

P.E.R.C. NO. 94-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Public Employer-Petitioner,

-and-

Docket No. CU-H-90-75

NEW JERSEY TURNPIKE  
SUPERVISORS' ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission dismisses a clarification of unit petition filed by the New Jersey Turnpike Authority. The Authority sought to remove twenty-three assistant section chiefs from a negotiations unit of primary level supervisors in the departments of tolls and maintenance. The Commission finds that any actual or potential substantial conflict of interest between toll plaza supervisors and assistant section chiefs is de minimis.

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SUPERVISORS' ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner, Schwartz, Tobia & Stanziale, attorneys (Frank R. Campisano, on the exceptions)

For the Employee Representative, Loccke & Correia P.A., attorneys (Michael J. Rappa, of counsel)

DECISION AND ORDER

On May 29, 1990, the New Jersey Turnpike Authority filed a petition for clarification of unit. The Authority seeks to remove 23 assistant section chiefs from a negotiations unit of primary level supervisors in the departments of tolls and maintenance. That unit is represented by the New Jersey Turnpike Supervisors' Association.<sup>1/</sup>

The Authority contended that the assistant section chiefs were managerial executives excluded from coverage under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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<sup>1/</sup> An amendment concerning the title of systems control supervisor was withdrawn at hearing.

It also contended that assistant section chiefs supervise toll plaza supervisors, raising a conflict of interest that warrants removing the assistant section chiefs from the negotiations unit. The Association contended that the assistant section chiefs are not managerial executives and do not supervise toll plaza supervisors.

On August 6, 1991, the Director of Representation issued a Notice of Hearing. On September 20, October 24, 28, and 29, and November 7, 1991, Hearing Officer Illse E. Goldfarb conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On March 22, 1993, the Hearing Officer recommended dismissing the petition. H.O. No. 93-3, 19 NJPER 188 (¶24092 1993). She found that assistant section chiefs do not formulate policy or direct its effectuation and concluded that they are not managerial executives within the meaning of the Act. She also found that assistant section chiefs do not play a substantial role in evaluating and disciplining toll plaza supervisors and that their primary function is to investigate and report to the next higher level, the section manager. She concluded that any conflict of interest between assistant section chiefs and toll plaza supervisors is de minimis and does not warrant breaking up the existing unit.

On April 19, 1993, the Authority filed exceptions. It objects to the Hearing Officer's conclusion that any conflict of

interest between the assistant section chiefs and toll plaza supervisors is de minimis. It claims that the Hearing Officer found that assistant section chiefs do play a significant role in disciplining toll plaza supervisors. It also claims that the Hearing Officer failed to find that assistant section chiefs have made several effective recommendations of discipline against toll plaza supervisors; assistant section chiefs report rule infractions committed by toll plaza supervisors; section managers rely on the disciplinary recommendations of assistant section chiefs; assistant section chiefs have a role in the job performance evaluations of toll plaza supervisors; and the long-standing paramilitary tradition of the tolls department emphasizes the superior-subordinate relationship between assistant section chiefs and toll plaza supervisors. The Authority did not file exceptions concerning the Hearing Officer's conclusion that assistant section chiefs are not managerial executives.

On May 13, 1993, the Association filed a reply. It contends that disciplinary recommendations made by assistant section chiefs are independently reviewed and are therefore not effective recommendations; reporting of rule infractions involves merely passing along sign-in sheets or shortage reports that plaza supervisors fill out themselves; the only example of disciplinary action by an assistant section chief was extraordinary and immediately countermanded; assistant section chiefs have a minimal role in evaluations; and the paramilitary tradition as a

generalized concept has no relevance here where the circumstances are reviewed case-by-case.

Pursuant to N.J.A.C. 19:11-8.8, we transfer this case to ourselves for appropriate action. We have reviewed the record. The Hearing Officer's findings of fact (H.O. at 3-24) are extensive and accurate. They address the duties of the director of tolls, the five section managers who report directly to the director, the 23 assistant section chiefs who are assigned to the five sections, and the 107 toll plaza supervisors who are assigned to the 27 turnpike interchanges and who directly supervise the toll collectors. We incorporate her findings of fact with these additions based on the Authority's exceptions. Although we believe that the Hearing Officer adequately found the facts in these areas, we make these additions so that we may consider the specific incidents the employer has raised in its exceptions.

Section manager James Lefferts testified that assistant section chiefs informed him that plaza supervisors were unwilling to accept the constant lateness of a particular plaza supervisor. On direct examination, Lefferts testified that he asked the assistants for their recommendations concerning what to do and they told him that some action had to be taken; "compassion through verbal conversation wasn't working, and we had to exercise something on paper to try to make him come around" (3T68-3T69). Lefferts testified that he accepted that recommendation (3T69). The supervisor was given a Notice of Disciplinary Action

specifying that he was subject to a three day suspension (C-5e). He waived his right to a hearing and was given a one day suspension (C-5d). On cross-examination, Lefferts testified that he relied heavily on the input of his predecessor section manager who had previously issued three disciplinary notices to the plaza supervisor (3T71). He also testified that he relied heavily on the assistants because he was new to the area and was not familiar with the personalities (3T71).

Section manager Richard J. Magerkurth testified that if he goes on vacation and assistant section chiefs become aware of a situation that requires disciplining a toll collector or a toll plaza supervisor, they can write a report suggesting the recommended discipline and forward it to the director of tolls. If he is not on vacation, assistant section chiefs report to him, and he reviews the matter and then forwards a recommendation to the director. He further testified that in the past, assistants had recommended a course of discipline to him, but he could not recall a particular incident (2T78-2T79). In general, Magerkurth felt that section managers had to rely on recommendations from assistant section chiefs because the assistants work in the field around the clock and section managers work 9 to 5, with weekends off (2T79-2T80).

Magerkurth also testified that one of the assistants' duties is to record if someone comes in late or is absent from an overtime assignment. He conceded that the function is "clerical"

(3T55). For example, when a toll plaza supervisor was an hour late, it was reported to the assistant section chief who placed it in the absence and overtime report for the day. That report was then turned over to section manager Magerkurth. Magerkurth decided to issue a verbal warning to the supervisor, but the assistant probably had no further role in the matter (3T47).

