

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

In the Matter of

CITY OF JERSEY CITY,

Public Employer,

-and-

DOCKET NO. RO-79-149

ADMINISTRATIVE HEALTH
PROFESSIONAL ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, in agreement with the recommendations of a Hearing Officer, determines that the Director and Assistant Director of Public Health Nursing Services are neither managerial executives nor confidential employees under the New Jersey Employer-Employee Relations Act and are entitled to representation for the purpose of collective negotiations. The Director concludes from the facts that the Director and Assistant Director do not formulate management policies and practices and do not direct the effectuation of management policies and practices as intended within the definition of managerial executive contained in the Act. Further, the Director concludes that the Director and Assistant Director do not engage in functional responsibilities or have knowledge in connection to the issues involved in the collective negotiations process which would make their membership in any appropriate negotiating unit incompatible with their official duties. Therefore, these employees are not confidential employees under the Act.

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Petitioner.

Appearances:

For the Public Employer

Manuel A. Correia, attorney
(John A. Smith, III on the brief)

For the Petitioner

Daniel Hussey, attorney

DECISION

Pursuant to an Agreement for Consent Election, the Commission conducted a secret ballot election in a collective negotiations unit comprised of the Director and the Assistant Director of Public Health Nursing Services. At the election, the City of Jersey City (the "City") challenged the voting eligibility of these individuals when they appeared and cast ballots. The City now claims that these individuals are either managerial executives or confidential employees as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1

et seq. (the "Act").

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Dennis Alessi on April 19 and 20, 1979, at which the City and the Administrative Health Professional Association (the "Association"), the Petitioner herein, were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The City and the Association filed post-hearing briefs and reply briefs by August 20, 1979. The Hearing Officer issued his Report and Recommendations on November 30, 1979, a copy of which is attached hereto and made a part hereof. Neither the City nor the Association has filed exceptions to the Hearing Officer's Report.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript, the exhibits, and on the basis thereof, finds and determines as follows:

1. The City of Jersey City is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Administrative Health Professional Association is an employee organization within the meaning of the Act and is subject to its provisions.

3. The City has challenged the voting eligibility of the Director and Assistant Director of Public Health Nursing

Services and, pursuant to N.J.A.C. 19:11-9.2(k), the matter is appropriately before the undersigned for determination.

4. The City asserts that the above employees are either managerial executives or confidential employees. The Association disputes this contention.

5. The Hearing Officer concluded that the Director and the Assistant Director of Public Health Nursing Services were not managerial executives and were not confidential employees. The Hearing Officer recommended that the ballots cast by these individuals be opened and tallied.

Having reviewed the entire record herein and noting the absence of objections filed thereto, the undersigned adopts the findings of fact and recommendations of the Hearing Officer. A summary of some of the relevant findings of the Hearing Officer follows:

Contained within the Jersey City Department of Human Resources is the Division of Health. Both the Department and the Division are headed by Directors. The Bureau of Public Health Nursing Services is a bureau within the Division of Health. The purpose of the Bureau is to provide home nursing services to patients within the community who have been released from the hospital. The Bureau is licensed by the State as a health care facility and participates in federal HEW Programs as a Home Health Care Facility. The employees involved in the instant

matter, the Director and Assistant Director of Nursing Services, are responsible for overseeing the day-to-day operations and administration of the Bureau. The Director supervises the facilities and staff performance, and plans, coordinates, and directs ongoing training.

Although the Director prepares an initial budget proposal for her bureau, the budget request is then forwarded to the Director of the Division of Health who prepares a line item budget proposal for the entire division. The Director of the Department of Human Resources then coordinates the proposals of all six divisions into a departmental budget proposal. Budget priorities and reductions are determined by the Department Director without consulting the Director of Nursing Services.

The Director and Assistant Director of Nursing Services have been present at negotiations sessions concerning the Bureau's professional staff and have been utilized as resource persons to clarify professional matters. The Director and the Assistant Director have not been part of the City's negotiating team, and have not prepared, evaluated, reviewed or had knowledge of or input in the City's proposals and have not evaluated the feasibility or implications of the union's negotiations proposals.

The Director is the second step in the grievance procedure for the Bureau's professional employees. However, this step may be bypassed and grievances may be presented directly to

the Director of the Department of Human Resources. The record reveals that the Director of Nursing Services has not possessed sufficient authority to resolve grievances relating to monetary items, and certain physical working conditions. Such grievances, when submitted to the Director, have been forwarded to the Director of the Division of Health with a recommendation.

