

D.R. NO. 95-25

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

In the Matter of

TOWN OF SECAUCUS,

Public Employer,

-and-

Docket No. RO-95-8

SECAUCUS PUBLIC EMPLOYEES
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among primary level supervisors employed by the Town of Secaucus. The Director finds that the administrative assistant, police department is inappropriate for inclusion in the proposed unit because she is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Director further finds that the deputy court administrator and program coordinator, department of social services are non-supervisory employees and are excluded from the proposed unit.

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Appearances:

For the Public Employer
Martin R. Pachman, attorney

For the Petitioner
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

DECISION AND DIRECTION OF ELECTION

On July 26 and August 15, 1994, the Secaucus Public Employees Association-Primary Supervisors Unit filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission, seeking to represent a collective negotiations unit of all primary-level supervisors employed by the Town of Secaucus. The Town objects to the petition and refuses to consent to a secret ballot election. It asserts that the proposed unit is inappropriate because the subject employees (a) do not share a sufficient community of interest or (b) are either confidential employees or (c) non-supervisory employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

We have conducted an administrative investigation. These facts appear. N.J.A.C. 19:11-2.6.

The Association seeks to represent a collective negotiations unit of primary-level supervisors, including the supervising foremen and foremen in the department of public works; foremen in the department of buildings and grounds; administrative assistant/police department; deputy court director; program coordinator/department of social services; and senior technical assistant to the construction official. However, the senior technical assistant to the construction official is a vacant position. It is Commission policy not to determine the unit status of vacant positions; accordingly, the status of this title will not be considered here.

The Town employs approximately 175 employees. There are five existing negotiations units: non-supervisory police, police superior officers, department heads, blue collar employees and white collar employees. The blue collar employees' unit is represented by Teamsters Local 11 and consists of non-supervisory blue collar employees in the garage, road, parks, and public buildings areas. The white collar employees' unit is represented by International Union of Production, Clerical and Public Employees, Local 911 (clerical unit) and consists of non-supervisory clerical employees.

Disciplinary actions and grievances are infrequent. The Town's labor counsel and the Town's administrator negotiate the Town's labor agreements with the various unions. They rely on the

superintendent of public works and chief of police as resource personnel. The Mayor and Town Council give final approval to negotiations agreements and grievance decisions.

Supervising Foreman and Foreman, Department of Public Works

The supervising foreman, Charles Snyder, oversees the maintenance, construction and repair of public facilities including streets, water, sewer, sanitation and parks facilities. The Town contends that the supervising foreman assigns, schedules, inspects and supervises personnel in the performance of various maintenance and repair duties. Snyder also prepares reports, operates equipment and checks and repairs equipment or supervises other employees in the performance of these duties. Snyder reports to the superintendent of the department of public works and has no role in collective negotiations on behalf of the Town.

There are three foremen in the DPW: Otto Diemer, Louis Imperato, and William Zeidler; they perform duties similar to those described for the supervising foreman. On a daily basis, each is in charge of a work crew at a remote location; these crews are assigned to road maintenance and repair, buildings and grounds maintenance, motor pool and parks maintenance. The foremen, DPW assign tasks to other employees and have the authority to discipline employees on the spot, if circumstances warrant. In fact, these foremen have sent employees home without prior approval and have recommended a formal reprimand/suspension for employees.

Administrative Assistant-Police Department (Beverly Mutschler)

Beverly Mutschler reports directly to the Chief of Police as his secretary/administrative assistant. She is responsible for opening and reading the chief's mail, including mail which contained tentative negotiations proposals drafted by the Town's labor counsel, before they were disclosed to any union. She types proposed disciplinary actions for the chief before they are disclosed to the officer being disciplined or to the union. She recently participated in interviewing applicants for part-time police dispatcher positions, although the chief also interviewed the applicants. Mutschler also supervises the penalty burglar alarm system, wherein monies are collected as penalties for false burglar alarms. The four clerks who work in the record room report to Mutschler, but she has never been involved in hiring or disciplining these clerks.

