

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION

Public Employer-Petitioner

and

Docket No. CU-32

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION

Respondent

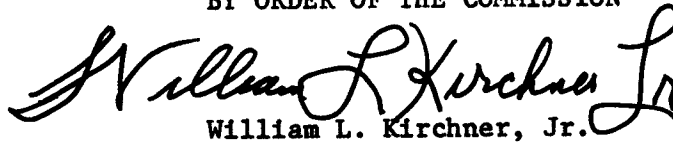
DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of the negotiating unit for certain employees of the County of Union, hearings were held on July 14, 1970, and July 17, 1970, before Hearing Officer Leo M. Rose. All parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Subsequent to the hearing the Hearing Officer issued a Report and Recommendations dated October 1, 1970. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. The Commission has considered the record and the Hearing Officer's Report and Recommendations and on the basis of the facts in this case finds:

1. The County of Union is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Union Council #8, New Jersey Civil Service Association is an employee representative within the meaning of the Act.

3. The public employer has petitioned to clarify a previously certified negotiating unit of certain County employees. The Employer seeks to exclude from that unit the Assistant County Treasurer and the Sergeants at Arms. Union Council No. 8, the certified representative, opposes the exclusion of the Assistant County Treasurer; it does not oppose the exclusion of the Sergeants at Arms. Since there is a question regarding the composition of the negotiating unit, the matter is properly before the Commission for determination.
4. In the absence of Exceptions to the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's findings and recommendations pro forma.
5. Accordingly, the Assistant County Treasurer and the Sergeants at Arms of the Court are properly excluded from the previously certified unit of County employees.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: November 6, 1970
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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COUNTY OF UNION

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Docket No. CU-32

UNION COUNCIL #8, NEW JERSEY CIVIL SERVICE ASSOCIATION

Respondent

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Pursuant to a Notice of Hearing to resolve a question concerning the membership in the bargaining unit of certain employees of the County of Union, hearings were held on July 14, 1970, and July 17, 1970, before the undersigned Hearing Officer of the Commission. All parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally.

On the basis of the record it is determined:

1. The County of Union, hereinafter referred to as the County, is a public employer within the meaning of the Act and is subject to the law's provisions.
2. Union Council #8, New Jersey Civil Service Association, hereinafter referred to as the Council, is an employee representative within the meaning of the Act.
3. The County, having filed a petition to exclude the Assistant County Treasurer from the previously certified unit of County employees, a question regarding the composition of the bargaining unit exists and the matter is properly before the Commission. (Said petition was

was amended at the first hearing to seek exclusion of the Sergeants at Arms of the court from the certified bargaining unit.

4. The questions to be determined in this proceeding are: (1) whether the appropriate negotiating unit should include the Assistant County Treasurer and (2) whether the appropriate negotiating unit should include the Sergeants at Arms of the Union County District Court.

Chapter 303 [C34:13A-6(d)] charges the Commission in resolving questions concerning representation to "decide in each instance which unit of employees is appropriate for collective negotiation." Earlier, Chapter 303 [C34:13A-5.3] reads, in part,

"Except as hereinafter provided, public employees shall have, and be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive... nor except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership..."

Later in the same Chapter, [Section C34:13A-3] paragraph 3(d), states:

"The term 'employee' shall include...except elected officials, heads and deputy heads of departments and agencies..." (emphasis added).

It is within the above statutory references and the pertinent body of custom, practice and usage that the instant matter will be considered.

During the hearings, certain facts became apparent. Among these was that the incumbent Assistant County Treasurer, Theodore Sienicki, occupies a position in competitive Civil Service and satisfied certain pre-requisites

in order to qualify for his position. Some of these were graduation from a recognized college with a major in accounting, four years of related supervisory experience, certification as a Registered Municipal Accountant, thorough knowledge of municipal accounting procedures and preparation of reports containing findings, conclusions and recommendations. (Exhibit P4, paraphrased). The present Assistant County Treasurer has served in this capacity under several preceding Treasurers. The County Treasurer is appointed by the Board of Chosen Freeholders for a three-year term. The Treasurer does not work a full day, but usually appears at the office for parts of four or five days per week. The Assistant Treasurer is a full-time employee, in active charge of the office and is responsible for the internal organization and management thereof.

