

D.R. No. 2024-6

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket Nos.

CU-2012-017
CU-2016-029
CU-2016-031
CU-2019-018
CU-2019-024
CU-2020-003

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Intervenor.

SYNOPSIS

In a first-round bellwether decision in a consolidated matter involving several clarification of unit petitions filed by Council of New Jersey State College Locals, AFT, AFL-CIO (AFT) regarding various titles and employees of the State Colleges and Universities and in which Communications Workers of America, AFL-CIO (CWA) has intervened, the Director of Representation provides guidance to the parties of the legal standards to be applied for future rounds and settlement efforts and resolves the unit placement status of select employees to resolve several of the docketed petitions. The Director addressed, among other things, issues of timeliness, unit work, and community of interest and definitions of supervisors, confidential employees, and managerial executives.

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Appearances:

For the Public Employer,
Matthew J. Platkin, Attorney General
(Kevin K.O. Sangster, Deputy Attorney General)

For the Petitioner,
Mets Schiro & McGovern
(Kevin P. McGovern, Esq.)

For the Intervenor,
Weissman & Mintz, LLC
(Patricia A. Villanueva, Esq.)

DECISION

This is a consolidated matter involving the above-docketed clarification of unit petitions filed by Council of New Jersey

State College Locals, AFT, AFL-CIO (AFT). Communications Workers of America, AFL-CIO (CWA) has validly intervened pursuant to N.J.A.C. 19:11-2.7. Both organizations seek clarification that over one thousand employees employed in various positions by the State of New Jersey in state colleges and universities are included in their respective negotiations units.^{1/} The State has raised various objections under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), to unit inclusion of some of the petitioned-for employees and indicated preferences for unit placement for some employees still disputed between AFT and CWA.

During the lengthy period of processing this matter, the parties have negotiated the placement of employees to varying success. While still encouraging negotiations among the parties, I determined that a more systematic and structured approach to handling the remaining employees was due. We advised the parties of the plan to finalize a list of employees and raised issues and publish a bellwether decision for a select first-round group of employees showing the parties the legal standards and analysis that will eventually be used for the rest of the employees. This

^{1/} The state colleges and universities at issue include The College of New Jersey (TCNJ), Kean University (Kean), Montclair State University (Montclair), New Jersey City University (NJCU), Ramapo College of New Jersey (Ramapo), Rowan University (Rowan), Stockton University (Stockton), Thomas Edison State University (TESU), and William Paterson University (WPU).

decision would then give the parties guidance to possibly agree on inclusion or exclusion for some employees, and, over time, a schedule of rounds of subsequent briefing and decisions for additional groups of employees would eventually resolve all of the docketed matters. See State of New Jersey (DEP), P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985) (“[T]he parties targeted titles in the hope that a decision would guide settlement discussions over other titles in dispute. . . . Thus, we provided the parties with numerous examples to guide their settlement discussions. . . . [T]he parties should advance their efforts to settle the status of the remaining titles and decide which require further litigation.”).

On February 17, 2023, we sent a schedule to the parties requesting that the State provide lists of all current non-aligned employees of all the schools and, for each employee, the asserted bases for exclusion and, if managerial executive status was raised, the policy area for which the employee was alleged to effectively have discretion to formulate policy or direct policy-implementation. We advised that certifications were not necessary at this stage but that the inclusion of employees without an asserted basis for exclusion would be deemed non-contested. We also advised that any employee for whom a managerial policy area was not asserted would be found to not be a managerial executive, with the record closed on that issue. We

requested that AFT and CWA identify the employees from the State's list they were seeking to include in their respective units and advised that any employee not so identified would be deemed withdrawn from consideration and that any new employees for consideration would need to be sought with a newly filed clarification of unit petition. Extensions were granted to the State due to workload demands at some of the schools.

By March 24, 2023, the State provided all school lists. We advised the parties that the State's lists would be considered prima facie exhaustive lists of those currently employed. On April 20, 2023, AFT and CWA submitted lists identifying which employees from the State's lists they were seeking to include in their respective units. The parties were advised that employees not so identified were deemed withdrawn from consideration, that exclusionary bases not asserted by the State for the remaining employees were not at issue in this matter, and that employees for whom no managerial policy was asserted were found not to be managerial executives.

On July 10, 2023, we selected a group of employees for consideration in the first-round decision. These employees were limited to some employees of Kean, Montclair, and TCNJ, in order to resolve some of the docketed petitions entirely. The parties and a Commission staff agent participated in a clarifying conference call on July 12, 2023.

The parties subsequently provided updated information regarding the status of certain titles and employees that were originally referenced in the petitions (e.g., newer employees in the titles, titles being renamed or reclassified, positions eliminated entirely), and the first-round list was updated accordingly to include a total of 29 employees. The parties also reviewed the names of employees for whom the State withdrew or did not raise an exclusionary basis for possible agreement on particular unit placement.

On October 2, 2023, the State filed and served its brief and certifications and exhibits with respect to each employee from the first-round list. On October 23, 2023, CWA filed and served its brief with exhibits and AFT filed and served its brief. On October 30, 2023, AFT filed and served a supplemental brief with a supporting certification of counsel with exhibits. On October 31, 2023, CWA filed and served a supplemental brief. The State did not file or serve a supplemental brief.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.

LEGAL STANDARDS AND GENERAL FINDINGS

As a preliminary matter, I find the petitions to be timely for several reasons. First, no party has raised timeliness as an

issue. Second, the earliest petition (CU-2012-017) covered all assistant deans, associate deans, directors, associate directors, managing assistant directors, executive assistants, executive directors, assistants to the dean, assistant bursars, associate bursars, assistant controllers, associate directors, coordinators, managing assistant directors, managers, officers, assistant registrars, associate registrars, specialists, business analysts, assistant business analysts, management operations analysts, grant writers, interior designers, associate producers, executive producers, senior researchers, and foundation scholarship assistants (overlapping with the later petitions) and was premised on changed circumstances; namely, the amendment to the definitions of managerial executive and confidential employees for employees of the State of New Jersey and the Executive Branch in N.J.S.A. 34:13A-3. Although it was determined in State, AFT, and CWA, P.E.R.C. No. 2013-52, 39 NJPER 301 (¶101 2013), aff'd 41 NJPER 357 (¶113 App. Div. 2015), that the amended definition of managerial executive was inapplicable to employees of the State colleges and universities,^{2/} the Appellate Division found that

^{2/} The amended definition applicable to confidential employees of the State of New Jersey was also found not to be applicable to employees of state colleges and universities in Rutgers and URA, H.E. No. 2015-6, 41 NJPER 277 (¶94 2014), citing State, AFT, and CWA. In the briefing for the instant first-round decision, no party has re-raised the argument that the amended definitions of managerial executives and confidential employees should apply.

AFT and CWA were entitled to a thorough fact-finding investigation to determine whether the employees fell under the general exclusionary definitions in N.J.S.A. 34:13A-3 and remanded the matter back to the Commission. Any finding of untimeliness would contradict that order.

Third, these petitions concern the statutorily defined statewide units in N.J.S.A. 34:13A-5.10,^{3/} which provides that majority representatives may challenge the unit placement decisions of the Governor's Office of Employee Relations through the clarification of unit procedure. Our earlier cases concerning the propriety and "timeliness" of clarification of unit petitions were premised on the petitions being intended to clarify whether a title was within the mutually intended definitional scope of the recognition clause to which the parties already agreed. Union Cty. VT Bd. of Ed., D.R. No. 2023-5, 49 NJPER 505 (¶122 2022). If the union did not clearly seek to include unrepresented employees that arguably would have fallen within the language of a similarly worded and subsequently executed recognition provision, it would be fairly understood to mean the parties did not intend that language to include those

3/ N.J.S.A. 34:13A-5.10 refers to these units as units of civilian employees of the Executive Branch, including the State colleges and universities unit despite the State colleges and universities not literally being part of the Executive Branch. The Legislature has referenced this use of the term Executive Branch in other statutes applicable to State colleges and universities. See N.J.S.A. 18A:64M-19.

employees, and the union would be considered to have waived an argument to the contrary. Id. The union's option at that point would be a representation petition with appropriate showing of interest, not a clarification of unit petition. Id.

However, our Act provides the definitions of the statewide units, the contours of which the Commission is empowered to resolve. N.J.S.A. 34:13A-5.10. As such, the concepts of timeliness and waiver which are tied to contractual recognition provisions are inapplicable to deciding disputes of these statutorily defined units. The Governor's Office of Employee Relations has made its unit placement decision for the employees at issue in the current matter; i.e., it has decided to place them outside of all of the represented units. N.J.S.A. 34:13A-5.10 allows AFT and CWA to challenge that decision. As such, the current clarification of unit matter can be decided on the merits.

Fourth, subsequent to the filing of the earliest petitions, the Workplace Democracy Enhancement Act (WDEA) (P.L. 2018, c. 15, effective May 18, 2018), N.J.S.A. 34:13A-5.11 et seq., was passed. The WDEA provides that employees who perform unit work shall be included in the unit regardless of job title, job classification, or the number of work hours previously required under the CNA. N.J.S.A. 34:13A-5.11(a), (b), (d); Union Cty. VT Bd. of Ed. A recognition provision is only relevant under the

WDEA to the extent it sheds light on what the unit's work is. Union Cty. VT Bd. of Ed.

A claim for inclusion under the WDEA then is not about resolving whether a title falls within the fairly attributable mutually intended meaning of a recognition provision, but about whether the title involves unit work and is not otherwise excluded, e.g., by a statutory exclusion or a substantial conflict of interest negating a community of interest.

AFT and CWA have argued that the employees at issue in this matter perform the work of their units. The statutory definitions of the units, the descriptions of the units in the parties' briefing and collective negotiations agreements (CNAs), and the evidence submitted in this matter, including the certifications and job descriptions submitted by the State, have made these claims properly raised for review. See Rutgers and AAUP-BHSNJ, P.E.R.C. No. 2024-1, 50 NJPER 119 (¶30 2023) (in WDEA cases, "the relevant information or evidence can be developed during the course of the proceeding."), citing N.J.R. 201(a).

The unions' claims for inclusion under a statewide unit (implicating N.J.S.A. 34:13A-5.10) and based on unit work (implicating the WDEA) make irrelevant the State's claim that many of the titles at issue in this matter are excluded due to the unions' recognition provisions. To the extent a title at issue does not fall within the inclusionary language or outside

of the exclusionary language in the unions' CNAs, that is not fatal to their attempts to have those titles clarified as included within their units. Thus, for employees found not to be managerial executives under the Act, they are not barred from being included in a unit merely because of a prior contractual exclusion of managers or executives.

The State does not raise community of interest arguments generally except insofar as alleging that certain employees' inclusion in the unions' units would create a substantial supervisory conflict of interest.^{4/} Having reviewed the relevant factors and given that we have said that virtually all employees of an education employer share a community of interest, I find that the employees at issue in this matter do share a general community of interest with both AFT's and CWA's respective units to the extent that they are found not to be statutorily excluded nor to create a substantial supervisory conflict of interest.^{5/}

4/ See Wilton v. West Orange Bd. of Ed., 57 N.J. 404 (1971) ("If 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. . . . [A] conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable[.]")

5/ See Hamilton Tp., D.R. No. 2022-4, 49 NJPER 49 (¶10 2022); E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996), req. for rev. denied P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996); Rutgers and AAUP-AFT, D.R. No. 2023-7, 49 NJPER 291 (continued...)

For such employees, a determination must still be made as to the most appropriate unit for inclusion.

AFT's unit is referred to in N.J.S.A. 34:13A-5.10 as "State colleges and universities". The recognition provision in AFT's CNA embraces the nine state colleges and universities (see Footnote 1) and includes teaching and/or research faculty, department chairpersons, administrative staff (non-managerial),^{5/} librarians, student personnel staff, demonstration teachers, demonstration specialists, and professional academic support personnel holding faculty rank. The recognition provision excludes secretarial staff, maintenance staff, "bookstore, food service, etc. staff", adjunct faculty, academic specialists, and graduate assistants. In its briefs, AFT describes its unit as including "positions where the employees' duties involve interaction with faculty, staff, students; where interaction

^{5/} (...continued)
 (¶67 2022), aff'd P.E.R.C. No. 2023-35, 49 NJPER 395 (¶97 2023); University Hospital, P.E.R.C. No. 2023-52, 50 NJPER 9 (¶4 2023).

^{6/} With the CU-2016-022 petition, AFT attached a Professional Staff State Generic Titles chart found at https://www.cnjscl.org/Prof_Generic_titles.htm in referencing its existing non-managerial administrative titles. The site shows that the existing generic titles associated with administrative staff in AFT's unit are Administrative Assistant I, II, III; Assistant Director I, II, III, IV; Program Services Specialist I, II, III, IV; and Program Assistant (although employees serving in this last title were reclassified as Professional Services Specialists IV pursuant to Letter of Agreement XII in the 2015-2019 AFT CNA).

means not only contact with same, but involvement in or support of the educational and programmatic aspects or curriculum delivery of the institution.”

CWA represents four statewide units, referred to in N.J.S.A. 34:13A-5.10 as “administrative and clerical”, “professional”, “primary level supervisory”, and “higher level supervisory”. The State and CWA use a single “contract book” that incorporates the provisions of the parties’ four separate collective negotiations agreements for the units, although I will refer generally to “CWA’s CNA” for all four units. The recognition provisions in CWA’s CNA use the terms in N.J.S.A. 34:13A-5.10 and exclusions that match statutory exclusions under the Act. As such, I understand supervisory to refer to statutory supervisors as defined by N.J.S.A. 34:13A-5.3 and those precluded from inclusion in a lower-level unit because they decide or effectively recommend personnel actions and would create a substantial supervisory conflict of interest. I understand “professional” to mean a professional as defined by our regulations:

“Professional employee” means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing

related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

[N.J.S.A. 19:10-1.1]

Thus, CWA's administrative/clerical unit includes non-supervisory, non-professional, white-collar employees not falling under any of the other statewide units. CWA's professional unit includes those professional employees not otherwise falling under AFT's State colleges and universities unit.

