

D.R. NO. 81-5

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

In the Matter of

ESSEX COUNTY WELFARE BOARD,

Public Employer,

-and-

DOCKET NO. RO-78-191

ESSEX COUNTY WELFARE BOARD,  
PUBLIC EMPLOYEES SUPERVISORS  
UNION, LOCAL 723, I.B.T.,

Petitioner.

SYNOPSIS

The Director of Representation, in agreement with a Hearing Officer, finds that Field Office Supervisors are not managerial executives and may choose, in a Commission election, whether or not they desire to be represented by Petitioner for the purpose of collective negotiations. The Field Office Supervisors do not formulate management practices and do not direct the effectuation of management policies.

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PUBLIC EMPLOYEES SUPERVISORS  
UNION, LOCAL 723, I.B.T.,

Petitioner.

Appearances:

For the Public Employer

Grotta, Glassman & Hoffman, attorneys  
(Thomas J. Savage of counsel)

For the Petitioner

Goldberger, Siegel & Finn, attorneys  
(Howard A. Goldberger of counsel)

DECISION AND DIRECTION OF ELECTION

On June 2, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Essex County Welfare Board, Public Employees Supervisors Union, Local 723, I.B.T. (the "Union") seeking to represent all Field Office Supervisors employed by the Essex County

Welfare Board (the "Board"). The Board objected to the conduct of an election among these employees, asserting that they are "managerial executives" as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and are thus excluded from the rights of self-organization and collective negotiations granted to public employees by the Act.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Dennis Alessi on October 23, 1978, January 27, 1979 and March 29, 1979, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties waived the right to file post-hearing briefs.

The Hearing Officer issued his Report and Recommendations on September 21, 1979, a copy of which is attached hereto and made a part hereof. On November 5, 1979, having received an extension of time, the Board filed exceptions to the Hearing Officer's Report.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations, the transcript, the factual stipulations, the exhibits and the exceptions, and on the basis thereof finds and determines as follows:

1. The Essex County Welfare Board is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Essex County Welfare Board, Public Employees Supervisors Union, Local 723, I.B.T. is an employee organization within the meaning of the Act and is subject to its provisions.

4. The Board asserts that the above employees are managerial executives, a contention which the Union disputes.

5. The Hearing Officer concluded that the Field Office Supervisors are not managerial executives within the meaning of the Act and recommended that an election be conducted in the petitioned-for unit.

6. The Board has excepted to the Hearing Officer's findings of fact and conclusions of law. Specifically, the Board contends that: (1) the Hearing Officer failed to apply PERC precedents such as In re County of Union, P.E.R.C. No. 48 (1970), which would have resulted in a contrary decision; (2) the Hearing Officer failed to properly utilize the statutory definition of managerial executive as set forth in the Act; and (3) the Hearing Officer misunderstood the nature of the Federal and State constraints, in that the constraints are not sufficient to remove Field Office

Supervisors from managerial executive status. Furthermore, the Board excepts to the Hearing Officer's finding that the employees are not managerial executives because: (1) they effectively recommend hiring, firing and transfer of employees; (2) they effectively recommend general policy considerations to the Welfare Division Director; and (3) they are responsible for implementing existing policies, and exercise independent judgment in effectuating such policies.

Having reviewed the entire record including the Board's exceptions, the undersigned adopts the Hearing Officer's findings of fact and ~~recommended~~ conclusions.

The Board's eight field offices are responsible for delivering financial assistance and social services to Board clients. Each office is headed by a Field Office Supervisor under whom there are two to three Assistant Field Office Supervisors. The Assistants in turn supervise two to five Income Maintenance and Service Supervisors, who directly oversee the line staff. The Field Office Supervisor reports directly to the Administrative Supervisor for Income Maintenance and the Administrative Supervisor of Service. The Administrative Supervisors, in turn, report to the Deputy Director, the Director and the Board itself. Thus, the Field Office Supervisors are the fifth level on the Board's organizational chart.

The Board's policy is to a great extent governed by Federal and State regulations. The Board has limited

discretionary authority in deciding how to implement these regulations.

The Field Office Supervisors are responsible for maintaining the day-to-day operations of the field offices, i.e. coordinating the dispensing of services to clients. They are restricted in the amount of discretion they have. Regulations are promulgated and changed by Federal and State agencies. The Director issues memos instructing the Field Office Supervisors in implementing these directives. While the Field Office Supervisor has discretionary authority to develop his or her own assignment procedure to ensure that a directive is efficiently carried out by staff, the Administrative Supervisor closely monitors the Field Office Supervisor's plan.

The Field Office Supervisors have little input regarding the preparation of the budget. They merely report to the Deputy Director the projected needs for supplies and equipment for the office. These recommendations are often not followed by the Board.

The Field Office Supervisors have no authority to hire or terminate employees, but they do have some discretionary authority in developing intra-office work assignments to ensure efficient performance by the staff. They can only alter an employee's duties or work location on a limited or emergency basis. Any permanent change in an employee's duties must be approved by the Director. The Field Office

Supervisors have no authority to impose disciplinary action beyond a reprimand. When an Assistant Field Office Supervisor recommends discipline for an employee, the Field Office Supervisor has discretionary authority to deny the recommendation as nonmeritorious or recommend to the personnel office that the employee receive some type of disciplinary action. Often, their recommendations are not followed. As to other personnel matters, the Field Office Supervisors merely enforce Board policy, but have little or no input as to the development of such policy.

