

D.R. NO. 91-20

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

In the Matter of

BERGEN COUNTY UTILITIES AUTHORITY,

Public Employer,

-and-

Docket No. RO-91-55

BERGEN COUNTY UTILITIES AUTHORITY  
ADMINISTRATOR'S ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among all higher level supervisors employed by Bergen County Utilities Authority. The Director dismisses the Authority's arguments that the unit lacks a community of interest, that some of the titles are managerial and/or confidential and that the creation of an additional bargaining unit would fractionalize the existing bargaining units. The Authority did not submit any specific facts to support its claims.

D.R. NO. 91-20

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

In the Matter of

BERGEN COUNTY UTILITIES AUTHORITY,  
Public Employer,

-and-

Docket No. RO-91-55

BERGEN COUNTY UTILITIES AUTHORITY  
ADMINISTRATOR'S ASSOCIATION,  
Petitioner.

Appearances:

For the Public Employer  
Giblin & Giblin, attorneys  
(Paul J. Giblin, of counsel)

For the Petitioner  
Loccke & Correia, attorneys  
(Michael Rappa, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 1, 1990, the Bergen County Utilities Authority Administrator's Association ("Association") filed a Petition for Certification of Public Employee Representative seeking to represent certain higher level supervisors of the Bergen County Utility Authority ("Authority").<sup>1/</sup> The Authority opposes the petition.

---

<sup>1/</sup> The petitioned-for titles are as follows: Manager of Computers, UAE; Assistant Sewage Plant Superintendent; Supervising Data Control Clerk; Environmental Compliance Analyst, UAE; Assistant Manager of Solid Waste, Transfer Station, UAE Supervising Heavy Equipment Operator; Director

Footnote Continued on Next Page

It contends that the unit lacks a community of interest, that some of the titles are managerial and/or confidential and that the creation of an additional bargaining unit would fractionalize the existing bargaining units and place an undue burden on the Authority. The Authority further asserts that because some of the employees were hired under N.J.S.A. 40:14B-18, which permits the appointment of "managerial personnel", these employees are automatically exempted from participation in bargaining units. The Association disagrees and urges that an election be ordered.

There are two other negotiations units at the Authority. Local 534 of the Utility Workers of America represents all clerical and technical employees. The Bergen County Utility Authority Supervisors' Association represents all assistant chief sewerage

---

1/ Footnote Continued From Previous Page

of Security; Manager of Solid Waste Operations (Transfer Station), UUAE; Assistant Manager of Solid Waste, Transfer Station, UUAE; Principal Engineer; Manager Employee Benefit Services, UUAE; Senior Engineering Inspector, UUAE; Recycling Coordinator, UUAE; Engineering Unit Coordinator, UUAE; Administrative Assistant to Purchasing Manager, UUAE; Night Operations Manager, UUAE; Personnel Technician; Manager of Administrative Compliance, UUAE; Solid Waste, Payroll Manager, UUAE; Accountant; Assistant Recycling Manager, UUAE; Manager of Data Processing, Solid Waste, UUAE; Chief of Finance and Accounts; Maintenance Superintendent; Superintendent of Field Operations, UUAE; Recycling Coordinator-Public Education, UUAE; Recycling Program Manager, UUAE; Acting Director of Security; Confidential Clerk to Commissioners, UUAE; Safety Director; Supervising Weighmaster; Supervising Account Clerk; Purchasing Manager, UUAE; Vehicle Shop Supervisor, UUAE; Program Planning and Solid Waste Administration Manager; Manager of Administrative Compliance Revenues, UUAE; Manager, Technical Services, UUAE; and Sewage Plant Superintendent.

plant operators, supervising lab technicians, water analysts, supervising mechanics, maintenance supervisors, chief sewerage plant operators, supervisors of sewerage meter repair, data processing program systems analysts, supervisors of electronic repairs and supervisors of sewer maintenance.

N.J.S.A. 40:14B-18 provides:

Every municipal authority may also appoint and employ, full- or part-time, a secretary, an executive director, managerial personnel, technical advisors and experts, professional employees, and persons who shall render professional services as set forth in section 5 of P.L. 1971, c. 198 (C. 40A:11-5), as the authority may determine necessary for its efficient operations, and it shall determine their qualifications, terms of office, for periods not to exceed five years, duties and compensation and enter into contracts therefor, for periods not to exceed five years, as it deems necessary.

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...

