

D.R. NO. 94-29

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

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Public Employer,

-and-

Docket Nos. RO-94-29, RO-94-30
CU-94-18

AFSCME, COUNCIL 73,
LOCALS 3913, 3912, 3914,

Employee Organizations.

SYNOPSIS

The Director of Representation orders elections in two units of employees: (a) a unit of non-supervisory professionals and (b) a unit of higher level supervisors, employed by the New Jersey Turnpike Authority. The Commission previously excluded both of these groups from the secondary level supervisors unit in New Jersey Turnpike Auth., P.E.R.C. No. 94-24, 19 NJPER 461 (¶24218 1993) ("Turnpike I").

The Authority objected to both units and, relying on the Turnpike I record, asserted that these employees are managerial and confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1. The Director found that the Commission had already decided the managerial and confidential issues in Turnpike I, and accordingly, ordered an election among the eligible employees in each unit.

The Director also clarified the secondary level supervisors unit to include a Project Engineer and the Public Affairs Director, who each now supervise non-unit employees.

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Appearances:

For the Public Employer
Tobia, Schwartz & Stanziale, attorneys
(Frank Campisano, of counsel)

For the Employee Organizations
Gerard Meara, Staff Representative

DECISION AND DIRECTION OF ELECTION

On September 15, 1993, AFSCME Local 3913 filed a Petition for Certification of Public Employee Representative (Docket No. RO-94-30) seeking to represent a unit of employees which the Commission found to be non-supervisory in New Jersey Turnpike Auth., P.E.R.C. No. 94-24, 19 NJPER 461 (¶24218 1993) ("Turnpike I"), modifying H.O. No. 93-2, 19 NJPER 303 (¶24154 1993). On the same day, AFSCME Local 3912 filed a Petition for Certification (RO-94-29) seeking to represent a unit of supervisors found by the Commission to be in conflict with the second-level supervisors unit found appropriate in Turnpike I. The Authority objects to the creation of both units.

On October 28, 1993, AFSCME Local 3914 filed a Unit Clarification Petition seeking to include certain positions in its secondary level supervisors unit, certified after the election in Turnpike I.

The Authority objects to both of the proposed new units. It relies on its claims made before the hearing officer and the Commission in Turnpike I that these employees are all managerial executives and that certain employees are confidential. The Authority also has not consented to the unit clarification petition.

* * *

Clarification of Unit Petition (CU-94-18)

As a result of the Commission's determinations in Turnpike I, an election was conducted among employees found appropriately included in the secondary level supervisors unit. AFSCME Local 3914 was certified to represent the secondary level supervisors unit on October 21, 1993. By this petition, AFSCME seeks to include in its existing unit Project Engineer Brian Meara.^{1/}

^{1/} AFSCME initially sought to also clarify the secondary level supervisors unit to include Project Supervisors Anthony Mastrolia, Wayne Johnsen, Stephan Buente, and Richard Brundage, as well as Construction Supervisor John Tuminelli. AFSCME asserted that these employees supervise rank-and-file, non-unit employees. However, the Authority responded that these Project Supervisors and the Construction Supervisor do not possess the authority to hire, discharge, discipline or effectively so recommend. Further, the Authority contends

AFSCME asserts that Meara, who is in charge of the construction services section of the engineering department, now supervises only assistant construction supervisors and assistant project supervisors, who are non-unit employees. Therefore, AFSCME argues that there is no conflict of interest barring Meara's inclusion in the unit. The Authority advised us that it does not contest Meara's inclusion in AFSCME's secondary level supervisors unit. Accordingly, the secondary level supervisors unit is hereby clarified to include Project Engineer Brian Meara.

