

P.E.R.C. NO. 85-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Public Employer,

-and-

Docket No. CU-84-47

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority delegated to him by the full Commission, adopts a Hearing Officer's recommended decision holding that a Superintendent of Public Works is a managerial executive, but that an Engineering Administrator is not. No exceptions were filed.

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Petitioner.

Appearances:

For the Public Employer, Vogel & Chait, Esquires
(Lorraine C. Staples, of Counsel)

For the Petitioner, Kathleen King, Staff Repre-
sentative, C.W.A., AFL-CIO

DECISION AND ORDER

On November 2, 1983, the Communications Workers of America, AFL-CIO ("CWA") filed a Petition for Clarification of Unit with the Public Employment Relations Commission. The petition, filed November 18, asserted that two positions - Superintendent of Public Works and the Engineering Administrator - are included in the negotiations unit of supervisors of the Borough of Madison ("Borough") which CWA represents.

CWA asserts that these two positions are supervisory in nature and belong in the unit of the Borough's supervisors. The Borough asserts that these two employees are either managerial executives or confidential employees within the meaning of the Act and, consequently, must be excluded from the unit.

On December 7, 1983, the Administrator of Representation issued a Notice of Hearing. On February 8 and 9, 1984, Hearing

Officer Judith E. Mollinger conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

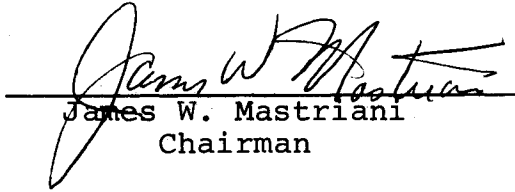
On September 27, 1984, the Hearing Officer issued her report and recommended decision. H.O. No. 85-6, 10 NJPER _____ (¶ _____ 1984) (copy attached). She found that the Engineering Administrator is a supervisor within the meaning of the Act and should be included within CWA's unit. The Hearing Officer also found that the Superintendent of Public Works is a managerial executive within the meaning of the Act and should be excluded from CWA's unit.

The Hearing Officer served a copy of her report on the parties and advised them that exceptions, if any, were due on or before October 10, 1984. Neither party has filed exceptions or requested an extension of time.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this case in the absence of exceptions. I have reviewed the record. The Hearing Officer's findings are accurate and, accordingly, I adopt and incorporate them here. Based on these findings, and in the absence of exceptions, I conclude that the Engineering Administrator is a supervisor within the meaning of the Act and should be included within CWA's unit and that the Superintendent of Public Works is a managerial executive within the meaning of the Act and should be excluded from CWA's unit.

ORDER

The unit represented by the Communications Workers of America, AFL-CIO is clarified, effective immediately, to include the title of Engineering Administrator and exclude the title of Superintendent of Public Works.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
January 3, 1985

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Public Employer,

-and-

DOCKET NO. CU-84-47

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Synopsis

A Hearing Officer of the Public Employment Relations Commission recommends that the Commission find that the Superintendent of Public Works is a managerial executive and excluded from a unit of Borough supervisory employees. She found that the Superintendent participates in collective negotiations on behalf of the Borough.

She also recommends that the Commission find that the Engineering Administrator is a supervisor and therefore included in the supervisors collective negotiations unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Public Employer,

-and-

DOCKET NO. CU-84-47

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Appearances:

For the Public Employer
Vogel and Chait, Esquires
(Lorraine C. Staples of counsel)

For the Petitioner
Kathleen King, Staff Representative

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On November 2, 1983, the Communications Workers of America, AFL-CIO ("CWA") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). This petition, as amended November 18, 1983, seeks a determination that two positions - Superintendent of Public Works ("Superintendent") and Engineering Administrator ("EA") are included in the negotiations unit of supervisors of the Borough of Madison ("Borough") which was certified September 1983, Docket No. RO-84-1 (C-1). ¹/_{*} This determination depends on a finding that the two positions are supervisory.