The primary responsibility of the Director and Assistant Director in overseeing the day-to-day operation and administration of the Bureau is to assure the general planning of patient care and the maintenance of professional standards and efficiency. The Director and Assistant Director assure compliance of the Bureau with the rules and regulations for state licensing and participation in federally funded programs. Additionally, the Director and Assistant Director are responsible for seeing that the Bureau has met Blue Cross/Blue Shield, Medicare and Medicaid requirements. In this regard, the Director directs in-service training and disseminates information to staff. The Director exercises independent authority concerning staff training, although the Director of the Division of Health provides pro forma approval.

The Director of Nursing Services recommends the exercise of disciplinary personnel actions to the Department Director in conformance with Civil Service regulations. However, the Director and Assistant Director have the discretionary authority to transfer employees to various branch offices. In exercising other personnel

functions, the Director must comply with the City's Personnel Handbook.

N.J.S.A. 34:13A-3(f) and (g) provide the following definitions:

- (f) "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, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.
- (g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

In a recent determination regarding the identification of managerial executives, In re Borough of Montvale, D.R. No. 80-32, 6 NJPER ___ (¶ ___ 1980), the undersigned stated that where a managerial executive issue exists, the undersigned is compelled to examine: (1) the specific functions and responsibility of the individual involved; (2) the relative position of that individual in the employer's organizational hierarchy; and (3) the extent of discretion afforded to that individual in his/her employment.

The Director and the Assistant Director herein exercise supervisory and administrative functions at a high level, but they do not formulate management policies and practices, and they are not charged with the responsibility of directing the effectuation of management policies and practices as that term is intended within the statutory definition.

In the Montvale decision, supra, the undersigned stated:

In general, "policy" may be defined as a "definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions." Websters Seventh New Collegiate Dictionary. In a public employment context, "policy" may further be defined as the development of particular sets of objectives of a governmental entity, designed to further the mission of the agency and the methods of achieving such objectives. Those who formulate policy are those who select a course of action from among the alternatives and those who substantially and meaningfully participate in the essential processes which result in the selection of a course from the alternatives available.
[citation omitted]

Managerial executives who direct the effectuation of policy are charged with overseeing or coordinating policy effectuation by line supervisors. Most importantly, those chosen for "directing the effectuation" of policy must necessarily be empowered with a substantial measure of discretion in deciding precisely how the policy should be effectuated.

In the Montvale decision, the undersigned noted that the National Labor Relations Board had developed a working definition of

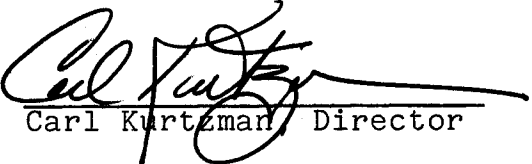
managerial executives which identified as managerials those employees who have discretion in the performance of their job independent of their employer's established policy.

The undersigned is convinced that the discretion afforded by the City to the Director and Assistant Director in all matters of implementing policy, with the sole exception of staff training, is confined to matters where Bureau policy and guidelines have already been established. The Director and the Assistant Director do not bear the primary responsibility for the employer's development of the methods, means and extent of accomplishing the Bureau's mission. The undersigned concludes that the Director and Assistant Director are not managerial executives.

The record also reveals that the Director and Assistant Director are not confidential employees. They do not participate in negotiations on behalf of management. The Director exercises grievance handling authority at a low level on the grievance procedure and does not exercise discretion in resolving grievances. The undersigned cannot conclude that these individuals' functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. Accordingly, the undersigned agrees with the Hearing Officer that the Director and Assistant Director are not confidential employees and may be represented for collective negotiations purposes.

Therefore, for the above reasons, the undersigned determines that the Director and the Assistant Director of Public Health Nursing Services are eligible to vote for representation and the undersigned directs that their ballots be tallied and the appropriate certification be issued.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: May 13, 1980
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Public Employer-Respondent,

-and-

Docket No. RO-79-149

ADMINISTRATIVE HEALTH PROFESSIONALS
ASSOCIATION,

Employee Organization-Petitioner.

SYNOPSIS

In a Petition for Certification of Public Employee Representative the City challenged the ballots cast by the Director and Assistant Director of Public Health Nursing Services, alleging that these two employees are "managerial executives" or "confidential employees" as those terms are defined by the Act. A Commission Hearing Officer finds that the Director and Assistant Director are not managerial executives or confidential employees. In accordance with a stipulation as to the appropriateness of the petitioned-for unit, the Hearing Officer recommends that a unit consisting of these two titles be found appropriate for purposes of collective negotiations. Accordingly, the City's challenges to the ballots cast by these two employees should be dismissed and the ballots counted.

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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ADMINISTRATIVE HEALTH PROFESSIONALS
ASSOCIATION,

Employee Organization-Petitioner.

Appearances:

For the Petitioner
Daniel Hussey, Esq.