Section manager Frank White testified to a similar incident where a supervisor called out late for a tour. It was logged in the toll plaza supervisor's log sheet and reported by the assistant (1T80). White testified that he has relied on the recommendations of the assistant section chiefs with regard to discipline (1T83). In another incident, it came to Magerkurth's attention through the absence and overtime report that the supervisor had failed to produce a doctor's note. Magerkurth issued a warning which was delivered to the supervisor by the assistant section chief. Magerkurth also testified about an incident where a supervisor bypassed a toll collector when canvassing for overtime. The collector filed a grievance and the assistant informed Magerkurth who disciplined the supervisor. White testified about a similar incident where he discussed the problem with the assistant section chief to see to it that supervisors do it correctly in the future (1T93-1T94). White also testified that assistants see to it that toll plaza supervisors and collectors are in uniform (1T124-125).

Newly promoted toll plaza supervisors are evaluated by section managers with primary input from other supervisors and

some input from assistant section chiefs (4T22; 2T112; 5T22). Section manager Magerkurth testified that he follows the evaluation recommendations of assistant section chiefs about half the time (2T119).

We first consider whether assistant section chiefs are managerial executives within the meaning of the Act. In the absence of exceptions on this issue, we adopt the Hearing Officer's recommendation that they are not. The record does not support a finding that assistant section chiefs formulate management policies and practices, or are charged with directing the effectuation of such management policies and practices. N.J.S.A. 34:13A-3(f).

We next consider whether some other reason warrants removing assistant section chiefs from the existing unit of primary level supervisors. N.J.S.A. 34:13A-3(d), -5.3, and -6(d), read together, authorize supervisory employees to organize together into negotiations units separate from nonsupervisory employees. No clear statutory language, however, permits all such supervisory employees to join a single negotiations unit, regardless of the gradations of duties of particular supervisors. There must still be a community of interest under N.J.S.A. 34:13A-5.3. In that regard, West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971), states:

[i]f performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial



conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. Id. at 425-426.

Under this test, the simple fact that one group of supervisory employees exercises some degree of oversight over another group of supervisory employees does not automatically mean that those supervisors lack a community of interest. If this were so, there would have to be a separate negotiations unit for each and every level of employees, a result potentially disruptive of supervisory and superior officer units throughout the State. State v. State Prof. Ass'n of N.J., 64 N.J. 231 (1974). There must be a determination that there is a substantial actual or potential conflict of interest with respect to their duties and obligations to the employer in relation to each other. Id. at 427. That determination must be made on the record.

Assistant section chiefs have no authority to hire or fire toll plaza supervisors. Although they do not formally evaluate toll plaza supervisors, they, along with other toll plaza supervisors, advise section managers about the performance of new toll plaza supervisors who are on their probationary period. This limited role played by assistant section chiefs in performance evaluation does not create any conflict of interest greater than that among the toll plaza supervisors themselves whose duties require them to report any occurrences that jeopardize smooth operations. See Edison Tp. Bd.

of Ed., D.R. No. 82-8, 7 NJPER 560 (¶12249 1981) (mere finding of evaluative responsibility does not, per se, give rise to conclusion that there is a potential for substantial conflict).

Moreover, assistant section chiefs have no independent authority to discipline toll plaza supervisors. Any instances of supervisor misconduct must be reported to the section managers or, in their absence, to a higher level of supervision. Decisions on minor discipline are made by the section manager with notice to the director of tolls. Decisions on more serious disciplinary matters are made by the director.

In its exceptions, the Authority argues that assistant section chiefs effectively recommend discipline. But its examples do not rise to the level of effective recommendations. In one case, an assistant section chief was simply passing along the recommendations of toll plaza supervisors that something more than a verbal warning had to be given to one of their colleagues. In another, the assistant section chief asked that a supervisor who had refused an assignment be charged with insubordination. Before any action was taken, however, the section manager conducted his own investigation and after "careful consideration and speaking personally" to the supervisor, suspended him and recommended to the director that he be terminated or reduced in rank. The director then suspended the toll plaza supervisor five days in addition to the suspension time already served.

The Authority carefully manages its operation to insure that the large sums of money it handles are accounted for. There are numerous recordkeeping requirements that, in effect, force employees to report their own errors and omissions. Notice of these errors and omissions is passed up from the toll collectors to the director through various levels of supervision. This structure minimizes any independent role that assistant section chiefs might play in monitoring the work of toll plaza supervisors. Nevertheless, both toll plaza supervisors and assistant section chiefs may be disciplined for not reporting or investigating misconduct - but on this record, there is no evidence of abuse evidencing a conflict of interest.


Finally, any conflicts of interest between toll plaza supervisors, who oversee the individual toll plazas, and assistant section chiefs, who coordinate the activities of the plazas, is de minimis in light of the role played by section managers in the management of the workforce. Significant disciplinary decisions are made at the section manager level or higher. There are few, if any, decisions that are not subject to independent analysis by a higher authority. See Township of Teaneck, E.D. No. 23, NJPER Supp. 465, 466 (¶114 1971).

Accordingly, based on this record, we find that any actual or potential substantial conflict of interest between toll plaza supervisors and assistant section chiefs is de minimis and that the Authority's petition should be dismissed.

ORDER

The unit clarification petition is dismissed.

BY ORDER OF THE COMMISSION

  
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O.F. Wenzler  
Acting Chairman

Acting Chairman Wenzler, Commissioners Bertolino, Goetting, Grandrimo, and Smith voted in favor of this decision. None opposed. Commissioner Regan was not present. Chairman Mastriani abstained from consideration.

DATED: August 24, 1993  
Trenton, New Jersey  
ISSUED: August 24, 1993

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Docket No. CU-H-90-75

NEW JERSEY TURNPIKE  
SUPERVISORS' ASSOCIATION,

Employee Representative.

SYNOPSIS

A Hearing Officer recommends that the Public Employment Relations Commission find that the Assistant Section Chiefs, employed by the New Jersey Turnpike Authority, are not managerial executives within the meaning of the Act. The Hearing Officer found that the Assistant Section Chiefs do not possess the authority to formulate and effectuate department of tolls policy nor control personnel decisions.

The Hearing Officer further recommends that the Commission find that the conflict of interest addressed by the parties is de minimis.

A Hearing Officer's Report and Recommendation is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

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Appearances:

For the Public Employer-Petitioner  
Schwartz, Tobia & Stanziale, attorneys  
(Kent A.F. Weisert, of counsel)

For the Employee Representative  
Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

The New Jersey Turnpike Authority filed a Petition for Clarification of Unit on May 29, 1990 with the Public Employment Relations Commission. The Authority seeks to remove approximately 23 assistant section chiefs from a unit represented by the New Jersey Turnpike Supervisors' Association consisting of primary level supervisors in the departments of tolls and maintenance.<sup>1/</sup>

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<sup>1/</sup> The Authority filed an amendment on June 18, 1992, also seeking to remove the the title of systems control supervisor. On September 21, 1992, the first day of the hearing, the Authority withdrew its objection to the inclusion of this title in the bargaining unit.

