

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 NO. CU-78-59

LOCAL 195, IFPTE, AFL-CIO,

Petitioner,

-and-

STATE SUPERVISORY EMPLOYEES
ASSOCIATION, C.S.A./S.E.A.,

Intervenor.

SYNOPSIS

The Director of Representation, adopting the recommendation of a Hearing Officer, determines that Senior Investigators Motor Carrier are supervisors within the meaning of the Act and excluded from a unit of non-supervisory inspection and security personnel represented by Local 195, IFPTE, AFL-CIO. The individuals involved perform evaluative functions, and their recommendations are instrumental in discharge and discipline determinations.

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 NO. CU-78-59

LOCAL 195, IFPTE, AFL-CIO

Petitioner,

-and-

STATE SUPERVISORY EMPLOYEES
ASSOCIATION, C.S.A./S.E.A.,

Intervenor.

Appearances:

For the Public Employer
Honorable Irwin I. Kimmelman, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

For the Petitioner
Rothbard, Harris & Oxfeld, attorneys
(Sanford R. Oxfeld, of counsel)

For the Intervenor
Fox & Fox attorneys
(Richard H. Greenstein, of counsel)

DECISION

Pursuant to a Notice of Hearing issued with respect to a Clarification of Unit Petition, a hearing was held before the Commission Hearing Officer Charles A. Tadduni, on March 4, 1981, in Newark, New Jersey on the claim raised by Petitioner, Local 195, IFPTE, AFL-CIO ("Local 195"), that the title Senior Investigator Motor Carrier should be placed in the Local 195 negotiations unit

of State inspection and security personnel. At the hearing, the State of New Jersey ("State") and the State Supervisory Employees Association a/w NJCSA/NJSEA ("Association") asserted that the title may not be included in Local 195's collective negotiations unit because it is a supervisory title and that it is properly placed in the Association's unit of primary level supervisors.

All parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The State and Local 195 submitted post-hearing briefs by November 16, 1981. ^{1/} The Hearing Officer submitted his Report and Recommendations on July 19, 1982, a copy of which is attached hereto and made a part hereof. The Hearing Officer recommended that employees in the Senior Investigator Motor Carrier position be determined to be supervisors within the meaning of the Act and that Local 195's petition be denied. No exceptions to the Hearing Officer's report have been filed.

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

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

^{1/} The Association did not submit a brief. Subsequent to the close of formal hearings, the Association was replaced as majority representative by Communications Workers of America, Primary Level Supervisors. CWA was provided an opportunity to participate in the instant proceeding upon assuming majority status but it did not forward additional submissions in the within matter. See Hearing Officer's Report, fn 4.

2. Local 195, IPFTE, AFL-CIO and the State Supervisory Employees Association are employee organizations within the meaning of the Act and are subject to its provisions.

3. Local 195 is the majority representative of nonsupervisory inspection and security employees of the State of New Jersey. (the "Inspection and Security Unit").

4. Local 195 contends that the Inspection and Security Unit should include the Senior Investigator Motor Carrier position. Local 195 alleges that prior to 1978 the incumbents in this disputed title were performing the same functions in the title of Senior Investigators Utilities and were employed by the Public Utilities Commission ("PUC"). Local 195 contends that at that time the title of Senior Investigator Utilities was included within its negotiations unit. During 1978 certain positions and employees, including the personnel involved herein, were transferred from the PUC to the Department of Transportation ("DOT"). According to Local 195, at the time of the transfer the State redesignated the personnel in question as Senior Investigators Motor Carrier and placed the employees in the Primary Level Supervisors Unit.

Local 195 argues that what occurred was simply a transfer of positions from one department to another, and that Senior Investigators Motor Carrier are not supervisors since they have no authority to hire, discharge or discipline or to effectively recommend the same. Local 195 asserts that its unit contains other "senior" line titles and that Senior Investigators Motor Carrier have more in common with Investigators Motor Carrier than with supervisory personnel.

Essentially, the State and the Association contend that the Senior Investigators Motor Carrier are currently supervisors within the meaning of the Act and therefore cannot be included in a unit of nonsupervisory personnel.

5. Senior Investigators Motor Carrier supervise Investigators Motor Carrier, whose function is to inspect buses at bus company garages and at roadside checks. Motor Carrier inspection work has been performed by PUC personnel until the transfer of this work to the Department of Transportation in 1978. The Hearing Officer found that the record did not substantiate Local 195's claim that the work of Senior Investigators Motor Carrier was performed at PUC by employees in a variant of the Senior Investigator Utilities title known as Senior Investigator Utilities (Motor Carrier). However, he found that the resolution of this factual question was not critical, since the controlling factual and legal issues related to the current job responsibilities of Senior Investigators Motor Carrier.