Prior to the passage of P.L. 2005, c. 142 which codified the then-existing statewide units, AFT and CNA had occasionally agreed to submit classification disputes to the State of New Jersey Classification Disputes Panel. In these decisions, available on the Commission's website (see, e.g., L.D. NO. 91-10, 91-11), AFT's unit and CWA's professional unit were described as follows:

The AFT faculty unit consists of teaching and research faculty and non-teaching professional employees who are integrally related to academic functions of the colleges and primarily interact with faculty and students. The CWA unit consists of non-academic professional employees, i.e. those professionals engaged in the College's administrative, financial, business and support services functions.

The party asserting the application of a statutory exclusion of an employee bears the burden of establishing it. See City of Burlington, H.O. No. 2002-1, 28 NJPER 1 (¶33000 2001) (holding that the party seeking application of a statutory exemption bears

the burden of proving its applicability), citing NLRB v. Ky. River Cmty. Care, Inc., 532 U.S. 706, 711-12 (2001) (finding that the Board's burden rule was reasonable and consistent with the National Labor Relations Act because it was supported by the general rule that the burden of proving applicability of a special exception generally rests on the one who asserts it and because practicality favored placing the burden on the asserter where it was easier to prove the exercise of any relevant duties than to disprove their exercise), cited in NJ Transit, P.E.R.C. No. 2024-18, 50 NJPER 264 (¶59 2023); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985) ("This policy is consistent with the Supreme Court's declaration that the Act's public policy favors the organization of all employees desiring collective negotiations: the burden must therefore be on the party seeking to place an employee outside the Act's protection."), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Rutgers and HPAE, D.R. No. 2024-4, 50 NJPER 329 (¶79 2024).^{7/}

^{7/} We have sometimes said that because representation matters are administrative investigations, the traditional concept of burden is not applicable. This is because the burden here is not specifically on an employer or a majority representative, or on a petitioner or a respondent, but rather on whichever party asserts the applicability of a special exclusionary exception to our policy of favoring the organizing of employees, our broad view of community of interest, and our preference for broad-based units. It is perhaps more accurate to say that given the broad definition
(continued...)

N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-6(d) provide that, except where dictated by established practice, prior agreement, or special circumstances, supervisors "having the power to hire, discharge, discipline, or to effectively recommend the same" shall not be represented in collective negotiations in the same unit as non-supervisors. Additionally, we may review whether an employee's roles in evaluation or grievance processes result in the employee deciding or effectively recommending personnel actions of other unit members and thus creating a substantial conflict of interest and negating a community of interest. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) ("While evaluating alone is not one of the statutory criteria, we have looked to it as it relates to other actions such as renewal, tenure, promotion and salary. . . . We consider a supervisor's role in evaluations because evaluations can serve as effective recommendations for the statutorily mandated criteria.") contrasting Wilton v. West Orange Bd. of Ed., 57 N.J. 404 (1971) ("If performance of the obligations or powers

7/ (...continued)
of employee in the Act, we have a presumption that particular persons are not excluded from that definition and that we only exclude them if the exceptions are shown by evidence in the record submitted by any party. In the absence of such evidence, we do not find the exceptions apply. It is in the interest of any party desiring a finding that an exception applies to ensure the record shows its applicability and to supplement the record with its own submissions if the other parties have not done so.

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. . . . [A] conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable[.]”); Mainland Reg. Bd. of Ed., P.E.R.C. No. 87-79, 13 NJPER 72 (¶18032 1986) (“While the first step of the negotiated grievance procedure raises the possibility that a principal may informally resolve the grievance of another unit member, we do not believe that this possibility under the facts of this particular case warrants removing the principal from that unit.”); Middlesex Cty., H.O. No. 78-13, 4 NJPER 143 (¶4067 1978) (“In the grievance procedure, foremen are not called upon to make any decisions but rather confer informally with shop stewards as to possible resolution of problems. This duty does not on its face indicate a conflict of interest. . . . Any real action would seem to emanate from . . . higher authority. . . . [T]herefore . . . foremen are not supervisors within the meaning of the Act.”), adopted D.R. No. 79-8, 4 NJPER 396 (¶4178 1978).

Determination of a supervisory conflict of interest requires more than a job description or bald assertion that an employee has authority to hire, discharge, discipline, assign, evaluate,

or promote other employees; the Commission requires evidence that the authority is regularly exercised. City of Burlington, D.R. No. 2004-7, 29 NJPER 501 (¶158 2003).

Any conflicts of interest between a person making personnel recommendations and other unit members are de minimis where independent analysis and judgment from another person occurs before any personnel decision is implemented. Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023); New Jersey Turnpike Auth., P.E.R.C. No. 94-23, 19 NJPER 459 (¶24217 1993) (finding any conflict between toll plaza supervisors and the higher assistant section chiefs to be de minimis when few, if any decisions, were not subject to independent analysis by section managers or even higher authority) citing Teaneck Tp., E.D. No. 23, NJPER Supp. 465, 466 (¶114 1971) ("The mere rendering of an opinion which is subject to independent analysis . . . does not constitute the high order of reliance necessary to meet the test of effective recommendation."); State of New Jersey (State Police), P.E.R.C. No. 2010-13, 35 NJPER 335 (¶114 2009) (finding, contrary to hearing officer, that executive officers who directed captains, approved or disapproved their requests, and participated in management sessions where performance was evaluated did not have a substantial potential conflict of interest because they did not effectively recommend personnel actions), remanded App. Div. Dkt. No. A-0907-09T1 (May 25, 2010) (ordering supplemental hearing

after statutory amendment to definitions of managerial executive and confidential for state employees).

Whether recommendations are "effective" does not depend on how often they are followed or how much weight they are given, but on whether there is non-ministerial independent judgment and analysis (even on other issues) from any other person which is relied upon by the decision-maker before signing off on a personnel action. Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023); Hanover Tp., E.D. No. 41, NJPER Supp 516 (¶132 1971) (finding that even "serious" consideration of an opinion which is nevertheless subject to independent analysis does not meet the test of "effective recommendation"; "emergency action" of sending out-of-uniform employees home is not disciplinary authority when a higher authority independently determines whether loss of pay results; any conflict from directing employees to work locations is de minimis), cited in Carteret Boro., P.E.R.C. No. 2023-16, 49 NJPER 266 (¶61 2022) appeal pending. See also Fairfield Tp., P.E.R.C. No. 92-115, 18 NJPER 299 (¶23127 1992) (foremen who overstepped his authority and tried to discipline without the normal higher independent review was not a statutory supervisor thereby; immediate suspensions for safety are qualitatively different from decisions to impose penalties for misconduct; recommending probation for improvement is not considered a recommendation of discipline).

When employees act collectively and make a joint recommendation, we find that none of the employees have made an effective recommendation. See Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023) (employer's use of hiring committees did not establish a supervisory conflict of interest regarding the foreman, because concurrent independent analysis from the other committee members occurred and his recommendations as a subject matter expert therefore did not meet the high standard to be considered "effective"); Rutgers University, H.O. No. 99-2, 25 NJPER 377 (¶30165 1999) (explaining that when employees act collectively and make a joint recommendation, no individual employee whose status was in dispute is responsible for the hiring recommendation), adopted P.E.R.C. No. 2000-31, 25 NJPER 446 (¶30197 1999); Trenton Comm. Charter. Sch., D.R. No. 2000-10, 26 NJPER 187 (¶31076 2000) (stating that we will not speculate as to whether teachers, who collectively attended employment interviews of prospective teaching staff members, assessed qualifications, and made recommendations, made those recommendations by consensus, majority rule, or other method, and finding that this diffuse authority was too attenuated to be indicative of an effective recommendation).

Acting in a lead capacity; assigning, scheduling, guiding, directing, and overseeing the work of others; authorizing payments and performing administrative functions; and submitting

reports of work completed or evaluations of others without effective recommendations for personnel actions are not duties that establish supervisory status under the Act nor a substantial conflict of interest. City of Linden, D.R. No. 2011-12, 38 NJPER 159, 160 (¶46 2011); Academy Urban Leadership Charter High School, D.R. No. 2018-16, 44 NJPER 253 (¶72 2018); State of New Jersey (Dept. of Law and Public Safety), D.R. No. 93-25, 19 NJPER 385 (¶24169 1993); Jackson Tp., D.R. No. 2020-6, 46 NJPER 133 (¶30 2019).

Confidential employees are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). N.J.S.A. 34:13A-3(g) defines "confidential employees" of public employers other than the State as:

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

The Commission has held that mere access to personnel files, or advance knowledge of employee personnel information unrelated to management's handling of grievances or the negotiations process, does not render an employee confidential as that term is defined by our Act. Bloomfield Public Library, D.R. No. 2011-09, 37 NJPER 153 (¶47 2011). "The key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract

administration, grievance handling and preparation for these processes.” Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); see also State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). This type of knowledge must be distinguished from “knowledge of information which is confidential in the traditional sense or definition because it concerns security or personal matters,” since the latter understanding on its own “is not sufficient to remove employees based upon the definition of a confidential employee within the meaning of the Act.” Camden Bd. of Ed., D.R. No. 2007-6, 32 NJPER 383 (¶159 2006), citing Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

Advance knowledge of disciplinary determinations alone does not make employees confidential within the meaning of the Act. See Queen City Academy Charter School, D.R. No. 2023-10, 49 NJPER 378 (¶92 2023) (finding that employees’ knowledge obtained through their involvement with the process of hiring, evaluations, non-renewals, and discipline did not involve strategies and positions regarding collective negotiations), req. for rev. den. P.E.R.C. No. 2023-44, 49 NJPER 528 (¶125 2023); W. Milford Tp. Bd. of Ed. P.E.R.C. No. 56, NJPER Supp 218 (¶56 1971) (secretaries were not confidential despite having information regarding supervisors’ recommendations for personnel decisions on who to recruit because such information was not used in making

labor relations policy); Passaic Cty., D.R. No. 2015-3, 41 NJPER 296 (¶98 2015) (employees responsible for handling sensitive information for various personnel matters, including resignations, retirements, and discipline found to not be confidential); Rutgers and HPAE, D.R. No. 2024-4, 50 NJPER 329 (¶79 2024) ("If supervisors discussing and making disciplinary decisions and their secretarial staff being privy to this information are not thereby confidential, then it follows that information technology employees are not confidential from their even more tenuous connection with disciplinary information.").

In elaborating on the confidential employee evidentiary standard, we have explained:

[W]hile a mere certification that the duties of a job description are performed is generally not enough to establish confidential status, and while documentary evidence of sample work actually performed and showing the relevant confidential information is preferred, sufficient details in certifications regarding specific duties and examples of times that work involving confidential labor relations materials were actually performed can lead to a finding of confidential employee status.

[Queen City Academy Charter School, D.R. No. 2023-10, 49 NJPER 378 (¶92 2023), req. for rev. den. P.E.R.C. No. 2023-44, 49 NJPER 528 (¶125 2023)]

See also Evesham Township Fire District #1, D.R. No. 99-4, 24 NJPER 503 (¶29233 1998) ("[M]ost significantly, although the Board submitted an affidavit from one of its members attesting that these are the duties of these individuals, it failed to provide any documentation or examples demonstrating that said

duties are actually performed."); Franklin Tp., D.R. No. 2019-14, 45 NJPER 333 (¶89 2019) (flex clerks found not to be confidential despite Township certification that they were slated as backups for the Township Clerk to attend executive sessions, as no specific examples were provided of them actually attending executive sessions where collective negotiations were discussed).

We generally do not find confidential status based on speculation and conjecture, but where job functions are clear and their implementation and exposure to confidential labor relations information is certain and imminent, we may find confidential status despite the duties or exposure not yet having reasonable time to occur. See Hopewell Tp., D.R. No. 2011-14, 38 NJPER 165 (¶48 2011) ("Although the Township expects that the municipal housing liaison will have duties related to collective negotiations and contract administration in the future, it has not demonstrated that these duties are to be assigned imminently."); Roxbury Tp. Bd. of Ed., D.R. No. 2014-10, 40 NJPER 272 (¶103 2013); Glassboro Boro., D.R. No. 2008-12, 34 NJPER 127 (¶55 2008). Cf. Sterling Bd. of Ed., P.E.R.C. No. 80, NJPER Supp. 80 (1974) (stating that a determination based on what duties will be rather than what they have been would be subject to reexamination if the duties were not performed within a reasonably sufficient time).

The mere technical ability to access computer information without permission, without evidence that an employee has actually obtained knowledge of confidential labor relations information, does not make that employee a confidential employee under the Act. Downe Tp. Bd. Of Ed., D.R. No. 2005-3, 30 NJPER 388 (¶125 2004); Camden Cty. Library, D.R. No. 2008-4, 33 NJPER 298 (¶114 2007), req. for rev. den. P.E.R.C. No. 2008-35, 33 NJPER 319 (¶121 2007); Rutgers and HPAE.

Both issues regarding supervisory conflicts of interest and confidential employee status are implicated by an employee's participation in the grievance process. As explained above, an employee whose role is to try to informally resolve the grievance, even as a first step officer in the grievance procedure, does not create a substantial supervisory conflict of interest if they are not effectively deciding personnel actions. Mainland Reg. Bd. of Ed., P.E.R.C. No. 87-79, 13 NJPER 72 (¶18032 1986); Middlesex Cty., H.O. No. 78-13, 4 NJPER 143 (¶4067 1978), adopted D.R. No. 79-8, 4 NJPER 396 (¶4178 1978); Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023) ("Step 1 is an informal oral presentation of the issue, and since it requires the supervisor to discuss it with the Personnel Administrator, it seems the supervisor would not be exercising independent judgment, but rather, relaying a preliminary pre-written grievance decision from the Personnel Administrator."). The nature of most multi-

step grievance procedures also means that if the lower step officer can only recommend a decision, it is not an effective recommendation because it would be subject to independent analysis by the higher step officers.

It follows from our findings that some grievance officers are included in negotiations units that mere involvement in the grievance process does not make one a confidential employee. Indeed, in New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997) (Turnpike Authority), the Supreme Court referenced the definitions of both supervisors and confidential employees and made no suggestion that mere involvement in the grievance process renders one a confidential employee.

