

D.R. No. 2010-1

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

In the Matter of

COUNTY OF HUNTERDON,

Respondent,

-and-

Docket Nos. RO-2009-039,
RO-2009-044

AFSCME COUNCIL 73,

Petitioner.

SYNOPSIS

In companion representation petition, the Director of Representation certifies units of primary and secondary level supervisors employed by Hunterdon County, based upon a majority of authorization cards submitted by AFSCME Local 73. Although the County filed an organizational chart asserting that the discretion exercised by each of the contested employees was "managerial", it did not provide specific examples of instances in which the managerial discretion intended by the Act had been exercised, thus, the Director found that all of the employees were eligible for representation. Since certain employees in the petitioned-for primary level supervisors unit (RO-2009-039) supervised certain employees in the secondary upper level supervisors unit (RO-2009-044), separate negotiations units were warranted. Although the County requested an evidentiary hearing, the Director found no substantial material facts in dispute and based the conclusion on the facts revealed by the investigation.

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Appearances:

For the Respondent,
Gaetano M. DeSapio, attorney

For the Petitioner,
Pellettieri, Rabstein and Altman, attorneys
(Andrew L. Watson, of counsel)

DECISION

On October 14, 2008, and on November 6, 2008, AFSCME Council 73 filed a representation petition and amended petition (RO-2009-039) seeking certification by card check of a collective negotiations unit comprised of about 25 upper level unclassified supervisory employees of Hunterdon County. On November 6, AFSCME amended its petition to seek card check certification of about 6 primary upper level unclassified supervisory employees, and filed a second petition (RO-2009-044), seeking card check certification of a unit of about 16 secondary upper level supervisors. All of the petitioned-for employees are unrepresented for purposes of

collective negotiations. The petitions are supported by a sufficient number of cards warranting certification. N.J.A.C. 19:11-1.2(a)10.

The County opposes certification. It asserts that all but three of the petitioned-for employees are ineligible for inclusion in any negotiations unit because they are managerial executives. AFSCME denies that the petitioned-for employees are managerial executives.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2. Our investigation reveals the following facts.

By letter of October 22, 2008, the County was directed to submit "an alphabetized list of employees in the unit described in the petition, together with their job classifications" for the payroll period immediately preceding the date of the letter.

An investigatory conference was scheduled for November 6, 2008. Before the conference, and in response to the October 22nd letter, the County filed a list of 77 employees, 12 of whom were denoted as "upper level management" (fitting the unit description set forth on the petition) and are assertedly ineligible for representation because they are managerial executives. During the conference, the County supplemented its list by adding some

employees as managerial executives and deleting others from its original list.

Also at the conference, AFSCME provided a list of 25 employees it considers eligible for representation. Some of the employees in the proposed unit appeared to supervise others in the same unit, possibly implicating a general statutory prohibition against supervisors being included in a unit with non-supervisory personnel. See N.J.S.A. 34:13A-5.3. AFSCME amended its initial petition (RO-2009-39) and now seeks a unit of about six (6) primary upper level supervisory employees. It also filed a second petition (RO-2009-44) seeking to represent about sixteen (16) secondary upper level supervisory employees. Draft stipulations of negotiations unit descriptions were provided to the parties. The County declined the proposed stipulations of units.

On November 21, 2008, the County filed a letter contending that all but three unnamed employees in the two petitioned-for units are ineligible for representation because they are managerial executives. The County was asked to submit by December 4, 2008, an alphabetized list of employees, together with a letter specifying those whom it considered both eligible and ineligible for representation, and the reasons why. Both parties were requested to provide documents supporting their respective positions, including certifications.

On December 4, the County filed a letter, together with two alphabetical lists of the employees in each of the petitioned-for units. The County submitted a list of five upper level supervisors, all of whom are assertedly ineligible for representation because they are managerial executives (RO-2009-039). The County also filed a list of seventeen secondary level supervisors, fourteen of whom are assertedly ineligible for representation because they are managerial executives.