In this regard he found that, Senior Investigators Motor Carrier, acting under the new job description developed at DOT in 1978, have substantial involvement in the areas of general supervision, work assignments, and review of work performance. Senior Investigators Motor Carrier complete and sign Performance Certifications and Salary Increase Recommendations as well as Employee Performance Evaluation and Improvement System Reports. These documents are evaluative instruments which ultimately determine the grant of permanent employee status and/or salary increment affecting Investigators Motor Carrier. In one cited instance, a probationary investigator was given a series of negative working test period reports by a Senior

Investigator Motor Carrier, and ultimately, based upon the working test performance evaluation, the employee was not retained. The Hearing Officer further found that the Seniors may impose minor discipline subject to review. The Hearing Officer concluded that supervisory status as defined by the Act had been established. ^{2/}

6. The undersigned adopts the above factual findings of the Hearing Officer and his determination that Senior Investigators Motor Carrier are supervisors. The factual record amply supports the conclusion that their evaluative functions are instrumental in determinations concerning job retention and/or denial of increment. Thus, the disputed personnel effectively recommend discharge and discipline.

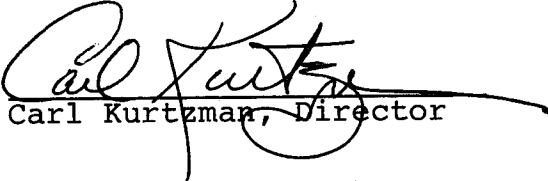
The undersigned also concurs with the Hearing Officer's conclusion that the controlling issue herein is the current exercise of supervisory powers by the disputed personnel. N.J.S.A. 34:13A-5.3 prohibits the inclusion of supervisors and nonsupervisors in the same unit, unless established practice, prior agreement or special circumstances dictate the contrary. These exceptional circumstances are not implicated herein. Thus, assuming for present purposes that Local 195 had previously represented motor carrier inspections personnel who exercised supervisory powers, the Act's exclusionary rule is preemptive. ^{3/}

^{2/} N.J.S.A. 34:13A-5.3 defines a supervisor as an employee who has the power to hire, fire, discipline or to effectively recommend the same.

^{3/} See In re W. Paterson B/E, P.E.R.C. Nos. 77 and 79 (1973), wherein the Commission found that the term established practice is limited to pre-Act (1968) negotiations relationships. Also, In re Edison Twp. B/E, D.R. No. 82-8, 7 NJPER 560 (1981).

Accordingly, the undersigned finds the position of Senior Investigator Motor Carrier to be supervisory and it may not be included in the negotiations unit represented by Local 195.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 20, 1982
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

LOCAL 195, IFPTE, AFL-CIO,

Docket No. CU-78-59

Petitioner,

-and-

STATE SUPERVISORY EMPLOYEES
ASSOCIATION, C.S.A.-S.E.A./AFT,

Intervenor.

SYNOPSIS

A Commission Hearing Officer recommends dismissal of a Petition for Clarification of Unit seeking to clarify the Petitioner's Inspection and Security unit comprised of certain non-supervisory employees of the State of New Jersey.

The Hearing Officer recommends that employees in the Senior Investigator MC position be determined to be supervisors within the meaning of the New Jersey Employer-Employee Relations Act. The Hearing Officer found that the Senior Investigators MC supervise employees in the field in that they make work assignments to employees; insure that employees properly discharge their work responsibilities; do performance evaluations of employees where said evaluations are determinative of whether the employee evaluated receives a salary increment or is retained as a permanent employee; and impose minor discipline.

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

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

LOCAL 195, IFPTE, AFL-CIO,

Docket No. CU-78-59

Petitioner,

-and-

STATE SUPERVISORY EMPLOYEES
ASSOCIATION, C.S.A.-S.E.A.,

Intervenor.

Appearances:

For the Public Employer

Honorable Irwin I. Kimmelman, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

For the Petitioner

Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, Esq.)

