Cornell University ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations Board (PERB)

11-3-2005

State of New York Public Employment Relations Board Decisions from November 3, 2005

New York State Public Employment Relations Board

Follow this and additional works at: https://digitalcommons.ilr.cornell.edu/perbdecisions

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from November 3, 2005

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

This article is available at DigitalCommons@ILR: https://digitalcommons.ilr.cornell.edu/perbdecisions/575

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 445,

Petitioner,

- and -

CASE NO. C-5535

VILLAGE OF WASHINGTONVILLE,

Employer,

- and -

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Incumbent/Intervenor,

- and -

WASHINGTONVILLE POLICE BENEVOLENT ASSOCIATION,

Intervenor.

RICHARD M. GREENSPAN, PC (ERIC J. LARUFFA of counsel), for Petitioner

BOND, SCHOENECK & KING, PLLC (MARK N. REINHARZ of counsel), for Employer

LEWIS, GREENWALD, CLIFTON & NIKOLAIDIS, PC (LOUIE NIKOLAIDIS of Counsel), for Incumbent/Intervenor

JOHN M. CROTTY, ESQ., for Intervenor

BOARD DECISION AND ORDER

This interlocutory appeal comes to us on exceptions filed by the Washingtonville Police Benevolent Association (PBA) to the ruling of the Administrative Law Judge (ALJ) denying its motion to intervene in a representation petition filed by the International Brotherhood of Teamsters, Local 445 (IBT). The underlying petition seeks to decertify the United Public Service Employees Union (UPSEU) and to have the IBT certified as the representative of a unit of employees of the Village of Washingtonville (Village).

EXCEPTIONS

PBA argues in its exceptions that the Board must allow its interlocutory appeal, that the ALJ erred by applying *Town of Brookhaven*, (hereafter, *Brookhaven*), 19 PERB ¶3010 (1986), to a case in which an intervening employee organization, not the incumbent, raised the issue of unit appropriateness and that PERB has an obligation to investigate any question concerning representation, regardless of when and how it is raised. The Village opposes the motion. Neither IBT nor UPSEU have responded to the exceptions filed by PBA.

Based upon our review of the record and our consideration of the parties' positions, we affirm the ruling of the ALJ.

FACTS

On July 1, 2005, IBT filed a petition seeking to represent an overall unit of Village employees, which includes both blue- and white-collar titles, among them the title of (police) dispatcher. UPSEU, the current representative, negotiated a collective

bargaining agreement with the Village for the at-issue unit, for the term of March 1, 2002, through February 28, 2006. In its response to the petition, UPSEU alleged that the unit was no longer the most appropriate unit because of the conflict between the blue- and white-collar employees in the unit.

By motion papers dated August 18, 2005, PBA sought to intervene in this representation proceeding, alleging that the current unit was inappropriate and that a separate unit of three full-time and three part-time (police) dispatchers was the most appropriate unit for the employees occupying that title. The motion included the requisite showing of interest and declaration of authenticity for a unit of (police) dispatchers.[1] By letter dated August 30, 2005, the ALJ denied PBA's motion to intervene, citing the Board's decision in *Brookhaven*. In that decision, the Board determined that:

> A representation petition which merely raises a question of majority status within a unit does not place into question the appropriateness of that unit. Here, the only petition, which was filed by the independent employee organization, merely raised a question of majority status. It follows that a public employer may not diminish or delay its bargaining obligation on the ground that a unit is not appropriate unless either it makes a timely challenge to the appropriateness of the unit or that appropriateness has been placed in question by the timely petition of another party. (at 3018)
>
> 19 PERB at 3018[2]

---

[1] Rules of Procedure (Rules), §212.1(b).

[2] The ALJ also noted that UPSEU's assertion in its response to the petition that the unit was no longer the most appropriate, was, for the same reasons, not properly raised and would not be considered. UPSEU has not sought review of that determination.

PBA thereafter filed exceptions to the ALJ's ruling. The conference in this case has been adjourned pending the outcome of the PBA's exceptions.