The County contends that only three employees and titles are appropriate for the secondary upper level supervisors unit (RO-2009-44): director of staff operations (Human Services); division head information technology; and assistant county counsel, Office of County Counsel. For its part, AFSCME asserts that it no longer seeks to represent the correctional administrator because the holder was promoted to warden and is enrolled in the Police and Fire Retirement System. On December 19, AFSCME filed a response to the County's December 4 letter.

On January 12, 2009, the Commission staff agent held a second investigatory conference. The parties were unable to stipulate any appropriate unit(s). All filings were received by March 6, 2009.

The County asserts that the factual issues regarding the petitioned-for employees' duties can only be resolved by an

evidentiary hearing. It argues it will prove each factual representation and provide further details.

AFSCME asserts that the petitioned-for employees are not managerial executives under the statute. It contends that the Board of Chosen Freeholders (BOCF) is responsible for the formulation and effectuation of management policies through the countywide policies it has drafted, adopted and implemented; that the petitioned-for unit employees' job duties confirm that they do not meet the statutory definition of managerial executive; and that union organization will not adversely affect the unit employees' loyalty to the County. AFSCME asserts that all of the petitioned-for employees are eligible for representation. It has filed questionnaires about job duties completed by many of the petitioned-for employees.

The facts of this case are gathered from the investigatory conferences and the several position statements filed by the parties. I find the following facts.

Hunterdon County employs between 580 and 650 people. Its bargaining units include a non-supervisory unit of about 400 employees; a supervisory unit of 30 to 50 employees; a corrections unit of 20 to 25 employees; a corrections supervisory unit of 5 to 7 employees; a non-supervisory unit of about 16 sheriff's officers; a supervisory unit of two sheriff's superiors; and a unit of about 23 prosecutor's detectives. Certain confidential aides or assistants and middle level

supervisors in the County's Roads Department are unrepresented and are not the subject of these representation petitions.

The organizational chart shows that the County is governed by a Board of Chosen Freeholders. Below the Freeholders in the County's table of organization is the County Administrator, Cynthia Yard. Below the Administrator are the departments of public works, public safety, finance, administrative support, health/human services, and land use and development. Each department has one or more department heads with subordinate division heads, except land use and development, which has a division head with a subordinate department head.

The County collective negotiations team includes John Glynn, Department Head/Public Works, George Wagner, Department Head/Public Safety, and Cheryl Weider, Department Head/Human Resources. None of these employees, nor Kimberley Browne, Department Head/Finance, or Margaret Pasqua, Treasurer/CFO (Finance) are the subject of either petition.

The County contends that all five titles sought in the petitioned-for primary upper level unit (RO-2009-039) are ineligible for representation because they are managerial executives. The County asserts that the titles, department head, health; department head, human services; division head, project management; division head, information technology; and library director formulate their department's budget, make decisions concerning allocation of resources and direct objectives,

directly develop policies for the manner and purposes for which County expenditures are made, and develop, recommend and solicit County projects. All are parallel in the County's organizational chart and report directly to the County Administrator.

County Administrator Cynthia Yard filed a certification that each of the disputed employees in both petitioned-for units:

. . . . administer[s] the primary functions and duties of their department/division including supervising all employees and directing operations. Each develops, to a greater or lesser degree, budgets which are submitted to the Freeholders for incorporation in the County budget. After the budgets are approved, they are responsible for authorizing and monitoring the expenditures of the department or division budget. They are also responsible for deciding how to specifically spend money in the broad categories the Freeholders set. They exercise almost exclusive discretion in spending those funds to accomplish objectives which Department or Division heads set, as well as the broad objectives the Freeholders direct.

Each, to a greater or lesser degree, thereafter establish policies and procedures for their departments, establish work protocols and are ultimately responsible for the discipline, hiring and firing of all subordinate employees within their Department/Division. . . .

The managers select the majority of the projects and objectives which will be pursued within their areas of operation and then, once approved by the Freeholders, are responsible for the manner, methods and techniques to be used to accomplish those objectives.

Each of these individuals are key management executives in the County and are empowered to assist in the development and administration

of County Public service systems, including establishing policies and procedures. In many areas they work independently, either performing statutory functions designated to them or their departments, or in areas where the Freeholders rely on them to exercise broad discretion and work independently.

