

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

STATE OF NEW JERSEY  
(DIVISION OF STATE POLICE),

Public Employer-Petitioner,

-and-

DOCKET NO. CU-80-42

STATE TROOPERS NCO ASSOCIATION  
OF NEW JERSEY, INC.,

Employee Organization.

SYNOPSIS

The Director of Representation, adopting the findings and recommendations of a hearing officer, excludes sergeants assigned to the Office of the Governor, the Office of the Attorney General, and the Personnel Bureau of the Division of State Police from the unit of State Trooper Enlisted Non-Commissioned Officers. The sergeants described above perform functions which provide them with access and exposure to State confidential labor relations materials, and are therefore confidential employees. Sergeants assigned to the Division's Budget Bureau do not have access and exposure to confidential labor relations materials and shall remain in the NCO unit.

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Employee Organization.

Appearances:

For the Public Employer-Petitioner -  
Melvin E. Mounts, Deputy Attorney General

For the Employee Organization  
Cerreto & LaPenna  
(Jerome J. LaPenna, of counsel)

DECISION

On December 12, 1979, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the State of New Jersey ("State") raising a question concerning the composition of a collective negotiations unit comprised of enlisted non-commissioned officers in the Division of State Police represented by the State Troopers NCO Association of New Jersey, Inc. ("Association"). The State seeks to have the NCO's in the following positions removed from the Association's negotiations unit on the grounds that they are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.: (1) two sergeant positions assigned to the Governor's staff, (2) one sergeant position

assigned to the Attorney General's staff, (3) four sergeant positions assigned to the Personnel Bureau of the Division of State Police, and (4) four sergeant positions, known as budget coordinators, assigned to the Budget Bureau of the Division of State Police. <sup>1/</sup>

Pursuant to a Notice of Hearing, hearings were held before Commission Hearing Officer Charles A. Tadduni on October 27, 28, 1980, June 9 and October 6, 1981, in Trenton, New Jersey at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties submitted briefs, the last of which was received by October 15, 1982. The Hearing Officer submitted his Report and Recommendations on July 26, 1983, a copy of which is attached hereto and made a part hereof. Neither party has filed exceptions to the Hearing Officer's Report and Recommendations.

The undersigned has carefully considered the entire record herein, including the transcripts, exhibits, and the Hearing Officer's Report and Recommendations, and finds and determines as follows:

1. The State of New Jersey is a public employer within the meaning of the Act, is the employer of the employees involved herein and is subject to the provisions of the Act.

<sup>1/</sup> The original Petition had included a sergeant position assigned to the Chief Justice of the New Jersey Supreme Court. However, subsequent to the filing of this Petition, that sergeant position was changed to a lieutenant position. Accordingly, there no longer being a sergeant position assigned to the Chief Justice, the State amended its Petition to delete the request to clarify the NCO unit to exclude the sergeant position assigned to the Chief Justice. The Association objected to the amendment, contending that the function was still non-confidential and that it would seek to take action concerning this particular matter in some other proceeding. The Hearing Officer overruled the objection and accepted the State's requested amendment. The undersigned concurs with the Hearing Officer's action.

2. The State Troopers NCO Association of New Jersey, Inc. is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association is the majority representative of a negotiations unit comprised of enlisted non-commissioned officers in the Department of Law & Public Safety, Division of State Police.

4. The Hearing Officer recommended the following: (1) that the sergeants assigned to the Office of the Governor, the Office of the Attorney General and the Personnel Bureau of the Division of State Police were confidential employees within the meaning of the Act and should be removed from the Association's negotiations unit, and (2) the sergeants assigned to the Budget Bureau of the Division of State Police were not confidential employees and should remain in the Association's negotiations unit. <sup>2/</sup>

The undersigned has fully reviewed the record, focusing upon evidence concerning the extent of the above employees' access and exposure to confidential information involved in the collective negotiations process in the course of their functional responsibilities.

The record indicates that the two sergeants assigned to the Office of the Governor are primarily responsible for ensuring the

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<sup>2/</sup> Confidential employees are not eligible for inclusion in a collective negotiations unit. See N.J.S.A. 34:13A-3(d).

N.J.S.A. 34:13A-3(g) defines confidential employees as those:

...employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

safety of the Governor. They also function as the Governor's drivers and general aides. In carrying out their duties the sergeants are necessarily in constant close proximity to the Governor.

The record also reveals that the Governor actively participates in the planning of the State's labor relations policies and also makes the final decisions concerning the State's position on various collective negotiations issues such as salaries and benefit packages. The sergeants, in carrying out their job responsibilities, are privy to the various conversations, meetings and documents that make up the Governor's workday, including those dealing with collective negotiations. Also, as part of their duties, the sergeants have been regularly required to retrieve and photocopy specific documentary material which may be found in the Governor's collective negotiations files and which may require perusal of contents in order to identify the requested material. In addition, the sergeants have access to the Governor's mail, which has included collective negotiations material. The record further reveals that Harold Hodes, at one time the Governor's Chief of Staff, had, as a general practice discussed with the Governor matters including collective negotiations issues during the course of travel with the Governor and within earshot of the assigned Sergeant who was driving the automobile.

The sergeants assigned to the Office of the Attorney General perform essentially the same functions as their counterparts in the Governor's office -- bodyguard, driver and general aide. The Attorney General is personally involved with labor relations issues as they affect the Department of Law and Public Safety and all other State

departments. Moreover, the Attorney General serves as the legal advisor to the State Office of Employee Relations.

As in the Office of the Governor, the sergeants in the Attorney General's office, as a function of their duties, are in constant close proximity to the Attorney General and are, in fact, exposed to conversations, documents, messages, and files containing collective negotiations materials. For example, on one occasion a sergeant was given a note detailing two alternative State proposals which were in response to a monetary proposal presented to the State by the NCO Association during collective negotiations. The sergeant was asked to contact the head of the labor relations department in the Division of State Police to obtain the cost-out of each of the alternative proposals. The sergeant later returned with the requested information.

The record established that the sergeants in the Office of the Governor and the Office of the Attorney General have access and exposure to confidential State materials involved in the collective negotiations process that render their membership in the Association unit incompatible with their official duties.

