

D.R. NO. 2024-5

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

In the Matter of

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC.,

Public Employer,

-and-

Docket No. RO-2023-041

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 701,

Petitioner.

**SYNOPSIS**

The Director of Representation issues a Certification of Representative to International Brotherhood of Teamsters Local 701 (Teamsters) for a unit of instructors (operational training) employed by NJ TRANSIT Bus Operations, Inc. (NJT) without an election on the basis of signed authorization cards from a majority of the unit employees. NJT opposed the petition, arguing that the instructors were supervisors within the meaning of the Labor Relations Management Act because they decided or effectively recommended discipline and discharge through their assessments of bus operator performance and were therefore not employees as defined by the New Jersey Public Transportation Act.

The Director found that the instructors were not supervisors because the guidelines, forms, and checklists they used for assessments were comprehensive and detailed enough that they did not exercise the degree of discretion required for independent judgment, and because NJT had not presented sufficient evidence that the instructors' assessments acted as decisions or recommendations that effectively caused operators to be disciplined or discharged.

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 701,

Petitioner.

Appearances:

For the Public Employer,  
McElroy, Deutsch, Mulvaney & Carpenter, LLC, attorneys  
(John J. Peirano, of counsel)

For the Petitioner,  
Cohen, Leder, Montalbano & Connaughton, LLC, attorneys  
(Brady M. Connaughton, of counsel)

**DECISION**

On May 30, 2023, International Brotherhood of Teamsters Local 701 (Teamsters) filed a representation petition seeking to be certified, on the basis of signed authorization cards without an election, as the exclusive representative for a collective negotiations unit of instructors (operational training) employed by NJ TRANSIT Bus Operations, Inc. (NJT) and excluding, among others, bus operators and Chief Instructors. NJT opposes the petition, arguing that the instructors are supervisors within the meaning of the Labor Relations Management Act (LRMA), 29 U.S.C.

141, et. seq., and are therefore not employees as defined by the New Jersey Public Transportation Act (NJPTA), N.J.S.A. 27:25-14 et. seq., which precludes supervisors of NJT from being included in any negotiations unit.<sup>1/</sup>

A telephone conference was held with the parties and a Commission staff agent on June 7, 2023. On June 19, 2023, NJT filed a position statement and certification of Director of Bus Operational Training Denise Cummings (Cummings Cert.) with exhibits. With NJT's consent, we forwarded this submission to Teamsters.

On July 7, 2023, Teamsters filed a position statement and certifications of 12 instructors with exhibits. On July 11, 2023, Teamsters filed and served a version of the July 7 submission with the names of the instructors redacted.

On August 10, 2023, I issued the Director's decision in NJ Transit and NATS Local 354 (NJT AND NATS), D.R. No. 2024-1, 50 NJPER 76 (¶20 2023), req. for rev. den. P.E.R.C. No. 2024-18, 50 NJPER 264 (¶59 2023), which also involved a claim of supervisory status under the NJPTA. We informed the parties in the instant case to review that decision before briefing the issue of whether the instructors were supervisors.

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<sup>1/</sup> The New Jersey Employer-Employee Relations Act (EERA), N.J.S.A. 34:13A-1 et seq., by contrast, allows other New Jersey public sector supervisors to be in negotiations units.

On September 22, 2023, NJT filed and served a supplemental position statement and certification of counsel with exhibits. On October 6, 2023, Teamsters filed and served a supplemental brief, including a resubmission of the certification of Instructor (Operational Training) Dolores Steele (Steele Cert.) (whose name was now unredacted) with exhibits.<sup>2/</sup>

On November 21, 2023, the Commission in P.E.R.C. No. 2024-18 denied the request for review of D.R. No. 2024-1, which had been cited in the briefs of the parties in this matter (RO-2023-041). The Commission concurred with the legal conclusions in D.R. No. 2024-1 and did not change precedent or set forth a new analysis for determining supervisory status under the Public Transportation Act. Therefore, we advised the parties that their prior submissions would be used and further supplemental briefing would not be requested.

