

L.D. NO. 95-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner/Public Employer,

-and-

Docket No. CU-94-4

PBA LOCAL 109 SUPERIORS,

Respondent.

Appearances:

For the Petitioner,
Genova, Burns, Trimboli & Vernoia, attorneys
(James J. McGovern, III, of counsel)

For the Respondent,
Thomas J. Cammarata, attorney

DECISION

On July 28, 1993, Hudson County filed a Clarification of Unit Petition seeking to remove Deputy Wardens from a unit of superior corrections officers represented by Policeman's Benevolent Association Local 109 Superiors. After the parties' efforts to resolve this matter were unsuccessful, I conducted an investigatory conference on December 20, 1994. The County and Local 109 jointly requested that the dispute be decided through the Commission's Litigation Alternative Program. The parties requested that the LAP decision be based on the petition, the parties' written statements and information provided at the investigatory conference. The parties also agreed that this decision is binding and resolves the Clarification of Unit Petition filed before the Commission.

PBA Local 109 Superiors represents a unit of all superior corrections officers below the rank of Warden, including Deputy Wardens. The County seeks removal of the Deputy Wardens from the superiors unit. It contends that the Deputy Wardens are managerial executives and are therefore ineligible for inclusion in any bargaining unit. The PBA strenuously objects to the County's petition and to its characterization of Deputy Wardens as managerial executives. It contends that the Deputy Wardens are not in a position to make policy decisions in the jail.

The PBA states that Deputy Wardens have always been included in the superiors unit. There are currently two Deputy Wardens - Dennis Woods and Raymond Murray.^{1/} Both have been Deputy Wardens for 14 years. The parties' most recent agreement expired on December 31, 1993. They are currently in negotiations for a successor.

Deputy Warden Woods has been the chief negotiator for the superiors union, as well as the chairman of its negotiations committee and treasurer. Woods has negotiated on behalf of the superiors since he became a sergeant in 1970. He has been the union's negotiations chair for the last 10 years, covering approximately four agreements. As Treasurer, Woods has established the financial security of the union's funds. Woods is privy to an

^{1/} Facts were gathered at the conference detailing Deputy Warden Dennis Woods' job functions. However, the parties stipulated that Woods' job functions are similiar to Murray's.

extensive amount of data used in negotiations sessions. He prepares calculations for the union's wage and benefits proposals and is privy to sensitive employee and union data concerning the negotiations process.

The County states that the Deputy Wardens run the jail facility on a day to day basis with total discretion. The Deputies direct other superior officers. They assist in formulating and executing management policies, departmental directives and plans for implementing programs that the department intends to pursue such as the deployment of staff in the facility. The Deputies oversee implementation of the County sick leave verification policy, which the union is currently seeking to abolish in negotiations for a successor agreement. When the County prepares negotiations proposals, it relies upon Deputy Warden Woods for an assessment of their impact, because of his experience and longevity in the facility. The County also relies on Woods for his assessment of the impact of the union's negotiations proposals on the operation of the facility.

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

The Deputy Wardens are directly under the Warden in the facility's chain of command, and therefore are second in command in the employer's hierarchy. Their functions and responsibilities as officers who are second in command include formulating and executing management policies, departmental directives and plans for implementing programs that the department intends to pursue. The Deputies' discretion to deploy staff in the facility is a prime example of their formulation and implementation of management policies.

The duties and responsibilities of the Deputy Wardens demonstrate that they are managerial executives within the meaning of the Act and are therefore ineligible for inclusion in any collective negotiations unit.

I also find that Woods' involvement in the collective negotiations process renders him a confidential employee. N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

[E]mployees 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained our 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 employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. 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 County has relied upon Woods to assess the impact of both its negotiations proposals and those of the union. Advance knowledge of the employer's proposals, and the employer's expectation that Woods evaluate the impact of union proposals that he is bringing to the negotiations table would place Woods in a position of divided loyalty between his employer and his union. I find that Woods is therefore a confidential employees.

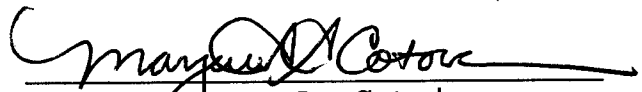
However, Woods' unique and long-standing role as the union's chief negotiator, and the union's reliance upon him in both negotiations and contract administration would render removal of the Deputies from the unit inappropriate at this time. Therefore, I find that although the Deputy Wardens are managerial executives and that Woods is also a confidential employee, I will not remove the current Deputy Wardens from the superiors negotiations unit. To do so now would unfairly prejudice the union in the course of current negotiations, as well as cause undue hardship for two deputies who have held their positions for 14 years each.

Although the County must screen some confidential negotiations duties from the current Deputies, it will still be able

to continue to assign the Deputies managerial functions. However, as Woods and Murray leave their positions, the employees who replace them, as well as any other employees who are hired or promoted to the position of Deputy Warden, will be designated as managerial executives and will not be included in the superiors unit. Those employees who become Deputy Wardens in the future will do so with full knowledge that the positions will not be included in any collective negotiations unit.

CONCLUSION

I find that the Deputy Wardens are managerial executives and that Deputy Warden Dennis Woods is a confidential employee. However, current Deputy Wardens Dennis Woods and Raymond Murray shall remain in Local 109's Superiors unit for the duration of the time they hold the deputy warden title. Upon the separation of each current Deputy Warden from employment, the respective successor employees appointed to Deputy Warden positions, as well as any other employees who are hired or promoted to the position of Deputy Warden, shall be excluded from any negotiations unit.


Margaret A. Cotoia
LAP Umpire

DATED: March 6, 1995
Trenton, New Jersey