The State also seeks the removal of four sergeants who are assigned to the Personnel Bureau of the Division of State Police. The Bureau, which consists of medical, payroll and recruiting, research and promotions units, is generally responsible for personnel recruitment, promotions, payroll, health and medical claims of police and civilian employees of the Division of State Police. The Bureau also performs research and data collection for the Division's Labor Relations

Unit for use in contract negotiations and grievance processing. This unit is an independent unit which is physically housed adjacent to the Bureau and is headed by Capt. Edward Martin. Martin's responsibilities include contract negotiation and grievance processing.

Sergeants Soos and Ditman, who are assigned to the medical unit, are involved in the initial processing of medical claims. As part of this function the claim will be evaluated and a recommendation will be forwarded to the labor relations unit concerning whether or not the claim should be paid. Captain Martin exercises final authority with respect to the payment of the claim. Grievances by employees concerning medical claims are not infrequent. During the processing of these grievances, Martin will consult extensively with the sergeants in the medical unit and review pertinent information leading to grievance decision making.

Sergeant Ferguson is assigned to the recruitment, research and promotions unit and is involved in determining which candidates meet the promotions criteria and also what weight to assign to various factors used in making promotions. The record indicates that there have been several grievances filed over how promotional criteria were applied and how factors were weighted.

Sergeant Black, who is an assistant to the head of the Personnel Bureau, administers the position reclassification program.

While the sergeants generally perform tasks which vary according to the unit to which they are assigned, <sup>3/</sup> the Bureau is

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<sup>3/</sup> No sworn police employees are assigned to the payroll unit. In addition, the record indicates that there has been a certain amount of "cross-training" of Bureau personnel which permits individuals to work in areas of the Bureau other than their normal work areas.

not functionally compartmentalized in a strictly formal way and as a result the sergeants in the Bureau have access to all of the records maintained by the Bureau, with the exception of the medical records of sworn police employees. The record reveals that in preparing for contract negotiations Captain Martin consults with the Bureau personnel, including the four sergeants under review herein, on a wide range of issues including salary and benefit costs, benefit usage, seniority of employees and how many employees are at each increment step. The record further reveals that Sergeants Black, Soos and Lt. Treavors (who was Sergeant Ferguson's predecessor) were involved in researching various information needed to formulate a shift differential proposal for the State. In addition, it is apparent that Captain Martin frequently discusses various aspects of contract negotiations and grievance arbitration with Bureau personnel including the Sergeants.

The record offers substantial support for the Hearing Officer's findings that the Personnel Bureau is a primary information source and processor for the labor relations unit and also that Bureau personnel, in their overall employment, have substantial involvement with sensitive confidential labor relations matters.


The four sergeants assigned to the Budget Bureau of the Division of State Police are known as Budget Coordinators and under direction are responsible for the formulation and administration of the Division's budget. However, the Budget Coordinators are not privy to confidential labor relations information. Rather, in formulating a budget, the coordinators utilize cost information from the previous budget. It is not until after negotiated increases have been finalized



that such information is given to the coordinators. In addition, the Budget Coordinators are not involved in collective negotiations and do not cost-out negotiations proposals. Therefore, the record does not establish that Budget Coordinators are confidential employees within the meaning of the Act.

Accordingly, the undersigned finds that the disputed sergeants in the Division of State Police assigned to the Office of the Governor, the Office of the Attorney General and the Personnel Bureau are confidential employees within the meaning of the Act and are inappropriate for inclusion in any negotiations unit. The undersigned therefore adopts the Hearing Officer's recommendation that those personnel be removed from the Association's unit effective immediately. <sup>4/</sup> The undersigned also adopts the Hearing Officer's recommendation that the sergeants functioning as Budget Coordinators are not confidential employees within the meaning of the Act and are properly included in the Association's unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Carl Kurtzman, Director

DATED: September 23, 1983  
Trenton, New Jersey

<sup>4/</sup> In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
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-and-

Docket No. CU-80-42

STATE TROOPERS NCO ASSOCIATION  
OF NEW JERSEY, INC.,

Employee Organization.

SYNOPSIS

A Commission Hearing Officer recommends that the unit of all enlisted Non Commissioned Officers be clarified as follows:  
(1) The Hearing Officer concluded that the NCO positions within the Division of State Police assigned to the Office of the Governor, the Office of the Attorney General and the Personnel Bureau of the Division of State Police perform functions which provide them with access and exposure to confidential labor relations materials sufficient to render their membership in any negotiations unit incompatible with their official duties. Accordingly, these positions are deemed confidential within the meaning of the Act and the unit should be clarified to exclude same.

(2) The Hearing Officer concluded that the NCO positions assigned to the Budget Bureau of the Division of State Police (Budget Coordinators) do not have access and exposure to confidential labor relations material which is sufficient to render their inclusion in any collective negotiations unit incompatible with their official duties. The Hearing Officer found that said positions are not confidential within the meaning of the Act. Accordingly, the Hearing Officer recommended that the unit be clarified as including said positions.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer-Petitioner  
Melvin E. Mounts, Deputy Attorney General

For the Employee Organization  
Cerreto & LaPenna, Esqs.  
(Jerome J. LaPenna, Esq.)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit (Docket No. CU-80-42) was filed with the Public Employment Relations Commission (the Commission) on December 12, 1979 by the State of New Jersey (Petitioner; the State) seeking clarification of a negotiations unit comprised of all enlisted, non-commissioned officers in the Division of State Police. By its petition, the State is seeking to clarify said negotiations unit to exclude the following positions: (1) the two sergeant positions (NCOs) assigned to the Staff of the Governor; (2) the sergeant position assigned to the Staff of the Attorney General; (3) the four sergeant positions assigned to the Personnel Bureau of the Division of State Police; and (4) the four sergeant positions (denominated Budget Coordinators) assigned to the Budget

Bureau of the Division of State Police. <sup>1/</sup> The State Troopers NCO Association of New Jersey, Inc. (the Association) opposes the unit clarification urged by the State and contends that the NCO negotiations unit be clarified as including the above-referred positions. Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on October 27 and 28, 1980, June 9, 1981 and October 6, 1981, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Briefs were submitted by the parties by October 15, 1982. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The State of New Jersey is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), is subject to its provisions and is the employer of the employees who are involved herein.

2. The State Troopers NCO Association of New Jersey, Inc. is an employee organization within the meaning of the Act and is subject to its provisions.