For the Respondent
Manuel A. Correia, Esq.
John A. Smith, III, on the brief

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On December 8, 1979, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission by the Administrative Health Professionals Association (the "Association"), seeking to represent a unit consisting of the Director and Assistant Director of Public Health Nursing Services employed by the City of Jersey City (the "City"). As set forth fully in the stipulations, the City challenged the ballots cast by these two employees alleging that they are "managerial executives" or "confidential employees", as those terms are defined by the Act, ^{1/} excluded from the rights of self-organization and collective negotiations granted to public employees.

1/ The New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

Pursuant to a Notice of Hearing, hearings were held before the undersigned Hearing Officer on April 19 and 20, 1979, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence ^{2/} and to argue orally. The City and Association filed post-hearing briefs on August 14, 1979, and reply briefs on August 14, 1979 and August 20, 1979, respectively. At the hearing, the parties agreed to the following stipulations.

STIPULATIONS

1. Jersey City is a public employer within the meaning of the Act, subject to the provisions of the Act, and is the employer of the employees in question.
2. The Administrative Health Professionals Association is an employee organization under the Act and has filed the instant petition to represent the titles in question.
3. In the Bureau of Public Health Nursing, supervisory nurse employees are represented for the purposes of collective negotiations by the Public Health Nurses Supervisors Association and rank and file nurses are represented by United Nurses Organization.
4. The unit petitioned for by the Administrative Health Professionals Association includes only the two titles of Director of Public Health Nursing Services and Assistant Director of Public Health Nursing Services.
5. The Administrative Health Professionals Association, on December 8, 1978, filed a Petition for Certification of employee representative with the Commission seeking a unit consisting of these two titles.
6. Pursuant to this petition, the parties, on January 3, 1979, entered into a consent election agreement for a secret ballot election, under the auspices of the Public Employment Relations Commission, to determine if the employees in these two titles wished to be represented for the purposes of collective negotiations by the Administrative Health Professionals Association.

^{2/} At the close of the hearing, the City agreed to submit as an exhibit the job description for the Health Officer. This exhibit has been denominated by the Hearing Officer as R7. The Association, at the close of the hearing, agreed to submit as exhibits the personnel manual and the rules and regulations of the Bureau. These exhibits have been denominated by the Hearing Officer as P13 and P14, respectively.

7. In accordance with the consent agreement an election was conducted by the Commission's agent on January 22, 1979, at which time Respondent, City of Jersey City, challenged the two ballots on the basis that these employees are managerial or confidential employees, as these terms are defined by the Act, and therefore are excluded from the rights to representation and collective negotiations.

8. The parties agree that if the titles in question are found not to be managerial or confidential, the appropriate unit for collective negotiations is the unit petitioned for - that is the unit consisting of the two titles of Director and Assistant Director of Public Health Nursing Services.

9. The Issues presented at this hearing are as follows: Are the Director of Public Health Nursing Services and the Assistant Director of Public Health Nursing Services managerial executives or confidential employees, as those terms are defined by the Act; therefore excluded from the rights granted to public employees under N.J.S.A. 34:13A-1 et seq.?

FINDINGS OF FACT

1. Public Health Nursing Services is a bureau within the Division of Health of the Department of Human Resources. There is a Director of the Department of Human Resources [hereinafter Director (Human Resources)]⁷, and a Director of the Division of Health [hereinafter Director (Health)]⁷, who is also the Health Officer for Jersey City and the Administrator of the Bureau. In addition there is an Assistant Health Officer.^{3/} Including the Mayor and Council, the Director and Assistant Director of Public Health Nursing Services [hereinafter Director (Nursing Services) and Assistant Director (Nursing Services)]⁷ occupy the fifth and sixth positions in the organizational structure.^{4/} The Director (Health) is the immediate supervisor of the Director (Nursing Services), although at times the Director (Human Resources) and the Director (Nursing Services) have consulted directly on significant problems such as the relocation of the Bureau.

^{3/} The Assistant Health Officer is a member of a bargaining unit.

^{4/} Despite the Hearing Officer's request, the Respondent has not submitted an organizational chart.

2. The major function of the Bureau is to provide, on a daily basis, at home nursing services to patients within the community who have been released from the hospital. The Bureau is licensed by the State as a health care facility and also complies with Department of Health, Education and Welfare requirements for participation in federal programs as a Home Health Care Agency. Nurses must obtain certification in the specialized field of public health nursing.

3. The Bureau employs 41 nurses, 7 nurse supervisors, 10 clinical attendants or health aides and 10 clericals, including clerical supervisors. In addition to the two employee organizations representing nurses and nurse supervisors, there is a unit of clerical employees and another for clerical supervisors. The Bureau has branch offices located in various geographical areas of the City with a nurse supervisor in charge. This organizational structure was in existence prior to the tenure of the current Director (Nursing Services) and has remained unchanged.