*Footnotes appear at the conclusion of this decision.

The Borough asserts that the two positions are not supervisory but are either managerial executives or confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and should be excluded from the negotiations unit.

Pursuant to a Notice of Hearing issued December 7, 1983, a hearing was held February 8 and 9, 1984. At the hearing, the parties were given an opportunity to examine witnesses, to present evidence and to argue orally. The parties waived oral argument and each submitted post-hearing briefs and reply briefs by April 16, 1984 and the record was closed. 2/

Issues

1. Is the Engineering Administrator a managerial or confidential position within the meaning of the Act?
2. Is the Superintendent of Public Works a managerial or confidential position within the meaning of the Act?

Findings of Fact

Based on the entire record of these proceedings, the Hearing Officer makes the following findings of fact.

1. The Borough of Madison, is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), is the employer of the persons whose positions are the subject of this proceeding and is subject to the provisions of that Act. (Stipulation, Tl. 3). 3/

2. The Communications Workers of America, AFL-CIO ("CWA") is an employee representative within the meaning of the Act having been certified in Docket No. RO-84-1 as the exclusive representative of a unit of supervisory white collar employees consisting of the following employees: court clerk, general foreman-public works, clinical supervisor, recreation director and supervisor-electric utility. The CWA is subject to the provisions of the Act. (Stipulation Tl. 4).

3. The CWA also represents a unit of white collar nonsupervisory employees employed by the Borough of Madison. (Stipulation Tl. 4).

4. The CWA seeks clarification of the unit of supervisory white collar employees, specifically, a determination that the Engineering Administrator and the Superintendent of Public Works can be included in the unit. The Borough denies that these positions are appropriately represented by the CWA. The parties agree that this controversy over the composition of the unit is, properly before the Commission. (Stipulation Tl. 5).

5. The public employer is a municipal corporation organized pursuant to the Borough Act, N.J.S.A. 40:86-1 et seq. (Stipulation Tl. 5).

6. Madison's governing body consists of a mayor and six council members all of whom are elected by the civilians of the Borough. (Stipulation Tl. 5).

7. The governing body serves part-time and without pay. With the exception of newly elected council member Robert Lundberg, who is retired, all of the council members and the mayor are employed

full-time in addition to serving of the council. (Stipulation Tl. 6).

8. The Borough administrative organization is divided into six major departments: Public Safety; Social Services, Public Works; Engineering, Planning and Construction; Administration; Finance (Tl. 13; J-1). A department head manages each department and reports directly to the Administrator (Tl. 12, 13, 54; J-1). The utility manager reports directly to the Mayor and Council (J-1).

9. The Borough Council is divided into subcommittees, each vested with responsibility to oversee the operation of each of the six major administrative departments. Since January 2, 1984, a council member chairs each subcommittee and acts as a liaison between the council and the Department head (Tl. 56-58; J-7, 8, 9).

10. The Borough's chief executive officer is the Borough Administrator (Tl. 13, 44, 53; J-1, 3, 5). The Administrator, James Allison, works directly for the Mayor and Council (Tl. 13) and is responsible for the daily operation of the Borough (Tl. 12). He advises all Department Heads of policy and sets tasks for each (Tl. 12, 54). He conducts monthly meetings with all Department Heads to review Borough policy, discipline procedures and other Borough business (Tl. 35).

11. All Department heads report directly to the Administrator. Supervisors and foremen report to the Department heads (Tl. 15, 16). Department heads also consult directly with specific liaison council subcommittee chairmen, who are designated to oversee each department (Tl. 15; J-7, 8, 9). Therefore, department heads may take direction from both individual council members and the Administrator

(T1. 16). Currently, the Borough Code is under revision so that it will provide authority for the Administrator to assume more control for hiring, firing and for the operation of the Borough (T2. 34, 35).