I will first review the job duties of the five titles in the petitioned-for primary level supervisors unit.

Department Head, Health - John Beckley

The County asserts that Beckley administers and enforces State, NJDEP, and local public health standards and practices; decides whether to institute court enforcement actions for fines and penalties; interfaces exclusively with local municipalities in enforcing their ordinances; supervises a \$600,000 contract with a hospital involving the utilization of 17 nurses in meeting State public health standards; and develops policies and procedures in all areas including a health emergency preparedness system for national and local emergencies and disasters. Beckley supervises 35 employees, including Environmental Health Coordinator (Division Head), Health, Carla Hobbs, and 17 nurses; administers independent trust fund for department; and administers budget of \$1.95 million and grants totaling \$743,236.

Department Head, Human Services - Pamela Pontrelli

The County asserts that Pontrelli is responsible for the administration of all public assistance programs and projects in the County; administers all State programs; sets policies and makes decisions in all areas of state and federal law conferring

exclusive discretion upon her; and administers a budget of \$3.6 million and grants of over \$2.2 million. Pontrelli supervises 86 employees, including Human Services Division Head Donna Gapas, Human Services Confidential Assistant Janet Previte and Human Services Executive Director Office on Aging Mary Ann Rodenberger.

Land Use and Development

Division Head, Project Management - Frank Bell

The County asserts that Bell supervises the design and construction of all County facilities; decides on the selection of techniques to be used and outside professionals to be engaged; reports directly to Freeholders at each public meeting; administers and sets policies for \$7.0 million of projects; and administers a \$246,517 budget and \$450,000 in grants. Bell supervises two employees, Department Head, Solid Waste and Recycling Alan Johnson and Project Management Confidential Aide Kevin Richardson.

Administrative Supports

Manager 1 (Division Head), Information Technology - Mike Rasimowicz

The County asserts that Rasimowicz designs and manages all information and IT functions of the County; decides whether employees need equipment and what will be provided; decides on the installation of county wide IT systems. Rasimowicz supervises 15 employees, including Information Technology Division Head Patricia Leidner.

AFSCME filed a questionnaire completed by Rasimowicz.

Rasimowicz summarizes his duties and discretion:

I oversee the technical staff of the Information Technology department. I meet with other departments on conceptual projects they may have and provide information as to what our office can and cannot offer them. I approve purchase requests from our office and all county departments that related to IT. This process is simply a check that the purchase was approved by the BOCF or that the requested purchase falls into one of the line items approved by the BOCF. I track staff attendance, performance evaluations, provide guidance and direction to staff on projects and daily work. I research new technology, act as the "project manager" for major projects in the office, and plan new IT initiatives.

Describing the level of discretion he exercises, Rasimowicz wrote: "The only discretion I have relates to my office and staff, to provide daily support to keep the County computers and equipment functional. Any new concepts, projects, initiatives etc., have to go before the BOCF or County Administrator for approval."

Library Director - Mark Titus

The County asserts that Titus works for the County through a "semi-independent" commission, pursuant to N.J.S.A. 40:33-7; sets policy without reporting to the Freeholders, despite the fact that Library operations are paid by County tax revenue; supervises three library branches and makes independent judgments on acquisitions and programs; and administers a budget of over

\$6.0 million. Titus supervises 107 employees, including Assistant Library Director Floyd Saums.

AFSCME filed a questionnaire completed by Titus. Titus wrote that he oversees all programs, services and departments of the Hunterdon County Library; oversees the development and maintenance of the library's collections; develops and oversees internal library policies and procedures; oversees the promotion and publicizing of library programs; oversees the development of partnerships between the library and various community groups; prepares annual operating budgets subject to approval by the Library Commission and the BOCF; and oversees the implementation of the operating budget. Titus also wrote that he implements policies set by the BOCF, without his suggestions, and that he has no discretion to choose among policy alternatives. He wrote that although he has participated in formulating policy objectives designed to further the mission of the Hunterdon County Library, those proposals were subject to the approval of the County's Library Commission.

