

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

In the Matter of

BROOKDALE COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. RO-1058

BROOKDALE COMMUNITY COLLEGE  
ADMINISTRATIVE ASSOCIATION - NJEA,

Petitioner.

SYNOPSIS

The Director of Representation directs that an election among certain of the College's administrative personnel be conducted within thirty days. The Director determines that personnel in twelve allegedly supervisory titles are not supervisors within the meaning of the Act in that they do not effectively recommend hiring, and that there is neither an actual nor potential substantial conflict of interest between these personnel and other administrators in the proposed unit. The Director also determines that certain personnel whose duties are generally related to computer functions and who process and assemble raw data are not confidential employees. Four administrative assistants, who neither have access to nor knowledge of material used in labor negotiations, are also found not to be confidential employees. However, the Director finds that the College's Chief Accountant, who at various levels determines the College's cost for a labor budget and for negotiations and is its principal source of information regarding wage and budget proposals, is a confidential employee. Additionally, the Director finds that the College's Director of Information Services is a confidential employee, but that personnel in the Research Associate and Data Coordinator-Research titles are appropriate for inclusion in the proposed unit. The Director also rejects the College's motion for rehearing, finding that there is sufficient record evidence to support the instant determination.

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-and-

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ADMINISTRATIVE ASSOCIATION - NJEA,

Petitioner.

Appearances:

For the Public Employer, Murray, Meagher &  
Granello, Esqs.  
(John A. Meagher, of Counsel)

For the Petitioner, Ruhlman & Butrym, Esqs.  
(Edward J. Butrym, of Counsel)

DECISION AND DIRECTION OF ELECTION

On June 23, 1975, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Brookdale Community College Administrative Association - NJEA (the "Association") with respect to a proposed unit of certain administrative employees of Brookdale Community College (the "College"). The Association seeks to be certified as the exclusive representative of the employees in the proposed unit pursuant to a secret ballot election.

Pursuant to the appropriate notice, hearings were held before Leo M. Rose on October 30, 1975, November 24, 1975, January 23, 1976, March 18, 1976, March 31, 1976 and May 3, 1976 at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Both parties filed briefs in support of their respective

positions, and the substituted Hearing Officer issued his Report and Recommendations on March 4, 1977.<sup>1/</sup> A copy is annexed hereto and made a part hereof. On March 29, 1977, the Public Employer filed exceptions and a supporting brief to the Hearing Officer's Report and Recommendations, and on March 30, 1977, the Public Employer filed a Motion for Rehearing and a supporting brief in the instant matter. No exceptions were filed by the Petitioner.

The undersigned has considered the entire record in this matter including the Hearing Officer's Report and Recommendations, the entire transcript, the exhibits, briefs, exceptions, and the motion for rehearing, and finds and determines as follows:

1. Brookdale Community College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), the employer of the employees described herein, and is subject to the Act's provisions.

2. Brookdale Community College Administrative Association - NJEA is an employee representative within the meaning of the Act and is subject to its provisions.

3. The College, having objected to the appropriateness of the unit sought in the petition by objecting to the inclusion of numerous titles, a question concerning the representation of administrative personnel exists, and the matter is appropriately before the undersigned for determination.

4. The parties have agreed to include or exclude personnel in a large number of titles involving the proposed unit, such titles being those

<sup>1/</sup> Since the original Hearing Officer resigned his position with the Commission prior to the issuance of a Report and Recommendations in this matter, the undersigned, pursuant to the Commission's Rules, designated James F. Schwerin as Hearing Officer for the purpose of issuing the Report and Recommendations herein.

enumerated in Appendix A of the Hearing Officer's Report and made a part hereof. Thus, the Association seeks to represent a unit including all administrators employed by the College including, but not limited to, those titles enumerated under inclusions in Appendix A, and specifically excluding those titles listed under exclusions in Appendix A.

The College has objected to the inclusion in the unit of administrators occupying 29 other titles on the basis of either supervisory/conflict of interest, or confidentiality within the meaning of the Act, or on the basis of both of these grounds.

5. The Hearing Officer found that the employees in twelve (12) specific titles were not supervisors within the meaning of the Act in that they did not "effectively recommend" hire, discharge or discipline as defined in N.J.S.A. 34:13A-5.3,<sup>2/</sup> and that there did not exist a substantial conflict of interest, as the College has alleged, between these twelve titles and other titles in the proposed unit. The Hearing Officer therefore recommended the inclusion of the personnel in the following twelve titles in the proposed unit: the Assistant Director of Computer Services for Systems and Programming; Assistant Director of Computer Services for

2/ N.J.S.A. 34:13A-5.3 in pertinent part is as follows:

"Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement, or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations;" (emphasis provided)

Contract Services; Operations Manager, Computer Services; Manager Data Base; Director of Student Life and Activities; Director of Admissions and Records; Director, Career Services; Associate Dean Community Education; Director Human Resources; Assistant Director, Human Resources; Director, Information Services; Manager, Material Services.

The Hearing Officer also found that nine (9) employees whose duties are generally related to computer functions, four (4) administrative assistants, and employees holding the titles of Chief Accountant, Data Coordinator- Research, and Research Associate, were not, contrary to the College's contentions, confidential employees within the meaning of the Act,<sup>3/</sup> and the Hearing Officer therefore recommended the inclusion of all these titles in the proposed unit. The titles held by the computer personnel are as follows: Assistant Director of Computer Services for Systems and Programming; Assistant Director of Computer Services for Contract Services; Production Control Coordinator; Operations Manager; Project Manager, Systems Coordinator; School Coordinator; Manager, Data Base; Coordinator, Data Base. The four administrative assistant titles are: Senior Administrative Assistant to Dean of Natural and Applied Sciences; Senior Administrative Assistant to Dean of Human Affairs; Senior Administrative Assistant to Dean of Applied Humanities; and Administrative Assistant to the Director of the Learning Resources Center.

Finally, the Hearing Officer found that the Director of Informational Services was a confidential employee within the meaning of the Act,

<sup>3/</sup> N.J.S.A. 34:13A-3(g) defines confidential employees as follows:

(g) "Confidential employees" of a public employer means 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.

and he therefore recommended the exclusion of this title, to which the Petitioner did not except, from the proposed unit.

