

D.R. No. 2007-14

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

In the Matter of

STATE OF NEW JERSEY  
(MOTOR VEHICLE COMMISSION),

Public Employer,

-and-

Docket No. CU-2005-38

IFPTE Local 195,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of non-supervisory inspection and security employees to include a newly created title, Motor Vehicle Commission (MVC) Investigator 1. The Director found no Wilton conflict of interest, even though the MVC Investigator 1 title investigates fellow unit members and recommends discipline. Furthermore, the Director held that the Investigator 1 title is not confidential as no facts support that they have knowledge of or responsibility for materials used in the labor relations process.

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Appearances:

For the Public Employer,  
Stuart Rabner, Attorney General of New Jersey  
(Geri Benedetto, Deputy Attorney General)

For the Petitioner,  
Oxford Cohen, P.C.  
(Arnold Shep Cohen, of counsel)

**DECISION**

On May 27, 2005, the International Federation of Professional and Technical Engineers, Local 195, AFL-CIO (Local 195) filed a clarification of unit petition seeking to include a newly-created title, MVC Investigator 1, in its collective negotiations unit of non-supervisory inspection and security employees of the New Jersey Motor Vehicle Commission (MVC or State).

On February 15, 2006, the State of New Jersey, on behalf of MVC, filed a letter opposing the petition. The State asserts that MVC Investigators 1 are confidential employees within the

meaning of N.J.S.A. 34:13A-3(g)<sup>1/</sup> and that their investigatory duties create an impermissible and substantial conflict of interest with Local 195 unit members. Accordingly, the State argued that the unit should not be clarified to include the petitioned-for employees.

We conducted an administrative investigation, pursuant to N.J.A.C. 19:11-2.2 and 2.6. On March 28, 2007, I wrote a letter to the parties, advising that I was inclined to issue a decision finding the petitioned-for employees are not confidential; that no conflict of interest exists; and that the unit shall be clarified to include them. Neither party objected. Our investigation showed:

Local 195 and the State signed a collective negotiations agreement extending from July 1, 2003 through June 30, 2007. The agreement covers all employees in the Operations, Maintenance and Services and Crafts unit, and all non-supervisory employees of the Inspection and Security unit.

In 1995, the Division of Motor Vehicles (DMV) was severed from the Department of Law and Public Safety (L&PS) and merged with the Department of Transportation (DOT). In ascending order,

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<sup>1/</sup> This section of the New Jersey Employer-Employee Relations Act (Act) provides: "'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 three lowest titles in the DMV Investigator series were Investigator 3; Investigator 2; and Investigator 1. The Department of Personnel (DOP) specifications for those positions required, respectively, one, two, and three years of experience.<sup>2/</sup>

The parties' collective agreement covers the Investigator 2 and Investigator 3 titles<sup>3/</sup>, but not the highest of the three, Investigator 1. However, the MVC Investigator 1 title at issue in this petition does not correspond to the previous Investigator 1 title, which was excluded from the agreement.

In June 2003, the DMV in the DOT was abolished, and the MVC was established to replace it. In June, 2005, the new MVC created a new Investigator title series. The newly created MVC Investigator 2 position required three years of experience, like the old Investigator 1 position, while the newly created MVC Investigator 1 position required two years of experience, as did the previous Investigator 2 position.<sup>4/</sup> The new MVC Investigator 2 title (formerly Investigator 1) was excluded from the unit and Local 195 asserts that that title belongs in a supervisory unit,

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<sup>2/</sup> See DOP Job Specifications 56782, 56783, and 56774 (State's brief, Exhibit "C"; Local 195's brief, Exhibits "D" and "E").

<sup>3/</sup> See Agreement, Appendix III-C, "Inspection and Security Titles."

