

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

DOCKET NO. CU-169

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

Petitioner.

STATE OF NEW JERSEY

Public Employer-Petitioner,

-and-

DOCKET NO. CU-172

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

Employee Representative.

SYNOPSIS

The Director of Representation, in a clarification of unit proceeding, determines that the Associate Directors of Library Services at Kean College of New Jersey and Trenton State College and the Assistant Directors of Library Services at Stockton State College are supervisors within the meaning of the Act and may not be included in a State College Faculty negotiations unit. The Director further finds that Assistant Directors of Library Services at Montclair State College, Jersey City State College, Kean College, Trenton State College, Ramapo College of New Jersey and Glassboro State College are not supervisors within the meaning of the Act, do not have a conflict of interest with other unit employees, and therefore, are included within the State College Faculty negotiations unit. Additionally, the Director finds that the Acting Department Heads at the William Paterson College library are not supervisors and, therefore, are included in the State College Faculty negotiations unit. In making the above determinations, the Director, applying the definition of supervisors contained in the New Jersey Employer-Employee Relations Act, concludes that, with the exception of Stockton State College, the Assistant Directors do not have the authority or the effective power to recommend hire, discharge or discipline and that their input into these determinations is diluted and attenuated by various levels of administrative review and by collegial recommendations

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COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

Employee Representative.

Appearances:

For the State of New Jersey
Honorable John J. Degnan, Attorney General
(Melvin E. Mounts of counsel and on the brief)

For the Council of New Jersey State College Locals
Thomas H. Wirth, Staff Representative

DECISION AND ORDER

On January 21, 1975, two Petitions for Clarification of Unit were filed with the Public Employment Relations Commission (the "Commission") with respect to the status of certain titles listed below.

- (1) Director of Library Services, ^{1/}
Trenton State College
- (2) Associate Director of Library Services,
Kean College of New Jersey
- (3) Associate Director of Library Services,
Trenton State College
- (4) Assistant Director of Library Services,
Montclair State College
- (5) Assistant Director of Library Services,
Kean College of New Jersey
- (6) Assistant Director of Library Services,
Jersey City State College
- (7) Assistant Director of Library Services,
Ramapo College of New Jersey
- (8) Assistant Director of Library Services,
Stockton State College
- (9) Assistant Director of Library Services,
Trenton State College
- (10) Assistant Director of Library Services,
Glassboro State College
- (11) Certain Librarians acting as Department Heads,
William Paterson College of New Jersey

The Petition in Docket No. CU-169 was filed by the Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO (the "Council") and the Petition in Docket No. CU-172 was filed by the State of New Jersey (the "State"). On February 4, 1975, these matters were consolidated by an Order Consolidating Cases.

The State, the public employer of the employees involved in this matter, is seeking to exclude the employees in the above-listed titles from the collective negotiations unit of State

^{1/} The parties subsequently agreed to exclude this title from the unit.

College faculty and nonteaching professional staff represented by the Council. The State contends that all the employees in question are managerial executives and/or supervisors under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Council asserts that the employees at issue are neither managerial executives nor supervisors under the Act, and that accordingly, they should be included in the negotiations unit.

Hearings were held before a designated Hearing Officer, at which time both parties were afforded an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Both parties filed post-hearing briefs on July 6, 1978. Thereafter, the Hearing Officer issued his Report and Recommendations on March 11, 1980, a copy which is attached hereto and made a part hereof. The Hearing Officer found that the librarians acting as department heads at William Paterson College, and the personnel functioning as Assistant Directors at Montclair State College, Kean College, Jersey City State College, Ramapo College, Glassboro State College, and Trenton State College are not managerial executives or supervisors within the meaning of the Act, and are not involved in a conflict of interest situation within the meaning of West Orange Bd. of Ed v. Wilton, 57 N.J. 404 (1971) and therefore should be included in the unit in question. ^{2/} The Hearing Officer found the titles of Associate Director of Library Services at Kean College and Trenton State College were supervisors

^{2/} The Hearing Officer found that the Assistant Director at Stockton State College was not a managerial executive, but was a supervisor. However, the Hearing Officer recommended that the Commission should apply the "special circumstances" exception of N.J.S.A. 34:13A-5.3, to provide for a uniform unit placement of Assistant Director titles.