The Court noted that the Legislature had rejected a proposal for an alternate statutory definition of supervisor, which definition would have made an employee, despite not having the authority to hire, fire, discipline, or to effectively recommend the same, a supervisor if they nevertheless had the authority to evaluate, assign, direct, or adjust grievances. See Id. at 347.^{8/} In enacting the narrower definition limited to personnel actions, it appears the Legislature did not intend adjusting grievances absent a connection to personnel actions to establish supervisory status, let alone confidential employee status.

^{8/} This is the definition in the National Labor Relations Act, which the Legislature was using for reference when enacting our Act. See 29 USCS § 152.

Where a person is a statutory supervisor and also decides grievances, we have found they are not necessarily a confidential employee unless they are privy to the employer's grievance strategies and proposals to be used at the terminal step before arbitration. Barnegat Tp., D.R. No. 94-26, 20 NJPER 251 (¶25124 1994) (superintendent found to not be a confidential employee where, although he was the final departmental step of the grievance process, the Township Committee was the next step and there was no evidence that he was privy to the Township's grievance strategies or proposals prior to their disclosure to the union).

With respect to contractual grievances concerning collectively negotiated provisions affecting the unit (as opposed to mere appeals of disciplinary determinations of individual employees), an employee who has advance knowledge of the employer's settlement position and strategy at arbitration would be confidential, as would an employee who has advance knowledge of the employer's position and strategy about whether to settle or go to arbitration. See Barnegat Tp.^{9/}

^{9/} The last step officer before arbitration is often also someone with direct involvement in contract negotiations or advance knowledge of the employer's position and strategy for contract negotiations and empowered to execute agreements to modify or supplement the contract to resolve grievances. Such duties would also establish confidential employee status.

Whether lower step officers have such advance knowledge may depend on their independence. If they are utilizing their own individual interpretation of contractual provisions before issuing their decision, they likely are not confidential absent a showing that the employer discusses its ultimate strategy with the lower step officer before that officer's decision. See Barnegat Tp. On the other hand, the more independence the lower step officer has to make a decision without guidance, the more likely that officer would be found to have effective decision-making authority to be a statutory supervisor. See Mainland Reg. Bd. of Ed.; Middlesex Cty.; Union Tp. Accordingly, a person involved with the grievance process may be a supervisor, a confidential employee, both, or neither, depending on the particular facts.

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[.]" N.J.S.A. 34:13A-3(f). Whether an employee possesses this level of authority generally depends on the interplay of their relative position in the employer's hierarchy, their functions and responsibilities, and the extent

of their discretion. Turnpike Authority, 150 N.J. 331, 356 (1997).^{10/}

With respect to the discretion factor, the alleged managerial executive must be shown to decide or effectively recommend the policies or procedures without independent review and judgment from others. See Hopewell Tp., D.R. No. 2011-14, 38 NJPER 165 (¶48 2011) (municipal housing liaison found not to be a managerial executive where recommendations were not "rubber-stamped" by management) cited in Burlington Cty., P.E.R.C. No. 2019-25, 45 NJPER 237 (¶62 2019) (finding that Director applied the appropriate standard that an employee who does not have independent decision-making authority over the formulation and implementation of employer policies is not a managerial executive); Ocean Cty. Util. Auth., P.E.R.C. No. 98-120, 24 NJPER

^{10/} AFT cites to Burlington County College, D.R. No. 2006-5, 31 NJPER 382 (¶150 2005), req. for rev. den. P.E.R.C. No. 2006-65, 32 NJPER 77 (¶38 2006) for the proposition that the authority must also broadly affect the employer's purposes and not be in a specific, limited area. Though attributing this proposition to the Commission's words, I note that the Commission denied a partial request for review over a portion of the Director's decision and did not address the issue of managerial executive status at all. I further note that the Director's decision seems to have applied an outdated requirement that was excised by the Supreme Court. See Turnpike Authority at 356 ("We view the requirement that managerial executives . . . affect broadly the organization's purposes . . . as unduly restrictive. . . . The requirement that a managerial employee be one who broadly affects the agency's mission should not be a condition of exclusion, but merely an example of a manager who should be excluded.").

212 (¶29100 1998) (comparing the requirement that managerial executives effectively determine what policies will be adopted to the effective recommendation requirement for supervisors in N.J.S.A. 34:13A-5.3); Camden Housing Auth., D.R. No. 2014-7, 40 NJPER 219 (¶84 2013) (holding that an evidentiary showing of this independent authority is required to establish managerial executive status). A person must have effective discretion and power to "call the shots" and effectively control what policies will be adopted by establishing their key components in order to be a managerial executive. State of New Jersey (DEP), P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998), recon. den. P.E.R.C. No. 2000-34, 25 NJPER 461 (¶30200 1999). Suggesting courses of action or supplying information is not enough. State of New Jersey (DEP). If a person has effective discretion to implement policy and can be held accountable for "misexercising" that authority, the fact that superiors have the power to occasionally override implemented decisions will not necessarily lead to the loss of managerial executive status. State of New Jersey (DEP).

With respect to the responsibilities factor, a person must have a greater degree of authority and accountability than a supervisor or professional employee to be found to be a managerial executive. State of New Jersey (DEP). Supervisory functions of planning, organizing, prioritizing, and assigning work among staff and making sure the work is done satisfactorily

does not establish managerial executive status. State of New Jersey (DEP). Making immediate judgments on an individual day-by-day basis as to whether or not a work product has been fulfilled and priorities have been met does not establish managerial executive status. State of New Jersey (DEP). Authority that is circumscribed by existing written policies may be insufficient for managerial executive status. Washington Tp. Fire Dist. #1 and IAFF Local 4204-B, D.R. 2003-16, 29 NJPER 152 (¶44 2003), req. for rev. den. P.E.R.C. No. 2003-84, 29 NJPER 221 (¶66 2003), recon. den. P.E.R.C. No. 2004-1, 29 NJPER 323 (¶98 2003). A person who generally acts independently in overseeing work and supervising and assigning subordinates but who must consult with and defer to higher authority on any non-routine matters is not a managerial executive. State of New Jersey (Public Defender), P.E.R.C. No. 99-60, 25 NJPER 55 (¶30022 1998), recon. den. P.E.R.C. No. 2000-35, 25 NJPER 462 (¶30201 1999).

Managerial executive responsibilities are generally not short-term decisions to address emergent issues, but involve long-term policy planning. See City of Newark, D.R. No. 2024-3, 50 NJPER 153 (¶36 2023); Avon Boro., H.E. No. 77-21 n.21, 41 NJPER 124 (¶45 1977) (authority to add extra employees to the payroll during emergency conditions was limited authority itself subject to continued approval by higher authority and thus not found to establish managerial executive status), adopted P.E.R.C.

No. 78-21, 3 NJPER 373 (1977) (modifying remedy). Effective decision-making power over labor relations policies, determining the staffing levels, contracting or expanding the budget, committing agency funding, and allocating fiscal resources may establish managerial executive status. State of New Jersey (DEP), State of New Jersey (Public Defender). Effective decision-making authority regarding policies concerning conflicts of interests, political activities, press contacts, and gifts might also establish managerial executive status. See State of New Jersey (Public Defender). Serving on training committees and helping to plan curricula does not necessarily make someone a managerial executive. Id. Developing forms to be used by others to record information, requests, and results but which do not set policy does not establish managerial executive status. Id.

Where objectives are formulated at a higher level and a lower level sets forth general strategies for achieving those objectives, the even lower level charged with "determining what specific strategies a unit will take" is "implementing policy directives", "not directing their effectuation." State of New Jersey (State Police). Employees that "effectuate and supervise others' implementation" of "policies in relatively important but limited areas" of the employer's operations "do not formulate fundamental management policies nor direct their effectuation". Id. An employee who can "investigate or initiate a program or

idea" but whose recommendations are subject to review and approval by others or whose authority and discretion is circumscribed by standard operating procedures, rules, and statutes, does not effectively determine policy or direct its effectuation. Id.

ANALYSIS AND SPECIFIC FINDINGS

Kean - Reenat Munshi

Sue Porterfield is the Vice President of Research (VPR) at Kean University. She is the senior research officer and oversees the Office of Research and Sponsored Projects (ORSP). This includes managing all external funding, convening the Institutional Review Board (IRB), and coordinating research compliance and lab safety efforts. (Porterfield Cert. 1). The VPR reports to the Provost and Senior Vice President for Academic Affairs, who reports to the Chief of Staff and Executive Officer, who reports to the President and Board of Trustees. (CWA 1st Br. Ex. 2).

The Director III (Associate Director, Student Research & Innovation) title at Kean University is held by Reenat Munshi. She ensures that all student research activities comply with federal, state, and university regulations, and that student researchers have the resources and support they need to carry out their work with integrity and safety. Specific job duties include: managing and expanding all student research award

programs including financial aspects; creating and managing a summer research program to award research fellowships to Kean students, including scheduling social activities; assisting/advising students on the development of research proposals for both internal and external funding; and educating faculty on the benefits of engaging with students in their research and creative interests. (Porterfield Cert. 2).

Munshi reports to the VPR on the following matters: planning, developing, and implementing ORSP strategic plans to support Kean's overall research mission; budget development; and conceptualizing data reporting to enhance decision-making. (Porterfield Cert. 5). She approves purchase requisitions and travel documents. (Porterfield Cert. 6). Porterfield certifies that Munshi makes independent programmatic and budgetary decisions. (Porterfield Cert. 8). Munshi drafts the office's annual budget, creates student research reports, independently secures internship opportunities for undergraduates, and recommends Faculty Seed Grant awardees to the university president and provost. (Porterfield Cert. 10).

Munshi has formulated or created best practices and procedures related to the faculty/student research and IRB. She has developed detailed manuals that outline the specific requirements for Faculty Mentors working with the Center for Undergraduate and Research Fellowships (CURF). She also outlines

the budget, reports, and recommendations for Funding Awards, and Faculty Seed Research Grant. She was also appointed to the Kean University Institutional Review Board, which includes her reviewing IRB applications, making decisions regarding approvals and provisions, and making recommendations on human subject protection policies, as well as serving on research integrity reviews as needed. (Porterfield Cert. 11).

The practices and procedures formulated by Munshi state what internal research funding is available, who is eligible, and the process for applying for the funds. Porterfield explains that because Munshi is transparent about the funding opportunities and since the awards are made at the same time every year, faculty can plan and craft stronger proposals. (Porterfield Cert. 12).

Munshi does research about faculty student research and IRB practices at other institutions inside and outside New Jersey. She independently reviews faculty/student research proposals and awards funds based on a scoring system. She selects faculty as potential IRB Committee members. (Porterfield Cert. 13). Munshi drafted the department's procedures for accounting for industry best practices and Kean's expanding research initiatives and needs. (Porterfield Cert. 15).

Munshi's decisions to formulate or implement policies and procedures are subject to review and approval by VPR and the provost. (Porterfield Cert. 14). Munshi reviews applications,

identifies candidates for job interviews, conducts interviews, and makes recommendations for hiring of new unit staff in consultation with the Search Committee and the VPR. Munshi engages with the VPR in the progressive discipline process for unit staff. Porterfield certifies that Munshi may prepare and deliver performance reviews, corrective action memos, performance improvement plans, and formal referrals for disciplinary action. Munshi may make recommendations for discharge, but discharge requires formal action from Human Resources. (Porterfield Cert. 16, 17).

Although Porterfield references a disciplinary recommendation occurring in Spring 2023, no further details are provided. (Porterfield Cert. 18). Porterfield also certifies that Munshi recommended a performance improvement plan for a PSS 4 staff member, worked with Human Resources to document performance, and met with the staff member multiple times to provide direction and accountability. (Porterfield Cert. 19).

Munshi prepares evaluation materials required for reappointment of AFT unit members, but the reappointment evaluation ratings are considered by the VPR for further review and recommendation. (Porterfield Cert. 21). Although Porterfield provided what she refers to as "examples of performance reviews completed by the Director III", no completed performance reviews were provided, only blank forms. (Porterfield Cert. 21, Ex. E).

The form provided shows that candidates may appeal non-recommendations at each level, from Munshi to the Director/Department Head, to the Dean, and to the Divisional Vice President, showing that each level provides for further independent review.

No grievances have been filed by department unit staff. However, Porterfield states that Munshi may be the first employee reached when department unit staff have a concern regarding terms and conditions of employment. Munshi would be responsible for understanding the concern and addressing it informally. If not resolved, a formal grievance would be filed and Munshi would be consulted by Kean's employment and labor relations teams for a related factual history and steps taken to informally resolve the matter. Munshi could also potentially be called as a witness. (Porterfield Cert. 22, 23).

The State has not shown that Munshi's proposals and recommendations with respect to policies and procedures and employee personnel actions are "effective" and not subject to further independent review. Indeed, the State has not provided sufficient detail of any specific instances of recommendations for personnel actions. Munshi's involvement with grievances would be informal at a low level and as a witness similar to any other employee that might be called to be a witness, and thus she would not, through the grievance process, decide or effectively

recommend personnel actions and any conflict would be de minimis. Accordingly, I find that she is neither a managerial executive nor supervisory within the meaning of the Act.

Porterfield states that Munshi works closely with Kean's labor counsel in analyzing and negotiating compensation questions concerning AFT faculty. Porterfield states that ORSP has mentoring opportunities for AFT faculty, and that Munshi analyzes the mentoring assignments and workload of the faculty in order to propose the appropriate compensation for Kean's labor counsel to negotiate with AFT. Porterfield further states that Munshi ensures that labor counsel negotiates a compensation amount within ORSP's budget and ensures that the negotiated workload results in meeting ORSP's overall goals for the project at issue. (Porterfield Cert. 27).