4. The Director (Health) is listed with the State Department of Health as the Administrator of the Public Health Nursing Service and the Director (Human Resources) is listed as the manager. (See Exhibit P-10). Under the State's Standards for Licensure of Home Health Care Agencies, (See Exhibit P-7), the Administrator is responsible for management of the operational, fiscal, personnel and reporting components of the program, in accordance with policies established by the governing authority. He participates in policy and administrative decision-making and implements the annual budget. The Director (Nursing Services), under the State Standards, supervises the facility's staff performance, plans, coordinates and evaluates the patient care services performed by the staff, and directs on-going training.

5. In accordance with Department of Health, Education and Welfare

rules and regulations, the Director (Health), as Administrator of the Bureau, is generally responsible, under the Director (Human Resources), for budgetary matters, fiscal management, policy decisions and implementation, liason with other concerned groups, and evaluation of the Bureau. (See Exhibits P3 and P6). The Director (Nursing Services) is in close consultation with the Administrator on all problems affecting the Bureau's operation.

6. The Director (Health), as the City's Health Officer, is responsible for overseeing all the bureaus that are concerned with public health. The Civil Service job description states that, under direction, he recommends the establishment of local public health policies and programs. He plans, develops, coordinates and directs the work program of the municipal health department, and directs the enforcement of public health within the Community. (See Exhibit R7).

7. The Director (Nursing Services) is responsible for over-seeing the day-to-day operations and administration of the Bureau. Through the first line, field supervisors the Director (Nursing Services) monitors the dispensing of nursing services by the staff. She is responsible for the general planning of patient care, the maintenance of professional standards, efficiency, and, when a medical problem is not resolved at the nurse supervisor level, has the final responsibility for determining an individual patient's care. The Director (Nursing Services) and Assistant Director (Nursing Services) respond to patient complaints and, in accordance with established evaluation procedures, evaluate staff and supervisors on a standard form which lists established criteria. Through a designated supervisor, the Director (Nursing Services) directs in-service training and the dissemination of pertinent information to the staff, in order to maintain compliance with State and Federal regulations. She insures that: (1) the intraoffice clerical billing procedures are

adequate to comply with the verification of service documentation required for reimbursement by Medicare and Medicaid; (2) the Bureau remains in compliance with the rules and regulations for licensing by the State and participation in federally funded Home Health Care Programs; (3) and that the Bureau complies with the mandated medical services requirements of Blue Cross/Blue Shield. (See Exhibits P6, P7, P8, P9 and P12). With the approval of the Director (Human Resources) or the Director (Health), the Director (Nursing Services) disseminates information to the public concerning the types of services provided by the Bureau. The Director (Nursing Services) also prepares the payroll forms and verifies its accuracy. The Director (Nursing Services) and Assistant Director (Nursing Services) represent the Bureau at professional conferences.

The Civil Service job description and the state standards for licensure state that the Director (Nursing Services) establishes and implements policies, rules, regulations and procedures. However, based on all of the testimony presented, the Hearing Officer finds that in actuality the Director (Nursing Services) is only responsible for insuring that the Bureau's internal procedures are in compliance with all State, Federal and insurance company rules, regulations, and standards. Where the job description states that the Director (Nursing Services) establishes a system of personnel functions in accordance with established and local pertinent practices, the Hearing Officer finds from all of the testimony presented that the Director (Nursing Services) must comply with the City's Personnel Handbook in this regard. (See Exhibits R3 and P13).

8. The Assistant Director (Nursing Services) primarily assists the Director (Nursing Services) in performing all of the above cited functions. A significant portion of her time is spent in insuring compliance with Medicare and Medicaid. In the absence of the Director (Nursing Services), the Assistant Director (Nursing Services) assumes all responsibilities and authorities. (See Exhibit R4).

9. In hiring, the Director (Nursing Services) initially interviews the applicant for the limited purpose of determining professional and academic qualifications. Where the Director (Nursing Services) finds the applicant qualified, all other aspects of hiring are performed by the Personnel Director for the Director (Human Resources), in accordance with Civil Service examinations and procedures for selection from the eligibility list. (See Exhibit P2).

10. The Director (Nursing Services) has no authority to terminate employees, but in accordance with the Personnel Handbook's policies on tardiness and excessive absenteeism, has recommended the dismissal of two clericals during their provisional period. In one instance the initial recommendation by the Director (Nursing Services) was not accepted. The Director (Human Resources) suspended the employee and terminated her only after a second recommendation by the Director (Nursing Services). In the second case termination was mandated by Civil Service rules and regulations. The Director (Nursing Services) has never recommended terminating a professional employee for incompetency. The Director (Nursing Services) recommends promotions in accordance with Civil Service regulations and contractual seniority provisions. Her recommendations are routinely adopted.

