

P.E.R.C. NO. 2010-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Respondent,

-and-

Docket Nos. RO-2009-039
RO-2009-044

AFSCME COUNCIL 73,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the County of Hunterdon's request for review of D.R. No. 2010-1 which certified AFSCME Council 73 as the majority representative of two units in the County comprised of five primary level executives and 17 secondary level executives. The County argues that the primary level executives are all managerial executives and 14 of 17 employees in the secondary unit are also managerial executives. AFSCME opposes review. The Commission remands the petitions for further administrative processing because, on the current record, it is unclear what information the parties were advised to submit to support their positions.

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 Respondent, Gaetano M. DeSapio, attorney, of
counsel

For the Petitioner, Pellettieri, Rabstein and Altman,
attorneys (Andrew L. Watson, of counsel)

DECISION

On July 10, 2009, the Director of Representation certified AFSCME Council 73 as the majority representative of two units in the County of Hunterdon. D.R. No. 2010-1, ___ NJPER ___ (¶ ___ 2009). The certification was issued based upon AFSCME's having submitted authorization cards from a majority of unit employees. The first unit is comprised of five primary level executives (RO-2009-039) and the second unit is comprised of 17 secondary level executives (RO-2009-034).

On July 20, 2009, the County filed a request for review of the Director's decision. AFSCME opposes review. We grant review and remand these cases to the Director for further administrative processing in accordance with this decision.

The Director conducted an administrative investigation to determine the facts. We rely on the facts and procedural history outlined in the Director's decision. D.R. at 1-19.

The County is governed by a Board of Chosen Freeholders. Below the Freeholders in the County's table of organization is the County Administrator, and below the Administrator are the departments of public works, public safety, finance, administrative support, health/human services, and land use and development. Each department has one or more department heads with subordinate division heads, except land use and development, which has a division head with a subordinate department head.

The County contends that all five titles sought in the petitioned-for primary level unit are ineligible for representation because they are managerial executives. These titles include Department Head-Health; Division Head-Project Management; Department Head-Human Services; Manager-Information Technology; and Library Director-Library. The County also asserts that 14 of the 17 employees in the petitioned-for secondary level unit are ineligible for representation because they are managerial executives. These titles include Division Head-Health; Department Head-Solid Waste and Recycling; Division Head-Human Services; Confidential Assistant-Human Services; Executive Director-Office on the Aging; Coordinator (Confidential Assistant)-Open Space; Planning Director-Planning; Department

Head-Parks and Recreation; Assistant Library Director-Library; Division Head-Information Technology; Department Head-Purchasing; Department Head-Central Printing/Mail; Assistant Superintendent-Youth Facility; and Department Head-Public Works.

Under N.J.A.C. 19:11-8.2, a request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

The County requests that we review the Director's decision because it is contrary to the weight of the evidence. That is not one of the compelling reasons for granting a request for review. However, in the interests of saving the time associated with permitting the County to perfect its request, we will treat the request as asserting that the Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review.

While N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate, it specifically exempts managerial executives from that right. N.J.S.A. 34:13A-3(f) defines managerial executives 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.

To support its position that the 19 petitioned-for employees are managerial executives, the County submitted a certification from the County Administrator that contained broad assertions that the disputed employees in both petitioned-for units:

administer the primary functions and duties of their department/division including supervising all employees and directing operations. Each develops, to a greater or lesser degree, budgets which are submitted to the Freeholders for incorporation in the County budget. After the budgets are approved, they are responsible for authorizing and monitoring the expenditures of the department or division budget. They are also responsible for deciding how to specifically spend money in the broad categories the Freeholders set. They exercise almost exclusive discretion in spending those funds to accomplish objectives which Department or Division heads set, as well as the broad objectives the Freeholders direct.

Each, to a greater or lesser degree, thereafter establish policies and procedures for their departments, establish work protocols and are ultimately responsible for the discipline, hiring and firing of all subordinate employees within their Department/Division. . . .

The managers select the majority of the projects and objectives which will be pursued within their areas of operation and then, once approved by the Freeholders, are responsible for the manner, methods and techniques to be used to accomplish those objectives.

Each of these individuals are key management executives in the County and are empowered to assist in the development and administration of County Public service systems, including establishing policies and procedures. In many areas they work independently, either performing statutory functions designated to them or their departments, or in areas where the Freeholders rely on them to exercise broad discretion and work independently.

The certification does not make any specific assertions with regard to the 19 individual titles. Moreover, it does not provide specific examples of how employees in the disputed titles work independently of the Freeholders and exercise broad discretion, develop and authorize budgets, establish policies and procedures for their departments, select the majority of projects and objectives, and choose techniques to accomplish those objectives.

The County also submitted a chart outlining each of the petitioned-for employees primary functions, the number of subordinate employees, and check boxes showing whether the employee formulates the budget and the size of the budget; whether the employee has involvement with an independent trust fund or grants; whether the employee makes decisions regarding

the allocation of resources and directs objectives or directly develops policies for the manner and purposes for which County expenditures are made; or develops, recommends and solicits County projects. The chart does not contain any specific examples of how the employees direct objectives, formulate the budget, are involved with an independent trust fund or grants, make decisions regarding the allocation of resources, develop policies for the manner and purposes for which County expenditures are made, or develop, recommend and solicit County projects.

From the pool of the 19 disputed titles, AFSCME submitted questionnaires from only five of the employees. From the primary level unit, a questionnaire was completed by the Manager-Information Technology and the Library Director-Library. From the secondary unit, a questionnaire was completed by the Division Head-Division of Social Services; the Division Head-Administrative Support; and the Department Head-Central Print/Mail.

The Director found that "the parties essentially agree on the employees' functional job duties, but disagree about the level of discretion exercised and whether that discretion rises to the level of managerial executive status." D.R. at 22. However, the Director ultimately found that although the County submitted the County Administrator's certification and the chart,

it failed to provide specific examples of instances in which the petitioned-for employees performed managerial duties. The Director relied on City of Teaneck, P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008), where we declined to review a decision of the Director certifying a unit of supervisory employees whom the Township sought to exclude as managerial executives after an administrative investigation had been conducted. In Teaneck, after the parties made their initial submissions, the Director sent a letter explaining the determination he was inclined to make and invited the parties to submit additional material facts including documentary materials, affidavits, or other evidentiary materials and a letter brief in support of their position. The Director denied the Township's request for an administrative hearing and found that the Township, during the course of the administrative investigation, had ultimately failed to provide specific examples of how employees in the disputed titles actually formulated policy or directed or effectuated management policies.

Here, the County made several requests for an administrative hearing. As we noted in Teaneck, neither public employers nor public employee representatives have an absolute right to a hearing. We have a consistent policy of resolving representation questions after administrative investigations unless substantial and material facts are in dispute. In Teaneck, we were able to

determine what information was requested from the parties. The Director had sent a letter after review of the parties' initial submissions advising them of the decision he was inclined to make and providing an opportunity to submit further documentation in response to his anticipated decision. Here, the record reflects that the parties were given the opportunity to amplify their position, but there is no document in the record that makes it clear that the County was informed about the information it was required to provide to substantiate the claims made in the County Administrator's certification and chart detailing the managerial duties that it asserts the petitioned-for employees were performing. Accordingly, we remand these cases to the Director for further administrative processing in accordance with this decision. If the County was given that opportunity, the Director should so indicate. If not, the County should be given that opportunity, subject to appropriate response from AFSMCE.

ORDER

These cases are remanded to the Director for further administrative processing in accordance with this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: November 24, 2009

Trenton, New Jersey