within the meaning of the Act, and therefore, should be excluded from the unit of employees at issue herein; and the title of Director of Library Services at Trenton State College, pursuant to agreement of the parties, should be excluded from the unit of employees at issue herein. Subsequently, the State filed exceptions to the Hearing Officer's Report arguing that the Assistant Directors of Library Services at Montclair State College, Kean College of New Jersey, Jersey City State College, Ramapo College of New Jersey, Stockton State College, Trenton State College and Glassboro State College exercise responsibilities which require their exclusion from the unit in question as managerial executives within the meaning of the Act, or alternatively as supervisors within the meaning of the Act and lastly due to the presence of a conflict of interest within the meaning of West Orange Bd. of Ed. v. Wilton, supra. ^{3/} The Council did not file exceptions to the Hearing Officer's Report.

Upon the entire record of this proceeding, the undersigned finds and determines as follows:

1. The State of New Jersey is a public employer within the meaning of the Act, is the employer of the employees who are the subject of these Petitions, and is subject to the provisions of the Act.

2. The Council of New Jersey State College Locals is an employee representative within the meaning of the Act and is

^{3/} It should be noted, that the Council and the State stipulated at the time of hearing that the issues in dispute were limited to the claims of managerial executive status and supervisory status. The undersigned, however, will address the State's Wilton argument since it is based on the factual record developed at the hearing. Additionally, although the Hearing Officer found that the Associate Directors were supervisors, the State has urged that they also be deemed managerial executives.

subject to its provisions.

3. The consolidated Petitions for Clarification of Unit having been filed with the Commission, raise an issue as to the status of certain enumerated titles. Specifically, a dispute exists as to whether the employees in such titles are to be excluded from the negotiations unit as managerial executives and/or supervisors under the Act or on the basis of a Wilton conflict.

N.J.S.A. 34:13A-3(f) provides a definition of managerial executive:

"Managerial executives" of a public employer means 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

In In re Borough of Montvale, D.R. No. 80-32, 6 NJPER 507 (¶ 11259 1980), the Commission held:

[a] person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

With respect to the question of "supervisory status,"

N.J.S.A. 34:13A-5.3, in relevant part, defines that term and provides:

... nor, except where established practice, prior agreement or special circumstances dictate to 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 nonsupervisory personnel to its membership

Accordingly, in In re Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶ 12122 1981), the undersigned held certain department chairpersons to be supervisors within the meaning of the Act based upon their responsibilities " ... for evaluation of non-tenured and marginal tenured teachers, for recommendations on increments and renewals, for screening and rating teacher applicants, for teacher discipline and for grievance administration on behalf of the Board." Thus, the undersigned based his finding of supervisory status upon the individuals' effective power to hire, discharge, discipline or effectively recommend the same, based upon an analysis of their job responsibilities. Id. at 275; accord, In re East Windsor Reg. School District, H.O. No. 80-11, 7 NJPER 277 (¶ 12124 1981); In re Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., D.R. No. 81-26, 7 NJPER 119 (¶ 12048 1981); In re Town of Boonton, D.R. No. 81-16, 6 NJPER 604 (¶ 11299 1980); In re Borough of Closter, D.R. No. 81-12, 6 NJPER 528 (¶ 11269 1980); In re Borough of Merchantville, D.R. No. 80-38, 6 NJPER 305 (¶ 11146 1980); In re N.J. Institute of Technology, D.R. No. 80-37, 6 NJPER 304 (¶ 11145 1980); In re Tp. of Manalapan, D.R. No. 80-34, 6 NJPER 41 (¶ 11117 1980); In re Ridgewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (¶ 11102 1980); and In re Borough of Montvale, supra.

Finally, with respect to the conflict of interest issue, the Supreme Court, in Wilton, stated:

Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular supervisor bespeaks such an intimate relationship with the management and policy-making function as to indicate actual or potential substantial conflict of interest between him and other supervisory personnel in a different or lower echelon of authority, such supervisor should not be admitted to the same negotiating unit. Admission would not be fair even to the other supervisory employees or to the employer. Obviously no man can serve two masters.

... Whether the matter under discussion is concerned with the propriety of supervisors joining the same organization as ordinary employees, or the propriety of supervisors in various degrees of managerial proximity in relation to the employer and each other belonging to the same organization, the issue would seem to be substantially the same. Are the duties, authority and actions of the employee in question vis-a-vis the other employees in the Association, primarily related to the management function? To what extent does the reasonable and good faith performance of the obligations a supervisor owes to his employer have capacity, actual or potential, to create a conflict of interest with other supervisors whose work he is obliged to oversee and evaluate for his employer?