Under N.J.S.A. 34:13A-3(f), managerial executive is defined 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 ... " 1/

In a recent matter, the undersigned developed standards for examining whether an employee is a managerial executive within the above statutory definition. 2/ These standards require an examination of: (1) the specific functions and responsibility of the employee involved; (2) the relative position of that individual in the employer's

1/ The statutory embodiment in 1975 of a definition in the Act of "managerial executive" coupled with the deletion of department heads as an exempt category somewhat altered the Commission's working definition of managerial executive utilized in determinations prior to 1975.

2/ In re Borough of Montvale, D.R. No. 80-32, 6 NJPER 198 (Para. 11097 1980).

organizational hierachy; and (3) the extend of discretion allocated to that individual in his/her employment.

In the Montvale decision, supra, policy in a public employment context was defined as " ... the development of particular sets of objectives of a governmental entity, designed to further the mission of the agency ... 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." (citation omitted). Also, "Those chosen for 'directing the effectuation' of policy must necessarily be empowered with a substantial measure of discretion in deciding precisely how the policy should be effectuated." (emphasis added).

The undersigned concludes that the Field Office Supervisors are not managerial executives within the statutory definition. They have little, if any, input into the formulation of management policy, and although responsible for effectuating management policy, are not allocated a substantial measure of discretion in this regard. The facts which the Board notes in its exceptions tend to establish that the individuals in question exercise merely supervisory responsibilities (albeit at a high level), as defined in N.J.S.A. 34:13A-5.3, but not the responsibilities of a managerial executive.



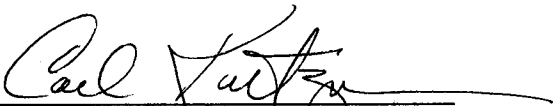
Therefore, for the above reasons, the undersigned determines that the Field Office Supervisors are not managerial executives and constitute an appropriate collective negotiations unit. Accordingly, the undersigned directs an election in the petitioned-for unit. The undersigned finds that the appropriate unit is: all Field Office Supervisors employed by the Essex County Welfare Board, but excluding nonsupervisory employees, managerial executives, confidential employees, professional and craft employees and police within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the Essex County Welfare Board, Public Employees Supervisors Union, Local 723, I.B.T. an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Essex County Welfare Board, Public Employees Supervisors Union, Local 723, I.B.T. with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Essex County Welfare Board, Public Employees Supervisors Union, Local 723, I.B.T.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: August 18, 1980  
Trenton, New Jersey

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

In the Matter of

ESSEX COUNTY WELFARE BOARD,

Public Employer-Respondent,

-and-

Docket No. RO-78-191

ESSEX COUNTY WELFARE BOARD, PUBLIC EMPLOYEES  
SUPERVISORS UNION, LOCAL 723, IBT,

Employee Organization-Petitioner.

SYNOPSIS

In a Petition for Certification of a Public Employee Representative a Commission Hearing Officer finds that Field Office Supervisors are not "managerial executives," as that term is defined by the Act. In accordance with a stipulation as to the appropriateness of the petitioned-for unit, the Hearing Officer recommends that an election be conducted in the petitioned-for unit of all Field Office Supervisors employed by the Essex County Welfare Board to determine whether these employees desire to be represented by the Petitioner for purposes of collective negotiations.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, 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. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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ESSEX COUNTY WELFARE BOARD, PUBLIC EMPLOYEES  
SUPERVISORS UNION, LOCAL 723, IBT,

Employee Organization-Petitioner.

Appearances:

For the Petitioner, Goldberger, Siegel & Finn, Esqs.  
(Howard A. Goldberger, Esq., of Counsel)

For the Respondent,  
Richard A. Feldman, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On June 2, 1978, a Petition for Certification of a Public Employee Representative was filed with the Public Employment Relations Commission by the Essex County Welfare Board Public Employees Supervisors Union, Local 723, IBT (the "Union") seeking to represent a unit of all Field Office Supervisors employed by the Essex County Welfare Board (the "Board"). The Board objected to the conducting of an election among these employees on the basis that they are "managerial executives," as that term is defined by the Act, <sup>1/</sup> excluded from the rights of self-organization and collective negotiations granted to public employees.

Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on October 23, 1978, January 27, 1979, February 16, 1979,

1/ The New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

and March 29, 1979, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and argue orally. Both parties waived the right to file posthearing briefs. At the hearing the parties agreed to the following stipulations.

1. Respondent, Essex County Welfare Board, is a public employer subject to the "New Jersey Employer-Employee Relations Act," N.J.S.A. 34:13A-1 et seq.

2. Petitioner, Essex County Welfare Board Supervisors Union Local 723, International Brotherhood of Teamsters, is an employee organization subject to the "New Jersey Employer-Employee Relations Act," N.J.S.A. 34:13A-1 et seq. and has presented a petition to represent or otherwise organize into a recognized bargaining unit under the Act the ten (10) Field Office Supervisors employed by the Respondent.

3. The issue of fact between the parties and to be resolved is whether or not the Field Office Supervisors are "managerial executives" under the Act.

4. The Table of Organization appended hereto is the official organizational chart of respondent; the job description appended hereto is the current Civil Service specification for the title "Field Office Supervisor."

5. The parties agree that this dispute affects ten (10) employees: eight (8) Field Office Supervisors; one (1) Food Stamp Office Supervisor; one (1) C.S.P. (Parent Locator) Office Supervisor. All ten employees shall be equally effected by the ruling.

6. The parties agree that if the subject employees are determined not to be "managerial executives" under the Act then the parties agree that such employees are the most appropriate unit for collective negotiations. 2/

#### FINDINGS OF FACT

Upon the entire record in this proceeding the Hearing Officer finds:

1. The Welfare Board's policy-making authority in the organization, structure and administration of its operation is severely limited by numerous

2/ During the course of the hearing the Petitioner contended that a prior Commission case, In re Essex County Welfare Board, CU-28 (1970), is controlling on the issue of whether Field Office Supervisors are entitled to self-organization and collective negotiations. Upon a review of this case the Hearing Officer finds that it did not consider the substantive issue of whether Field Office Supervisors are managerial executives.