12. Department heads are responsible for the formulation of a proposed budget for their department. In mid-September, the Administrator sends out a budget manual to each department head; each department head then prepares a proposed department budget and returns it to the Administrator within thirty days (T1. 22, 75, 76). Department heads use the current year's operating budget figures as a basis to estimate the next year's needs (T2. 7). These proposed budgets are then reviewed by the Administrator who may make adjustments before he submits them to the Council (T1. 28, 60). In order to justify the department proposal, department heads sometimes attend the Council hearings scheduled specifically to review the budget (T1. 22, 74, 75; T2. 36, 37). Often, the Council liaison member for each department reviews the proposed budget with the department head before the Council's hearings take place (T1. 22, 24). A final review of the budget is made by the Administrator, the Finance Director and Council before final passage by Council (T1. 24; T2. 32, 37). The Administrator attends all the Council budget meetings (T1. 27). Last year only two department heads appeared before Council at the budget hearings (T2. 8).

13. Purchases and expenditures by department heads are made through a requisition process. Purchase orders are submitted to the purchasing agent in the Engineering department. All expenditures under \$4,500 require only submission of the requisition forms

(T1. 24). Purchases totaling more than \$4,500 are made by a public bid process, except for professional services (T1. 25, 45; T2. 10). For professional services, each department head submits requests directly to the Council for approval (T2. 38).

Written quotes are necessary for purchases totaling more than \$500; telephone price quotes are accepted for purchases totaling \$100 or \$200. Department heads may make these purchases without prior approval if the items are within the department's budget allowance (T1. 25, 45).

14. Annually employees receive written performance evaluations (the last was May, 1983) prepared by each department head (T1. 29, 30, 52). These evaluations are reviewed with each employee and are submitted to the Administrator (T1. 30). Each department head is authorized to discipline employees for failing to perform their duties or for infractions of work rules. If the discipline is a suspension or termination, the Administrator is consulted prior to the action. If the discipline is an oral or written reprimand, the Administrator is advised orally or by receipt of a copy of the reprimand (T1. 30, 31, 45; ER-2).

15. The Engineering department has approximately 11 employees--the EA; the Borough Engineer (outside consultant); two custodians; two senior engineering assistants (one who also serves as a purchasing agent and the other who also serves as the fire department zoning official); one full-time secretary and one part-time secretary; the planning and zoning official; the construction code official; and the fire chief who also serves as the zoning sub-code official (T1. 17,

19-21, 45, 63-66, 69; J-3; P-3, 4). The EA is responsible for supervising the work of all these employees.

Except for the EA, all employees in this department are included in collective negotiations units. The two custodians are represented by Local 866, I.B.T. and the others are in a nonsupervisory white collar unit represented by CWA (Tl. 39). The CWA unit includes the two senior assistant engineers (Tl. 49, 50, 51; T2. 2; J-13).

16. The functions of this department include maintaining the Borough's buildings and grounds, purchasing, planning, building inspections, and zoning enforcement (Tl. 18). For large purchases, the purchasing agent and other employees prepare bid specifications. The agent also processes the requisitions and purchase orders for the Engineering department (Tl. 18, 26, 44, 74).

17. The EA, William Sweeney, works directly under the supervision of the Administrator (J-4). He has been employed in this division for 12 years (Tl. 53). His position is described in the most current job specification as one which is responsible for "supervising and performing independent work in the complex phases of general civil engineering, planning, surveying and/or inspection of construction projects, utilities or related facilities;..."

Examples of work listed in the job specification include: supervising the field and office work of the Engineering department; developing and recommending public capital improvement projects, road maintenance programs and special programs, including funding for such programs; and, reviewing all applications for land development within the Borough... (Tl. 21; J-4). When requested, he may attend as

many as 12 Council executive sessions per year. These meetings concern pending legislation for which Council members need technical advice (Tl. 66). However, he has not attended any executive sessions concerning labor relations matters (Tl. 67).

