

D.R. No. 2008-4

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

In the Matter of

CAMDEN COUNTY LIBRARY COMMISSION,

Respondent,

-and-

Docket No. RO-2007-55

AFSCME, AFL-CIO, DISTRICT COUNCIL 71,

Petitioner.

SYNOPSIS

The Director of Representation certifies by card check a unit of supervisory professional employees employed by the Camden County Library Commission. The Director finds insufficient facts to support the employer's assertion that the petitioned-for employees are managerial executives and/or confidential employees as defined by the Act.

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Appearances:

For the Respondent  
Deborah Silverman Katz, County Counsel  
(Donna Whiteside, Assistant County Counsel)

For the Petitioner  
John Hemmy, Council 71 Associate Director

**DECISION**

On December 27, 2006, the American Federation of State, County and Municipal Employees, AFL-CIO, District Council 71 (AFSCME), filed a timely representation petition for card check certification seeking a unit of "chief librarian and supervising librarians" employed by the Camden County Library Commission (Library or Employer). The petitioned-for unit is unrepresented and consists of four (4) employees. The petition was accompanied by authorization cards from a majority of the proposed unit. No other labor organization claimed interest in representing the titles.

The Library objects to the proposed collective negotiations unit. It contends that all petitioned-for employees formulate or effectuate policy and, potentially have access to confidential labor information and, therefore, are managerial executives and/or confidential employees.

We have conducted an administrative investigation to determine the facts. The disposition of the petition is properly based upon our investigation. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Our investigation reveals the following:

On January 11, 2007, the Library submitted a list of chief librarians and supervising librarians identified in AFSCME's petition. We have compared the names on the submitted authorization cards with those on the employer's list and determined that a majority of petitioned-for employees have signed cards authorizing AFSCME as their exclusive representative.

On January 18, 2007, a Commission staff agent conducted a telephone conference among the parties about the petition. The staff agent afterwards forwarded to them a proposed stipulation of appropriate unit. On January 26, 2007, the County advised that it would not sign the stipulation and it disputed the appropriateness of the proposed unit. On February 15, 2007, the Library more specifically advised that it was seeking to exclude

all four individuals from the petitioned-for unit arguing they were managerial executives and confidential employees, as defined by the Act. The parties filed letters and supporting documents by July 20, 2007.

The disputed employees hold civil service and functional titles. Lisa Derfler holds the civil service title of supervising librarian/tech services; Janice Masud Paul and Nancy Bennett both hold the civil service title of supervising librarian. William Brahms holds the title, chief librarian. Their functional titles differ; Lisa Derfler is technical services manager; Janice Masud Paul is technology systems director; Nancy Bennett is south county regional branch manager; and William Brahms is Vogelson branch manager.

The Library System is County-wide and operates six branches: Vogelson Regional Branch Library; South County Regional Branch Library; Anthony Infanti-Bellmawr Branch Library; Gloucester Township/Blackwood Rotary Library; William Rohrer Memorial/Haddon Township Branch Library; and Merchantville Reading Center.

The Library System is operated by a Library Board of Commissioners, appointed by the County Freeholders. The Library Director is the chief executive of the Library System. Linda Devlin has held that position since her promotion from Assistant Director in about January, 2007. Deborah Ellis Dennis has recently been appointed Assistant Director, and reports directly

to Devlin. Also reporting to Director Devlin are these system-wide department heads: Human Resources Director Lauren Callahan; Business Office Manager Lisa Bicking; Information Technology Manager Lisa Derfler; and Technical Services Manager Janice Masud Paul.

All six library branch managers report to the Director. Two of them - Brahms and Bennett - are sought by AFSCME; the other four are currently included in a non-supervisory professional employee unit represented by AFSCME, which has a collective agreement with the County extending from 2005 through 2008. AFSCME acknowledges that the Library Director, Assistant Director, Human Resources Director, and Business Office Manager are excluded from the proposed supervisors unit.

#### Policy Making

All Library policies must be adopted by the Library Board of Commissioners. Library Director Linda Devlin certified that Library policies are typically formulated by a standing committee called the "SET Committee." The SET committee currently consists of 12 members: Director Devlin, the HR Manager, the Business Office Manager; the Payroll Manager; IT Manager Janice Masud Paul; Technical Services Manager Lisa Derfler, and the six branch managers (including Brahms and Bennett, petitioned-for here).

