, a Petition for Decertification of Public Employee Representative was filed by Vincent Manetta with the Public Employment Relations Commission. The petition, accompanied by an adequate showing of interest, seeks an election to determine whether white collar employees employed by the Borough of Carteret

wish to continue being represented by AFSCME Local 3850. There are approximately 28 employees in the petitioned-for unit. On October 10, 1995, AFSCME filed an unfair practice charge against the Library.

At issue is whether the Library or the Borough is the "public employer" of the five library employees, and whether these employees are eligible to vote in the decertification election sought by the petitioner.<sup>1/</sup>

The Borough does not oppose the election but asserts that the five disputed positions are Borough employees and should be eligible to vote in the decertification election. The Library Board of Trustees disagrees; it asserts that the five employees are Library employees not Borough employees. AFSCME asserts that the Library employees are members of its Borough bargaining unit and should be eligible to vote. The petitioner takes no position on this issue. No other issues were raised by any party in opposition to the requested decertification election.

We have conducted an administrative investigation and make the following findings.

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<sup>1/</sup> The charge alleges that the Library violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(5); that subsection prohibits public employers, their representatives or agents from: "Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative." AFSCME withdrew the charge on March 18, 1996.

On January 25, 1993, the Commission certified AFSCME as the majority representative of a unit of white collar employees employed by the Borough of Carteret:

Included: all full-time and part-time clerical employees employed by the Borough of Carteret.

Excluded: all managerial executives, confidential employees, police employees, supervisory employees within the meaning of the Act, professional employees craft employees and all other employees employed by the Borough of Carteret including, housing, building, plumbing and electrical inspectors and senior library assistants and library assistants. (emphasis added)

AFSCME asserts that the disputed white collar titles were in the blue collar unit and that AFSCME and the Borough agreed during negotiations to relocate them into the white collar unit. It appears that the Library Board was neither consulted about nor in agreement with this decision. The recognition article of the collective negotiations agreement between AFSCME and the Borough, effective from January 1, 1993 through December 31, 1995, lists "supervising library assistant, junior library assistant and library assistant" as titles included in the Borough's clerical unit.<sup>2/</sup>

On October 18, 1995, at our request, the Borough provided a list of employees eligible to vote in the decertification election and their job titles; that list included five employees in the following library positions:

- |                     |                          |
|---------------------|--------------------------|
| 1. Eileen Fullam    | Senior Library Assistant |
| 2. Barbara Ann Rosa | Senior Library Assistant |

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<sup>2/</sup> All of the parties agree that the correct titles are senior library assistant, library assistant and clerk typist.

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|-----------------------|--------------------------|
| 3. Annabelle Tomasino | Senior Library Assistant |
| 4. Mary Roche         | Library Assistant        |
| 5. Kathy W. Quito     | Clerk Typist             |

N.J.S.A. 40:54-12, Libraries and Reading Rooms: Trustees.

Powers: Employees, provides, in relevant part:

The board shall hold in trust and manage all property of the library. It may rent rooms, or, when proper, construct buildings for the use of the library, purchase books, pamphlets, documents, papers and other reading matter, hire librarians, and other necessary personnel, and fix their compensation, make proper rules and regulations for the government of the library, and generally do all things necessary and proper for the establishment and maintenance of the free public library in the municipality.... (emphasis added).

The Library, not the Borough, has hired, fired and promoted employees, set hours of work, staffing levels, wages and fringe benefits, and maintained a grievance procedure.

The Library is a separate "appointing authority" within the State civil service system. With respect to hiring procedures, Library Director Ronna Pearl interviews applicants, presents a recommendation to the Library Board for approval, receives hiring authorization, prepares and sends the official hiring papers to the State Department of Personnel ("DOP") and, for informational purposes, to the Borough's Treasurer and Municipal Clerk. The Borough Committee does not vote to approve the Library's hiring selections, nor has the Borough Committee voted to reverse Library hiring decisions. The procedure for promotions is similar. In November 1995, Mary Roach was promoted from library assistant to senior library assistant. Pearl recommended this promotion to the

Library Board, which approved the promotion. Pearl then called the DOP, completed their required paperwork and posted the official DOP "promotional announcement." Another employee was disciplined and terminated for failing to return to work after an extended sick leave. Pearl prepared the official preliminary and final disciplinary notices, after receiving authorization from the Library Board, not the Borough Committee. In that case, the employee appealed and was scheduled for a hearing before an administrative law judge when the matter was resolved without a hearing by the Library Director and a Library Board member, with no participation by the Borough.