Pursuant to N.J.S.A. 34:13A-5.3, managerial executives do not have the right to form, join or assist a majority representative.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), the Commission set forth the following standard for determining whether a person formulates policy or directs its effectuation and therefore is a managerial executive as defined in the Act:

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

the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purpose or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. (6 NJPER at 508-509).

The Commission narrowly construes the term "managerial executive" and determinations of managerial executive status are made on a case-by-case basis. Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). The Commission will apply this test to the duties of all employees to determine whether they fall into the Act's definition of "managerial executives". The employer claims that these employees were hired as "managerial personnel" pursuant to N.J.S.A. 40:14B-18. However, the statute also empowers the Authority to hire "technical advisers, experts, professional and persons who render professional services". The mere authority to hire "managerial personnel" does not make these employees "managerial executives" as defined by N.J.S.A. 34:13A-5.3. Such a determination must be based on an individual employee's job duties. Compare City of Jersey City, P.E.R.C. No. 86-12, 11 NJPER 459 (¶16163 1985) where a statute expressly defined the managerial duties of the employee in dispute (Chief of Police).

A statute or regulation will preempt rights guaranteed by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") only when it sets terms and conditions of employment expressly, specifically and comprehensively. See State v. State Supervisory Employees Assn., 78 N.J. 54, 80 (1978) and N.J. College Locals v. State Board of Higher Education, 91 N.J. 18, 30 (1982).

N.J.S.A. 34:13A-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.

It is the policy of the Commission to narrowly construe the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the collective negotiations process if the employee was included in a negotiating unit. (11 NJPER at 510).

See also, Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

The Authority has declined to provide any specific facts or job duties which would support a finding that the petitioned-for titles are either managerial or confidential.

Similarly, the Authority has not submitted any specific facts in support of its claim that these employees do not enjoy a community of interest.

The Association points out that there are several levels of management above the titles in the petitioned-for unit.<sup>2/</sup> None of the employees in the proposed unit have managerial duties nor do they have functional responsibilities which give them access to confidential information pertaining to collective negotiations. All report to their respective division heads. Accordingly, I order that an election be conducted among the higher level supervisors of the Authority in a unit comprised as follows:

Included: All higher level supervisors, including Manager of Computers, UUAE; Assistant Sewage Plant Superintendent; Supervising Data Control Clerk; Environmental Compliance Analyst, UUAE; Assistant Manager of Solid Waste, Transfer Station, UUAE Supervising Heavy Equipment Operator; Director of Security; Manager of Solid Waste Operations (Transfer Station), UUAE; Assistant Manager of Solid Waste, Transfer Station, UUAE; Principal Engineer; Manager Employee Benefit Services, UUAE; Senior Engineering Inspector, UUAE; Recycling Coordinator, UUAE; Engineering Unit Coordinator, UUAE; Administrative Assistant to Purchasing

---

<sup>2/</sup> Including Executive Director, Deputy Executive Director, Chief Engineer, Chief of Personnel and Labor Relations, Chief Fiscal Officer, Director of Special Projects, Director of Security, Manager of Computer, Director of Resource Recovery, Director of Solid Waste Management.

Manager, UUAЕ; Night Operations Manager, UUAЕ; Personnel Technician; Manager of Administrative Compliance, UUAЕ; Solid Waste, Payroll Manager, UUAЕ; Accountant; Assistant Recycling Manager, UUAЕ; Manager of Data Processing, Solid Waste, UUAЕ; Chief of Finance and Accounts; Maintenance Superintendent; Superintendent of Field Operations, UUAЕ; Recycling Coordinator-Public Education, UUAЕ; Recycling Program Manager, UUAЕ; Acting Director of Security; Confidential Clerk to Commissioners, UUAЕ; Safety Director; Supervising Weighmaster; Supervising Account Clerk; Purchasing Manager, UUAЕ; Vehicle Shop Supervisor, UUAЕ; Program Planning and Solid Waste Administration Manager; Manager of Administrative Compliance Revenues, UUAЕ; Manager, Technical Services, UUAЕ; Sewage Plant Superintendent employed by Bergen County Utilities Authority.

Excluded: All non-supervisory employees within the meaning of the Act, all primary level supervisors, all managerial executives, craft employees, police and fire employees, all confidential employees and all other employees employed by Bergen County Utilities Authority

All included employees will vote on whether they wish to be represented for purposes of collective bargaining by the Bergen County Utilities Authority Administrator's Association. In addition, the employees in the titles of Principal Engineer and Accountant will vote on whether they wish to be included in a unit with non-professional employees.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees will vote by mail ballot. Ineligible



to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: February 14, 1991  
Trenton, New Jersey