Despite these statements, the State does not argue in its brief that this makes Munshi a confidential employee, although it does argue that she is confidential because of her knowledge with respect to employee performance reviews, Human Resources information, and the University's academic research goals and initiatives. This latter information is not confidential labor relations information. See Bloomfield Public Library, Camden Bd. of Ed. Regardless, with adequate notice to the parties during the processing of this case, the lists of employees and raised issues were finalized, and the State had not by then raised a

confidential employee status claim for Munshi. On August 17, 2023, the State had indicated that Munshi had switched titles but that it was raising the same exclusionary bases from its list. I therefore find the State has waived a confidential claim for Munshi in this case. In the interest of resolving the unit placement of hundreds of employees in this long-standing consolidated matter, new bases for exclusion will not be considered in this matter at this late date absent a showing that relevant duties or authorities (and not just the knowledge thereof) have actually changed since the finalization of the list. See Monmouth Cty. Prosecutor, D.R. No. 2010-13, 41 NJPER 117 (42 2010) (where employer suddenly raised a particular objection for the first time months after the understanding of the original dispute was finalized, Director found that consideration of the new objection at the "late date" was no longer appropriate, but explained that employer could file a subsequent petition later).^{11/}

^{11/} Moreover, even if the State had sought permission to raise a belated claim of confidential status based on Munshi's interaction with labor counsel regarding compensation proposals (which the State does not argue in its brief), it would have been in the State's interests to provide more detailed certified factual statements and documentary evidence (in camera if necessary) of specific times when Munshi would have been exposed to the State's position on negotiations proposals (beyond knowledge of the discoverable budget) before the unions.

CWA does not seek to include Munshi in its units. As I find that Munshi is not statutorily excluded, and that she is extensively involved in interacting with and advising students and faculty with respect to research, I find that Munshi is included within AFT's unit.

Kean - Christina Hoffman

John Wooten is the Executive Director of the Office of Theatre Management and Programming (TMPO) and manages professional performing arts programming at the University, including the programs Kean Stage and Premiere Stages.

(Wooten/Hoffman Cert. 1). Wooten reports to the Board Operations and Chief of Staff, who reports to the Office of the President. (Wooten/Hoffman Cert. Ex. F).

Christina Hoffman is the Managing Assistant Director III (MAD 3) (internal title: Director of Marketing and Audience Development) at Kean and reports to Wooten. She creates and oversees the implementation of a strategic marketing plan including social media for all performing arts programs hosted by Premiere Stages and Enlow Hall; supervises marketing support staff; manages audience cultivation, and increases visibility for arts programming on campus by nurturing collaborative partnerships with other University departments; oversees the TMPO's safety protocols to ensure compliance with partner Actor's

Equity Association (AEA) safety riders and audience needs. (Wooten/Hoffman Cert. 2).

Hoffman ensures programming fulfills the requirements of Premiere Stages' union partners and ensures that Premiere Stages is in compliance with the AEA safety rider, in accordance with State of NJ guidelines and regulations. (Wooten/Hoffman Cert. 4, Ex. B). The safety riders are signed by Wooten, as the producer. (Wooten/Hoffman Cert. Ex. B). Wooten states that Hoffman, as the safety coordinator for Premiere's Equity productions, has managerial authority over AEA or SDC members to maintain compliance with the Safety Rider and is responsible for overseeing, monitoring, and enforcing protocols for testing, symptom monitoring, protocols following a positive Covid test, monitoring the cleaning and sanitization, ensuring that masks and respirators are provided, ventilation, press events, case reporting, contact tracing, and conducting orientations and training. (Wooten/Hoffman Cert. 4).

Hoffman acts as a liaison between Kean and the design consultant utilized by TMPO to create materials to market and publicize Premiere Stages programming. She assigns projects to contractors and reviews/approves work products. Emails provided by Kean show that Wooten has asked for changes to marketing materials and Hoffman has relayed these requests to the consultants. Wooten has also requested Hoffman to receive cost

estimates before Wooten has approved the orders. (Wooten/Hoffman Cert. 4, Ex. C).

Hoffman creates and formulates a strategic marketing plan each year for Premiere Stages, outlining marketing and Public Relations initiatives, timelines for initiatives, a cost analysis for initiatives, and the personnel required to support the implementation of the initiatives. In addition to creating a marketing plan with benchmarks, assignments, and expectations that aligns with each fiscal year, Hoffman is also responsible for the development of a detailed marketing section to be included as part of the Premiere Stages three-year strategic plan, which is a requirement for the department to continue to receive funding by the New Jersey State Council on the Arts. (Wooten/Hoffman Cert. 4).

Hoffman designs and supervises the development of opening night donor events for Premiere Stages, creates a budget for the events, and supervises the personnel required to implement them. (Wooten/Hoffman Cert. 4).

Hoffman reports to Wooten on all marketing and public relations matters related to the professional performing arts events on campus; keeps him apprised of collaborations with external offices and off-campus partnerships in the course of their duties; and takes the lead on all matters of safety

coordination but keeps Wooten abreast of all concerns.

(Wooten/Hoffman Cert. 5).

Hoffman has developed and implemented strategic marketing plans that outline marketing initiatives for the professional performing arts programming at Kean. The plans also outline the staff required to assist her with its implementation, a schedule for implementation, and the cost of each initiative, if applicable. (Wooten/Hoffman Cert. 11, Ex. G). The plans provide guidelines by which the department's marketing goals are met and highlights important standards and accountability measures that Wooten says Hoffman must uphold. (Wooten/Hoffman Cert. 13).

Hoffman works closely with TMPO staff to garner feedback and ideas and frequently meets with Executive Director Wooten to gauge the effectiveness of the protocols that Hoffman oversees. (Wooten/Hoffman Cert. 13). Hoffman's decisions to formulate and implement protocols and procedures are subject to review and approval by Wooten. (Wooten/Hoffman Cert. 14). Wooten reviews the safety protocols and marketing plans, and he discusses the procedures with Hoffman and appropriate representatives. This includes reviewing safety procedures with Kean's Office of University Counsel and Chief of Staff; reviewing marketing planning documents with the Premier Stages advisory board; and making recommendations to enhance these initiatives. (Wooten/Hoffman Cert. 15).

Hoffman shares supervision duties with two other managers to manage the multiple public performances Premiere Stages produces throughout the year. Wooten certifies that these public events require that a full-time manager be present to supervise the front-of-house and box office staff, troubleshoot any facilities issues (e.g., HVAC failure, equipment failure, etc.), and contact security and fill out accident reports should a member of the public or an artist need medical attention. (Wooten/Hoffman Cert. 4).

Hoffman directs work to the Professional Services Specialist (an AFT unit title internally referred to as Marketing Associate) in the creation/updating of the Premiere Stages website, e-blasts, and outreach and publicity efforts that market and publicize Premiere Stages programming. (Wooten/Hoffman Cert. 4). Hoffman also schedules the work of the Premiere Stages marketing intern. (Wooten/Hoffman Cert. 4). Hoffman assigns duties to and provides feedback on the Marketing Associate to be included in the performance evaluations. However, Hoffman is not the direct supervisor and does not prepare and complete the evaluation itself. (Wooten/Hoffman Cert. 16). The evaluation is submitted by the TMPO Associate Director II (Manager of Kean Stage). (Wooten/Hoffman Cert. 17). Wooten reviews the evaluation of the Marketing Associate to determine whether or not to forward it to the University's Chief of Staff with a recommendation for

reappointment. (Wooten/Hoffman Cert. 20). Hoffman may be tasked with reviewing applications and identifying candidates for job interviews, conducting interviews, and making recommendations for hiring in consultation with the Search Committee. (Wooten/Hoffman Cert. 16).

Hoffman may be consulted when staff have a concern regarding their terms and conditions of employment. She would be responsible for understanding the concern and assisting with finding a resolution before a formal grievance is filed. Wooten states that after a formal grievance is filed, Hoffman may be consulted for the factual history and may serve as a witness. (Wooten/Hoffman Cert. 21). However, no formal grievances have been filed yet. (Wooten/Hoffman Cert. 22). Hoffman is not involved with the collective negotiations process. (Wooten/Hoffman Cert. 25). She is only involved with contracts of the Actor's Equity Association (AEA) in that she is responsible for overseeing the company management requirements mandated by the Premiere Stages union partner, ensuring that Premiere Stages is in compliance with the Actor's Equity Association's safety protocols rider, which is a required part of the agreement that must be fully executed before AEA union actors and stage managers can be employed by Premiere Stages at Kean University.

(Wooten/Hoffman Cert. 26, Ex. B).^{12/} Wooten certifies to his knowledge that Hoffman is not subject to confidential information that would make membership in AFT or CWA's unit incompatible with her title's official duties. (Wooten/Hoffman Cert. 27).

The State has not met its burden of showing that Hoffman's proposals and recommendations with respect to policies and procedures are "effective" and not subject to further independent review. Several areas are shown to involve further independent review and recommendations, and I infer that all other areas similarly involve further independent review and recommendations in the absence of certified statements or documentary evidence regarding specific instances to the contrary.

The State has also not shown a substantial supervisory conflict of interest. Hoffman's supervisory duties are limited to scheduling and directing work. She does not decide or recommend personnel actions without the independent review of co-managers, higher-level managers, or committees. No recommendations in evaluations have been provided as examples, let alone with sufficient evidence to show they effectively determined personnel

^{12/} The rider indicates that it will form part of each contract entered by the Actor or Stage Manager. These do not appear to be "collective" contracts covering a collective negotiations unit imposable on unit members who did not individually agree to the contract and future members who were not employed when it was ratified. Rather, these appear to be individual contracts for persons not within a negotiations unit.

actions without independent review from others. Her involvement with grievances would be informal at a low level and as a witness similar to any other employee that might be called to be a witness, and thus she would not, through the grievance process, decide or effectively recommend personnel actions and any conflict would be de minimis. There is also nothing in the record to show that she is exposed to confidential collective negotiations information in the course of her duties. Accordingly, I find that she is neither a managerial executive nor a confidential employee nor a supervisor within the meaning of the Act.

AFT argues that Hoffman's duties, which it says primarily involve marketing and promotion of the performing arts programs, should be in its unit under the administrative staff (non-managerial) category in its unit description because a similar position (assistant communications and marketing director) at Montclair was included in its unit in State of New Jersey (Montclair State University), D.R. No. 2018-15, 44 NJPER 244 (¶70 2018), req. for rev. den. P.E.R.C. No. 2018-42, 44 NJPER 398 (¶111 2018). In that matter, the Director determined that the special events director, assistant communications and marketing director, assistant annual giving director, assistant media relations director, assistant donor-relations events director, and associate donor-relations

scholarships director at Montclair were not managerial executives nor confidential employees and were included in the unit of AFT, the organization that had filed the petition for clarification of unit in that matter. However, the Director was not asked in that matter to determine whether AFT's or one of CWA's units was more appropriate as it appears that CWA was not informed of the proceeding and did not intervene.

AFT does not explain how Hoffman's duties are integrally related to academic functions or primarily involve interaction with faculty and students in support of the educational and programmatic aspects or curriculum delivery. CWA argues that Hoffman's functions are not integrally related to Kean's academic functions because the theatrical productions are not limited to students and are open to the general public. It appears that performances are not primarily student-led. Even with some student and faculty involvement with TMPO, Hoffman is primarily responsible for the business operations of TMPO through marketing events to all patrons. CWA's professional unit already includes titles involved with agricultural, tourism, and fish and seafood marketing. Accordingly, I find that CWA's professional unit is more appropriate and Hoffman is included within it.^{13/14/}

^{13/} CWA had sought Hoffman's placement in its Primary Level Supervisory unit. The State argued that there was a supervisory conflict of interest with AFT's unit (which it has failed to show), but did not explain how there would be
(continued...)

Kean - Patrick McMullen

Patrick McMullin is the Managing Assistant Director II (Production Supervisor) at Kean and reports to TMPO Executive

13/ (...continued)

a conflict with any of CWA's units and whether it had a preference for one if it were determined that Hoffman could be represented for collective negotiations. As I find that Hoffman is not a supervisor within the meaning of the Act, I find that she is more appropriately placed in CWA's professional unit. Nevertheless, if CWA and the State believe that the Primary Level Supervisory unit is more appropriate, her inclusion therein would be appropriate under a subsequent agreement to that end under the special circumstances exception. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). This also applies to any other employees that may be found to be appropriately within one of CWA's units.

14/ AFT had argued that several titles were not "professional employees" as defined by N.J.A.C. 19:10-1.1, apparently to argue that they more appropriately fell under the administrative (non-managerial) category of AFT's unit definition. This focus seems misplaced as CWA represents both a professional unit and an administrative/clerical unit (i.e., non-professional white-collar employees not falling within the other codified state-wide units) and as AFT's unit as originally certified before codification in the Act was a professional unit. See State of New Jersey (CNJSCL AFT), P.E.R.C. No. 72, NJPER Supp 308 (¶72 1972). That is, the administrative (non-managerial) category itself consists of professionals, so to the extent AFT argues that a title at one of the colleges is administrative and not professional, that is actually an argument that it should be included in CWA's administrative/clerical unit. The primary distinction from CWA's professional unit is the AFT unit's integration with the academic function. Titles that are instead related to the non-academic administrative, financial, business, and support services functions are more appropriately included in CWA's units. For those titles found in this decision to be included in particular CWA units, the State and CWA may seek reclassification into CWA's other units by agreement or through a future clarification of unit petition in the event of a dispute between them.

Director Wooten, who reports to the Board Operations and Chief of Staff, who reports to the Office of the President.

(Wooten/McMullin Cert. Ex. B). McMullin manages the recruitment and training of all full-time, part-time and student staff in the safe and proper use and maintenance of equipment and systems, including audio, video, rigging and lighting; directs and supervises the work of stage management as required by each production hosted by the TMPO; supervises performances; and troubleshoots urgent matters that may arise. (Wooten/McMullin Cert. 2).

McMullin has primary oversight of technical aspects of each event hosted by the TMPO along with budgetary responsibility for each event. He acts as liaison with the Executive Director, Associate Director II, and Office of University Counsel on contracts required for all aspects of the performances, which includes negotiating requirements of the technical riders, preparation of technical addendums, and arranging for and negotiating prices for all rentals of additional equipment necessary to meet requirements of contract. He also researches, forecasts, and plans budgets for the annual maintenance and repair program, including costs for labor, equipment, and outside contractors. (Wooten/McMullin Cert. 2).

In partnership with the Executive Director and Associate Director II, McMullin manages production codes within the TMPO

cost center, overseeing all technical related expenditures for each fiscal year and ensuring the accurate and timely processing of payments for production expenses. (Wooten/McMullin Cert. 2).