RO 2009-44 - secondary upper level supervisory employees:

The County asserts that thirteen of the sixteen employees in the petitioned for secondary upper level supervisors' unit are ineligible for representation because they are managerial executives. The County contends that they formulate their department's budget; administer an independent trust fund; make decisions concerning allocation of resources and direct

objectives; directly develop policies for the manner and purposes for which County expenditures are made; and develop, recommend and solicit County projects. The disputed titles and facts about their duties follow.

Health and Human Services

Environmental Health Coordinator (Division Head), Health -
Carla Hobbs

Hobbs reports to Health Department Director John Beckley, whose title is contested in the petitioned-for primary level unit. The County asserts that Hobbs acts for Health Department Director Beckley in his absence; supervises 47 subordinates (perhaps the same supervised by Beckley); and assists Beckley in formulating the department's budget. Hobbs does not develop recommendations or solicit County projects.

Department Head, Solid Waste and Recycling - Alan Johnson

The County asserts that Johnson develops and implements the County Solid Waste Management Plan and administers a budget of \$242,662. Johnson has no subordinates.

Division Head, Human Services - Donna Gapas

The County contends that Gapas administers State public assistance programs for all eligible County residents; decides on policies and procedures independent of Freeholders in connection with programs; supervises 38 subordinates; and administers a budget of \$1.16 million.

AFSCME filed a questionnaire completed by Gapas. Gapas wrote that she exercises discretion in making decisions related

to daily operations, but does not independently hire or fire personnel; and does not approve training, flex schedules, or make decisions on spending. All expenditures are reviewed by the BOCF and subject to its approval or State guidelines. She wrote that the BOCF has the "ultimate say" in all operations related to County-funded programs. She wrote that she develops a departmental budget, subject to approval by the BOCF; creates and implements policies and objectives for the Division that she supervises, all of which are subject to the approval of her supervisor, Human Services Department Head Pamela Pontrelli (a petitioned-for title in the primary level unit). She enforces any County policy in the manner in which the BOCF and County Administrator decide.

Confidential Assistant, Human Services - Janet Previte

The County argues that Previte is the direct assistant to Director Pontrelli (a petitioned-for title in the primary level unit) and acts for the Director in her absence, overseeing and administering federal funds for the federal housing program for the County.

Executive Director Office on Aging (Division Head), Human Services - Mary Ann Rodenberger

The County writes that Rodenberger oversees County senior services and develops and administers senior programs; supervises 20 unspecified employees; formulates a budget of \$506,536; administers a trust fund and \$802,292 in grants. Rodenberger reports to Pontrelli.

Project Management Confidential Aide - Kevin Richardson

The County contends that Richardson administers the County's open space program; evaluates properties, recommends purchases and negotiates with landowners. He also supervises and recommends the allocation of an annual dedicated tax fund of about \$7.5 million; allocates County resources, and "directs objectives, develops recommendations and solicits County projects." Richardson reports to Department Head, Parks and Recreation, John Trontis, a petitioned-for employee in this unit. Richardson has no subordinates.

Land Use and DevelopmentPlanning Director , Planning Department - Gelaine (Sue) Dziemara

The County asserts that Dziemara administers the statutory functions of the County Planning Board pursuant to N.J.S.A. 40:27-1. She develops components of the County's master plan; supervises 7 subordinates; administers a budget of \$567,907 and \$51,904 in grants; and decides on policies, procedures and techniques for County master planning, and has about \$20 million pending in acquisition projects. Dziemara reports to Frank Bell, Division Head, which is a contested title in the petitioned-for primary level unit.

Department Head, Parks and Recreation - John Trontis

The County asserts that Trontis administers and plans the annual operations of 25 County parks and 810 acres; establishes recreation and parks programs; supervises 28 subordinates; and

administers a \$1.5 million budget and \$5000 in grants. Trontis reports to the County Administrator and BOCF.

Administrative Supports

Assistant Library Director, Library - Floyd Saums

The County asserts that Saums is the direct assistant to the Library Director (a contested title in the petitioned-for primary level unit) and acts for the Director in his absence. Saums makes recommendations on the allocation of County resources.