DISCUSSION

Appeals from rulings made during the processing of a representation petition that remains pending before the Director or an ALJ are considered with our permission only, pursuant to §201.9(c)(4) of the Rules. Permission to appeal rulings made in conjunction with the processing of a representation petition will not be granted absent extraordinary circumstances.[3] We are persuaded to grant review of the issues raised in PBA's exceptions because of unusual circumstances here that would result in extreme prejudice to PBA if we did not consider them now. That is, the ALJ's ruling on the motion to intervene cannot be adequately reviewed after the investigation of all questions concerning representation is completed. Also, without our timely consideration of the issues raised, an election in the petitioned-for unit would be held without PBA's participation, and we would then be in the position of holding in abeyance the results of a representation election and possibly delaying certification of a bargaining representative in order to review an ALJ's ruling on the motion to intervene - a preliminary issue.

---

[3] *State of New York (NYSCOPBA)*, 31 PERB ¶3058 (1998); *County of Putnam*, 31 PERB ¶3031 (1998); *Town of Saugerties*, 30 PERB ¶3002 (1997); *Town of Putnam Valley and Town of New Paltz*, 28 PERB ¶3049 (1995).

PBA argues that our holding in *Brookhaven*, and the cases that followed,[4] is limited to either the public employer or the incumbent employee organization and that the ALJ erred in applying that holding to its motion to intervene because it is not the incumbent employee organization. PBA is correct in its assertion that *Brookhaven* involved a uniting question raised by the public employer and that the cases that have followed since that decision dealt only with public employers or incumbent employee organizations. There have been no cases before PERB that have involved a unit appropriateness question raised by an intervening employee organization in a certification/decertification case. This is a case of first impression.

Our decision in *Brookhaven* was not limited to only public employers. The language used was broad and not restrictive: "A representation petition which merely raises a question of majority status within a unit does not place into question the appropriateness of that unit." The same concerns regarding delay of the bargaining process apply regardless of which party raises a uniting question. Indeed, as already noted, the rationale has been applied to uniting questions raised by incumbent employee organizations.[5] To apply the holding in *Brookhaven* in the instant case is a natural extension of the rationale articulated therein.

If a party's purpose is to raise a question of unit appropriateness,

> the party must raise that question during the applicable window period. [footnote omitted] For example, a

---

[4] *See, e.g.*, *County of Orange and Sheriff*, 25 PERB ¶3021 (1992); *Town of Riverhead*, 28 PERB ¶4069 (1995); *Village of Washingtonville*, 27 PERB ¶4002 (1994); *Worcester Central Sch Dist*, 20 PERB ¶4020 (1987).

[5] *County of Orange and Sheriff*, *supra*, note 4.

> decertification petition that raises only a question of a union's majority status does not place the appropriateness of the unit in issue. A party will not be allowed, in that circumstance, to raise a unit question after the applicable filing period has closed. [footnote omitted][6]

We have previously held that the requirements relating to the filing and processing of a certification or decertification petition must be strictly applied.[7] Here, PBA was free during the applicable open period to file a representation petition seeking to fragment the (police) dispatchers from the overall unit. PBA did not do so and may not now raise a unit appropriateness question in the context of IBT's petition for certification/decertification.

PBA raises numerous other issues related to PERB's obligation to investigate all questions concerning representation.[8] While there exists such an obligation, it is only triggered by a proper, timely petition raising a representation question. Indeed, the Rule section, §201.9, mandating investigation of all questions concerning representation, is preceded by several Rule sections setting forth the time for filing such petitions, the content thereof and the support therefor.[9] It is only once a valid petition is filed that the

---

[6] Jerome Lefkowitz, et al., *Public Sector Labor and Employment Law* 414 (2d ed. 1998).

[7] *County of Dutchess and Dutchess County Sheriff*, 26 PERB ¶3080 (1993), citing *City Univ. of New York*, 20 PERB ¶3069, at 3148 (1987).

[8] Act, §207; Rules, §201.9 (a) (1).

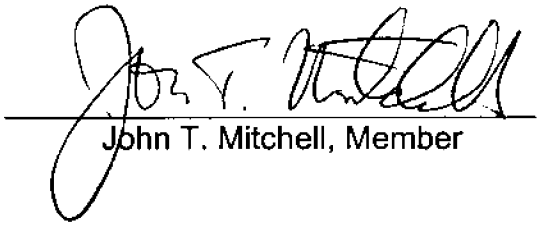
[9] Rules, §§201.1, 201.2, 201.3, 201.4, 201.5, 201.6 and 201.8.

obligation to investigate any representation questions raised by the petition is triggered.[10] Here, the PBA has not filed its own, valid, timely petition.