57 N.J. at 416-417

Giving due regard to the above standards, the undersigned has carefully reviewed the entire record, including the transcripts, the briefs, the Hearing Officer's Report and the State's exceptions.

ACTING DEPARTMENT HEADS

The record indicates that the individuals in the positions of librarian/acting department head at William Paterson College lack the power to formulate and/or direct management policies, and therefore, fail to satisfy the operative definition of managerial executive. Moreover, the record discloses that these same individuals lack the power to hire, discharge, discipline, or to effectively recommend the same. In point of fact, such determinations are made by a personnel committee which may include but which is not limited to department heads. Any staff member with at least two years experience is eligible to serve on the personnel committee which is elected by the staff. The committee makes recommendations to the Library Director concerning the strength and weakness of applicants. The Library Director, in turn, makes recommendations to the College Administrator with respect to the hiring of personnel. Moreover, a similar independent determination is made by the College Administrator with respect to discipline and nonretention of employees. Accordingly, the undersigned notes the absence of exceptions with regard to this classification and finds that the record adequately supports the Hearing Officer's conclusion that the acting department heads in question fail to satisfy the definition of managerial executive and/or supervisor within the meaning of the Act.

ASSOCIATE DIRECTORS OF LIBRARY SERVICES

With respect to the Associate Director titles at Kean College and Trenton State College, an analysis of the record indicates a lack of any basis for concluding that these positions carry the authority of a managerial executive. The two Associate

Directors do not exercise final power over significant, policy-making activities. Neither Associate Director possesses the requisite authority to formulate and/or direct the implementation of managerial policy.

However, the record adequately supports a finding of supervisory status with respect to these two titles. The Associate Directors specifically possess authority to effectively recommend that hiring, firing, and discipline be implemented on a case-to-case basis. Moreover, the record indicates that Associate Directors acting in place of Directors possess the Director's complete authority, and that this assumption of authority occurs with a great degree of regularity. Since there is ample evidence in the record to establish that the Associate Directors possess the requisite authority to hire, fire, discipline and/or to effectively recommend the same, the undersigned determines that the Associate Director titles should be excluded from the unit on the basis of their supervisory functions.

ASSISTANT DIRECTORS

The State argues that the Assistant Directors of Library Services at Montclair State College, Kean College, Jersey City State College, Ramapo College, Stockton State College, Trenton State College and Glassboro State College are managerial executives based upon their implementation of policy in the limited areas of their appointment and their consultation with and direction of various Department Heads regarding specific management policies and practices in the library. The State further asserts that the

Assistant Directors advise the Director and Associate Director on general library policy.

The Hearing Officer found a pattern throughout the State College libraries wherein the Assistant Directors coordinated efforts toward the implementation of policy; however, he also found that the Assistant Directors recommended policy to the Directors with varying degrees of success. In all instances, the ultimate policy determinations were issued by the Director.

To support its position, the State has referred to its brief before the Hearing Officer, which evaluated certain testimony presented at the hearings. The undersigned, having reviewed this testimony in conjunction with the entire factual record developed at the hearings, is satisfied that the Hearing Officer considered this evidence in balance with the entirety of the transcript and correctly concluded that the Assistant Directors could not constitute managerial executives under the Act. Although the Assistant Directors recommend policy to the Directors, they do not occupy a position of authority, nor do they exercise the substantial level of discretion necessary to determine policy or to direct its effectuation. Accordingly, the undersigned adopts the Hearing Officer's findings and conclusion as to non-managerial executive status for the reasons stated in his report.

The State argues that the Assistant Directors at the State College libraries are supervisors within the meaning of the Act based upon their administration of personnel policy, in general, and based upon their input in hiring, reappointment and

discipline determinations. Again, the State's exceptions refer to its brief which was fully considered by the Hearing Officer. His findings and conclusion that the Assistant Directors are not supervisors within the meaning of the Act are adequately supported by the record.