* * *

NON-SUPERVISORY UNIT (RO-94-30)

AFSCME Local 3913 seeks to represent a non-supervisory unit which includes the following titles:

- Administrative Services and Technology Department
 - Senior Project Engineer (Albert Isaacs)
 - Program Manager, New Business Development (Jeanette Thompson)
 - Supervising Engineer (Harry Loewengart)
- Operations Department
 - Manager, Employee Safety Division (John O'Keefe)
- Engineering Department
 - Landscape Architect (John Kosztyo)

1/ Footnote Continued From Previous Page

that they do not evaluate subordinates, nor do they adjust employee grievances. Accordingly, the Authority argues that they should be deemed to be non-supervisory employees. Upon receipt of the Authority's objections, AFSCME advised us that it concedes that these employees are non-supervisory and withdraws these positions from consideration in the unit clarification petition, but requests their inclusion in the non-supervisory unit.

Finance and Budget Department

Assistant Comptroller (Cynthia Zeigler)
Manager, Payroll Section (Charlotte Maindelle)
Chief Accountant (Pam Varga)

Law Department

Environmental Coordinator (Tim Doolan)
Real Estate Analyst (Walter Luger)
Contract Administrator (Diane Scacetti)

Public Affairs Department

Director of Public Affairs (Lynn Fleeger)
Publications Specialist (Samuel Donnellon)

Maintenance Department

Assistant Equipment Manager (Tim Foster)
Project Engineer
Project Supervisor
Construction Supervisor

The Authority objects to representation for these employees and relies on its arguments made to the Hearing Officer and the Commission in Turnpike I. It contends that these employees are managerial executives and/or confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). However, the Commission held in Turnpike I that, except for Assistant Comptroller Cynthia Zeigler, none of these petitioned-for titles "exercise a level of authority and independent judgment sufficient to broadly affect the Authority's purposes or means of effecting these purposes", and thus, do not meet the statutory criteria for managerial executive status. N.J.S.A. 34:13A-1.1. See State of New Jersey (Trenton State College), P.E.R.C. No. 91-93, 17 NJPER 246 (¶22112 1991).

In Turnpike I, the Commission stated,

Given the Authority's management structure and the Act's policy favoring organization of all employees

desiring it, and in the absence of exceptions from AFSCME, we conclude that except for Assistant Comptroller Zeigler, the petitioned-for employees do not meet the narrow definition of managerial executive. Turnpike I at 462.

However, the Commission held that certain titles must be excluded from the secondary level supervisors unit because they have no supervisory authority, while others must be excluded from the secondary level supervisors unit because their inclusion in that unit created a Wilton conflict of interest with their subordinate supervisors. The Commission stated:

Any determination that more than one level of supervision cannot be in the same unit would not defeat the representation rights of any of the supervisory employees. Any supervisors excluded from the proposed unit would be free to organize into another negotiations unit. Similarly, higher level professional employees excluded from this unit because they are not supervisors are free to organize into an appropriate unit of nonsupervisory employees.

It is these two groups of employees -- professional non-supervisory employees and third-level supervisors -- that AFSCME now seeks to represent. However, because of this finding, the Commission reviewed the Hearing Officer's recommendations concerning the confidential status of some of the titles, but not others.

With regard to those titles whose confidential status was not resolved by the Commission, I have reviewed the record in the Turnpike I matter, including the Authority's briefs, the Hearing Officer's findings, and the Authority's exceptions, with regard to the potential confidential status of the employees in these two petitioned-for units. Based upon the record in that matter, I find as follows:

Administrative Services and Technology DepartmentSenior Project Engineer

Based upon its earlier submissions, it appears the Authority is contending that Senior Project Engineer (Albert Isaacs) is confidential.

The Hearing Officer in Turnpike I found that Albert Isaacs, the Senior Project Engineer in the MIS Section of the Administrative Services and Technology Department, is responsible for evaluating mechanical projects contracts, especially those for toll terminals, treadles, air conditioning and site installations. He works directly for Systems and Programming Manager John Maklary. He has no duties concerning collective negotiations or contract administration. Turnpike I at 307, 309. Accordingly, the Hearing Officer found that Isaacs is not confidential within the meaning of the Act, N.J.S.A. 34:13A-3(g).^{2/} Turnpike I at 309. The Authority has not filed any additional materials in opposition to these findings during the investigation of this petition. Accordingly, I adopt the Hearing Officer's conclusion in Turnpike I, and find that Senior Project Engineer Albert Isaacs is appropriate for inclusion in the non-supervisory unit.