State and Federal regulations mandating a uniform manner in which all local boards are to function. However, the Board does appear to have some limited discretionary authority to determine how it will implement these various regulations. It also has discretion to determine what types of audit procedures to use in the control of errors and frauds and when, and in what capacity, to utilize provisional and CETA employees.

2. The Board's policy-making authority in the actual issuance of assistance is almost completely preempted by Federal and State regulations.

3. While the Board does have the authority to hire and fire employees, it has little discretionary authority in the area of staffing due to numerous regulations of Civil Service and the Division of Public Welfare which mandate, among other things, staffing levels based on the number of clients, the classifications of personnel that can be hired, and the staff/supervisor ratio.

4. Each field office is headed by a Field Office Supervisor, with a maximum of three and a minimum of two Assistant Field Office Supervisors, a maximum of five and a minimum of two Income Maintenance Supervisors and Service Supervisors, and approximately 70 to 80 staff employees, including clerical employees who have a separate supervisor structure. When a Field Office Supervisor is absent from the office the Assistant Field Office Supervisor assumes all his duties, responsibilities and authority.

5. The Field Office Supervisor normally reports directly to the Administrative Supervisor for Income Maintenance and the Administrative Supervisor of Service. Above these administrators are the Deputy Director, the Director, and the Board itself. Accordingly, the Field Office Supervisors are the fifth level on the organizational chart (Exhibit J1).

6. The field offices are responsible for direct contact with clients to determine eligibility, dispense financial assistance and other social services.

In general the Field Office Supervisors are in charge of and responsible for these day-to-day operations. They coordinate the various social and financial services provided by the different specialists in the field office to ensure a comprehensive welfare service.

7. Specifically, Field Office Supervisors have the responsibility for ensuring the day-to-day safety of the staff and the security and maintenance of the office building itself. In exigent circumstances, such as a public demonstration, a disturbance in the building, or a violent crime, the responsibilities and duties of Field Office Supervisors have been circumscribed by a detailed Board resolution (Exhibit R1). The resolution, on its face, appears to leave no discretionary authority to the Field Office Supervisors. However, in actual operation they do retain some limited discretion. Where there is a failure of vital building services - i.e. heat and hot water - the Field Office Supervisors have the authority to contact the landlord directly, but nonemergency problems with the building must be referred to a management specialist.

8. The Field Office Supervisors have little input in the selection of office locations and other decisions relating to the working environment of the Board's employees. They do solicit recommendations from the Assistant Field Office Supervisor concerning their projected requirements for supplies and equipment. The Field Office Supervisors, based on these recommendations, then determine the total projected needs of the field offices and report this information to the Deputy Director for use in the preparation of the budget. The Field Office Supervisors have no other input in the preparation of the budget, and even in the area of supplies and equipment their recommendations are often not followed by the Board which, based on budgetary restraints, ultimately determines the amounts to be provided.

9. When not resolved at a lower level, the Field Office Supervisors are required to handle all types of personnel problems, for example personality conflicts between staff members. They are ultimately responsible for ensuring harmonious relationships among the staff at the field office. They are responsible for all personnel recordkeeping, for example the scheduling of vacations to eliminate conflicts, the recording and notification to the payroll office of sick leave. They ensure that all staff conform with personnel directives and procedures. <sup>3/</sup> Within the limits prescribed by these personnel guidelines (Exhibit P6), they do have some discretionary authority in their application to particular incidents. They do not have the authority to deviate from them (Exhibit P7).

10. While the Field Office Supervisors have no authority to hire or terminate employees, they are responsible for overseeing the staff to ensure that they properly and efficiently perform their duties, and control errors and frauds. They do have some discretionary authority to develop intraoffice work assignment procedures to ensure an even distribution of work for efficiency of operation. They also have some discretionary authority to alter, on a limited or emergency basis, an employee's normal method of working. For example, when the Field Office Supervisor determines that a staff person has a backlog of office work, he may require the employee, for a limited period, to spend more time in the office. However, any request for a permanent change in an employee's duties or method of working has to be submitted to the Personnel Office for approval, with final approval by the Director.

11. The Field Office Supervisors are responsible for dealing with recommendations for discipline made by Assistant Field Office Supervisors. They have the discretionary authority to deny the recommendation as nonmeritorious or recommend to the personnel office that an employee receive a suspension, dismissal or

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<sup>3/</sup> For example, they are responsible for enforcing the dress code and the requirement of a doctor's note after extended sick leave.



other type of disciplinary action, beyond a mere reprimand. <sup>4/</sup> They have the independent authority to issue written reprimands for poor performance or insubordination. In a recommendation of suspension or dismissal the Personnel Department conducts a hearing at which the Field Office Supervisor presents his case against the employee. Their recommendations are often not followed, the employee being given less severe discipline.

12. To ensure an efficient operation the Field Office Supervisors may recommend the reallocation of personnel within the field office based on changes in the demand for services. Caseworkers are assigned to geographical areas and due to the constant relocation of clients the Field Office Supervisors have discretionary authority to issue geographical reassignments of casework to maintain even workloads. However, the geographical redistricting of field offices is performed by the Board, the Field Office Supervisor having no input in this decision.