3. The Association is the statutory majority representative of a negotiations unit of certain employees of the State comprised as follows: all enlisted Non-Commissioned Officers in the

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<sup>1/</sup> The original Petition had included a sergeant position assigned to the Chief Justice of the New Jersey Supreme Court. However, subsequent to the filing of this Petition, that sergeant position was changed to a lieutenant position. Accordingly, there no longer being a sergeant position assigned to the Chief Justice, the State amended its Petition to delete the request to clarify the NCO unit to exclude the sergeant position assigned to the Chief Justice. The Association objected to the amendment, contending that the function was still non confidential and that it would seek to take action concerning this particular matter in some other proceeding. The Hearing Officer overrules the objection and has accepted the State's requested amendment (See T-2, pp. 3-5).

Division of State Police but excluding Troopers and Commissioned Officers. <sup>2/</sup>

4. Accordingly, there is a question concerning the composition of a negotiations unit and the matter is properly before the Hearing Officer for a Report and Recommendations.

#### I. Positions of the Parties

The State contends that the employees in the above-referred positions are confidential employees within the meaning of the Act and therefore should be excluded from the NCO (and any other) negotiations unit. In support of its position, the State notes that all of the other employees employed in the offices where the asserted confidentials work are confidential employees. The State asserts that the sergeant positions in the Offices of the Governor and the Attorney General are regularly exposed to materials and discussions dealing with labor-management relations between the State and the employees organizations representing various groups of State employees. The State argues that the involvement of the Budget Coordinators in the State's budgetary process provides them with knowledge of certain personnel and collective negotiations issues to an extent which renders their inclusion in the NCO unit inappropriate. Finally, the State notes that the sergeants in the Personnel Bureau have regular access to personnel, payroll and medical records of Division employees, participate in or are aware of management discussions concerning collective negotiations issues and strategy of the State and assist the Division's labor relations unit in the handling of certain collective negotiations matters.

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<sup>2/</sup> Exhibit J1.

The Association disagrees with the State's analysis. It contends that the record shows that the NCOs in the Personnel Bureau have access to raw data materials and have no direct connection with the collective negotiations processes. It is argued that much of the material with which they work is not labor relations oriented. The Association argues that the Budget Coordinators also have no direct (or indirect) connection to the collective negotiations process. The involvement of Budget Coordinators in the initial preparation of the Division's budget occurs so long before the final budget is approved and so long before negotiations actually begin that no advanced labor relations knowledge is gained through their involvement in the budget process.

Regarding the NCOs assigned to the Governor's and the Attorney General's offices, the Association argues that only a very vague connection exists between these employees and any labor-management materials. It is asserted that neither their primary duties nor their functional responsibilities or knowledge in connection with the collective negotiations process would render these employees confidential.

Accordingly, the issue to be determined in this matter is whether the employees in the above-enumerated positions are confidential employees within the meaning of the Act; if a particular employment position is determined to be confidential, then the unit will be clarified to exclude such position; if an employment position is determined not be confidential, then the unit will be clarified as including such position.

II. Analysis: Discussion of Law  
and Findings of Fact

Discussion of Law -- N.J.S.A. 34:13A-3(g) defines confidential employees as:

...employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

The Commission has addressed the issue of confidential employee status in various factual settings. <sup>3/</sup> Underlying all of the Commission's confidential employee status determinations is the requirement that the alleged confidential employee be linked in some manner -- directly or indirectly -- to management's workings vis-a-vis the collective negotiations process. <sup>4/</sup> Several cardinal factors have emerged from these decisions to become the framework for examination of confidential employee disputes.

Initially, one must examine the functions of the individual and/or the specific office for whom the alleged confidential renders services. Is that person (or office) involved in the labor relations process (negotiations, contract administration, grievance handling or preparations for negotiations or preparations for grievance handling) on behalf of management? Is the person (or office)

<sup>3/</sup> See In re Bd/Ed of Twp. of West Milford, P.E.R.C. No. 56 (1971); In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); In re Orange Bd/Ed, D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); In re Twp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979); In re City of Rahway, D.R. No. 80-12, 5 NJPER 506 (¶10261 1979); In re Old Bridge Bd/Ed, D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); In re Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); and In re River Dell Reg. Bd/Ed, D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

<sup>4/</sup> This labor relations nexus imperative is consistent with the statutory definition of confidential employees and with the approach which has been taken by the NLRB to this issue for over 40 years. See NLRB v. Hendricks County Rural Electric Corp., U.S. 108 LRRM 3105 (1981).

for whom the alleged confidential works involved in such personnel processes as employee hire, evaluation, promotion, discipline and/or discharge? Is that person (or office) involved in the budget formulation/adoption process? With regard to the budgetary process, what confidential personnel or labor relations cost data is the person (or office) thus privy to? Is there restricted access to this budgetary information?

The next major consideration in the determination of a confidential employee dispute is the specific set of functions ascribed to the alleged confidential employee. What is the nature of the work performed by the alleged confidential? What is the nature of the alleged confidential's work relationship with the person for whom the work is done (and/or the office for which it is done)? Does the confidential, in the course of performing his/her functions, have access to and knowledge of confidential labor relations materials? Do they handle such confidential materials in the course of performing their duties (data collection, typing, filing, mail distribution, telephone messages etc.)? Do they have advanced knowledge of certain labor relations material, strategies or policies, or other (temporarily) confidential material which eventually will be made public? Are they expected to continue performing that part of their duties which exposes them to the confidential materials? If they have had access to and knowledge of confidential materials, has the exposure been of such a degree so as to render the alleged confidential's membership in any negotiations unit inappropriate? Finally, in this regard, it should be noted that in determining the confidential status of a contested employment posi-



tion, the Act does not require that the alleged confidential have a continuous pattern of involvement -- or even a regular involvement -- with the collective negotiations process. Rather, what is required for a finding of confidentiality is an involvement with the collective negotiations process to such an extent so as to render the confidential's membership in any collective negotiations unit incompatible with his/her job duties. <sup>5/</sup>

Sergeant Positions (NCOs) Assigned to the  
Governor's Office and the Attorney General's Office

Harold Hodes, then the Chief of Staff to the Governor, testified concerning the two NCOs assigned to the Governor's office. Hodes testified that he spent all of his time with the Governor -- either with the Governor in his Trenton office or traveling with the Governor when the Governor was required to be away from Trenton. Hodes further testified that the Governor took an active role in the planning and consideration of the State's labor relations policies and that the Governor made the final decisions concerning the State's position on various and sundry collective negotiations issues such as salaries, benefit packages, etc.

The NCOs' primary responsibility is to insure the safety and protection of the Governor at all times. They also function as the Governor's driver and general aide. In performing these roles, the NCOs necessarily are always either literally with or quite near to the Governor. They travel with the Governor at all times and drive him to wherever he is required to be.