18. For the last two or three years, one vacancy has existed in the Engineering Department (Tl. 63), other than a few custodial positions which have been filled (Tl. 77). When a vacancy occurs and the Council authorizes hiring, the EA consults with the Administrator concerning this position and the salary. The EA then conducts interviews and makes a selection recommendation to the Administrator (Tl. 27; ER-1). Prior to 1984, he would recommend two or three candidates for each position; now however, he recommends only one (Tl. 61). This recommendation is subject to the approval of the Administrator and then is forwarded to the Council for final scrutiny and appointment (Tl. 61). The Administrator does not participate in interviews of applicants (Tl. 29).

19. The EA evaluates two senior engineering assistants and the Administrator serves as a reviewing officer (Tl. 30). He may independently discipline employees for minor rule infractions. However, he consults with the Administrator if the discipline involves a major rule infraction (Tl. 46; P-1, ER-2). The EA has no power to independently terminate an employee. The authority to do this is reserved for the Administrator and Council (Tl. 62).

20. The Council determines all engineering projects for the budget year after consultation with the Administrator and EA (Tl. 32). However, daily work assignments and priority decisions are

made by the EA. He delegates the authority to implement the plans to his two assistants. The Borough Engineer, an outside consultant, is responsible for inspection of all contract work (Tl. 33, 63). The EA also makes inspections of work and reports, daily if necessary, on the progress to the Administrator (Tl. 59, 72, 73).

21. The EA also serves as the Borough Clerk for all bond work (Tl. 55; P-2). Sometimes he substitutes as the Deputy Clerk on other matters (Tl. 47, 48). During 1981 and 1982 he also served as the Borough Deputy Treasurer (Tl. 47). As chairman of the technical coordinating committee, which assists the zoning and planning board, he reviews all Borough development plans and advises on technical matters (Tl. 37, 84). One-and-a-half years ago, he served for a short period of time as the Acting Administrator (Tl. 86-89).

22. On grievance matters, the EA serves as the Borough representative at step 2 of the grievance procedure of the contract covering the custodial employees (Tl. 37). He has settled disputes on work assignments; however, other disputes he refers to the Administrator at step 3 (Tl. 67).

He does not participate in collective negotiations for the nonsupervisory white collar employees represented by CWA (Tl. 39). Additionally, he is not a member of the Borough negotiating team nor does he participate in any meetings or caucuses during negotiations (Tl. 49).

23. In the Public Works Department, there are 28 employees (Tl. 4). Superintendent Francis Angri, is currently on sick leave, consequently since December, 1983, Vincent Falcone, the General Foreman,

is serving as Acting Superintendent (T2. 42). Department employees are responsible for the maintenance of parks, roads, sewers, some construction on roadways, the maintenance of streets and some repair to sidewalks (T2. 3). The General Foreman ordinarily would assist the Superintendent, perform administrative tasks and supervise day-to-day work for public safety employees. There are three working foremen who report to the General Foreman. There is one each for public works, sewer and water, and mechanical services (J-12). There are three truck drivers, one water utility employee, and two water station operators in the sewer and water division; there are two mechanics in mechanical services (T2. 5). In Public Works, under the Assistant Foreman, there are two divisions, Parks and Roads; in Parks, there are six truck drivers, one equipment operator; in Roads, there are six truck drivers, two equipment operators (T2. 5; J-11, 12). The General Foreman schedules all work (T2. 46). Foremen work directly with their crews (T2. 45) and these crews are interchangeable (T2. 46).

24. The Superintendent reports to the Administrator (T2. 6) and is responsible for the employees' daily activities. He administers the contract and hears all grievances; he also determines work priorities and makes decisions concerning snow removal and approves the use of overtime (T2. 22-26, 40). He also serves on the Borough Water Policy Committee as a consultant with other local experts (T2. 28). He often appears before Council to advise on various programs (T2. 29).

