

D.R. NO. 2004-016

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

In the Matter of

SOUTH JERSEY TRANSPORTATION  
AUTHORITY,

Public Employer,

-and-

Docket No. CU-2003-4

LOCAL 193A, IFPTE, AFL-CIO,

Petitioner.

**SYNOPSIS**

The Director of Representation dismisses a Clarification of Unit Petition filed by Local 193A, IFPTE, AFL-CIO, seeking to include the position of toll audit manager in its supervisory unit. The Director finds the petition timely because the employer revised the job description after the expiration of parties' last collective agreement, constituting a change in circumstances under Clearview. However, the Director finds that the toll audit manager should be excluded because the position's job duties appear to create a substantial, actual or potential conflict of interest with the toll plaza supervisor titles in the same unit.

D.R. NO. 2004-016

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

In the Matter of

SOUTH JERSEY TRANSPORTATION  
AUTHORITY,

Public Employer,

-and-

Docket No. CU-2003-4

LOCAL 193A, IFPTE, AFL-CIO,

Petitioner.

Appearances:

For the Public Employer,  
Gruccio, Pepper, Desanto & Ruth, attorneys  
(Lawrence Pepper, Jr., of counsel)

For the Petitioner,  
Karen Bellamy Lewis, Int'l Representative

**DECISION**

On August 5, 2002, Local 193A of the International Federation of Professional & Technical Engineers, AFL-CIO (IFPTE or Local 193A) filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission) seeking to include the position of toll audit manager in its collective negotiations unit of supervisors employed by the South Jersey Transportation Authority (SJTA). The SJTA opposes the petition, arguing that the filing is untimely, that adding the title would create a conflict of interest with existing positions in the unit, and that the job's duties make the employee holding the

title a managerial executive and, thus, ineligible for inclusion in any collective negotiations unit.

We have conducted an investigation in accordance with N.J.A.C. 19:11-2.2. On February 25, 2004, I sent a letter to the parties setting forth the facts as they appeared and indicating that I was inclined to find that the toll audit manager title should be excluded from the collective negotiations unit. Neither party responded. Therefore, the disposition of this matter is properly based upon our administrative investigation since there are no substantial, material facts in dispute.

N.J.A.C. 19:11-2.2 and 2.6. I make the following:

#### **FINDINGS OF FACT**

The SJTA is a statutory agency charged with the maintenance and operation of the Atlantic City Expressway, the Atlantic City Airport and other related facilities. Local 193A represents a unit of the SJTA's supervisors including forepersons, lead forepersons, toll plaza supervisors, duty supervisors, assistant superintendent and head counting clerk.<sup>1/</sup> On July 3, 2000, the parties executed a collective negotiations agreement effective

---

<sup>1/</sup> The composition of the unit is described in the recognition clause of the parties' agreement which cites Certifications of Representative issued by the Commission on May 29, 1987 (Docket No. RO-87-133) and October 17, 1991 (Docket No. RO-92-11). On March 28, 2001, Local 193A requested that the SJTA also include the head counting clerk and toll audit manager in the unit. The SJTA agreed to add the former position but not the latter.

from September 1, 1999 to August 31, 2003. The title at issue does not appear in the agreement.

The toll audit manager title has existed since 1993. The current holder has occupied the position since December 1998. The parties have negotiated three successor collective agreements in the ensuing years.

The toll audit manager reports to the director of finance. The current job description for the title at issue, dated July 9, 2001, provides in pertinent part:

Formulates and directs the effectuation of management policies concerning the toll audit function and is responsible for overseeing bank reconciliation and E-Z Pass transaction reconciliation process to ensure all funds are properly accounted for and all transactions are reconciled. Ensures accuracy and integrity of toll collections and counting. Responsible for the internal audit functions of E-Z Pass, automated and manual toll collection and money counting procedures.

A prior, undated job description provided by Local 193A was more concise and read in pertinent part:

Manager of toll audit is responsible for overseeing bank reconciliations and E-Z Pass transaction reconciliation process to ensure all funds are properly accounted for and all transactions are reconciled. Ensure accuracy and integrity of toll collections and counting. Internet audit functions of E-Z Pass.

The prior job description reflected the same line of supervision as the July 9, 2001 revision. The job description for the toll audit manager shows that title "effectively manages Line Supervisors and subordinate staff in terms of providing necessary work direction and review, performance evaluation, and

allocating work assignments", and "formulates and communicates variance/bank change program to Toll Collectors and Supervisors to address deficiencies in this area." The toll plaza supervisor, assistant toll plaza supervisor and the acting toll plaza supervisor appeared to be included in the "Line Supervisors" and/or the "supervisors" set forth above.

The toll plaza supervisor, assistant toll plaza supervisor and the acting toll plaza supervisor are included in the unit currently represented by Local 193A. As set forth in the job descriptions attached to the parties' agreement, all three of these positions supervise and observe toll collectors to check their compliance with the SJTA's policies; call-in and assign collectors at their toll plazas; and recommend discipline. No dispute has been presented over the duties as set forth in the job descriptions.