For the Intervenor

Fox and Fox, Esqs.
(Richard H. Greenstein, Esq.)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit (Docket No. CU-78-59) was filed with the Public Employment Relations Commission (the "Commission") on June 26, 1978 by Local 195, IFPTE, AFL-CIO ("Local 195") seeking clarification of a negotiations unit comprised of certain employees of the State of New Jersey (the "State"). By its Petition, Local 195 is seeking to clarify its negotiations unit to in-

clude the title of Senior Investigator Motor Carrier ("Senior Investigator MC"). The State Supervisory Employees Association, New Jersey Civil Service Association/New Jersey State Employees Association, a/w the American Federation of Teachers (the "Association") intervened in this matter in accordance with N.J.A.C. 19:11-1 et seq. Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on March 4, 1981, in Newark, N. J., at which all the parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Briefs were submitted by the parties by November 16, 1981. Upon the entire record in this proceeding, the Hearing Officer finds: 1/

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

2) Local 195, IFPTE, AFL-CIO and the State Supervisory Employees Association are employee organizations within the meaning of the Act and are subject to its provisions.

3) Local 195 is the statutory majority representative of the statewide, Inspection and Security unit of non-supervisory employees of the State of New Jersey. 2/

1/ Although the testimonial record was completed on March 4, 1981, several documentary exhibits in this matter were not then physically placed in the record because they were not available on the date of hearing. Further, as the testimony proceeded, requests for additional exhibits were made by the Hearing Officer and by Local 195's counsel. At the direction of the Hearing Officer, these exhibits were subsequently furnished by the State with copies going to all other parties. All of the exhibits which were added to the record after the testimonial record was closed were specifically noted to counsel in correspondence from the Hearing Officer.

2/ See Exhibits C2, J1 and J2.

At the time of this hearing, the State Supervisory Employees Association was the statutory majority representative of the statewide Primary Level Supervisors Unit comprised of supervisory employees of the State of New Jersey. ^{3/}

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

I. Positions of the Parties

Local 195, the Petitioner herein, contends that its unit (Inspection and Security) should be clarified to include the title Senior Investigator MC. Prior to 1978, it is alleged that the incumbents in the disputed title occupied positions designated as Senior Investigator Utilities and were located in the Public Utilities Commission ("PUC"). Local 195 contends that at that time, the title of Senior Investigator Utilities was included within its negotiations unit. During 1978, certain positions and employees were transferred from the PUC to the Department of Transportation

^{4/}

^{3/} See Exhibits J3 and J4.

^{4/} The instant matter is part of a considerably sizable group of clarification of unit petitions ("CU petitions") filed by representatives of various negotiations units of State employees. These matters were filed prior to the recent series of representation elections which were conducted by the Commission in several State employee negotiations units in 1981. During the course of processing of these CU petitions, the parties herein agreed to pend all of the other CU petitions while the elections in several State employee negotiations units were conducted. It was also agreed by the parties herein to proceed with the instant litigation.

Subsequent to the above-referenced representation elections, a new majority representative was certified in several State employee negotiations units. That representative (the CWA) had not been a party to this litigation. However, the undersigned communicated with representatives of the CWA to inform them of the pendency of this matter. To date, no formal request to intervene has been received from said representatives.

("DOT"). At the time of the transfer, the State redesignated the positions in question as Senior Investigator MC and placed them within the Primary Level Supervisors Unit.

Local 195 argues that what occurred here was simply a transfer of positions from one department to another. It is argued that the Senior Investigator MC position is not supervisory within the meaning of the Act -- that the employees in the position have no authority to hire, discharge or discipline or to effectively recommend the same. Further, Local 195 notes that its unit contains other "senior" line titles and that Senior Investigators MC have more in common with Investigators Motor Carrier than with supervisory personnel.

Accordingly, a determination is urged removing the Senior Investigator MC title from the Primary Level Supervisors Unit and clarifying the Local 195 unit to include the title Senior Investigator MC.

The State and the State Supervisory Employees Association both contend that the Senior Investigators MC are supervisors within the meaning of the Act and therefore should remain in the Primary Level Supervisors Unit. The State argues that the record shows that Senior Investigators MC perform disciplinary and evaluative functions. Further, the State counters that the fact that Local 195's unit may contain senior line titles does not necessarily support Local 195's position that Senior Investigators MC should be in their unit; those senior titles in the Local 195 unit either are not supervisors or, if they are supervisory, do not belong in the 195 unit. The State contends that there is no connection between

the Senior Investigator Utilities title and the Senior Investigator MC title. Thus, Local 195's argument that that title had been included within its Inspection & Security Unit prior to the 1978 transfer of various investigator titles from the PUC to DOT is moot. Finally, the State maintains that even if a connection was established that the employees who performed as Senior Investigators MC when the titles were located in the PUC were included within the Inspection & and Security unit, that would not be dispositive of the instant dispute. The State's position is based upon the current performance of the Senior Investigators MC -- it is asserted that the incumbents in that title are performing supervisory duties. Accordingly, the State maintains that the title in dispute is properly included within the Primary Level Supervisors Unit and that Local 195's petition to clarify its unit as including this title should be dismissed.