In its exceptions and supporting brief the College specifically objected to the Hearing Officer's recommended inclusion in the unit of the employees holding the twelve alleged supervisor titles, the nine computer type titles, the four administrative assistant titles, and the Chief Accountant title. Specifically, the College's first exception is related to the Motion for Rehearing filed by the College and shall be discussed herein after the other exceptions have been considered. The second and third exceptions relate to the Hearing Officer's inclusion of the twelve alleged supervisor-type positions in the proposed unit.<sup>4/</sup> Exception four relates to the computer personnel; exception five relates to the administrative assistants; and exception six relates to the Chief Accountant.<sup>5/</sup>

#### Supervisory Status - Conflict of Interest

6. In regard to the twelve alleged supervisors, the College argued in its exceptions that the Hearing Officer misconstrued the statutory test for a supervisor within the meaning of the Act, and that he misapplied the applicable law regarding conflict of interest. The College generally

<sup>4/</sup> Exceptions two and three are:

"2. The Public Employer excepts to failure of the Hearing Officer to apply the correct standard of law under N.J.S.A. 34:13A-5.3, regarding the definition of supervisors. (P. 4 of Report).

3. The Public Employer excepts to the failure of the Hearing Officer to apply the proper standard of law to the issue of conflict of interest. (P. 10 of Report)."

<sup>5/</sup> Exceptions four, five and six are:

"4. The Public Employer excepts to the failure of the Hearing Officer to apply correctly the rationale of the case cited as supportive of the Hearing Officer's conclusion regarding the computer personnel.

5. The Public Employer excepts to the Hearing Officer's report in that it fails to credit the official job descriptions of the Administrative Assistants.

6. The Public Employer excepts to the Hearing Officer's Report concerning the Chief Accountant in that Report here contains an erroneous finding of fact and misreads the cases cited in support of the Hearing Officer's report."

maintains that the twelve titles are supervisors because, as the statute provides, they either have the power to hire, discharge, or discipline, or they may effectively recommend the same.<sup>6/</sup> Of these enumerated powers, the College specifically contends that the titles in question do have the power to effectively recommend the above.

A review of the transcript reveals that much of the testimony was elicited from Ghislaine Sheehan, the College's Assistant Director of Personnel. Mrs. Sheehan testified, among other matters, concerning the title of Director of Student Life and Activities, one of the twelve alleged supervisors herein.<sup>7/</sup> Mrs. Sheehan was intensively questioned about the Director's (Student Life) ability to effectively recommend hiring, discipline and discharge, and his role in evaluating his subordinates.

In regard to hiring, Mrs. Sheehan testified that several standard forms were used by the College in its hiring process, particularly the Personnel Request form <sup>8/</sup> and the Employment Recommendation form.<sup>9/</sup> Mrs. Sheehan also testified that the Personnel Request form was used by an individual such as the Director of Student Life and Activities when it was necessary to hire additional personnel.<sup>10/</sup> This form was not used as a recommendation for hiring, but was used to insure the existence of sufficient funds for the additional personnel. Mrs. Sheehan further testified that the Director (Student Life) would "initiate" the form as part of the hiring process,<sup>11/</sup> and that the form then needed the approval of a College officer,

<sup>6/</sup> N.J.S.A. 34:13A-5.3, see note 2.

<sup>7/</sup> Information concerning the position of Director of Student Life and Activities is contained in T. 3 p. 9 - T. 3 p. 38.

<sup>8/</sup> Exhibit E-3.

<sup>9/</sup> Exhibit E-4.

<sup>10/</sup> T. 3 p. 13.

<sup>11/</sup> T. 3 p. 13.

in this case the Vice-President of Educational Services.<sup>12/</sup> Assuming the Vice-President approved the form, the form then needed budget approval.<sup>13/</sup> Finally, the President of the College had "final approval."<sup>14/</sup>

Mrs. Sheehan further testified that once the Director (Student Life) had completed interviews or had utilized a committee process for interviewing for an approved position he would initiate the Employment Recommendation form which proceeded through the same levels of authority as the Personnel Request form.<sup>15/</sup> Although Mrs. Sheehan clearly testified that the Director (Student Life) could very possibly prevent a job candidate from being hired by not recommending the candidate for the position,<sup>16/</sup> she also testified that the ultimate staffing of the institution involved a "cumulative process"<sup>17/</sup> necessitating the authorization and review of the Vice-President and President.

The parties have generally agreed that the personnel request and employment recommendation procedures were essentially the same for the remaining alleged supervisor positions.<sup>18/</sup> In addition, Steven Seligman, Director of Admissions and Records, and the only alleged supervisor to testify at the hearing, testified that he did use the Employment Recommendation

<sup>12/</sup> T. 3 p. 14 and 15.

<sup>13/</sup> T. 3 p. 15.

<sup>14/</sup> T. 3 p. 16.

<sup>15/</sup> T. 3 p. 28.

<sup>16/</sup> T. 3 p. 10 and p. 28.

<sup>17/</sup> At T. 3 p. 18 Mrs. Sheehan was asked, "...who would be ultimately responsible for the staff planning of this department?" Her answer at T. 3, p. 19 was, "Ultimately responsible for staffing of the institution would be the President. Each Vice-President would have responsibility for his own area. Directors under him would be responsible for their areas. It's a cumulative process."

<sup>18/</sup> T. 3 p. 39 - p. 41.



form and he was aware that his recommendation required the approval of two other officials.<sup>19/</sup>

The undersigned has examined the relevant exhibits and testimony regarding the employees in the 12 titles and their ability to effectively recommend hiring, and concludes that the hiring function and indeed the hiring recommendation itself is a cumulative and cooperative function requiring the participation and authorization of several individuals.

Regarding the areas of discharge and discipline, Mrs. Sheehan testified that the alleged supervisors are required to conduct an annual evaluation of their subordinates regarding the accomplishment of their objectives,<sup>20/</sup> and that there is a specific evaluation form for that purpose.<sup>21/</sup> Mrs. Sheehan further testified that the evaluation form might be the basis upon which an individual is terminated,<sup>22/</sup> but that the form used in the event of discharge would be the Contract Administration form <sup>23/</sup> under the section designated "Recommendation for Non-Renewal of Contract." <sup>24/</sup>

An examination of the Recommendation for Non-Renewal section reveals that two signatures are required, a "supervisor's" (one of the 12 alleged supervisory titles) and a College officer's, usually a Vice-President. Mrs. Sheehan was examined at length concerning the need for both signatures in order to complete the recommendation, and she testified that both signatures were required.<sup>25/</sup> Moreover, when asked whether a Director's non-renewal recommendation would be effective if the College

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<sup>19/</sup> T. 6, pp. 14-16.

<sup>20/</sup> T. 3, p. 19.

<sup>21/</sup> Exhibit E-6.

<sup>22/</sup> T. 2, p. 13.

<sup>23/</sup> Exhibit E-5.