McMullin takes the lead role with regard to ensuring that all venues are up to code and meet safety requirements mandated by the State. This includes placing work orders when necessary and following up with Campus Planning to ensure that they are addressed. (Wooten/McMullin Cert. 4).

McMullin reports to Executive Director Wooten on production budgeting and related expenses; venue requests and accommodations; and departmental oversight, including keeping Wooten apprised of any important staffing or production matters that may require attention. (Wooten/McMullin Cert. 5).

McMullin has developed manuals outlining the required procedures for the operation of the three campus venues under the authority and management of TMPO. All units who use TMPO venues must first participate in a walk-through with McMullin and review/sign off on the requirements for accessing and utilizing the venues. (Wooten/McMullin Cert. 11). Wooten certifies that the Wilkins Theatre Operations Manual is one of three manuals that McMullin has created and monitors. (Wooten/McMullin Cert. 11, Ex. C). The cover of this manual shows that it was written by McMullin. Its introduction page states that the manual contains required guidelines, policies, and protocols for the use of the

theatre; that McMullin will talk through each section of the manual to all venue users; and that users should contact McMullin for questions regarding the terms in the manual. The manual contains policies for catwalk safety, emergency procedures, fall protection, fire extinguishers, first aid, headsets, incident reporting, keys, lighting, lockup, man lifts, motors, orchestra pit, rigging, running lights, sound system, tech table, and work lights. (Wooten/McMullin Cert. Ex. C).

McMullin oversees Kean Stage production budgets and is actively involved in cost center projections, analysis, and recommendations with regard to production rentals, enhancements and replacements. (Wooten/McMullin Cert. 11). Wooten certifies that McMullin created what Wooten refers to as a Crew Expense Report form to provide a breakdown to the rental company of staffing costs they agreed to pay as part of their agreement for the event. For each event, McMullin supervises a crew of production personnel and documents the hours worked by each of his direct reports, including Shaw and personnel provided through Hudson Enterprises, an external labor provider. (Wooten/McMullin Cert. 11, Ex. D). Wooten provides a completed copy of the form, which at the top is labeled TMPO Stage Personnel Expense Report and is alone signed by McMullin on a line indicated that he prepared and approved the report. (Wooten/McMullin Cert. Ex. D). McMullin submits the hours to Wooten. (Wooten/McMullin Cert. 24).

Wooten certifies that McMullin's formulation and implementation of the operating procedures (including the operation manuals and production budgets and reports) was subject to review and approval by Wooten. (Wooten/McMullin Cert. 14). Wooten reviewed the manual and, with McMullin, discussed the procedures with representatives at the Office of Campus Planning to ensure the manual was in accordance with Kean and State policies and protocols. (Wooten/McMullin Cert. 15).

McMullin supervises Professional Services Specialist IV (Stage Technician) Patrick Shaw, an AFT unit employee. McMullin assigns Shaw to events, sets his schedule, monitors and evaluates his progress, reviews his paperwork, and provides feedback for and assists with his formal evaluation for reappointment. McMullin approves Shaw's use of vacation, sick, compensatory, and flex time. (Wooten/McMullin Cert. 4).

Wooten states that McMullin would have "primary" responsibility for the hiring process for AFT Professional Services Specialist IV position (currently held by Shaw) if it became vacant. McMullin monitors, evaluates, hires, and assigns the production crew for the hundreds of events on campus that are staffed each year by the TMPO in three venues. He is responsible for managing all production/technical related activities that occur in these venues, including reviewing and approving technical riders and rental agreements; assessing the needs of

each presentation and assigning crew; supervising the crew during events; and evaluating the crew and assessing the need to expand or replace existing crew members. (Wooten/McMullin Cert. 4).

McMullin reviews applications, identifies candidates for interviews, conducts interviews, and makes recommendations for hiring of staff in consultation with the Search Committee. (Wooten/McMullin Cert. 16).

With Executive Director Wooten and Human Resources, McMullin can engage in the progressive disciplinary process for the AFT unit staff member. Wooten states that McMullin may prepare and deliver corrective action memos, performance improvement plans, and formal referrals for disciplinary action to Human Resources. McMullin does not have authority to discharge the AFT unit member, but he may forward a recommendation of discharge. (Wooten/McMullin Cert. 16).

Wooten states that McMullin has assigned the AFT unit employee to events, approved his schedule, monitored and evaluated his progress, reviewed his paperwork, provided feedback and assistance with his formal evaluation for reappointment, and recommended reappointment. (Wooten/McMullin Cert. 18).

Wooten provided a blank performance evaluation form that he certifies McMullin completes for reappointment recommendations for the AFT unit member. (Wooten/McMullin Cert. 19, Ex. E). McMullin's recommendations are forwarded to Wooten for further

review and recommendation. (Wooten/McMullin Cert. 19, Ex. E). The form provided shows that candidates may appeal non-recommendations at each level, from McMullin to the Director/Department Head, to the Dean, and to the Divisional Vice President, showing that each level provides for further independent review. (Wooten/McMullin Cert. Ex. E). Wooten reviews the evaluation to determine whether or not to forward it to the University's Chief of Staff with a recommendation for reappointment. (Wooten/McMullin Cert. 20).

No grievances have been filed in TMPO while McMullin has been employed. However, Wooten states that McMullin may be the first employee reached if the AFT unit member has a concern regarding terms and conditions of employment. McMullin would be responsible for understanding the concern and addressing it informally. If not resolved, a formal grievance would be filed and McMullin would be consulted by Kean's employment and labor relations teams for a related factual history and steps taken to informally resolve the matter. Munshi could also potentially be called as a witness. (Wooten/McMullin Cert. 21, 22).

Wooten states that McMullin has knowledge of "confidential information" from his duties related to monitoring the job description of Shaw to ensure he is not being assigned work outside of his job description, submitting leave approval forms to Human Resources, and completing performance reviews.

(Wooten/McMullin Cert. 26). However, this information is not confidential collective negotiations information. Indeed, Wooten certifies that McMullin is not involved with the collective negotiations process. (Wooten/McMullin Cert. 25). Further, with adequate notice to the parties during the processing of this case, the lists of employees and raised issues were finalized and the State had not by then raised a confidential employee status claim for McMullin. I therefore find the State has waived such a claim in this case, although it is not precluded from filing a future clarification of unit petition.^{15/}

The State has also not shown a substantial supervisory conflict of interest. The State has not shown that McMullin decides or recommends personnel actions without independent judgment from co-managers, higher-level managers, or committees. McMullin's involvement with grievances would be informal at a low level and as a witness similar to any other employee that might

^{15/} In an early position statement regarding McMullin, before these cases were consolidated, the State had initially argued that McMullin was a managerial executive. In the finalized list of employees in the consolidated matter, the State no longer raised the managerial executive issue and did not identify a policy area for which managerial executive authority might be exercised by McMullin, which the parties were notified would be deemed a finding that the employee was not a managerial executive. The State does not argue in its briefs that McMullin is a managerial executive. I further note that the record shows that any policies McMullin helped to initially formulate were subject to further independent review and approval by others and would therefore not establish managerial executive status.

be called to be a witness, and thus he would not, through the grievance process, decide or effectively recommend personnel actions and any conflict would be de minimis.

AFT argues that nearly all the duties of McMullin were previously assigned to the AFT unit title of Professional Services Specialist 3 (with the same internal title of Production Supervisor). However, in addition to the new title name, AFT acknowledges the notable differences in that the Managing Assistant Director II (Production Supervisor) has these additional duties: "develops performance standards for staff and students, makes performance evaluations, provides guidance and counsel to staff and students and approves various personnel actions required within the sections managed." (Wooten/McMullin Cert. Exhibit A).

In evaluating this new position with the competing claims of AFT and CWA, I find that AFT's unit is the most appropriate unit. The position's interaction with students does not appear to be part of their academic curriculum. Rather, the students appear to be workers alongside outside professionals. This provides students at Kean opportunities to gain experience, though this is not much different than if a student were to take a part-time job in any other university department while separately pursuing their academic studies, whether or not the job was related to their planned career field. However, as the previous position

(with many similar duties) was in AFT's unit as is the Professional Services Specialist IV (Stage Technician) position, and as I find no substantial supervisory conflict of interest, I find that AFT's unit work encompasses McMullin's duties and AFT's unit is more appropriate than CWA's units. See Trenton Bd. of Ed., D.R. No. 2012-4, 38 NJPER 372 (¶126 2012) (clarifying inclusion of purchasing clerks into clerical unit as opposed to general blue-collar and white-collar unit where it was not disputed that the purchasing clerks performed work previously performed by secretaries in the clerical unit); Hamilton Tp. Bd. of Ed., D.R. No. 2004-14, 30 NJPER 93 (¶37 2004) (finding that a title primarily encompassing duties of the previous title that was included in a transportation unit was more appropriate for inclusion in that unit). Accordingly, I find that McMullin is included within AFT's unit

TCNJ - James Spencer

John Donohue is the Vice President for Advancement at TCNJ and oversees the offices of Development and Alumni Engagement; Communications, Marketing & Brand Management; Advancement Services; and Government & Community Relations. (Donohue/Spencer Cert. 1).

James Spencer is in the title of Director of Development and Planned Giving at TCNJ. (Donohue/Spencer Cert. 2). He reports to

the Associate Vice President for Advancement, who reports to Donohue. (Donohue/Spencer Cert. 5, Ex. B).

Spencer identifies and solicits major and planned gifts, maintains call reports, creates research and cultivation strategies for prospects, develops and maintains a planned giving program that educates alumni about deferred and outright gifts, supervises and reviews activities of Annual Fund staff, determines methodology to increase participation, oversees efforts to process and recognize gifts, coordinates with financial institutional representatives, and assists with reunion and homecoming activities to cultivate planned giving candidates. (Donohue/Spencer Cert. 2). Spencer has authority involving identification of prospective donors, development of fundraising strategies, and negotiation and execution of gift agreements. (Donohue/Spencer Cert. 4). Spencer carries out the goals of the TCNJ Foundation, Inc. Official Fund Raising, Gift and Acceptance Policies. (Donohue/Spencer Cert. 12, Ex. C).

Although the State originally raised a supervisory status issue for Spencer in the finalized lists, it no longer raised this issue in its brief, and, regardless, the facts do not show that Spencer decides or effectively recommends personnel actions. The State argues that Spencer is a managerial executive, but the State provides no examples of Spencer effectively determining policy or directing its effectuation without independent analysis

and review from others. Accordingly, I find that he is not a managerial executive.

Since the Director of Development and Planned Giving position is "solely" devoted to raising funds (Donohue/Spencer Cert. 7) and focuses on external parties and not current students and faculty and is not integrally related to an academic function, I find that AFT's unit is not the most appropriate. I find that the title and Spencer are included in CWA's administrative unit because that unit is the most appropriate. TCNJ - Laura Smith, Susan Collins, Kerri Keane

Laura Smith is the Leadership Gift Officer at TCNJ. Susan Collins and Kerri Keane are Major Gift Officers at TCNJ. They all report to the Associate Vice President for Advancement, who reports to Donohue. (Donohue/Smith Cert. 5, Ex. B). Smith's duties include developing and implementing strategies to identify and solicit potential leadership gift donors, drafting and negotiating gift agreements that comply with TCNJ policies, providing appropriate recognition and stewardship of the donor/gift, and complying with TCNJ Foundation, Inc. Official Fund Raising, Gift and Acceptance Policies. (Donohue/Smith Cert. 2). The duties of Collins and Keane are similar, but with respect to major gifts. (Donohue/Collins/Keane Cert. 2).

The State argues Smith, Collins, and Keane are managerial executives, but the State provides no examples of them

effectively determining policy or directing its effectuation without independent analysis and review from others. Accordingly, I find that they are not managerial executives.

Since the Leadership Gift Officer and Major Gift Officer positions are "solely" devoted to raising funds (Donohue/Smith Cert. 7, Donohue/Collins/Keane Cert. 7) and focus on external parties and not current students and faculty and are not integrally related to an academic function, I find that AFT's unit is not the most appropriate. I find that these titles and the employees holding them are included in CWA's administrative unit because that unit is the most appropriate.

TCNJ - Eddie Roberts

Eddie Roberts is the Director of Stewardship & Donor Relations at TCNJ. He reports to the Executive Director of Advancement Services, who reports to Donohue. (Donohue/Roberts Cert. 4, Ex. B).

Roberts had duties include supervising the Financial Reporting & Stewardship Coordinator, developing and executing personalized gift acknowledgment strategies for major and leadership gift donors, developing and disseminating financial impact reports to donors, coordinating with the Office of Student Financial Assistance to ensure scholarships are awarded in compliance with all criteria and requirements, overseeing the process of securing and distributing notes of appreciation from

scholarship recipients to the donors, reviewing and processing transfer requests from the TCNJ Foundation to the College, and participating in campus activities including Welcome Weekend, True Blue Weekend, and Commencement Weekend. (Donohue/Roberts Cert. 2).

Roberts is involved with evaluating the performance of the Financial Reporting & Stewardship Coordinator, a CWA unit position. Roberts is responsible for everyday oversight of the Coordinator and conducts the annual performance evaluation. Donohue states that the evaluation constitutes the basis for consideration of the Coordinator's continued employment. (Donohue/Roberts Cert. 6).

The State argues that Roberts has a substantial supervisory conflict of interest with CWA's unit. However, the State provides no examples of completed evaluations showing recommendations, let alone evidence that such recommendations effectively decide personnel actions without independent review from others. Accordingly, I find that Roberts is not supervisory within the meaning of the Act and that there is no conflict of interest with CWA's professional or administrative/clerical units.

AFT argues that because a similar position (Associate Director, Donor Relations-Events) at Montclair was found to be included in AFT's unit in Montclair State University despite no

interaction with students, the similar position at Kean should be included as well. Not only is this inconsistent with the definition of AFT's unit provided by AFT itself in this case, but there was no argument raised in Montclair State University that another unit was more appropriate, and CWA was not a party to that case. Although Montclair State University found that there was a community of interest between Montclair's Associate Director, Donor Relations-Events position and AFT's unit, it is important to note again that we have said that virtually all non-supervisory employees at an educational institution share a community of interest. Rutgers and AAUP-AFT, D.R. No. 2023-7, 49 NJPER 291 (¶67 2022), aff'd P.E.R.C. No. 2023-35, 49 NJPER 395 (¶97 2023). Roberts shares a community of interest with CWA's professional and administrative/clerical units and AFT's unit.

