

P.E.R.C. NO. 2013-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CU-2012-017

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey's motion to dismiss a clarification of unit petition filed by the Council of New Jersey State College Locals, American Federation of Teachers (AFT) to include within its existing unit a number of titles that had been excluded as "managerial executives" prior to the January 18, 2010 effective date of the amendment to N.J.S.A. 34:13A-3. The Communications Workers of America (CWA) intervened alleging that some titles sought by AFT should be placed its broad-based units of state government executive branch employees. The State argued that the individuals sought by the petition are employed by the colleges' boards of trustees, not the State, thereby rendering N.J.S.A. 34:13A-3 inapplicable. The Commission found that changes in the state college system replaced the State Board of Higher Education with individual college boards of trustees who now assume the role of public employer (N.J.S.A. 18A:64-20) despite the fact that the Governor is mandated to negotiate on behalf of state colleges (N.J.S.A. 18A:64-21.1). The Commission holds that the individuals sought by the petition are not employees of the State of New Jersey.

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, Jeffrey S. Chiesa, Attorney General
(Sally Ann Fields, Sr. Deputy Attorney General, on the
brief)

For the Petitioner, Council of NJ State College Locals,
AFT, Bennett Muraskin, Staff Representative

For the Petitioner, Communications Workers of America,
AFL-CIO, Weissman & Mintz, attorneys (Ira W. Mintz, of
counsel)

DECISION

On February 17, 2012, the Council of New Jersey State
College Locals, AFT, filed a clarification of unit petition,
which was later amended, to include within its existing
negotiating unit (The State Colleges/University Unit) a number of
titles which had previously been excluded as "managerial

executives" under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Subsequently, the Communications Workers of America intervened claiming that some of the titles sought by the AFT should be placed within one or another of its broad based negotiations units of executive branch employees of the state government.

The basis of these claims for inclusion of these former managerial executive employees was the allegation by both unions that the amendment of N.J.S.A. 34:13A-3 effective January 18, 2010 narrowed the definition of managerial executive for state employees permitting the inclusion of the petitioned for employees in the pre-existing units; and that their placement was ripe for hearing to determine whether their duties fit within the new definitions established by the amendment, and in which unit they should be placed.

That statute as amended now reads:

"Managerial Executives" of a public employer, in the case of the State of New Jersey means persons who formulate management policies and practices, but shall not mean persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in the case of the executive branch of the State of New Jersey, "Managerial Executive shall include only personnel at or above the level of Assistant Commissioner."

In the case of any public employer other than the State of New Jersey, "Managerial Executives" of a public employer means persons who formulate management polices and

practices, and persons who are charged with the responsibility of directing the effectuation of such management polices 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.

Simply put, both unions contend that the sought after titles are charged with the responsibility of directing the effectuation of management policies and practices, and are no longer managerial executives since the State remains the public employer.

The State filed a motion to dismiss the petition in its entirety, claiming that the State was not the employer of the individuals sought by the petition. The State asserts that the sought after individuals are employed by the colleges' Boards of Trustees thereby rendering N.J.S.A. 34:13A-3 inapplicable.

The unions both argue that the Commission, with the approval of the courts, have long held that the employees in the state college system are employees of the State, and has issued multiple decisions so holding. In addition, they point to N.J.S.A. 18A:64-21.1 which reads:

The Governor shall continue to function as the public employer under the "New Jersey Employer-Employee Relations Act," P.L. 1941, c. 100 (C.34:13A-1 et seq.) And through the Office of Employee Relations act as the chief spokesperson on behalf of the State colleges with respect to all matters under negotiation. One representative of the State college sector shall be designated by the Governor as a

member of the negotiating team, upon recommendation by the State colleges.

They also point to N.J.S.A. 34:13A-5.10 which states in section

(b) thereof:

b. (1) There shall be only twelve collective negotiations units for civilian employees of the Executive Branch of State government. The units shall be as follows: administrative and clerical; professional; primary level supervisory; high level supervisory; operations, maintenance and services; crafts; inspection and security; health care and rehabilitation services; State colleges and universities; State colleges and universities adjuncts; deputy attorneys general; and State government managers.

However, this argument fails to recognize that there has been a significant change in the structure of the state college system in New Jersey since these earlier decisions were issued. Firstly, the State Board of Higher Education was legislated out of existence and replaced with individual college boards of trustees who now assume the role of public employer. N.J.S.A. 18A:64-20 states:

Employment of professors, etc., continued; tenure rights, etc., preserved.

All professors, associate professors, assistant professors, instructors, supervisors, registrars, teachers, and other persons employed by the state of New Jersey, the state board of education or the commissioner of education in the state colleges on July 1, 1967 shall continue in their respective employments in the employ of the board of trustees of their respective colleges and any and all rights of tenure, civil service, retirement, pension disability, leave of absence or similar benefits provided by or under the provisions of the laws of this

state shall not be affected or interrupted by virtue of such transfer. (Emphasis added)

While N.J.S.A. 18A:64-21.1 states that:

The Governor shall continue to function as the public employer under the "New Jersey Employer-Employee Relations Act, "P.L. 1941, c. 100 (C. 34:13A-1 et seq.) and through the Office of Employee Relations Act as the chief spokesperson on behalf of the State colleges with respect to all matters under negotiation. One representative of the State college sector shall be designated by the Governor as a member of the negotiating team, upon recommendation by the State colleges.

Petitioners overstate the import of that language in claiming that it continues the status of the employees as employees of the State of New Jersey. When that language is read in the context of the statute immediately preceding it which characterizes their employment as "in the employ of the board of trustees of their respective colleges," it is clear that while the Governor is mandated to negotiate "on behalf of the state colleges," neither that statute nor any other pointed out by petitioner or intervenor continues these people as employees of the State of New Jersey, rather than employees of the respective boards of trustees of the various state colleges.

Because we have found that the petition herein at issue requires that the employees status as managerial executives be overturned, and the statute relied upon to alter their status does not reach them because they are not employees of the State of New Jersey, we hereby grant the motion to dismiss the petition.

ORDER

The motion to dismiss the petition is hereby granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones, Voos and Wall voted against this decision.

ISSUED: January 31, 2013

Trenton, New Jersey