^{2/} This section of the Act defines "confidential employees" as: "employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties." The term is construed narrowly. See Brookdale Comm. College, D.R. No.78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

Supervising Engineer

The Authority has advised us that Supervising Engineer Harry Loewengart has retired and it will not fill his vacant position. Accordingly, we will not include this title as eligible at this time.^{3/}

Manager of New Business

The Authority asserts that the title Manager of New Business Development was abolished in December, 1991. AFSCME does not dispute this contention. Accordingly, I will not consider the unit eligibility for this non-existent position.

Operations DepartmentEmployee Safety Manager (John O'Keefe)

In Turnpike I, the Authority contended that the Employee Safety Manager, John O'Keefe, was a managerial executive. It also argued that, as a non-supervisory employee, O'Keefe was not appropriate for inclusion in the supervisors' unit. The Commission found that O'Keefe is not a managerial executive as described in the Act, but also found that as a non-supervisory employee, he could not be included in the secondary level supervisors unit. Turnpike I at 463. Accordingly, I find that O'Keefe is appropriate for inclusion in the non-supervisory unit.

^{3/} Should the Authority fill this or other vacant positions in the future, either party may seek a unit clarification.

Finance and Budget Department

The Commission found that the Assistant Comptroller Cynthia Zeigler, Payroll Section Manager Charlotte Maindelle, and Chief Accountant Pam Varga, all of the Finance and Budget Department, are confidential supervisors and are not eligible for representation. See Turnpike I at 465. Accordingly, these employees are not appropriate for inclusion in any of the units involved here.

Law DepartmentContract Administrator (Diane Scacetti)

In the Law Department, the Commission similarly found that Diane Scacetti, the Contract Administrator, is a confidential employee within the meaning of the Act. Turnpike I at 465. Therefore, Scacetti cannot be included in any of the units involved here.

Environmental Coordinator

In Turnpike I, the Authority argued that the Environmental Coordinator, Tim Doolan, is a managerial executive. The Commission found that the Environmental Coordinator is not a managerial executive, but the title was not placed in the secondary level supervisors unit because Doolan does not supervise any employees Turnpike I at 463. Therefore, I will include the Environmental Coordinator in this non-supervisory unit.

Real Estate Analyst (Walter Luger)

The Authority asserted that Real Estate Analyst Walter Luger is a managerial executive. The Commission found that the Real Estate Analyst is not a managerial executive and is not a

supervisor. Turnpike I at 463. Accordingly, I will include the Real Estate Analyst in the non-supervisory unit.

Public Affairs Department

In the Public Affairs Department, AFSCME has petitioned for the Public Affairs Director and the Public Relations Specialist ^{4/} as part of the non-supervisory unit.

In Turnpike I, the Commission found that Public Relations Specialist Samuel Donnellon is neither managerial nor confidential, and is a non-supervisory employee. The Authority does not dispute his inclusion in this unit. Accordingly, I find Public Relations Specialist Samuel Donnellon eligible for inclusion in the non-supervisory unit.

The Commission in Turnpike I found that Director of Public Affairs, then Gordon Hector, since replaced by Lynn Fleeger, supervised secondary level supervisors unit member Community/Public Relations Assistant Jean Adubato. However, during the election process in the Turnpike I matter, the Authority asserted that Adubato no longer supervises any employees. AFSCME does not dispute this contention. Accordingly, Community/Public Relations Assistant Adubato is appropriate for inclusion in this non-supervisory unit. The Public Affairs Director, as a supervisor, is appropriate for the existing secondary level supervisors unit, since the potential

^{4/} The Public Relations Specialist was inaccurately identified in Turnpike I as well as in our correspondence with the parties and in this petition as "Publications Specialist."

conflict of interest with Aduato has been removed.^{5/}

Accordingly, the secondary level unit is clarified to include Public Affairs Director Lynn Fleeger.