Although it would seem that Roberts may have some interaction with students at campus activities, and particularly with students receiving scholarships as they express their appreciation to donors, this interaction is not integrally related to the academic function or curriculum delivery. Roberts does not primarily interact with faculty and students, but with other fundraising staff and donors. Accordingly, AFT's unit is not more appropriate for inclusion.

The parties have not identified in which CWA unit the Coordinator is included. As it does not appear that Roberts is

engaged in a field of science or learning, I find that he is included in CWA's administrative/clerical unit rather than CWA's professional unit.^{16/}

TCNJ - Kelly Andrews

Kelly Andrews is the Associate Director of Creative Services at TCNJ. She reports to the Associate Vice President for Communications, Marketing, and Brand Management, who reports to Donohue. (Donohue/Andrews Cert. 4, Ex. B). Andrews translates TCNJ's brand strategy into creative strategies resulting in top-level, high-impact external communications. She designs publications, including TCNJ Magazine and development and admissions publications. She monitors internal and external use of logotypes, wordmarks, and other design elements to ensure consistent branding. She oversees creative services providers, photo shoots, and on- and off-campus creative work. She also manages an in-house design team consisting of a design specialist, student designers, and outside freelance designers. (Donohue/Andrews Cert. 2). The position is not a student-facing position. (Donohue/Andrews Cert. 6). The position requires a BA or BFA degree in design or a related field, with an MFA degree preferred. (Donohue/Andrews Ex. A).

^{16/} Even if there was found to be a supervisory conflict of interest between Roberts and the Coordinator, AFT's unit is not the most appropriate. Roberts would instead be included in CWA's primary supervisory unit.

The State does not object to the inclusion of Andrews in a negotiations unit and recommends her inclusion in CWA's unit because the position is not student-facing. AFT indicated it was willing to cede the title to CWA on the condition that CWA cede other titles that the State recommended be included in AFT's unit. CWA did not do so, so there appears to still be a dispute regarding placement of Andrews.

AFT does not dispute that the position is not student-facing, but argues that under Montclair State University, student interaction is not required for inclusion in AFT's unit. As previously discussed, CWA was not a party and there was no argument in that case that another unit's definition was more in line with the non-student-facing positions at issue. AFT's unit includes positions that involve faculty interaction even if student interaction is not involved. However, the positions should still be integrally related to the academic function. Andrew's communications, marketing, and brand management duties are instead primarily related to TCNJ's business function. Accordingly, I find that she is included in CWA's professional unit.

Montclair - Thea Dyer

Thea Dyer is the Assistant Director for Residence Life - Facilities at Montclair. She reports to Associate Director of Housing Services Kevin Schafer, who reports to the Executive

Director of Residence Life. (Schafer/Dyer Cert. 1, Ex. 1). CWA also explains that the Executive Director reports to the Associate Vice President for Student Development and Campus Life, who reports to the Vice President for Student Development and Campus Life, who reports to the University President.

Schafer is responsible for the facilities, operational and support services for students living in residence halls and University apartments. The Associate Director for Residential Support Services oversees the program and policies related to all room selection, room change situations, lease agreements, conference housing, and room assignments for all new and returning students to the University; manages the residential conferences program; and serves as an appointed designee and departmental fiscal agent on behalf of the Executive Director in his/her absence. (Schafer/Dyer Cert. 1).

Dyer is responsible for the coordination of the maintenance and repair of residential facilities; proposing long-term capital improvements; working with University Facilities administration in establishing methods for identifying facility and remediation issues; developing the budget with the Associate Director; and recommending policy revisions pertaining to facilities. (Schafer/Dyer Cert. 2).

Dyer is not involved with evaluating AFT or CWA unit employees' work performance, although if an employee fails to

follow proper procedures (such as closing a building), she can consult with their supervisor to document the concern and recommend that a job action be taken. (Schafer/Dyer Cert. 19, 20, 29). Schafer certifies that Dyer has not performed duties that generate a potential conflict of interest. (Schafer/Dyer Cert. 24). Dyer is not involved with processing or deciding grievances. (Schafer/Dyer Cert. 22). Dyer is not involved with collective negotiations or contract administration. (Schafer/Dyer Cert. 26).

The State had not raised a statutory exclusionary basis with respect to Dyer when the lists were finalized. As such, the State's belated claim of managerial executive status in its brief is waived in this matter. Regardless, Schafer certifies that Dyer's formulation or implementation of policies is subject to review and approval by Schafer and the Executive Director. (Schafer/Dyer Cert. 14). As such, there are no facts showing that any recommendations of Dyer effectively determine policy without independent review from others to establish managerial executive status.

Despite interaction with students, Dyer's duties are not integrally related to the academic function, but rather administrative operations. AFT's unit description excludes "Bookstore, food service, etc. staff", and the housing facility services provided by Dyer fall within this. AFT states that the facilities maintenance duties of Dyer make CWA's units more

appropriate. CWA's professional unit has many other "facilities" positions. The Assistant Director for Residence Life - Facilities job description also indicates the requirement for a Master's degree and maintaining up-to-date knowledge with regard to student development theory. I find that Dyer is included in CWA's professional unit.

Montclair - Victoria Elisca, Karen Gillen, Genicka Voltaire

Victoria Elisca, Karen Gillen, and Genicka Voltaire are each in the title of Assistant Director of Residence Life at Montclair. They report to the Associate Director, Residence Life Tara Mellor, who reports to the Executive Director, Residence Life. (Mellor Cert. Ex. 2).^{17/} CWA also explains that the Executive Director reports to the Associate Vice President for Student Development and Campus Life, who reports to the Vice President for Student Development and Campus Life, who reports to the University President.

Mellor supervises managers and a CWA unit member and indirectly supervises AFT unit members. She is responsible for the day-to-day operations of Residence Life. She writes, reviews, and evaluates university, divisional, and departmental policies and procedures and ensures that her unit is trained and able to

^{17/} Mellor provided mostly identical certified statements for each of these employees. Unless otherwise indicated, references to (Mellor Cert.) are references to all three certifications.

implement those policies and procedures. She also serves in the manager on-call emergency response rotation. (Mellor Cert. 1).

The Assistant Directors supervise community directors in AFT's unit and senior clerk transcribers in a CWA unit. (Mellor Cert. 2). CWA's CNA indicates that senior clerk transcriber is a position in its Administrative/Clerical unit. The Assistant Directors indirectly supervise graduate student assistant community directors and undergraduate student staff members. They have oversight of residential communities. They assist with student, AFT, and CWA staff recruitment, selection, training and development processes. They serve in on-call emergency response rotation. They serve as conduct and appeal officers for violations of the code of conduct for students. They develop learning content and activities. They develop and implement student staff evaluation systems. They also oversee the budget for training, development, and recruitment. (Mellor Cert. 2).

They report to Mellor on matters involving staff recruitment, hiring, training, development, supervision, evaluation, operations and facilities management, student conduct caseloads, programming and curriculum development, and payroll management. (Mellor Cert. 5). They review policies, formulate appropriate responses in accordance with established protocols, and ensure that staff have implemented the policies accordingly. (Mellor Cert. 15). While on call, they provide guidance for

responses based on guidelines and established protocol and have a high degree of independent discretion to adjust responses in real time depending on the facts of each incident, although they can call up the chain of command for guidance. (Mellor Cert. 13-15).

The State had not raised a claim of managerial executive status with respect to these employees nor identified a potential policy area where they might have had such authority when the lists were finalized. As such, per adequate notice given earlier in the case, the State's belated claim of managerial executive status in its brief is waived in this matter and these employees are found to not be managerial executives.

I further note that the State did not provide documentary evidence of Gillen formulating policy. With respect to Voltaire and Elisca, the State provided the "Division of Student Development and Campus Life Strategic Plan - Core Values, Pillars, Strategic Goals & Action Steps". (Mellor/Voltaire Cert. Ex. Q11). There is no indication that the Assistant Directors alone determined the plan without independent judgement from others. Indeed, the plan applies to the whole Division of Student Development and Campus Life, and covers not just the Residence Life unit, but also Auxiliary Services, Intercollegiate Athletics, Campus Recreation & Health Promotion, Center for Leadership and Engagement, Social Justice and Diversity, Center for Student Involvement, Student Communications, Disability

Resource Center, University Health Center, and University Police. The only action step in the document that Voltaire is indicated as the lead on (with co-lead Patrick Duffy and a mentor) is in setting up a divisional group for interdepartmental contact and information sharing via a mobile app. (Mellor/Voltaire Cert. Ex. Q11). Elisca is also assigned with other co-leads and mentors for various action steps. (Mellor/Elisca Cert. Ex. 2A).

With respect to Elisca, the State also provided the "Residence Life Professional Staff Duty Response Guide 2022-2023". (Mellor/Elisca Cert. Ex. 11A). There is no indication that Elisca independently created this guide without independent review from others, especially since it requires professional staff to submit duty reports every morning to people above Elisca, including Mellor and the Executive Director, and Mellor is in the manager on-call emergency response rotation. (Mellor/Elisca Cert. 1, Ex. 11A).^{18/} Even if no one higher than the Assistant Directors was involved in creation of the guide, if the Assistant Directors created the guide together, then neither of them individually could be said to have authority to effectively decide policy. If they also each have independent discretion in adjusting responses as needed, such discretion would be more akin to using individual judgment for oneself as a

^{18/} The certification of Executive Director Jeanine Stroh submitted by the State also attributes the design of the duty response guide to Mellor. (Stroh Cert. 11).

knowledgeable professional, rather than the thoughtful consideration and forward-planning of longer-term policy to be followed by others that won't simply be adjusted with discretion by another employee of the same level the next day.

The State also provided a Think Tank Initial Report that contained recommendations for addressing challenges with the field and Student Development and Campus Life, and Elisca was one of at least 12 members in the think tank. (Mellor/Elisca Cert., Ex. 2B). The State does not indicate whether any recommendations were adopted without further review and what contributions Elisca specifically made, but with joint review by the think tank members, it cannot be said that she can effectively determine policy without independent analysis from others.

Unlike the State's claim regarding managerial executive status, the State's claim that the Assistant Directors have a supervisory conflict of interest was timely raised. Nevertheless, Mellor states that they have not performed tasks that would generate a potential conflict of interest. (Mellor Cert. 24).

Mellor states that the Assistant Directors have authority to hire, discharge, and discipline AFT and CWA unit employees in consultation with Human Resources and the Vice President/unit head. (Mellor Cert. 16). Mellor says that the Assistant Directors would be involved with grievance processing in the form of providing information and making recommendations to the Vice

President or unit head, but that they have not done so yet (Mellor Cert. 23, 27). They are not involved in the collective negotiations process. (Mellor Cert. 26).

Mellor states that Gillen is responsible for recommending hiring of AFT unit members, although Gillen has not done so yet but is expected to in the coming months as there is a vacancy on her team for the Blanton Hall Community Director position (Mellor/Gillen Cert. 18). Gillen wrote responses and recommendations for reappointment in the written evaluation of a community director, although the form shows that the Unit Head provided further independent review and recommendations, followed by further independent review and recommendations by the Vice President, who supported the community director's reappointment after review of the comments from her manager, the Dean of Students, and the community director's own self-appraisal. (Mellor/Gillen Ex. 3).

Voltaire has served as the hiring manager for multiple AFT-unit community director positions and evaluated AFT and CWA unit members. (Mellor/Voltaire Cert. 17). She has recommended the hiring of the following community directors: Ruqaiyah Lash, Brent Johnson, and Paige Hammond. (Mellor/Voltaire Cert. 18). Voltaire wrote responses and recommendations for reappointment in the written evaluation of a community director, although the form shows that the Unit Head provided further independent review and

recommendations, followed by further independent review and recommendations by the Vice President, who supported the community director's reappointment after review of the comments from his manager, the Dean of Students, and the community director's own self-appraisal. (Mellor/Voltaire Cert. Ex. 3).

Elisca has served as the hiring manager for AFT-unit community director positions and CWA positions and has evaluated community directors and a CWA-unit senior clerk transcriber. (Mellor/Elisca Cert. 17). She has recommended the hiring of the following community directors: Rebecca Stringham, Joanne Powser, Katie Lanigan, and Brittany Passano. (Mellor/Elisca Cert. 18). Elisca wrote responses and recommendations for reappointment in the written evaluation of a community director, although the form shows that the Unit Head provided further independent review and recommendations, followed by further independent review and recommendations by the Vice President, who supported the community director's reappointment after review of the comments from her manager, the Dean of Students, and the community director's own self-appraisal. (Mellor/Elisca Cert. Ex. 3). Elisca also provided responses and recommendations for improvement in the Interim Performance Assessment Review (PAR) for a Senior Clerk Transcriber, although it does not show recommendations regarding personnel actions. No comments appear from a higher reviewer, and the final PAR was not provided, nor

any showing that the PARs were used in deciding personnel actions. (Mellor/Elisca Cert. Ex. 3). Elisca also wrote a letter to a community director addressing "challenges" with the employee's communication and missed deadlines and stating Elisca's "expectation" of improvement. There is no warning of a possible personnel action let alone a recommendation for one, and Elisca CC'd another Assistant Director of Residence Life, the Associate Director of Residence Life (Mellor), and the Executive Director of Residence Life. (Mellor/Elisca Cert. Ex. 4). As noted above, Elisca reports to Mellor on matters involving hiring, supervision, and evaluation and consults with Human Resources and the Vice President and Unit Head regarding personnel actions, and Mellor does not view Elisca's duties as creating a conflict of interest. (Mellor Cert. 5, 16, 24).