<sup>4/</sup> See DOP Job Specifications 4002 and 4003 (State's brief, Exhibit "E"; Local 195's brief, Exhibit "B").

and not in the inspection and security unit. However, the old Investigator 2's that were included in the unit were reclassified as MVC Investigator 1, and Local 195 now seeks the inclusion of this new title in its inspection and security unit.<sup>5/</sup>

On February 28, 2005, following the creation of the new Investigator title series, the MVC requested the Governor's Office of Employee Relations (OER) to retain the designation of "confidential" status for the MVC Investigators 1 and 2. On the "Confidential Employee Questionnaire" accompanying the request, the MVC circled "yes" to the following question:

Does the proposed confidential employee have access to, use or manage confidential information that is, information that is related to issues or topics that may involve the State's position in formal collective labor negotiations **and** which is related to the bargaining unit to which the proposed confidential employee presently belongs?

Asked on the questionnaire to "identify which of the following applicable duties that the proposed confidential employee performs," the MVC checked:

. . . h) drafts/prepares disciplinary charges or management's decision re: results of disciplinary charges, and;

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<sup>5/</sup> In the DCP's May 11, 2005 letter from Harry J. Kyler about the creation of a new Investigator title series, and also in the Office of Employee Relations' June 1, 2005 letter from Lawrence M. Fox about deeming the new titles "confidential," the new titles were mislabeled (the higher title at Range 26 should have been Investigator 2/II, and the lower title at Range 23 should have been Investigator 1/I).

. . . ; other (please explain): Investigative Reports.

The MVC added this description of investigator duties to its request for a designation of confidential status:

An investigator's duties are to conduct internal investigations regarding issues of employee misconduct, violations of administrative policies and motor vehicle regulations, theft, workplace violence and sexual harassment. He/she may also work along side with State Police and the Federal Bureau of Investigation when criminal investigations are being conducted. An investigator provides in their investigative report their opinion as to whether disciplinary action should be taken. Investigators routinely testify at disciplinary hearings, grievance hearings and Administrative Law hearings. Information obtained from the Security and Investigations Office is used in drafting new labor relations policies and in the revision of existing labor relations policies. The investigator reports directly to the Director of Security and Investigations who in turn reports directly to Chief Administrator Sharon Harrington.

OER granted the MVC's request and designated MVC Investigators 1 and 2 as confidential.

A Human Resources chart of the MVC's Security, Investigations and Internal Audit Division dated November 7, 2005 shows that 37 MVC Investigators 1 were then-employed. According to the DOP Job Specification for Title Code 40003, MVC Investigators 1 perform the following duties, among others:

**DEFINITION**

Under the general direction of a Supervising Investigator or other supervisory official in the New Jersey Motor Vehicle Commission (NJMVC), conducts in-depth moderately complex regulatory and administrative investigations in compliance with State and NJMVC statutes, regulatory requirements, NJMVC policies, procedures and performs other related duties as required.

. . . .

**EXAMPLES OF WORK:**

Investigates highly sensitive, confidential and moderately complex cases involving alleged fraud, negligence, incompetence, misrepresentation, misconduct, including but not limited to, misuse or alterations of the NJMVC Comprehensive Database and/or NJMVC abstracts in violation of State Statutes, Administrative Code regulations and procedures.

Assists law enforcement and other appropriate governmental agencies by performing various searches of all NJMVC databases, i.e. identity fraud, Driver Testing computer entries and tests results and driver license, registration and title records; when necessary, prepares certified information.

. . . .

Conducts overt investigations of Business License Compliance relating to, but not limited to, new and used vehicle dealership licenses, odometer fraud at new and used vehicle dealerships, driving schools, private inspection facilities (PIF), central inspection facilities (CIF) and auto body repair facilities to ensure that standards, codes, laws and NJMVC rules, regulations and/or court orders pertaining to NJMVC policy and procedure is adhered to; advises higher level supervisor of investigative finding that indicate the need for a covert investigation/surveillance activity.

Conduct overt investigations in the detection of monetary discrepancies pertaining to NJMVC Motor Vehicle Agency and Regional Service Center business practices as they relate to industry standards, including review of records.

Recommends need for covert investigation at agency locations and other improvements to ensure fiscal integrity, document security and services to the public.

Conducts moderately complex investigations with the Office of Information Technology (OIT) relating to NJMVC Driver Testing computer entries and test results, which involves review of archived records to determine patterns of possible fraudulent activity; recommends need for surveillance activity of internal operations.