The Issue

The instant matter presents a question of the appropriate placement of the title Senior Investigator, MC in a negotiations unit. Two unit choices are advanced by the parties: Local 195 urges that the title be placed in its Inspection and Security Unit -- a unit of non-supervisory State employees; the State and the Supervisory Employees Association maintain that the title should be left where it is presently situated, in the Primary Level Supervisors Unit.

While several factors should be considered in making the determination as to which unit is the appropriate unit for the instant title -- for example, community of interest and the background and

history of the title in question -- the primary inquiry herein must focus upon whether the Senior Investigator MC position is supervisory within the meaning of the Act. If the Senior Investigators MC are supervisors within the meaning of the Act, they should be included in the Primary Level Supervisors Unit; if the Senior Investigators MC are non-supervisory employees, then the Inspection and Security Unit should be clarified to include that title. ^{5/}

III. Analysis: Findings of Fact and Discussion of law

N.J.S.A. 34:13A-5.3 provides in part that "...nor except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership."

N.J.S.A. 34:13A-6(d) states that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors..."

The Commission has determined that the Act, in effect, defines supervisor as one having the authority to hire, discharge,

^{5/} In the event that this title is determined to be non-supervisory, some further inquiry would normally be made to ascertain that a sufficient community of interest exists warranting the placement of the title in Local 195's unit. In the instant matter, should this title be deemed non-supervisory, it appears from an examination of the composition of Petitioner's unit (Exhibits C2, J1 and J2) and the indications in the record of the functions performed by the Senior Investigator MC employees that placement of the Senior Investigator MC title in the Local 195 unit -- under the above-referred circumstances -- would be appropriate.

discipline, or to effectively recommend any of the foregoing. ^{6/}

Background and History -- Currently, the title Senior Investigator MC is located in the Department of Transportation, (DOT) Bureau of Equipment. The title is now included in the State Primary Level Supervisors Unit. The title of Senior Investigator Utilities is located in the Public Utilities Commission (PUC); that title is and continues to be contained in Petitioner's Inspection and Security Unit. ^{7/}

Prior to 1978, Petitioner Local 195 alleges that the employees who are the current incumbents in the Senior Investigator MC titles were employed in a variant of the title Senior Investigator Utilities. Local 195 contends that there were then numerous variations of the title Senior Investigator Utilities -- such as Senior Investigator Utilities (Service Inspection), Senior Investigator Utilities (Electrical), Senior Investigator Utilities (Motor Carrier), etc. ^{8/} These titles were then all located at the PUC and were included in the Inspection and Security Unit. In 1978, the State transferred several titles (and employees) from PUC to DOT, among which was the line of Motor Carrier positions -- Investigator Motor Carrier, Senior Investigator Motor Carrier, and Principal Investigator Motor Carrier.

In meetings with the employees to be transferred and their union representatives prior to the transfer to DOT, employees were told what to expect from the transfer -- the work they would be required to perform, the administrative environment in which they

^{6/} In re Cherry Hill Dept. of Public Works, P.E.R.C. No. 30 (1970).

^{7/} See Exhibits C2, J1 and J2.

^{8/} See Tr. at 10, 20-23 and 37-38.

would work etc. ^{9/} At the time of the transfer of the Senior Investigator MC positions from PUC to DOT, a new job description was effectuated for these positions. ^{10/} This job description was drafted by the Chief of the Equipment Bureau, Mr. A. Alaimo. Mr. Alaimo testified that he had begun preparing the new job description for the Senior Investigator MC position prior to the move in 1978 and that he had not utilized the job description for Senior Investigator Utilities as a base from which to prepare the revised job description. ^{11/}

Mr. Alaimo devised the administrative structure within the Equipment Bureau into which the Motor Carrier positions -- Investigator, Senior Investigator and Principal Investigator -- were placed. He based the revised structure partly on what general titles he found were coming into DOT and partly on his own conceptions about what the titles should be doing now that they were being integrated into DOT's administrative structure. ^{12/} The

^{9/} Tr. 25, 36, 74 and 97.

^{10/} Tr. 11, 26, 61-62. See Exhibit P-2.

^{11/} Tr. 60-63, 97-100.

^{12/} On balance, the evidence concerning the specific title designations of the employees who had performed the motor carrier investigators work at the PUC is unclear.

Mr. Alaimo testified that he was uncertain of what the specific titles were of the employees who were doing the motor carrier investigations work at the PUC prior to their transfer to DOT. Mr. Alaimo indicated that the titles generally were those of investigator, senior investigator and principal investigator.