The Authority argues that the assistant section chiefs supervise the toll plaza supervisors who are in the same bargaining unit; and therefore, a conflict of interest exists between the two titles. The Authority also contends that assistant section chiefs are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association denies that the assistant section chiefs supervise toll plaza supervisors or that assistant section chiefs are managers.

On August 6, 1991, the Director issued a Notice of Hearing.<sup>2/</sup> Five days of hearings were conducted on September 20, October 24, 28, 29 and November 7, 1991. The parties stipulated certain facts, submitted exhibits and examined witnesses. The parties waived oral argument. Both parties submitted post-hearing briefs, the last of which was received on May 14, 1992.<sup>3/</sup>

Based upon the entire record, I make the following:

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<sup>2/</sup> This matter was initially consolidated with a Clarification of Unit petition, Docket No. CU-H-91-5, filed by the Association. The petition, which sought to include approximately 53 titles in the existing unit, was subsequently withdrawn.

<sup>3/</sup> Exhibits are designated as follows: Commission exhibits are "Cm", joint exhibits are "J," the Authority's exhibits are "E," and the Association's exhibits are "C." Transcript references are designated as: "1T" for the September 20 hearing; "2T" for the October 24 hearing; "3T" for the October 28 hearing; "4T" for the October 29 hearing; and "5T" for the November 7, 1991 hearing.

FINDINGS OF FACT

1. The New Jersey Turnpike Authority is a public employer within the meaning of the Act and the employer of the assistant section chiefs; and that the New Jersey Turnpike Supervisors' Association is an employee representative within the meaning of the Act. The parties' collective bargaining agreement was effective from July 3, 1989 to June 30, 1991. The Association represents a unit of about 220 supervisory employees in the titles of assistant foremen, maintenance assistants, water and sewerage foremen, assistant control supervisors, system control supervisors, training supervisor tolls, toll equipment maintenance supervisors, toll plaza supervisors and assistant section chiefs, the title in dispute (J3).

2. The Chairman and the Board of Commissioners oversee the operations of the Authority. The executive director reports to the Chairman and the Commission and is responsible for the daily management of the 2,500 employees employed by the Authority. The chief engineer reports to the executive director and is responsible for the departments of engineering, maintenance, operations and tolls, which operate on a 24-hour workday basis.<sup>4/</sup> The directors of these four departments, including Director William J. Burke of the department of tolls, report to the chief engineer (Cm1a; 1T24; 1T56).

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<sup>4/</sup> The other five departments of human resources, administrative services/technology, law, public affairs and finance/budget are under the executive director.



3. Director Burke is responsible for the 1,184 employees working in the department of tolls, who collect toll revenues and operate and maintain the 27 turnpike interchanges or toll plazas servicing the exits located along the turnpike (1T10). The interchanges or toll plazas are identified by one of five sections in which they are located: Section 1 includes the interchanges for exits 1 through 5; section 2 includes the interchanges for exits 6 through 8A; section 3 includes the interchanges for exits 9 through 13; section 4 includes the interchanges for exits 13A through 15E and the Newark Bay extension; and section 5 includes the interchanges for exits 16 through 18W (Cm1b). Sections 1 and 2 comprise the southern division and sections 3, 4 and 5 comprise the northern division (Cm1b).

Reporting directly to Director Burke are five section managers, each of whom are assigned to a section (1T18).<sup>5/</sup> Reporting to the five section managers are 23 assistant section chiefs, the title in dispute, who are also assigned to sections. Beneath the assistant section chiefs are 107 toll plaza supervisors who are assigned to interchanges within each section (1T10-1T11). Reporting to the toll plaza supervisors are toll

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<sup>5/</sup> A tolls distribution manager, a superintendent of tolls equipment and maintenance and one administrative section manager also report directly to Director Burke (C1b; 1T10).

collectors who are represented by IFPTE, Local 194, a unit of non-supervisory employees (1T17).<sup>6/</sup>

The department operates three, eight hour shifts in a 24-hour workday. The first, or midnight shift, is between 10:30 p.m. and 6:30 a.m. The second shift is staggered between two starting times: Shift 2a is between 6:30 a.m. to 2:30 p.m.; and shift 2b is between 10:30 a.m. to 6:30 p.m. The third shift is 2:30 p.m. to 10:30 p.m (J3, Article VIII, B; 1T28; 2T40).

Assistant section chiefs, toll plaza supervisors and toll collectors work rotating shifts and rotating days (J3, Article VIII.B.; E6a-E6c; T122-1T123). Section managers work a regular work week, 9 a.m. to 5 p.m. (1T28; 1T96; 2T80), although they may adjust their usual hours to make unannounced spot checks at any time during the department's 24-hour workday (2T69-2T70). Assistant section chiefs are the highest ranking supervisor on duty in their sections during the first shift and at the beginning of the second shift and at the end of the third shift (1T63; 1T117).

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<sup>6/</sup> The titles of section manager, assistant section chief and toll plaza supervisor have corresponding military ranks indicated by their uniforms: A section manager is sometimes referred to as "captain" and wears two bars; an assistant section chief is called "lieutenant" and wears one bar; and a toll plaza supervisor is called "sergeant" and wears three stripes (2T126). However, the quasi-military nature of the division of tolls has become less apparent within recent years (2T127-2T128).

SECTION MANAGERS

4. Section managers supervise the daily operations of the toll plazas located in their sections (1T10). They work out of an office located at an interchange, where all the personnel files and administrative records for the section are kept (2T103-2T104). Section managers recommend personnel, evaluate the performance of assistant section chiefs and toll plaza supervisors, and submit recommendations to the director concerning investigations conducted into complaints and/or reports of incidents occurring within their sections (J4; 1T62). Section managers meet regularly with the director and his administrative staff after commission meetings, to discuss such issues as recommendations for promotions (1T65-1T66).

Certain differences in the size and scale of operations are apparent among the sections. These differences generally affect the level of staffing. Sections in the northern division have larger work forces because they include more exits and accommodate a greater flow of traffic (5T78). Sections in the southern division have fewer employees and less traffic (5T84-5T85). Section Manager Magerkurth of section 2 is more personally involved with his assistant section chiefs and toll plaza supervisors (2T79) than Section Manager James Lefferts of section 4, who relies on reports from his assistant section chiefs

and toll plaza supervisors (2T54-2T55).<sup>7/</sup> Section Manager Lefferts characterized his daily interaction with his assistant section chiefs and toll plaza supervisors as, "I guess my duties would be the office and they're running the field" as troubleshooters (2T19; 5T80).

