

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

NEW JERSEY INSTITUTE OF TECHNOLOGY

-and-

Director of Health and
Environmental Safety

COMMUNICATIONS WORKERS OF AMERICA

DECISION

The above-named parties have a dispute concerning whether the Director of Health and Environmental Safety is appropriate for inclusion in the supervisors unit petitioned for by CWA. The parties have agreed to submit a dispute to me for a binding determination. CWA argues that he is appropriate for inclusion in the supervisors unit. NJIT argues that the Director of Health and Environmental Safety is a managerial executive as defined by the New Jersey Employer-Employee Relations Act. Further, NJIT asserts the position's supervisory responsibilities are de minimus, and the position is therefore inappropriate for inclusion in the supervisors unit.

The Director of Health and Environmental Safety, Norman VanHouten, reports to the Vice-President of Administration. He supervises one clerical employee. He interviews candidates and makes effective hiring recommendations. He has the authority to recommend discipline and has disciplined clerical employees on at least two occasions. He has recommended that a probationary clerical employee be terminated at the end of her working test period. NJIT does not dispute that the Director of Health and Environmental Safety has supervisory duties but contends that the supervisory duties are not continuing in nature and are unnecessary to the success of the position's mission.

N.J.S.A. 34:13A-5.3 defines a supervisor as an employee having the authority to hire, discharge, discipline, or effectively recommend those actions. Cherry Hill Department of Public Works, P.E.R.C. No. 30, 114 NJPER Supp 30 (1970). Here, VanHouten exercises authority to discipline and has effectively recommended an employee's termination. This is sufficient to demonstrate supervisory status. While the supervisory authority must be exercised with some regularity, the actual recommendations for personnel actions need not be constant. Nor does such supervisory authority necessarily have to be the main component of the employee's responsibilities.

Based upon the submissions of the parties, I find that the Director of Health and Environmental Safety is a supervisor within the meaning of the Act.

NJIT also contends that the Director of Health and Environment Safety is a managerial executive. It argues that the position is highly autonomous and critical to the continuing success of the University. NJIT looks to the Director of Health and Environment Safety for creating policies and procedures in his area of expertise.

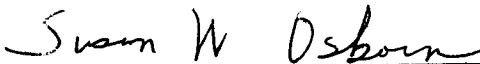
A managerial executive formulates management policies and practices, or directs the effectuation of such management policies and practices. The term is meant to be narrowly construed. N.J.S.A. 34:13A-3(f).

A managerial executive formulates policy when he develops a particular set of objectives designed to further the governmental unit's mission and when he selects a course of action from among available alternatives. A managerial executive directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority is generally determined three factors: (1) the employee's relative position in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Borough of Montvale, P.E.R.C. No. 81-52, 1980.

While Van Houten may have substantial input on the administration's development of certain policies and procedures, there is no evidence that he has ultimate responsibility to formulate any University policies. Van Houten may implement the University's health and safety policies by assuring University-wide compliance with State and federal laws and regulations, but he does not direct its implementation through line supervisors. Additionally, I note that extensive federal and State statutes and regulations concerning occupational health and safety, fire and safety effect significant control on any college's policies in these areas.

Based upon the foregoing, I find that the Director of Health and Environmental Safety does not have the authority to set policy or to direct the implementation of such policy which would broadly affects the College's mission or the means to accomplish its mission.

Accordingly, I find that the Director of Health and Environmental Safety is not a managerial executive within the meaning of the Act. Having found that the position to be supervisory, I find that the position is appropriate for inclusion in the unit.



Susan Wood Osborn
Assistant to the Director of
Representation

Dated: May 29, 1991