Although the Borough and AFSCME asserted that the Borough controls the hiring, firing and promotions for library employees, no specific factual examples were provided of the Borough's having taken these personnel actions. Both agree that the Library sets the library's staffing levels, work hours, weekly schedule and work rules.

The Borough provides the funding for library operations, but the Library Board controls the employees' terms and conditions of employment. In contrast, the Borough exerts very little authority over the hiring, disciplining, firing, staffing levels, work schedule, and benefits of the library employees.

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Based on the information provided and the applicable legal standard, we find that the Library is the employer of the disputed

employees and accordingly, that the five Library employees are not eligible to vote in the instant decertification election. The standard for determining the public employer of employees is set forth in the Act. N.J.S.A. 34:13A-3(c) defines "employer" and "public employer" as:

(c) the term "employer" includes an employer and any person acting directly or indirectly, or on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

In determining who is the public employer of certain employees, the Commission considers who controls the hiring, discipline, performance evaluations, firing, promotions, vacations, hours of work, scheduling, wages and benefits of employees and the funding of employees' compensation and benefits. See County of Morris, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985).<sup>3/</sup>

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3/ See also, Township of Neptune, D.R. No. 87-26, 13 NJPER 386 (¶18155 1987); Ocean County Prosecutor, D.R. No. 82-29, 8 NJPER 60 (¶13024 1981); Bergen County Freeholders Bd. v. Bergen County Prosecutor, P.E.R.C. No. 78-72, 4 NJPER 104 (¶4110 1978), aff'd 172 N.J. Super 363 (App. Div. 1980); Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER 147 (¶4069 1978), aff'd P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978); Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977).

Here, the fact that AFSCME and the Borough chose to place the library titles in their contractual recognition clause and to negotiate over their terms and conditions does not overcome these other labor relations elements which we reviewed.

In County of Morris, Morrisview Nursing Home derived its operating budget from the County and its employees were included in the same contract and enjoyed the same benefits as the County employees. Nevertheless, Morrisview exercised sufficient control so that it and not the County was the employer.

See also, Township of Neptune, D.R. 87-26, 13 NJPER 386 (¶18155 1987). In Bergen and Mercer County Prosecutor D.R. 78-34 4 NJPER 105 (¶4047), aff'd P.E.R.C. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 178 N.J. Super 363, 411 (App. Div. 1980), where the Commission and the Appellate Division held that the Prosecutors, and not the respective counties, were the public employers of employees in each Prosecutor's office. In Mercer County Superintendent of Elections, P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978), the Commission held, and the Appellate Division affirmed, 172 N.J. Super. 406 (App. Div. 1980) that the Superintendent, not the County, was the public employer despite the County's responsibility to pay salaries. The Court held:

We attach no importance to the fact that the county maintains the personnel records of the employees, nor is the fact that the county pays the salaries determinative of the identity of the employer. Id. at 410.



Here, although the funding is provided by the Borough, pursuant to statute, that statute does not give the Borough authority over the labor relations of Library employees. Due to the substantial control the Library Board exercises over the labor relations of the disputed employees and the lack of specific factual evidence indicating that the Borough has hired, promoted, disciplined, fired and established the work schedules for these employees, I find that the Library Board is the employer of the above-referenced Library employees and to exclude them from the unit represented by AFSCME Local 3850.

Accordingly, I order that an election be conducted among the employees in the Borough's clerical negotiations unit, and that the senior library assistants, library assistants and clerk typist employed by the Carteret Free Public Library are excluded from the white collar unit of Borough employees represented by AFSCME Local 3850, and are thus ineligible to vote in this decertification election. The decertification election shall be conducted pursuant to the Commission's rules.

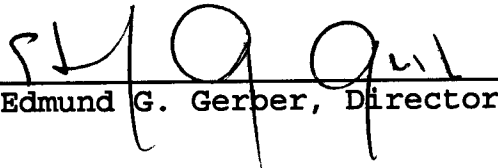
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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. 19:11-10.1, 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: May 2, 1996  
Trenton, New Jersey