

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
(Section Chiefs - Department
of Environmental Protection)

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. 99-59. In that decision, the Commission found that section chiefs in the State's Department of Environmental Protection 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.

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.

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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 section chiefs in the State's Department of Environmental Protection ("DEP") 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).^{1/}

^{1/} The same motion also sought reconsideration of another decision declaring 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, 22 NJPER 55 (¶30022 1998). We consider the motion for reconsideration of that decision in a separate opinion also issued today.

The State requests that we grant reconsideration and declare section chiefs managerial executives. It argues that we did not attribute enough weight to the technical expertise of section chiefs in DEP's policymaking process.

On June 29, 1999, CWA filed a response opposing reconsideration. CWA asserts that we properly decided that section chiefs serve as technical advisors and experts, not as policymakers.

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

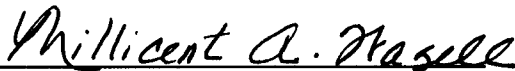
We decline to reconsider P.E.R.C. No. 99-59. That decision comprehensively articulates, analyzes, and applies the relevant criteria concerning the issue of managerial executive status. In particular, we decline to reconsider our belief that the section chiefs' professional and technical expertise in complicated areas does not make them managerial executives organizationally responsible for formulating or directing the effectuation of DEP's management policies and practices.^{2/}

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

ORDER

The motion for reconsideration of P.E.R.C. No. 99-59 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

2/ Footnote Continued From Previous Page

and simply asks us not to foreclose the possibility that such a category might exist. Because we are denying reconsideration, 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.