11. The Director (Nursing Services), in consultation with the Assistant Director (Nursing Services) and the nurse supervisors,

prepares an initial proposal on the projected costs of requested equipment, supplies and personnel for non-mandatory items. In regard to mandated programs and clerical procedures, the Director (Nursing Services) estimates personnel and administrative costs based on expenditures during the previous year. (See Exhibit P5) This budget request, along with requests from other Bureau Directors, is forwarded to the Director (Health) who prepares a line item budget proposal for the entire Division. The Director (Human Resources) then coordinates the proposals from all six Divisions into a Departmental budget proposal. The Department Fiscal Director, Personnel Director and the Business Administrator are also involved in this process. Including the Mayor and Council, who must approve all budget requests, the Director (Nursing Services) and Assistant Director (Nursing Services) occupy the sixth and seventh positions in the organizational structure which prepares the budget. The Director (Health) and the Director (Human Resources) determine priorities, reductions, and the amount of the reductions, without consulting the Director (Nursing Services). On non-mandatory items the Director's (Nursing Services) requests are often not granted due to other priorities and budgetary restraints.

Based upon her evaluation of the Bureau's needs, the Director (Nursing Services) forwards a request to the Director (Health) for additional nurses and auxiliary technical/and medical personnel. These additional positions will be included in the budget proposal only if the Director (Health), Director (Human Resources), Departmental Personnel Director and the Fiscal Officer concluded that such additional personnel are a warranted priority. Such requests by the Director (Nursing Services) are routinely rejected due to budgetary restraints

and in the opinion of the Director (Nursing Services) the Bureau is chronically understaffed.

12. Under the contract with the United Nurses Organization, the Director (Nursing Services) is the second step in the grievance procedure and the Director (Human Resources) is the third step. However, under Article II, D. 1, a U.N.O. representative may by-pass the Director (Nursing Services) and bring a grievance directly to the attention of the Director (Human Resources). (See Exhibit R1) On one occasion the President of the U.N.O. utilized this procedure and the problem was promptly resolved. Under the contract with the Public Health Nurses Supervisors Association the Director (Nursing Services) is again the second step in the grievance procedure. (See Exhibit R2)

The Director (Nursing Services) has handled five grievances in the recent past involving carfare reimbursement, tuition payment, unsanitary conditions and lack of air conditioning. In each instance the Director (Nursing Services) has forwarded the grievance to the Director (Health) with her recommendation. The Director (Nursing Services) could not resolve these grievances since she has no authority to issue vouchers, expend monies, or purchase equipment. A chronic grievance is the failure to reimburse carfare. The Director (Nursing Services) did forward this grievance to the Director (Health) (See Exhibit P4), but attempted to explain the causes for the delay in reimbursement based on information from the Director (Health). (See Exhibit R5) Only the Director (Health) had the authority to deviate from the contract in order to resolve this problem.

13. For two separate contracts the Director (Nursing Services) and the Assistant Director (Nursing Services) were present at negotiations

sessions with the United Nurses Organization. However, they were not part of the negotiating team, did not prepare, evaluate, review, have knowledge of or input in the City's proposals, and did not evaluate the feasibility or implications of the Union's counter proposals. The City's negotiating team utilized the Director (Nursing Services) and the Assistant Director (Nursing Services), as resource persons to clarify professional matters such as the distinctive duties of public health nurses and the differences between the various grade levels of nurses. The Director (Nursing Services) and Assistant Director (Nursing Services) have never played any role in negotiations with the Supervisors Association or the unions representing clericals and clerical supervisors.

The current Director (Human Resources) stated that in future negotiations he would expect that the Director (Nursing Services) and Assistant Director (Nursing Services) would play a greater role. It is apparent that past Directors (Human Resources) have not had much input in negotiations with the U.N.O. (See Exhibit P1) The current Director (Human Services), who has held this position for approximately one year, has not yet been involved in negotiations and has not consulted the Director (Nursing Services) but, apparently based on his expectation of further involvement in negotiations (Again See Exhibit P1), expects that the Director (Nursing Services) and the Assistant Director (Nursing Services) will also play a greater role.

14. Without consulting the Director (Nursing Services), the Bureau was given two weeks to vacate its main location. The Director (Human Resources) did consult with the Director (Nursing Services) concerning the physical needs of the Bureau; however he decided where the Bureau was to be relocated. The Director (Nursing Services) did

have the discretion to physically arrange these facilities in a manner which she determined would insure efficiency of operations. She also made certain requests for doors and locks and procedures to limit access by non-authorized personnel, in order to comply with federally mandated security for drugs. The Director (Human Resources) made every effort to comply with these requests and established a security procedure.

15. Under Article XVII of the 1978, 79 contract with the United Nurses Organization (See Exhibit R1), the Director (Nursing Services), along with two designees of the U.N.O., are members of the Tuition Reimbursement Committee which determines criteria for the reimbursement program. The Director (Human Resources), who must sign the voucher before any reimbursements can be made, has in the past relied on the Committee's recommendations, but would deny payment if he felt that the amount was excessive or reimbursement was clearly improper.