Maintenance Department

The Commission found that the record did not support a finding that any of the employees in the Maintenance Department are confidential. It observed that, while Maintenance Director Bruzzechesi is on the Authority's negotiations team, there was no evidence that his managers had advance knowledge regarding the Authority's key proposals and strategies as they relate to collective negotiations. Turnpike I at 464. The Commission also found that none of these employees are managerial executives. Turnpike I at 462. It further found that Assistant Equipment Manager Tim Foster is a non-supervisory employee, and excluded him from the secondary level supervisors unit. Turnpike I at 463. Accordingly, I find that Assistant Equipment Manager Foster's position is appropriate for inclusion in the petitioned-for non-supervisory unit.

^{5/} Although neither party filed a formal unit clarification petition over Public Affairs Director Fleeger, an issue has been raised about the title's appropriate unit placement, and the parties have both asked that we clarify this title's status.

Engineering DepartmentLandscape Architect (Koszttyo)

The Authority asserted in Turnpike I that the Landscape Architect is either a managerial executive or a non-supervisory employee. The Commission found that Koszttyo is neither a managerial executive nor a supervisor and accordingly, was excluded from the supervisors unit. Accordingly, I include the title in this non-supervisory unit.

Project Supervisors

The Project Engineers, Project Supervisors and the Construction Supervisor all exercise different levels of supervisory authority. AFSCME argues that those project supervisors who are found not to supervise are appropriate for the non-supervisory unit. As found above, AFSCME concurs with the Authority's assertions that Project Supervisors Mastrolia, Johnsen, Brundage, and Buente, as well as Construction Supervisor Tuminelli, are not currently supervisors within the statutory definition. The position occupied by remaining Project Supervisor, Larry Williams, was also found by the Commission to have no supervisory duties. No claim of confidential status has been asserted regarding these positions. Therefore, I find that these Project Supervisor positions are appropriate for inclusion in the non-supervisory unit.^{6/}

^{6/} During the election process in the Turnpike I secondary level supervisors unit, the Authority also asserted that the following additional Project Supervisors do not supervise: Jerry Allerdings, Robert McGowan, Andrew Takacs, and Bernard Traszka. However, the Authority has not formalized that

Finally, having found Project Engineer Brian Meara appropriate for clarification from the secondary level supervisors unit, the status of that position is no longer at issue in the non-supervisory unit.

Based upon the foregoing, I conclude that the petitioned for unit of non-supervisory professional employees is appropriate for negotiations, and that the following titles/positions are appropriate for inclusion in that unit. I direct that a secret ballot election be conducted among the following:

Administrative Services and Technology Department
Senior Project Engineer (Albert Isaacs)

Operations Department
Manager, Employee Safety Division (John O'Keefe)

Law Department
Environmental Coordinator (Tim Doolan)
Real Estate Analyst (Walter Luger)

Public Affairs Department
Community/Public Relations Assistant (Jean Adubato)
Public Relations Specialist (Samuel Donnellon)

Maintenance Department
Assistant Equipment Manager (Timothy Foster)

Engineering Department
Landscape Architect (John Kosztyo)
Project Supervisor (Larry Williams)
Project Supervisor (Anthony Mastrolia)

6/ Footnote Continued From Previous Page

position by seeking to remove those employees from the secondary level supervisors unit through a unit clarification petition. Should it seek to do so, I may then consider whether those project supervisors should be removed from the certified secondary level supervisors unit and whether they are appropriate for this non-supervisory unit.

Project Supervisor (Wayne Johnsen)
 Project Supervisor (Stephan Buente)
 Project Supervisor (Richard Brundage)
 Construction Supervisor (John Tuminelli)

* * *

THIRD-LEVEL SUPERVISORS UNIT (RO-94-29)

AFSCME seeks to represent a unit of third-level supervisors, including employees in the following titles:

Administrative Services and Technology Department

Manager, Systems & Programming (John Maklary)
 Computer Systems Manager (Leonard Goldrosen)
 Admin. of Office Services (Raniero Travasano)
 Manager, Office Services (Lawrence Goerke)
 Ass't. Director of Purchasing (Warren Luther)