No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and -2.6. Based upon my administrative investigation, I make the following:

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<sup>2/</sup> NJT did not object to the redaction of instructor names in the certifications and cited to the Steele Certification while the name was originally redacted (the names were provided in camera). The statements in the 12 certifications of the instructors provided by Teamsters are identical and were visible to NJT. Accordingly, I find their certifications to be admissible and references to statements in the Steele Certification shall be construed to also be references to the same statements in the certifications of the other instructors.

**FINDINGS OF FACT**

NJT has within its organizational structure an Operational Training Department. (Cummings Cert., ¶ 3). Denise Cummings is the Director of Bus Operational Training. (Cummings Cert., ¶ 1). The Operational Training Department is responsible for teaching NJT's bus operators how to safely operate NJT's buses. (Cummings Cert., ¶ 3). Training of NJT bus operators occurs in several forms (Cummings Cert., ¶ 4). All newly hired bus operators are required to undergo a multi-week training program conducted by the Operational Training Department. (Id.). During this program (which spans 21 or 25 days depending upon the type of bus the operator will be using) operators learn everything they need to know about driving an NJT bus. (Id.). Operators learn, for instance, how to use all of the equipment, how to inspect the bus before and after using it, how to handle money, how to deal with customers, how to accommodate disabled customers, and how to drive in a defensive and professional manner. (Id.). These skills and techniques are taught to bus operators both in the classroom and on the road as part of the new hire program. (Id.). The program is taught primarily by Instructors. (Cummings Cert., ¶ 4). New hires are assigned to an Instructor at the outset of the program (Id.). The Instructor presides over all classroom sessions (Id.). They also oversee all four written tests administered during the program. (Id.). Instructors also ride on

the buses with the new hires during the practical, on-road portions of the course. (Id.).

During the new hire training program, Instructors are responsible for evaluating and grading the operators in their class. (Cummings Cert. ¶ 6). New hires are evaluated and graded each day. (Cummings Cert., ¶ 6, Exs. A, B). Cummings states that Instructors use their "independent judgment" to determine whether each operator should be graded "satisfactory" or "unsatisfactory" on various performance metrics. (Id.). Cummings states that the Instructors make these judgments based upon metrics such as the operator's pre-and post-trip inspection procedures, reversing skill, left turns, right turns, pull-ins and pull-outs, steering wheel grip and posture, lane control, braking control, attention while driving, intersection safety, pedestrian safety, use of directional signals, railroad crossing procedures, acceleration control, recognition of hazards, and pedestrian interactions. (Id.)

An Instructor, when determining whether a bus operator will be qualified to drive, uses an "instructors special instructions report form." (Steele Cert., ¶ 3, Ex. A). This has a checklist which the Instructor fills out based upon what is observed (Id.). The checklist is a skills assessment of the bus operator's operation of the bus. (Id.). Although there is a section for remarks, the Instructor is not required to include remarks (Id.).

In order to be qualified, the operator must pass all items on the checklist. (Id.).

According to Cummings, if an Instructor determines an operator was "unsatisfactory" in any aspect of their training, the Instructor has the authority to order counseling for that operator. (Cummings Cert., ¶ 6, Exs. A, B). The Instructor performs the counseling. (Id.). Thereafter, the Instructor continues to evaluate the operator. (Id.). According to Steele, an Instructor can "recommend" counseling a student operator, which must be reviewed and is subject to the complete discretion of the Chief Instructor. (Steele Cert., ¶ 7). Steele states that this is not considered to be discipline or a violation. (Id.). Counseling only gets applied to the checklist while the student is in training, and that counseling does not follow the operator after the training is over. (Steele Cert., ¶ 7).

Cummings states that if the Instructor determines the operator remains unsatisfactory, he or she has the authority to disqualify the operator from the course. (Cummings Cert., ¶ 6, Exs. A, B). Cummings states that disqualification by an instructor results in the termination of an operator (Id.). An Instructor does not have the authority or ability to remove a bus operator from service. (Steele Cert., ¶ 2). An Instructor can only report what has been observed on an objective pre-printed form. (Id.). Steele states that an Instructor's recommendation

of whether to qualify a bus operator is limited to the assessment on the Special Instructions Report. (Steele Cert., ¶ 4). Steele states that the recommendation is not final or binding (Steele Cert., ¶ 4). The Chief Instructor must sign off on the Special Instructions Report in order for a bus operator to be qualified or not qualified. (Steele Cert., ¶ 4, Exhibit B). The Instructor does not have final authority to make such decision. (Id.). If a Chief Instructor disagrees, she has full discretion to ignore the Instructor's checklist and recommendation and assign the operator to a different Instructor, or the Chief Instructor could perform the assessment herself. (Steele Cert., ¶ 4).