25. Except for the Superintendent and General Foreman, all the other employees in the department are included in a collective negotiations unit represented by Local 866, I.B.T. (T2. 2, 5; J-13).

The General Foreman is now represented by CWA in the instant supervisory unit (T2. 5). The department secretary is represented by CWA in its white collar unit (T2. 5).

The Superintendent's current job description is accurate (T2. 42; J-10). The Superintendent is required to work under the direction of the Borough Administrator, supervise employees engaged in the work of the department, develop suitable work programs for the various functions, prepare and maintain time records, plan and schedule training if necessary, prepare the budget, execute the plans for the effective utilization of available funds, prepare specifications for needed equipment and supplies, interview candidates for vacant positions, and make recommendations to the Administrator regarding hiring, promotion, discipline and other personnel actions (J-10).

26. Purchases for this department are made through purchase orders submitted to the purchasing agent in engineering for all expenditures under \$4,500; for those over that amount, a bid is required. Ninety percent of the department's requests are honored (T2. 10, 12-13; ER-3, 4). Some requests involve a substantial amount of money, for example, repair of equipment \$15,000 (T2. 10). Other requests may involve capital expenses and therefore bonds may be needed (T2. 10).

27. Vacant positions in the department are filled following a posting and interviewing procedure outlined in the collective agreement with Local 866. Applicants from within the department and Borough are considered first if qualified for the position (T2. 13, 43). Council must approve hiring if a position has been vacant a long time

or for a newly authorized position. Otherwise the Administrator may direct the hiring (T2. 13, 14). Two truck drivers were recently hired (T2. 14, 15) upon the recommendation of the Acting Superintendent (T2. 16). A similar process is followed for the promotion of employees (T2. 16; ER-5, 6).

28. The Superintendent is authorized to discipline employees for minor and major offenses. If the offense is major, he advises the Administrator before disciplining an employee (T2. 50, 51). However, no prior authorization was necessary recently when an employee was reprimanded for poor work performance (T2. 19) and when one was sent home for drinking on the job (T2. 49). Routinely, the Administrator is notified after the disciplinary action is taken (T2. 19). Council must authorize termination or suspension of more than one day (T2. 33, 52). There have been no terminations or suspensions recently (T2. 44, 49). An appeal is then made to the Administrator if the grievant is not satisfied (T2. 20). The Superintendent represents the Borough at step 2 in the contractual grievance procedure and the General Foreman represents the Borough at step 1 (T2. 20; J-13).

All employees receive annual evaluations. The Administrator evaluates the Superintendent; the Superintendent evaluates the General Foreman; the General Foreman evaluates the foreman who in turn evaluates all employees. The Superintendent sees all the employee's evaluations (T2. 6, 46-47, 51).

29. The Superintendent does participate in collective negotiations for the Borough. He attended negotiations two years ago and he did attend some negotiations and caucus meetings last year (T2. 21, 30, 31).

LAW

The following is a discussion of the law as it applies to the definitions of "managerial executive", "supervisory employee" and "confidential employee."

1. Managerial Executive

Section 13A-3(f) of the Act defines "managerial executives" as those "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,..."

Section 5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. ^{4/}

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980) affirming D.R. No. 80-32, 6 NJPER 198 (¶11097 1980) ("Montvale"), the Commission, applying the definition in section 3(f), set forth the following standards for determining whether a person is a managerial executive as defined by the Act, i.e., that a person formulates policy or directs its effectuation:

...when he develops a particular set of objectives designed to further the mission of 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. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its 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. 6 NJPER at pp. 508-509.

See, In re County of Bergen, Bergen Pines County Hospital, D.R. No. 83-8, 8 NJPER 535 (¶13245 1982) (adopting the standards set out in Montvale), request for review denied P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982) aff'd App. Div. Docket No. A-564-82T2 (10/18/83) ("Bergen Pines"). In applying these standards in a case-by-case examination, the Commission has narrowly construed the term "managerial executive", Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977) ("Avon").

