

D.R. NO. 98-10

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

In the Matter of

GLOUCESTER TOWNSHIP MUNICIPAL
UTILITIES AUTHORITY,

Public Employer,

-and-

Docket No. RO-98-8

CAMDEN COUNCIL NO. 10 MUA
SUPERVISORY UNIT,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among all supervisory employees including assistant sewer superintendent and municipal recycling coordinator employed the Gloucester Township Municipal Utilities Authority. The Authority opposed the petition, but the Director found that John Tyler, an assistant sewer superintendent, was not a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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Appearances:

For the Public Employer
Maressa, Goodstein, attorneys
(David Patterson, of counsel)

For the Petitioner
Tomar, Simonoff, Adourian, O'Brien, Kaplan, Jacoby &
Graziano, attorneys
(Mary L. Crangle, of counsel)

DECISION AND DIRECTION OF ELECTION

On August 5, 1997, Camden Council No. 10 MUA Supervisory Unit filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent all supervisory employees employed by the Gloucester Township Municipal Utilities Authority. The petition is

supported by an adequate showing of interest and is timely filed.
N.J.A.C. 19:11-2.8.1/

The Authority consents to a secret ballot election, but objects to the inclusion of Joseph Tyler, an assistant sewer superintendent, in the proposed negotiations unit. The Authority argues that Tyler is a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The proposed unit consists of two titles held by three individuals: assistant sewer superintendent (Joseph Tyler and Patrick Cokos) and municipal recycling coordinator (Glenn Engelbert).

We have conducted an administrative investigation in this matter which revealed the following facts. N.J.A.C. 19:11-2.6.

The Authority is an organization consisting of approximately fifty employees, five Commissioners and two alternate Commissioners. The Commissioners are solely responsible for formulating and effectuating policy. The Commissioners have developed employment procedures which are codified in a manual.

The Authority meets monthly and determines, among other things, budget preparation, collective negotiations and procedures for implementation of policy contained in its employment manual.

1/ On November 7, 1997, the parties were notified of the Director's preliminary findings and were given an opportunity to argue why the decision is incorrect and supply additional evidence in support of their respective positions. The parties provided no further submissions.

The Authority submitted its organizational chart. At the top of the chart are the Commissioners. The Executive Director, the Board Secretary, Solicitor, Auditor and Engineer all report directly to the Commissioners.

The Administrative Secretary (Director of the Department of Administration, Finance & Permits) is the next level of authority; Dora Guevara serves in this title and is also the Board Secretary.^{2/}

Robert Benson holds two positions, Superintendent (Director of the Department of Operations & Maintenance) and Executive Director. No job description was offered for the Executive Director title nor was an affidavit provided from Benson as to his duties and responsibilities, either as Executive Director or as Superintendent. The employer did submit an official job description for the Superintendent title as follows:

SEWAGE PLANT & SEWER SUPERINTENDENT Grade 24
Under direction, has charge of plans, and directs the work involved in the operation of a sewage treatment plant(s); has charge of the construction, maintenance and repair of sewers; does related work as required.

Benson has the authority to approve appropriations of up to one-thousand dollars. He is responsible for the daily operations of

^{2/} The parties agreed to exclude Guevara from representation in any unit because as Board Secretary she is a confidential employee.

the Authority, but does not formulate policy nor can he hire or fire without the approval of the Commissioners.^{3/}

Cokos, Engelbert and Tyler are chiefs of various divisions. They report directly to Benson as Superintendent. All three individuals have the same level of authority on the organizational chart.

Engelbert, the municipal recycling coordinator, is chief of the division of recycling, composting and marketing and supervises approximately nine employees. Cokos holds the title of assistant sewer superintendent and is chief of the division of construction, inspections, line cleaning and safety. He supervises approximately six employees. The employer does not object to the inclusion of either Engelbert or Cokos in the proposed supervisory unit.

Tyler is both assistant sewer superintendent and chief of the division of pump stations and collection system. The Authority operates forty-eight (48) pumping stations and a network of sewer lines. Only Tyler and Benson hold special licenses to operate the facility.

Tyler supervises approximately eighteen employees plus four summer help employees. The Authority asserts that Tyler assigns and evaluates their work and approves time off. He can also authorize an employee's transfer to another department. Tyler has imposed discipline on four employees in the last six months for lateness.

^{3/} Neither party seeks to include the title of Executive Director or Superintendent in the negotiations unit of all supervisory employees.

Tyler has no separate office and holds no staff meetings. He orders parts for his department but has no independent authority to commit Authority funds. Tyler has the same authority as Benson has to approve expenditures of up to one-thousand dollars without the approval of the Commissioners.