Steele provides an exhibit of a written memorandum addressed to instructors from a Chief Instructor of "Team Expectations". (Steele Cert., Exhibit B). The memorandum tells instructor not to disqualify students without calling and speaking to a Chief Instructor first to discuss a plan of action. (Id.).

Disqualifications occur frequently during the course of the new operator program (Cummings Cert., ¶ 8). Approximately 10% of new hires do not complete the new hire program (Id.). At least 28 new hires have been disqualified in 2023, which Cummings states resulted in the termination of their NJT employment (Id.). In 2022, 42 new hires were disqualified, which Cummings states resulted in the termination of their employment (Id.).



On occasion, an Instructor may deliver a training course to Regional Supervisors who need to learn new materials or to regular operators whose garage supervisor or garage manager recommended a refresher course due to poor performance. (Steele Cert., ¶ 9). Instructors preside over re-trainings and return-to-work evaluations. (Cummings Cert., ¶ 9). Re-trainings occur when a bus operator is involved in an accident or engages in misconduct that a manager believes warrants further training. (Id.). Return-to-work evaluations occur when an operator has been out of service for an extended period of time (typically due to a medical leave) and must be evaluated prior to resuming bus operations. (Id.). Cummings states that Instructors will preside over the training/evaluation process and exercise their "independent judgment" to determine whether the operator can safely return to driving an NJT bus. (Cummings Cert., ¶ 9). Cummings states that if the Instructor concludes the operator cannot safely return to driving a bus, the operator's manager will be so advised, the operator will be held out of service, and, where necessary, discipline will be imposed (Id.).

An Instructor may go "undercover" to observe bus operators, but fills out an Instructors Special Report Form and checklist to report objectively what is observed. (Steele Cert., ¶ 6)

An Instructor does not monitor a bus operator's following and adherence to NJT work rules. (Steele Cert., ¶ 8). This

responsibility is reserved for the regional supervisor, garage supervisor, or garage manager. (Id.). An Instructor only fills out a checklist and Special Instructions Form. (Id.). An Instructor has no ability or authority to assign work, alter work schedules, or recommend discipline. (Steele Cert., ¶ 5). The new hire "New Instructor/Instructor Training/Training Materials" packet contains no references to being a supervisor or any guidance on supervisory duties. (Steele Cert., ¶ 5, Ex. C).

Cummings states that the new hire program was developed by several classifications of NJT employees, including Instructors (Cummings Cert., ¶ 4). Steele states that an Instructor has no ability to create a presentation on his/her own, but may be asked by the Chief Instructor to assist in creating a training PowerPoint slideshow presentation. (Steele Cert., ¶ 9). The Chief Instructor is primarily responsible for this and has in the past created and authored training presentations. (Id.). An Instructor may deliver a training presentation, but he/she only delivers the PowerPoint which is created by the Chief Instructor. (Id.).

The Special Instructions Record form provides spaces for an Instructor to check Pass or Fail (without comment) to the following skills: starting, stopping, turning left, turning right, backing, clever device, code black and gray, ADA procedures, railroad crossing procedures, emergency procedures,

and general troubleshooting. (Cummings Cert., Ex. B). There is also a signature line for the Chief Instructor to approve. (Id.). Vehicle Operation Qualification Record forms define the ratings on the ratings scale as follows: "Satisfactory - Meets requirements, limited supervision with occasional reinstruction; Needs Improvement - Able to perform task with close supervision and frequent reinstruction. Four "N" consecutively in an area requires counseling; Unsatisfactory - Unable to perform task, requires constant supervision and continual reinstruction. Four "U" consecutively in an area requires counseling." (Cummings Cert., Ex. A). The procedures listed on the form to be assessed include bicycle procedures, railroad crossing procedures, transportation service guide, safety rules, radio procedures, fire drills, emergency evacuation, breakdowns, troubleshooting, route specific procedures, and ADA procedures. (Id.). There are also signature spaces on the form for the Chief Instructor and the Director of Operational Training. (Id).