When the need for a revision of policy or a new policy is brought to the SET team's attention, the team will assign the

task of drafting the policy or revision to one or more of its members. A drafted policy is reviewed and discussed by the whole SET team. The recommended policy is then presented to the Library Board of Commissioners for its approval. The Employer provided a "customer behavior policy" and an "internet access policy" as examples of recent policies reviewed by the SET Committee.

These policies each set forth a broad policy statement, followed by a detailed rationale for the policy, followed by comprehensive and specific regulations and procedures. For instance, the "customer behavior policy" is 16 printed pages and covers procedures for staff to respond to such matters as customers' verbal abuse, sleeping, weapons, child abuse, theft, and disruptive behavior.

#### **Acting Director Responsibilities**

The Library contends that any of the four petitioned-for employees could be asked to serve as the "in charge" person when the Library Director is unavailable. Until late 2006, Claudia Sumler was the Library Director and Linda Devlin was Associate Director. Sumler quit at the end of 2006. Devlin was appointed Director, and her previous position remained vacant for many months and was only recently filled.<sup>1/</sup> In the seven-months since

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<sup>1/</sup> The parties' positions statements were submitted during the time the Assistant Director position was vacant and suggest  
(continued...)

Devlin became Director, Lisa Derfler was required to be in charge ten times: three times when Devlin took a week vacation or conference leave, and seven times for one day each. Janice Masud Paul also was placed in charge four times, each time lasting one day. Nan Rosenthal, a branch director (and member of the AFSCME non-supervisory professional unit) was placed in charge once for one day. Although Devlin certified that no other employee has been required to be in charge, AFSCME acknowledges that Brahms was also once asked to be in charge for a period of about an hour.

On November 1, 2006, around the time Claudia Sumler was leaving the Director position, Devlin issued a memorandum to all Library staff clarifying the "in charge" procedures and identifying those who may be asked to be in charge in her absence. The memorandum provides:

In charge responsibilities will be handled first by system wide department heads, then by branch managers by title and then by length of time in title:

Lisa Derfler  
Janice Masud Paul  
William Brahms  
Nancy Bennett  
Nan [Rosenthal]  
Debbie [Stefano]  
Anne [Ackroyd]  
Eve [Brown]

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1/ (...continued)  
greater responsibility on the staff because of the vacancy.

AFSCME contends that before this memorandum was issued, the in charge responsibilities were handled by Human Resources Manager Lauren Callahan. Devlin's memorandum also provides:

As a refresher, this is what may be expected of you if you are in charge of the system:

Contact for information that is immediately needed by Freeholder Cream's Office or by other people at the County.

Contact for customer complaints/issues when the customer wishes to speak to someone above the branch manager/department head.

Branch staff may call you in the absence of their branch manager when they need advice on how to handle issue/emergency at their location.

Weather closing. Although I will make every decision if at all humanly possible, there is a chance that you might have to handle a weather situation if I am out of the area. I will send out instruction on closing procedures in another email.

AFSCME notes that the last three individuals named in Devlin's memo are branch managers included in the AFSCME professional unit. During the brief periods that employees were "in charge" during the Director's absence, they continued to perform their normal duties; and were neither delegated the powers of the Director, nor were privy to any confidential or sensitive information. The Director reiterated to them that she is ordinarily available by cell phone.



**Purchasing**

Any employee may submit a purchase requisition. The Library Director however, must approve all purchases. Purchases over \$17,500 must be approved by the Library Board of Commissioners and the County Freeholders.

The petitioned-for supervisors have submitted recommendations for purchases on items ranging from library supplies to computer equipment. Janice Masud Paul has recommended the purchase of software, computer hardware, printers, phone and data line installation, and a new server. Lisa Derfler has recommended library and office supplies. Bill Brahms has submitted requisitions for maintenance services and supplies for his branch, a copier contract for the library system, and a microfilm maintenance contract. Nancy Bennett has requisitioned office supplies.