Operations Department

Traffic Engineer, Operations (Spencer Purdum)

Maintenance Department

Administrative Maintenance Manager (Richard Walley)
 Buildings Manager (Brian Campbell)
 Division Manager, Roadway (Robert Geberth)
 Equipment Manager
 Manager, Communications (Dayton Elyea)
 Maintenance Engineer (David Wingeter)

Engineering Department

Supervising Engineers
 Senior Project Engineers
 Project Engineers

The Authority objects to this petitioned-for unit. It relies on the claims it made before the hearing officer and the Commission in Turnpike I that these employees are managerial executives and that some of them are confidential.

Based upon its earlier submissions, it appears the Authority is contending that the all of the supervisors in the Administrative Services and Technology Department are confidential,

Operations Traffic Engineer Spencer Purdum is confidential, and that all of the Maintenance Department supervisors are confidential. (No claim was made that the supervisors in the Engineering Department are confidential.)

As noted above, the Commission found that none of these petitioned-for titles meet the statutory criteria for managerial executive status. Rather, the Commission held that these higher-level supervisors could not be included in the same unit as second-level supervisors because their unit inclusion created a Wilton conflict of interest with their subordinate supervisors. The Commission observed that any supervisors excluded from the proposed unit would be free to organize into another negotiations unit.

Based upon the record in the Turnpike I matter, I find as follows:

Administrative Services and Technology Department
Manager, Systems and Programming (John Maklary)

Systems and Programming Manager John Maklary works in the MIS section, which is responsible for automated toll collection, traffic surveillance and administrative support systems (6T6). Maklary reports directly to the MIS director, John Hatala. In Turnpike I, the Hearing Officer found that Maklary provides cost estimates of negotiations proposals to the Authority's negotiations team before and during collective negotiations. The cost scenarios are developed by applying various percentage increases to salary information which was available to the public. Maklary is not told

if the Authority uses any particular estimate in collective negotiations, nor is he informed of the Authority's negotiations positions before their disclosure to the unions. He and others are canvassed for ideas for changes in existing agreements before negotiations begin. He has no other role in negotiations or contract administration. Turnpike I at 307, 309.

Accordingly, I find Maklary does not have functional use or knowledge of confidential labor relations information, such as the Authority's counter-proposals, its strategies in bargaining, or the Authority's bottom line. He has no other role impacting upon negotiations or contract administration. Accordingly, I find that Maklary is not a confidential employee within the meaning of the Act, and that the title Systems and Programming Manager is appropriate for inclusion in the third-level supervisory unit.^{7/}
Computer Systems Manager (L. Goldrosen)

The Hearing Officer found that Computer Systems Manager Leonard Goldrosen supervises that part of MIS which has to do with computer equipment (hardware) and the software which operates the

^{7/} In Turnpike I, the Authority also argued that all employees who have access to information stored in its computer system are confidential. However, the Commission and courts have held that access to confidential information is a relevant factor in assessing an employee's responsibilities, but it is not enough, standing alone, to make an employee confidential. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Accord, Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

main computer. He and his assistant meet with other MIS team members when policies concerning the management information system operation are considered. Goldrosen is responsible for hardware, scheduling and input/output operators. Turnpike I at 307. The Hearing Officer concluded that the Computer Systems Manager title was not confidential. Turnpike I at 310. I find that the Computer Systems Manager does not possess confidential labor relations information, and I include the title in the third-level supervisors unit.

Administrator of Office Services (R. Travasano)

The Hearing Officer in Turnpike I found that Administrator of Office Services Raniero Travasano oversees the office and patron services functions, including mail distribution, reception, motor pool, procurement and quality control of all supplies, including toll tickets, and fuel and rest stop services contracts with Shell Oil and Marriott Corporations. He compiles the office/patron services annual budget and discusses it with MIS Director Hatala; his budget recommendations may include recommendations for promotions. Turnpike I at 308.