Division Head, Information Technology - Patricia Leidner

The County asserts that Leidner administers the County's geographic information system (GIS) and decides policies regarding its development of information and use. She also supervises 4 subordinates. Leidner does not formulate budget.

AFSCME has filed a questionnaire completed by Leidner. Leidner writes that she oversees all programs, services and activities of the Division of GIS, including the development and distribution of spatial data, the interviewing and hiring of new employees (subject to the rules of the County, NJDOP and Civil Service regulations), and oversees and evaluates four subordinates. Leidner asserts that all but day-to-day supervision of the Division of GIS is subject to approval by the BOCF. Leidner writes that although she is involved with developing objectives designed to further the mission of the Division of GIS, any policies she may develop are subject to the review of the County Administrator, County Counsel, and the BOCF.

She wrote that she has never been asked for suggestions on County policy objectives. Leidner also writes that she develops the portion of the information technology budget related to the Division of GIS, subject to the needs of the IT department and the review of the County administrators and the BOCF.

Finance

Department Head, Purchasing - John Davenport

Davenport is the County's statutory purchasing agent, pursuant to N.J.S.A. 40A:9-30. He reports to the Treasurer/CFO, Department Head/Finance, and to County Administrator Yard. His duties include setting standards and developing specifications and bid packages for procurement within the County; supervising 4 subordinates and administering a budget of \$352,352, and making decisions on allocation of resources and "directing objectives." Davenport does not develop policies concerning County expenditures, nor does he develop, recommend or solicit County projects.

Department Head, Central Printing/Mail - Robert Thurgarland

The County asserts that Thurgarland's duties include administering County records under the Open Public Records Act; supervising 4 subordinates; and administering budgets of \$340,658 and \$1,000,000 as project manager of the County's public archives and records infrastructure support (PARIS) grant.

AFSCME has filed a questionnaire completed by Thurgarland. He wrote that all but the day-to-day operational supervision of

the department is left to the discretion of the BOCF.

Thurgarland wrote that the BOCF develops and directs all policies at his level; that he is charged with carrying out those directives; that his discretion is limited to directing his staff in the day-to-day operations of his department, and that he implements only those objectives and policies as defined and established by County administration and the BOCF, and is not asked for his suggestions about policies. Thurgarland wrote that he submits an annual departmental budget request which is reviewed, modified, denied or approved by the BOCF.

Public Safety

Assistant Superintendent (Division Head), Public Safety - Karin Gruss

The County asserts that Gruss is responsible for the establishment of programs for and the supervision of children at the County youth facility; supervises 13 subordinates; and administers a budget of \$624,630. She does not formulate budget, develop recommendations or solicit County projects. Gruss reports to Correctional Administrator Scott Nodes, whose title is not the subject of either petition.

County Policies

The County's October 28, 1986 policy, entitled "Employment of Personnel" synthesizes two previous policies and sets forth the procedure by which County department heads may "obtain permission" for the creation of a new position, and provides that no new position shall be created without Freeholder approval.

On July 14, 1992, the County, through its Board of Chosen Freeholders, established a policy entitled, "Use of Centralized Personnel Procedures," requiring all County departments and agencies to comply with certain uniform personnel procedures.

On August 11, 1998, the County, through its Board of Chosen Freeholders, established a "Corrective Action/Disciplinary Program," outlining a uniform table of offenses and penalties for employee disciplinary action.

On October 26, 1999, the County, through its Board of Chosen Freeholders, established a policy entitled, "Costs and Expenses Reimbursed by County" providing that employees shall be eligible for reimbursement of pre-authorized expenses for seminars, meetings and meals directly related to County business.

The County, through its Board of Chosen Freeholders, has established an administrative policy entitled, "Voice Mail Policy and Procedure" (Policy # 2000-2) setting forth procedures to be followed by departments requesting voice mail for their employees.

On March 11, 2003, the County, through its Board of Chosen Freeholders, established a policy entitled, "Guidelines for Trips/Conferences" setting conditions for employee attendance at conferences or trips at County expense with prior authorization from the County Administrator.