Depending on their years of service, section managers may receive from three to eight weeks of vacation, as well as personal days (1T96).<sup>8/</sup> Whenever a section manager is on vacation or out for extended periods of time, the assistant section chief working the second or day shift performs the section manager's routine duties, which include opening his regular mail, approving section employees' requests for emergency leaves from scheduled holiday shifts and attending staff meetings with Director Burke (1T50; 2T59-2T60; 2T78).

The assistant section chief's authority to act for the section manager is limited, however. Assistant section chiefs are to call the director's office with any serious matters such as immediate suspensions (2T61). Assistant Section Chief Timothy Dugan of section 3 stated that he performs his "normal duties"

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<sup>7/</sup> Section Manager Lefferts was recently promoted to section 4 after spending 17 years in the southern division as an assistant section chief (2T51). This may account for his reliance upon his assistant section chiefs and toll plaza supervisors.

<sup>8/</sup> Section Manager James Lefferts of section 4 limits his vacations to two weeks, whereas Section Manager Richard Magerkurth of section 2 takes a one week vacation (2T60; 2T78).

whenever he covers for his section manager, Frank White (3T83). On two occasions when no section manager was present in section 5 for extended periods of time, Director Burke designated Administrative Section Manager Raymond as an acting section manager and instructed assistant section chiefs to call Raymond (2T18-2T19; 5T66).

#### ASSISTANT SECTION CHIEFS

5. Assistant section chiefs work under the direction of Director Burke and the section manager of their assigned sections. They perform all the administrative details necessary to ensure that toll plaza supervisors and toll collectors efficiently collect toll revenues and process traffic through the interchanges (E1). Assistant section chiefs have offices at assigned interchanges. The assistant section chief assigned to the same interchange where the section manager has his office, shares the section manager's office with him (1T128). Assistant section chiefs assigned to other interchanges in the section share an office in the plaza administration building with the toll plaza supervisors (1T16; 1T128).

Assistant section chiefs duties include traveling to each interchange to observe traffic patterns and checking that the toll collector coverage is adequate to accommodate the traffic flow (3T8; 4T54). They review the accuracy of toll plaza supervisors' reports such as daily interchange logs, duty reports and payroll

entries. They observe and assist toll plaza supervisors and toll collectors and report their findings and observations directly to a section manager (E1; 1T16; 1T17).<sup>9/</sup>

An assistant section chief can reach an off-duty section manager either by phone or by beeper seven days a week in order to report any serious matter, such as an immediate suspension (1T28).<sup>10/</sup> Assistant section chiefs may also call Director Burke's office (2T63-2T64; 3T84).

An assistant section chief's duties vary depending upon the shift and whether more than one assistant section chief is assigned to the shift (E10b). Generally, assistant section chiefs on the first shift spends most of their time going over toll plaza supervisors' reports from the previous shift (5T53; 5T83-5T84). On the second and third shifts when more traffic is moving through the interchanges, assistant section chiefs spend more time visiting the interchanges within their sections and conferring with toll plaza supervisors (1T129; 4T51; 4T130; 5T52-5T53; 5T81-5T82).<sup>11/</sup>

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<sup>9/</sup> The assistant section chief's job description also identifies a section chief as an assistant section chief's supervisor. The section chief's title has not been filled since 1982 (1T29; 2T21; 2T111).

<sup>10/</sup> Section managers in the northern division are assigned emergency beeper duty on rotating weekends (E10a; 1T117; 2T52).

<sup>11/</sup> In the southern division, the interchanges are further apart; therefore, more time is spent traveling among a section's interchanges (5T84-5T85).

TOLL PLAZA SUPERVISORS

6. Toll plaza supervisors are responsible for the operation of their assigned toll plazas. They supervise toll collectors collecting tolls and they maintain an efficient flow of traffic through their assigned toll plazas. They ensure that each shift has enough toll collectors on duty to cover the number of lanes contractually mandated for the shift (E8). They are responsible for calling in additional toll collectors in order to accommodate increased traffic through the toll plazas (2T41; 4T53; 5T71). They are accountable for the interchange's master tour fund or bank, each toll collector's tour fund or starting cash register, and all money and ticket bags deposited into the bank at the end of each shift (1T16). In addition, toll plaza supervisor maintain the toll collectors' overtime lists. They prepare daily logs, job performance reports, toll collector lane schedules, toll receipt records and all other reports completed by toll collectors (E8).

A toll plaza supervisor may recommend revisions to operating procedures to Director Burke. Any unusual occurrence or emergency, and the action taken to deal with it, must be reported to the section manager and Director Burke (E5; E8). When directed by a section manager, a toll plaza supervisor assumes the duties of an assistant section chief (E8; 1T110; 1T122).

The volume of traffic flowing through an intersection determines the number of toll plaza supervisors scheduled for a

shift. Interchanges that traditionally carry less traffic during the first shift do not have an toll plaza supervisor on duty because there are too few toll collectors to warrant a supervisor (E10c; 4T137-4T138). The assistant section chief performs the duties of a toll plaza supervisor at these interchanges (2T41). Other interchanges have 24-hour toll plaza supervisor coverage, including double coverage, on shifts that have a high volume of traffic (2T16).

#### HIRING

9. Director Burke does not have the authority to hire (1T25). A section manager may make a recommendation to Director Burke who, in turn, makes a recommendation to the commission (1T105). Assistant section chiefs are not involved in the hiring process.

#### PROMOTIONS AND EVALUATIONS

10. The usual practice is to promote from within the ranks of the department of tolls (1T51). Four field section managers, an administrative section manager, two assistant section chiefs and one toll plaza supervisor testified that they began their careers with the Authority in lower titles, accumulating years of experience at each level in their career path (1T74-1T75; 2T15; 2T76-2T77; 3T6; 3T74; 4T2; 5T4).



The department of tolls posts informational notices of openings for assistant section chiefs and toll plaza supervisors (J3, Article XI). At Director Burke's request, section managers make recommendations for promotions to him for his review (1T52-1T54; 1T75). A section manager may base his recommendation on his own observation and knowledge of the employee (1T63). Assistant section chiefs and toll plaza supervisors also volunteer recommendations to their section manager. Section Manager White routinely tours the interchanges in his section and hears recommendations from assistant section chiefs and toll plaza supervisors (1T126-1T127; 1T137). A section manager may also consider the verbal reports of assistant section chiefs or toll plaza supervisors working with the recommended employee (1T51; 1T76; 1T111; 1T121-1T122; 1T143; 2T112). The section manager evaluates these reports before making his formal recommendation to Director Burke (1T111-1T112).

