

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of
CITY OF PATERSON,

Public Employer,

-and-

Docket No. CU-L-89-36

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO,

Petitioner.

Appearances:

For the City, James V. Sparano, Director of Personnel

For AFSCME, Art Delo, Staff Representative

LAP DECISION

On March 9, 1989, the City of Paterson ("City") and the American Federation of State, County and Municipal Employees ("AFSCME") jointly requested that a dispute concerning the unit placement of Executive Assistant Marge Barone ("Barone") be submitted to the Commission's Litigation Alternative Program. On May 31 and June 19, 1989, I, as Commission designee, held an informal hearing to hear facts pertaining to the disputed issue. The parties have agreed that this decision is binding and resolves the Clarification of Unit petition filed before the Commission.

AFSCME represents units of blue-collar supervisory employees^{1/}, white-collar supervisory employees^{2/} and white collar non-supervisory employees^{3/} of the City of Paterson. The contracts for the three above-described units were under negotiation at the time that the LAP proceeding was conducted. Contracts for all three units expire on December 31, 1989.

The parties stipulated that the unit certified as AFSCME, AFL-CIO Paterson Supervisor's Local is a unit of blue-collar supervisors. Paterson Director of Personnel James Sparano ("Sparano") described the unit as consisting of DPW division heads, general foremen, foremen, assistant foremen, and recreation supervisors. Although there are a few office-based traffic and engineering titles in the unit, it can generally be characterized as consisting of field foremen and supervisors.

Sparano stated that the white-collar supervisors unit includes all division heads from departments other than public works, deputy directors, coordinators, and the city engineer. He stated that the white-collar non-supervisory unit consists of all white-collar employees below the level of supervisor, including administrative assistants, secretaries, accountants and principal clerk stenographers. Sparano also stated that Barone is the only City employee in the Executive Assistant title.

1/ This unit is certified as AFSCME, AFL-CIO Paterson Supervisor's Local.

2/ This unit is certified as AFSCME Paterson Supervisors Local A

3/ This unit is certified as AFSCME, AFL/CIO Council 52

Marge Barone is a member of the Paterson Supervisor's Local. The parties stipulated that Marge Barone is appropriately placed in one of the three above-described units. The City contends that her current placement in the blue-collar supervisors' unit is inappropriate, and seeks to place her position in either the white-collar supervisory or non-supervisory unit.

The parties agree that if I find that Barone should be moved to a different unit, the effective date of unit transfer will be December 31, 1989 - the date that all three contracts expire.^{4/}

Ed Cotton ("Cotton") is Director of the Department of Public Works ("DPW"). He reports to the Mayor of Paterson. He supervises a superintendent, assistant superintendent, department supervisors, foremen and laborers. There are three administrative employees who work in Cotton's immediate office - a secretary, an employee who is in charge of purchasing orders and Executive Assistant Marge Barone.

Barone reports to Cotton. Barone classifies her position as an "office employee" and states that she does not perform any field or road work. She is a high school graduate. Barone summarized her basic job responsibilities as bookkeeping, accounting and recordkeeping. According to Cotton, Barone's duties include issuing several types of permits, processing employee accident and medical claims, depositing department funds, bookkeeping, budget

^{4/} See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

preparation and answering the phone.^{5/} Cotton has recommended discharge of employees, but has never discussed this with Barone. Cotton has discussed disciplinary matters with the three employees in his immediate office, including Barone. Such discussions are in general terms, and do not include the name of the affected employee. Barone has offered advice in the course of these discussions, but Cotton and Barone characterized this as informal advice and Cotton does not solicit any specific disciplinary recommendations. He sometimes follows this advice, but is under no obligation to do so.

Barone is in charge of a summer employment program for approximately 50 youths ages 14 to 21. She structures the program, decides how many youths to hire, consults with blue-collar supervisors about their placement and orders program supplies. She stated that she has made hiring recommendations for the summer program that are usually effective. When asked to provide an example, she stated that a City employee asked her to get his son a job. She called the person in charge of summer program hiring and recommended hiring the employee's son. The recommendation was followed. When there is a problem with work quality, a supervisor contacts Barone, who arranges for a program counselor to speak with

^{5/} The City submitted a 1978 civil service job description for the Executive Assistant title. Both Barone and the City stated that although the job description was used when Barone took a civil service test for the position, it varies from her actual job functions.

the employee. Barone has recommended employee discharge to the program counselors, who have authority to terminate employment. Barone has directly supervised two or three summer program employees and has recommended discipline or discharge when warranted. Although Barone has solicited Cotton's input on decisions relating to the summer program, she makes all decisions to contact the counselors.

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the Act, the unit definition contained in a Commission certification or the parties' recognition agreement. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). The parties have stipulated that the unit Barone is currently placed in is a unit of blue collar supervisors. In order for Barone to remain in that unit, it must be demonstrated that she is both a blue-collar employee and a supervisor.

Blue collar employees are generally involved in some form of manual or physical labor, they perform their work in the field or at least outside an office environment and they are not required to have more than, or even as much as a high school education. Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196), adopting H.E. No. 83-44, 9 NJPER 416 (¶14190 1983). Barone characterized her job as bookkeeping, accounting and recordkeeping. She does not work outside of an office and has a high school diploma. White collar employees perform work that generally involves greater mental or

intellectual skills, are more likely to work in an office environment and may have a higher educational requirement. Bergen. I find that Barone is a white collar employee.

The remaining issue to be resolved is Barone's supervisory status. The Act defines a supervisor as one having the authority to hire, discharge, discipline or effectively recommend any of the foregoing. N.J.S.A. 34:13A-5.3; Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970). There must also be evidence that such supervisory authority is regularly exercised in order to find supervisory status. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976).

Barone discussed her extensive involvement with the City's summer youth employment program. She stated that she has made recommendations for hiring, discipline and discharge of program employees. An effective recommendation is one that is adopted without independent review and analysis by a higher level of authority. Teaneck Bd. of Ed., E.D. No. 23 (1971); Borough of Avalon, P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984). Barone recommended hiring the son of a City employee directly to the person in charge of hiring, who followed her recommendation. She has also made disciplinary and discharge recommendations to youth program counselors who have authority to carry them out. I find that Barone's recommendations are effective and that she is a supervisor within the meaning of the Act.

I find that Marge Barone is a white-collar supervisory employee and is appropriately included in the white collar supervisory unit currently represented by AFSCME Paterson Supervisors Local A. As stipulated to by the parties, her placement in this unit shall be effective December 31, 1989.^{6/}

Margaret A. Cotoia
Commission Designee

DATED: July 20, 1989
Trenton, New Jersey

^{6/} Barone's terms and conditions of employment will not automatically be those of the unit she is placed in, they must be negotiated. Union Cty. Reg. H.S., D.R. No. 83-22, 9 NJPER 228 (¶14106 1983).