On December 12, 2006, County Administrator Cynthia Yard issued a memorandum to all County departments directing adherence

to an attached, detailed internal control mechanism for the monitoring and management of County grants (adopted by the Freeholders at their August 22, 2006 meeting).

On August 28, 2007, the County, through its Board of Chosen Freeholders, established an administrative policy on County "in-kind" services and equipment loaning, setting forth the procedure by which department managers may submit requests to the Freeholders to loan County equipment to municipalities and outside agencies.

ANALYSIS

Managerial Executive

I find that none of the positions in the petitioned-for primary and secondary supervisor units is a managerial executive.

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, 150 N.J. 331, 356 (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.

The Court modified the Commission's decision in Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), in which the Commission adopted a standard for determining whether a person formulates policy or directs its effectuation (and is, therefore, a managerial executive). The Court wrote:

Higher-level supervisors who are not elected officials or members or boards or commissions and who do not fall within the 'managerial executive' or 'confidential employee' exclusions may organize; in the event that 'an actual or potential substantial conflict of interest' exists between different levels of supervisors, separate supervisory units should be formed. [Turnpike Authority, at 150 N.J. 354]

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 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 150 N.J. 355.

The Commission applied Turnpike Authority standards to a dispute over State section chiefs in NJ/State (DEP-Section Chiefs), P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998). The Commission wrote:

An employee need not be at the top of an organization to be a managerial executive. But the higher an employee is in the hierarchy and the fewer levels of decisional review, the more likely it is that the employee has authority to formulate or direct the effectuation of management policies and practices. In examining the hierarchy, we will also consider the number and positions of employees reporting to an employee asserted to be a managerial executive; the more employees who report to a person and the higher and broader range of positions they hold, the more likely it is that the person has managerial executive status. And we will consider the extent to which an employee regularly participates in management-level committees convened to discuss and adopt

managerial policies and strategies. Compare County of Rensselaer (Hudson Valley Community College), 18 N.Y. PERB 3001 (¶3001 1985) (Director of Learning Resources who participated in weekly meetings of college deans and served in president's cabinet formulated policy). We finally repeat that the Legislature contemplated the possibility that some employees holding managerial titles would be eligible for representation when it limited the managerial executive exclusion in the school board context to superintendent-level employees and when it limited that exclusion in other contexts to employees who formulate policies and practices or direct their effectuation. Thus, merely holding a managerial title does not make one a managerial executive. [25 NJPER 52]

In these cases, the County asserts that the disputed employees' duties "go beyond mere supervision" as discussed in Turnpike Authority. The parties essentially agree on the employees' functional job duties, but disagree about the level of discretion exercised and whether that discretion rises to the level of managerial executive status. Although the County has filed an organizational chart and has written that the discretion exercised by each of the contested employees is "managerial", it has not provided specific examples of instances in which the managerial discretion intended by the Act has been exercised.

Recently, in City of Teaneck, P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008), app. withdrawn App. Div. Dkt. No. A-2168-08T3 (2009), the Commission declined to review a decision of the Director of Representation to certify a unit of supervisory employees whom the Township sought to exclude as managerial

executives. The Director found that the employer's "mere recitation" of each employee's functions set forth in job descriptions were insufficient to demonstrate that the department heads exercised the scope of authority or independent discretion demanded of employees claimed to be managerial executives. Nor did the narrative certification submitted by the Township Manager suffice to show that the department heads formulated policy or possess and exercise the broad discretion over Township policies demonstrating managerial executive status. D.R. No. 2009-3, 34 NJPER 268 (¶96 2008), citing Ringwood Tp., D.R. No. 93-19, 19 NJPER 196 (¶24093 1993). The Commission held that "(p)erformance of statutorily mandated duties, without more, does not support a finding of managerial executive status under our Act." See, e.g. Bethlehem Tp. Ed., 91 N.J. 38, 44 (1982). The Commission noted that the employer had submitted no evidence demonstrating that the department heads formulate municipal policies which effect the Township's mission. Teaneck, citing Eastampton Tp., D.R. No. 94-1, 19 NJPER 404, 406 (¶24178 1993) (Eastampton I) cited in Eastampton Tp., D.R. No. 2000-5, 26 NJPER 43, 44 (¶31014 1999) (Eastampton II); Clark Tp., P.E.R.C. No. 85-105, 11 NJPER 283 (¶16104 1985). The Commission denied the Township's request for review of the Director's decision and an evidentiary hearing.