In the testimony of Mr. D. Philippi, the Business Agent for Local 195 and in the Statement of Position set forth by Local 195, it is indicated that when the motor carrier investigation employees were at the PUC, they were incorporated into the Investigator Utilities line of titles. However, that contention appears to be supported neither by other parts of the testimony nor by the Agreements in evidence between the State and Local 195 (Exhibits C2, J1 and J2) and the State and the Association (Exhibits J3 and J4). Both the title Investigator Utilities and Investigator

structure and the corresponding Civil Service pay grades were as follows: Investigator MC (Grade A-15) -- Senior Investigator MC (Grade A-19) -- Principal Investigator MC (Grade A-21). Subsequent to the transfer into DOT, the Principal Investigator MC was upgraded to the title Supervisor MC (Grade A-24). In turn, the Supervisor MC reports to the Project Engineer (Grade A-28) (title is vacant); the Project Engineer reports to the Chief, Equipment Bureau.

Currently there are 28 Investigators MC located in the Bureau of Equipment, DOT; there are four Senior Investigators MC (one primarily situated in the central office in Trenton, three in the field), one Supervisor MC (situated in the central office), one Project Engineer (central office, slot vacant) and one Chief, Equipment Bureau (central office).

Functions and Responsibilities -- Mr. Alaimo testified that the basic function of Senior Investigators MC is to supervise a group of Investigators MC. ^{13/} The primary function performed by Investigators MC is to inspect buses at bus company garages. ^{14/} The Investigators MC perform some related functions such as road-

^{12/} (continued) Motor Carrier appears in pre-1978 Agreements between the State and Local 195. This would seem to contradict the contention that the Investigator Motor Carrier line was part of the Investigator Utility line. Further, the title Senior Investigator Utility appears in both pre and post '78 contracts between the State and Local 195 while the contested title, Senior Investigator MC, appears in the contract between the State and the Supervisors Association covering the period from 1977-1979. This latter circumstance is not supportive of Local 195's contention that the Senior Investigator MC title was (a) part of the Senior Investigator Utilities line of positions or (b) that the title Senior Investigator MC, in whatever form, was part of Local 195's unit prior to 1978.

^{13/} Tr. 50.

^{14/} Tr. 49. The MC Investigators perform vehicle inspections -- similar to the inspections performed on passenger automobiles at State inspection stations.

checks of buses. They also investigate and file reports concerning accidents involving buses. All motor carrier investigation employees receive training in accident investigations from the New Jersey State Police. MC Investigators also receive on-the-job training.

MC Investigators do not perform their work at one set location. They have no common, central reporting place. Rather, MC Investigators work out of their homes. Each one is assigned to a group of bus company garages, grouped by geographical proximity. They perform much of their inspection function at that group of garages.

The current job description (Exhibit P-2) for the Senior Investigator MC position was drafted by Mr. Alaimo in 1978, prior to the transfer of the positions from the PUC to DOT. Subsequent to the transfer, the job description was submitted to and eventually approved by the Civil Service Commission on March 7, 1980. Some of the functions of the Senior Investigator MC position are as follows: (a) supervises a staff of MC Investigators and Equipment Inspectors in the inspection of vehicles...(b) supervises the assignment, work performance and department (sic) of subordinate inspectors...(c) plans, organizes, schedules, assigns and reviews work of subordinate inspectors...(d) supervises the work operations of employees...(e) has responsibility to make recommendations concerning hire, discharge, promotion, demotion and disciplining of employees...(f) supervises and makes inspections of buses and other equipment...(g) supervises and conducts complex accident investigations...and (h) supervises the preparation of inspection reports and recommendations.

Senior Investigators MC also work out of their homes. They are assigned to a territory. Within that territory, the Senior Investigator MC will assign one of the group of MC Investigators in his/her charge to perform inspections in the bus garages in one part of that territory. When an Investigator MC is absent for a period of time, the Senior Investigator MC will sometimes arrange for coverage of the absent employee's assignments when the assignments are due prior to a specified date. The Seniors themselves are not assigned to perform inspection duties at any specific garages. Rather, they "float" around their entire assigned territory. In addition to assigning MC Investigators to perform inspections at a specific group of garages in his/her territory, part of the Senior's function is to insure that the inspections and reports are being performed in a timely fashion and are being performed properly. ^{15/} By "floating" rather than being assigned to specific garages to perform inspections, their supervisory function is facilitated. ^{16/}

When an Investigator MC files a report where a problem arises concerning the adequacy, accuracy or some other aspect of the report itself or the actions of the investigator, the Equipment Bureau's Central Office sends the problem report to the Senior Investigator MC to whom the Investigator MC is responsible. The Senior will then investigate the report and associated actions of the Investigator to insure that they have been properly and adequately performed. The senior may do a follow-up report and, where appropriate, may discipline the employee. ^{17/}

^{15/} Tr. 69.