The Act defines a supervisor as an individual with the power to hire, discharge or discipline employees or who can effectively recommend the same. The Hearing Officer properly noted that the Directors exercise the sole authority to make hiring recommendations to the various college administrators. The Assistant Directors provide general input into these recommendations. In some instances the Assistant Directors participate in the interviewing of applicants. The Assistant Directors also make recommendations to the Director concerning staff reappointment. However, in each instance, the Director exercises an independent judgment. Moreover, there is additional collegial participation in reappointment recommendations by staff-elected personnel advisory committees which make direct recommendations to the Directors. The record further reveals an absence of any experience relating to direct discipline of employees by the Assistant Directors.

Under the instant circumstances, in which multiple levels of College administrators and staff -- vice presidents, directors, associate directors, personnel advisory committees -- are involved in the hiring and/or reappointment process, it must be concluded that the Assistant Directors' recommendations become

diluted and attenuated by collateral recommendations and independent review. Accordingly, the undersigned finds that the Assistant Directors do not have the power to hire, discharge or discipline or effectively recommend the same.

The undersigned, however, excepts from the above finding the Assistant Directors at Stockton State College. There, the Assistant Directors have exercised the authority to hire employees, albeit non-unit, nonprofessional staff. The undersigned concludes that the Assistant Directors at Stockton exercise the authorities and effective powers which are similar to the authorities and effective powers of the Associate Directors at Kean and Trenton State Colleges. While this condition exists, Assistant Directors at Stockton may not be included in the Council's unit on the basis of their supervisory functions. ^{4/}

Finally, although the parties did not specifically identify this issue at the hearing, the Hearing Officer concluded that a conflict of interest, as envisioned by Bd. of Ed. of West Orange v. Wilton, supra, did not exist between Assistant Directors and other unit members. In its exceptions, the State argues that such a conflict exists between the Assistant Directors and the included members of the faculty unit. A Wilton conflict arises when there is an actual or potential substantial conflict of interest due to the split loyalty created by the exercise of an employee's substantial responsibilities owed as an arm of the employer as opposed to the employee's participation in unit

^{4/} Should there be a change in circumstances, i.e., the appointment of an Associate Director in addition to the Assistant Directors, a Petition for Clarification of Unit status of the Assistant Directors at Stockton State College would be considered by the Commission.

activities which often influence, or are influenced by the effectuation of the employer-mandated responsibilities. These conflicts are virtually inherent in a supervisory/nonsupervisory relationship, but as the undersigned has found above, the supervisory function is not applicable to the instant employees. It is also axiomatic that the conflict of interest be examined in the context of the negotiations unit at hand. The questioned individuals' conflict as to employees in other units is not in issue.

In the context presented, the undersigned must take into consideration the multiple levels of administrative authority above the Assistant Directors in the proper balancing of the Assistant Directors' interests. The undersigned notes the overall authority vested in the library directors and college vice presidents. Further, the undersigned takes note of the collegial system in which the State Colleges operate and the professional camaraderie among the various librarian employees. With the above in mind, and based on a review of the record, the undersigned concludes that the Assistant Directors' participation in the above discussed areas of promotion, reappointment, hire and discipline has not involved them in actual substantial conflict nor does there exist potential substantial conflicts of interest. Further, the undersigned cannot find that the Assistant Directors' responsibilities in scheduling, vacation approval, sick-day monitoring, or in transfers has produced substantial conflicts of interest; nor can the undersigned realistically foresee such responsibilities as presenting a potential for substantial conflict of interest.

Accordingly, for the above reasons, the undersigned adopts the findings and recommendations of the Hearing Officer except as to the Assistant Directors at Stockton State College. The undersigned therefore clarifies the instant unit as excluding the Associate Directors at Kean College and Trenton State College, and the Assistant Directors at Stockton State College. ^{5/} The remaining Assistant Directors at the State Colleges and the Department Heads at William Paterson College are included in the unit. The instant clarification is effective with the issuance of this decision.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: January 7, 1982
Trenton, New Jersey

^{5/} Further, as stipulated by the parties, the Director at Trenton State College is excluded from the unit.

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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In the Matter of

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COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

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-and-

Docket No. CU-172

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO

Respondent.