The County, in developing its side of this matter, asserted that the Assistant Treasurer was a deputy under the statute, was a managerial executive and therefore subject to the exclusions in the statute quoted above, and had supervisory duties and was a confidential employee. In support of these claims, proof was adduced that Sienicki attended Freeholder's meetings in the stead of the Treasurer and otherwise functioned as the head of the department in the absence of the Treasurer. It was also asserted that Sienicki had the power to hire, discharge, discipline or to effectively recommend same. In regard to confidentiality, it was claimed that Sienicki was particularly situated to have access to data relevant to labor relations matters, so that by virtue of his position he should be excluded from the bargaining unit on this ground.

On the other hand, the Council, by deprecation, attempted to create a concept of the Assistant Treasurer as a mere technician, doing work of a

mainly routine nature. In rebutting the probative value of "standing in" for the Treasurer at meetings of the Freeholders, the Council showed that such presence was in the capacity of a resource person, quite divorced from the decision-making function, except to stand by and advise whether or not funds were available for contemplated action of the Freeholders. By stressing the purely ministerial nature of many of the internal practices of the Treasurer's Office, and likewise the ministerial relationship with the Freeholders and other departments, the Council sought to depict Sienicki's duties in a framework of rote, "keeping the books for the County."

In regard to the "hire-fire-discipline" rule, the County placed great stress on the signing of Sienicki of "Request for Personnel Action" (Form CS6) (Exhibits P5 and P6). This is a multi-purpose form which is forwarded to the Department of Civil Service, State of New Jersey, which, when approved, is returned to the appointing authority. According to the exhibits cited, Sienicki was authorized, and did, sign such forms as the appointing authority.

The County chose to interpret this as proof that Sienicki, on his own motion, could request from Personnel Department, interview, evaluate and hire a new employee. Emphasis was placed on the limited number who have authority to sign the C-6 and its acceptability to the Freeholders and to the Department of Civil Service. Council #8 derogated this function on the ground that "selection" was scarcely the word to use in "looking to pull a warm body off the street to fill a low-paying job...the element of discretion in hiring and firing, as we usually conceive it, doesn't exist." (Transcript, Page 147). The undersigned believes that the low rate of employee accretion and of turn-over made a meager sampling, and

therefore is of questionable validity. The "hire" portion of the rule and its applicability herein are of dubious value, but are indicative.

From the transcript, it appears that no one is ever discharged in the Treasurer's Department, so that this portion of the rule likewise fails in applicability.

In regard to discipline, only one reference was made to a recalcitrant employee, and the matter appears to have been resolved by Sienicki. Once more, the rule fails to clarify through desuetude.

Thus, it appears to the undersigned that the element of hiring becomes the only portion of the rule which is relevant in the instant matter. The County showed that there were occasions in which Sienicki interviewed and recommended, where Sienicki and the Treasurer interviewed and hired, and others where Sienicki operated alone, to the point of hiring and executing the C-6 form. The entire process seemed blurred by mutual reliance and concurrence as to a given action. But that Sienicki had a role in hiring seems undeniable.

In other areas of operations, the County showed that Sienicki independently invested large amounts of surplus funds, notifying the appropriate Freeholder of his actions. (Exhibit P-3) (The amounts involved and the dates of the transactions are: September 3, 1969 - \$500,000; September 22, 1969 - \$100,000; November 13, 1969 - \$248,444.444; December 8, 1969 - \$246,700,83).

Other areas of duty of the Assistant County Treasurer which received exhaustive treatment by the County, were: participation in consideration of departmental budgets and preparation of the Treasurer's Department budget, with the related matter of recommending promotions and

job title changes. Although it is fairly clear that much of the departmental budget is delegated by Sienicki, it is equally clear that the Treasurer relied on his expertise in the final preparation of the budget, although it is officially submitted to the Freeholders by the Treasurer. Again, it would appear that the participation by Sienicki and the Treasurer in the budgets of other departments is as resource people for the Freeholders. In regard to the Treasurer's Department budget, Sienicki originates the personnel actions mentioned above, and discusses same with the Treasurer prior to submitting the budget.