Initiates specific investigations relating to driver license suspensions and restorations entered in the NJMVC database to determine the validity of an applicant's identification, and determines cases of identity theft and/or need for surveillance activity of internal operations.

. . .

Reviews, analyzes, and interprets various statistical reports to detect possible patterns of fraudulent NJMVC activity.

. . .

Testifies as an investigative expert for the State before formal hearings, Grand Juries, Courts of Law, administrative hearing or other judicial bodies for the prosecution of the alleged offenders or other proceedings.

Assists local and state prosecutor offices to coordinate smaller scale joint investigative efforts to prosecute offenders accused of criminal, civil, administrative, or institutional abuse/neglect.

Assists Attorney General's Office regarding the prosecution of offenders and administrative search warrants, subpoenas, and other documents required by law during the course of an investigation.



Uses various types of electronic communications equipment, film-based photographic equipment, magnetic and digital recording devices, and various database software for investigative activities.

Ensures compliance with established NJMVC policies and procedures, and follows up with corrective updates regarding procedural changes.

The parties agree that MVC Investigators 1 conduct internal investigations of fellow employees and the public concerning fraud, theft, and violations of statutes, regulations, and administrative policies. They also agree that MVC Investigators 1 gather facts and provide investigative reports which may lead to criminal indictments or complaints and/or disciplinary actions against fellow employees.

In their written investigative reports to the Chief of Investigations, MVC Investigators 1 advise whether the allegations against employees have been substantiated, but do not recommend discipline. The Chief of Investigations reviews and approves each report, and forwards it to the MVC Office of Employee Relations, along with a summary and disciplinary recommendations. The MVC Office of Employee Relations determines if and how the employee suspected in the investigation will be charged and penalized, if at all. The employee/suspect of an investigation may request a hearing or meeting on the charges.

At those hearings, MVC Investigators 1 may testify about their investigative reports, but do not serve as hearing officers.

On December 23, 2004, MVC Investigator 1 Philip Foley was assigned to investigate complaints regarding alleged violations of MVC policy and procedure by a Safety Specialist 1 (SS1), a position which is also employed by the State MVC and included in Local 195's inspections and security unit. Foley's investigation included an "on-the-record" interview of the SS1 which the employee signed, dated, and verified as truthful and voluntary. The SS1 exercised his right to have a union representative present at the interview. Foley's four-page investigative report concluded that the two allegations against the SS1 were "substantiated." MVC Chief of Investigations James S. Clifford reviewed, approved, and forwarded Foley's report to the Office of Employee Relations with a recommendation of disciplinary action up to and including termination. The Office of Employee Relations suspended the SS1 without pay and noted that he may be terminated.

All other investigative reports conducted by MVC Investigators 1 submitted by the State concerned investigations of the several positions not included in the Local 195 unit:

support service representatives 3<sup>6/</sup>, senior clerk typist, and customer service representatives 4.

### ANALYSIS

The clarification of unit process is intended to resolve confusion concerning the composition of an existing collective negotiations unit for which the exclusive representative has already been selected. "Typically, clarification is sought as to whether a particular title is contemplated within the scope of the unit." Clearview Reg. Bd. Of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977). Such a petition is appropriately filed regarding personnel in title(s) newly created during the contract period in which that title is established, and before the signing of a successor collective agreement. Clearview Reg. Bd. of Ed; see also, Morris Cty. Voc. Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992); Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987); Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); County of Bergen (Bergen Pines Hospital), D.R. No. 80-20, 6 NJPER 61 (¶11034 1980); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977).

The current and disputed MVC Investigator 1 title was created either in or around June, 2005 when the MVC created a new

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<sup>6/</sup> Williamsen's title of MVC Investigator I may have changed to MVC Investigator 2 sometime soon after he prepared a December 10, 2005 investigation report.

