

L.D. NO. 95-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY,

Public Employer,

-and-

Docket No. CU-94-39

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1031

Employee Representative.

DECISION

On January 21, 1992, the University of Medicine and Dentistry ("UMDNJ") filed a Unit Clarification Petition requesting that the following positions be removed from the negotiations unit of supervisors represented by Communications Workers of America ("CWA") Local 1031:

Senior Management Assistant
 assigned to Dean of Dental School (Lorraine Drennan)
Patient Services Manager
Chief Technician Cytopathology
Chief Technologist Pathology
Purchasing Coordinator
Supervisor - General Stores

The employer asserts that Senior Management Assistant Lorraine Drennan is a confidential employee within the meaning of N.J.S.A. 34:13A-5.3, and therefore is ineligible for representation in any collective negotiations unit. The employer asserts that the remaining titles are managerial executives within the meaning of the Act, and also must be removed from the supervisors unit. CWA

objects to the exclusion of any of these employees from its unit. However, the parties have agreed to submit the issue of these employees' unit status be submitted to the Commission's Litigation Alternative Program. The parties have agreed that this decision is binding and resolves the issue of these employees' unit status.

Based upon the information presented at the November 3, 1994 investigatory conference and the materials supplied by the UMDNJ, I find as follows:

Senior Management Assistant Lorraine Drennan

Until CWA organized the supervisors, Senior Management Assistants were represented by HP AE and covered by the HP AE contract until June 30, 1995. At UMDNJ's initiative, all employees in this title were reclassified as supervisory employees and placed in the CWA unit, effective July 1, 1995, coinciding with the expiration of HP AE's current contract. UMDNJ now asks that the individual position held by Senior Management Assistant Lorraine Drennan be declared confidential under the New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A, et seq.

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.

Confidential employees may not appropriately be included in any negotiations unit. Pleasantville Bd. of Ed., D.R. No. 87-18, 13 NJPER 148; Willingboro Twp. Bd. of Ed., D.R. No. 84-4, 9 NJPER 527

(¶ 14215 1983); Passaic Co. Reg. H.S. Dist. #1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

Confidential status is determined by an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and the preparation for these processes. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). Access to negotiations and grievance documents through typing, photocopying and filing indicates confidential status. See Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986). Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); and River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 190 (¶14084 1983).

Employees in clerical positions can be deemed confidential due to their supervisor's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell; W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 56 (1971).

Lorraine Drennan is the senior secretarial employee assigned to the office of Dean Buchanan of the Dental School. While the Dean does not actually sit as a member of the employer's negotiations committee to negotiate with the CWA, he has designated

his assistant dean for that purpose. The Dean is represented by his assistant for negotiations with both CWA and the HPAAE professional unit to the extent that those negotiations involve Dental School personnel. The Dean has been a member of the employer's negotiations committee for faculty negotiations. UMDNJ's Labor Relations Director Howard Pripas has sent correspondence to the Dean concerning negotiations strategies and updates on the progress of negotiations. He has also sent the Dean copies of the University's draft negotiations proposals before they are disclosed to the unions in negotiations. The Dean has sent written replies with his suggestions and reactions concerning negotiations topics to Pripas. As the senior secretary to the Dean, Drennan is assigned to open his mail and prepare his correspondence. Because Drennan is and has been a member of the negotiations unit represented by HPAAE, she has been restricted from opening the Dean's mail if it is marked "confidential."

Applying the statutory definition of confidential employee, I find that Drennan's duties for the Dean render her confidential. Because of her access to the employer's confidential memoranda concerning its negotiations strategies, she must be excluded from representation. Access to the employer's preliminary discussions, proposals, or strategies concerning contract negotiations potentially compromises the employer's right to confidentiality of this sensitive information.

Accordingly, I conclude that the Senior Management Assistant assigned to the Dean of the Dental School, Lorraine Drennan, is a confidential employee within the meaning of the Act. Drennan is excluded from all collective negotiations units, effective June 30, 1995.^{1/}

Managerial Executives

UMDNJ asserted that employees in the following titles are managerial executives and should be removed from the CWA supervisors unit:

Patient Services Manager
Chief Technician Cytopathology
Chief Technologist Pathology
Purchasing Coordinator
Supervisor - General Stores

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 applying that statutory definition, we have held that:

a managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. [Borough of

^{1/} UMDNJ and CWA stipulated that the decision applying to Drennan's status would be effective with the expiration of the HPAE contract, June 30, 1995.

Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 509
(¶11259 1980)]

Patient Services Manager

The Patient Services Manager reports to the Director of Family Practice. He administers the Patient Services activities of the Practice Plan Central Office. He coordinates patient billing and collection efforts between that office and Billing Group managers. He develops and updates procedures for the Faculty Practice Plan's central registration. He acts as liaison between the Faculty Practice Plan and third-party insurance carriers. He may recommend changes in the staffing levels of the Central Registration Unit.

Chief Technician Cytopathology

The Chief Technologist Cytopathology reports to the Administrator of Laboratory Medicine and Pathology and the Division Director. He provides technical supervision over the Cytopathology Lab and monitors the performance of its staff. He develops and implements lab operating policies and procedures under the direction of the Lab Administrator and the Division Director.

Chief Technologist Pathology

The Chief Technologist Pathology also reports to the Division Director and the Lab Administrator. He supervises the daily operations in the Diagnostic Immunology/Serology-Immunovirology Lab. He monitors staff performance, participates in their selection, is responsible for their training and continuing education. He assists in preparing the division's budget. He maintains lab records and procedures manuals.

Supervisor- General Stores

The Supervisors of General Stores report to the Manager of Processing and Distribution in the Materials Management Department. They are generally responsible for the supervision of central receiving operations. They oversee the receiving, recording, storing, safeguarding and distribution of materials, supplies, and equipment. They supervise store clerks and other support employees. They develop storeroom procedures and schedules. They are responsible for assuring that an adequate stock of needed materials is on hand.

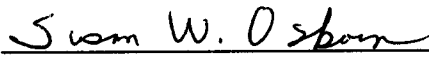
Purchasing Coordinator

The Purchasing Coordinator reports to the Purchasing Manager. He arranges for the purchase of materials, supplies, equipment and services, and prepares appropriate bid documents. He supervises buyers and other departmental staff. He assists the purchasing manager in setting purchasing goals and standards. He provides advice and technical expertise to other departments concerning bidding and purchasing procedures.

* * *

While each of these employees' responsibilities include developing and implementing procedures to accomplish the goals of their respective units, this level of responsibility does not rise to that exercised by a managerial executive. Further, their input to their respective managers concerning budget items and unit policies is insufficient to establish their managerial status; they

do not possess independent authority to develop nor direct the implementation of policies which have broad-reaching effect on the University's overall mission. Accordingly, I conclude that the employees in the above titles do not presently possess the level of responsibility in their respective positions to render them managerial executives within the meaning of the New Jersey Employer-Employee Relations Act. Those positions are appropriate for continued inclusion in the CWA supervisors unit.



Susan Wood Osborn
Commission L.A.P. Designee

Dated: February 7, 1995
Trenton, New Jersey