The Field Support Rides form allow the Instructor to mark either satisfactory or unsatisfactory for operator procedures and operations, including uniform, pre-trip inspection, scanning the road, seatbelt, lane control, nameplate displayed, attention while driving, schedules, available cushion of safety, dash clear, braking control, sign on clever device, intersection safety, proper mirror adjustment & use of mirrors, passing parked

vehicles, terminal operations, pedestrian safety, reverse & backing up, directional signal, left turns, accelerator control, right turns, passing & being passed, bus stops - pulling in & out, railroad crossing procedures, ada procedures, recognizing hazards, mobility device tie down, merging & lane changing, cell phone & electronic device activity, customer service (ie, general attitude toward job), and steering wheel grip & posture. (Id.).

The form informs the instructor that all unsatisfactory items require reinstruction, and unsatisfactory marks must be explained in detail on the form. (Id.).

The Accident Grading forms have the Instructors mark satisfactory or unsatisfactory (and requires comments for all unsatisfactory marks) for various activities including uniform, vehicle pre-trip inspection, garage operation, reverse & backing up, emergency procedures, railroad crossing procedures, terminal operations, left turns, right turns, intersection safety, passing parked vehicles, bus stops - pulling in & out, pedestrian safety, highway driving, merging & lane changing, passing & being passed, lane control, defensive driving techniques, scanning the road, steering wheel grip, attention while driving, cushion of safety, mirror use, braking control, and accelerator control. (Id.). The form also contains detailed instructions for evaluating each activity. For example, for garage operation, it asks the instructor whether the operator properly adjusted seat mirrors,

put on a seat belt, safely approached garage doors, and checked for obstructions. (Id). For reverse - backing up, it asks whether the operator used four-way flashers, checked and verified clearances, scanned mirrors, and sounded the horn before backing. (Id). For left turns, it asked if the operator used directional signals in advance, anticipated the need for a left turn and moved into the lane well ahead of the turn, paid attention to all traffic signals and signs, ensured sufficient space in the street to avoid the bus becoming hung up, allowed sufficient break in on-coming traffic, and used mirrors before, during, and after completion of the turn to ensure clearance. (Id.).<sup>3/</sup>

#### **ANALYSIS**

The New Jersey Public Transportation Act (NJPTA), N.J.S.A. 27:25-14 et seq. empowers the Commission to enforce the rights and obligations of NJT Bus Operations and its employees. The NJPTA incorporates the definition of "employee" in the National Labor Relations Act (NLRA), as amended by the Labor Management Relations Act (LMRA), 29 U.S.C. §141 et seq., and directs that we be guided by the federal or State labor law and practices developed under the LMRA. N.J.S.A. 27:25-14(c).

N.J.S.A. 27:25-14b provides that employees of bus companies acquired by NJT "shall have and retain their rights to form,

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<sup>3/</sup> The other activities have similarly detailed guidelines for the instructor. (Cummings Cert., Ex. A).

join, or assist labor organizations and to negotiate collectively through exclusive representatives of their own choosing."

However, that section is limited by N.J.S.A. 27:25-14a(2), providing that the term "employee" does not include "supervisors" as defined under the LMRA. Individuals deemed not to be "employees" under NJPTA and the LMRA do not have to be analyzed anew under the EERA. NJ Transit and CWA Local 1032 (NJT AND CWA), P.E.R.C. No. 2002-9, 27 NJPER 363 (¶32132 2001).

29 U.S.C. §152(3) excludes supervisors from the definition of employee. 29 U.S.C. §152(11) in turn defines a "supervisor" as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in conjunction with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

Employees are statutory supervisors if: (1) they have authority to engage in one of the listed supervisory functions; (2) their exercise of such authority is not routine or clerical, but requires independent judgment; and (3) their authority is held in the employer's interest. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 121 S. Ct. 1861 at 1867, 149 L. Ed. 2d 939 (2001) (Kentucky River); NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994). Assessment of supervisory status is fact-intensive, Caremore, Inc. v. NLRB, 129 F.3d 365, 371 (6th Cir. 1997), and the burden of proof is on the

party asserting that an employee is a supervisor. Kentucky River; NJT and NATS.