13. The Administrative Supervisors conduct conferences for the purpose of explaining and instructing the Field Office Supervisors on various newly issued regulations and policies, and dealing with any problems which the administration has discovered. The agenda is prepared by the Administrative Supervisors, although the Field Office Supervisors may suggest a particular problem for discussion. At these meetings the Field Office Supervisors, to some extent, function as resource persons concerning the changing needs and problems of the field offices, and they make recommendations on how to deal with these problems. However, these recommendations are often not followed.

14. In the day-to-day operations of the field office the Field Office Supervisor has the final responsibility and discretionary authority for interpreting and applying the various regulations and mandates to specific cases. When a ques-

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<sup>4/</sup> The Board has established a procedure which the Field Office Supervisors must follow in this regard (Exhibit P8).

tion is not resolved at a lower level, the Field Office Supervisor has the final authority, at the field office level, to determine a client's classification and eligibility for financial assistance and other social services. They are also responsible for controlling errors and reviewing possible cases of fraud discovered by staff employees to determine whether they should be reported to the investigations unit. They have the authority to issue duplicate checks based on recommendations from the Assistant Field Office Supervisor. However, other types of emergency financial assistance have to be approved by Administrative Supervisors or the Deputy Director (Exhibit P3). When clients appeal a Field Office Supervisor's decision to deny benefits, he has the responsibility, along with the Administrative Supervisor, to defend this decision at a fair hearing before the State Division. Field Office Supervisors also have discretionary authority to deal with other boards to determine when a case should be transferred to or from the other board.

15. The Civil Service job description (Exhibit J3) states that: "Under direction, [The Field Office Supervisor] has charge of a field office of a County Welfare Board..." He directs the operations of a field office in administering the various categorical assistance programs, supportive and administrative services, assigns staff to various duties in accordance with their areas of expertise and Civil Service titles, changes assignments to ensure even distribution of workload, directs the operation of prescribed programs and resolves unusual situations, supervises and conducts on-the-job training, conducts conferences with staff to ensure compliance with agency policy, resolves local office problems and supervises maintenance of essential files.

16. State and Federal agencies are constantly issuing circulars updating, altering and adding to existing regulations and mandates. Examples are the circu-

lars mandating a 5% increase in standard allowances, the rebudgeting of "zero grant" cases and the conversion of the food stamp program to computerization. Memos are issued by the Director instructing the Field Office Supervisor to implement these directives. Each Field Office Supervisor, based on the particular situation in his office, has the discretionary authority to develop his own work assignment procedure or plan to ensure that staff are made available and given the necessary instructions to perform the mandated work. In the case of the emergency caused by the food stamp conversion the Administrative Supervisor closely monitored the Field Office Supervisor's work assignment plans to ensure the timely completion of the conversion.

17. The Field Office Supervisors are the first step in the formal grievance procedure when a grievance cannot be resolved informally at the Assistant Field Office Supervisor level. In deciding a grievance the Field Office Supervisor does interpret the collective negotiations agreement covering the staff.

18. The Field Office Supervisors have no authority to expend Board monies. All requests for supplies, equipment or other expenditures must be directed to the appropriate offices responsible for administration and purchasing.

#### STATEMENT OF LAW

Initially, §5.3 of the Act stated that the organizational rights granted to public employees did not extend to "managerial executives," but this term was not defined. Further, §3 stated that the definition of employee did not include heads and deputy heads of departments and agencies. The Commission concluded that these sections evinced a legislative intent to exclude certain positions which are managerial in nature from the rights and protections granted to public employees. Due to the absence of an explicit statutory definition, the Commission utilized

the definition commonly accepted in labor relations. A managerial executive was defined as one who: "determines and executes policy through subordinates in order to achieve the goals of the administrative unit for which he is responsible or for which he shares responsibility." <sup>5/</sup>

In 1974 the Act was amended by deleting the provision relating to heads and deputy heads of departments and agencies and inserting this definition: "Managerial executives of a public employer means 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." <sup>6/</sup>

While it is true that the definition utilized in the early Commission decision is significantly similar, there are some differences resulting from the lack of explicit statutory guidance. For example, under these decisions it appears that formulation of policy, not just effectuation, is essential; <sup>7/</sup> while under the statutory definition authority limited to effectuating policy decisions of others is sufficient. Moreover, this issue was considered in the context of determining whether an individual was in fact, if not in title, the head or deputy head of a department, automatically excluded under the original Act even if he did not perform managerial functions. The intermingling of these two issues has led to some confusion over the factors to be considered in determining managerial status. For example, in In re Township of Hanover, *supra*, the Deputy Chief was excluded due to his status as a deputy department head, not as a managerial executive. The two

<sup>5/</sup> In re City of Elizabeth, P.E.R.C. No. 36 (1970); In re Township of Hanover, E.D. No. 41 (1971).

<sup>6/</sup> N.J.S.A. 34:13A-3(f).

<sup>7/</sup> See cases cited in footnote number 5.

titles are not necessarily interchangeable. As discussed infra, the factors relied on in Hanover do not meet the standards under the statutory definition of managerial executive.

There is also some inconsistency in the early Commission decision. In re City of Elizabeth, supra, and In re Township of Hanover, supra, state that it is the final responsibility to formulate, determine and effectuate policy and not the initial preparation of a budget or policy proposals that distinguishes a managerial executive from other staff or line positions. However, in In re County of Union, P.E.R.C. No. 48 (1970), it was found that the County Treasurer had the final responsibility for presenting a budget to the freeholders for their approval. The Assistant County Treasurer prepared a proposed departmental budget which included related matters of recommending promotions and job title changes. This budget proposal was a completed product which the Treasurer, in reliance on the Assistant's expertise, adopted with only minor changes. Thus, something less than final responsibility was considered, admittedly along with other factors, sufficient to find managerial status.