We, therefore, affirm the ALJ's ruling and deny PBA's motion to intervene. We remand the case to the ALJ for further processing, consistent with this decision.[11]

DATED: November 3, 2005
Albany, New York

Michael R. Cuevas, Chairman



John T. Mitchell, Member

[10] *See Wappingers Central Sch Dist*, 20 PERB ¶3043 (1987). *See also Jamesville-DeWitt Central Sch Dist*, 31 PERB ¶3049 (1998).

[11] Based on the limited nature of the exceptions, we do not reach and make no findings as to any other issues raised by the petition, including timeliness.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DORMITORY AUTHORITY OF THE STATE OF NEW YORK,

Employer,

CASE NO. E-2283

Upon the Application for Designation of Persons as Managerial or Confidential.

WHITEMAN OSTERMAN & HANNA, LLP (NORMA G. MEACHAM of counsel), for Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (RICHARD V. STEWART, JR., of counsel), for Intervenor

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Dormitory Authority of the State of New York (DASNY) to a decision of an Administrative Law Judge (ALJ) denying, in part, DASNY's application to designate as managerial certain titles represented by the Intervenor, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA).

EXCEPTIONS

DASNY excepts to the ALJ's decision on the law and the facts. CSEA filed a response in support of the ALJ's decision.

Based upon our review of the record and our consideration of the parties' arguments, we reverse that part of the ALJ's decision that denied DASNY's application as to the titles Chief, Project Manager; Chief, Construction Services Contracts; and

Chief, Professional Services Contracts. In all other respects, we affirm the decision of the ALJ. [1]

FACTS

The facts, as we find them to be established in the record, are set forth below.

On August 30, 2002, DASNY filed an application pursuant to §201.10 of PERB's Rules of Procedure (Rules) seeking to designate certain employees managerial or confidential in accordance with §201.7 of the Public Employees' Fair Employment Act (Act). DASNY sought to exclude from the CSEA unit the title of Chief, Project Manager; Chief, Construction Services Contracts; Chief, Professional Services Contracts; and Assistant Director, Budget and Payroll.[2] These titles are represented for purposes of collective negotiations by CSEA and set forth in Appendix A of the parties' collective bargaining agreement.[3]

On three prior occasions, DASNY filed applications to designate certain titles either managerial or confidential. Those applications included the title of Chief, Project Manager and, in each case, the Director of Public Employment Practices and Representation (Director) granted DASNY's application upon a finding that the duties

---

[1] The ALJ's decision is reported at 38 PERB ¶4015 (2005).

[2] The ALJ designated Karen Reith, Assistant Director, Budget and Payroll, as confidential. No exceptions were taken by CSEA to the designation. The original application sought to exclude numerous other titles. The ALJ issued an interim decision based upon the parties' stipulation regarding those titles. *See Dormitory Auth of the State of the New York*, 36 PERB ¶4004 (2003).

[3] Joint Exhibit 10.

and responsibilities of those individuals, as set forth in the documents submitted by DASNY, met the criteria of §201.7 of the Act. [4]

The job description for Chief, Construction Services Contracts,[5] states that the incumbent works under the direction of the Director, Procurement, and oversees the administration of the Construction Contract function within the Procurement Unit. The incumbent is expected to exercise a high degree of independent judgment as it pertains to construction contracts and "the development and implementation of Authority policy and procedures governing Construction Contracts."[6]

The job description of Chief, Professional Services Contract,[7] states that the incumbent works under the Director, Procurement, and oversees the administration of the Professional Services Contract function within the Procurement Unit. The incumbent is expected to exercise a high degree of independent judgment in the creation, modification and administration of Professional Services Contracts and "the development and implementation of Authority policy and procedures governing Professional Services Contracts."[8]

A hearing was held on July 30 and 31, and December 9, 10 and 11, 2003 and February 16, 2005. Douglas VanVleck, Managing Director of the Construction Division, explained the services that DASNY provides. He testified that DASNY was created by

---

[4] *See* ALJ Exhibit 24. *See also Dormitory Auth of the State of New York*, 6 PERB ¶4029 (1973), 18 PERB ¶4000.20 (1985) and 33 PERB ¶4000.11 (2000).

[5] ALJ Exhibit 1 (Exhibit 5).

[6] *Id.*

[7] ALJ Exhibit 1 (Exhibit 6.4).