The Hearing Officer concluded that Travasano does not have any significant role in collective negotiations or contract administration other than to suggest changes to contracts before negotiations, which are then compiled and approved by division director Hatala and others, and then given to the negotiations team. Turnpike I at 310. Therefore, I find that Travasano is not a

confidential employee within the meaning of the Act and that the Administrator of Office Services title is appropriate for inclusion in the third-level supervisors unit.

Manager of Office Services (M. Sahli)

The Hearing Officer found that the Manager of Office Services Mark Sahli (formerly Lawrence Goerke), reports directly to Travasano and supervises supervisors Malone, Schurr, and Belloff. The Office Services Manager and his staff control toll ticket inventory and quality control. Like Travasano, he has no role in collective negotiations or contract administration for the Authority, except to suggest changes to contracts before negotiations. Turnpike I at 308, 310. Accordingly, I find that the Manager of Office Services position is not confidential and is appropriate for inclusion in the third-level supervisors unit.

Assistant Director of Purchasing (W. Luther)

The Authority has advised us that the incumbent in this title, Walter Luther, has retired. The Authority has no plans to fill this vacant position. Accordingly, I will not decide this title as unit eligible unless the position is recreated.

Communications Manager (D. Elyea)

In Turnpike I, the Commission found that the Communications Manager Dayton Elyea^{8/} is not a managerial executive. Turnpike I

8/ The Authority has advised us that Elyea's position has been transferred to the Administrative Services and Technology Department.

at 462. The Hearing Officer found that while Elyea worked in the Maintenance Department and participated in departmental discussions about negotiations, he did not determine the Authority's negotiations positions nor was he knowledgeable about the Authority's proposals before they were disclosed to the unions in negotiations. Therefore, the Hearing Officer concluded that Elyea's duties do not meet the statutory definition of confidential employee. I adopt the Hearing Officer's finding, and conclude that the Communications Manager is not a confidential employee. Elyea supervises the Assistant Manager for Communications and the Senior Project Engineer, both titles in the secondary level supervisors unit. Accordingly, I find that the Communications Manager is appropriate for the third-level supervisors unit.

Operations Department

Operations Traffic Director (Spenser Purdum)

In the Operations Department, AFSCME seeks to represent Operations Traffic Engineer Purdum. In Turnpike I, the Commission found that while Purdum makes suggestions to his Director during negotiations, he is not privy to the Authority's discussions about negotiations proposals. Accordingly, the Commission specifically found that Purdum is not a confidential employee. Turnpike I at 464. Accordingly, the Traffic Engineer is included in the third-level supervisors unit.

Maintenance Department

In the third-level supervisors unit, AFSCME seeks to represent Administrative Maintenance Manager Richard Walley, Buildings Manager Brian Campbell, Roadway Division Manager Robert Geberth.^{9/} and Maintenance Engineer David Wingeter. In Turnpike I, the Commission found that these employees are not managerial executives. Turnpike I at 462. It also specifically found that none of the managers in the maintenance department meet the statutory definition of confidential employee.^{10/} Accordingly, the Administrative Maintenance Manager, the Buildings Manager, the Roadway Division Manager and the Maintenance Engineer are included in the third-level supervisors unit.

Equipment Manager (L. Willever)

AFSCME also seeks to include Equipment Manager LeRoy Willever in its third-level supervisors unit. In Turnpike I, the Commission found that Equipment Manager Leroy Willever was appropriately included in the Local 3613 supervisors unit, as he only supervises non-unit, non-supervisory employees. Turnpike I at

^{9/} The former positions of Roadway Manager, North (previously occupied by Geberth) and Roadway Manager, South (previously occupied by Russell Anderson), were abolished. The functions were consolidated into a single position, Roadway Division Manager.

^{10/} The Commission observed that while Maintenance Director Bruzzechesi gets some input from his staff in preparing for negotiations, these managers have no advance knowledge regarding key negotiations proposals and strategies as they relate to the Maintenance Department. Nor do the managers' handling of grievances, acting as hearing officers early in the grievance process, or costing out of negotiations proposals make them confidential.