At the State House, the NCOs are present either in the Governor's actual office or just outside thereof. The NCOs receive

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<sup>5/</sup> In re Twp. of Dover, supra.

a copy of the Governor's written briefing schedule so that they are always apprised of the upcoming schedule. The briefing schedule is a summary document produced daily which indicates with whom the Governor is meeting, at what time and what topics will be on the agenda for each appointment; often written memoranda from a cabinet member or other staff member are attached to the briefing schedule to provide further information about a specific topic on the day's schedule. Such memoranda may relate to collective negotiations issues.

At times, the NCOs are in the Governor's office when he receives calls; they are in Hodes' office when he receives calls. The NCOs are not normally asked to leave the office during such conversations. While there have been occasions when the NCOs were asked to leave during certain conversations due to the nature of the discussions, those discussions did not concern collective negotiations. The NCOs take messages for the Governor and/or his deputies if no secretaries are available to do so (especially at times when the Governor is working outside normal business hours, or when the Governor is at Morven, the Governor's residence).

At the State House, the NCOs sometimes receive incoming mail for the Governor. (This occurs more often at Morven or after regular business hours at the State House.) Sometimes this mail is open and includes collective negotiations material.

NCOs are sometimes asked to photocopy documentary materials. There is no restriction on the types of material which the NCOs are requested to copy and such material may include collective negotiations material.

The NCOs bring people and messages in to see the Governor. If the Governor is in a meeting when the NCO enters, the meeting does not pause while the NCO is in the room; rather, it continues without interruption.

The NCOs have access to all of the files (including the collective negotiations files) in the Governor's office. They are regularly asked to retrieve specific documentary materials from these files, which would necessitate their reading through material in the file.

While driving in the car with the Governor, Hodes has often utilized that time to brief the Governor on various topics, including various collective negotiations issues. Hodes periodically updates the Governor concerning the status of negotiations and asks the Governor for his decisions concerning particular matters. Hodes indicated that he has thus briefed the Governor while traveling with the Governor in his (the Governor's) car. Hodes indicated that the NCO driving the Governor's car is able to hear any conversation in the vehicle because there is no partition between the driver and passenger compartments and because the Governor often rode in the front passenger seat.

On one occasion, Hodes set forth a salary package which the State was considering for the State Police (Trooper) unit to one of the NCOs assigned to the Governor's office and asked for his thoughts on it. 6/

Judith Yaskin, then the First Assistant Attorney General, testified concerning the NCO assigned to the Attorney General's

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6/ While this type of consultation is acknowledged not to be part of the NCO's job, Hodes points out that he would pose such a question to them only because he is so familiar with them.

Office. Yaskin performed as Acting Attorney General during the period between the resignation of Attorney General Degnan and the appointment of Attorney General Zazzali; further, she would periodically perform as Acting Attorney General whenever the Attorney General was out of State. In addition, Yaskin's office was located adjacent to the Attorney General's office and she would work closely with the Attorney General on a regular basis. Yaskin was assigned to coordinate and administer to collective negotiations activities within the Department of Law and Public Safety. During the State employee job actions which occurred in the course of the 1979 contract negotiations, Yaskin was assigned to coordinate State Police activity, court proceedings and liaison with the Governor's office. She further noted that the Attorney General's Office serves as the legal advisor to the State Office of Employee Relations.

The NCO's primary function is to provide for the protection and safety of the Attorney General: he acts as the Attorney General's bodyguard, driver and aide. He schedules all transportation and extended safety details required by the Attorney General's activities. In performing these tasks, like the Governor's NCOs, the NCO -- or the trooper -- assigned to the Attorney General are necessarily almost always with or quite near to the Attorney General. Although the NCO shares an office located adjacent to the Attorney General's office with a confidential secretary, <sup>7/</sup> the NCO is physically with the Attorney General for much of any given day -- either in the Attorney General's own office, in his car or traveling

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<sup>7/</sup> All of the Attorney General's mail passes through this office (in opened condition) so that whatever personnel sit in that office have access to all such material.

(long distance) with the Attorney General as is required by his schedule. Particularly when the Attorney General works into the evening, the NCO is situated at a desk adjacent to the Attorney General's own desk. There is no place within the Attorney General's office which is restricted to the NCO. There are general files in the Attorney General's office and a small section of confidential files. The NCO has access to the general files (which contain collective negotiations materials) but not the confidential files. (Access to the confidential files is restricted to the Attorney General and two of his secretaries; these files do not contain collective negotiations material.) The NCO is regularly requested to retrieve specific materials from the general files. Particularly when the Attorney General works into the evening or when he works on weekends or holidays, the NCO is often the only one present in the office with the Attorney General. Thus, the NCO will answer phones and take messages, retrieve documentary materials from files and handle internal memoranda, mail and persons waiting to meet with the Attorney General. Some of these calls and documentary materials concern collective negotiations. The NCO is responsible for shredding confidential documents as directed.

Yaskin has traveled with the Attorney General in his car (which is driven by the NCO) and discussed various topics, including collective negotiations. Yaskin detailed several instances wherein she had discussed confidential labor relations matters with other State officials in the presence of the Attorney General's NCO or had directed the NCO to procure certain confidential labor relations information from other State officials. Specifically, on

one occasion, Yaskin was in a discussion with the Treasurer about the possible response to a monetary proposal presented to the State by the NCO Association. She called the NCO in to the meeting, gave him a note that detailed two alternative proposals on it; she directed the NCO to call Captain Edward R. Martin (head of the labor relations in the Division of State Police) to get the cost-out of each of the alternative proposals; later in the meeting, the NCO returned to Yaskin and provided the requested cost information. 8/

On another occasion, while in the Cabinet Room (a room adjacent to the Governor's office wherein persons waiting to meet with the Governor often congregate), Yaskin discussed with Harold Hodes certain problematic effects of a monetary proposal made by the STFA. On that occasion, the Attorney General's NCO was present with Yaskin during said discussion. 9/

On yet another occasion during the 1979 job actions, Yaskin had a discussion concerning the role of the State Police and their morale with the Superintendent of State Police. The Attorney General's NCO was present with Yaskin during that discussion, having accompanied her to the location of the meeting at the Attorney General's direction. 10/

Further, Yaskin notes that she would periodically travel with the Attorney General in his car. While traveling, she would review various pending matters with the Attorney General. Yaskin indicates that some of these discussions concerned collective negotiations matters and that the Attorney General's NCO (the driver)

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8/ Tr. 3, p. 54.