It is the opinion of the undersigned that the full-time man in charge of an important County department, disregarding title, for the moment, is something far more than a mere "straw boss". The conceiving and execution of the procedures and routines of a complex division of government, involving methods, staffing, supervision and delivery of the finished product call for skills of a specialized order, exercised within a sphere governed by statute, rule and regulation. Not only is fiscal knowledge required, but also specific governmental experience. This finesse is reflected in the ability to fractionalize functions as a contribution to the total operation of the Department. A mere perusal of the job description as set forth by the Civil Service Commission (Exhibit P-4) would demonstrate that this position is filled by an uncommon man.

To revert to the matter of title, and the County's claim that Sienicki is, in truth, the Deputy of the County Treasurer, Webster's Collegiate Dictionary defines a deputy as: (a) a person appointed as a substitute with power to act; (b) second-in-command or assistant who usually takes charge when his superior is absent. That Sienicki "usually takes charge when his superior is absent" is a fact which permeates all of

the testimony at the hearings, and it is obvious that he indeed, and in more than one situation, acts for the Treasurer.

Considering the County's contention that Sienicki is a managerial executive, therefore statutorily excluded from any bargaining unit, the indicia of such status have not been exhaustively treated in the available precedents of the Commission. Hence, it seems advisable to seek guidance from the experience of others in surmounting the same problem.

The National Labor Relations Board, in various cases, has held that the following characterize a managerial executive:

1. A person identified with management interest;
2. One who formulates and effectuates management policies by expressing and making operative the decisions of the employer;
3. One who exercises discretion in the performance of his job;
4. One who has the ability to make purchases and pledge the credit of the Employer.

The Department of Labor and Industry, State of New Jersey, in "Wage and Hour Laws and Regulations" (Chapter 113, Laws of New Jersey, 1966, Approved June 17, 1966, Page 17, Regulation 4) reads in part:

"...any employee (a) whose primary duty consists of the management of the enterprise in which he is employee or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to hiring and firing and as to advancement and promotion or any other change of status of any other employee will be given particular weight and (d) who customarily and regularly exercises discretionary powers."

The definition of a managerial executive, according to the foregoing criteria, reinforced by the opinions of various experts, cause the undersigned to conclude that the term department head and managerial

executive refer to the same class of persons. The head of the department and deputy head of a department are managerial executives according to analogy in the Act: The term "managerial executive" as used in 34:13A-5.3 of the Act is limited specifically to mean the Superintendent of Schools or his equivalent. Since the Superintendent of Schools in 34:13A-3 is treated as a department head and in 34:13A-5.3 the same title is referred to as a managerial executive, it follows that the term department head and managerial executive refer to the same class of persons. It would be safe to conclude, then, that in the present circumstances Sienicki, as the de facto deputy Treasurer (herein equated with managerial executive) is properly excludable from the collective negotiating unit.

Further weight is given this conclusion by Sienicki's responsibility for the budget of his department. He, with the help of assigned subordinates, presents an end product to the Treasurer and the record shows that the latter's emendations are minor in nature. This activity, again, surpasses that of even a senior bookkeeping type of employee and derives its power at the top. Through expertise born of experience, it is a major factor in keeping the wheels of government turning.

Concerning the issue of confidentiality raised by the County, and rebutted by Council #8, it would appear that Sienicki is privy to the financial status of all county departments. In spite of his claim that payroll data were available to the public at large (as it may well be) he has intimate knowledge of allocations, transfers in accounts, actual and contemplated financial moves, the liquidity and solvency of a given department - in short, not only does he know the figures, but he understands their meaning. It is somehow unthinkable that the "principal professional

finance officer" of the County would not be aware of the bargaining posture of the County, and its resources for meeting employee demands. Hence, on the test of confidentiality, it is the opinion of the undersigned that Sienicki, by virtue of his position, is uniquely privy to the labor relations policy, plans, and programs of the County. Equally important, his incidental exposure to officialdom on his own and higher levels would certainly be utile to an astute, trained and experienced man like Sienicki.