^{16/} Tr. 51.

^{17/} Tr. 66-67.

The Seniors are responsible for completing and do complete Employee Performance Evaluation and Improvement System Reports ("EPEIS" Reports) for each Investigator MC within their charge. EPEIS Reports are compiled jointly by an employee and the employee's supervisor. The document sets forth work standards and performance expectations based upon what work the employee is actually doing -- as viewed by the employee and his/her supervisor. These standards may be adjusted over the course of time. The employee is evaluated against these standards. 18/

Senior Investigators MC have completed these reports for Investigator MC employees and have signed the reports as the employee's supervisor. 19/ No other supervisory signatures appear on the EPEIS Reports for the Investigator. Further, in the EPEIS Reports completed for employees in the position of Senior Investigator MC, one of the functions described for that position is supervising and overseeing Investigators; in fulfilling these performance standards, the Senior evaluates the Investigators within his/her charge. 20/

Senior Investigators also complete and sign Performance Certification and Salary Increase Recommendations (CS-85s) for the Investigators within their responsibility. This document is an evaluative instrument which is utilized in conjunction with an EPEIS Report. It indicates that the supervisor and the employee together

18/ Tr. 51-61, 104-8, 130-34.

19/ Exhibits E1, E2 and E3.

20/ Exhibits Ra-3 and Ra-4.

have established performance expectations for the employee and that those standards were utilized for the employee's evaluation. A CS-85 must be completed with an affirmative recommendation by the employee's supervisor in order to qualify the employee to receive a salary increase. These forms are co-signed by the Supervisor MC, the immediate supervisor of the Senior Investigator MC. The Equipment Bureau Chief does not see most of these documents before they go to the DOT Personnel Office.

The Senior Investigators MC also complete Working Test Period Reports for probationary Investigators. These are similar in nature to the EPEIS/CS-85 Reports except they concern new employees during their working test period. Accordingly, several reports are completed by the Senior Investigator during the course of the test period. At the end of the working test period, a determination is made based upon the working test period evaluation reports as to whether or not the employee will be retained as a permanent employee. The Senior Investigator MC is an integral part of this evaluative process. The Senior is generally the only one to observe the probationary employee in the field. The Senior completes working test period reports and forwards them to the Supervisor MC who generally will review them and pass them along to the DOT Personnel Department. However, where a problem crops up, the Supervisor MC may become more actively involved in the process.

When a probationary employee receives any negative evaluations from the employee's Senior Investigator MC during his/her working test period, the Senior Investigator MC will counsel the

employee on how and where improvements should be effectuated. The Supervisor MC may also counsel the employee. Ultimately, if no improvement is noted, the employee may not be retained.

During the summer of 1980, a probationary Investigator MC was given a series of negative working test period reports by his Senior Investigator MC. That employee was counseled by both the Senior Investigator and the Supervisor MC. Ultimately, based upon the working test period performance evaluation, it was determined not to retain the employee as a permanent employee. 21/

Discipline may be recommended by any person in the supervisory hierarchy of the Equipment Bureau (Senior Investigator MC and Supervisor MC). The Chief of the Equipment Bureau would be the conduit for all such recommendations -- whether minimal or severe -- prior to their going to the DOT Personnel Office. Any recommended discipline could be countermanded by the next highest level of authority within the hierarchy. 22/ The steps in the disciplinary process would be as follows: (a) supervisor recommends discipline; (b) the recommendation proceeds through the hierarchy to the DOT Personnel Office; (c) the Personnel Office issues a Notice of Discipline to the employee, stating the discipline to be meted out; (d) thereafter, a departmental hearing may be convened.

21/ At the time of the hearing in this matter, a litigation was in progress concerning the discharge of this employee. See also Tr. 56, 67-68, 134-36.

22/ Mr. Alaimo, the Equipment Bureau Chief, could not recall any specific instances of discipline, other than the termination of the probationary employee discussed above. Mr. Philippi indicated in his testimony that he could not recall any instances of discipline to an Investigator MC in the last two years (Tr. 45).