9/ Tr. 3, p. 57.

10/ Tr. 3, pp. 71-72. See also Tr. 3, pp. 72-75 for other examples of Yaskin's utilization of the NCO and Trooper aides.

was clearly able to hear such discussions.

Finally, Yaskin stated that both Attorney Generals Degnan and Zazzali did a large amount of memo and letter dictation while being driven to various destinations by the NCO. Yaskin stated that she has received numerous memos concerning collective negotiations matters from the Attorney General and while she could not testify that she had directly witnessed the dictation of such a memo by the Attorney General in his car with the NCO driving, Yaskin indicated that an inference could be drawn that at least some of that labor relations correspondence had been dictated by the Attorney General while he was being driven in the car by the NCO.

In examining the functions of the persons and the offices for whom the alleged confidentials work, it is abundantly clear and uncontroverted that both the Governor and the Attorney General (and their respective offices) are extensively involved at the highest levels of the collective negotiations process on behalf of management. The NCOs assigned to the Governor and the Attorney General, respectively, have close relationships with the two officials. These close relationships developed as a result of the NCOs performing their primary function -- protection of the official -- and other central functions of their positions: driving the official to various destinations, otherwise traveling with the official and acting as a general aide to the official. The Governor and Attorney General NCOs spend alot of time around their assigned official in their role of bodyguard and driver. The other tasks which they perform seem to flow naturally as a result of spending the large amounts of time with the official. Thus, under appropriate circum-

stances, the NCOs will be present during meetings between their assigned official and other persons, answer phones and take messages for the official, retrieve material from files, procure designated information as directed from various sources, etc. The various tasks performed by the NCOs bring them into direct contact with the myriad subject matters with which State governments are concerned -- including the collective negotiations process. Because of the high degree of involvement of these executive officials with the collective negotiations process and because of the extensive amounts of time which the NCOs spend in close proximity to these officials, to presume that the NCOs can be somehow isolated from all -- or even most -- of the collective negotiations involvements of these executive officials and their offices is unrealistic.

The record provides several illustrations of direct contacts between the NCOs and management's collective negotiations apparatus and materials: To wit, Hodes testified that he regularly discussed State business (including labor relations matters) with the Governor while riding in the Governor's car which was driven by one of the NCOs assigned to the Governor's office. Yaskin gave similar testimony vis-a-vis the Attorney General's NCO. Further, Yaskin recited several instances of conversations which she had with other State officials concerning confidential labor relations matters in the presence of the Attorney General's NCO.

Based upon the foregoing, the undersigned concludes



that the NCOs assigned to the Governor and the Attorney General have access to and knowledge of confidential labor relations materials. Such contact with confidential labor relations materials renders their membership in any collective negotiations unit incompatible with their job duties. Accordingly, the undersigned concludes that the NCOs assigned to the Governor and the Attorney General are confidential employees within the meaning of the Act.

Sergeant Positions(NCOs) Assigned to the  
Personnel Bureau of the Division of State Police

The Personnel Bureau is part of the Administration Section of the Division of State Police. The Personnel Bureau has three subunits: (a) Payroll Unit; (b) Medical Unit and (c) Recruiting, Research and Promotions Unit. The general functions of the Bureau include payroll calculation and processing; personnel recruitment; assessment and processing of personnel promotions; assessment, processing and payment of various medical claims; calculation and payments for health benefits; maintenance of various personnel and payroll records for all personnel -- sworn and non-sworn (civilians) -- employed in the Division of State Police; and doing research and data collection as requested by the labor relations unit for use in contract negotiations and grievance processing.

During these proceedings, the Personnel Bureau was headed by Capt. Joseph Pagnillo; Pagnillo has two assistants: Lt. Vandenberg and Sgt. Black. The Payroll Unit has no sworn personnel assigned thereto. Sgts. Soos and Ditman are assigned to the Medical

Unit. The Recruitment, Research and Promotions Unit is headed by Lt. Treavors; Sgt. Furgeson is assigned to the Recruitment, Research and Promotions Unit. The contested positions within the Personnel Bureau are those occupied by Sgts. Black, Soos, Ditman and Furgeson.

The Personnel Bureau is located on the second floor of the New Administration Building. At the head of the second floor hallway is Pagnillo's office; the next office is one which contains two Head Payroll Clerks (civilian employees); next is the Payroll Records Office wherein six civilian clericals work; and at the end of the hallway (on Pagnillo's side) is a records storage area which contains the personnel records of Division employees. On the opposite side of the hallway, opposite Pagnillo's office, is an office occupied by Lt. Vandenberg and Sgts. Black and Soos; next down is a Head Clerk's office (civilian); next is an office with three civilian employees who deal with roster information; next is an office occupied by Sgt. Furguson and Trooper Reed; next is an office occupied by Lt. Treavors and his secretary; at the end of the hallway is the Medical Unit office which houses the medical records of sworn personnel, Sgt. Ditman and three civilian clerks. The Labor Relations Unit is located on the second floor of the Old Administration Building, through a set of doors at the beginning of the hallway housing the Personnel Bureau.

All of the employees in the positions contested herein have access to all of the records maintained by the Personnel Bureau, with the exception of medical records of sworn personnel -- those

records have access limited to only those employees assigned to the Medical Unit. (Medical records of non-sworn personnel are contained within the employee's regular personnel file.)

Promotions among sworn personnel are handled by the Recruitment, Research and Promotions Unit; promotions among non-sworn personnel are handled directly through Capt. Pagnillo's office. The section within the Division where the promotion is to be made will set the promotion criteria. The criteria will then be communicated to the Recruitment, Research and Promotions Unit (this will occur before any vacancy announcement is made). Thereafter, the vacancy announcement is made and eventually candidates present themselves for consideration. The Recruitment, Research and Promotions Unit would then assess the candidates -- they would check to insure that each candidate meets the promotion criteria and they would assign appropriate weights to certain factors vis-a-vis each candidate. This function involves the exercise of some amount of subjective judgment. Furgeson is assigned to do some criteria checks and factor weighting. There have been several grievances involving how promotional criteria were applied and how various factors were weighted in the promotion process. Lt. Treavors usually has supplied such information regarding promotional procedure in any grievance proceeding. While Lt. Treavors would be the likely one to testify at any arbitration hearing on such a grievance, Furgeson, because he does become involved in some of these matters, may be assigned to provide such information.