[8] *Id.*

the legislature as a public benefit corporation and it has been granted legislative authority to expand its original mission of financing and constructing dormitories for the New York State college system to low-cost access to capital financing and construction management services to public and private clients.[9]

VanVleck stated that DASNY serves two primary functions. It provides financing through the issuance of tax exempt bonds and it also manages the construction of the projects it finances. DASNY helps their clients develop program needs, prepare budgets for a project, hire the architects and construction managers, issue the construction contracts and oversee those contracts.[10]

In 2001, DASNY reorganized the Construction Division because of a reevaluation of workload post-1995. VanVleck noted that the workload had expanded and there was a need to reevaluate the organizational structure to meet the needs of DASNY's clients. As a consequence, the State was divided into regions and programs within each region. DASNY focused on four programs: three programs located in New York City and a fourth program covering Statewide Facilities.[11] The three programs located in New York City involve the City University of New York, New York City Health and Hospitals, and New York City's court program. DASNY's new organizational structure has a director

---

[9] Transcript, pp. 25-26. See DASNY mission statement: To be the public finance and construction partner of choice, providing our customers with low cost, quality sources of capital and facilities delivered on time by a responsive innovative team of professionals. (Available at http://www.dasny.org).

[10] Transcript, p. 23.

[11] Transcript, pp. 31-33.

overseeing each program and a Chief Program Manager overseeing the work of each program within the boroughs of New York City.

Paul Casey, Director of Administrative Analysis, testified that he works on developing and documenting policy and procedures, strategic planning, system development and internal controls. Casey works with the Directors, Senior Directors, Assistant Directors and Chiefs to develop procedures for the various DASNY units.[12] His unit posts the finalized procedure on the DASNY Intranet for comment. These procedures explain how to implement DASNY Board policies.[13]

With regard to the development of policies adopted by DASNY's Board, Casey stated that the Chiefs have a role in the development of policy.[14] Casey explained that the procurement policy was developed with the assistance of the Chief, Professional Services Contracts, and the Chief, Construction Services Contracts.[15] Similarly, Casey testified about the manner in which the various units participated in developing a consultant's contract and contract award procedure.[16] He explained that developing a consultant's contract and the contract award procedure was a collaborative effort with the Chief, Project Manager, Procurement Unit and Professional Services Contracts.[17] It

---

[12] Transcript, p. 127.

[13] Transcript, pp. 131-32.

[14] Transcript, pp. 138, 152.

[15] *Id.*

[16] Transcript, pp. 135-36.

[17] Transcript, pp. 140-43.

resulted in the Consultant Section and Award procedure adopted by the DASNY Board.[18]

In describing the process, Casey stated that he received input from the Chiefs during the drafting stage of a policy in order to circulate the draft among the members of the committee that developed the procedure.[19]

Enrico Bianchi, Senior Director of Project Management, testified that prior to the reorganization, both he and VanVleck were "choke points for every single piece that ever arrived in Project Management and Construction . . . it was overbearing. We couldn't get anything done. We needed to elongate authority and responsibility down to a level where we could effectively manage."[20]

Bianchi testified that workload management changed after the reorganization. A Chief and a subset of managers were then responsible to manage the workload and the personnel. During cross-examination, Bianchi stated that during his meetings with his staff, the Directors and Chiefs, the discussion is not "a one-way street."[21] He uses their collective input before any decision is made on a particular issue.[22]

Karen Graber, Director of Procurement, explained the role of the procurement unit. She stated that the unit functions within the Construction Services Division and supports project management, as well as the Authority, in its corporate procurement

---

[18] Transcript, p. 144.

[19] Transcript, pp. 147-8, 150.

[20] Transcript, p. 192.

[21] Transcript, pp. 266-67.

[22] *Id.*

activity.[23] The unit is organized into three functional areas: Professional Services Contracts, Construction Contracts and Purchasing and Interior Design. Graber stated that all three functional areas are staffed by an individual in the title of Chief, as the person directing that operation.

Graber meets weekly with the three Chiefs, in addition to regular daily contact. Professional Services involves the procurement of all types of consultant services, i.e., architects, engineers, construction managers, testing firms and also accountants, auditors, bond counsel and banking institutions.[24] Construction Contracts handles all of the bids and the awards of the publicly-bid contracts, oversees the job contract program, and maintains cost control through the process of charge orders and resolution of contractor's claims.[25]

Graber described how DASNY policies evolve. She noted that certain policies are statutorily required to be approved by the Board. The executive management also develops policy and policies that arise from the various divisions out of the day-to-day operations of the authority.[26] Graber also described how decisions are made by consensus within the group tasked to resolve an issue. She explained that normally the working group comes to consensus and the issue is then brought to the Executive Director for approval or revision.[27] Graber then described the duties performed by the

---

[23] Transcript, p. 277.