<sup>24/</sup> T. 3, p. 21.

<sup>25/</sup> T. 3, p. 22.

officer (vice-president) did not agree, Mrs. Sheehan responded "[b]ecause the College officer is responsible for that entire area, I think his decision would over-weight (sic) the supervisor. The same would go for the President's decision." <sup>26/</sup> The parties have generally agreed that all of the recommendation procedures and forms were essentially the same for the remaining alleged supervisor titles. <sup>27/</sup>

Based upon the foregoing discussion and also the evidence in its entirety, the undersigned is convinced that the 12 titles in question, acting alone and without the approval of the appropriate college officer, do not have the power to hire, discharge, or discipline their subordinates, or to effectively recommend the same. At best, the Director's participation in the hiring process is at the initial level, and remote from the actual decision and power to hire discharge or discipline. ~~Any level of review from~~ the Director's level can disapprove a Director's recommendation. Under these circumstances, the undersigned can hardly conclude that a recommendation which requires the approval of three additional levels of authority is at all effective.

The College has further argued in its exceptions that the capacity for actual or potential conflict of interest exists between the various alleged supervisors and their subordinates largely due to the Director's role in the hiring and evaluation process. However, the record does not demonstrate that an actual conflict has occurred or that the capacity for a potential conflict of interest is ~~imminent~~ or that any incompatibility is presently foreseeable. Rather, the undersigned must conclude from the record that any

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<sup>26/</sup> T. 3 p. 25.

<sup>27/</sup> T. 3 p. 39 - p. 41.

potential for the Director being placed in a position of substantial conflict of interest is remote and speculative.

Accordingly, the undersigned finds, based upon the foregoing reasons and in accordance with the Hearing Officer's conclusions, that the 12 titles in question are appropriate for inclusion in the proposed unit.

#### Computer Type Personnel - Confidentiality

7. The College also excepted to the Hearing Officer's finding that the nine computer titles were not confidential employees within the meaning of the Act. The College argued in its exception that ~~even~~ ~~assuming~~ that not every contested title is excludable, that a closer examination of the titles would show that at least several titles should be excluded.

The bulk of the testimony concerning the computer titles was derived from Mr. Vincent Gormon, Director of Computer Services at the College.<sup>28/</sup> Mr. Gormon was asked several questions concerning the accessibility that the nine individuals in those titles would have to negotiations material.<sup>29/</sup> Mr. Gormon testified generally that all nine titles would have access to various information stored or produced by the computer center,<sup>30/</sup> but later he testified that his department (including the nine instant titles) performed mainly a maintenance, storage and production function regarding the data in question.<sup>31/</sup> Moreover, Mr. Gormon's testimony revealed that even he was not entirely certain whether he had ever received a request to process data specifically for negotiations.<sup>32/</sup> At the same time, Mr. Gormon testified that he believed he prepared reports used for negotiations purposes. Since

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<sup>28/</sup> Mr. Gormon's testimony begins at T. 4, p. 2.

<sup>29/</sup> T. 4, p. 9 - T. 4, p. 21.

<sup>30/</sup> T. 4, p. 12.

<sup>31/</sup> T. 4, p. 14.

<sup>32/</sup> T. 4, p. 19.

Mr. Gormon's testimony reflects uncertainty in his mind with regard to utilization of data he has processed, it is reasonable to conclude that his subordinates, the employees in the nine instant titles, are equally unclear as to the nature and use of the information they were preparing.

Although the College contends that at least several computer titles are confidential employees within the meaning of the Act, the evidence in the record shows that the contested computer personnel would merely have access to and assemble raw data which eventually might be used by the College in negotiations. The Commission in In re Board of Education of the Township of West Milford, P.E.R.C. No. 56 (1971), at p. 5, has found that, "mere knowledge of raw information acquired in this process [assembly of information] would not ordinarily tend to compromise Management's right to confidentiality in matters of policy affecting negotiations or contract administration." Accordingly, and in conformity with the above-cited decision, the undersigned adopts the Hearing Officer's Report and Recommendations regarding the nine computer titles and finds that those titles are not confidential within the meaning of the Act and are appropriate for inclusion in the proposed unit.

#### Administrative Assistants - Confidentiality

8. Regarding the four Administrative Assistants, the Hearing Officer concluded - to which the College excepted - that they were not confidential employees within the meaning of the Act. The College alleged in its exception that the Hearing Officer failed to credit the job descriptions of these four titles. However, the College made no other argument relating to the confidentiality of these titles. The undersigned notes that the testimony of two of the four administrative assistants, who clearly testified

that they did not have access to or knowledge of any material used in labor negotiations, is not contradicted.<sup>33/</sup> Additionally, Mr. Stanley Stein, the College's Director of Personnel testified that to his belief the title of Administrative Assistant - Learning Resource Center (held by Pamela Austin) did have access to confidential information.<sup>34/</sup> However, on cross-examination Mr. Stein indicated that he never had a meeting or discussion with this particular Administrative Assistant present, nor had he received any communication directly from her.<sup>35/</sup> Moreover, Mr. Stein admitted that he only assumed that Ms. Austin had a hand in confidential information.<sup>36/</sup>

With respect to the title of Senior Administrative Assistant to the Dean of Human Affairs (held by Cathy McNee), Mr. Stein also testified that Ms. McNee would have access to confidential information,<sup>37/</sup> yet on cross-examination Mr. Stein again stated that he assumed that her duties involved confidential information.<sup>38/</sup>

The undersigned concludes, after a study of the job descriptions of the four titles and the testimony with regard to the actual job functions, that the evidence demonstrates that the Administrative Assistant titles do not have a confidential status within the meaning of the Act. The undersigned therefore adopts the Hearing Officer's Report and Recommendations regarding these four titles and finds that they are not confidential employees, and these titles are therefore appropriate for inclusion in the proposed unit.

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<sup>33/</sup> Pamela Austin, Administrative Asst. - Learning Resource Center so testified at T. 6 pp. 28, 29, 30.  
Cathy McNee, Senior Admin. Asst. to Dean of Human Affairs so testified at T. 6 pp. 50, 51.

<sup>34/</sup> T. 5 p. 6.

<sup>35/</sup> T. 5 p. 18.

<sup>36/</sup> T. 5 p. 19.

<sup>37/</sup> T. 5 p. 61.

<sup>38/</sup> T. 5, pp. 62, 63.