The State has not submitted facts showing specific instances in which the Assistant Directors of Residence Life decided or effectively recommended (through evaluations or otherwise) personnel actions without independent review and judgment from others. They have not been involved with grievances and any future involvement is speculative and would be limited to providing information and recommendations to higher-level personnel, who, given the nature of a multi-step grievance process, would conduct independent review and exercise independent judgment before issuing any decisions. Accordingly, I

find that Victoria Elisca, Karen Gillen, and Genicka Voltaire are not supervisory within the meaning of the Act and would not create a substantial conflict of interest in the non-supervisory units of AFT and CWA.

Although I determined that Thea Dyer, the Assistant Director for Residence Life - Facilities, is included in CWA's professional unit, the Assistant Directors of Residence Life positions held by Victoria Elisca, Karen Gillen, and Genicka Voltaire have entirely different duties. As CWA mentions in its briefing, they perform professional work in the field of higher education, student affairs, and residence life. The positions require a Bachelor's degree supplemented by a Master's Degree in Student Personnel, Student Affairs, Higher Education Administration, or a related field. The job descriptions indicate that they coordinate activities of staff members in areas related to academic initiatives, implement programs to foster student leadership development and academic success, and have residential curriculum responsibilities. (Mellor Cert. Ex. 1). I find that they are non-teaching professional employees who have extensive interaction with students and who are integrally related to academic functions of Montclair. As I also find that there is no conflict of interest with the community directors who are already in AFT's unit, I find that AFT's unit is the most appropriate

unit for the Assistant Directors of Residence Life and that they are included within it as well.

Montclair - Tara Mellor

Tara Mellor is the Associate Director of Residence Life at Montclair. On some matters, she reports to Executive Director of Residence Life Jeanine Stroh. (Stroh Cert. 1). CWA explains that the Executive Director reports to the Associate Vice President for Student Development and Campus Life, who reports to the Vice President for Student Development and Campus Life, who reports to the University President.

Mellor reports to Executive Director Stroh on matters involving budgeting and allocation of funds for training and development, programming, and payroll; departmental policies and procedures; major issues within residence halls, and crisis and emergency response. (Stroh Cert. 5).

Mellor also reports to the Associate Dean of Students and Director of Student Conduct on matters involving high-level conduct cases, suspension, and expulsion; oversight of residential conduct portfolio; policy review and updates; and conduct-related training programs. (Stroh Cert. 5).

Stroh directs policy and procedure development and implementation related to housing assignments, licensing, contract releases and billings, student conduct, facility maintenance and operations, residential living learning

communities, residence life, applicable codes and legislation, crisis and emergency response, use of technologies, and related services in compliance with applicable laws. She develops and administers the annual Housing and Residence Life budget. She develops, recommends, and oversees the implementation of strategic plans for the expansion and improvement of Residence Life, student residential living learning communities, and student housing facilities. She manages the recruitment, selection, training, evaluation, and termination of all support, professional, and managerial staff within Residence Life. She refines the development, implementation, and assessment of Montclair's model for living learning communities, resident and student staff leadership, and community development programs. She develops and coordinates the training of staff to implement regulations and technology into policy and operating procedures. She oversees the development and implementation of departmental communication and marketing programs and the Residence Life website content. She develops and oversees opening communication and procedure coordination with campus partners for when student move in to campus. She also creates and maintains the Residence Life management on-call rotation schedule for student and staff assistance after business hours. (Stroh Cert. 1).

Mellor supervises and evaluates three managers and a CWA unit member. She indirectly supervises eight AFT unit members and

one CWA unit member. She has duties related to the design, implementation, and evaluation of departmental recruitment and hiring processes. She oversees departmental training and development programs. She performs residential conduct caseload management. She reviews and assigns every incident report, tracks residential conduct cases from start to finish, coaches and supports conduct officers, serves as appellate officer, hears high level conduct cases involving possible suspension and expulsion, designs and implements training programs for hearing officers, implements panel hearings, and reviews and edit the student code of conduct in partnership with the Director of Student Conduct. She writes and reviews departmental policies and procedures. She is on the manager after-hours emergency on-call rotation and provides guidance to serious incidents, crises, and emergencies. (Stroh Cert. 10).

The State had not raised a claim of managerial executive status with respect to Mellor nor identified a potential policy area where she might have had such authority when the lists were finalized. As such, per adequate notice given earlier in the case, the State's belated claim of managerial executive status in its brief is waived in this matter and Mellor is found to not be a managerial executive.^{19/}

^{19/} Regardless, the State has not shown that Mellor formulates or directs the effectuation of policy without subsequent or (continued...)

The State's claim of a supervisory conflict of interest is timely, however. Mellor served as hiring manager for a CWA unit position for Isabel Iparraguirre and evaluated the employee's performance. Mellor also served as hiring manager for the following AFT-unit community directors: Nathan Parsell, Leslie Kropa, DonnaLee Mahabeer, Milagros Ortiz, Jaffir Rice, and Jahkahli Johnson. (Stohl Cert. 17, 18). Mellor makes personnel action recommendations in consultation with Human Resources, the Vice President, and the Unit Head. (Stohl Cert. 18).

Mellor is involved with evaluating AFT and CWA unit employees' work performance. (Stohl Cert. 20). Mellor wrote responses and recommendations for reappointment in the written evaluation of Assistant Director of Residence Life Victoria Elisca, although the form shows that the Unit Head provided further independent review and recommendations, followed by further independent review and recommendations by the Vice President, who supported Elisca's reappointment after review of the comments from her manager, the Dean of Students, and Elisca's

19/ (...continued)

concurrent independent judgment from supervisors, teams, and think tanks. Indeed, the State provides certifications that her supervisor, Stroh, exercises final independent judgment with respect to policies. (Stroh Cert. 1) (Soufleris Cert. 2-15). Preparing strategic plans, supervising implementation of policies in relatively important but limited areas, and determining specific strategies to implement the general strategies and directives of higher-level supervisors does not constitute directing the effectuation of policy. State of New Jersey (State Police).

own self-appraisal. (Stohl Cert. Ex. 3). Stohl provides her own recommendations regarding personnel actions, reviews evaluations, and provides final approval for all hiring within Residence Life. (Soufleris Cert. 16-20).

Stohl states that Mellor would be involved with grievance processing in the form of providing information and making recommendations to the Vice President or unit head, but that she has not done so yet (Stohl Cert. 22, 23, 27). She is not involved in the collective negotiations process. (Stohl Cert. 26).

The State has not submitted facts showing specific instances in which Mellor decided or effectively recommended (through evaluations or otherwise) personnel actions without independent review and judgment from others. She has not been involved with grievances and any future involvement is speculative and would be limited to providing information and recommendations to higher-level personnel, who, given the nature of a multi-step grievance process, would conduct independent review and exercise independent judgment before issuing any decisions. Accordingly, I find that Mellor is not supervisory within the meaning of the Act and would not create a substantial conflict of interest in the non-supervisory units of AFT and CWA.

For the same reasons that I found above that Victoria Elisca, Karen Gillen, and Genicka Voltaire are included in AFT's unit as opposed to CWA's unit, and because I find that Mellor

does not have a substantial conflict of interest with AFT's unit, I find that Mellor is included in AFT's unit.

Montclair - Jeanine Stroh

The State timely raised its claims that Executive Director of Residence Life Jeanine Stroh is a managerial executive. The State also timely raised a supervisory conflict of interest argument.

CWA agrees with the State that Stroh is a managerial executive and would have a supervisory conflict of interest if placed in the same unit as Associate Directors. AFT also agrees that Stroh is a managerial executive. Given that all parties agree that she is a managerial executive and precluded from any unit, there is no dispute regarding unit placement to resolve. City of Newark, D.R. No. 2018-18 n.3, 44 NJPER 415 (¶116 2018); N.J.S.A. 34:13A-5.3 ("[T]he commission shall not intervene in matters of . . . unit definition except in the event of a dispute."). Cf. N.J.A.C. 19:11-2.3(a).

Montclair - Erin Bunger Johnson

Bunger Johnson is the Associate Director of the Center for Research and Evaluation on Education and Human Services (CREEHS) at Montclair. She reports to the Director of CREEHS, Eden Kyse, who reports to the Dean for the College for Education and Human Services (Kyse Cert. 5). CWA further explains that the Dean

reports to the Provost and Vice President for Academic Affairs, who reports to the University President.

The State had not raised a claim of managerial executive status with respect to Bunger Johnson nor identified a potential policy area where she might have had such authority when the lists were finalized. As such, per adequate notice given earlier in the case, the State's belated claim of managerial executive status in its brief is waived in this matter and Mellor is found to not be a managerial executive. Regardless, the State provided a certification showing that Bunger Johnson's formulation or implementation of policies were subject to review and approval by the Director, CREEHS, along with the CREEHS leadership team, including the Senior Research Associates. (Kyse Cert. 14). As shared and subsequent independent judgment of others is involved in policy formulation and implementation, it cannot be said that Bunger Johnson effectively decides policy to be a managerial executive. City of Newark, D.R. No. 2024-3, 50 NJPER 153 (¶36 2023). Cf. Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023).

The State also had not raised a claim of a supervisory conflict of interest before finalization of the lists, and, therefore, that belated claim in its brief is also waived. The State has made no argument that the job duties have changed since the finalization of the lists. Regardless, Kyse certifies that Bunger Johnson has not performed tasks that would generate a

potential conflict of interest; that she has not been involved with any grievances; and that only unit employees' direct supervisors (not Bunger Johnson) and the Dean of the College can review and submit evaluations of the unit employees (Kyse Cert. 20, 21, 22, 23, 24, 27). While Bunger Johnson has chaired and participated in search committees to fill unit positions, these are collaborative, and the decision-making process involves polls and conversations. (Kyse Cert. 19). Bunger Johnson's does not directly evaluate unit employees and her involvement is limited to contributing to reviews submitted by the employees' direct supervisors. (Kyse Cert. 20, 21). Her involvement in disciplinary matters is limited to supporting and coaching supervisors of staff who have had to be disciplined. (Kyse Cert. 29). Thus, Bunger Johnson does not decide or effectively recommend personnel actions without independent review from others and would not be supervisory within the meaning of the Act.

CREEHS is a self-supporting revenue-generating unit, providing applied research, program evaluation, and program planning services to clients inside and outside the University. (Kyse Cert. 1). All CREEHS employees work toward the provision of high-quality research and evaluation services. (Kyse Cert. 7). Bunger Johnson translates key information to staff about current relevant trends in research and evaluation. (Kyse Cert. 2). She has presented evaluation and research results in reports and

presentations. (Kyse Cert. 8). To the extent that education research and evaluation services are also being applied to clients inside the University, CREEHS is supporting the academic and curricular function of the University. Regardless, AFT's unit includes research faculty and administrative and academic support staff in support of the University's research function.

Accordingly, even if Bunger Johnson does not directly interact with Montclair students or the faculty teaching those students, she is performing and supporting the research function, and in the absence of a conflict of interest, I find that she is more appropriately included in AFT's unit.

Montclair - Carrie Carpenter, Heather Kugelmass, Marisa MacDonnell

Carrie Carpenter, Heather Kugelmass, and Marisa MacDonnell are Senior Research Associates of CREEHS. They report to Associate Director of CREEHS Erin Bunger Johnson, who reports to Director Eden Kyse, who reports to the Dean for the College for Education and Human Services, who reports to the Provost and Vice President for Academic Affairs, who reports to the University President. (Bunger Johnson Cert. 1).

The State had not raised a claim of managerial executive status with respect to the Senior Research Associates nor identified a potential policy area where they might have had such authority when the lists were finalized. As such, per adequate

notice given earlier in the case, the State's belated claim of managerial executive status in its brief is waived in this matter and Senior Research Associates are found to not be managerial executives. Regardless, the State provided a certification showing that their formulation or implementation of policies were subject to review and approval by the Associate Director, Director, and the CREEHS leadership team, including the other senior Research Associates. (Bunger Johnson Cert. 14, 15). As shared and subsequent independent judgment of others is involved in policy formulation and implementation, it cannot be said that any Senior Research Associate effectively decides policy on their own to be considered a managerial executive. City of Newark, D.R. No. 2024-3, 50 NJPER 153 (¶36 2023). Cf. Union Tp., D.R. No. 2024-2, 50 NJPER 85 (¶22 2023).

The State also had not raised a claim of a supervisory conflict of interest with respect to Carpenter and Kugelmass before finalization of the lists, and, therefore, those belated claims in its brief are also waived. The State also indicates that Carpenter's position is now vacant. The State did timely raise a conflict of interest claim with respect to MacDonnell, however.

MacDonnell is responsible for the overall design of a statewide evaluation of the quality rating improvement system for childcare providers in New Jersey as well as the implementation

of the rating program. She secures funding for and prepares and manages grants and contracts for research and evaluation projects. She supervises Evaluation Associates/Project Coordinators, Research Assistants, and graduate students in conducting these tasks. She oversees the team's research and evaluation activities; writes, reviews, and edits research and evaluation reports; and ensures quality of all works products. (Bunger Johnson Cert. 2).

MacDonnell has participated in staff search committees and contributed to the collective decision-making for per diem and full-time staff. MacDonnell's does not directly supervise existing AFT or CWA unit members and does not have the authority to hire, discharge, or discipline them (Bunger Johnson Cert. 4, 16). She does directly supervise non-unit Project Coordinators, who supervise AFT staff. (Bunger Johnson Cert. 16). Bunger Johnson states that MacDonnell has the authority to hire, discharge, or discipline these Project Coordinators, although no specific examples are provided through certification details or documentary evidence. (Bunger Johnson Cert. 16). MacDonnell has, in conjunction with her participation in the position search committee, made hiring recommendations (Bunger Johnson Cert. 4, 18, 19). Bunger Johnson states that MacDonnell would develop performance improvement plans (PIP), contribute to PIP meetings, and provide ongoing review to the employee and direct managers,

but acknowledges that these tasks have not occurred yet. (Bunger Johnson Cert. 19).

Only unit employees' direct supervisors (not MacDonnell) and the Dean of the College can review and submit evaluations of the unit employees. (Bunger Johnson Cert. 20). MacDonnell is involved only to the extent that she can collaborate with the evaluatee's supervisor and contribute comments for employees she has worked closely with on projects. (Bunger Johnson Cert. 20). MacDonnell added a supplemental review for an AFT-unit Research Assistant into the last annual review submitted by the supervisor. (Bunger Johnson Cert. 21). Although Bunger Johnson says the evaluation had an impact on the decision to promote a staff member to a new position, documentary evidence of this review was not provided, and Bunger Johnson does not explain what comments or recommendations might have been made. (Bunger Johnson Cert. 21).