[24] Transcript, p. 278.

[25] Transcript, p. 279.

[26] Transcript, p. 282.

[27] Transcript, pp. 145-46, 297 and 316.

Chief, Construction Services Contracts. At the time of the hearing, the incumbent in the title, John Kemp, was responsible for overseeing the publications, bid and award of all construction contracts, as well as subsequent change orders.[28] He was responsible for the job order contracting program and overseeing the cost control function which reviews all bid documents prior to publications.[29] As Chief, Kemp has five employees who report directly to him, and he supervises a total of twenty-three employees. Kemp's responsibility is to determine the lowest responsible bidder. As a result, he is involved on a daily basis with bid rejections, terminations and withdrawals.[30] In this process, Kemp functions with DASNY's Counsel's office and, at times, the Director of Internal Affairs.[31]

Graber explained how Kemp, as Chief, Construction Services Contracts, interacts on a day-to-day basis with other senior staff. She explained that weekly meetings are held with senior staff, including Chiefs, so that information is shared.[32] She gave as an example of Kemp's interaction with senior staff the creation of "at-risk" contracts between the Authority and consultants. Under the at-risk contract, DASNY is acting in the capacity of the project owner and contracts with a construction manager to oversee the completion of the work within the contract period and within the contract price. Thus, the risk is on the construction manager to complete the project on time and

---

[28] Transcript, pp. 478-80.

[29] Transcript, p. 286.

[30] Transcript, pp. 288-89.

[31] Transcript, p. 288.

[32] Transcript, p. 295.

on budget or be penalized. Kemp along with Paul Koopman, Chief, Professional Services Contracts, and Timothy McGrath, Chief, Project Manager, developed these at-risk contracts used by the Authority.[33]

Graber stated that Kemp, as Chief, Construction Services Contracts, does not make an independent judgment as to whom will be awarded a contract, however, she noted that no one person makes a decision alone.[34] Likewise, the decision to terminate a contract with a contractor on a project is not Kemp's to make alone, and there is not otherwise one individual who would alone make such a decision. The decision to renew or terminate a contract with a contractor is done as part of a process by a team that may include the Project Manager, the Senior Director of Project Management, the Construction Manager and himself. Kemp noted that he has made recommendations in the past with regard to the procedure to be followed.[35]

Graber explained how Koopman, in his role as Chief, Professional Services Contracts, oversees two teams of professionals, one focused on project specific contract awards for large capital projects and the other focused on the administration of term contracts that are used to provide services on smaller projects with budgets under five million dollars.[36] He also oversees training services and recently chaired the selection committee for payroll services. He has interacted with senior staff to adjust

---

[33] Transcript, pp. 295-96.

[34] Transcript, p. 330.

[35] Transcript, pp. 520, 535.

[36] Transcript, p. 312.

insurance claims.[37] As an example of this role, Graber explained how Koopman chaired the committee that developed a consultant contract to determine the extent of a loss suffered by a building adjacent to the World Trade Center following the September 11th terrorist attack.

Graber explained that Koopman meets periodically with the American Institute of Architects (AIA) to review concerns regarding DASNY's professional services contract for architects. DASNY does not use the AIA forms. Koopman, in his role as Chief, is responsible to review the DASNY standard agreement and make any necessary adjustment. He then submits his proposed changes to counsel prior to implementation.[38]

Graber noted that the duties performed by the incumbents in the Chief, Construction Services Contracts and Chief, Professional Services Contracts are performed statewide.

DISCUSSION

DASNY argues in its exceptions that the ALJ's determination that the disputed titles functioned as high level supervisors ignored certain record evidence and thereby reached an improper legal conclusion. CSEA, in support of the ALJ's decision, contends that the position of the disputed Chief titles within DASNY's hierarchy relegates the incumbents to high level manager status, but not policy-makers.

CSEA's argument overlooks the business model that DASNY transformed itself into in 2001. It is no longer the rigid vertical model with several layers of management

---

[37] Transcript, p. 313.

[38] Transcript, p. 319.

but instead it was transformed into a hybrid where units function as teams and decisions are made by consensus rather than a single individual.

