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State of New York Public Employment Relations Board Decisions from June 4, 2013

New York State Public Employment Relations Board

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46 PERB ¶3015
B/R 45-4017

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HOOSICK FALLS CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. E-2510

HOOSICK FALLS SUPPORT STAFF
EMPLOYEES COUNCIL,

Intervenor,

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

**TABNER, RYAN & KENIRY, LLP (WILLIAM F. RYAN of counsel), for
Employer**

**GLEASON, DUNN, WALSH & O'SHEA (RONALD DUNN of counsel), for
Intervenor**

BOARD DECISION AND ORDER

This case comes to the Board on exceptions by the Hoosick Falls Central School District (District) to a decision by an Administrative Law Judge (ALJ) on its application for the designation of Superintendent of Buildings and Grounds Paul Baker (Baker), School Lunch Manager Heather Brooks (Brooks) and Transportation Supervisor Charles Weedon (Weedon) as managerial or confidential in accordance with the criteria set forth in §201.7(a) of the Public Employees' Fair Employment Act (Act).¹ Each at-issue employee encumbers a job title within the negotiating unit recognized by the

¹ 45 PERB ¶4017 (2012).

District and represented by the Hoosick Falls Support Staff Council (Council), which opposes the District's application.

EXCEPTIONS

With respect to its application for managerial designations, the District asserts that the ALJ erroneously concluded that Baker, Brooks and Weedon are supervisors who do not play major roles in personnel administration and in administering collectively negotiated agreements, and that their anticipated role on behalf of the District in future negotiations would be limited to providing advice concerning current contract language and the feasibility of negotiating proposals. In the alternative, the District contends that the ALJ should have granted its application to designate the three employees as confidential because they assist and act in a confidential capacity to District Business Administrator Pamela Hatfield (Hatfield). The Council supports the ALJ's decision.

DISCUSSION

The applicable facts are fully set forth in the ALJ's decision. They are repeated here only as necessary to address the District's exceptions.

Pursuant to §201.7(a) of the Act, a managerial employee is a person who formulates policy on behalf of an employer, is required to directly assist in the preparation and formulation of an employer's collective bargaining proposals, plays a major role in the administration of an agreement or plays a major role in personnel administration so long as that role is not routine or clerical in nature and requires the exercise of independent judgment. A confidential employee under §201.7(a) of the Act is a person who assists and acts in a confidential capacity to a managerial employee concerning collective negotiations, contract administration or personnel administration.

For over four decades, we have strictly applied the statutory criteria set forth in §201.7(a) of the Act for managerial and confidential designations.² As we stated in *Fashion Institute of Technology (FIT)*:³

Since the 1971 amendment to §201.7(a) of the Act to exclude managerial and confidential employees from coverage under the Act, the Board has held that the statutory criteria for such designations should be applied strictly, in order to preserve existing negotiating units, with all uncertainties resolved in favor of coverage under the Act. This approach stems directly from the text and legislative history of the 1971 amendment.

Our careful scrutiny in making managerial designations is also based upon our recognition that, unlike the National Labor Relations Act, the Act does not exclude supervisors from coverage nor does it define what constitutes a supervisor. As a result, we draw a distinction between employees who perform various supervisory duties and responsibilities, who are covered by the Act, and the much narrower subset of employees with broad powers to develop 'particular objectives of a government or agency thereof in the fulfillment of its mission and the method, means and extent of achieving such objectives.'

We draw a similar distinction between supervisory and managerial employees under the Act with respect to duties related to the administration of an agreement and personnel administration. It is common for supervisors to be involved in the processing of grievances, but a managerial designation will be made, pursuant to §207.1(a)(ii) of the Act, only when it is demonstrated that the supervisor plays a 'major role' in implementing the agreement, including the authority to change the employer's procedures or methods of operation, or engages in a similarly significant role in personnel administration. (Footnotes omitted)

² See *State of New York*, 5 PERB ¶¶3001 (1972); *City of Binghamton*, 10 PERB ¶¶3038 (1977); *Owego-Apalachin Cent Sch Dist*, 33 PERB ¶¶3005 (2000); *County of Ostego* 34 PERB ¶¶3024 (2001).

³ 42 PERB ¶¶3018, at 3061 (2009).

In order to be designated as managerial, the employee must have "fundamental control over the direction and scope of [the employer's] mission" or exercise "independent judgment reflecting substantial discretionary responsibility, including standard setting."⁴ We make managerial designations based upon evidence in the record concerning duties performed or duties that an employee may be reasonably required to perform in the future, rather than merely relying on job titles or job descriptions.⁵

Under our strict application of the statutory criteria, a supervisor will not be designated managerial based on the performance of routine administrative duties such as processing contract grievances at early stages of the negotiated procedure, assigning work duties, recommending hiring and discipline, suggesting ideas concerning budgetary matters, and/or approving timesheets and leave requests.⁶ In a small school district, we will designate an employee as managerial when the facts presented demonstrate that she or he plays a major role in personnel administration such as participating in Board of Education executive sessions where personnel matters

⁴ *State of New York (UCS)*, 30 PERB ¶3067 (1997), *confirmed sub nom. Lippman v New York State Pub Empl Rel Bd*, 263 AD2d 891, at 902, 32 PERB ¶7017, at 7031 (3d Dept 1999).

⁵ *See Town of East Fishkill*, 27 PERB ¶3073 (1994); *City of Jamestown*, 19 PERB ¶3019 (1986).