Chief Accountant - Confidentiality

9. In its sixth exception the College specifically excepted to the Hearing Officer's finding that the Chief Accountant was not a confidential employee. The College argued that the Hearing Officer misread the testimony produced at the hearing which indicated that the Chief Accountant worked closely with the Comptroller who was, himself, deeply involved in matters related to negotiations.<sup>39/</sup>

In his Report and Recommendations the Hearing Officer concluded that the Chief Accountant should be included in the proposed unit because, even though he had knowledge of the College's negotiations proposals, he was unaware of the College's position regarding those proposals.<sup>40/</sup> The Hearing Officer thus concluded that the Chief Accountant lacked the kind of knowledge or information that would make him a confidential employee.

An examination of the record reveals that Mr. Stein also testified concerning the Chief Accountant and Comptroller functions.<sup>41/</sup> Mr. Stein first testified that the Comptroller exercised managerial functions regarding negotiations,<sup>42/</sup> and then testified that the Chief Accountant was required to perform functions used to determine costs for a labor budget and negotiations.<sup>43/</sup> Mr. Stein testified that the Chief Accountant "...would be involved in all the levels that the process enjoins. The act of preparing. The act of revising. The act of finalizing. The act of all that is required in terms of budget."<sup>44/</sup> Moreover, Mr. Stein further testified that during

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<sup>39/</sup> T. 5, pp. 74,75.

<sup>40/</sup> See attached H.O. No. 77-7, p. 17.

<sup>41/</sup> Testimony on the Chief Accountant begins at T. 5, p. 73.

<sup>42/</sup> T. 5 p. 74.

<sup>43/</sup> T. 5 p. 74.

<sup>44/</sup> T. 5 p. 74.

the course of negotiations the College officials rely on the Chief Accountant as their principal source of information regarding wage and budget proposals.<sup>45/</sup>

The undersigned has thoroughly reviewed the uncontroverted testimony relating to the Chief Accountant and concludes, contrary to the finding of the Hearing Officer, that the Chief Accountant prepares, revises, and finalizes the precise kind of information that would make him a confidential employee within the meaning of the Act.

Consequently, the College's exception relating to the Chief Accountant is sustained and the undersigned finds that the Chief Accountant is a confidential employee within the meaning of the Act, and the Chief Accountant title is therefore inappropriate for inclusion in any negotiations unit.

#### The Motion for Rehearing

As previously discussed, the College's first exception deals with the issues raised in its Motion for Rehearing.<sup>46/</sup> The College argues that since the Hearing Officer often referred to a lack of information or the existence of voids in the record that, therefore, the hearing should be re-opened to obtain the necessary information.

The College argues that because the Hearing Officer believes that certain information is missing from the transcript that, therefore, there is insufficient basis upon which to reach a decision. Such is not the case. The undersigned has reviewed the entire transcript herein and finds that there is more than sufficient evidence to substantiate the findings and conclusions

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<sup>45/</sup> T. 5 pp. 75, 76.

<sup>46/</sup> The first exception is, "The Public Employer excepts to the closing of the record. It is clear and apparent, that the Hearing Officer, whose report was received by the Public Employer, was not satisfied that the record, as compiled under a previous Hearing Officer, was complete. This position of the Hearing Officer is clear throughout the report, and specifically can be found at pp. 7, 8-9, 9 (last paragraph), 13."

made by the undersigned. The mere fact that some information is not contained within the transcript and is referred to as missing by the Hearing Officer does not, in and of itself, establish that the totality of the evidence obtained at the hearing was insufficient to reach a valid conclusion. The critical variable in considering requests for rehearing is not whether some information is missing, but whether the missing information as a whole makes the record so deficient so as to leave insufficient basis on which to properly and viably conclude, one way or the other, the nature of the dispute.

In the instant matter, despite the lack of information concerning the number of times an alleged supervisor's recommendation is approved, there still remains sufficient information to conclude, as the undersigned has concluded, that the recommendation function herein is a cumulative function participated in by several people and not a singular function exercised by one individual.

Consequently, for the reasons enumerated above, the College's first exception cannot stand and, additionally, its Motion for Rehearing is hereby denied.

10. With respect to the titles of Director of Information Services, Data Coordinator-Research, and Research Associate, the undersigned notes no exceptions from the Hearing Officer's Report and Recommendations regarding these positions, and the undersigned after an independent review of the record adopts the Hearing Officer's Report and Recommendations regarding these titles. The undersigned therefore finds that the Director of Information Services is a confidential employee within the meaning of the Act, and inappropriate for inclusion in any negotiations unit. The undersigned also finds that the titles of Data Coordinator-Research and Research Associate are appropriate titles for inclusion in the Association's unit.



11. Accordingly, for the above-stated reasons, the undersigned finds that the appropriate unit is, and he shall direct an election in, a unit of administrators employed by Brookdale Community College including those titles listed under inclusions in Appendix A of the Hearing Officer's Report, and further including the twelve titles contained in paragraph 5, page 3 of this decision, the nine computer-type titles and the four administrative assistant titles contained in paragraph 5, page 4 of this decision, and the Data Coordinator-Research and the Research Assistant titles; but excluding those titles named under exclusions in Appendix A, and further excluding the Director of Information Services and the Chief Accountant.

12. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

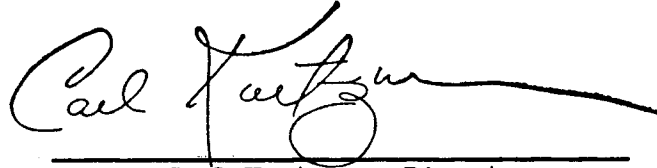
Pursuant to N.J.A.C. 19:11-9.6 the Public Employer is directed to file with the undersigned and with the Association an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received no later than ten (10) days prior to the date of the election. A copy of the eligibility

list shall be simultaneously filed with the Association with Statement of Service to the undersigned. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by the Brookdale Community College Administrative Association - NJEA.

The exclusive representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

A handwritten signature in cursive script, reading "Carl Kurtzman", written in black ink. The signature is positioned above a horizontal line.

Carl Kurtzman, Director  
of Representation

DATED: September 7, 1977  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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-and-

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ADMINISTRATIVE ASSOCIATION,

Petitioner.

SYNOPSIS

The Brookdale Community College Administrative Association filed a Petition for a unit of Administrators, and the College objected to the inclusion of a substantial number of titles. The Hearing Officer finds that none of the administrators claimed to be supervisors of others in the proposed unit have a demonstrated conflict of interest with these other administrators sufficient to warrant exclusion.