In applying Montvale to subsequent cases, as in Bergen Pines, we have focused on the three factors enumerated in determining whether persons "possess and exercise a level of authority and independent judgment sufficiently to affect broadly the organization's purposes or its means of effectuation of these purposes to be titled 'managerial executive'." Montvale. Such persons need not have final responsibility for decisions but the level of authority exercised must meet the standard established. The power claimed must be exercised regularly. ^{5/} Additionally, "those chosen for directing and effectuating policy must be empowered with a substantial measure of discretion in deciding precisely how the policy should be effectuated." Montvale, D.R. No. 80-32, slip op. p. 22 (emphasis added).

Policy in a public employment context is defined as:

"...the development of particular sets of objectives of a governmental entity designed to further the mission of the agency and the methods of achieving such objectives. Those who formulate policy are those who select a course of action from among the alternatives and those who

substantially and meaningfully participate in the essential processes which result in the selection of a course from the alternatives available." Montvale, 6 NJPER 202.

Clearly, a managerial executive must have the authority to make operative decisions. In other words, a managerial executive must be allowed to exercise substantial discretion, independent of the employer's established policies and procedures, to set policy governing the objectives of a governmental entity and to fashion methods of achieving such objectives.

This authority to make operative decisions on behalf of the employer is distinguished from mere discretion exercised by supervisory employees. Section 5.3 of the Act describes a supervisory employee as one "having the power to hire, discharge, discipline, or to effectively recommend the same." See, In re City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶15086 1984) ("East Orange"); Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") (broad definition of supervisors applied). See also, § 34:13A-3(f); Bergen Pines, Avon, Middlesex County Welfare Board, P.E.R.C. No. 10 (1969) ("Middlesex Welfare Board"); In re Cherry Hill Township Department of Public Works, P.E.R.C. No. 30 (1970); In re City of Trenton, D.R. No. 83-33, 9 NJPER 382 (¶14172 1983) ("Trenton"); In re County of Middlesex, D.R. No. 80-14, 5 NJPER 517 (¶10267 1979) ("Middlesex Supervisors"); Metuchen Borough, D.R. No. 78-27, 3 NJPER 395 (1977) ("Metuchen").

2. Confidential Employees

Confidential employees are excluded from the protections and rights afforded other public employees under the Act and conse-

quently they are not eligible for inclusion in a collective negotiations unit. Section 34:13A-3(d) defines "employee" as follows:

This term [employee] shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer except elected officials, members of boards or commissions, managerial executives and confidential employees.

Section 3(g) of the Act 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.

In each case, the relevant consideration is whether the individual in question has access and exposure to information that has a direct bearing on the collective negotiations and labor relations functions of the public employer. ^{6/}

ANALYSIS & CONCLUSIONS

1. Engineering Assistant ("EA")

This employee oversees the work of ten Borough employees and one consulting engineer. All of the Borough employees are included in the nonsupervisory collective negotiations units. The EA evaluates all these employees; makes hiring and firing recommendations to the Administrator; disciplines employees for minor misconduct and may order suspensions for up to one day; hears employees' grievances; prepares an estimated departmental budget for the Administrator; inspects construction work; makes recommendations for land development to the Administrator; and provides technical engineering information to the

Administrator, the Council and the Zoning Board. He does not participate in collective negotiations on behalf of the Borough.

Because the EA has limited discretion in the exercise of his duties, I find that he is a supervisor not a managerial executive within the meaning of the Act. Nor is he a confidential employee since he has no access or exposure to information concerning the Borough's collective negotiations strategy and labor relations policies.

2. Superintendent of Public Works ("Superintendent")

The Superintendent oversees the operation of the Public Works department and its 28 employees. Twenty-seven employees are included in a nonsupervisory collective negotiations unit and the general foreman is included within CWA's supervisory unit which is at issue in this case.