16. The Director (Human Resources) will hold meetings on a regular basis with the various Division Directors, but the Bureau Directors are not included due to the large number involved. Through interoffice memos, the Director (Human Resources) communicates with the Bureau Directors, primarily on administrative and personnel matters.

17. In accordance with the seniority provisions of the United Nurses Organization contract, the Director (Nursing Services) and the Assistant Director (Nursing Services) have the discretionary authority to transfer employees to the various branch offices based on changes in manpower requirements. In an emergency the Director and Assistant Director have unlimited discretionary authority to transfer

personnel. The Director relies on the recommendation of the nurse supervisor at the branch office that such an emergency exists. With regard to the Swine Flu inoculation program, the Director (Health) was responsible for coordinating implementation. He selected the sites where inoculations would be dispensed. The Director's (Nursing Services) only input was to insure that sufficient manpower was assigned to each site.

18. The maintaining of a technical manual is an established medical practice in all Public Health Nursing Bureaus. The manual is limited to medical procedures which are considered acceptable nursing practices in the field. Such a manual existed in the Bureau prior to the current Director's (Nursing Services) assumption of this position. The Director (Nursing Services), in consultation with the Assistant Director (Nursing Services) and nurse supervisors, periodically updates this manual to reflect advances in nursing science and changes in State, Federal, and insurance company rules and regulations. However, the Director (Nursing Services) has never issued policy directives concerning the application of such regulations in the field. The Director (Nursing Services) and Assistant Director (Nursing Services) hold periodic meetings with supervisors for instructional and informational purposes. Through the inservice training supervisor, the Director (Nursing Services) insures that the Bureau remains in compliance with State and Federal training requirements. When a change occurs in these regulations the Director (Nursing Services) and Assistant Director (Nursing Services) determine what alterations in the training program are necessary in order to remain in compliance. The Director (Nursing Services) does not have the independent authority to implement the change, but must obtain approval from the Director (Health), who mostly relies on her expertise in this matter.

19. The Director (Nursing Services) and the Assistant Director (Nursing Services) had no input in the decision to eliminate the other two Assistant Director positions and the position of Public Health Nurse Consultant. Nor did they have any input in the decision to subcontract the mandated programs of Visiting Homemakers Service and Physical Therapy.

20. When auditors from the State Department of Health, Education and Welfare audit the Bureau's operations for compliance with their recordkeeping regulations, the Director (Nursing Services) and Assistant Director (Nursing Services) represent the interests of the City. When certain deficiencies are found the Director (Nursing Services) and Assistant Director (Nursing Services), in consultation with the nurse supervisors, determine what actions are necessary in order to return to compliance. (See Exhibit P11).

21. The Director (Nursing Services) and the Assistant Director (Nursing Services) prepared a code of agency rules, regulations and policies. (See Exhibits R6 and P14) However, this code is merely a concise compilation or paraphrased summary of the various State and Federal rules and regulations applicable to the Bureau. Discretionary decisions in dealing with the problems of the Bureau are always made within the context of these rules and regulations. In order to comply with Health, Education and Welfare's requirements, the Assistant Director (Nursing Services) also prepared the job description for the Administrator of the Bureau. Here again this was merely a compilation and paraphrasing of the Administrator's Civil Service job description as the City's Health Officer and the specifications of the Department of Health, Education and Welfare for the position of the Administrator.

22. The Director (Nursing Services) and Assistant Director (Nursing Services) must comply with the personnel regulations regarding signing in and out, and the taking of vacation and sick leave. They both **receive** the same fringe benefits provided for supervisors and nurses.

STATEMENT OF LAW

In re Essex County Welfare Board, H.O. No. 80-8, 5 NJPER 439 (Para. 10227, 1979) and In re Borough of Montvale, H.O. No. 80-9, 5 NJPER 445 (Para 10228, 1979) should be consulted for a rather thorough discussion of managerial executives by the undersigned Hearing Officer. In summarizing these two cases a managerial executive: (1) has the final decision - making authority on plans governing principles or courses of action for the administration and operation of the governmental entity; (2) as a significant aspect of his function, is ultimately responsible, through coordinating the activities of subordinates, for compiling or composing a complete policy scheme, relating to the entire governmental entity, and then submitting this scheme to those officials with final authority who, in reliance on his knowledge of the bureaucracy and understanding of the employer's best interests, routinely adopt the proposal as a mere ministerial act necessitated by our form of government; (3) has the final authority, unhindered by established guidelines, to select which of the various options available is, in his judgement, the most effective and economical course of action for fulfilling substantive policy decisions, in light of the agency's interests and goals; (4) possess the individual initiative to alter or deviate from established methods when, in his determination, they do not effectively foster the objectives of the agency; and (5) where a policy decision is made only in principle or in

the broadest of terms, is given the individual initiative to decide all of the lesser policy decisions necessary to fill the substantive details^{5/}