The only statutory indicia of supervisory status asserted by NJT in this matter are discharge and discipline. NJT Br. at 7. NJT cites to Public Service Coordinated Transport and Amalgamated Transit Union (PSCT),<sup>4/</sup> Case No. 22-RC-4405 (1969) for support that the instructors are supervisors. In that decision, the NLRB Regional Director found that the driving school instructors were supervisors because of the "uncontradicted testimony" that the instructors recommended retention or disqualification and because it was "undisputed" that the instructors effectively caused the termination of applicant-operators who were not qualified within their 90-day probationary period. PSCT, slip op. at 13. The Regional Director contrasted the driving school instructors with bus operators used as line inspectors who went on routes with new applicants to familiarize them with actual route conditions, because the line inspectors' unfavorable reports on the applicants' performance only resulted in the applicant returning to the instruction department for further determination by the supervisor of instruction and because reports from several line instructors were considered by the supervisor in the aggregate

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<sup>4/</sup> As explained by NJT, at the time of the Regional Director's decision, NJT did not yet exist. NJPTA established NJT, which later acquired private transportation entities including PSCT.

compared to an individual driving school instructor's report which was apparently considered on its own. PSCT at n. 22.

Teamsters argues in its briefing that the private entity Public Service Coordinated Transport had nowhere near the organizational public structure that NJT has today, that the role of instructors has dramatically changed, and that NJT now has more oversight and micromanagement over all aspects of the duties and responsibilities of the instructors. Teamsters also argues that the checklists and forms used today were not in place at the time of the earlier decision, and neither was the degree to which the Chief Instructor has sole authority to disqualify and counsel trainees and requalification candidates.

Whether there have been these changes since the earlier decision is not clear from the record, but PSCT was based on uncontradicted testimony and an undisputed understanding that an instructor's individually considered disqualification recommendation effectively caused termination of probationary applicant-operators. Here, the parties dispute whether there are effective recommendations and there is evidence that the instructors do not exercise non-routine independent judgment and that their supervisors do exercise independent judgment in determining the fate of applicant-operators. The checklists, which may or may not have only started after that decision, are comprehensive and appear to leave little room for independent



judgment. Instructors must consult with Chief Instructors before disqualifications can occur and disqualification can lead to retraining by another instructor or the Chief Instructor. Thus, decisions on termination, made above an instructor, may be based on multiple evaluations and not just a single evaluation by one instructor.

NJT's briefing stresses Cumming's statements that the instructors exercise "independent judgment". However, this is a cursory legal conclusion. Checking accomplishment of a comprehensive preprinted list of driving tasks and being limited to two (Satisfactory/Unsatisfactory) or three (Satisfactory/Needs Improvement/Unsatisfactory) options is less like determining whether conduct is "unbecoming" (requiring independent judgment) and more akin to counting absences and tardiness and reporting when they reach preset thresholds, which was found not to be the exercise of independent judgment in NJT and NATS. It would seem that each driving task is either accomplished correctly or not, and there are detailed guidelines that the instructors follow in determining whether the task has been completed. No judgment is exercised as to whether to report the results of the tests. The instructors are not exercising independent judgment in deciding whether certain unsatisfactory determinations for some tasks are more or less important than for other tasks and whether the trainee's overall performance in general was satisfactory or

unsatisfactory. In order to be qualified, the operator must pass all items on the checklist. Counseling is recommended if any item is unsatisfactory. The checklists are provided to the instructors, not created by them. This does not leave room for much discretion.

NJT acknowledges that the forms give instructors several factors and guidelines for each activity to be evaluated but appears to argue that because there is no "formula" or "mathematical-like rules" provided, the instructors have sufficient independent discretion for supervisory status. I do not read NJT and CWA to require a mathematical formula. While the attendance-reporting duties of the foremen in NJT and NATS were found not to require the exercise of real independent judgment because the collective negotiations agreement was comprehensive with respect to what number of attendance violations resulted in disciplinary slips and each penalty, that decision did not state that only mathematical-like and mechanistic rules can reduce the degree of judgement below the statutory threshold. As explained by the Commission in NJT and CWA, the Supreme Court in Kentucky River noted that "independent judgment" was ambiguous to the degree of discretion required and that "the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the

employer." Kentucky River at 1867. The Commission stated that Kentucky River did not foreclose an argument that NJT employees may fall outside of the definition of supervisor because their duties are routine and controlled by NJT procedures. NJT and CWA.