Based on the foregoing discussions the Hearing Officer concludes, contrary to the Commission's holding in In re Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977), <sup>8/</sup> that the pre-1974 decisions are not controlling precedents, although they are helpful, to some extent, in delineating the factors to be considered.

Subsequent to 1974 Borough of Avon is the only Commission decision which dealt with the question of managerial executive in any great detail. In this decision the Commission relied heavily on National Labor Relations Board precedents, in addition to its own. The Board has defined managerial executives as "those who formulate, determine and effectuate an employer's policies." <sup>9/</sup> Since this defi-

<sup>8/</sup> The Commission, without comment, adopted the Hearing Examiner's conclusion that the pre-1974 decisions established a working definition of managerial executive which is substantially similar to the statutory definition adopted by the 1974 amendments.

<sup>9/</sup> American Federation of Labor, 120 NLRB 969, 973, 42 LRRM 1075 (1958).

tion is significantly similar to that contained in the Act, the Board's decisions do provide a substantial degree of guidance. However, application of these standards must be modified, to some extent, in consideration of the differences in structure and operation between government and private enterprise. Within this limitation the Hearing Officer will rely heavily on the Board's decisions. <sup>10/</sup>

Before addressing the specifics of the definition certain general principles should be noted. It has been suggested that a managerial executive is defined generally as a person who is identified with management's interests. However all supervisory personnel are identified with management since they are held responsible for ensuring efficient and effective operation of the enterprise. An additional element is necessary to separate managerial executives from upper echelon supervisors. Accordingly, a managerial executive is one whose primary duty is directing and controlling the affairs of government, and for this reason is identified with management. This managing function consists of formulating or effectuating policy.

Initially the word "policy" <sup>11/</sup> must be defined. The relevant definition is "any governing principle, plan, or course of action." <sup>12/</sup> Thus a managerial executive is identified with management's interests since he formulates or effectuates decisions on how the governmental enterprise is to be internally organized or structured, the manner in which it will operate, the types of public services

<sup>10/</sup> The Commission, in Borough of Avon, specifically approved the use of NLRB precedents in this regard

<sup>11/</sup> Since the Act does not define the word "policy," its ordinary and well understood meaning is to be used. Sands v. Board of Examiners of Electric Contractors, 90 N.J. Super. 82, affirmed 54 N.J. 484 (1969); Lehmann v. Kanane, 88 N.J. Super. 262 (1965).

<sup>12/</sup> Webster's New World Dictionary at page 1131.

it will provide or, where mandated, the level or method of providing these services.

Since the legislative intent of the Act is to grant public employees the right to self-organization and collective negotiations as a means for ensuring labor peace, the Commission's policy is to strictly construe those provisions which exclude certain categories of employees. Therefore, unless it is clearly shown that an individual exercises managerial authority, the Act's definition of employee will be accorded its broadest possible application to enable the Commission to discharge its statutory responsibilities and permit the fullest accomplishment of the legislative intent. <sup>13/</sup> However, while the amendments to the Act are, admittedly, clear indications that the Legislature intended exclusion to be strictly limited, <sup>14/</sup> interpretation of the definition must not be so restricted as to undermine its effectiveness. <sup>15/</sup>

The first portion of the Act defines a managerial executive as one who formulates management policies and practices. In the past the Commission has interpreted this provision as applying only to those who have the final decision-making authority. <sup>16/</sup> However, the Hearing Officer finds that this standard is not a proper analysis of the legislative intent and fails to properly consider the Act in the context of the management structure and mode of operations of

<sup>13/</sup> In re Borough of Avon, supra at page 21 of the Hearing Examiner's Recommended Report and Decision.

<sup>14/</sup> The definition limits managerial status to "superintendents and assistant superintendents of school districts. In deleting the provision automatically excluding all heads and deputy heads of departments, the Legislature clearly recognized that in some situations even these functions are not managerial. Employees holding their positions by appointment are also not automatically excluded unless they are members of boards and commissions.

<sup>15/</sup> The Act must be interpreted in such a manner as to give effect to the intent of the Legislature. Clifton V. Zweir, 36 N.J. 309 (1962).

<sup>16/</sup> In re City of Elizabeth, supra; In re Township of Hanover, supra; In re Borough of Avon, supra.

governmental entities. <sup>17/</sup>

Despite the growth of bureaucracy, a substantial portion of final decision-making authority still resides with elected officials in order to provide for public accountability. The remainder of this authority is usually held by appointed members of boards and commissions which are necessary for effective, centralized management. However, the Act already specifically excludes these two categories of officials from the definition of "employee." <sup>18/</sup> To avoid a redundancy <sup>19/</sup> the definition of managerial executive must apply to a broader category of officials.

A person "formulates" policy when he devises or contrives a plan or governing principles for dealing with a problem. <sup>20/</sup> Accordingly, in the bureaucratic structure a managerial executive is ultimately responsible, through coordinating the activities of subordinates, for compiling or composing a complete policy scheme <sup>21/</sup> and then submitting this scheme to those officials with final authority who adopt it. This function must be a significant aspect of the

<sup>17/</sup> The Commission's mandate is to interpret the Act in a manner which, in its expert opinion, will foster effective labor management relations by adequately protecting the interests of both public employers and employees. In this regard the Commission must consider the contextual setting - i.e. the nature of government - to which the Act will be applied. Pfitzinger v. Board of Trustees of Public Employment Retirement System, 62 N.J. Super. 589 (1960).

<sup>18/</sup> N.J.S.A. 34:13A-3(d). In determining legislative intent the Act must be considered as a whole and each provision must be interpreted in pari materia with other related provisions. Petition of Sheffield Farms Co., 22 N.J. 548 (1956), Republican Committee of Garwood v. Mayor and Council of Borough of Garwood, 140 N.J. Super. 594 (1976).