N.J.S.A. 34:13A-5(g) defines confidential employees as follows:

"Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

To be considered confidential these employees must play an integral role in labor relations as a representative of management. This would include: (1) participation in the formulation of labor relations policies, related personnel policies, negotiations proposals, and undisclosed strategies or positions for responding to employee grievances; or (2) at least attendance at closed meetings of the employer where such matters are discussed. During the performance of their regular duties, these employees must obtain an intimate knowledge of the employer's undisclosed decisions, strategies and positions in labor relations and must extensively handle or have access to private documents and confidential materials pertaining to labor relations.^{6/}

ANALYSIS AND CONCLUSIONS

Preliminarily, the Hearing Officer notes that Civil Service job descriptions and statements of job responsibilities from State agencies are not determinative of an employees' status under the Act. Rather, the functions which the employee performs on a regular basis are the determining factor. The Civil Service job description and the State regulations do state that the Director (Nursing Services) establishes

^{5/} In re Essex Co. Welfare Board, supra, at pages 15, 16 and 19.

^{6/} In re Township of Dover, D.R. No. 79-19, 5 NJPER 61 (para. 10040, 1979).
In re Jersey City Board of Education, D.R. No. 78-35, 4 NJPER 139
(para. 4065, 1978). In re Borough of Fair Lawn, D.R. No. 79-30 5 NJPER
165 (para. 1009, 1979). In re Brookdale Co. College, D.R. No. 78-10,
4 NJPER 32 (para. 4017, 1977).

policies, rules, regulations, and procedures. However, based on the findings of fact concerning the normal functions of the Director (Nursing Services), the Hearing Officer concludes that any authority or responsibility in these areas is in reality nonexistent.

It is apparent from the findings of fact that the Director (Nursing Services) does not have final decision making authority, or the functional equivalent, concerning plans, governing principles or courses of action on how the governmental enterprise is to be internally organized or structured, the manner in which it will operate, the types of public services it will provide, or, where mandated, the level or method of providing these services. Rather, in every aspect of the administration and operation of the Bureau, the Director's (Nursing Services) function is to insure that policy decisions made by others are adhered to in day-to-day operations. ^{7/}

The functional division of the Bureau into branch offices in various geographical areas of the City was established prior to the tenure of the current Director (Nursing Services) and has remained unchanged (Finding of Fact No. 3); while the administrative organization is mandated by federal and State reimbursement requirements (Finding of Fact No. 7). The Director (Nursing Services) had no input into the decision to relocate the main office. Her discretionary authority, to physically arrange the facility in the manner she determined would insure efficiency of operations, can hardly be considered "policy-making" authority. Rather all high echelon supervisors possess this type of this discretion. ^{8/}

^{7/} Considering: (1) the State and Federal bureaucracies which determine such a great deal of the policy questions for the Bureau; (2) the bureaucratic structure within the City itself; and (3) the job responsibilities of the Director (Human Resources) and Director (Health); the position and authority of the Director (Nursing Services), in the context of this total structure, is so diminutive as to belie the finding of managerial status. (Findings of Fact Nos. 1, 4, 5, and 6).

^{8/} In re Borough of Montvale, supra, at pages 20 and 22.

(Finding of Fact No. 14).

The types of services, and the methods by which they are provided, as mandated by federal and State licensing standards and the requirements of private insurance companies (Findings of Fact No. 2 and 7). The Director's (Nursing Services) authority is strictly limited to the continuing compilation of these rules and regulations as they are promulgated, in order to insure the Bureau's continued compliance. Accordingly, any discretionary decisions by the Director (Nursing Services) in dealing with day-to-day problems are made within the context of these rules and regulations. (Finding of Fact No. 21). When a deficiency is found during an audit, the Director's (Nursing Services) authority is again limited to insuring that the Bureau returns to compliance. (Finding of Fact No. 20). It is indisputable that this individual's main concern is to ensure that she is in conformity with these policy directives as she deals with various situations.

In the area of nurse training, the Director (Nursing Services) has the functional equivalent of independent authority to determine what types of training will insure that the nurses remain in compliance with changes in Federal and State rules and regulations. Although the Director (Health) must approve any changes in training, his approval is only pro forma, since he relies on the expertise of the Director (Nursing Services). (Finding of Fact No. 18). However, given the overall character of the Director's (Nursing Services) functions, this singular exercise of independent authority is not a sufficient basis for considering this position as being managerial.