One other factor, mentioned in passing, but not pursued by either party was the fact that Sienicki is a Registered Municipal Accountant. This designation, accorded after successfully taking a test, is a requirement for filling the position of Assistant County Treasurer. Certain reports from the County to the State require the signature of a Registered Municipal Accountant. As mentioned previously, this question was not fully developed at hearing, therefore the undersigned will pass it by with the observation that possession of the job requirements including his being a Registered Municipal Accountant, creates a plausible basis for claim that the Assistant County Treasurer is a professional. Inasmuch as no such claim was advanced, the foregoing is only to be considered as commentary.

Set forth previously herein without comment at the time was the duty of the Assistant County Treasurer to invest surplus County funds. The handling of more than a million dollars in a four month period, on his own initiative and responsibility is clearly not a supervisory nor a ministerial function. Rather, it lies in knowledgability regarding (1) the fact that certain cash is surplus, (2) the mechanics of securing the least risky, most profitable arrangement with a financial institution, (3) the limits of the fund's availability (i.e., when will the County need the cash involved to carry on its affairs?) and (4) the legal steps necessary to free the funds for such purpose and those to whom notification is required.

Such a function is only delegated to a man of proved capability and known probity and the power to do so is easily the equal of the right to "pledge the credit of the Employer" (cited *ibid* - N.L.R.B. *indicia*).

It is the finding of the undersigned that the County's position is sustained on the following counts:

1. Sienicki is in fact, a Deputy to the County Treasurer.
2. Sienicki is a managerial executive.
3. Sienicki is a confidential employee.

It is therefore recommended that Theodore Sienicki be excluded from the certified unit, namely: all employees employed by the County of Union but excluding all blue collar employees, i.e., those employed in the Department of Roads, Bridges, Engineering, Public Property, the Shade Tree Commission, and at John E. Runnells Hospital (food service workers, cooks, butchers, institutional attendants, practical nurses, and other blue collar workers) craft employees, professional employees, policemen, correction officers, managerial executives, and supervisors within the meaning of the Act.

The Sergeants at Arms of the Union County District Court have joined in the petition to exclude themselves from the bargaining unit. Their claim is based on the assertion that they are classed as police, and therefore, ought not to be in the same unit as non-police employees.

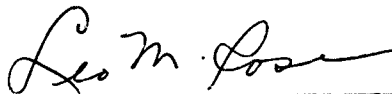
The following passage of Chapter 303, C34:13A-5.3 bears on this subject:

"...except where established practice, prior agreement, or special circumstances dictate to the contrary, no policemen shall have the right to join an employee organization that admits employees other than policemen to membership."

Counsel for Union County cited County of Gloucester 1/ in support of the contention of the Sergeants at Arms. In that matter, the Commission took a literal view of the word "police". The court took a contrary view, therefore, it would seem incumbent upon the undersigned to take a broad view of the use of the word in the statute.

Reference was made to correspondence between a judge and the Association in this matter and the concensus of all concerned seemed to be quite permissive. No one appeared to be very strongly inclined to oppose the wishes of the Sergeants at Arms, as expressed by their spokesman, Mr. Lech. In support of his contention that their function, although not that of policemen in the conventional sense, was sufficiently "police-like" to qualify as such under the Act, he cited the various statutes governing this uniformed service. Furthermore, the opinion of a judge that they are law officers with constabulary powers must be accorded appropriate weight. These facts, coupled with the non-adversary position of Council #8, lead the undersigned to the conclusion that they ought not to be in a unit which includes non-police.

For the reasons cited, the undersigned finds that the Sergeants at Arms of the District Court of Union County should be removed from the bargaining unit previously set forth herein at length.



Leo M. Rose
Hearing Officer

DATED: October 1, 1970
Trenton, New Jersey

1/ County of Gloucester, Board of Chosen Freeholders and Teamsters Local Union #676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, P.E.R.C. No. 11.