Various possible forms of discipline were set forth in the record: letters of counselling, written reprimands and discharge. Letters of counselling are issued to any employee who has acted improperly in some manner. They are issued by an employee's supervisor. The letters generally would indicate dissatisfaction with the employee concerning certain conduct which, if not properly adjusted, would lead to harsher measures being taken. Senior Investigators MC have issued letters of counselling to Investigators MC. ^{23/}

The grievance procedure applicable to Investigators MC is set forth in the Agreement between the State and Local 195 ^{24/} as follows:

The purpose of this procedure is to assure prompt and equitable solutions of problems arising from the administration of the Agreement, or other conditions of employment by providing the exclusive vehicle set forth in this Article for the settlement of employee grievances...

Any member of the collective negotiating unit may orally present and discuss his complaint with his immediate supervisor on an informal basis prior to filing a formal grievance at Step One...

In the event that the grievance has not been satisfactorily resolved on an informal basis then an appeal may be made in writing on a grievance form to be provided for such purpose. The grievance form shall contain a general description of the relevant facts from which the grievance derives and references to the section of the Agreement, if any, which the grievant claims to have been violated.

Step One

In the event the matter is not resolved informally, the grievant shall submit his grievance in writing to his designated supervisor who shall hear the grievance...

Step Two

If the grievant is not satisfied with the disposition of the grievance at Step One, he may appeal to the highest operational management representative or other designated individual.

^{23/} See Exhibits R-a5 and R-a7.

^{24/} Exhibit J1, Article VII.

Step Three

In the event that the grievance has not been satisfactorily resolved at Step Two, then an appeal to the Department or Agency Head or his designee may be made in writing. The appeal shall be accompanied by the decisions at the preceding levels and any written record that has been made part of the preceding hearings. The Department or Agency Head, or his designee, shall hear the grievance and shall thereafter issue a written decision to the grievant...

If the decision involves a non-contractual grievance as defined in A.2. the decision of the Department Head or his designee shall be final, except as provided below.

In the event the A.2. grievance has not been satisfactorily resolved at Step 3, the Union may submit the grievance to the Office of Employee Relations within fourteen (14) calendar days of receipt of the decision at Step 3.

The Office of Employee Relations shall schedule a grievance meeting on a quarterly basis with the Union...

Arbitration

a. In the event that the grievance has not been satisfactorily resolved at Step Three and the grievance involves an alleged violation of the Agreement as described in the definition of a grievance in A.1. above, then a request for arbitration may be brought...

The Motor Carrier hierarchy is as follows: Investigator MC -- Senior Investigator MC -- Supervisor MC -- Project Engineer (position vacant) -- Chief, Equipment Bureau. In grievances concerning Investigators MC, the grievance procedure is as follows: Step I --Supervisor MC; Step II -- Chief, Equipment Bureau; Step III -- Agency Head (or designee). Thus, the Senior Investigator MC has not been designated as a formal step in the grievance process. ^{25/}

^{25/} However, a reading of the contractual grievance procedure (Exhibit J1) indicates that there is a pre-Step I phase contemplated in the grievance process involving the employee's oral, informal presentation of his complaint to "his immediate supervisor." It would thus appear from the testimony and a reading of the contract that this informal grievance adjustment process may go to the Senior Investigator MC.

In In re Ridgewood Bd/Ed, D.R. No. 80-33, 6 NJPER 209 (¶11102 1980), the Director of Representation concluded that Department Chairpersons were supervisors within the meaning of the Act based upon their (1) participation in the hiring process (2) making recommendations concerning the withholding of increments and (3) making recommendations concerning the non-renewal of teachers. In In re Emerson Supervisors Assn., D.R. No. 82-13, 7 NJPER 571 (¶12255 1981), the Director concluded that the Supervisors of Instruction were supervisors within the meaning of the Act based solely upon their role in the evaluative process. The Director stated:

In several recent decisions involving factual records similar to that involved herein, the undersigned has found the existence of "supervisory" status where department chairpersons exercise the primary responsibility for evaluating teachers, and where the evaluations are instrumental in determinations to withhold increments, renew contracts, or terminate employment. 26/

Finally, in a case which factually parallels the instant matter in several respects, In re County of Middlesex, D.R. No. 80-14, 5 NJPER 517 (¶10267 1979), the Director determined that Senior Sanitary Inspectors in the County Health Department were supervisors within the meaning of the Act. The Senior Sanitary Inspector is a field position whose primary responsibility is to supervise a group of Sanitary Inspectors in a specific geographic sector of the county. The Seniors do some line inspections but have no regular inspection assignments; instead, they float around their sector supervising and assisting the Inspectors. The Seniors make work assignments to Inspectors, do oral evaluations of the Inspectors within his/her

26/ Emerson, supra, at 5.

responsibility and could unilaterally impose minor discipline. The Seniors have no role in the hire or discharge process.

In the instant matter, Petitioner Local 195's argument centers around the contention that the function of the Senior Investigator MC was formerly within its negotiations unit and that employees in the Senior Investigator MC title currently do not perform supervisory functions. However, based upon the record herein, it appears that the title did exist prior to 1978 and was not included in the recognition Article appendix of the pre-78 contracts between the State and Local 195.

On the second issue, there is an abundance of material in the record which demonstrates that the Senior Investigators MC are supervisors within the meaning of the Act. 27/

27/ The record shows that three Senior Investigators are utilized in the field; the fourth Senior Investigator MC is located in the central offices of the Equipment Bureau. The employee functioning in that position was described in the record as assisting the Supervisor Motor Carrier in performing his work.

The Supervisor MC is the next level up in the hierarchy of the Equipment Bureau: he is the immediate supervisor of the Senior Investigator MC and is once removed in the motor carrier hierarchy from the Investigator MC. Where a problem is noted by the Central Office concerning an Investigator, the Supervisor will contact the Senior Investigator in the field to alert him/her to the problem. The Supervisor evaluates the Senior Investigators and has a secondary involvement in the evaluation and discipline processes of the Investigators. Further, Local 195 concedes that the Supervisor MC is a supervisor within the meaning of the Act. The predecessor title to the Supervisor MC position -- Principal Investigator MC -- was in the Higher Level Supervisors Unit of State employees.

Since the beginning of 1981, the Central Office Senior has been utilized in the field on a part-time basis (Tr. 52, 124). In performing the duties of a Senior Investigator MC in the field, clearly that employee is a supervisor within the meaning of the Act. To the extent that the Central Office Senior has continued to assist in the discharge of the responsibility of the Supervisor MC position, based upon the tasks associated with the Supervisor position in this record, it would also appear to the undersigned that the Central Office Senior Investigator MC is performing supervisory tasks in this regard as well. In either case, there is no indication in the record that the Senior Investigator MC who is

(continued)

The Senior Investigator MC position may be analogized to the Senior Health Inspects in the Middlesex decision, supra. Senior Investigator MC is the field supervisor of Investigators MC. The Senior Investigator MC job is designed to facilitate the supervisory aspects of that position. The Senior floats around his/her sector assisting and supervising the investigators within the Senior's area of responsibility. The Senior assigns work to the Investigators and insures that the Investigators are properly performing their work. Where a problem arises with the work performance of an Investigator, the Senior will look into the situation. The Seniors do performance evaluations for the Investigators within their charge; these evaluations ultimately determine whether the employee will receive his/her annual salary increment and/or, where a new employee is involved, whether the employee will be retained as a permanent employee. The record shows that the Seniors may impose minor discipline and that they may be involved in the adjustment of employee concerns prior to the time when those concerns might crystallize into a formal grievance. 28/

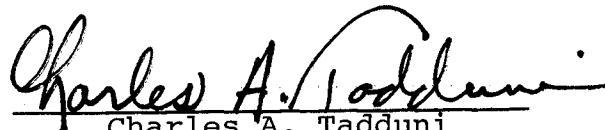
27/ (continued) assisting the Supervisor MC in the Central Office and who is utilized on a part-time basis in the field performs any functions which would warrant the clarification of the Local 195 unit to include that position.

28/ Local 195 has raised an objection to the State's production and utilization of certain evidence concerning events which occurred subsequent to the filing of the petition herein. The undersigned notes that the State has focused its case in the post 1978 timeframe -- that is, in the period of time subsequent to the transfer of the Senior Investigator MC position from the PUC to DOT. However, only part of the evidence adduced herein concerns occurrences after the filing of the petition. No credibility problems are presented in the record with regard to these events. Because certain aspects of the evidence concern relatively recent events is not grounds for exclusion of that material. Thus, no cogent reasons are set forth warranting the exclusion from the record of the objected to material. See In re Cinnaminson Bd/Ed, D.R. No. 81-39, 7 NJPER 274 (¶12122 1981) and In re Clearview Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (1977).

IV. Conclusions and Recommendations

Upon consideration of the entire record in this matter and the foregoing discussion, the Hearing Officer concludes that the Senior Investigators MC are supervisors within the meaning of the Act. Accordingly, the Hearing Officer recommends that Local 195's petition seeking to clarify its Inspection and Security Unit to include the Senior Investigator MC title be dismissed.

Respectfully submitted,


Charles A. Tadduni
Hearing Officer

Dated: July 19, 1982
Trenton, New Jersey