Investigator title series, or on August 12, 2005 when the Merit System Board issued final administrative approval of MVC's request for an interim noncompetitive designation for the MVC Investigator 1 title. In either case, the parties had not yet executed a successor contract, rendering the petition as timely filed. Morris Cty. Voc-Tech Bd. Of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992).

N.J.S.A. 34:13A-3(g) defines confidential employees as those: ". . . 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 Commission has narrowly construed the term, "confidential employee." See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

The key to confidential status is an employee's access to and knowledge of materials used in the labor relations process (and attendant preparations), including contract negotiations,

contract administration, and grievance handling. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), aff'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood. Knowledge of information which is "confidential" because it concerns security or personal matters but is unrelated to the negotiations process is beyond the Act's jurisdiction. See Burlington Cty. Coll., D.R. No. 2006-5, 31 NJPER 382 (¶150 2005).

No facts show that MVC Investigators 1 have knowledge of or responsibility for materials used in the labor relations process, including contract negotiations, contract administration and grievance handling. Investigative reports issued by MVC Investigators 1 might be used during the processing of a grievance; for example, a unit employee subjected to an investigation may file a grievance challenging a discipline which flowed from an investigative report. But that investigator does not have advanced knowledge (i.e., more than the grievant himself) of charges initiated by the Office of Employee Relations and strategies the employer contemplates in preparation for grievance hearings. Nor do any facts show that MVC Investigators

1 are privy to knowledge or materials used by the State in contract negotiations.

The State also argues that a conflict of interest will exist if Local 195's unit is clarified to include the MVC Inspector 1 title. I disagree. No facts support the notion that the potential conflict of interest between MVC Investigators 1 and their fellow unit members is substantial, thereby warranting their exclusion from the negotiations unit.

Article I, paragraph 19 of the New Jersey Constitution guarantees public employees the right to organize and to choose a representative to present their proposals and grievances. Our Act, N.J.S.A. 34:13A-1 et seq., implements this guarantee by entitling public employees to form, join and assist employee organizations and to have their chosen representatives negotiate for them over their terms and conditions of employment. N.J.S.A. 34:13A-5.3; Lullo v. IAFF, 55 N.J. 409 (1970); State of New Jersey, P.E.R.C. No. 99-60, 25 NJPER 55 (¶30022 1998). N.J.S.A. 34:13A-3(d) defines public employees to "include any public employee, i.e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees." Sections 5.3

and 6(d) of the Act also prohibit the inclusion of supervisory personnel<sup>7/</sup> in a unit with non-supervisory personnel.

N.J.S.A. 34:13A-5.3 mandates that, "[t]he negotiating unit shall be defined with due regard for the community of interest among the employees concerned . . ." County of Hudson, D.R. No. 2006-16, 32 NJPER 203 (¶88 2006). In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), our Supreme Court reviewed community of interest matters in the context of a supervisory employee (a director of elementary education) and her fellow unit members (nine elementary school principals and other lower-level supervisors) who were statutory "supervisors," and subordinate to her:

[T]here should be a clear and identifiable community of interest among the employees who constitute the appropriate unit to negotiate their problems with the employer. If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [57 N.J. at 425]

The Court determined that various levels of supervisory employees do not automatically belong in a single supervisory unit. Rather, it held:

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<sup>7/</sup> Supervisors are employees ". . . having the power to hire, discharge, discipline, or to effectively recommend the same . . ." N.J.S.A. 34:13A-5.3.

[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 that a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute. [57 N.J. at 427]

The Court noted that each case must be examined on its own facts, and that only where such a conflict was de minimis or peripheral, would the unit combination be permissible. Wilton at 426, 428.

The State argues that the logic of Wilton is also applicable to the question of the requisite community of interest for determining the appropriate non-supervisory unit.