In Camden Cty. Library Commission, D.R. No. 2008-4, 33 NJPER 298 (¶114 2007), the Director found that a negotiations unit of all supervisory professional employees employed by the County

library commission, including chief librarian, supervising librarian, and supervising librarian/technical services, was appropriate, because none of the disputed employees were managerial executives or confidential employees within the meaning of the Act.

Some of the disputed employees participated in a policy-making committee. But the Director determined:

[They] 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 (emphasis added). 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).

The Director found that the employees were supervisors who did not "direct the effectuation of policy," and that they lacked "responsibility for developing the methods and means to reach a policy objective." The disputed employees had no control over the budget, no authority on staffing decisions, and no ability to commit the employer's funds. Although they were responsible for

ensuring that the employer's policies were followed within their sections, they did not "coordinate the implementation of policy by line supervisors" as the employees below them are the members of the professional and support staff. Although the Library contended that the discretion exercised by the titles demonstrated their managerial status, the Director found "(s)uch discretion is expected of senior professional employees with a high degree of specialized expertise. The extent of the supervisors' discretion in making day-to-day decisions is circumscribed by the specific and extensively detailed written policies and procedures." Camden Cty. Library, at 33 NJPER 301.

The Commission denied the employer's request for review of the Director's decision, finding that the investigation left no material facts or substantial questions of law in dispute, and denied its request for an evidentiary hearing. Camden Cty. Library, P.E.R.C. No. 2008-35, 33 NJPER 319 (¶121 2007).

In both petitioned-for units, the disputed County employees' managerial authority is confined to the scope of their respective departments. Their departmental authority is circumscribed by countywide policies set by the Freeholders. Although the Freeholders may rely upon the department heads' "input" when setting policy, no evidence -- apart from the County's recitation of each employee's responsibilities -- shows that any of the disputed employees has the level of decision making authority which would accord them managerial executive status. See Township

of Holmdel, D.R. No. 94-9, 19 NJPER 532 (¶24249 1993) (police lieutenants' authority limited by the scope of their responsibilities and the control exercised by the Chief and the Township council; lieutenants were not managerial executives).

The County emphasizes that the formulation and size of the budget each department head administers is a determinant of managerial executive status. We have decided however, that large budget administration alone does not justify a finding of managerial executive or confidential status. See Asbury Park, D.R. No. 2001-6, 27 NJPER 119 (¶32043 2001) (employer argued that supervisor of accounts/purchasing agent participated in budget preparation and had knowledge of budget data which the City used in negotiations. The Director held that without a proffer of specific duties and a demonstration that the claimed duties are actually performed, the Commission will not find confidential status). See also City of Newark, D.R. No. 2000-11, 26 NJPER 234 (¶31094 2000), req. for rev. den. P.E.R.C. No. 2000-100, 26 NJPER 289 (¶31116 2000), aff'd 346 N.J. Super. 460 (App. Div. 2002) (employer must make a particularized showing that employees actually perform those duties which make the titles managerial); Evesham Tp. Fire Dist. #1, D.R. No. 99-4, 24 NJPER 503 (¶29233 1998) (directed election; employer failed to submit evidence that confidential job duties were actually performed). Access to budget information which is not specifically relevant to the employer's bargaining position does not implicate confidential,

and by extension, managerial executive status. See, e.g. Monmouth Reg. Bd. of Ed., D.R. No. 94-10, 20 NJPER 16 (¶25009 1993).

The County argues that if N.J.S.A. 11A:3A-5, which permits up to "12 County department heads" and up to 20 positions to be exempted from civil service provisions, is read with our Act (exempting managerial executives from its protections), ". . . it is clear that these individuals are managerial executives."

