

D.R. NO. 95-13

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

In the Matter of

BOROUGH OF BLOOMINGDALE,

Public Employer,

-and-

Docket No. CU-95-10

IUPCPE, LOCAL 911,

Petitioner.

SYNOPSIS

The Director of Representation orders a clarification of a clerical employee unit to include an assistant treasurer.

The Borough of Bloomingdale objected to the petition filed by the IUPCPE, Local 911, claiming that the title was a managerial executive within the meaning of N.J.S.A. 34:13A-3(f).

The Director disagreed, determining that the duties of the position failed to demonstrate that the assistant treasurer "possessed or exercised the level of authority and judgment which broadly affects the organization's purposes...."

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Appearances:

For the Public Employer
Mizzone, Filko & Mizzone, attorneys
(Philip H. Mizzone, Jr., of counsel)

For the Petitioner
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(James M. Mets, of counsel)

DECISION

On September 7, 1994, Local 911, International Union of Production, Clerical and Public Employees filed a petition for clarification of unit seeking to clarify its clerical employee unit to include the assistant bookkeeper position.

On September 21, 1994, the public employer, Borough of Bloomingdale, submitted a letter advising that the assistant bookkeeper is "within the contract's recognition clause." It asserts that the person in the title did not "perform the duties of assistant bookkeeper"; she "actually performed managerial-related

duties" and the title was changed to "assistant treasurer...a new title, on September 11, 1994." The employer also asserted that the "employee in question is no longer within the unit nor does she want to be in the unit."

On November 23, 1994, I issued a letter tentatively clarifying the unit to include the assistant treasurer.

On December 1, 1994, the Borough filed a response and a copy of an ordinance adopted September 13, 1994, creating several titles, including "assistant municipal treasurer." The position "assist[s] the Treasurer in the work involved in the disbursement, accounting and reconciliation of funds received and disbursed, in the negotiation of lands and sale of bonds, investment of funds [sic] and preparation of payroll." The person holding the position also must have "completed two of the required courses toward a Certified Municipal Financial Officer...."

The Borough asserts that the job duties are "directed towards development of policy", ostensibly making the position a managerial executive. It also asserts that the Commission's tentative decision "goes beyond" the scope of the petition which seeks clarification for the assistant bookkeeper.

The most recent collective negotiations agreement between the parties covered the period from January 1991 to December 1993. The recognition provision (Article 1) describes the unit as,

...all clerical employees, employed by the
Borough of Bloomingdale, including clerk-tax
collector's office, clerk's office,
secretary-police department; payroll clerk,

clerk-borough office; clerk-treasurer's office; revenue collector-water/sewer department; ass. bookkeeping/finance; and secretary construction office/Planning Board...

Excluded from the unit are blue collar employees, confidential employees, managerial executives, professional employees, etc.

The Township also negotiates with separate units of blue collar employees and police officers.

The statutory definition of managerial executive is:

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....

N.J.S.A. 34:13A-3(f).

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), the Commission stated:


A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for 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 broadly affect the organization's purposes or 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. Id. at 509. (emphasis added).

The Township has not offered sufficient facts warranting a

hearing to determine if the assistant treasurer is a managerial executive. None of the asserted duties suggest that the assistant treasurer possesses or exercises the requisite level of authority or judgment. Nor has the Borough asserted facts showing why the independent newly-created position is not appropriately included in the clerical unit. Finally, I note that the change in title occurred after the petition was filed and the Borough has acknowledged that the individual was already performing the described duties.

Based on the facts and arguments filed, I conclude that the clerical unit should be clarified to include the assistant treasurer. The clarification is effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 12, 1994
Trenton, New Jersey