Section 201.7 of the Act states that:

> . . . Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment . . .

In 1972, following the legislature's amendment to §201.7, which defined those managerial and confidential employees who would be excluded from the Act's coverage, we decided *State of New York*.[39] In that case, we defined the term "formulation of policy". We found that "[i]n government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives."[40] In the context of the term managerial, we next determined who formulates policy. We determined that policy formulation would "include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect." Simply stated, it is the participation with regularity into the decision-making process

---

[39] 5 PERB ¶3001 (1972).

[40] *Id.* at 3005.

that distinguishes a managerial employee from someone who is making a determination of methods of operation that are merely technical in nature.[41] We have held that such a person may be a member of a management team.[42]

We find on this record that correspondence from DASNY, dated May 30, 2003, provides a description of the duties of the titles which are the subject of DASNY's application[43] as well as a list of incumbents in the same title, Chief, Project Manager, who have been previously designated managerial.[44] The ALJ accorded this information no weight in his decision. We find the prior designations of individuals in the Chief, Project Manager title significant. While those designations were made by the Director without a hearing, based upon the stipulations of the parties, the same statutory criteria were necessarily applied by the Director in making them.

Civil Service Law §201.7 requires that, "Employees may be designated as managerial *only* if they are persons (1) who formulate policy…" (emphasis supplied). In fact, the Director's prior decision made the affirmative finding that pursuant to the

---

[41] *See City of Binghamton*, 12 PERB ¶3099 (1979).

[42] *See Buffalo City Sch Dist*, 35 PERB ¶3018 (2002); *Town of Hamburg*, 28 PERB ¶4082 (1995).

[43] ALJ Exhibit 24.

[44] *Supra*, note 4. *But see* ALJ decision, 38 PERB ¶4015, n. 13 (2005). Testimony from DASNY employee indicated that Frank Frasco, Chief Project Manager, CUNY Region, had been designated managerial. Although Frasco was not one of the employees, DASNY sought to exclude in its application, the ALJ found no reported decision making such designation.

parties stipulations, the employees' duties and responsibilities satisfied the criteria set forth in §201.7(a).[45]

While the Act indicates that "employees" are designated, once an employee in a particular title of a public employer is designated, it creates a presumption that future occupants of that position will be treated similarly, unless evidence is adduced to demonstrate a significant diminution of the policy-making duties of the incumbent when compared to the predecessor. To hold otherwise would be contrary to the Act's policy of promoting stability and harmonious and cooperative relationships between government and its employees and would be contrary to the principle of judicial economy.

Here, the record shows that following DASNY's reorganization in 2001, the incumbents in the disputed titles of Chief, Project Manager, assumed more decision-making and policy-making responsibilities than before, not less. So since all parties agreed that the duties described in 2000 were sufficient for designation, we can only conclude that the additional duties further support the designation as managerial of the employees presently occupying the Chief, Project Manager titles at DASNY.

As to the two remaining titles in dispute, Chief, Construction Services Contracts, and Chief, Professional Services Contracts, we find these titles to be managerial. We are not unmindful of the intent of the legislature to narrow the universe of unrepresented employees when it adopted §201.7 of the Act and the amendments thereto. We note,

---

[45] *Dormitory Auth of the State of New York*, 33 PERB ¶4000.11 (2000).

however, that the ALJ's analysis of the duties of the subject titles misinterprets our recent decision in *State of New York (PEF)*.[46]

In *State of New York (PEF)*, *supra*, we found that the Forester 4 had responsibility for the day-to-day operation of his bureau. He supervised a staff of ten employees. He reported to a Director who reported to the Deputy Commissioner of the agency. Between the Deputy Commissioner and the Commissioner of the agency was the Executive Deputy Commissioner. The designated individual had a role in entering into contracts and contract negotiations. He approved contracts even though he was not a signatory. His recommendations were generally followed by his superiors when called upon to give opinions and recommendations to his superiors. These activities are not unlike the duties and responsibilities of the titles in dispute. We held, therefore, that only those employees who have a direct and powerful influence on policy formulation at the highest level will be determined managerial under the formulation of policy criterion.[47]

The ALJ misinterpreted this principle as applying to only those individuals who are at the level of DASNY's Board of Directors or Executive Direction. Such an interpretation ignores the duties actually required and performed by the disputed titles within the organizational structure of DASNY. Policy decisions, other than statutory policies required of the DASNY Board of Directors, begin within the organization's

---

[46] 36 PERB ¶3029 (2003). *See also East Ramapo Cent Sch Dist*, 11 PERB ¶3075 (1978). The Board will look to the duties actually required and performed and not to those duties listed in the job description.