Director Burke's administrative assistant, William Darragh, investigates promotional recommendations. Darragh gathers his information from a section manager, or from assistant section chiefs and toll plaza supervisors for presentation to the director. He also makes recommendations of his own (3T20). Director Burke then makes his own recommendations through the chief engineer and the executive director to the commission where all promotional decisions are made (1T54). All of Director Burke's promotional recommendations have been accepted (1T56).

11. Section managers do written performance evaluations on all probationary assistant section chiefs and toll plaza supervisors during their first six months of employment (J3, Article IX, 1b).<sup>12/</sup> Thereafter, they are evaluated yearly for the first two years of their permanent employment (1T138; 1T164). The written evaluations are submitted to Director Burke (1T113-1T114; 5T46). Section managers base their evaluations upon information gathered in the same manner as for promotions (1T58; 2T54; 4T22-4T23; 4T51). The record does not indicate that assistant section chiefs do ratings of toll plaza supervisors or sign written recommendations

Traditionally, probationary toll plaza supervisors are trained for two weeks. The section manager may decide to add a third week to a probationary toll plaza supervisor's training period based on recommendations from an assistant section chief or other toll plaza supervisors (4T25; 5T49; 5T70). Toll Plaza Supervisor Michael Calleo of section 5, in his role as president of the Association, recommended to his section manager that a three week training period be mandatory for all probationary toll plaza supervisors in section 5. His section manager accepted the recommendation (4T125).

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<sup>12/</sup> This article also states that newly promoted assistant section chiefs and toll plaza supervisors may be required to serve an additional six month probationary period if "unusual circumstances" are involved.

The case of probationary Toll Plaza Supervisor Clarke of section 3 illustrates the interaction between Director Burke and his staff concerning a probationary employee (E2a; E2b). Section Manager White received complaints from an assistant section chief and other toll plaza supervisors about Toll Plaza Supervisor Clarke's performance during his initial probationary period (1T99; 1T126; 3T81). Section Manager White directed Assistant Section Chief Dugan "to keep an eye on Mr. Clarke" (1T100). Assistant Section Chief Dugan requested that Section Manager White give Clarke another week of training (E2a); however, Clarke's probationary period was interrupted by an extended illness (1T99). When Clarke returned to work, Assistant Section Chief Dugan again submitted a written evaluation and asked Section Manager White to "consider removing (Clarke) from his current position" (E2b). Section Manager White agreed with the assessment (1T113) and made the recommendation to Director Burke, who, after "many discussions" with Section Manager White, decided to demote Clarke (3T82). Section Manager White thereafter counseled Clarke and convinced him to voluntarily resign as a toll plaza supervisor and return to his former position as toll collector (1T112).

#### DISCHARGE AND DISCIPLINE

12. A section manager routinely receives written reports and verbal information "through the chain of command" from assistant section chiefs and toll plaza supervisors regarding

infractions of departmental procedures and disciplinable incidents (1T28; 1T57; 2T20; 4T8).<sup>13/</sup> A section manager will either investigate a reported incident himself or direct the assistant section chief on duty to do it (1T58; 1T61; 1T83; 2T48). The assistant section chief investigating the incident may not be the same assistant section chief who reported it (1T83). The section manager reviews the assistant section chief's investigation and determines whether or not to make a recommendation for discipline to Director Burke, who has the final authority to discipline and discharge department of tolls personnel (1T22; 1T25; 2T20; 2T48)).

After receiving a recommendation, Director Burke confers with the section manager (1T22; 1T26; 1T57). Director Burke's administrative assistant William Darragh also gathers information for him (3T20). Article XV, Discipline, of the parties' negotiated agreement specifies that the department head or his designee must concur with a manager's recommendation for discipline (J3, Article XV, A and B). He evaluates a section manager's recommendation from a vantage point that is removed from the "heat of (the scene)" (1T47). He determines whether the facts

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<sup>13/</sup> An assistant section chief would be considered derelict in his duty if he did not report to the section manager any incident of which he has knowledge (1T17; 2T19; 2T83).

presented and the employee's record support the section manager's recommendation before he makes a final decision (1T26; 1T33).<sup>14/</sup>

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14/ Director Burke testified about two incidents of insubordination that occurred before he or the section manager were on duty. In the first incident, an assistant section chief in section 5 called his section manager to report that at 6:15 a.m., a toll plaza supervisor had refused to work his shift at another interchange that was short a toll plaza supervisor. The assistant section chief requested that the section manager take disciplinary action (J1a; 1T29). The section manager interviewed the toll plaza supervisor at about 10:30 a.m. and suspended him immediately "pending notification from (Director Burke) as to what penalty will be implemented (sic)" (J1b). The section manager then reported the incident to the director, recommending that the toll plaza supervisor be terminated or reduced in rank for his "serious insubordination" (J1b; 1T32). Director Burke rejected the section manager's recommendation and imposed a five-day suspension (J1c; 1T33).

A second incident occurred at an interchange in section 5 at 8:45 p.m.. on a shift with two toll plaza supervisors on duty. The incident, which concerned a fight between one of the toll plaza supervisors and a toll collector, was reported to the assistant section chief by the second on-duty toll plaza supervisor. The assistant section chief contacted his section manager immediately and reported that he smelled alcohol on the toll collector's breath. The section manager told the assistant section chief to suspend both employees immediately and report to Director Burke as soon as possible. Director Burke ordered the assistant section chief to suspend only the toll collector and to have his blood tested for alcohol (J2; 1T34-1T35; 4T6-4T7; 4T45-4T49).

Assistant Section Chief Timothy Dugan testified about a similar incident involving an immediate suspension he imposed on a toll collector who struck a patron. The incident occurred at about 7:45 a.m., before his section manager or Director Burke were on duty. Assistant Section Chief Dugan completed his investigation and then called Director Burke at about 8:50 a.m. to report what had happened and to recommend a suspension. Director Burke, however, ordered that the toll collector be put back to work (3T84-3T85; 3T125). Later,

Footnote Continued on Next Page

13. Routine minor disciplinary action such as verbal or written warnings are decided at the section manager level with notice to Director Burke.<sup>15/</sup> Minor disciplinary incidents are usually reported on a three part form called a "Collector's Report" or "unusual occurrence" report (E5). The first page goes to the section manager, the second page goes to Director Burke and the third page is kept at the toll plaza supervisor's interchange office (4T5-4T6; E5). This is consistent with the toll plaza supervisor's job description which specifies that unusual

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14/ Footnote Continued From Previous Page

Director Burke explained to Assistant Section Chief Dugan that he had first talked to the toll collector's union and was told that the toll collector was about to retire (3T125). He assured Assistant Section Chief Dugan that "they would take care of it at their end" (3T124).