Bunger Johnson does not explain what MacDonnell's role, if any, with grievances would be. Any involvement is speculative, as she has not been involved with any grievances. (Bunger Johnson Cert. 23, 27). According to Bunger Johnson, MacDonnell has not performed any tasks that would generate a potential conflict of interest. (Bunger Johnson Cert. 24).

As there is no evidence of specific instances in which MacDonnell has decided or effectively recommended personnel actions without independent review and judgment from others

(e.g., employees participating in the same evaluations and search committees, as well as higher-level supervisors), I find that she is not supervisory within the meaning of the Act and would not have a conflict of interest with the non-supervisory units of AFT or CWA.

The Senior Research Associates design and oversee research studies and activities and work with research assistants and graduate students (Bunger Johnson Cert. 2). I find their duties are integrally related to Montclair's academic and research functions that AFT's unit covers. I therefore find that they are included within AFT's unit.

Montclair - Eden Kyse

Eden Kyse is the Director of CREEHS. She is responsible for leading the staff of researchers and evaluators in procuring contracted work; conducting research and evaluation; engaging with stakeholders across the state; creating and sustaining internal systems and infrastructure of the 2 Center; hiring and managing staff; ensuring the fiscal viability of the Center; and representing the Center and operating within the administrative systems of Montclair. (Kyse Cert. 1). Kyse Reports to Dean of the College for Education and Engaged Learning Vincent Alfonso. (Alfonso Cert. 2, Ex. B.). On all matters relating to educational, budgetary, and administrative affairs of the college, Alfonso reports to the Provost and Vice President for

Academic Affairs, who reports to the University President.

(Alfonso Cert. 1).

Kyse oversees, guides, and plans the day-to-day operations and activities of CREEHS. He secures funding for research and evaluation projects through grants and contracts. He creates and sustains a management system and infrastructure to ensure fiscal viability. He provides leadership in developing structures, processes and policies for CREEHS. He manages activities, personnel, and budgets for CREEHS and projects. He writes research and evaluation reports and oversees writing and dissemination of such reports. (Alfonso Cert. 2).

Kyse was involved with the formulation of the FY23 Professional Development Policies and Procedures and a proposal template for staff to request paid hours and funds for professional membership and professional development activities. (Alfonso Cert. 11, 12, Ex. C). Kyse was also involved with the development of a remote work policy. (Alfonso Cert. 13).

However, Kyse's formulation and implementation of these policies were subject to review and approval by Tamara Lucas, the previous Dean, who was responsible for management and supervision of all matters relating to the educational, budgetary, and administrative affairs of the college. (Alfonso Cert. 14, 15). Kyse is responsible for keeping Alfonso informed about CREEHS activities, revenue, budget, partnerships, and collaborative

projects, personnel actions, and partnership developments serving the University and external organizations. (Alfonso Cert. 5).

Kyse was involved with the inaugural Dean for the College for Education and Engaged Learning search. She has served on and chaired search committees for director-level, managerial, and dean searches. She has interviewed and evaluated candidates, selected candidate slates, and led the process of final selection and onboarding of the successful candidates. (Alfonso Cert. 17). She has been involved with actions that have led to the hiring of all current CREEHS staff, including the Associate Director, Senior Research Associates, Evaluation Associates, Project Coordinators, and Research Assistants. She also "supports" the hiring of all student workers and graduate assistants. Supervisors in CREEHS consult with Kyse on performance evaluations. (Alfonso Cert. 19, 20).

Kyse has previously "supported" the Associate Director and Senior Research Associates in their conducting of performance evaluations and was "consulted" on managers' decisions on personnel performance reviews of a staff member whose contract was not renewed due to poor performance. (Alfonso Cert. 29). However, the State did not provide these evaluations and reviews, and it is unclear what Kyse's support and consultation involved. There are no facts presented showing that she made a recommendation for a personnel action, let alone that such a

recommendation would have been effective without independent review and judgement from others.

Alfonso states that Kyse could engage as "part" of the step one review of the grievance process by responding with a "decision or next steps" to address the employee's concern (Alfonso Cert. 22). However, Kyse has not been involved with any grievances to date. (Alfonso Cert. 22, 23). Thus, Kyse's exact role, if any, is speculative. The AFT CNA's grievance procedure only has two formal steps: (1) a hearing and decision from the College/University President and (2) arbitration. The CNA provides for attempts to resolve the grievance informally before Step 1 and for the President at Step 1 to request the grievant to meet with involved officials in an effort to resolve the grievance informally before the hearing, with such informal discussions not becoming part of the record unless they resolve the grievance. It would seem then that if Kyse ever did become involved with a grievance, it would be as part of the informal resolution attempts.

Kyse is not involved with collective negotiations and all information available to Kyse is not considered confidential. (Alfonso Cert. 26, 30).

The State has timely raised a managerial executive and supervisory conflict of interest claim. However, the State has not shown that Kyse decides or effectively recommends policies or

personnel actions without independent review and judgment from others (including fellow search committee members and the Dean of the College for Education and Engaged Learning). She has not handled any grievances, and it appears any involvement that might occur would be informal. Accordingly, I find that Kyse is not a managerial executive nor supervisory within the meaning of the Act.

CWA withdrew its claim for Kyse's inclusion in its units. Because the work of CREEHS is related to Montclair's research function, I find that Kyse is included in AFT's unit.

Montclair - Khadija Ahmed, Milagros Benitzes, Ariana Buchar, Meghan Butler, Erika Marks, Maria Mera, Andrea Targonski

Khadija Ahmed, Milagros Benitzes, Ariana Buchar, Meghan Butler, and Maria Mera are Evaluation Associates in CREEHS. Erika Marks and Andrea Targonski are Project Coordinators in CREEHS. The State does not object to their inclusion in either AFT's or CWA's units but suggests that they be included in AFT's unit because of the research-intensive nature of their positions. The parties all agree that they do not have statutory supervisory authority, but CWA argues that they should be placed in CWA's professional unit. However, CWA acknowledges that they are researchers in a specialized field of social science. AFT describes this as applied research and programming to clients, including clients inside the University. The mission of CREEHS is

to conduct high quality multi-disciplinary and multi-method research to produce usable knowledge in education and human services fields. (Kyse Cert. Ex. 1). Because the work of CREEHS is related to Montclair's research function and AFT's unit includes researchers, I find that AFT's unit is more appropriate and that the Evaluation Associates and Project Coordinators are included in it.

Montclair - Tara Zurlo

Tara Zurlo is the Director of Red Hawk Central at Montclair. She reports to Vice President of Enrollment Management Wendy Lin-Cook, who reports to the University President. (Lin-Cook Cert. 5, Ex. B).

Zurlo is involved in the setting of policy for the services and processes conducted by the two operations within Red Hawk Central (1-Stop and Call Center) as well as the retention initiatives undertaken by the Enrollment Advocates. (Lin-Cook Cert. 2). She is responsible for establishing integrated student services representing areas such as: registrar, financial aid, student accounts, and advising students. (Lin-Cook Cert. Ex. A).

Her duties include creation of a tracking system for metrics for Red Hawk Central visits/calls/chats/emails; coordination of the office utilizing one centralized documented system for all interactions in Service Now (SNOW); oversight of the utilization of the TASKE and AVAYA phone management system; and adoption the

IVY live chat system to provide real time communication to students. Zurlo works closely with the Red Hawk Central managers on the most efficient methods to implement and achieve Red Hawk Central's policies and initiatives to help students address roadblocks. (Lin-Cook Cert. 2).

Zurlo is involved with decisions regarding timesheets, performance reviews, tuition waiver requests, travel approval, onsite and virtual service standards, hiring, fiscal oversight of expenditures, 1-Stop, and Call Center. She collaborates with Lin-Cook in developing policies governing the Enrollment Management Division, Hawk Pass, and Registration Holds and Student Persistence. (Lin-Cook Cert. 4). She reports to Lin-Cook on matters related to the daily operations of Red Hawk Central, the management of the Red Hawk Central personnel; human resource requests; performance evaluation; fiscal oversight ensuring funds are being spent and tracked efficiently; and KPI reports on retention data and assessment. (Lin-Cook Cert. 5). She was involved with the formation of SNOW and Hawk Pass. (Lin-Cook Cert 11). She has implemented policies related to receipt of forms for the Office of the Registrar, Office of Financial Aid, and Student Accounts; Red Hawk Central's extended/late night services during the academic year; residential student immunization compliance; and procedures for getting assistance with NetID lockouts. (Lin-Cook Cert. 13).

However, Zurlo's formulation or implementation of these policies was subject to review and approval by Lin-Cook. (Lin-Cook Cert. 14). The policies were "socialized" with appropriate campus partners before being submitted for review, feedback, and final approval by Lin-Cook. (Lin-Cook Cert. 15). Thus, I find that Zurlo does not effectively determine or implement policy without further independent review and that she is not a managerial executive.

Zurlo's duties relate to the student services of registrar, financial aid, student accounts, and advising students of the same. These are administrative and business functions and not integrally related to the academic function or curriculum delivery. As such, I find that AFT's unit is not the most appropriate. CWA and the State are in agreement that Zurlo is supervisory within the meaning of the Act. As such, as there is no dispute between them to resolve on that issue, Zurlo should be included in CWA's Primary Level Supervisory Unit as Zurlo supervises a Program Assistant in CWA's professional unit.

Montclair - Eileen Kearney

Eileen Kearney is the Associate Director of the School of Nursing at Montclair. The State does not object to her inclusion in either AFT's or CWA's units but suggests that she be included in AFT's unit based on the academic nature of her position, conceding that she would not create a conflict of interest

therein. CWA argues that the position is not academic in nature and is primarily responsible for overseeing the administrative functions of the Nursing School. CWA also argues that Kearney would create a conflict of interest in AFT's unit because she supervises the AFT-unit positions of Simulation Lab Manager and Web Content Coordinator. Nevertheless, rather than CWA's primary level supervisory unit, CWA argues that she should be placed in CWA's professional unit because CWA agrees that she does not have authority to decide or effectively recommend personnel actions. AFT argues that since Kearney previously served as a Professional Services Specialist II in AFT's unit before she was reclassified as a Director III, many of her continuing duties make it appropriate for her to be returned to AFT's unit.

Among other duties, Kearney works closely with Janice Smolowitz, Dean and Professor, School of Nursing, to prepare the official CCNE accreditation of the generic BSN program and MSN program; maintains cooperative working relationships with academic heads, faculty members, and students; maintains documents within the School of Nursing for presentation to accrediting agencies; assists in the preparation of accreditation, self-study, and other reports while complying with accreditation guidelines; and performs special studies and research. (Smolowitz Cert. 2). One of the original new duties that led to reclassification was responsibility to work closely

with the manager of the new Simulation Laboratory (AFT-unit position), nursing education departments, and Online and Extended Learning to establish CNE opportunities using the Simulation Laboratory. (McGovern Cert. Ex. B). These duties are integrally related to the School of Nursing's academic function in providing an accredited education and curriculum for students. She has many duties that she had previously in her AFT-unit position before reclassification. (McGovern Cert. Ex. B). The parties all agree that she does not decide or effectively recommend personnel actions, and no evidence has been presented that shows otherwise. For these reasons, I find that AFT's unit is the most appropriate unit and her placement in it would not create a substantial conflict of interest. Kearney and her position are included in AFT's unit.

ORDER

I clarify the unit placement of the following titles and employees as follows:^{20/}

Included in AFT State Colleges and Universities Unit

Kean - Director III/Associate Director, Student Research & Innovation (Munshi)

^{20/} With prior notice having been given to the parties, because of the specific selection of employees for the first round and the elimination of various titles since the filing of the applicable petitions, this decision fully resolves the cases with docket numbers CU-2016-029, CU-2016-031, CU-2019-018, CU-2020-003. The cases with docket numbers CU-2012-017 and CU-2019-024 will continue to be processed.

Kean - Managing Assistant Director II/Production Supervisor
(McMullin)

Montclair - Assistant Director of Residence Life (Elisca)

Montclair - Assistant Director of Residence Life (Gillen)

Montclair - Assistant Director of Residence Life (Voltaire)

Montclair - Associate Director of Residence Life (Mellor)

Montclair - Associate Director of CREEHS (Bunger Johnson)

Montclair - Senior Research Associate of CREEHS
(Vacant/Carpenter)

Montclair - Senior Research Associate of CREEHS (Kugelmass)

Montclair - Senior Research Associate of CREEHS (MacDonnell)

Montclair - Director of CREEHS (Kyse)

Montclair - Evaluation Associate in CREEHS (Ahmed)

Montclair - Evaluation Associate in CREEHS (Benitzes)

Montclair - Evaluation Associate in CREEHS (Buchar)

Montclair - Evaluation Associate in CREEHS (Butler)

Montclair - Evaluation Associate in CREEHS (Mera)

Montclair - Project Coordinator in CREEHS (Marks)

Montclair - Project Coordinator in CREEHS (Targonski)

Montclair - Associate Director of the School of Nursing (Kearney)

Included in CWA Primary Level Supervisory Unit

Montclair - Director of Red Hawk Central (Zurlo)

Included in CWA Professional Unit

Kean - Director of Marketing & Audience Development/Managing
Assistant Director III (Hoffman)

Montclair - Assistant Director for Residence Life - Facilities
(Dyer)

TCNJ - Associate Director of Creative Services (Andrews)

Included in CWA Administrative/Clerical Unit

TCNJ - Director of Development and Planned Giving (Spencer)

TCNJ - Leadership Gift Officer (Smith)

TCNJ - Major Gift Officer (Collins)

TCNJ - Major Gift Officer (Keane)

TCNJ - Director of Stewardship & Donor Relations (Roberts)

No Unit Placement Dispute to Resolve

Montclair - Executive Director of Residence Life (Stroh)

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

DATED: April 30, 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 May 10, 2024.