NJT argues that the Commission in NJT and CWA found that the use of forms and checklists did not preclude a finding of independent judgment. But the lists referenced by NJT were the "reasonable suspicion" checklists in the operator fatigue policy that helped regional supervisors gauge whether an operator was impaired. Id. Regional supervisors were also left with the discretion to determine whether it was necessary to complete a violation report for "unsafe" acts. Id. The checklists here are not merely aids to the instructors in helping them independently judge whether the operator's overall performance in general is satisfactory. They are comprehensive lists by which an instructor must go through each task, mark one of only two or three possibilities for each, and turn in to the Chief Instructor. The detailed guidelines in the instructions for the Accident Grading forms appear to remove ambiguities as to what the instructor should be checking for each activity to be assessed, and it would seem that if the instructor answers any of the questions in the negative, the instructor is required to mark that activity as unsatisfactory. In that sense, the guidelines

take on a more mechanistic role, and certainly effectively dictate how instructors assess operators.

Accordingly, I find that the lists are comprehensive and detailed enough that the instructors' assessments are more ministerial than an exercise of independent judgment and that the instructors are therefore not supervisors under the NJPTA.

Independently of this conclusion, I also find that they are not supervisors because NJT has not presented evidence that the instructors' assessments act as decisions or recommendations that effectively cause operators to be disciplined or discharged.

It should be noted that there is no evidence in the record showing that the instructors actually make recommendations to discipline or discharge operators. There is no place on the forms asking the instructors for such a recommendation. I do not consider marking the performance of scheduled training tasks as unsatisfactory on a written checklist that must be turned in to be akin to recommending that the trainee be discharged or to choosing whether to report rule violations that will institute the disciplinary process.

NJT nevertheless compares the instructors in this case to the regional supervisors in NJT and CWA that had the authority to investigate violations of company policy and report such violations. The Commission in NJT and CWA relied on the reasoning of Glenmark Assocs., Inc., 147 F.3d 333, 341-341 (4th Cir. 1998)

that the nurses effectively recommended discipline because they decided whether it was necessary to file a report that triggered an investigation and were often the only witnesses to whether aides were properly performing their duties. The Commission then found that a regional supervisor's violation reports were the primary means by which operator performance was monitored and disciplinary proceedings initiated, that a regional supervisor may be the only eyewitness, that informal hearings were held, and that violation reports submitted into evidence showed sanctions imposed in every instance. The Commission also distinguished these violation reports (also called employee incident reports) from the mere "observation reports" filed by other employees when they observe violations. NJT and CWA at n. 5.

The training checklists used by instructors are used more to report what the instructors observed (in the form of a satisfactory/unsatisfactory determination). They are not intended to be reports of employee "incidents" or "violations" that would trigger the disciplinary process. NJT has not provided copies of completed reports that would suggest otherwise, unlike in NJT and CWA where the violation reports were in evidence. Instructors do not decide whether they will or will not submit completed checklists. There is no suggestion that hearings occur as a result of unsatisfactory marks. Further, an individual instructor would not be the only witness to the performance of

operators, as a Chief Instructor can assign themselves or other instructors to retrain and retest the operators, for it is not particular incidents that are at issue but the operator's ability to perform or improve performance.

NJT does not provide examples of "discipline" that has been imposed on operators, except to the extent it is saying that discharges are always disciplinary. But a termination because of a lack of qualification is different from a termination because of misconduct or rule violation. The more relevant statutory indicia of supervisory status based on the evidence presented is discharge rather than discipline.