The Hearing Officer further finds that mere access to computer data does not make computer operations administrators confidential employees within the meaning of the Act. Administrative Assistants were found not to be regularly utilized in a confidential capacity by those responsible for management labor relations policy. The Chief Accountant was found not to be confidential although he costs out labor negotiations proposals. Recommended for exclusion as a confidential employee is the Director of Information Services who is briefed as to labor negotiations positions as background for his dealings with the public press.

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(John A. Meagher, of Counsel)

For the Petitioner, Ruhlman & Butrym  
(Edward J. Butrym, of Counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed on June 23, 1975 by the Brookdale Community College Administrative Association (the "Association") seeking certification as the exclusive representative for the purpose of negotiations of administrative employees of Brookdale Community College (the "College").

Pursuant to a Notice of Hearing, a hearing was held in Newark, New Jersey, before Hearing Officer Leo M. Rose on October 30, 1975, November 24, 1975, January 23, 1976, March 18, 1976, March 31, 1976, and May 3, 1976.<sup>1/</sup>

During the hearing the parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Both parties filed briefs subsequent to the hearing, the Petitioner's being received on July 8, 1976 and the Employer's on July 22, 1976.

<sup>1/</sup> References to the transcripts will be as follows: T1 - October 30, 1975; T2 - November 24, 1975; T3 - January 23, 1976; T4 - March 18, 1976; T5 - March 31, 1976; T6 - May 3, 1976.

Pursuant to N.J.A.C. 19:14A-2.2 <sup>2/</sup> the Director of Representation Proceedings designated the undersigned on February 7, 1977, as Hearing Officer for the purpose of issuance of a Report and Recommendation. This was due to Mr. Rose having left the employ of the Commission.

Upon the entire record, the exhibits admitted into evidence and the briefs in the instant proceeding the Hearing Officer finds:

1. Brookdale Community College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.

2. The Brookdale Community College Administrative Association is an employee organization within the meaning of the Act and is subject to its provisions.

3. The Association sought recognition as the exclusive representative of a unit of administrative employees and the College objected to the appropriateness of the unit sought, objecting to the inclusion of a substantial number of titles. Accordingly, there is a question concerning representation regarding the administrative personnel of the College and the question is appropriately before the Hearing Officer for a Report and Recommendations.

Both before and during the hearing, the parties reached agreement as to the inclusion or exclusion of a large number of job titles in the proposed unit. Annexed hereto as Appendix A is a list of the titles agreed upon by the parties.

<sup>2/</sup> This subsection provides that, "In the event the hearing officer designated to conduct the hearing becomes unavailable, the Executive Director [now the Director of Representation Proceedings] or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendation on the record, or both."

The College is currently objecting to the inclusion of some 24 titles in the unit on the grounds either that a conflict of interest exists between the objected to title and one or more other titles sought for inclusion, or that a petitioned-for employee is a confidential employee within the meaning of the Act, and therefore ineligible to be represented in any bargaining unit. In certain instances the College has pressed both objections to the same titles. These two broad areas of objection to inclusion will be treated separately.

#### CONFLICT OF INTEREST

It is the College's position that twelve titles are in effect "supervisors" of the titles to be included in the unit, and that therefore a conflict of interest exists such that the community of interest between these employees is not sufficient to warrant their inclusion in the same unit with the other administrators. These twelve are: Assistant Director of Computer Services for Systems and Programming; Assistant Director of Computer Services for Contract Services; Operations Manager, Computer Services; Manager Data Base; Director of Student Life and Activities; Director of Admissions and Records; Director, Career Services; Associate Dean Community Education; Director Human Resources; Assistant Director, Human Resources; Director, Information Services; Manager, Material Services.

The College does not argue that these titles should be excluded on the basis of the Act's declaration that supervisors not be in the same unit with non-supervisors.<sup>3/</sup> This is due to the fact that other titles, to which the College does not object, are supervisors within the meaning of the Act in their relationship to non-administrative personnel

<sup>3/</sup> N.J.S.A. 34:13A-5.3.

not sought for inclusion in this unit. However, the College does contend that the standard to be used in determining whether there is a conflict of interest is that for determining supervisors - the power to hire, discharge, discipline, or effectively recommend the same. Maintaining that the twelve titles enumerated above have these powers over other employees in the unit sought, the College asserts that conflict exists as a result of the exercise of these supervisory duties.

The Association responds by asserting that the administrators in question are only minimally involved in the hiring, discharge or discipline of other proposed unit members. Higher level administrators are pointed to as those who effectively are the decision makers in these areas, and as the Association is not seeking their inclusion in the unit, the potential for real conflict of interest, it is argued, has been eliminated.

Central to any determination on this question is the New Jersey Supreme Court decision in Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971). At issue therein was whether the Director of Elementary Education would properly be included in a unit of supervisory personnel. The Court rejected the notion that merely because Miss Wilton was a supervisor, and the other proposed members were supervisors, a community of interest existed per se. What must be examined is the degree to which a particular supervisor's duties are related to a management function.

"Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular supervisor bespeaks such an intimate relationship with the management and policy-making function as to indicate actual or potential substantial conflict of interest between him and other supervisory personnel in a different

or lower echelon of authority, such supervisor should not be admitted to the same negotiating unit." 4/

In support of its position, the College relied primarily on the testimony of Ghislaine Sheehan, the Assistant Director of Personnel. Mrs. Sheehan's testimony was based on a compilation of job descriptions<sup>5/</sup> which was the result of a compensation study performed by an outside consultant. It was compiled through the use of questionnaires to be filled out by the incumbents in the administrative job titles from which the consultant firm and the college were able to develop the descriptions.

Mrs. Sheehan testified that according to the description of his position, the Director of Student Life and Activities was the "supervisor" of an Administrative Assistant. When such position fell vacant, it would be up to the Director to submit a request for personnel <sup>6/</sup> which would need approval from the Dean of Student Development, and then need approval signatures from a college Vice-President, the personnel department and the President. Then it would be up to the Director to interview candidates with the option of using a committee for that function. Then he would fill out an employment recommendation form <sup>7/</sup> listing the candidate of his choice, and send it through the same chain of approvals necessary for the request for personnel with the Board of Trustees having to give final approval for an administrative position.<sup>8/</sup>

In addition to initiating the hiring process, the Director could also initiate the discharge process by use of a recommendation for

4/ 57 N.J. at 416.

5/ Exhibit E-1.

6/ Exhibit E-3.

7/ Exhibit E-4.

8/ T3:12-27.



non-renewal,<sup>9/</sup> which calls for a "college officer's" signature - in this case Vice President, and then goes on to the President for a final decision.<sup>10/</sup> (Although the form does not call for the Dean's signature, he would be expected to sign-off <sup>11/</sup>). Furthermore, the Director would be involved in evaluating the Administrative Assistant. On the evaluation form <sup>12/</sup> objectives to be accomplished are listed as developed by the Director and the Assistant, and at the end of the year the Director would evaluate the Assistant on the basis of accomplishment or non-accomplishment. Often times, an Assistant might also be asked to do self-evaluation. Then the form is sent to the personnel office for review.<sup>13/</sup>

After this testimony, it was agreed by counsel for both sides that the general procedure outlined above would apply to all the administrators sought to be excluded on the basis of conflict of interest.<sup>14/</sup> From there on, the College's evidence as to the remaining titles was limited to a recitation of what administrators were supervised by the title in question, that the "supervisor" initiated hiring or discharge procedure, and evaluated the subordinate. Additionally, Mrs. Sheehan testified that a grievance procedure had been established for non-represented personnel <sup>15/</sup> and that a person's immediate supervisor was responsible for the informal first step necessary before the formal stage could be entered. She stated that no grievances had yet been processed through this procedure.<sup>16/</sup> All of this testimony was based

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<sup>9/</sup> Exhibit E-5.

<sup>10/</sup> T3: 21-23.

<sup>11/</sup> T3: 23.

<sup>12/</sup> Exhibit E-6.

<sup>13/</sup> T3: 19-21.

<sup>14/</sup> T3: 39-41.

<sup>15/</sup> Exhibit J-2.

<sup>16/</sup> T3: 68.

on the contents of the job descriptions, and was virtually devoid of specific examples. (The same type testimony was provided as to the four computer people <sup>17/</sup> by Vincent Gorman, the Director of Computer Services.) Mrs. Sheehan stated that she personally was familiar with the hiring and other processes only insofar as the necessary forms and the personnel office's procedures.<sup>18/</sup>

The College is divided into departments each of which is headed by a Dean or Director. All of the Deans and Directors in charge of a department have been stipulated out of the unit, and all of the titles at issue for conflict of interest are subordinate to one of these Deans or Directors.

It has been the Commission's position that the bare possession of supervisory authority without more is insufficient to sustain a claim of supervisory status. There must be concrete indication that the power is exercised with regularity and is not a "sterile" attribute. In re Somerset County Guidance Center, D.R. NO. 77-4 (1976). This is even more important in the instant case where the grounds for objection are not separating supervisors from non-supervisors, but instead are actual conflict of interest albeit from the supervisor-supervisor relationship alleged.

Upon a review of the testimony on this point, the undersigned concludes that the evidence does not demonstrate the existence of a conflict of interest sufficient to warrant exclusion from the proposed unit. Mrs. Sheehan's testimony did not give any figures as to the number of occasions on which any of the "supervisors" at issue had instituted hiring or discharge procedures, nor did it indicate how often such recommendations may have been followed or disapproved by higher

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<sup>17/</sup> The two Assistant Directors of Computer Services, the Operation Manager and the Manager, Data Base.

<sup>18/</sup> T3: 55.

authority. The sole indications of possible conflict were the job descriptions which on paper showed that these administrators were the supervisors for other administrators in the unit.

In reaching this conclusion, the undersigned wishes to stress the fact that the testimony was uncontroverted that all of the actions of the "supervisors" are subject to review by a number of higher levels of authority within the College, and that final decisions rest with the President. It is not contended that these administrators can actually hire or fire, but rather that they can "effectively recommend" the same. Yet there is nothing in the record to show whether or not these recommendations are indeed effective. Unless it could be substantiated that these recommendations are accepted in almost all cases, it cannot be said that the administrator-supervisors are effectively recommending action.

The brief submitted on behalf of the College makes reference to three Executive Director decisions dealing with community colleges in which immediate supervisors were found to effectively recommend hire or discharge even though they had to submit their recommendations through higher levels of administration.<sup>19/</sup> These cases dealt with the issue of whether Department Chairmen were supervisors within the meaning of the Act. In all of them, the evidence clearly established that the recommendations as to hiring made by these Chairmen were followed almost 100% of the time, and so they were found to effectively recommend, and therefore were excluded from faculty units as supervisors.

As noted above, the record herein does not contain evidence showing the recommendations' effectiveness, nor even how often the

19/ Board of Trustees of Essex County College and Essex County College Faculty Association, E.D. No. 45 (1973); Board of Trustees of Mercer County Community College and Mercer County Community College Faculty Association, E.D. No. 35 (1971); Cumberland County College and Cumberland County College Faculty Association, E.D. No. 4 (1970).

administrators have ever made such recommendations. In terms of discharge, while testifying about the position of Director of Student Life and Activities, Mrs. Sheehan stated that he had not ever instituted a discharge proceeding for the Administrative Assistant position he supervised.<sup>20/</sup> Moreover, the department chairmen most closely analagous to the excluded supervisors in the other cases are not now being sought for inclusion in the unit. Unlike the department chairmen in these cases, the administrators herein at most are listed as being supervisor for one or two other administrators, and direct supervision of these other unit members are not their primary job functions even according to the job descriptions put into evidence by the College.

Only one of the administrators in question testified as to the actual functions of his job - Steven Seligman, Director of Admissions and Records. He stated that his role in evaluating administrators working under him was to form goals jointly with them and have them evaluate their success subject to his comments before sending the evaluation up through the chain of command. This contrasted with his evaluation of non-academic staff which he testified was done without significant input from the persons evaluated.<sup>21/</sup> This description of working in conjunction with the other administrators rather than by fiat certainly does not indicate a conflict of interest. While on cross-examination he did state that he was in a position to make recommendations for discontinuance of employment, there was no indication he had actually done so, nor that he had actually had to be involved with an administrator's grievance though he theoretically would be the necessary first person involved.

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<sup>20/</sup> T3: 21.

<sup>21/</sup> T6: 7-12, 16-17.

The undersigned is not convinced by the evidence that the administrators here at issue have been shown to be the supervisors of those below them within the Act's definition of that term. Even if they were, that alone would not require their exclusion from the unit as those being supervised are themselves supervisors of non-administrative personnel. Actual conflict, or at least a very strong potential, must be shown, and the record herein does not show the existence of such conflict. Accordingly, the undersigned recommends that these twelve titles not be excluded from the proposed unit on the basis of conflict of interest.