SYNOPSIS

A Commission Hearing Officer in a consolidated clarification of unit proceeding recommends that the position of Director of Library Services at Trenton State College and that the positions of Associate Director of Library Services at Kean College and Trenton State College be excluded from the negotiations unit of state college faculty and non-teaching professional staff as supervisors under the Act. The Hearing Officer further finds that the positions of Assistant Director of Library Services at Montclair State College, Kean College, Jersey City State College, Ramapo College, Stockton State College, Trenton State College and Glassboro State College and the librarians acting as Department Heads at William Paterson College are not supervisory titles under the Act and therefore recommends that these positions be included in the aforementioned negotiations unit. Finally, the Hearing Officer found that none of the above-mentioned titles are managerial executives.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Respondent.

APPEARANCES:

For the State of New Jersey,
Honorable John J. Degnan, Attorney General
Melvin E. Mounts, Deputy Attorney General,
of Counsel and on the brief

For the Council of New Jersey State College
Locals,
Thomas H. Wirth, Staff Representative

HEARING OFFICER'S REPORT AND RECOMMENDATION

The instant consolidated petition was filed with the Public Employment Relations Commission (the "Commission") to clarify the status of certain titles; specifically, the petition pertains to whether the following titles are managerial executives and/or supervisory employees under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (the "Act"):

- (1) Director of Library Services,^{1/}
Trenton State College
- (2) Associate Director of Library Services,
Kean College of New Jersey

^{1/} During the course of the hearings the parties agreed to exclude this title from the unit.

- (3) Associate Director of Library Services,
Trenton State College
- (4) Assistant Director of Library Services,
Montclair State College
- (5) Assistant Director of Library Services,
Kean College of New Jersey
- (6) Assistant Director of Library Services,
Jersey City State College
- (7) Assistant Director of Library Services,
Ramapo College of New Jersey
- (8) Assistant Director of Library Services,
Stockton State College
- (9) Assistant Director of Library Services,
Trenton State College
- (10) Assistant Director of Library Services,
Glassboro State College
- (11) Certain Librarians acting as Department
Heads, William Paterson College of
New Jersey

The State of New Jersey (the "State"), the Public Employer in this matter, is seeking to exclude the above-listed titles from the collective negotiations unit of State college faculty and non-teaching professional staff represented by the Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO, (the "Council"). The State contends that all of the positions in question are managerial executives and/or supervisors under the Act. The Council asserts that the titles at issue are neither managerial executives nor supervisors under the Act and that accordingly they should properly be included in the negotiations unit.

Hearings were held before the undersigned at which time both parties were afforded an opportunity to present evidence, examine and cross-examine witnesses and to argue orally. Both parties filed post-hearing briefs on July 6, 1978. Upon the entire record in this matter, the Hearing Officer finds:

(1) The State of New Jersey is a public employer within the meaning of the Act and is subject to its provisions.

(2) The Council of New Jersey State College Locals is an employee representative within the meaning of the Act and is subject to its provisions.

(3) The consolidated clarification of unit petitions, having been filed with the Commission, raise an issue as to the status of certain enumerated titles; specifically, a dispute exists as to whether such titles should be included or excluded from the negotiations unit as managerial executives and/or supervisors under the Act. Accordingly, the matter is properly before the Hearing Officer for a Report and Recommendation.

DISCUSSION

The employees involved in this proceeding are all professional librarians with certain administrative responsibilities in their respective titles. The existing negotiations unit consists of teaching faculty and, in addition to the titles involved in this proceeding, it also contains non-teaching professional staff. There are eight State colleges within the State of New Jersey and one State-wide unit. All of the employees involved in this petition possess a community of interest of their own inasmuch as they are all involved in the profession of library science. Throughout the hearing, the testimony of the witnesses and their demeanor suggests a strong sense of collegiality with respect to the discharge of their professional duties notwithstanding the different job classifications in which each individual is employed. The shared nature of their tasks indicates a high level of cooperation and professional deference and a strong sense of professional loyalty. This appears to be the motivating factor for

the position of the Council that, save for the director of library services, all of the titles in question should be in the unit and not construed to constitute managerial or supervisory status. These considerations, however, must give way to the exclusionary language in the statute which does not grant managerial executives public employee status and segregates supervisors from units of non-supervisors. The Hearing Officer, therefore, must examine the nature of the authorities which are within the power of the employees involved to exercise. Where such statutory authority exists professional interest must give way to the ability of management to manage.

Additionally, the Hearing Officer has the task of examining the duties of the employees employed in all of the colleges despite a lack of uniformity among the various colleges as to the actual employment of persons in the titles at issue in this proceeding. Thus, one college may have an assistant director and no associate director while at another college the associate director title is a fully operative position.^{2/} This lack of uniformity may have the effect of requiring an employee at a lower title at one college to perform some duties normally performed by an employee in a higher title at another college.

