

D.R. NO. 91-6

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

In the Matter of

GLOUCESTER TOWNSHIP BOARD OF
FIRE COMMISSIONERS, DISTRICT 4,

Public Employer-Petitioner,

-and-

Docket Nos. CU-90-67
CU-90-68

CAMDEN COUNTY UNIFORMED FIREFIGHTERS
ASSOCIATION, IAFF, LOCAL 3249,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses Clarification of Unit Petitions filed by the Board seeking to exclude the titles of Fire Official and Maintenance Mechanic. The Director finds that the Board waived its right to file the petitions when it entered into an Agreement for Consent Election three months earlier which effectively stated that those titles were properly included in the unit.

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Appearances:

For the Public Employer
Schlesinger, Schlosser, Mintz & Pilles, attorneys
(John F. Pilles, Jr., of counsel)

For the Employee Representative
Carlamere, Rowan & Schemanski, attorneys
(Lee-Alan Schemanski, of counsel)

DECISION

On May 1, 1990, the Gloucester Township Board of Fire Commissioners, District #4 ("Board") filed two Clarification of Unit Petitions seeking to remove the titles of Fire Official (CU-90-67) and Maintenance Mechanic (CU-90-68) from a unit represented by the Camden County Uniformed Firefighters Association, IAFF Local 3249 ("Association"). The Board claims that the Fire Official is a managerial executive and/or a supervisory employee and therefore is not properly included in the Association's unit. The Board also claims that the Maintenance Mechanic is not engaged in firefighting duties and therefore is not properly included in this unit.

No substantial and material facts appear to be in dispute that would warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

On November 20, 1989, the Association filed a Petition seeking to represent all Maintenance Mechanics and Fire Officials employed by the Board. On January 22, 1990, the Board entered into an Agreement for Consent Election with the Association. In that agreement, the appropriate collective negotiations unit is described as follows:

Included: All employees engaged in firefighting duties including fire official and maintenance mechanics employed by the Board of Fire Commissioners, District 4, Township of Gloucester.

Excluded: All other employees, including police officers, employees not engaged in firefighting, professional employees, craft employees, supervisors and managerial executives within the meaning of the Act.

When the agreement was executed, there were three employees in the petitioned-for unit. After conducting an election among these employees, on March 6, 1990, a Certification of Representative was issued certifying the Association as exclusive majority representative of the employees in the petitioned-for unit. The unit description in the certification is the same as the description in the consent quoted above. Approximately two months after the certification issued, the Board filed these petitions. Currently, there are only two employees in the unit -- one in each title.

The agreement for consent election signed by the Board effectively states that the Maintenance Mechanic is engaged in firefighting duties and that the Fire Official is not a supervisory or managerial employee.^{1/} Moreover, the consent election agreement states: "the undersigned parties hereby waive a hearing on all issues that could properly be raised at said hearing." Accordingly, under these circumstances, the Board waived its right to file these unit clarification petitions.

Further, even if the merits of these petitions were considered, these employees should not be removed from the unit based on the facts in this record.

The Maintenance Mechanic is responsible for the general maintenance and upkeep of the two fire stations in the District. This includes, but is not limited to, trash removal, cleaning the facilities, mowing the lawn/shoveling the snow, painting the building inside and out, installing new equipment, repairing leaky faucets, etc. In addition, one of the duties listed in the Maintenance Mechanic's job description is "responds to all fires during working hours." It is undisputed that at a fire, the Maintenance Mechanic performs all of the functions of a

^{1/} The consent specifically states that the Fire Official and the Maintenance Mechanics are included in the unit which is generically described as all employees engaged in firefighting duties and excluding all employees not engaged in firefighting duties. Further, after specifically stating that the Fire Official is included in the unit, the consent excludes supervisors within the meaning of the Act and managerial executives.

firefighter. Accordingly, the Maintenance Mechanic is engaged in firefighting duties.

The Fire Official's duties are set forth both by statute in the Fire Code, N.J.S.A. 5:18A-3.3, and in a job description adopted by the Board in 1987. Generally, the Fire Official is expected to be a fire inspector, fire investigator and fire prevention education officer. The Fire Official's duties have not changed since the execution of the consent agreement.

There is also a Fire Inspector in the Fire Prevention Bureau ("Fire Inspector/Prevention") who is not in the negotiations unit. The Fire Inspector/Prevention is an as-needed, part-time employee, budgeted by the Board of Fire Commissioners to work 40-50 days per year, with no set number of hours per week. The Fire Inspector/Prevention assists the Fire Official in his inspection duties.

There is one Fire Commissioner assigned to oversee the Fire Prevention Bureau. The full Board of Fire Commissioners has final authority over the hiring, firing and discipline of the Fire Inspector/Prevention. The Fire Official may make recommendations regarding the hiring, firing or discipline of the Fire Inspector/Prevention. Such recommendations are made to the Fire Commissioner, who in turn makes a recommendation to the full Board of Fire Commissioners. In the case of major discipline, the Fire Commissioner will do an independent study of the situation and will not rely solely on the Fire Official's recommendation. No instances

of disciplinary recommendations have been cited. The Fire Inspector/Prevention is not formally evaluated. The Fire Official generally assigns work to the Fire Inspector/Prevention, but the Fire Inspector/Prevention has wide discretion in determining how and when the specific tasks will be performed.

The Fire Official reports directly to the Fire Commissioner assigned to supervise the Fire Prevention Bureau. That Commissioner is one of five on the Board of Fire Commissioners which is elected by the public. The Maintenance Mechanic reports to the Chairman of the Board of Fire Commissioners. The Board of Fire Commissioners makes all policy for the District. Recommendations for changes in policy are solicited from all employees of the District. The Fire Official implements the Board's policies in the Fire Prevention Bureau. The Fire Official does not participate in the formulation of the District's salary budget. With regard to operating expenses and equipment in the Fire Prevention Bureau, the Fire Official submits a budgetary request to the Fire Commissioner supervising the Bureau; the Commissioner uses that figure to determine an amount for the Fire Prevention Bureau which should be included in the overall department budget formulated by the full Board.

The Fire Official has no authority over the Maintenance Mechanic. Their respective supervising Fire Commissioners set their work hours and work assignments, and approve vacation and sick leave for each employee.

At a fire, the Volunteer Fire Chief directs all fire suppression activities at the scene. If the fire is suspicious, the Fire Official assumes command of the scene but does not assume direction of fire suppression activities.

Accordingly, the Fire Official is not a supervisor within the meaning of the Act. See N.J.S.A. 34:13A-5.3 and Somerset Cty Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

The Fire Official is also not a managerial executive.

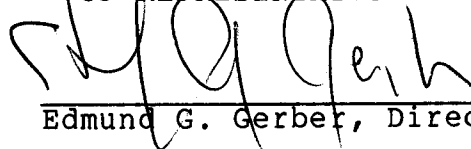
N.J.S.A. 34:13A-3(f) states:

'Managerial executives' of a public employer means 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...

The Board of Fire Commissioners as a whole and the Fire Commissioner assigned to the Fire Prevention Bureau, not the Fire Official, formulate and effectuate the District's policies and practices. The Fire Commissioner assigned to the Fire Prevention Bureau oversees the daily operation of the Bureau including its budget and employee work assignments and leave requests. If policies are changed, the Commissioners solicit input from all District employees. Accordingly, the Fire Official does not have sufficient discretionary authority to be considered a managerial executive.

The Board's request to clarify this unit to exclude the titles of Fire Official and Maintenance Mechanic is denied and the petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: August 24, 1990
Trenton, New Jersey