Deputy Court Administrator (Donna Rovito)

Donna Rovito, the deputy court administrator reports to the court administrator and assists the municipal court judge and court administrator in the operation of municipal court. Rovito maintains all financial records, and supervises two records clerks at court two nights and one day per pay cycle. In about June 1992, upon being promoted the deputy court administrator position, Rovito was informed that she was being removed from and no longer eligible to be in the non-supervisory white-collar negotiations unit due to her new supervisory authority over other unit members. However, she has not participated in the hiring, firing or disciplining of other employees.

Program Coordinator, Department of Social Services (Rita Weber)

Rita Weber, program coordinator, reports to the director of social services. She coordinates subcontracted instructors and volunteers in the senior citizen program. She is located in a different facility from the director and other social services staff. A full-time clerical employee, a social worker, part-time clerical employee and part-time welfare investigator report to her at her location. However, no evidence was submitted to indicate that she has ever hired, fired or disciplined, or recommended such actions, for any employees under her direction.

* * * * *

Supervising Foreman and Foreman, Department of Public Works

The Town objects to the inclusion of these employees in the proposed unit. It asserts that the supervising foremen and foremen are not supervisors within the meaning of the Act. It claims that by ordinance, only the superintendent of public works supervises all departmental employees.

The standards used to determine supervisory status are well established. N.J.S.A. 34:13A-5.3 provides:

Nor, except where established practice, prior agreement or special circumstances dictate to the contrary shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

Determination of supervisory status requires more than a job description or bald assertion that an employee has the authority

to hire, discharge, discipline or effectively recommend such action. The Commission requires evidence that the authority is regularly exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

I find that the supervising foremen and foremen, DPW are supervisors within the meaning of the Act. These employees are in charge of work crews made up of non-supervisory blue collar employees in remote locations where daily work projects are completed in the absence of any higher-level supervisor. They have disciplined and recommended discipline be taken against other employees. The Town concedes that the supervising foremen and foremen have taken or recommended disciplinary actions and have had input into the hiring of other employees. The fact that the foremen have sent other employees home from the job for disciplinary reasons independent of the superintendent's prior approval underscores their supervisory authority. Accordingly, the supervising foremen and foremen are supervisors and are included in the proposed unit. Administrative Assistant-Police Department (Beverly Mutschler)

The Town contends that the administrative assistant-police department is a confidential employee. N.J.S.A. 34:13A-3(g) defines "confidential employees" as those:

[W]hose 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.

Confidential employees are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). The Commission has narrowly construed the term confidential employee.^{1/} A finding of confidential status requires a case-by-case examination of an employee's knowledge and use of information which could compromise the employer's position in the collective negotiations process.

To establish confidential status, there must be more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87).

Here, Beverly Mutschler is the sole administrative and secretarial assistant to the chief of police, a position involved in collective negotiations as a resource to the Town's negotiations team. Mutschler opens and reads the chief's mail. This has included mail which contained negotiations proposals drafted by the Town's labor counsel before they were disclosed to any union. She has also typed proposed disciplinary actions for the chief before they were disclosed to either the officer being disciplined or the union. I find that Mutschler's duties are confidential. These

^{1/} See Brookdale Comm. College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

specific examples show that Mutschler has handled confidential labor relations materials at a time which could compromise the Town's position in negotiations or the administration of the agreement. This is the type of conflict of interest which the Act's policies are designed to avoid. Accordingly, the administrative assistant, police department, is a confidential position and is excluded from the proposed unit. Having determined Mutschler to be confidential, it is unnecessary to decide her supervisory status.

The SPEA argues that even if we find the administrative assistant, police department, confidential with respect to police department matters, we should not exclude the incumbent from membership in any negotiations unit. It asserts that confidential police matters, negotiations and discipline, "bear little or no relevance to issues which will be discussed between the Town and the non-uniformed SPEA." However, the Act defines "confidential employees" as those "...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." N.J.S.A. 34:13A-3(g) (emphasis added). Significantly, the Act's definition of public employee at N.J.S.A. 34:13A-3(d), specifically excludes confidential employees. Once an employee is found confidential, the employee is ineligible for membership in any negotiations unit. Pleasantville Bd. of Ed., D.R. No. 87-18, 13 NJPER 148 (¶18066 1987). Accordingly, the administrative assistant,

police department is a confidential employee and therefore, is excluded from the proposed unit.