Although NJT cites the number of new operator terminations, it does not provide examples of completed forms from instructors showing recommendations and evidence showing that the terminations were effectively caused by individual instructor recommendations. NJT admits that a Chief Instructor must approve the termination of each new operator. See NJT Supp. Br. at 9. NJT argues that Teamsters has identified no cases where a Chief Instructor overrode the recommendation of an instructor. However, the burden is on NJT, as the party asserting supervisory status, to show that the instructors have made recommendations, and that those recommendations effectively determined the discharge of operators. The forms provided show that a Chief Instructor reviews and signs them, and Teamsters has shown a

memorandum instructing the instructors not to disqualify operators without consulting with a Chief Instructor first. A Chief Instructor can also assign the operator to a different instructor or perform a reassessment themselves. The evidence presented is thus insufficient to conclude that an individual instructor's evaluation, to the extent it can even be viewed as a recommendation for discharge, effectively causes that discharge.<sup>5/</sup>

Accordingly, I find that the instructors do not exercise sufficient independent judgment regarding and do not decide or effectively recommend discipline or discharge of employees, and as no other statutory indicia of supervisory authority is

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5/ See also McDonnell Douglas Corp. v. NLRB, 655 F.2d 932, 937, 106 L.R.R.M. 2925 (1981) ("The Board has consistently held, however, that an instructor-trainee relationship is different from a supervisor-employee relationship."); Webco Indus., 334 N.L.R.B. 608, 609-610, 169 L.R.R.M. 1058, 334 NLRB No. 77 (2001) (finding that employer did not demonstrate that trainers made effective recommendations concerning retaining probationary employees because it did not establish a direct link by providing specific examples detailing circumstances surrounding management decisions regarding probationary employee and the effect of the trainers' evaluations in the decision-making process); Hudson a Pro. Corp., 2022 NLRB LEXIS 122, \*1, 2022 WL 900313 (NLRB March 24, 2022) ("[I]t is not enough for the evaluation to 'play a role' or be 'one of the criteria considered' in a decision regarding wages or job status: rather, the party alleging supervisory status must 'establish a direct correlation' ... including demonstrating 'what weight evaluations are given in the decision.'... 'Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority.'").

asserted by NJT, I find that the instructors are not supervisors under NJPTA and that a unit of instructors is appropriate.

Teamsters has provided valid authorization cards from a majority of the instructors on the list provided by NJT to be certified as the majority representative for the following appropriate unit:

**Included**: All regularly employed instructors (operational training) employed by NJ TRANSIT Bus Operations, Inc.

**Excluded**: Managerial executives, confidential employees, and supervisors within the meaning of the New Jersey Public Transportation Act; professional employees, craft employees, police, casual employees; bus drivers, bus cleaners, bus mechanics, dispatchers, Chief Instructors; employees in other existing negotiations units; and all other employees of NJ TRANSIT Bus Operations, Inc.

**ORDER**

I certify International Brotherhood of Teamsters Local 701 as the exclusive representative of the unit described above.<sup>6/</sup>

/s/ Ryan M. Ottavio  
Ryan M. Ottavio  
Director of Representation

DATED: February 2, 2024  
Trenton, New Jersey

**A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.**

**Any request for review is due by February 12, 2024.**

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<sup>6/</sup> Certification attached.



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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<b>In the Matter of</b>	>	
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NJ TRANSIT BUS OPERATIONS, INC.,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2023-041
	>	
INTERNATIONAL BROTHERHOOD OF	>	
TEAMSTERS, LOCAL 701,	>	
Petitioner.	>	
	>	

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**CERTIFICATION OF REPRESENTATIVE  
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 701**

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

**UNIT: Included:** All regularly employed instructors (operational training) employed by NJ TRANSIT Bus Operations, Inc.

**Excluded:** Managerial executives, confidential employees, and supervisors within the meaning of the New Jersey Public Transportation Act; professional employees, craft employees, police, casual employees; bus drivers, bus cleaners, bus mechanics, dispatchers, Chief Instructors; employees in other existing negotiations units; and all other employees of NJ TRANSIT Bus Operations, Inc.

**DATED:** February 2, 2024

**Attachment:**

**Certification of Representative dated:** [February 2, 2024](#)

**In the Matter of**

NJ TRANSIT BUS OPERATIONS, INC.

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 701

Docket No. RO-2023-041

**Service on the following:**

John J. Peirano, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Ave  
Box 2075  
Morristown, NJ 07960

Brady M. Connaughton, Esq.  
Cohen Leder Montalbano & Connaughton, LLC  
River Center Dr Ste 125  
669 River Dr  
Elmwood Park, NJ 07407