Director Burke offered the first two incidents to illustrate the point that assistant section chiefs make disciplinary recommendations to him; however, neither his testimony nor Assistant Section Chief Dugan's example support his assertion. I find that an assistant section chief's primary function is to investigate and to immediately report to the off-duty section manager and to Director Burke, who makes the final disciplinary decisions based on his own independent evaluations.

15/ Article XV, A, of the parties' negotiated agreement states that minor discipline, which consists of violations resulting in a suspension of five days or less, may be "imposed without the concurrence of the respective Department Head...." Informal reprimands are to be documented by each manager and thoroughly discussed with the "offending employee" (J3).

occurrences are to be reported to the section manager and the director (E8; 4T80).<sup>16/</sup>

An investigation of the incident is conducted either by the section manager or by the assistant section chief on duty. The investigation consists of talking to the toll plaza supervisor who filed the collection report to ascertain how the event occurred.<sup>17/</sup> The section manager then checks the toll plaza supervisor's file for past infractions and determines the appropriate level of progressive discipline to impose (1T83; 2T48). The first two offenses warrant a verbal discussion or

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<sup>16/</sup> One of the most common minor disciplinary incidents is an impress, or safe error (1T18; 2T48). An impress error is a discrepancy between the cash to be returned to the intersection "bank" and the cash collected at the end of a shift. The usual impress error shows up as an apparent shortage of cash, caused by either a toll collector or a toll plaza supervisor miscounting the amount of money deposited at the end of the shift (1T85; 1T131; 2T26; 2T34; E3b; E3c; C4a; C4b). The toll plaza supervisor on whose shift the impress error occurred records the incident in his log book and files the collector's report (1T133; 4T4; E5; E9). When the report is received in the Director's office, it is audited and a check for the amount of the error is returned to the interchange with a form memo from the director, requesting that the section manager:

"...Interview the Plaza Supervisor involved in this incident and counsel him on the correct procedure to be used handling toll funds. If your investigation reveals that disciplinary action is warranted, issue same. Submit a report of your findings." (E4a; E4b; E4c).

<sup>17/</sup> Section Manager Lefferts stated that some impress errors are so obvious that "there's no need for much investigation at all" (2T34).

"counseling" and a written warning is usually issued on the third offense (1T90).<sup>18/</sup>

The disciplinary notice is then signed by the section manager. He may serve or deliver the notice himself or ask the on-duty assistant section chief to deliver it.<sup>19/</sup> Section Manager Magerkurth often delivers the notice himself (2T82; 2T101). The employee is then "counseled" or advised on correct procedures. The counseling is viewed as a retraining session where the section manager or the assistant section chief explains and reviews what must be done in order to correct the problem (1T84; 1T92-1T93; 1T95; 3T80). Finally, the section manager sends report to Director Burke summarizing the action taken (2T24; 2T28; E4a; E4b; E4c).

Other common minor disciplinary incidents, such as the failure to follow overtime procedures (E3d-E3f; C4a-C4b; C6b, C6e, C6f, C6j; 1T18), lateness (E3a, C4c; C5a-C5c), failure to conduct terminal checks (C6g, C6h) and patron reimbursements (4T40) are reported and handled in the same way.

14. The first step of the parties' negotiated grievance procedure begins with the section manager (J3, Article XIV; 1T116; 2T113). Toll collectors, who are represented by IFPTE, Local 194,

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<sup>18/</sup> Most impress errors are remedied with counseling (2T35).

<sup>19/</sup> Disciplinary notices served before the Association was recognized as the majority bargaining representative in 1988, indicate that the assistant section chief "issued" the notice (E3a-E3f).



also file a step one grievance with the section manager (3T79; 4T9). Since 1989, when the Association became the certified bargaining representative, no grievances have been filed by a toll plaza supervisor against an assistant section chief (2T114; 5T22).

15. Director Burke has the authority to fire permanent department of tolls employees subject to the appeal rights accorded them under the terms of the relevant negotiated agreement. Probationary employees and summer hires may be terminated without a hearing (1T26).

#### SCHEDULING OF SHIFT COVERAGE

16. Because the shift schedules for assistant section chiefs, toll plaza supervisors and toll collectors are determined by the negotiated agreements between the Authority and the Association and IFPTE respectively, the assistant section chiefs do not have the authority to assign regular shift work to toll plaza supervisors and toll collectors.<sup>20/</sup> Changes in the amount of scheduled shift coverage that may be made at the discretion of the Authority are made by the section managers, not assistant section chiefs (E11, section 6; 4T96). In section 5, the section

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<sup>20/</sup> The shift schedules for assistant section chiefs is by section and by interchange for toll plaza supervisors. Shifts are bid upon by seniority only when a vacancy occurs (J3, Article VIII.B; E10b; E10c; E11; 4T55-4T56). Toll collectors bid annually by seniority on a shift and vacation schedule. Their schedule is referred to as "mandatory coverage" because it sets the minimum or mandatory number of toll collectors working on a shift (E6b; E6c; 2T55-2T56; 3T7; 4T55-4T56).

manager decided that more toll plaza supervisor positions were to be added to a shift, thereby necessitating changes to the toll plaza supervisors' permanent shift schedule (5T44).<sup>21/</sup> Section managers, with the approval of the director, also determine the amount of mandatory coverage that toll collectors bid on yearly. Their determination is based, in part, on recommendations from toll plaza supervisors regarding changes in the traffic flow at their interchanges (J3, Article VIII, B; 4T56; 4T67; 4T136).

Assistant section chiefs do have limited authority in three overtime scheduling situations. They annually prepare a vacation relief schedule for toll plaza supervisors and toll collectors to cover their vacations and other scheduled leaves (2T47; 2T58; 2T88; 4T117; 5T15).<sup>22/</sup> They have the authority to

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<sup>21/</sup> Scheduled toll plaza supervisor shift coverage for interchange 15W, section 5, was permanently added for the third shift because toll plaza supervisors were regularly refusing the overtime duty originally authorized for shift coverage (5T9). Section Manager Schmitz stated that he made the change in the shift schedule when he was an assistant section chief (5T8-5T9). I do not infer from this testimony that, as an assistant section chief, he authorized the change to the permanent shift schedule because he also testified that as a section manager, he is involved with changes to the permanent schedule, not his assistant section chief (5T44). Therefore, I credit his testimony for the fact that when he was an assistant section chief, he prepared the revised permanent toll plaza supervisor schedule.