According to the SJTA, the head counting clerk also has toll collection duties. However neither party has submitted that title's job description to the Commission.

#### **ANALYSIS**

A clarification of unit petition is used to resolve questions concerning (1) the scope of a collective negotiations unit within the framework of the provisions of the Act, and/or (2) the unit definition contained in a Commission certification or set forth in the recognition clause of the parties' agreement.

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 252-253 (1977). The threshold issue in any unit clarification petition is whether the petition is appropriately filed under the circumstances of the case.

Clearview outlines six circumstances under which clarification of unit petitions might be filed and establishes principles applicable to each situation. One such instance where a clarification petition might be appropriate occurs when there is a change in circumstances such as the creation of a new title or a significant change in a title's job duties. Clearview, 3 NJPER at 252.

In this case, after the SJTA declined IFPTE's March 2001 request to add the toll audit manager to the unit during the term of the current agreement, the SJTA revised the title's job description. Where, as here, the altered job description creates a change in circumstances, a unit clarification petition is appropriate, provided the petition is filed before the parties execute their next contract. See Milltown Bd. of Ed., D.R. No. 2001-7, 27 NJPER 157 (¶32054 2001). Accordingly, I find that this clarification petition is procedurally appropriate.

Despite the timeliness of this petition, however, I find that the toll audit manager should be excluded from the existing unit due to an impermissible conflict of interest between that position and certain toll supervisors currently represented in

the IFPTE unit. Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 427 (1971) ("Wilton").

In Wilton, the New Jersey Supreme Court held that supervisors who exercise significant supervisory authority over other supervisory employees, such as hiring, firing, disciplining or evaluating, may not be included in the same unit with each other. The Court stated:

[W]here a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and . . . a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute.

Wilton, 57 N.J. at 427.

The Court added that each case needs to be examined on its own facts, and that only where the conflict is "de minimis" or peripheral and, therefore, tolerable, would a unit combining all supervisory titles be appropriate. Wilton at 426.

While the toll audit manager may not directly supervise the toll plaza supervisor, assistant toll plaza supervisor and acting toll plaza supervisor, all of those titles are required to check on toll plaza computer systems and equipment and report all malfunctions. The toll audit manager is required to check the work submitted by these supervisors, as well as their subordinates (e.g. toll collectors) for accuracy and for potential fraud and theft. While no Commission cases appear on

point with the facts of this matter, cases arising in other public sector jurisdictions illustrate the conflict between the employees or supervisors involved in the manual or automatic collection of tolls, and those employees or supervisors assigned to verify that all revenues and receipts are actually collected, reported and turned over. See Hudson v. Pennsylvania Turnpike Commission, 1996 U.S. Dist. 17193, 72 FEP Cases 1251 (E.D. PA 1996) (discharge of a toll collector flowed from the normal activities of the Turnpike's audit division); Douglas v. New York State Thruway Authority, 6 N.Y.2d 721, 158 N.E.2d 504, 185 N.Y.S.2d 809 (1959) (supervising toll collector was disciplined after state toll audit unit discovered four infractions including failure to properly account for and dispose of expired toll commutation ticket books and for substituting an expired ticket for a cash fare which had been collected); Ohio Turnpike Commission v. Conrad, 1994 Ohio App. 5376 (8th App. Dist., Cuyahoga Cty.) (toll collector who did not properly account for discrepancy caused by dispensation of double tickets by automatic ticketing machine was discharged following an investigation supervised by director of operations, superintendent of toll collections and toll audit manager).

Both under the current and the prior job description, the auditing of toll collections is a core function of the title at issue. Thus, the position's auditing duties appear to create a



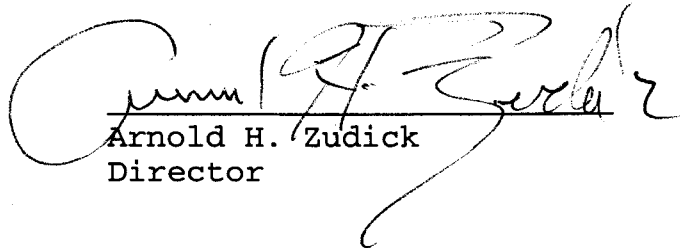
substantial, actual or potential conflict of interest with the toll plaza supervisor titles.<sup>2/</sup> Such a conflict of interest between this position and the toll plaza supervisor titles would preclude its inclusion in this unit.<sup>3/</sup>

For the foregoing reasons, I find that the toll audit manager title is appropriately excluded from the existing unit of supervisory personnel represented by IFPTE.

**ORDER**

The Clarification of Unit Petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director

DATED: March 25, 2004  
Trenton, New Jersey

- 
- <sup>2/</sup> I make no decision here about any conflict between the toll audit manager and the head counting clerk.
- <sup>3/</sup> I need not address the SJTA's argument that the toll audit manager is a managerial executive. I note that the SJTA rests that contention, in part, upon language that appears only in the updated job description.