Position reclassification is administered by Sgt. Black. Reclassifications are initiated by the commander of the section where the position to be reclassified is situated. Initially,

Black will complete a desk audit -- a detailed log of activities actually performed by the person in the position to be reclassified; thereafter, Black will discuss the requested reclassification with Capt. Pagnillo and make recommendations thereon to Pagnillo. Finally, Black will draft a reclassification questionnaire and submit same to Pagnillo. Pagnillo then will make a recommendation to the Superintendent of State Police (whose approval is needed for a reclassification) concerning the requested reclassification. Pagnillo testified that he gives considerable weight to Black's recommendations.

Capt. Edward Martin is the head of the labor relations unit within the Division of State Police. Martin's responsibilities include contract negotiations and grievance processing on behalf of the Division. Martin testified that he regularly requests information from the Personnel Bureau concerning contract negotiations (proposals and counterproposals) and grievance processing.

Sgts. Soos and Ditman are involved in the initial processing of medical claims. In processing a claim, Soos will make an evaluation and recommendation as to whether or not a claim should be paid. Capt. Martin will subsequently decide whether to pay the claim or not. Grievances are frequently filed concerning the Division's initial disposition of medical claims. In processing a medically related grievance, Martin will consult extensively with Soos and Ditman concerning a particular claim. Martin will lay out specific, pertinent facts about the grievance, his own thinking on the subject, including possible resolutions of the problem, so that Soos or Ditman can search out the information that Martin

needs to support his position. Based in part upon the information which he receives in response to such an inquiry, Martin will determine how to proceed with a particular grievance. Martin has also followed this approach with the Personnel Bureau with regard to non-medical grievances. 11/

Martin testified about a medical claim where a sergeant was hurt playing racquetball and filed a medical claim asserting the injury to be service related -- inasmuch as the employee was playing to stay in shape for his annual physical. Soos was involved in the initial decision not to pay the claim. Subsequently, a grievance was filed. Soos again became involved in the matter researching the facts of the grievance, the Division policy concerning such incidents, and any prior similar cases which may have occurred. Soos assessed all of this and recommended that the claim was not service connected. Armed with the information which Soos had compiled and Soos' conclusion, Martin decided how to proceed with the grievance (he denied it).

The record shows that in preparing for contract negotiations, Martin often confers with Personnel Bureau employees on a wide range of topics -- salary costs, benefit usage, benefit costs, seniority of employees, how many employees are at each increment step, etc. 12/ While some of this type of information may be available to the Association upon approval of a request for "information to prepare for negotiations" by the Office of Employee Relations, Martin indicated that not all of the information which he

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11/ Tr. 1, pp. 29-33, 68-69, 77 and 87. Tr. 2, pp. 7, 13, 17, 19, 20, 37 and 38.

12/ Tr. 1, pp. 60-62.

requests from the Personnel Bureau would be available to the public or the Association. Further, Martin testified that by his conversations in the Personnel Bureau with Capt. Pagnillo and other Personnel Bureau employees, personnel working therein would sometimes become aware of a potential, State-proffered proposal Martin was contemplating. Martin stated that in discussing contract proposal information or grievance information with Personnel Bureau employees, he was forthright with them, and never attempted to conceal the proposals for which he was seeking the information; further, he often laid out considerable factual background for them and his own thinking so that they would better understand what it was he was after. 13/

Martin testified concerning negotiations preparation by the State. In preparing for recent negotiations, the State had occasion to prepare a proposal concerning a shift differential. In putting this proposal together, Personnel Bureau employees were utilized to research various aspects of the information needed to formulate and implement the proposal (if it was eventually agreed upon). Martin testified that when the Personnel Bureau was working on this matter, there was much discussion with the within the Personnel Bureau about the shift differential proposal among Personnel Bureau employees. Martin stated he was certain that the employees of the bureau were all aware of what was going on, based upon the material which was being prepared and the conversations which were occurring. Involved in this project were, in addition to Pagnillo and Martin, Lt. Vandenberg, then-Sgt. Treavors (occupying the

position now occupied by Sgt. Ferguson), Sgts. Black and Soos and a number of civilian personnel. <sup>14/</sup>

Based upon the foregoing, the undersigned concludes that the Personnel Bureau is a primary information source and processor for the labor relations unit. The labor relations unit requests information from the Personnel Bureau about specific, ongoing labor relations matters (grievances or contract negotiations). The information requests from labor relations and their interaction with the Personnel Bureau is such that the Personnel Bureau personnel are aware of the topic being worked on and of the State's approach thereto. In addition to the contract negotiations and grievance involvements of the Personnel Bureau, they are involved in other potentially sensitive and possibly confidential areas concerning promotions and position reclassifications. In the area of promotions, Ferguson has been involved in checking candidates' qualifications against promotional criteria and weighting certain factors vis-a-vis specific candidates. Certain mechanics of the promotional process have been the subject of several grievances. Further, the personnel in this section have a certain amount of advanced knowledge about promotions and criteria. A similar argument may be made about position reclassifications. While the involvement of Personnel Bureau employees in the promotion and reclassification processes may not be enough, standing alone, upon which a finding of confidentiality may be based, taken together

<sup>14/</sup> Tr. 2, pp. 25-35. Martin further indicated that a similar effort was undertaken when the State had put together its proposal concerning super seniority. Note that the involvement of Sgts. Soos and Treavors in such a project is consistent with Pagnillo's testimony that the NCOs in the Personnel Bureau are cross-trained so that they are able to be utilized outside their immediately assigned areas as necessary.

with the involvements of Personnel Bureau employees in the preparation for grievance and contract negotiations (and their exposure to conversations concerning same), the undersigned is convinced that Personnel Bureau employees have a sufficient involvement with the collective negotiations process so as to render their membership in any collective negotiations unit incompatible with their job duties. Accordingly, the undersigned concludes that the NCOs assigned to the Personnel Bureau of the Division of State Police are confidential employees within the meaning of the Act.

Sergeant Positions Assigned to the Budget Bureau  
of the Division of State Police (Budget Coordinators)

Testimony concerning Budget Coordinators was taken primarily from Capt. Daniel Jordan and Lt. Arthur Biggs, who both at one time had been Budget Coordinators. Capt. Jordan is the Division Fiscal Control Officer; Lt. Biggs is the Assistant Fiscal Officer.