**Budgeting Process**

The budget process begins in the summer before the start of the fiscal year. All branch managers and system-wide department heads are asked to provide estimates for anticipated projects and expenses. Personnel expenses, including salaries and benefits, are projected by the Human Resources Department. The Assistant Director assembles the library materials budget and the State aid budget. Lisa Derfler assisted in the preparation of the library materials budget for 2007. Budget requests are submitted to the

Library Director and to the Business Office. The Business Office Manager compiles all the data into a draft budget. The Library Director prepares a final budget draft based upon direction from the Library Board and the County. The draft budget, together with a narrative explanation, is presented to the Library Board for approval. Once approved, it must then be submitted to the County. The Freeholder Board formally adopts the budget, along with the rest of the County budget, in late spring. The Library system operates from a temporary budget until the new budget is adopted by the Freeholders.

#### **Exercise of Independent Judgment**

The Library contends that the petitioned-for employees exercise independent judgment. For example, Derfler decides how to allocate money in the various budget funds for which she is responsible. Masud Paul advises her staff on how to deal with problem customers in the computer centers. She also selects computer hardware and software and decides when to recommend upgrades to the computer system. Brahms and Bennett use independent judgment to handle day-to-day issues at their respective branches, such as handling customer issues, organizing their branch collections, and scheduling the branch staff.

#### **Duties of IT Manager Masud-Paul**

Masud Paul holds the civil service title of Supervising Librarian. She heads the information technology (IT) department,

a position she has held since 1998. She reports to Library Director Devlin. According to the job description she prepared for her position, she is responsible for determining and prioritizing the information technology needs of the library system. It appears that her department's mission is to keep the Library's electronic system working and up to date within the confines of the budget. She oversees the department workflow by tracking trouble tickets, assigning tasks, monitoring progress and following up as needed. She supervises and evaluates the IT staff, recommends personnel actions, and determines when training is needed. As the ILS<sup>2/</sup> system administrator, and together with Linda Babli (a professional unit employee), she updates software, troubleshoots problems, advises on system capabilities, assigns passwords and logins, and interfaces with the county college and partner libraries. She prepares monthly and annual reports for her department and prepares the IT budget recommendations.

She and her entire IT staff (except computer pages) can access any computer in the library system in-person or remotely. The Library contends that its computer system stores "confidential" information, such as disciplinary actions,

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<sup>2/</sup> ILS is not defined in the parties submissions but a Google search reveals it is an acronym for "Integrated Library System," defined by Wikipedia, as "an enterprise resource planning system for a library, used to track items owned, orders made, bills paid, and patrons who have borrowed;" also referred to as a library management systems.

employee medical information, employee investigations, and claims of sexual harassment. Masud Paul also has "unfettered access" to any e-mails or electronically transmitted memoranda between the Library Director and the Library Board or the County Freeholders. However, the Library Director certifies that Masud Paul has never accessed a computer without permission.

Masud Paul has no responsibility in collective negotiations. She does not have advanced knowledge of the Employer's labor relations materials or negotiations strategies or policies.

**ANALYSIS**

The Employer argues that all four of the petitioned-for employees are managerial executives and cannot be represented in any negotiations unit.

N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate, but specifically exempts managerial executives from that right. N.J.S.A. 34:13A-3(f) defines managerial executives as:

. . .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 New Jersey Turnpike Authority v. AFSCME Council 73, 150 N.J. 331 (1997), our Supreme Court adopted this test to determine managerial authority:

A person formulates policies when he develops a particular set of objectives designed to

further the mission of a segment 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 of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. 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. [N.J. Turnpike Auth., 150 N.J. at 356]

Sustaining the lower court's holding that a managerial executive need not possess organization-wide power, the Supreme Court rejected other portions of the lower court's opinion that would have expanded the managerial executive definition to exclude all employees above first-line supervisors and to adopt the private sector exclusion of all managerial employees who effectuate managerial policies. The Supreme Court reasoned that the problem of divided loyalties is of less concern in the public sector than in the private sector because public employees do not have a right to strike; public employees have a much narrower scope of negotiations; public employers are not seeking to maximize profits; and public employers and public employees share a stronger common interest in the mission of the organization. The Court stressed that the Legislature had rejected a managerial executive definition, proposed by Governor Cahill, that would

have excluded persons "effectuating and making operative" management policies and practices and had instead confined that part of the exclusion to persons "directing the effectuation" of such "policies and practices." The Court concluded that "directing the effectuation" connotes a higher level of authority than does "effectuating and making operative." Id. at 355.