<sup>19/</sup> The Act must be interpreted as to give effect and meaning to each provision. State v. Corgdon, 76 N.J. Super. 493 (1962), Mentus v. Town of Irvington, 79 N.J. Super. 465 (1963).

<sup>20/</sup> Considering the context in which it is used, the Hearing Officer finds this to be the common, well understood meaning of the word "formulate."

<sup>21/</sup> For example, a managerial in a police or fire department would be ultimately responsible for the composition of a complete policy scheme on increasing or decreasing and/or reallocating manpower and equipment based on a correlation of statistics from the research department on geographical changes in demands for services and the types of services demanded; data from the personnel department on manpower availability and supervisor/employee ratios; and information from the maintenance department on equipment status and availability.



individual's work, which he routinely performs. <sup>22/</sup> Naturally, policy proposals on this level would be most general in nature - i.e. relating to the entire governmental entity. Those in authority must, in the vast majority of cases, routinely adopt these proposals with little or no modification, relying on the individual's knowledge of the bureaucracy under his control and understanding of the employer's best interests. In this situation ultimate responsibility for composition of the proposal to be submitted is, for all practical purposes, the functional equivalent of final authority to decide policy. Final approval by elected or appointed officials becomes merely a ministerial act, necessitated by our form of government. In addition, it is reasonable to assume that an individual performing such a function would normally occupy a position on the organizational chart which is directly below that of elected or appointed officials and would report directly to them. This assumption is further supported by the fact that complete policy schemes normally are not compiled at a lower level and would be subject to modification as they pass through layers of bureaucracy. However, it must be emphasized that title and position are not determining factors, but only indications. The true test is whether the individual actually performs this managerial function. <sup>23/</sup>

A distinction must be made with the situation where officials have initially devised a policy proposal only in principle and utilize the expert knowledge of a subordinate to advise them on how to fill in the specific details; or where

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<sup>22/</sup> On occasion all supervisory personnel may, after canvassing their subordinates, compose policy proposals based on their expert knowledge and familiarity with the unit they supervise. However, even if these occasional proposals are adopted, the supervisor is not elevated to the level of a managerial who is routinely concerned with overall policy formulation. By analogy, under the National Labor Relations Act supervisors are excluded from the rights granted to employees, and the NLRB has held that the occasional exercise of supervisory authority by an employee does not elevate that person to the level of a supervisor. Eastern Camera & Photo Corp., 140 NLRB 569, 52 LRRM 1068 (1963), Barr Rubber Products Company, 118 NLRB 1428, 40 LRRM 1389.

<sup>23/</sup> It is highly probable that in certain cases, particularly with smaller governmental entities, all aspects of decision making are retained by elected officials and appointed members of boards and commissions. The Legislature, obviously in consideration of such circumstances, deleted the provision automatically excluding all heads and deputy heads of departments.

the expert is asked to comment on and evaluate the feasibility of a proposal. This individual's role in policy making is advisory and subordinate in that he provides aid and assistance, as a resource person, thereby enabling officials to make an intelligent, informed decision. Admittedly, the research, data and expert knowledge provided are an integral aspect of the total governmental decision-making process. However, it cannot be said that this expert has any form of ultimate responsibility or final authority to compose or decide on a complete policy scheme.

Other situations which must be distinguished are where officials request the submission of several policy schemes and then, after evaluating the pros and cons of each, decide which one to adopt; or where they reject proposed plans that run counter to preestablished governing principles. Since the individual in question does not have ultimate responsibility for deciding which proposal is to be submitted and they are not routinely adopted, his authority is not the functional equivalent of final authority to decide policy.

An example of these two circumstances is In re Borough of Avon, supra, where the captain of the lifeguards compiled a proposed code of rules and regulations to govern the conduct of his staff. The mayor altered some of the rules without consulting the captain, independently evaluated them through consultation with others, rejected those which were not in accordance with his policies, and in certain instances relied on his own expertise in deciding how the lifeguards should function. In City of Elizabeth, supra, the Deputy Chief, after evaluating the captains' budget requests, composed a complete budget recommendation for the Chief. However, the decision does not consider the determining factor of whether the recommendation was submitted, substantially intact, and routinely adopted by those having final decision-making authority.

To summarize the first portion of the definition, a managerial executive has the final decision-making authority on plans or governing

principles for dealing with problems; or, as a significant aspect of his function, is ultimately responsible, through coordinating the activities of subordinates, for compiling or composing a complete policy scheme, relating to the entire governmental entity, and then submitting this scheme to those officials with final authority who, in reliance on his knowledge of the bureaucracy and understanding of the employer's best interests, routinely adopt the proposal as a mere ministerial act necessitated by our form of government.

The next portion of the definition states that a managerial is one who is charged with the responsibility of directing the effectuation of such management policies and practices. If interpreted literally this language would apply to all supervisory personnel. <sup>24/</sup> The very essence of a supervisor's function is to make operative the operational decisions of management by overseeing rank-and-file employees to ensure their compliance. Supervisors are also required to implement management decisions regarding the utilization and administration of personnel, and enforce rules and procedures regulating employee conduct. Accordingly, he is in charge of and responsible for the day-to-day operations of the unit under his supervision. Due to the inherent generality of policy decisions, a supervisor must possess some degree of discretionary authority to determine, consistent with established guidelines, the manner in which a policy will be implemented or substantively applied to specific factual situations which arise daily. All supervisors, in this sense, effectuate policy decisions.

A high-level supervisor - in some instances possibly a department head - will have a wide range of responsibility and, consequently, a considerable degree of discretionary authority as the chief executive of an entire governmental entity. Even though he may function with a minimum of immediate or direct supervision, he is not a managerial executive if his discretionary authority to administer the

<sup>24/</sup> In construing the Act primary regard must be given to its fundamental purpose, where a literal reading will lead to a result not in accord with this purpose, the spirit of the law controls the letter. Floral Park Tenants Association v. Project Holding Inc., 152 N.J. Super. 582 (1978).

department must be exercised in conformity with preestablished policy guidelines. <sup>25/</sup>

For example, a high-level supervisor may determine: <sup>26/</sup>

(1) work schedules, shift assignments, and alterations of both in accordance with his interpretation of relevant contractual provisions and preestablished personnel policies;

(2) what types of maintenance are necessary to ensure that equipment conforms with established operational standards;

(3) in accordance with standards for selection and allocation restrictions, the specific make or model of equipment which will most efficiently serve the unit's needs;

(4) in his discretion when a member of the public has satisfied the eligibility standards for his agency's assistance;

(5) under a code of rules and regulations, when an employee's conduct warrants formal disciplinary proceedings;

(6) based on applicable criteria, when an employee is entitled to compensatory time, sick leave, or any of the various forms of personal leave or fringe benefits;

(7) what arrangements should be made, normally with other agencies, to ensure that personnel receive mandated training.

Further:

(1) where contingency plans have been formulated by others for emergency situations, the individual has discretionary authority to declare when such an

<sup>25/</sup> American Federation of Labor, 120 NLRB 969, 42 LRRM 1075 (1958); I.L.G.W.U. v. NLRB, 57 LRRM 2540 (1964); Albert Lea Cooperative, 119 NLRB 817, 41 LRRM 1192, Eastern Camera & Photo Corp., supra.

<sup>26/</sup> Due to the dearth of controlling precedents and the current confusion as to the applicable standards, the Hearing Officer is constrained to cite numerous specific examples.

emergency has occurred and is responsible for implementing the plan;

(2) where a decision has been made to provide an additional or special service, he determines how manpower in his unit will be deployed to cover this new work while completing existing assignments;

(3) where policy directives have been issued concerning the security of the operation and safety of its employees, he has the discretion to decide when the situation calls for their implementations;

(4) where certain criteria have been established for justifying overtime the individual has the authority to determine when these criteria have been met. <sup>27/</sup>

A department head may perform all of these functions, yet he is not a managerial. <sup>28/</sup> His discretionary authority is limited, by specific standards and guidelines, to routine application of a predetermined policy to particular situations. In some cases, once the supervisor has analyzed the factual setting, application of a predetermined procedure or plan automatically follows. While there is discretion, there is no opportunity for independent judgment or initiative. The individual's main concern is to ensure that he is in conformity with general policy directives as he deals with various situations. <sup>29/</sup>

Something more then is necessary to distinguish a managerial executive from a high level supervisor. The distinguishing factor is the quantum of discre-

<sup>27/</sup> Based on these examples it is apparent that the Deputy Chief in In re Township of Hanover, supra, may have been a deputy department head, but was not a managerial executive.

<sup>28/</sup> It is obvious that here the deputy department head likewise is not a managerial.

<sup>29/</sup> Bell Aerospace Co., 219 NLRB No. 42, 89 LRRM 1664 (1975); Flintkote Co., 217 NLRB No. 85, 89 LRRM 1295 (1975); Chrysler Corp., 192 NLRB 1208 (1971); American Radiator and Standard Sanitary Corp., 119 NLRB 1715 (1958); Kitsap County Automobile Dealers Assn., 124 NLRB No. 123, 44 LRRM 1560 (1959); Eastern Camera and Photo Corp., supra; ILGWU v. NLRB, supra; Iowa Industrial Hydraulics, Inc., 169 NLRB No. 27, 67 LRRM 1246 (1968).

tion exercised by the individual in relation to preexisting policy guidelines. It must amount to independent judgment to determine the "policy" of effectuation itself. That is, a managerial must have the final authority, unhindered by established guidelines, to select which of the various options available is, in his judgment, the most effective and economical course of action for fulfilling substantive policy decisions, in light of the agency's interests and goals. <sup>30/</sup> He must possess the individual initiative to alter or deviate from established methods when, in his determination, they do not effectively foster the objectives of the agency. <sup>31/</sup> Such independent judgment also exists where a policy decision is made only in principle or in the broadest of terms and a managerial is given the individual initiative to decide all of the lesser policy decisions necessary to fill in the substantive details. <sup>32/</sup>

For example, if minimum manning levels have already been established, a managerial would also decide what methods or systems of personnel organization will ensure effective implementation of this policy. <sup>33/</sup> Similarly, when a decision has been made to provide a new service, a managerial then must consider whether the creation of an additional or special unit will be most efficient. He is responsible for developing, to the extent that they are not negotiable, those methods of enforcement which will effectively accomplish management's preestablished goals in employee discipline. A final example is where a city has already decided to institute a meter parking system. The next question is whether the system will be enforced by subcontracting to a private towing service or assigning the police department. If the decision is in favor of the police department, a final manage-

<sup>30/</sup> Allis-Chalmers Mfg. Co., 158 NLRB No. 67, 62 LRRM 1103 (1966). Also see the cases cited in footnotes number 25 and number 29.

<sup>31/</sup> If prior approval is necessary for such alterations or deviations the individual is not a managerial. Where an unusual situation occurs or a problem develops which is not covered by a policy directive, an individual, to be a managerial, must have the flexibility to respond in a manner which he believes is in the best interests of the employer, without the necessity of prior approval.

<sup>32/</sup> This type of authority is to be clearly distinguished from the situation where a high-level supervisor is used as a resource person to merely advise on such matters.

<sup>33/</sup> Manning levels and personnel organization, as opposed to shift assignments, are not mandatorily negotiable.

ment concern is what method of patrol - car, motorcycle or motorbike - is the most economical and effective means of enforcement. After the type of vehicle has been selected, a high-level supervisor might then have the discretionary authority to select the particular make or model based on criteria of economy and efficiency. A managerial would also have the authority to alter or deviate from these decisions if they subsequently proved ineffective.

The Assistant County Treasurer in County of Union, supra, was a managerial executive because he possessed the authority to independently judge what amount of county funds were available for investment as surplus capital, where the funds should be placed to ensure a maximum profit with minimum risk and the duration of the investment in view of his projection as to the County's future need for operating funds. He would not have been a managerial if all these decisions were made by others and he was granted only the discretionary authority to establish the mechanics for transferring the funds.

The following are other supportive factors which have to be considered in determining managerial status.

(1) The function which the individual performs in the grievance procedure. There is a greater likelihood of managerial status where he is the last step in the procedure prior to arbitration and has the authority to settle grievances outside of established personnel policy when he believes it is in the best interests of labor relations.

(2) The individual is a managerial if he has final decision-making authority on a budget or ultimate responsibility for the compilation and submission of the adopted budget, as opposed to being a resource person or merely preparing an initial, advisory proposal.

(3) The extent to which an individual substitutes for an admittedly managerial executive is another consideration. However, he would have to fill in for the managerial on a regular basis and would have to possess the same quantum

of authority, not just "minding the store."

(4) While the authority to hire, fire and discipline are factors normally associated with supervisors, they have also been considered relevant on the issue of managerial status. An individual is probably a managerial if he makes the final decision in these matters after recommendations by supervisors, has the final authority to determine the criteria to be applied, or ultimate responsibility for the compilation and submission of adopted criteria, and possesses the independence to deviate from such criteria when he believes it is necessary.

(5) The extent to which the individual is involved in labor relations. While mere knowledge of the employer's labor policies or contract proposals does not classify the employee as a managerial, he may be a confidential. <sup>34/</sup> However, the key managerial issue is whether he determines labor policy or contract proposals and represents the employer as a negotiator. He is not a managerial if at negotiating sessions he simply provides information on the working conditions of the employees under his supervision, or advises as to the feasibility of proposals, thereby enabling the negotiators to prepare more realistic proposals and properly evaluate the union's proposals.

(6) An individual's mere presence at managerial meetings is not determinative. Rather, the question is what function he performs at these meetings. <sup>35/</sup>

(7) Another factor is whether the individual, as a managerial, exercises independent judgment in personnel administration, including such matters as granting extensions of maternity and sick leave when these benefits have been exhausted, and determining whether, in the interests of good labor relations, an employee should

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<sup>34/</sup> This individual may be excluded from the unit based on a conflict of interest.

<sup>35/</sup> A conflict of interest, possibly justifying exclusion from the unit, arises if labor relations problems are discussed at these meetings.



be granted a benefit even though he is not technically eligible.

(8) The fact that an individual is the employer's representative with the public is not a consideration which supports the finding of managerial status.

(9) The extent to which the position in question has previously been considered aligned with management or included in a unit of employees with a negotiations history is a further factor, although the Hearing Officer questions the weight that it should be given.

(10) The authority of an individual to purchase on behalf of the employer or commit his credit does not in all circumstances automatically confer managerial status. These functions must be performed on a regular basis, not just sporadically or in emergencies; it has to involve more than relatively small amounts and the individual must not be strictly limited by established criteria or guidelines.

(11) A final standard is whether the interests of the individual are identified more with the employees, and his inclusion in the union would not be inconsistent with the purposes of its establishment. This includes consideration of the extent to which he is subject to the same rules, regulations and discipline as other employees, receives the same benefits and relatively the same salary and is granted those increases which the union negotiates, performs some of the same work in addition to supervisory functions, and has common interests in terms of mutual working conditions and work problems. <sup>36/</sup>

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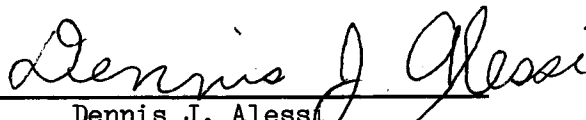
<sup>36/</sup> Most of these additional factors have been gleaned from the NLRB and Commission decisions previously cited.

CONCLUSIONS OF LAW

By necessity the Statement of Law was lengthy; however, the analysis of the Findings of Fact will be mercifully short since a detailed discussion is not warranted. Not a scintilla of evidence was presented that Field Office Supervisors have final decision-making authority on policy matters, as that term has been defined herein. Nor was any evidence presented that they have ultimate responsibility for compiling and submitting policy proposals which are routinely adopted. Moreover, it is apparent, specifically from findings number 7, 9, 10, 14, 15 and 16, that their discretionary authority is exercised within preestablished guidelines from which they cannot deviate. The Findings of Fact speak for themselves. They present a classic example of an upper level supervisor, as that title has been described herein. Therefore, the Hearing Officer finds that Field Office Supervisors are not "managerial executives" as that term is defined by the Act.

RECOMMENDATIONS

For the above-stated reasons, and in accordance with stipulation number 6 as to the appropriateness of the petitioned-for unit, the Hearing Officer recommends that an election be conducted in the petitioned-for unit of all Field Office Supervisors employed by the Essex County Welfare Board to determine whether these employees desire to be represented by the Petitioner for purposes of collective negotiations.

  
Dennis J. Alessi  
Hearing Officer

DATED: Trenton, New Jersey  
September 21, 1979