At the time of this hearing, there were four Budget Coordinator positions in the Administrative Section of the Division of State Police. The four Budget Coordinators are directly supervised by the Assistant Administrative Officer. The Budget Coordinators and the Assistant Administrative Officers are responsible for the initial formulation of the Division's budget. The Budget Coordinators are further responsible for the administration of the Division's budget, once it is finalized by the Governor and the Legislature.

The four coordinators divide the budgetary responsibilities as follows:

- a) Sgt. Clark -- Patrol, Crime Control and Marine Police sections.
- b) Sgt. Kurtiak -- Police Services & Emergency Management Services.



- c) Sgt. Norton -- State Government Security and Administrative sections.
- d) Sgt. Paulillo -- Grants Management section.

The budget formulation process begins in approximately May and runs through October, at which time the proposed budget is due at the Division level. <sup>15/</sup> In formulating the budget, the Budget Coordinators collect budget requests from the supervisors of the various units, bureaus and sections within their area of responsibility. Thereafter, the Budget Coordinators review and research the requests and make recommendations (to their supervisors) on each element of the budget. Finally, they combine the various budget components into one coherent whole which is submitted to the Division. The Division budget is then presented by the Superintendent of State Police to the Department of Law and Public Safety where it is again reviewed. The Superintendent will utilize the Budget Coordinators as resource persons to assist him in answering questions and researching backup material at this level of budget review. Next, the budget proceeds to the Governor's office and finally, to the Legislature, where hearings are held upon each department's budget. At these levels of the review process, Budget Coordinators again may be asked to provide additional data or to assist the Superintendent in answering questions about the budget. However, after their submission of the initial budget proposal on October 1, the role of the Budget Coordinators is to react to questions coming down from the department level and to provide background material to justify budget requests. <sup>16/</sup>

<sup>15/</sup> The proposed budget which is due on October 1 is for the upcoming fiscal year -- i.e., the budget due to the Division on October 1, 1982 was for Fiscal Year 84 (7/1/83--6/30/84).

<sup>16/</sup> Tr. 4, pp. 7-8 and 32-35.

After the budget is formally approved by the Legislature, the Budget Coordinators meet with supervisory staff to study any cuts which might have been made to their initial submission and to determine how they may best be allocated within the Division.

Finally, Budget Coordinators are involved in administering the approved budget during the fiscal year: they monitor the spending of their various departments during the fiscal year. They keep track of how much money is being spent and how the money is being spent. Where an account is overspent, the Budget Coordinators will recommend fund transfers from one account to another in order to cover any shortfalls. <sup>17/</sup>

While the budget itself is a public document, <sup>18/</sup> some of the materials and information utilized by the Budget Coordinators in the formulation process are not public. The Budget Coordinators have access to various computer printouts from the Fiscal Control Officer; where positions are assigned within the Division; money actually paid for salaries; amounts actually paid for overtime, shift differential, tuition reimbursement, mileage reimbursement, and uniform allowance.

From the foregoing, it is plain that the Budget Coordinators work for an office involved in the budget formulation process. However, further inquiry must be made with regard to their status as confidentials. Specifically, what personnel cost data or labor relations materials are these employees privy to as a result of their budget formulation/administration responsibilities?

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<sup>17/</sup> Tr. 2, pp. 47-65.

<sup>18/</sup> Not only is the approved budget a public document, but the budget document submitted by the Governor to the Legislature (for legislative hearings and approval) is also a public document. (See Tr. 2, p. 94)

To the extent that they are privy to how much money is actually spent, much, if not all, of such data is available either to the public at large or to employee organizations as part of their preparation for negotiations.

The budget formulation process and the collective negotiations process are two entirely separate, independent processes whose occurrences sometimes (temporally) overlap -- i.e., they proceed on separate, sometimes parallel tracks, often with different players. Ultimately, however, each process will affect the other, although those effects will often be indirect. One process will not be a part of the dynamics of the other process.

As an example, the undersigned has undertaken an application of the record testimony to this fiscal year's (F.Y. 84: 7/1/83 through 6/30/84) budget preparation process and to the collective negotiations process. The actual budget preparations for the Division's fiscal 84 budget would, in accordance with the record, have begun in May, 1982. The Budget Coordinators would have assembled the entire initial budget and submitted it to the Superintendent by October 1, 1982. Thereupon, the Superintendent would have presented the budget to the Department of Law and Public Safety. Thereafter, the budget would have been presented, reviewed and passed upon by the Governor's Office and the Legislature. Eventually (in this case, in late June, 1983), the Legislature passed a revised budget and the Governor approved same. However, after October 1, 1982, in accordance with the evidence in this record, the Budget Coordinators' role in this process was greatly diminished, being reduced essentially to responding to questions and requests for information furnished to them from the Department of Law and Public Safety.

On the other hand, with regard to contracts which expired on June 30, 1983, negotiations between the State and the various majority representatives of the State employee collective negotiations units have generally not yet begun by October 1, 1982. <sup>19/</sup>

N.J.A.C. 19:16-2.1 states:

The parties shall commence negotiations for a ...successor agreement...no later than 150 days prior to the public employer's required budget submission date.

The required budget submission date for the State of New Jersey is July 1, 1983; 150 days prior thereto is February 1, 1983. While negotiations may begin anytime prior to February 1, 1983 that the parties agree to do so, it must be considered unlikely that formal negotiations for a successor to the agreement expired on July 1, 1983 would have begun in earnest by October 1, 1982. At the outside, negotiations might just be getting under way late in 1982 for a successor to the agreement due to expire in mid-1983.

Thus, the Budget Coordinators' role in the budget formulation process was mostly over by the time contract negotiations were getting under way.

When the budget is initially put together by the Budget Coordinators, the cost information utilized for personnel salary and benefit items is essentially taken from last year's actual expenditure for those items. They use last year's salary figures to derive their budgetary salary component. The Budget Coordinators do not initially budget for increment changes or negotiated increases. Those items are budgeted for by the State Office of Employee Relations. <sup>20/</sup> Budget Coordinators have no direct role in either the

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<sup>19/</sup> Of course, this is not to presume that the parties have not begun their respective preparations for negotiations.