[47] *East Ramapo*, *supra,* at 3084.

working groups, which include the Chief's titles. Each member of the group contributes to the draft policy which ultimately Casey circulates on DASNY's Intranet.

We noted that the evolving needs of government require a different template with which to evaluate the managerial status of a title. As we stated in *State of New York (PEF)*, *supra*, the duties of the title should be the focus rather than the title's position on the organizational chart or salary grade. Casey, Bianchi, Graber and Kemp testified that decisions, including setting new goals, objectives and methods of operation are made by consensus of the working group or team involved in a project which includes the titles in dispute. After reaching consensus, the group or team presents their recommendations to the Executive Director for approval or rejection. We find this model closely resembles the MATRIX/PROJECT Organization Structure where employees from different functions formed teams to work on a project until completion. Business decisions are usually made at the project leader, as well as the top corporate and top function, levels, but nonetheless made by leaders and not followers.[48]

CSEA was able to demonstrate only that none of the incumbents in the disputed titles makes the final decision. This admission, however, is not dispositive of the issue. DASNY's witnesses were unequivocal that decisions are made based upon the recommendations of the working group or team involved in the particular policy and/or procedural issue which includes the input of the disputed titles. Under these circumstances, it is reasonable to conclude that the organizational structure of DASNY

---

[48] *See Jack Kondrasuk, Ph.D., SPHR and John Lewison, SPHR, Organization Structures: A Primer (May, 1988),* available at http://www.shrm.org/hrresources/whitepaperspublished/CMS000268.asp (revised November 2002).

promotes participation in the decision-making process that is more than mere technical advice to single decision-makers.

Both titles, Chief, Construction Services Contracts, and Chief, Professional Services Contracts, are contained within the Office of Construction, Procurement section under Graber's direction. Graber testified that the duties and responsibilities of the title are statewide in scope. Each of the incumbents works independently of Graber and supervises subordinate staff. Each of the incumbents makes recommendations to their respective Directors which are generally accepted because the incumbents are highly regarded because of their experience in their field. Each of the incumbents functions as a member of a management team that assists in the daily operation of DASNY. Thus, the record evidence in this case more than sufficiently establishes the title of Chief, Construction Services Contract, and Chief, Professional Services Contract regularly participate as a member of a management team that develops policies and procedures affecting the direction of DASNY's day-to-day operations in furtherance of its mission to the public.

Based on the foregoing, we grant DASNY's exceptions and reverse that part of the ALJ's decision that denied DASNY's application as to the titles Chief, Project Manager; Chief, Construction Services Contracts; and Chief, Professional Services Contracts.

We hereby designate Nicholas D. Ambrosio, Frank Reda, Jay Goldstein, Annison Cesar, Timothy McGrath and Richard Allison, Chief, Project Managers; John Kemp, Chief, Construction Services Contracts; Paul Koopman, Chief, Professional Services

Contracts; as managerial and Karen Reith, Assistant Director, Budget and Payroll, as confidential.

SO ORDERED.

DATED: November 3, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, VILLAGE OF LAKEWOOD POLICE UNIT, CHATAUQUA COUNTY LOCAL 807

Petitioner,

-and-

CASE NO. C-5506

VILLAGE OF LAKEWOOD,

Employer,

-and-

LAKEWOOD POLICE BENEVOLENT ASSOCIATION, INC.,

Incumbent/Intervenor.

AMENDED CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,[1]

---

[1] The Lakewood Police Benevolent Association, Inc. (PBA), petitioned the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to become an affiliate of CSEA. The Village refused to recognize CSEA as the successor to the PBA. The instant petition was then filed.

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Village of Lakewood Police unit, Chatauqua County Local 807[2] has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time Police Officers of the Village of Lakewood.

Excluded: All others including the Chief of Police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Village of Lakewood Police Unit, Chatauqua County Local 807. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to

[2] The original certification order was issued on June 8, 2005, certifying the Village of Lakewood Police Unit, Chatauqua County Local 807, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The Board was thereafter informed that the correct name of the petitioner employee organization is Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Village of Lakewood Police Unit, Chatauqua County Local 807.

agree to a proposal or require the making of a concession.

DATED: November 3, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member