Under Turnpike Authority, the Commission determines the line between managerial executives and lower-level employees on a case-by-case basis. The analysis in each instance focuses on the weight and interplay of the employee's position in the hierarchy, his or her functions and responsibilities, and extent of discretion. The goal is to determine whether the employee has the authority and accountability of a managerial executive to formulate or direct the effectuation of management policies and practices.

In this matter, the petitioned-for employees do not "formulate policy" for the Library system. As members of the SET committee, their suggestions are incorporated into the drafting of policies, but their recommendations are reviewed first by the entire SET committee, then by the Library Director, and then by the Library Board of Commissioners. The ability of an employee to recommend management policies is not included in the statutory definition, nor is it part of the criteria set forth by the Supreme Court in Turnpike Authority. Although "input" from

supervisors involved in the day-to-day operation of the Library may help to develop a strategy, the Director decides upon the course of action. Based upon this record, I find that these supervisors' quantum of "input" into management policies does not make them managers. See N.J. Office of the Public Defender, P.E.R.C. No. 99-60, 25 NJPER 55 (¶30022 1998), req. for recon. den. P.E.R.C. No. 2000-35, 25 NJPER 462 (¶30201 1999).

Nor do these supervisors "direct the effectuation of policy." They do not have responsibility for developing the methods and means to reach a policy objective. They have no control over the budget, no authority on staffing decisions, and no ability to commit the Employer's funds. Although they are responsible for ensuring that the Employer's policies are followed within their sections, they do not "coordinate the implementation of policy by line supervisors" as the employees below them are the members of the professional and support staff.

The Library also contends that the discretion exercised by these titles demonstrates their managerial status. Such discretion is expected of senior professional employees with a high degree of specialized expertise.<sup>3/</sup> The extent of the supervisors' discretion in making day to day decisions is circumscribed by the specific and extensively detailed written

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<sup>3/</sup> The use of discretion within the employee's field of expertise is part of the Commission's definition of "professional employee." N.J.A.C. 19:10-1.1.

policies and procedures. The 16-page policy on customer conduct is a good example of the extent to which their discretion is limited.

The Library further contends that the petitioned-for employees are managerial because they are in charge of the Library when the Director is out of the office. Derfler and Masud Paul have been asked to be in charge, but those instances were infrequent and for short periods. Nor do they assume the managerial authority of the Director in her absence. The Director declared her availability to them by cell phone should she be needed to make a decision. The supervisors' decisions are essentially limited to handling problems and inclement weather closings. Finally, the hiring of an assistant director decreases the likelihood that they will again be called upon to be "in charge." Accordingly, I find that the petitioned-for employees are not managerial executives within the meaning of the Act.

**Confidential Status**

The Library argues that IT Manager Janice Masud Paul is a confidential employee within the meaning of the Act. The Employer expressed concern that Paul has unfettered access to all of the Library system's computers, which may contain confidential information.

Confidential employees do not have representation rights under the New Jersey Employer-Employee Relations Act. N.J.S.A.



34:13A-5.3. N.J.S.A. 14:13A-3(g) defines confidential employees as:

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.

The Commission's policy is to narrowly construe the term "confidential employee." Ringwood Bd. of Ed. P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp. 2d 186 (¶165 1988); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985). In State of New Jersey, the Commission explained the approach taken in determining whether an employee is confidential:

[W]e scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and what [the employee] knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee [were] included in a negotiating unit. [Id. at 510]

In Turnpike Authority our Supreme Court approved the standards articulated in State of New Jersey and explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-

3(g); see also State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (holding that final determination is 'whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit.'). Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358]

Applying these standards to the facts, I find that the IT Manager is not a confidential employee. Masud Paul has no involvement with collective negotiations. Specifically, she does not sit on the Employer's negotiating committee or have any responsibility for developing labor relations strategy, analyzing negotiations proposals, or costing out possible Employer proposals. The Employer is most concerned that her role as the IT Manager gives her possible access to all computers in the library system. But

Masud Paul has not accessed anyone's computer without permission. Mere "access" to computerized information, without any responsibility to pay attention to its contents, does not necessarily give the employee knowledge of confidential information. See Downe Tp. Bd. Of Ed., D.R. No. 2005-3, 30 NJPER 388 (¶125 2004) (computer technician with system-wide access not confidential).