<sup>20/</sup> Tr. 2, p. 94; Tr. 4, p. 52.

actual negotiations process or in negotiations preparation -- formulating employer proposals and counterproposals, costing out various proposals and counterproposals, etc. <sup>21/</sup>

The Fiscal Control Officer is called upon to do cost outs of various negotiations proposals and packages. While the Budget Coordinators are called upon to provide cost data for various items, they are specifically not called upon to cost out labor relations proposals or personnel cost proposals. <sup>22/</sup> The cost outs of labor relations proposals done by the Fiscal Control Officer are not generally made available to the Budget Coordinators. However, after the collective negotiations agreement has been finalized, such cost-outs may be made available to the Budget Coordinators. <sup>23/</sup>

Lt. Biggs testified that as a Budget Coordinator he would try to get the latest fiscal information available regarding all the costs relevant to his areas of budgetary responsibility. <sup>24/</sup> As Assistant Fiscal Control Officer, Lt. Biggs stated that during the 1981 collective negotiations, he inquired about negotiated salary and benefit costs prior to a finalization of the collective negotiations agreements involving Division employees. However, Lt. Biggs further testified that he could not recollect whether negotiated salary and benefit cost information had been made available to him when he was a Budget Coordinator; nor could he testify whether such cost information was now made available to Budget Coordinators <sup>25/</sup> during ongoing negotiations. After the contracts (in-

<sup>21/</sup> Tr. 2, pp. 89-93; Tr. 4, pp. 26-27.

<sup>22/</sup> Tr. 2, pp. 67-71. Tr. 4, pp. 12-16, 24 and 48-52.

<sup>23/</sup> Tr. 4, pp. 12-17, 25.

<sup>24/</sup> Tr. 4, p. 11.

<sup>25/</sup> Tr. 4, pp. 22-25.

volving Division employees) are finalized, the Budget Coordinators are apprised of the negotiated increases so that such cost figures may be incorporated into a budgetary revision. <sup>26/</sup>

Biggs' testimony on this issue is fairly unclear. At some points he states that as a Budget Coordinator, he did solicit and receive personnel cost information from the Division of State Police Labor Relations Unit while both the budgetary and collective negotiations processes were ongoing. <sup>27/</sup> However, at several other points in his testimony he states either that he cannot recollect specific instances of requesting and receiving such personnel cost information as a Budget Coordinator <sup>28/</sup> prior to contract finalization, or his testimony is unclear on the point -- particularly about at what point in time he received such information: was it when he was a Budget Coordinator or the Assistant Fiscal Officer? was it before or after the contract was finalized? <sup>29/</sup> -- for example, he indicates at one point in the testimony that his inquiries were about items that were already agreed upon during negotiations. <sup>30/</sup>

Further, in response to questions by the Hearing Officer, Biggs states that the hypothetical situation set forth by the Hearing Officer in his question never occurred -- i.e., that while contract negotiations were ongoing, as a Budget Coordinator, Biggs might inquire of a labor relations unit officer what a final salary

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<sup>26/</sup> Tr. 4, pp. 24-26.

<sup>27/</sup> Tr. 4, pp. 29-31, 41-43.

<sup>28/</sup> Tr. 4, pp. 23-25, 28-29.

<sup>29/</sup> Tr. 4, pp. 11, 27-28, 59-60.

<sup>30/</sup> Tr. 4, pp. 45-47.

settlement was likely to be. 31/

Thus, the clear and uncontroverted testimony about the role of Budget Coordinators indicates that they are integrally involved in the initial formulation of the Division's budget; that negotiated increases are not initially budgeted -- rather, the previous fiscal year costs are used; that after negotiated increases have been finalized, such information is communicated to Budget Coordinators for incorporation into their budget figures; that Budget Coordinators specifically do not cost out negotiations proposals; that Budget Coordinators are not involved in collective negotiations -- directly or indirectly; and that Budget Coordinators are involved in the administration of the approved budget.

Based upon the foregoing, the undersigned concludes that Budget Coordinators are not privy to confidential labor relations information -- they do not handle or work on confidential labor relations materials (such as management proposals) and they are not exposed to management's confidential labor relations data in the course of performing their responsibilities. They do have access to cost figures of various kinds -- generally, data which

31/ Tr. 4, pp. 52-61. This is consistent with the Hearing Officer's earlier conclusion that the Budget Coordinators' role in the budget process was largely over by the time negotiations were getting under way. It is also consistent with Capt. Jordan's testimony on this point. At this juncture, the Hearing Officer would make the following general observations -- In the experience of the Hearing Officer, labor relations professionals tend to be cautious and will play their hand close to the vest. The Hearing Officer finds it highly improbable, and absent absolutely clear and unequivocal testimony on the issue, would specifically decline to make a finding that a professional negotiator would -- in the midst of ongoing negotiations -- ruminate with an "outsider" (anyone outside the labor relations unit) about the likely settlement (re salary and benefits) which would result from the negotiations.

is either public information, or material which employee organizations may have access to, or non labor relations financial data. However, their access to such information and the performance of their duties do not provide a sufficient collective negotiations involvement so as to render their membership in any collective negotiations unit incompatible with their job duties. <sup>32/</sup> Accordingly, the undersigned concludes that the Budget Coordinators (NCOs assigned to the Budget Bureau) are not confidential employees within the meaning of the Act.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

Upon consideration of the entire record in this matter and the foregoing discussion, the Hearing Officer concludes and recommends as follows: (1) The NCO positions in the Division of State Police assigned to the Office of the Governor, the Office of the Attorney General and the Personnel Bureau are confidential positions within the meaning of the Act and therefore are inappropriate for inclusion in any negotiations unit. Accordingly, it is recommended that that portion of the State's petition seeking to clarify the Association's unit to exclude these positions should be granted and given immediate effect.

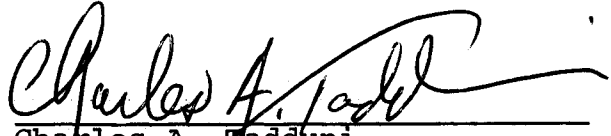
(2) The NCO positions assigned to the Budget Bureau (Budget Coordinators) are not confidential employees within the meaning of the Act and therefore they are appropriately included in the negotiations unit represented by the State Troopers NCO

<sup>32/</sup> The Budget Coordinator whose area of responsibility was Grants Management -- the coordination and management of federal grant monies -- was not shown to be involved in the formulation and administration of the Division's budget. However, there is also nothing in the record to suggest that the duties of that position are in any way related to confidential labor relations matters.



Association of New Jersey, Inc. Accordingly, it is recommended that that portion of the State's petition seeking to clarify the Association's negotiations unit to exclude these positions be denied.

Respectfully submitted

  
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Charles A. Tadduni  
Hearing Officer

Dated: July 26, 1983  
Trenton, New Jersey