465. Accordingly, absent a demonstrated change in circumstances, the Equipment Manager position will not be placed in the third-level supervisors unit.

Engineering Department

In its petition for a third-level supervisors unit, AFSCME seeks to represent Supervising Engineers Hans Steinbeis, Stanley Wisniewski, John Kunna, Joseph Veni and J. Kessler.^{11/} and Senior Project Engineer Robert Grimm.

In Turnpike I, the Authority contended only that these titles were managerial executives within the meaning of the Act, and that they should be excluded from the secondary level supervisors unit because of conflicts of interest with other secondary level unit supervisors reporting to them.^{12/} The Commission found, as discussed above, that these titles are not managerial, but removed them from the secondary level supervisors unit because of the potential for conflicts of interest with other secondary level unit supervisors.

^{11/} Although Kessler was not individually named in AFSCME's petition, it is clear that it seeks all Supervising Engineers found to be appropriate for the third-level unit. The Authority has informed us that Kessler has been added to the Supervising Engineer staff.

^{12/} The hearing officer noted, "The Authority initially raised the issue that some or all of these employees are confidential within the meaning of the Act. However, at the hearing, it acknowledged that testimony about this subject would be speculative and in its post-hearing brief did not contend that engineering titles are confidential (Turnpike I, Respondent's post-hearing brief, pp. 17-30). Accordingly, I will not consider the issue of confidential status of engineering department titles." Turnpike I at 339, fn. 45.

Supervising Engineers^{13/} coordinate and supervise the department's engineering and administrative functions, monitor projects for compliance with the budget, review others' budget recommendations and participate in meetings where budget issues are discussed. Senior Project Engineer Robert Grimm (Grimm was recently promoted from Project Engineer to Senior Project Engineer) also is not a managerial executive. Since the Authority made no other argument (other than managerial executive status as discussed above), I find that the Supervising Engineers and Senior Project Engineer Robert Grimm are appropriate for inclusion in the third-level supervisors unit.

In summary, I find that the petitioned-for third-level supervisors unit is appropriate for collective negotiations. The petitioned-for employees are neither managerial executives nor confidential employees.

Based upon the foregoing, I direct an election among the employees in the following third-level supervisors unit:

Administrative Services and Technology Department
Manager, Systems & Programming (John Maklary)
Computer Systems Manager (Leonard Goldrosen)
Admin. of Office Services (Raniero Travasano)
Manager, Office Services (Mark Sahli)

Operations Department
Traffic Engineer, Operations (Purdum)

^{13/} At the time of the 1991 record in Turnpike I, only Stanley Wisniewski, Richard Zipp, and John Kunna were supervising project engineers. Since then (former senior engineers) Hans Steinbeis and Joseph Veni were promoted to the title.

Maintenance Department

Administrative Maintenance Manager (Richard Walley)
Buildings Manager (Brian Campbell)
Division Manager, Roadway (Robert Geberth)
Manager, Communications (Dayton Elyea)
Maintenance Engineer (David Wingeter)

Engineering Department

Supervising Engineer (Stanley Wisniewski)
Supervising Engineer (Hans Steinbeis)
Supervising Engineer (John Kunna)
Supervising Engineer (Joseph Veni)
Supervising Engineer (J. Kessler)
Senior Project Engineer (Robert Grimm)

Those eligible to vote in the non-supervisory unit shall vote on whether they wish to be represented for purposes of collective negotiations by AFSCME, Local 3913.

Those eligible to vote in the third-level supervisors unit shall vote on whether they wish to be represented for purposes of collective negotiations by AFSCME, Local 3912.

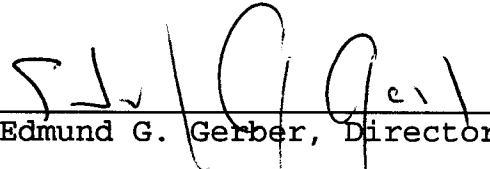
The elections shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us eligibility lists consisting of an

alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility lists shall be simultaneously provided to AFSCME with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in each election. The elections shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 28, 1994
Trenton, New Jersey