The Library contends that Masud Paul has "unfettered access" to electronic records on personnel matters, and to information about employee investigations and sexual harassment charges. These materials are not the type of information with which we are concerned in excluding confidential employees from representation rights. The test is whether the employee's inclusion in the unit would potentially compromise the employer in negotiating and administering the contract because the employee would have advanced knowledge of its negotiations strategies which might be shared with the employee representative. The Library further maintains that Masud Paul has computer access to all e-mails and electronic memoranda. But the Library has not provided any specific examples of the content of e-mails or memoranda which contain sensitive negotiations information. Masud Paul's job responsibilities have not provided her advanced knowledge of the Employer's negotiations strategies or other confidential labor relations information.

Accordingly, I find that IT Manager Janice Masud Paul is not a confidential employee within the meaning of the Act. Nor has the Library provided facts indicating that any other petitioned-for employee is confidential.

#### CONCLUSION

I find that the following collective negotiations unit is appropriate:

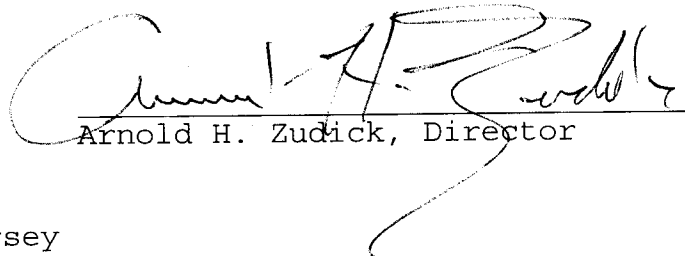
Included: All supervisory professional employees employed by the Camden County Library Commission, including Chief Librarian, Supervising Librarians, and Supervising Librarian Technical Services.

Excluded: Managerial executives, confidential employees and non-supervisory employees within the meaning of the Act; non-professional employees, craft employees, police, casual employees, and all other employees employed by Camden County Library.

AFSCME, apparently under the identical employee organization name as the petitioner, represents a separate unit of non-supervisory professional employees of the Library. In order to complete the representation process, we require AFSCME to amend its name in this case within ten days to reflect a distinct identity for its petitioned-for unit. Additionally, we enclose a certification form to be completed by a duly designated officer of the representative of the supervisory unit to distinguish the AFSCME supervisory unit from any non-supervisory unit representing Library employees.

AFSCME has otherwise met the requirements necessary for certification based upon its submission of authorization cards from a majority of the employees in the unit described above. Certification of AFSCME based upon the card check is appropriate. Upon our receipt of the properly executed (and enclosed) certification, and the amendment to the Petitioner's name, I will issue an Order certifying the amended AFSCME representative as the exclusive representative of the negotiations unit described above, based upon its authorization cards.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: October 29, 2007  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by November 9.

PUBLIC EMPLOYMENT RELATIONS COMMISSION  
DOCKET NO. RO-2007-055

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Camden County Library,

-and-

CERTIFICATION

AFSCME Council 71,

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I, \_\_\_\_\_, of \_\_\_\_\_,  
certify as follows:

1. This organization makes this certification seeking to represent certain supervisory employees of the Camden County Library.
2. This organization understands that it will comply with the requirement that it be and act as a separate organization from any other organization which represents or may represent non-supervisory employees employed by the Camden County Library.
3. This organization, rather than the majority representative of any non-supervisory organization, will control the negotiations agreements covering supervisory employees.
4. This organization, as it now exists, has no non-supervisory members.

The forgoing statements made by me are true to the best of my knowledge and belief. I am aware that if any statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_

DATED: