

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Docket No. RO-H-94-91  
(Chief Investigators and  
Assistant Chief Investigators-  
Office of the Public Defender)

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the State of New Jersey for reconsideration of the Commission's decision in P.E.R.C. No. 99-60. The State also requested to reopen the record to take more evidence concerning the State's distinction between chief investigators and assistant chief investigators subordinate to them. In that decision, the Commission found that chief investigators and assistant chief investigators in the State's Office of the Public Defender, who are represented by the Communications Workers of America, AFL-CIO, are not managerial executives within the meaning of the New Jersey Employer-Employee Relations Act. The Commission declines to reconsider its decision which comprehensively articulates, analyzes, and applies the relevant criteria concerning the issue of managerial executive status. The Commission also refuses to reopen the record since no specific or new facts have been proffered to show why a different result would be warranted if the record were reopened.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Docket No. RO-H-94-91  
(Chief Investigators and  
Assistant Chief Investigators-  
Office of the Public Defender)

Petitioner.

Appearances:

For the Public Employer, John J. Farmer, Jr., Attorney  
General (Michael L. Diller, Senior Deputy Attorney General)

For the Petitioner, Weissman and Mintz, attorneys  
(Steven P. Weissman, of counsel)

DECISION

On April 30, 1999, the State of New Jersey moved for reconsideration of a Commission decision. That decision declared that chief investigators and assistant chief investigators in the State's Office of the Public Defender are not managerial executives as defined by N.J.S.A. 34:13A-3g. State of New Jersey (Office of the Public Defender), P.E.R.C. No. 99-60, 25 NJPER 55 (¶30022 1998).<sup>1/</sup>

---

<sup>1/</sup> The same motion also sought reconsideration of another decision declaring that section chiefs in the State's Department of Environmental Protection are not managerial executives as defined by N.J.S.A. 34:13A-3g. State of New Jersey (DEP), P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998). We consider the motion for reconsideration of that decision in a separate opinion today.

The State requests that we grant reconsideration and declare that: (1) both chief investigators and assistant chief investigators are managerial executives or (2) chief investigators are managerial executives even if assistant chief investigators are not. As an alternative form of relief, it asks that we reopen the record to take more evidence concerning the State's asserted distinction between chief investigators and assistant chief investigators subordinate to them.

On June 29, 1999, CWA filed a response opposing reconsideration. CWA asserts that we should deny all three forms of relief requested by the State.

N.J.A.C. 19:11-9.3 governs motions for reconsideration in representation cases. The moving party must specify extraordinary circumstances warranting reconsideration.

We decline to reconsider P.E.R.C. No. 99-60. That decision comprehensively articulates, analyzes, and applies the relevant criteria concerning the issue of whether assistant chief investigators and chief investigators are managerial executives. We remain satisfied that these employees lack the power of a managerial executive to formulate management policies and practices or to direct the effectuation of those policies and practices.<sup>2/</sup>

---

<sup>2/</sup> The statutory definition of managerial executive speaks of persons who formulate management policies and practices or are charged with the responsibility of directing their

We specifically decline to reopen the record to take more evidence concerning the distinction now asserted between assistant chief investigators and chief investigators. As the State acknowledges (brief, p. 5), both parties addressed these titles together and without separate argument before the Hearing Officer and the Commission. We did not seek to raise an issue where the parties had not raised one, especially where they requested ground rules for these proceedings providing that the parties would control whether an issue was placed in the record. Reopening the record would sanction a post-decision change in litigation strategy. Further, no specific or new facts have been proffered to show why a different result would be warranted if the record were reopened. Finally, we note that to the extent that some chief investigators supervise assistant chief investigators in regional offices, they will be placed in separate negotiations units. West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971).

---


2/ Footnote Continued From Previous Page

effectuation. The State suggests that we recognize a third category of managerial executives: employees whose positions are created for the purpose of assisting managerial executives in the first two categories. The State, however, recognizes that this case does not present any facts or issues concerning the putative third category and simply asks us not to foreclose the possibility that such a category might exist. Because we are granting reconsideration for a limited purpose, we do not consider that possibility further. For the same reason, we decline the State's request that we take administrative notice of statistics concerning the represented and unrepresented portions of its work force.

ORDER

The motion for reconsideration of P.E.R.C. No. 99-60 is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: October 28, 1999  
Trenton, New Jersey  
ISSUED: October 29, 1999