The Hearing Officer feels that the purposes of the Act are not served through a unit composition which varies from college to college. Logic and harmonious labor relations depend on a unit structure which is uniform. There are eight separate and distinct libraries; there is only one overall State-wide unit. Authorities and duties which differ at a single college due to either practice or a failure to have a specific title filled should not cause the

^{2/} For example, at the time of the hearings the director title at William Paterson College was vacant; there was an acting associate director and no assistant director. (III T 67-70)

creation of a jagged unit structure where there should exist a common and uniform existence of duties and authorities.

The Act defines managerial executives of a public employer as,

"Persons who formulate management policies practices, and persons who are charged with the responsibility of directing the effectuation of such management policies..." ^{3/}

The Commission has determined that the definition of a managerial executive must be "narrowly construed" in light of the fact that managerial, unlike supervisors, have no rights as employees under the Act.^{4/} Therefore, in order to find managerial executive status there must be evidence to establish authority clearly distinguishable from the mere discretionary responsibility exercised by a supervisor.^{5/}

Furthermore, the Commission has indicated an acceptance of the application of National Labor Relations Board precedents within the above-noted narrow construction. The NLRB's definition of managerial executives is closely parallel to that of the Commission. That definition speaks of those employees who formulate and effectuate management policies. The Board's decisions note that the distinction as to discretion is that managerial exercise discretion independent of the employer's established policy. (See Eastern Camera & Plate Corp., 140 NLRB 569, 52 LRRM 1068 (1963); Bill Aerospace Co., 219 NLRB No. 42, 89 LRRM 1664 (1975)).

In applying the facts of this matter to established law it is necessary to determine from the record whether the employees in question formulate and effectuate policy. The record as to the

^{3/} N.J.S.A. 34:13A-3(f)

^{4/} In re Avon Borough, PERC No. 78-21 (1977), 3 NJPER 373.

^{5/} Ibid.

librarians acting as department heads (William Paterson College) does not indicate that these are positions with the power to formulate or direct the effectuation of managerial policies. In fact, the record shows that the responsibilities of the department heads is at most to recommend change in existing policies, such recommendations to be presented to the library departmental council for discussion and approval.^{6/} Furthermore, the testimony indicates that the library departmental council "serves in an advisory capacity to the director particularly in the setting of policy."^{7/} The fact that department heads make recommendations as to policy changes to a council that acts in an advisory capacity does not support the contention that department heads are managerial executives. To the contrary, it is indicative that the position of department head does not have sufficient independent authority to formulate and effectuate policy and is therefore not a managerial executive under the Act.

The record regarding the assistant director positions in question (Montclair State College, Kean College, Jersey City State College, Ramapo College, Stockton State College, Trenton State College and Glassboro State College) reveals that authority for formulating and effectuating policy does not rest with them. The testimony shows repeated patterns of consultation, input, discussion and recommendation, however, evidence of these functions does not, in and of itself, create a factual record to support a finding that any of the assistant directors "is a managerial executive is a managerial executive." Specifically, the assistant director at Montclair State College coordinates efforts to work out specific procedures for implementation of policy once the

^{6/} III T 94
^{7/} III T 95

policy has been accepted by the director.^{8/} There is also testimony of "input" to the director.^{9/} At Kean College the assistant director merely recommends changes in policy and the director testified that although approval may be likely, that it was not "routine".^{10/} Similarly the assistant director at Jersey City State College makes recommendations subject to the director's approval.^{11/} The pattern of responsibility is consistent among all of the assistant director positions; there is input and recommendation but not sufficient authority to formulate managerial policy. The record clearly shows that none of the assistant directors in question is a managerial executive.

The record indicates that the associate director positions at issue (Kean College and Trenton State College) may have a somewhat greater discretionary function than the assistant directors but here too the facts do not support a finding of managerial executive status. The key point again is whether the position has policy making authority or merely the power to recommend. For example, on direct examination of the director of library services of Kean College the testimony reveals that ultimate responsibility for all policies in the library is with the director himself. Recommendations for policy by the associate director are adopted only upon approval of the director.^{12/} The associate directors do not have final authority to formulate and direct the implementation of managerial policy. The record does not indicate that they exercise final or significant policy-making functions nor that they have power to exercise discretion independent of existing policy.