In In re City of Camden, P.E.R.C. No. 52 (1971), the Commission confirmed that a substantial potential or actual conflict of interest among non-supervisory employees in a non-supervisory unit violates the community of interest criterion. The Commission wrote:

The supervisor versus non-supervisor distinction is not the only boundary to be considered when diagramming the area of common interest on an organization chart. One may have various authorities over other employees, still not be a supervisor as the Commission defines that term, yet be disqualified from the unit inclusion because by their nature and exercise such authorities preclude a common bond. Seen from another view, such authorities, though not legally supervisory in character, may nevertheless be



so intimately related to service of the management interest that failure to recognize such in making a unit determination would tend to or would in fact compromise that interest. [Id. at NJPER Supp. 1<sup>st</sup> 196]

Thus, it is proper to inquire whether a Wilton conflict exists between MVC Investigators 1 and their fellow non-supervisory inspection and security unit members.<sup>8/</sup> As the Court noted:

Significant indications of such conflict are existence of a duty in some of the group to evaluate the performance of others in the unit in the interest of the employer, and exercise by some of an influential part in matters of discipline or grievance procedures with respect to the others. [Wilton at 57 N.J. 423]

Commission decisions in non-police settings have deemed performance evaluations a relevant factor in establishing a conflict of interest warranting the removal of an evaluator from a negotiations unit. See Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987); Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985); and Willingboro Tp. Bd. of Ed., P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984). Specifically, employee evaluations indicate a significant conflict of interest if they are important to personnel actions such as salary increases or increments,

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<sup>8/</sup> In Mercer Cty. Welfare Bd., D.R. No. 83-28, 9 NJPER 298 (¶14138 1983), the Director of Representation cited Camden in rejecting AFSCME's contention that a Wilton conflict cannot be found among solely non-supervisory employees.

employment renewals, achieving tenure, or promotions. See, e.g., Atlantic Cty. Welfare Div., D.R. No. 94-2, 19 NJPER 408 (¶24179 1993); Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984); and Emerson Bd. of Ed., 7 NJPER 571 (¶12255 1981). In Mercer Cty. Welfare Bd., D.R. No. 83-28, 9 NJPER 298 (¶14138 1983), a non-supervisory unit was clarified to exclude training technicians whose evaluations of other unit employees created an impermissible conflict. In Burlington Cty. Bd. of Social Services, D.R. No. 96-15, 22 NJPER 180 (¶27095 1996), a supervisory unit was clarified to exclude the supervisor of accounts because its performance evaluations of clerk positions (which were the basis for merit raises) in that unit created an impermissible conflict of interest. In Woodbridge Tp. Housing Authority, D.R. No. 96-5, 21 NJPER 344 (¶26212 1995), a unit of non-supervisory employees was clarified to exclude the two employees holding the highest level positions in their respective series because their evaluations of account clerks and housing technicians created an impermissible conflict of interest.

In this case, the MVC Investigator 1 title performs internal investigations of other MVC employees, presumably including fellow unit members. MVC Investigators 1 are assigned investigations and conduct them under the general direction of a supervising investigator. The reports they produce conclude whether the allegations have been substantiated or not, but do

not recommend discipline. The disciplinary recommendation is reserved to the Chief of Investigations, who must approve the report, and then transmits it to the Office of Employee Relations, which decides if and how the subject will be charged and penalized.

The MVC Investigator 1's duties or functions are not akin to those set forth in Wilton and subsequent Commission cases demonstrating a significant potential or actual conflict of interest. In cases where an employee is obligated to perform evaluations of fellow unit members, the evaluative functions must be shown to actually play an important role in effecting other employees' terms and conditions of employment. See, e.g., Montville Tp., P.E.R.C. No. 87-140, 13 NJPER 483 (¶18178 1987) (police captains properly included in superior officers unit where their evaluative functions with respect to subordinates did not rise to substantial level of actual or potential conflict of interest); Salem Community Coll., D.R. No. 88-35, 14 NJPER 426 (¶19173 1988) (financial aid director and EOF Director/Specialist were allowed to remain in non-supervisory unit where their evaluations of subordinates were neither alleged nor shown to affect subordinates' terms and conditions of employment); Lakeland Reg. H.S. Bd. of Ed., D.R. No. 88-34, 14 NJPER 417 (¶19169 1988) (assistant supervisor allowed to remain in unit despite future annual performance evaluations of two fellow unit

members where it is unclear what effects those evaluations will have on terms and conditions of employment).