<sup>22/</sup> The vacation relief schedules and the shift schedules for toll plaza supervisors and toll collectors make up the overtime lists which are used to award overtime duty on a rotational basis in accordance with the overtime provisions of the respective negotiated agreements (J3, Article VIII, B; J5; J5; 2T88).

assign vacation relief toll plaza supervisors and toll collectors who are not needed for scheduled leaves to fill in for unscheduled absences anywhere within the section (2T88; 5T5).

Assistant section chiefs, in conjunction with toll plaza supervisors, have the discretion to decide the number of toll collectors to be called in on overtime to handle additional traffic at an interchange ("traffic coverage").<sup>23/</sup> Most traffic coverage decisions are routine. The assistant section chief and the toll plaza supervisor work cooperatively when making these decisions (2T41; 3T7; 4T136). Typically, the toll plaza supervisor makes the initial decision for traffic coverage at the beginning of the shift (2T68; 3T7; 3T21; 4T69; 4T75).<sup>24/</sup> Assistant section chiefs are usually informed of the toll plaza supervisor's decision when they visit the interchange and talk with the toll plaza supervisor or when they review the toll plaza supervisor's daily log. Although assistant section chiefs can countermand a toll plaza supervisor's decision (2T44), they rarely do (2T42; 2T45; 5T71).

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<sup>23/</sup> Approximately, 30% of toll collector overtime duty is to provide traffic coverage for extraordinary traffic demands (1T81; 1T114; 2T57; 2T88; 3T7-3T8). The other 70% is used to cover unexpected absences in order to maintain the contractually mandated shift coverage (E8; 1T115; 2T68).

<sup>24/</sup> Most traffic coverage is in response to episodic events such as bad weather, traffic accidents or the usual rush hour traffic (3T14; 3T86; 4T75). For example, Toll Plaza Supervisor Michael Calleo routinely puts on traffic coverage at interchange 18W, section 5, because of heavy traffic (4T69; 4T135). However, some anticipated traffic coverage can be scheduled in advance, such as an increase in traffic because of a sporting event at the Meadowlands arena (3T78).

Finally, an assistant section chief may order an toll plaza supervisor to remain on duty ("hold over") for all or part of the next shift under limited circumstances. If no replacement can be called in, then the assistant section chief can require the toll plaza supervisor to remain on duty, pursuant to the hold over provision of the overtime procedures in the parties' negotiated agreement (J6, para. 9 and 10; 1T115; 2T44; 2T90; 2T92; 3T105). A toll plaza supervisor refusing to hold over would be subject to discipline by the section manager (4T79).<sup>25/</sup>

A request for emergency vacation leave or personal leave for absence on a shift scheduled for a holiday must be made to the section manager for his approval (2T46). The on-duty assistant section chief covering for an absent section manager may also grant the request (2T59).

#### CONTRACTUAL PROPOSAL FOR SHIFT SCHEDULE MODIFICATION

During negotiations for a successor agreement, the Association proposed a modification to the shift schedule for

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<sup>25/</sup> The Association recently successfully grieved a section manager's continuing practice of assigning a vacation relief assistant section chief to fill in for an absent toll plaza supervisor at an interchange with two toll plaza supervisor on duty. The Labor Relations Committee found that the vacation relief assistant section chief was "overseeing the operation" and awarded overtime to the by-passed toll plaza supervisor (E12). The Labor Relations Committee's conclusion as to the assistant section chief's supervisory status is not relevant and does not contribute to the issue of whether assistant section chiefs' supervisory responsibilities create a substantial conflict of interest.

assistant section chiefs and toll plaza supervisors. The proposal would formalize a widespread, long term practice of toll plaza supervisors reporting for duty a half hour before toll collectors began their shift (4T37-4T38).<sup>26/</sup> Director Burke had his administrative assistant William Darragh call all the section managers, including the assistant section chief covering for vacationing Section Manager White, and ask for their assessment of the proposal (3T25). The assistant section chief responded, "no problem" (3T27). Director Burke later called Section Manager White for his personal assessment (3T28).

#### ANALYSIS

The Authority asserts that assistant section chiefs are managerial executives within the meaning of the act and should be removed from the existing supervisory unit. The standard for managerial executive status originates in the Act. N.J.S.A.

34:13A-3(f) provides:

managerial executives are "...persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district."

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<sup>26/</sup> Section 2 instituted this shift schedule in accordance with a side bar agreement entered into by the parties before the Association made the proposal (4T39).

This definition was first applied in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, the lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary point system, authorized changes in work week, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough and mayor's policies, trained and scheduled all guards, managed the beach and supervised the guards daily. The Commission stated that:

The term "managerial executive shall be narrowly construed and that the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by...[the lifeguard captain] is needed. [He]... was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives - excluded from coverage - from supervisors - eligible to be represented in appropriate units.  
Id. at 374.

Borough of Montvale, P.E.R.C. 81-52, 6 NJPER 507, 508-09

(¶11259 1980) states:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be

determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. (emphasis added)

In Montvale, the Commission found that the Borough's chief of police was not a managerial executive. The Borough's mayor and commissioners exercised almost complete control over the department. The chief had no discretion to hire, assign overtime, promulgate policies or plan schedules. In addition, he had no control over or effective input into the budget, deployment, discipline or investigations. The Commission concluded that the chief played no role in the formulation of policy and little role in directing its effectuation in any but routine matters.

Applying the foregoing principles, I find that the assistant section chiefs are not managerial executives. The Authority is headed by the Chairman and Commission; at the fourth level below the Commission is Director Burke of the department of tolls. The assistant section chiefs are two levels beneath Director Burke. Their authority is not department-wide but limited to supervising the operations of one geographical section of the turnpike within the department.

Director Burke's management style is highly centralized. There are no decisions or recommendations that the director is not involved in. Director Burke, in conjunction with the section managers, decides when changes are to be made to toll plaza supervisors' permanent schedule and to the toll collectors yearly

schedule. Assistant section chiefs, if involved at all, are involved peripherally. Assistant section chiefs do exercise authority when scheduling and deploying vacation relief employees where needed within the section, or when determining whether or not traffic coverage is sufficient. These examples of independent judgment relate more to the degree of flexibility they have in handling routine matters which arise on a daily basis.

There is no evidence that assistant section chiefs are responsible for policy formulation or for developing the means to reach policy objectives.<sup>27/</sup> Assistant section chief's duties are limited to administrative and supervisory responsibilities, such as investigating and reporting discipline, evaluations and promotions, either to the section manager or to Director Burke. The record shows that Director Burke is involved in all recommendations. The director may consult with the section manager or investigate further at his level. Before he makes his final determination, all recommendations are subject to his analysis and possible reversal or rejection.