8/ I T 43-44
9/ I T 43
10/ II T 48
11/ III T 27
12/ II T 19-20

At N.J.S.A. 34:13A-6 (d) the Act provides that the Commission is empowered to resolve questions concerning representation and that except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes both supervisors and non-supervisors. The Commission has defined a statutory supervisor, consistent with N.J.S.A. 34:13A-5.3, as one having the authority to hire, discharge, discipline or to effectively recommend the same. See In re Cherry Hill Township Department of Public Works, PERC No. 30 (1970).

It is important to note that the Commission has consistently held that bare possession of supervisory type authority which is not within the statutory definition, without more, is insufficient to warrant exclusion from a unit with non-supervisory personnel. In order to establish supervisory status the record must indicate that the power claimed to be possessed must additionally be exercised with some regularity by the employees in question. In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, (1976).

In the instant matter, the record as to the functions performed by librarians acting as department heads at William Paterson College does not indicate that the power to hire, discharge or discipline, or effectively recommend the same, is exercised by the employees in question. As far as hiring is concerned, the record does not indicate that department heads hire or effectively recommend the same. By contrast, interviews, review and an initial recommendation is made by a "personnel committee."^{13/} Although department heads are eligible for membership on the committee, that eligibility is no greater than any other staff member with at least two years experience. The committee

is elected by the staff.^{14/} Furthermore, upon completion of the interviewing process the committee would make recommendations to the library director. Such recommendation would not specifically rank candidates but merely indicate strengths and weaknesses. The director in turn makes a recommendation to the college administrator.^{15/} It is clear that librarians at William Paterson College acting as department heads have no special function, as far as the statutory definition is concerned, with regard to the hiring process. As far as discipline and non-retention of an employee is concerned the record indicates that the personnel committee would be involved in each of those situations as well. A department head's independent recommendation might be given weight in such a situation however, the director would make an independent decision which too would "go up the line administratively."^{16/} Therefore, the record does not establish that the librarians in question exercise authority or effectively recommend in these areas either.

An analysis of the record relative to the assistant director of library services positions at Montclair State College, Kean College, Jersey City State College, Ramapo College, Stockton State College, Trenton State College and Glassboro State College reveals that the assistant director position is not one with the authority to hire, discipline or discharge. There is some testimony to indicate a general pattern of input to and consultation with the respective directors as to these areas but the record does not support a theory of effective recommendation. Specifically, the record shows that at Montclair State College the director, not an assistant director, has the sole authority to recommend in hiring.^{17/} With respect to reappointment decisions a

^{14/} III T 74-75, III T 117

^{15/} III T 77-79

^{16/} III T 122-125

^{17/} I T 69-70

personnel advisory committee (elected from the staff) would make a recommendation to the director. There would be input from the assistant director which would be considered by the director who makes her own evaluation and forwards a recommendation to the vice-president of the College. The vice-president receives a dossier including the director's recommendation and signed recommendations from the personnel advisory committee but no signed recommendation from the assistant directors.^{18/} There is clearly some input from the assistant directors in this process, but it is also clear that this input does not rise to the level of effective recommendations. Similarly at Kean College, although the assistant director may make recommendations as to retention or non-retention of an employee, the director indicated that the recommendation would be subject to an independent judgement and decision by the director himself.^{19/} At Ramapo College the assistant director may be called upon to interview applicants for hiring and make recommendations to the director in that area and in the area of retention or non-retention of personnel. Although weight may be given to such recommendation by the director, there would be independent scrutiny and judgement exercised prior to the director's recommendation to the vice-president for academic affairs.^{20/} There was evidence to indicate that the director may make a personal investigation into a matter of non-retention himself.^{21/} There was some testimony to suggest that at Stockton State College the assistant director might have authority for effective recommendation as to some aspects of discipline. However, this testimony was speculative in nature, as there had never been an instance where such

^{18/} I T 64-66

^{19/} II T 91

^{20/} III T 18-19, 44-47

^{21/} III T 47-48

authority had been exercised.^{22/} As noted earlier, to establish supervisory status under the statutory definition the record must show that any authority possessed must be exercised with some regularity, not merely speculative.