CONFIDENTIALITY

There are seventeen administrators as to whom the College asserts that they are confidential employees within the meaning of the Act, and therefore ineligible for inclusion in any bargaining unit. Nine of these employees may be loosely classified as computer personnel - Assistant Director of Computer Services for Systems and Programming; Assistant Director of Computer Services for Contract Services; Production Control Coordinator; Operations Manager; Project Manager; Systems Coordinator; School Coordinator; Manager, Data Base; Coordinator, Date Base. There are four administrative assistants - Senior Administrative Assistant to Dean of Natural and Applied Sciences; Senior Administrative Assistant to Dean of Human Affairs; Senior Administrative Assistant to Dean of Applied Humanities; and Administrative Assistant to the Director of the Learning Resources Center. Additionally there are four other titles - Chief Accountant; Director of Informational Services; Data Coordinator, Research; Research Associate.

N.J.S.A. 34:13A-3(g) defines confidential employees as follows:

(g) "Confidential employees" of a public employer means 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 Act bars confidential employees from the right to join, form or be represented by an employee organization.<sup>22/</sup>

Prior to the amendment of the Act to include the above definition of confidential employee, the Commission had adopted as part of its rules N.J.A.C. 19:10-1.1 which defined a confidential employee as:

"...any employee for whom a principal duty is to assist and act in a confidential capacity to persons who formulate, determine and effectuate management policy in the area of labor relations...The term 'confidential employee' shall be narrowly construed."

Nothing in the Commission's definition is inconsistent with the legislative definition, and therefore the undersigned considers N.J.A.C. 19:10-1.1 as a guide to be used in application of N.J.S.A. 34:13A-3(g). In light of the fact that the legislature has chosen to completely bar confidential employees from representation by an employee organization, the stricture that the term shall be narrowly construed is more vital than ever.

#### Computer Personnel

Testimony as to the job functions of the nine computer area administrators was provided by Vincent Gorman, Director of Computer Services. He testified that when a request for a report comes in, if it is for an existing report, it would go directly to the operations wing for processing. In that wing, the administrator titles involved would

<sup>22/</sup> N.J.S.A. 34:13A-5.3.

be Production Control Coordinator and Operations Manager. If a request for new information is made, it would first have to go to the Systems and Programming group in which the Assistant Director and Project Manager would be directly involved, and it would then be sent on to the operations wing. The Manager of Data Base has control over access to the stored information. All other titles objected to would have access to the information.<sup>23/</sup>

Mr. Gorman further testified that his department performed primarily a maintenance, storage and production function as to data compiled by the various departments of the College and that his department was the only one which would have all of the data together for the College as a whole.<sup>24/</sup>

As to labor negotiations, Mr. Gorman testified that requests for information would be received for possible use in labor negotiations. The one example he gave was a request for salary information. What was supplied was historical data and current salary figures. He stated that approximately twenty percent of the Computer Center's time would be spent on reports relating to negotiations.<sup>25/</sup>

In In re Board of Education of the Township of West Milford, P.E.R.C. No. 56 (1971), the Commission was faced with determining whether a large number of employees were confidential. Three employees out of nineteen were found to be confidential. They were secretaries to the School Superintendent and Board Secretary, who shared responsibility for formulating labor policy and conducting negotiations, and were found to have access to policy information. As to the remaining employees the Commission declared:

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23/ T4: 8-12.

24/ T4: 14-15.

25/ T4: 19.

"It may be that the lowest clerk would, as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collection function should disqualify one from the possibility of representation. Mere knowledge of raw information acquired in this process would not ordinarily tend to compromise management's right to confidentiality in matters of policy affecting negotiations or contract administration.26/

It is the undersigned's conclusion that the computer personnel of Brookdale College fall under the above analysis from West Milford. As part of their duties they may be dealing with data which will later on be considered by management in formulating its policies in labor negotiations or contract administration. This knowledge does not compromise management's position as the computer people do not know what conclusions will be drawn from the data, or whether it will in the long run have any real effect on labor policy. Unlike the secretaries found to be confidential in West Milford, the personnel in computer work does not attend any policy formulation meetings and does not have access to items such as the minutes of policy sessions. Therefore, there is no reason to believe that their inclusion in the unit will in any manner compromise management's position in labor relations.

#### Administrative Assistants

Mr. Stanley Stein, Director of Personnel, gave the College's position as to these four titles. He testified that at the initial stage of labor policy formulation, the College utilized committees to discuss past experience and come up with some preliminary positions to be taken into a negotiations session. Among those who would be called upon



to serve on these committees might be the immediate superiors of the four employees concerned - the Dean of Human Affairs, the Dean of Applied Humanities, the Dean of National and Applied Sciences, and the Director of the Learning Resources Center. Mr. Stein testified that the Administrative Assistants might have to prepare material for their superior for use in these meetings, and that as these discussions often carried for a period of weeks at a time, the Administrative Assistants would inevitably be aware of what was being discussed at them.<sup>27/</sup> He went on to state that a leak of information from these meetings had taken place and been traced to an Administrative Assistant, although whether it was one of the titles herein at issue was not specified.<sup>28/</sup>

During cross-examination Mr. Stein - who was initially describing the duties of administrative assistants in the course of testifying as to the Assistant to the Director of the Learning Resources Center - stated that he had not, at any of the meetings described, seen the Assistant to the Director of Learning Resources present. Nor had he received any direct input from the Assistant as to labor negotiations policy. He further testified that while he would expect that the Assistant was utilized in formulating responses for inquiries to the Director on the subject of labor relations, he did not have first hand knowledge of how she was utilized.<sup>29/</sup>

As to the remaining three titles, Mr. Stein's testimony by and large added no new elements to the description of what administrative assistants do and why they should be excluded from the unit. He gave one concrete example of Mr. Skoules - Assistant to the Dean of Applied

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<sup>27/</sup> T5: 5-7.

<sup>28/</sup> T5: 8.

<sup>29/</sup> T5: 18-19

Sciences - compiling data on the question of shift differentials for non-academic staff.<sup>30/</sup>

Two of the four administrative assistants testified.

Pamela Austin, Assistant to the Director of Learning Resources Center disclaimed any knowledge of confidential information regarding negotiations, and said she did not consult with the Director or any other official with respect to matters concerning labor negotiations.<sup>31/</sup>

She did participate in putting together figures from the subdivisions of the Learning Resources Center as to the budget, which would include only the current salary figures, and not any projections of future salaries.<sup>32/</sup> She did not do cost analysis of sick days, vacations and the like but merely kept records of who was away at what times. She was surprised that the questionnaire form as to her position indicated access to confidential information (it was filled out by the Director as she was not at that time employed by the College).<sup>33/</sup>

Cathleen McNee, Administrative Assistant to the Dean of Human Affairs, also denied knowledge of any labor negotiations confidential information or consultation on that subject. She said that the Assistants to the Deans of Applied Humanities and National Sciences did basically the same things she did.<sup>34/</sup>

In view of the fact that the testimony by the Administrative Assistants themselves consisted of out and out denial of any involvement in the labor negotiations area on behalf of their superiors, and that the

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<sup>30/</sup> T5: 35.

<sup>31/</sup> T6: 29-31.

<sup>33/</sup> T6: 46. Placed into evidence in Exhibit E-8 was an appeal form signed by Ms. Austin requesting upgrading to Senior Administrative Assistant at higher salary. It stated that she performed management duties, but she stated that she only signed it, that it was done at the suggestion of the Director and she was not responsible for the description of duties it contained. In any event the undersigned does not believe this document sheds any light on the question of confidentiality.

<sup>34/</sup> T6: 50-51.

testimony by Mr. Stein relied on job descriptions and what he assumed would be the role of the Assistants, there is no basis for exclusion of these titles as confidential employees. In prior cases, it has been held that there must be regular involvement in work concerning labor policy. In re Springfield Board of Education, E.D. No. 52 (1974); In re Plainfield Board of Education, E.D. No. 1 (1970). Herein the Deans might be said to be regularly involved on the basis of the committee meetings, but there is no evidence that the Administrative Assistants are utilized in a confidential capacity on those matters. Even if on occasion an Assistant may prepare statistical material, such as the shift differentiation data as mentioned above, that is not regular involvement which would warrant the exclusion of those Administrative Assistants from the right to be represented in collective negotiation.

#### Chief Accountant

The Chief Accountant position was described by Mr. Stein. Mr. Tomlinson, the incumbent, reports to the College's comptroller. The main contention made by the College was that the Chief Accountant participated in overall budget formulation including costing out of proposals put forth in negotiations.<sup>35/</sup>

The status of employees who prepare cost projections was considered by the National Labor Relations Board in National Medical Hospital, 88 LRRM 1075 (1974). A bookkeeper therein had access to salary and other cost data, and prepared cost projections for use by management in labor negotiations. The Board reasoned that this alone did not give him knowledge of policy that would make him a confidential

employee. Similarly budget analysts with access to salary, fringe benefit, and labor hours and rates information were held not to have access to basic labor relations policy and were not confidential.

General Dynamic Corp. 87 LRRM 1705 (1974).

The fact that the Chief Accountant may cost out items proposed in negotiations does not mean that his presence in the unit will compromise management. At most, he will know what proposals have been put on the bargaining table, and not what management's position vis-a-vis these proposals may be.<sup>36/</sup> It is the undersigned's recommendation that the Chief Accountant not be excluded a a confidential employee.

Director of Information Services

Mr. Stein again provided the testimony as to this job position. The Director reports to the Executive Director of Public Affairs who is in the President's cabinet. The Executive Director sits in on labor relations strategy meetings with the President and other cabinet members. The Director of Information Services has not attended any of these meetings.<sup>37/</sup> However, when the College is in the position of dealing with the press, the Director is made aware of the College's position on labor questions, and told what can be released to the press and what cannot be made known.<sup>38/</sup> No conflicting testimony was offered.

The Director of Information Services appears to precisely fit the concept of what is a confidential employee as defined by the legislature and the Commission. As part of his duties, he reports

<sup>36/</sup> Mr. Stein testified that he might turn to the Chief Assistant to cost a proposal that had been "put on the table." T5: 80.

<sup>37/</sup> T5: 88-89.

<sup>38/</sup> T5: 90-92.

to a superior regularly and directly involved in formulating labor policy and regularly is utilized in a confidential capacity. Mr. Stein's testimony that labor policy positions are revealed to the Director was not rebutted, and therefore he ought to be excluded from representation by an employee organization.

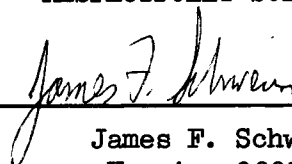
Date Coordinator, Research and Research Associate

No testimony was presented as to these two positions. In the absence of any showing that these employees do have access to confidential information or are in any way involved in the process of formulating labor policy, the undersigned declines to recommend their exclusion from any right to representation on the basis of their being confidential employees.

RECOMMENDATION

For the above stated reasons the undersigned recommends that the appropriate unit should be all administrators employed by Brookdale Community College excluding the following: President; Administrative Assistant to the President; Vice-Presidents; Assistants to Vice-Presidents; Executive Director of Public Affairs; Director of Information Services; Internal Auditor; Deans; Administrative Assistant to Executive Director of Public Affairs; Director of Personnel; Assistant Director of Personnel; Lieutenant, Safety and Security; Director, Safety and Security; Executive Assistant to the President; Director of Computer Services; Director of Learning Resources; Director of Accounting; Director of Campus Services; Director of Physical Plant; Comptroller; Director of Research.

RESPECTFULLY SUBMITTED



James F. Schwerin  
Hearing Officer

DATED: March 4, 1977  
Trenton, New Jersey

APPENDIX A

The following titles were agreed upon by the parties for inclusion or exclusion in the proposed unit.

Inclusions

Program Administrator, Community Services  
Manager, Food Services  
Coordinator, Community Services  
Associate Dean, Extension Services  
Construction Coordinator  
Program Administrator, Community Services  
Administrative Assistant, Community Services  
Administrative Assistant, Student Development  
Supervisor, Media Distribution  
Director, Testing Services  
Director, Nursing and Allied Health  
Manager, Print Shop  
Manager, College Store  
Director of Financial Aid  
Coordinator, Facilities Planning  
Coordinator, Publications  
Supervisor, Learning Resources Center  
Coordinator, Cooperative Education  
Manager, Central Plant  
Supervisor, Grounds  
Director, Curriculum Design  
Supervisor, Childhood Education Learning Laboratory  
Coordinator, Veterans Affairs  
Supervisor, Audio Visual  
Director, Multi-Cultural Programs  
Supervisor, Common Services  
Manager, Maintenance and Custodial Services  
Supervisor, Custodial Services  
Registrar  
Director, Instructional Development Laboratory

Exclusions

President  
Vice-President  
Deans  
Executive Director, Public Affairs  
Executive Assistant to the President  
Administrative Assistant to the President  
Assistants to Vice-Presidents  
Director, Safety and Security  
Lieutenant, Safety and Security  
Administrative Assistant, Public Affairs  
Comptroller  
Internal Auditor  
Director of Accounting  
Director of Personnel  
Assistant Director of Personnel  
Director, Learning Resources

Exclusions (continued)

2.

Director, Computer Services  
Director, Campus Services  
Director, Physical Plant  
Director, Research