Deputy Court Administrator (Donna Rovito)

The Town objects to the inclusion of the deputy court administrator. It contends this position is not supervisory. Rovito assists the municipal court judge and court administrator in the operation of municipal court and she maintains all financial records of the court. Rovito is in charge of two records clerks, without any higher-level supervision, who work in night court. She has not participated in the hiring or discipline of other employees. The Town asserts that the court administrator does not exercise supervisory authority over the records clerks.

The SPEA note that Rovito has determined that an employee needed counselling, referred the employee to the court administrator, Dennis Pope, who in turn counselled the employee. Further, the SPEA asserts that one night per week, one-third of the total court time, Rovito alone supervises the work of at least four full-time and two part-time clerks. It also notes that this is a work environment where discipline is rarely, if ever, imposed.

The Act specifically defines "supervisory" employees: those who effectively recommend or possess the authority to discipline, hire or terminate other employees. The SPEA's sole example of effective recommendation of action by this employee was that an employee receive counselling, not discipline. Assuming the counselling constituted discipline, this is not a sufficient

exercise of authority to warrant a finding that she is a supervisor. The Act requires that the authority be regularly exercised. See Somerset Cty. Guidance Center. Rivoto's authority is that of a "lead person." Accordingly, the deputy court administrator, Donna Rovito, is not a supervisory employee and is excluded from the primary level supervisory unit. If, in the future, circumstances change such that Rovito regularly recommends discipline or hiring, either party may raise the issue of Rovito's proper unit placement by filing an appropriate petition.^{2/}

Program Coordinator, Department of Social Services (Rita Weber)

The Town alleges that Rita Weber, program coordinator, is not a supervisor within the meaning of the Act. Weber reports to a director who works at a different location and Weber is in charge of one clerical employee. Initially, no evidence of any recommended discipline, discharge or hiring decisions was produced. However, in its January 5, 1995, response, the SPEA objects to our proposed findings concerning the program coordinator, department of social services, Rita Weber. It asserts that in 1991, Weber determined that the clerk assigned to her location was not performing her work diligently and reported this to the director who issued an oral warning to the clerk. However, this one incident four years ago does not fulfill the requirement that supervisory authority be

^{2/} Having found that Rovito is a non-supervisory employee, the Commission would accept a petition to add her title to a non-supervisory unit.

regularly exercised. Accordingly, for reasons similar to those expressed concerning the deputy court administrator, we find that the program coordinator, department of social services, Rita Weber, is not a supervisory employee within the meaning of the Act and decline to place that position into the primary level supervisory unit.

Finally, the Town also argued that because the petitioned-for employees come from various departments, the employees lack a sufficient community of interest to establish a collective negotiations unit. This petition seeks an appropriate primary-level supervisory unit, distinct from the higher-level department heads' unit, composed of the supervising foremen and foremen in the department of public works. Accordingly, I order that an election be conducted by mail ballot among the employees in the following unit:

Included: All primary level supervisors employed by the Town of Secaucus, including the supervising foremen and foremen.

Excluded: All other employees, all employees represented in other negotiations units, managerial executives, confidential employees, craft employees, police, firefighters, non-supervisory employees, the deputy court administrator, the administrative assistant, police department and program coordinator, department of social services.

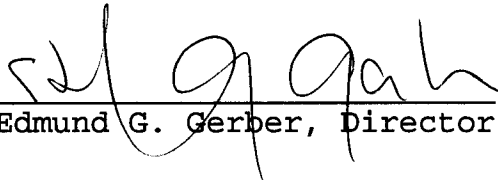
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that

period because they were out ill, on vacation or temporarily laid off, including those in the military service. The election shall be conducted by mail ballot. 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.

Pursuant to N.J.A.C. 19:11-9.6, 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: March 15, 1995
Trenton, New Jersey