N.J.S.A. 11A:3A-5 does not mandate or indicate that the category of employees with which it is concerned is necessarily a managerial executive or a confidential employee ineligible for rights under our Act.

Finally, I note that the County has requested an evidentiary hearing. N.J.A.C. 19:11-2.6(f)(1). That regulation provides that a hearing will be conducted:

(i) if it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, may more appropriately be resolved after a hearing.

The Commission recently noted in Teaneck that neither public employers nor public employee representatives have an absolute right to a hearing. Rather, the Commission has a consistent policy of resolving representation questions after administrative investigations unless substantial and material facts are in dispute. Teaneck; But cf. Town of Kearny, P.E.R.C. No. 89-55, 15

NJPER 10 (¶20002 1988) (Commission ordered election in unit of department heads after a hearing).

In the processing of these two cases, both parties have had the opportunity to assert, amplify and clarify their respective factual positions by submitting position statements, documents, affidavits and other materials. I find that no substantial material facts are disputed and base my conclusion on the facts revealed by the investigation.

I find that none of the petitioned-for employees, in both RO-2009-39 and RO-2009-44, are managerial executives and that all are eligible for representation.

A "substantial actual or potential conflict of interest among supervisors with respect to their duties and obligations to the employer in relation to each other. . . ." must be shown to warrant the creation of separate supervisory units. Turnpike Authority, 150 N.J. at 354; Board of Education of West Orange v. Wilton, 57 N.J. 404, 427 (1971). The parties do not dispute that the petitioned-for employees are supervisory and that the employees in the petitioned-for primary level supervisors unit (RO-2009-039) supervise certain employees in the secondary upper level supervisors unit (RO-2009-044). Accordingly, I find that separate negotiations units are warranted.

Our comparison of the number of and names on authorization cards with the lists of the employees filed by the County (and who are eligible for representation), shows that AFSCME has met

the requirements of the Act and is entitled to certification as majority representative in both petitioned for units. N.J.S.A. 34:13A-5.3.

Based upon all of the foregoing, I find that the following units are appropriate:

Primary Level Executives (RO-2009-039):

Included: All primary level executives including Department Head, Health; Division Head, Project Management; Department Head, Human Services; Library Director, Manager 1, Information Technology.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees, secondary level executive employees, employees in other bargaining units, and all other employees employed by the County of Hunterdon.

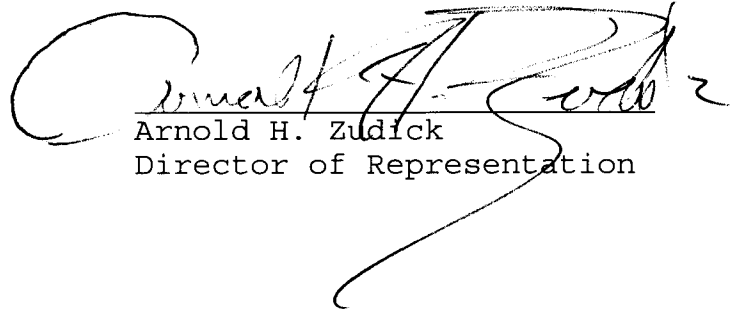
Secondary Level Executives (RO-2009-044):

Included: Department Head, Purchasing; Planning Director; Planning Department; Assistant Superintendent, Public Safety; Environmental Health Coordinator (Division Head), Health; Department Head, Solid Waste and Recycling; Assistant Library Director; Department Head, Parks and Recreation; Division Head, Human Services; Division Head, Information Technology; Confidential Assistant, Human Services; Project Management, Confidential Aide; Executive Director Office on Aging.

Excluded: All managerial executives within the meaning of the Act, non-supervisory employees, professional employees, craft employees, confidential employees; primary executive level employees, employees in other bargaining units, and all other employees employed by the County of Hunterdon.

ORDER

I certify AFSCME Council 73 as the exclusive representative of the units described above, based upon its authorization cards^{1/}.



Arnold H. Zudick
Director of Representation

DATED: July 10, 2009
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 July 20, 2009.

^{1/} The formal certifications will be sent under separate cover.