It is true that the investigations conducted by MVC Investigators 1 may eventually rise through the various layers of supervision and be used to recommend and effect an adverse employment action against a fellow unit member. However, the investigators have no discretion to order or decline an investigation and offer no recommendations on their findings. The Commission has found that employees whose primary function is to investigate fellow unit members and report to the next higher level, even with a recommendation for discipline, do not have a substantial potential conflict of interest with their fellow unit members. New Jersey Turnpike Auth., P.E.R.C. No. 94-23, 19 NJPER 459 (¶24217 1993). In New Jersey Turnpike Auth., assistant section chiefs reported rules infractions of subordinate supervisory unit members, along with disciplinary recommendations, to their superiors. The Commission found:

[A]ssistant section chiefs have no independent authority to discipline toll plaza supervisors. Any instances of supervisor misconduct must be reported to the section managers or, in their absence, to a higher level of supervision. Decisions on minor discipline are made by the section manager with notice to the director of tolls. Decisions on more serious disciplinary matters are made by the director.

. . . Notice of these errors and omissions is passed up from the toll collectors to the director through various levels of supervision. This structure minimizes any independent role that assistant section chiefs might play in monitoring the work of toll plaza supervisors. Nevertheless, both toll plaza supervisors and assistant section chiefs may be disciplined for not reporting or investigating misconduct -- but on this record, there is no evidence of abuse evidencing a conflict of interest. [19 NJPER 460, 461]

Similarly, in New Jersey Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1997) adopting H.O. No. 96-1, 21 NJPER 327 (¶26210 1995), both the audit operations supervisor and assistant auditor were found not to have a substantial actual or potential conflict of interest with their fellow supervisory unit members, despite their job duties to audit fellow unit members and recommend discipline if fraud or other serious errors were detected. The hearing officer noted the hierarchy in which the audit positions reported their findings to their supervisors, who then determined whether the matter should be reported to the Director of Tolls who, in turn, independently decided whether and how to discipline. Id.

MVC Investigators 1 perform their duties in an analogous hierarchical structure which requires independent actions and decisions at various levels of supervision before an implicated fellow unit member is disciplined. MVC Investigators 1 only decide whether the charges are substantiated or not, whereas the

auditors and assistant section chiefs in both New Jersey Turnpike Auth. cases included disciplinary recommendations when they reported infractions.

Contrast South Jersey Transportation Auth., D.R. No. 2004-16, 30 NJPER 124 (¶36 2004), where the toll audit manager was excluded from a supervisors unit because the position's duties - checking subordinates' work for accuracy, potential fraud, and theft - created an actual or substantial potential conflict of interest with fellow supervisory unit members. In South Jersey Transportation Auth., the toll audit manager audited fellow unit members and effectively managed them by directing and reviewing their work, conducting performance evaluations, allocating their work assignments, and formulating, communicating, and addressing deficiencies in the variance/bank change program to toll collectors and supervisors. Like the section manager in New Jersey Turnpike Auth., P.E.R.C. No. 94-23, the toll audit manager was at such a high level in the oversight chain of command (responsible for checking and reporting the work of subordinates) that it was properly excluded from the supervisory unit.

MVC Investigators 1 shall not be excluded from the non-supervisory unit of inspection and security employees; they do not present a substantial potential conflict of interest with other unit employees. An MVC Investigator 1 has investigated a

fellow unit member one time, and no facts support a finding of a substantial actual conflict of interest in that instance.

I find that MVC Investigators 1 are not confidential employees within the meaning of the Act, and that any actual or substantial potential conflict of interest between MVC Investigators 1 and other Local 195 inspections and security unit members is peripheral. Accordingly, Local 195's petition is approved, and the inspections and security unit is clarified to include MVC Investigators I, effective immediately. Clearview Reg. H.S. Bd. Of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

**ORDER**

IFPTE Local 195's unit of non-supervisory inspection and security employees is clarified to include MVC Investigator I, effective immediately.



Arnold H. Zudick

Director of Representation

DATED: June 15, 2007  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by June 25, 2007.