The Superintendent determines work priorities; authorizes the use of overtime; prepares an estimated departmental budget for submission to the Administrator; makes hiring, promotion and firing recommendations; disciplines employees, evaluates the general foreman and reviews the foreman's evaluations and employees' evaluations, and administers the collective agreement covering department employees; he also hears grievances at step 2 (the general foreman hears grievances at step 1).

Additionally, the Superintendent participates in collective negotiations on behalf of the Borough offering technical advice and information. He also participates in setting governmental policy and objectives.

Based on the foregoing, I find that the Superintendent serves as a managerial executive.

RECOMMENDATIONS

Based on the foregoing facts and conclusions of law, I recommend a finding that:

1. The position of Engineering Administrator is supervisory within the meaning of the Act, and should be included within the collective negotiations unit.

2. The position of Superintendent of Public Works is a managerial executive within the meaning of the Act and should be excluded from the collective negotiations unit.

Respectfully submitted



Judith E. Mollinger
Hearing Officer

DATED: September 27, 1984
Trenton, New Jersey

FOOTNOTES

- 1/ Commission exhibits are designated as "C-", Joint exhibits as "J-", CWA exhibits as "P-", and Borough exhibits as "ER-".
- 2/ The record does not include post-hearing submissions by the Borough, i.e., an unsigned affidavit by Francis Angri, and a Certification by the Council for the Borough. The Borough was granted an opportunity to interview Mr. Angri, and secure affidavits. Subsequent to the hearing, the Borough Council did interview Mr. Angri, who thereafter refused to sign the affidavit prepared by Borough Council. No further requests were made for interrogatories or depositions.
- 3/ References to the Transcript of Proceedings are as follows: "T1." for February 8, 1984 and "T2." for February 9, 1984.
- 4/ N.J.S.A. 34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees. Section 13A-3(f), added in 1974, defines managerial executive as those "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, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district." The Act, as amended, Law 1968, Chap. 303 § 4 effective July 1, 1968; Law 1974, § 123, subsection 2.
- 5/ Middlesex County Welfare Board, P.E.R.C. No. 10 (1969); State of New Jersey and Council of New Jersey State College Locals, D.R. No. 82-35, 8 NJPER 87 (¶13036 1982).
- 6/ In re Board of Education of West Milford, P.E.R.C. No. 56 (1971). Decided pursuant to N.J.A.C. 19:10-1.1 definition of confidential employee, not inconsistent with the definition found in N.J.S.A. 34:13A-3(g). Several decisions established the contours of legal analysis for a finding of confidential status, In re Passaic County Regional High School District No. 1 Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976); In re Woodbridge Township Board of Fire Commissioners District No. 1, P.E.R.C. No. 51 (1974); Willingboro Board of Education, D.R. No. 84-4, 9 NJPER 527 (¶14215 1983); River Dell Regional Board of Education, D.R. No. 83-21, 9 NJPER 180, 181 (¶14084 1983) fn. 2; Linden Free Public Library Board of Trustees, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Old Bridge Township, D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980); In re Township of Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); In re Little Ferry Board of Education, D.R. No. 80-19, 6 NJPER 59 (¶11033 1980); In re Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979); In re Jersey City Board of Education, D.R. No. 80-15, 5 NJPER533 (¶10273 1979); In re Rahway

6/ (cont'd) Board of Education, D.R. No. 80-12, 5 NJPER 506 (¶10261 1979); Mercer County Community College, D.R. No. 80-13, 5 NJPER 507 (¶10262 1979); Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); In re Jersey City, D.R. No. 78-35, 4 NJPER 139 (¶4065 1978); Orange Board of Education, D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); Cranford Board of Education, D.R. No. 78-20, 3 NJPER 352 (1977); In re Springfield Board of Education, E.D. No. 52 (1974); In re Plainfield Board of Education, E.D. No. 1 (1970).