In Tp. of Montville, P.E.R.C. No. 87-140, 13 NJPER 333 (¶18138 1987), captains were found not to be managerial because

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<sup>27/</sup> Toll Plaza Supervisor Calleo made a recommendation to his section manager to add an additional week to the training period for probationary toll plaza supervisors. This cannot be taken as evidence that assistant section chiefs, or in this case toll plaza supervisors, are in a position to affect policy decisions. Toll Plaza Supervisor Calleo made the recommendation in his capacity as president of the Association.



their responsibilities when substituting for higher-level employees were limited to enforcing already formulated policies. Here, assistant section chiefs do not have plenary authority when substituting for their section managers. Instead, they handle day-to-day operations as directed by existing policies and procedures. In the event of a serious incident, an assistant section chief acting for the section manager must contact the on-call section manager or Director Burke's office. Assistant section chiefs' authority is further limited by the policy of spot checks and field inspections conducted by section managers. Therefore, I conclude that assistant section chiefs act as caretakers in the absence of the section managers.

There is only one example in the record of an assistant section chief's involvement in the preparation for collective negotiations. An assistant section chief filling in for an absent section manager was asked to give his opinion about the affect that a proposed change in the shift schedule would have. Director Burke later contacted the section manager for his assessment. This one instance does not indicate that assistant section chiefs participate directly in collective negotiations. Tp. of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988); Borough of Madison, P.E.R.C. No. 85-76, 11 NJPER 61 (¶16032 1985).

The record is devoid of any examples of assistant section chiefs involvement in purchases or the preparation of the budget. Their lack of involvement is further support for concluding that assistant section chiefs are not managerial. Kearny.

Based on all the evidence, I find that the assistant section chiefs authority is limited by the scope of the responsibilities for their title, the high level of control exercised by Director Burke and procedures and negotiated agreements affecting their decisions. Therefore, they do not formulate policy, nor do they direct its effectuation in any but routine matters.

The Authority asserts that the assistant section chiefs supervise toll plaza supervisors and that their continued inclusion in the negotiations unit creates a conflict of interest that destroys a community of interest that might otherwise exist.

The New Jersey Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") determined that supervisors who exercise significant supervisory authority over other supervisory employees, such as hiring, firing, disciplining or evaluating, may not be included in the same unit with each other. The Court stated:

...where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and...a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. 57 N.J. at 427.

The Court added that each case needs to be examined on its own facts, and that only where the conflict is "de minimis" or peripheral and therefore tolerable, would the unit combination be permissible. Wilton, 57 N.J. at 425-26.

Since assistant section chiefs have no authority to hire or fire toll plaza supervisors, any actual or potential conflict of interest must arise from their authority to discipline or to evaluate, where evaluation affects personnel actions such as employment renewal, receiving a salary increment or promotions. Emerson Bd. of Ed., 7 NJPER 571 (¶12255 1981) and Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984). I find that the actual and potential conflict of interest that exists between assistant section chiefs and toll plaza supervisors is minimal.

Assistant section chiefs do not do formal, written evaluations of toll plaza supervisors. There is only one example of an assistant section chief's negative evaluation of a probationary Toll Plaza Supervisor. The facts lead me to infer that this was an extraordinary situation. Concern for probationary Toll Plaza Supervisor Clarke's performance and the fact that his probationary period was extended, led the section manager to "designate" an assistant section chief to monitor his progress. The usual practice is assistant section chiefs and toll plaza supervisors both make recommendations to the section manager, although the assistant section chiefs has the greater role to play because he is responsible for the section, whereas the Toll Plaza Supervisor is responsible for an interchange.<sup>28/</sup> There is no evidence that

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<sup>28/</sup> Other toll plaza supervisors are working along side the probationary toll plaza supervisors and would logically have more first hand information on their performance.

assistant section chiefs are deterred from performing their evaluations. Neither is any evidence that an assistant section chief's recommendation has resulted in a Toll Plaza Supervisor filing a grievance.

The assistant section chief's recommendation is only part of the evaluation process. Section managers make all the formal promotional recommendations and evaluations to Director Burke. They also rely on their own appraisals. Section Managers White and Magerkurth regularly tour their sections and talk to assistant section chiefs and toll plaza supervisors. Once Director Burke receives a recommendation, he, in turn, evaluates the recommendation himself and may seek additional information through an investigation by his administrative assistant. The finding of evaluative responsibility does not, per se, give rise to the conclusion that there is a potential for substantial conflict. Where the responsibility for only some part of the evaluative function fell to the title sought to be excluded, we have found de minimis conflict. North Bergen Bd of Ed., D.R. No. 84-8, 9 NJPER 615 (¶14263 1983) and Edison Toll plaza. Bd. of Ed., D.R. No. 82-8, 7 NJPER 560 (¶12248 1981).

Similarly, in the area of discipline, assistant section chiefs operate within a department where minor disciplinary actions are largely self reported by toll plaza supervisors. They do not sign disciplinary notices. Their primary function is to investigate and report to the section manager. Although a assistant section

chief may recommend discipline, the section manager determines the level of discipline. Assistant section chiefs' further involvement in the process is largely ministerial. They deliver disciplinary notices and retrain or advise toll plaza supervisors on correct procedure as a preventative measure.

The examples of more serious disciplinary situations presented by Director Burke and Assistant Section Chief Dugan exemplify the centralized decision making process within the department. Director Burke controls all disciplinary decisions. Moreover, the section manager made the initial recommendations to the director in two of the situations. In the incident involving Assistant Section Chief Dugan, the only example presented of an assistant section chief actually imposing discipline, he was immediately countermanded by Director Burke. Although this presents an actual conflict of interest, it is de minimis.

The court in Wilton also examined whether "...the duties, authority and actions of the employee in question vis-a-vis the other [unit members] [are] primarily related to the management function." Wilton, 57 N.J. at 417. Assistant section chiefs do not exercise management-type powers over toll plaza supervisors. Shift assignments are controlled by the parties' negotiated agreement, as when an assistant section chief may order a Toll Plaza Supervisor to hold over through the next shift.

The two areas where assistant section chiefs have authority over toll plaza supervisors is vacation relief and determining toll

collector overtime for traffic control. There is no evidence that any actual conflict has arisen over the assistant section chief's exercise of this authority. In fact, assistant section chiefs and toll plaza supervisors work in a cooperative manner in deciding traffic control coverage. A recent grievance filed by the Association regarding the deployment of vacation relief assistant section chiefs was filed against a section manager. Any actual or potential conflict of interest in these areas is de minimis.

RECOMMENDATION

I recommend that the Commission dismiss the Authority's unit clarification petition.

  
Illse E. Goldfarb  
Hearing Officer

DATED: March 22, 1993  
Trenton, New Jersey