While he does furnish budget information to the Executive Director/Superintendent relating to operational costs, Tyler takes no part in formulating the budget. Tyler is not involved in collective negotiations, as this is done through a negotiations committee consisting of the Commissioners and the Authority's legal counsel. Tyler occasionally attends commission meetings (if invited) to provide specific information relative to his operations. The Authority admits that Tyler does not formulate policy.

Tyler handles emergencies, e.g., after a spill, he informs the State and files necessary reports. In so doing, Tyler follows set procedures which have been adopted by the Authority.

The Authority asserts that when Benson is absent due to illness, vacation or otherwise, Tyler assumes "full responsibilities in the absence of the Executive Director/Superintendent for oversight" of employees. However, the Authority provided no specific examples of the work performed by Tyler when he assumes Benson's duties. No affidavits from Benson or from Tyler as to the additional duties actually performed by Tyler during Benson's absences were provided.

Nothing in the record suggests the duties performed by Tyler in Benson's absence require Tyler to direct the effectuation of management policies and practices. Indeed, the Authority has abandoned its objection to Cokos' inclusion in the petitioned-for supervisory unit. However, the Authority originally stated that both Cokos and Tyler, who hold the same title of assistant sewer superintendent, assumed responsibility for the Superintendent in Benson's absence. The Authority never explained why it objects to Tyler's inclusion in a supervisory unit when it has withdrawn its objection to Cokos' inclusion in the same unit.

The standards to be followed in analyzing whether a disputed position should be included in or excluded from the petitioned-for unit are well established. N.J.S.A. 34:13A-5.3 affords public employees the right "to form join and assist any employee organization..." However, under the Act, managerial executives and confidential employees do not have the statutory right to organize and negotiate collectively. N.J.S.A. 34:13A-5.3.

The statutory definition of managerial executive is:

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

The Commission established the standards for determination of managerial executive status in Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1981). Recently, in New Jersey Turnpike Authority v. American Federation of State, County and Municipal

Employees, Council 73, 150 N.J. 331 (1997), the Supreme Court reviewed the Montvale standard. It excised the requirement that an employee must exercise organization-wide power in order to fit within the managerial executive exception and approved the following test as formulated in Montvale and restated by the Supreme Court:

A person formulates policies when he develops a particular set of objectives designed to further the mission of [a segment of]^{4/} 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.
Id. at 356.

The Authority concedes that Tyler does not formulate policy. Therefore, my analysis need only focus on the "direct the effectuation" portion of the Act's managerial executive definition and the functional test approved by the Supreme Court in Turnpike Authority, supra.

The Authority admits that neither the executive director/superintendent or assistant sewer superintendent formulate policy. Tyler has responsibility for the daily operations of the

^{4/} Bracketed words added by the Supreme Court to the original Montvale test.

division of pump stations and collection system, but, he is bound by the procedures developed by the Commissioners. In carrying out these duties, his discretionary authority is also circumscribed by the policies and practices formulated by them.

The Authority has stated generally that Tyler, as assistant sewer superintendent, performs "managerial duties", but has failed to support this conclusion with any specific examples by way of affidavit from Tyler or from Benson specifying exactly what these duties are and how Tyler can independently make decisions affecting the operation of the division of pump stations and collection systems, including examples of any such decisions made by Tyler. Tyler's assignment of daily work to the employees he supervises does not rise to the level of independent judgment and an exercise of discretion in the implementation of policy which would transform a supervisory employee into a managerial executive. See, e.g., Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984); Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Tp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987).

The Authority has not challenged the supervisory status of Tyler. Therefore, since Tyler does not function as a managerial

executive, I find that Tyler is appropriately included in the petitioned-for supervisory unit.^{5/}

Based upon the foregoing, I find that the following petitioned-for unit is appropriate for collective negotiations.

Included: All full-time and part-time supervisory employees, including assistant sewer superintendent and municipal recycling coordinator, employed by the Gloucester Township Municipal Utilities Authority.

Excluded: All managerial executives, confidential employees within the meaning of the Act, police employees, fire employees, craft employees, non-supervisory employees and all other employees employed by the Gloucester Township Municipal Utilities Authority.

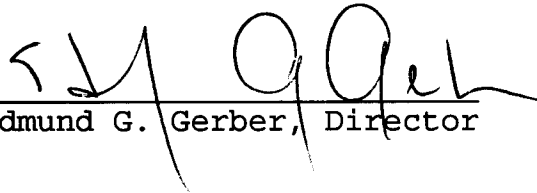
The election shall be conducted by mail ballot no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill,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

^{5/} The Authority has never asserted that Cokos or Engelbert report to Tyler when Tyler is acting in Benson's place. Because the employer has provided no specific examples of the additional duties performed by Tyler in Benson's absence, I cannot determine that Tyler's presence in the same unit as Cokos and Engelbert would present a conflict of interest.

Pursuant to N.J.A.C. 19:11-10.1, 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: December 3, 1997
Trenton, New Jersey