The analysis of the factual record relative to the assistant directors viewed together with existing law on the supervisory status issue necessitates the conclusion that although the titles in question perform certain functions such as some day-to-day direction of activities and input into certain personnel processes but these functions do not meet the statutory definition of having authority to hire, discharge, discipline or effectively recommend the same, therefore, they are not supervisors under the Act. The Hearing Officer does acknowledge that in one instance, that of the assistant director at Stockton State College, there is testimony that the assistant director has the authority to hire non-unit non-professional employees.^{23/} As noted at the outset of the discussion of the supervisory issue, the Act establishes that there are exceptions to the general provision that units including both supervisory and non-supervisory are inappropriate. These exceptions are established practice, prior agreement and special circumstances. The record requires that the special circumstances exception be applied the assistant director title at Stockton State College. The need for continuity in defining the structure of a collective negotiations unit, especially in one as broad as the unit in issue herein, requires that the assistant director position at Stockton State College be treated consistently with the assistant director positions at the other institutions. It is important to note

22/ V T 19

23/ V T 25

that the library structure at Stockton State College is one without an associate director position. Perhaps this has contributed to the filtering down of authority to an assistant director in this one situation. Therefore, the application of the special circumstances exception to this one title is warranted, the assistant director title at Stockton State College should not be excluded from the instant unit.

An analysis of the record relative to the associate director positions at Kean College and Trenton State College establishes that those in the associate director titles do exercise supervisory authority with some regularity. The threshold test in the crucial personnel areas reveals that recommendations may be adpoted with little or no independent investigation. Specifically, in the area of evaluation for the purpose of increment or reclassification, the associate director at Kean College will make recommendations, the validity of which would not be questioned by the director.^{24/} Furthermore, unlike the three assistant directors, the associate director and the director are not eligible to serve on the personnel advisory committee which is made up of library staff members. According to the testimony of the director this prohibition of membership on the committee which makes advisory recommendations was by design.^{25/} Therefore, the recommendations of the associate director must be independent of those of the advisory committee.

The record establishes the associate directors at both Trenton State College and Kean College act in the place of the director with full authority.^{26/} It is very important to note that there is full authority indicated where the associate directors are acting in place of

^{24/} II T 16

^{25/} II T 13

^{26/} II T 7, 8; VI T 32

the directors; the record as to assistant directors acting in such a capacity indicated quite limited authority.

The fact that an employee may act in place of a supervisor in his absence does not, in and of itself, establish supervisory status. In the instant matter significant weight must be given to the evidence that associate directors acting in the place of directors have the full authority of the director and that this takes place with some regularity. This fact, viewed with the foregoing discussion of the associate directors power to effectively recommend in key areas substantially establishes supervisory status as to the associate director titles.

It is important to note that although neither party specifically argued the issue of actual or potential conflict of interest (see West Orange Board of Education v. Wilton, 57 N.J. 404 (1971)); an analysis of that standard is not in any way inconsistent with the findings of this report. Indeed, the record indicates that only the associate director titles function in a context that raise Wilton type conflict, whether actual or potential.

In summary it is found that none of the employees herein petitioned for are managerial executives. The librarians acting as department heads and the assistant directors in issue are found not to be supervisors. The associate directors at Kean College and Trenton State College are found to be supervisory employees under the Act.

RECOMMENDATION

Based on the above findings it hereby recommended that:

(1) The librarians acting as department heads at William Patterson College should be included in the unit in question.

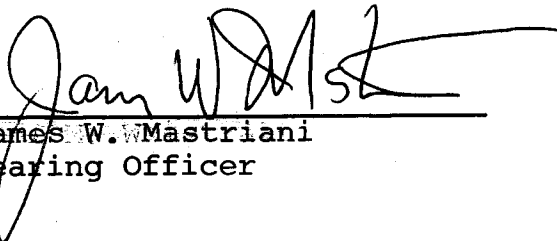
(2) The titles of assistant director of library services at Montclair State College, Kean College, Jersey City State College, Ramapo College, Stockton State College and Glassboro State College

should be included in the unit in question.

(3) The titles of associate director of library services at Kean College and Trenton State College should be excluded from the unit of employees at issue herein.

(4) The title of director of library services at Trenton State College pursuant to the agreement of the parties should be excluded.

RESPECTFULLY SUBMITTED



James W. Mastriani
Hearing Officer

DATED: March 11, 1980
Trenton, New Jersey