The Director (Nursing Services) functions primarily as a medical professional to insure that the staff conforms to accepted nursing practices in performing their daily functions. In this regard she does exercise

considerable discretionary authority (Findings of Fact No. 4 and 7). However, such medical decisions do not reach the level of "policy decision making". Rather, it normally involve discretionary application of routine procedures and methods previously established as being acceptable nursing practices in a particular situation. Similarly, the Director's (Nursing Services) authority to promulgate rules and procedures is limited to a professional medical manual on acceptable methods of nursing care, (Finding of Fact No. 18).

There is a greater likelihood of managerial status where the individual is the last step in the grievance procedure prior to arbitration and has the authority to settle grievances outside of established personnel policy, when he believes it is in the best interests of labor relations.^{9/} Here the Director (Nursing Services) merely functions as a conduit for grievances which she forwards to the Director (Health) with her recommendation (Finding of Fact No. 12).

An individual is a managerial if he has final decision making authority on a budget or ultimate responsibility for the compilation and submission of the adopted budget, as opposed to being a resource person or merely preparing an initial, advisory proposal.^{10/} From Finding of Fact No. 11 it is apparent that in regard to the budget and staffing levels, as they relate to the budget, the Director (Nursing Services) functions on the most elementary levels.

Another factor in determining managerial status is whether the individual exercises independent judgement in personnel administration. With the exception of emergency transfers, the authority of the Director (Nursing Services) to promote and transfer is limited by the various

^{9/} In re Borough of Montvale, supra, at page 24.

^{10/} In re Borough of Montvale, supra, at page 24.

collective negotiations agreements and the City's Personnel Manual. (Findings of Fact Nos. 10 and 17). Further, the Director (Nursing Services) had no input in the decision to eliminate certain positions and subcontract work (Finding of Fact No. 19).

While the authority to hire, fire and discipline are factors normally associated with supervisors, they have also been considered relevant on the issue of managerial status. An individual is probably a managerial if: (1) he makes the final decision in these matters after recommendations by supervisors; (2) has the final authority to determine the criteria to be applied; or (3) ultimate responsibility for the compilation and submission of adopted criteria; and (4) possesses the independence to deviate from such criteria when he believes it is necessary.^{11/}

The authority of the Director (Nursing Services) to discipline is also limited by the personnel manual and she can only recommend termination (Finding of Fact No. 10). Her only function in the hiring process is to evaluate professional competency (Finding of Fact No. 9).

The extent to which the individual is involved in labor relations is another relevant factor in determining managerial status. The key issue is whether he determines labor policy or contract proposals and represents the employer as a negotiator. He is not a managerial if at negotiating sessions he simply provides information on the working conditions of the employees under his supervision, or advises as to the feasibility of proposals, thereby enabling the negotiators to prepare more realistic proposals and properly evaluate the union's proposals.^{12/} From Finding of Fact No. 13, it is self-evident that the Director (Nursing Services) does not perform a managerial function in this regard.

^{11/} In re Borough of Montvale, supra, at page 25.

^{12/} In re Borough of Montvale, supra, at page 25.

Finally, based on Finding of Fact No. 22, the Director (Nursing Services) and the Assistant Director (Nursing Services) do, to some extent, have common interests with other employees in terms of mutual working conditions and work problems.

From all of the foregoing, the undersigned Hearing Officer concludes that the Director (Nursing Services) is not a managerial executive. It is, therefore, axiomatic that the Assistant Director (Nursing Services), who assists the Director (Nursing Services), (Finding of Fact No. 8), also is not a managerial executive.

It is apparent from Findings of Fact No. 12, 13 and 16 that the Director (Nursing Services) and the Assistant Director (Nursing Services) do not perform those types of functions delineated in the Statement of Law as confidential. As previously discussed, the Director (Nursing Services) merely acts as a conduit for grievances which she forwards to the Director (Health) with her recommendation. She does not attend confidential staff meetings with the Director (Human Resources), and during negotiations both the Director (Nursing Services) and the Assistant Director (Nursing Services) acted merely as resource persons concerning the working conditions of the employees under their supervision. They did not have knowledge of, or access to, any undisclosed proposals, strategies or other confidential materials relating to negotiations. The testimony of the Director (Human Resources) concerning his expectations of the Director's (Nursing Services) future involvement in collective negotiations is mere speculation.

For the foregoing reasons the undersigned Hearing Officer finds that the Director (Nursing Services) and the Assistant Director (Nursing Services) are not confidential employees. Therefore, based on a stipulation as to the appropriateness of the petitioned-for unit, the Hearing Officer recommends that a unit consisting of these two titles be found

appropriate for purposes of collective negotiations. Accordingly, the City's challenges to the ballots cast by these two employees should be dismissed and the ballots counted.



Dennis J. Alessi
Hearing Officer

DATED: November 30, 1979
Trenton, New Jersey