⁶ *FIT*, *supra* note 3; *State of New York (UCS)*, *supra* note 4; *Vill of Kenmore*, 22 PERB ¶3044 (1989).

are discussed and determined or functions as the superintendent in the incumbent's absence.⁷

In the present case, the District is small, with a single school building for approximately 1,200 students, and a transportation garage. The building is divided into an elementary school and a high school. Each school has its own principal and assistant principal, who are represented in a separate administrators' negotiating unit.

Contrary to the District's arguments, Baker, Brooks and Weedon do not have major roles in personal administration or the administration of negotiated agreements. Business Administrator Hatfield is in charge of the respective departments supervised by Baker, Brooks and Weedon. While each employee functions as a supervisor counseling employees, assigning work, creating work schedules, monitoring time and attendance, making purchases and submitting budgetary recommendations to Hatfield, those routine duties are not sufficient under §201.7(a) of the Act and our precedent to support a managerial designation. Similarly, the fact that they draft employee evaluations, participate in the hiring process, investigate and make recommendations regarding discipline, and hear grievances at the informal stage do not demonstrate that they are managerial employees under the Act.

Next, we turn to the District's argument that the three at-issue employees should be designated as managerial because they may be reasonably required to assist the District in collective negotiations. In *Copiague Union Free School District*,⁸ we set forth

⁷ See *Mount Morris Cent Sch Dist*, 41 PERB ¶13020 (2008); *Manchester-Shortsville Cent Sch Dist*, 16 PERB ¶13055 (1983).

⁸ 8 PERB ¶13095, at 3163 (1975), *confirmed sub nom*, *Copiague Union Free Sch Dist v New York State Pub Empl Rel Bd*, 55 AD2d 596, 9 PERB ¶17025 (2d Dept 1976).

the applicable standard for a managerial designation based upon an employee's role in collective negotiations on behalf of the employer:

We do not find that the Legislature intended that the fact an employer consults with supervisors as to problems encountered in the current contract, or as to the feasibility of proposals, that such supervisory personnel would be deemed managerial. In the conduct of negotiations, admittedly certain principals were present from time to time at the negotiations sessions, but they had no direct involvement or participation in such negotiations sessions. It is clear from the facts herein that they were present simply as observers, or at most as resource persons. In our view, the phrase "to assist directly" means direct involvement and participation in the negotiating process and that being at the negotiations table as an observer, resource person, or other non-participatory role is not sufficient to support designation of managerial.

The evidence in the present case demonstrates that Baker, Brooks and Weedon have not played any role in collective negotiations on behalf of the District, and the District does not intend to make them participants in future negotiations.⁹ As Hatfield's testimony makes clear, the District seeks managerial designations of the three employees for the purpose of using them merely as resources to discuss negotiation proposals and the operations of their respective departments.¹⁰ The fact that Hatfield is reluctant to speak with them concerning those issues without managerial designations is not relevant to our application of the criteria for a managerial designation.

⁹ Contrary to the District's suggestion, the fact that Baker is a former member of the Council's negotiating team is not a basis under the Act for him to be designated as managerial. See District's Statement of Exceptions to Administrative Law Judge's Decision, pp. 9-10.

¹⁰ Transcript, pp. 39-40, 46-7, 50, 64-5, 85.

Finally, we deny the District's alternative argument that Baker, Brooks and Weedon should be designated as confidential because of access to labor-related information. As we explained in *Town of Dewitt*,¹¹

The definition of a confidential employee incorporates a two-part test for designation. The person to be designated must assist a §201.7(a)(ii) manager in the delivery of the duties described in that subdivision. Assistance alone, however, is not enough to support a designation. In addition, the person assisting the §201.7(a)(ii) manager must be one acting in a confidential capacity to that manager. The first part of the test is duty oriented, while the second is relationship oriented. As the two parts of the test are distinct, satisfaction of one might not satisfy the other. A person assisting a manager through the performance of duties confidential in nature is not necessarily one performing those duties in a position which has a confidential relationship to the §201.7(a)(ii) manager. A person in a confidential relationship to a managerial employee might never perform or be expected to perform any of the duties warranting a confidential designation.

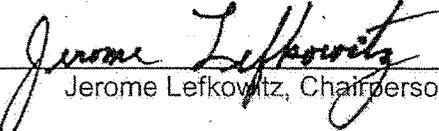
Here, Baker, Brooks and Weedon do not meet the criteria for a designation as confidential employees. On the present record, we are not persuaded that they currently perform confidential duties for Hatfield relating to collective negotiations, contract or personnel administration. Indeed, Hatfield stated during her testimony that she avoids discussing confidential issues with these employees because they are in the Council-represented negotiating unit. Furthermore, their limited access to personnel records and their limited role concerning discipline are not sufficient evidence warranting confidential designations under the Act.

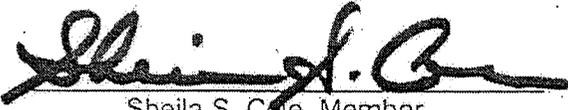
Based upon the foregoing, we affirm the ALJ's decision denying the District's application.

¹¹ 32 PERB ¶3001 at 3002 (1999). See also *New York Power Auth*, 38 PERB ¶3003 (2005).

IT IS, THEREFORE, ORDERED that the District's application to designate Baker, Brooks, and Weedon as managerial or confidential pursuant to §201.7(a) of the Act is denied.

DATED: June 4, 2013
Albany, New York


Jerome Lefkowitz, Chairperson


Sheila S. Cole, Member