

H.O. No. 2009-2

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

In the Matter of

NEW JERSEY STATE (STATE POLICE),

Public Employer,

-and-

Docket No. RO-2006-087

NEW JERSEY STATE TROOPER CAPTAINS
ASSOCIATION,

Petitioner.

SYNOPSIS

An association petitioned to represent a negotiations unit of all State police captains employed by the Division of State Police, Department of Law and Public Safety. A Hearing Officer recommends that the Commission find that certain captains are entitled to be represented for collective negotiations. The Hearing Officer recommends that their responsibilities, the extent of discretion they exercise and their positions in the Division's paramilitary hierarchy establish that these captains are neither managerial executives nor confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and that their inclusion in a negotiations unit would not create any conflict of interest.

The Hearing Officer finds that several other captains are ineligible for representation in the proposed unit. Their responsibilities, input to the formulation of policy and level of authority establish that these captains are managerial executives or confidential employees within the meaning of the Act and ineligible for membership in any negotiations unit. Finally, the Hearing Officer recommends that the inclusion of several captains would create a conflict of interest and they should be excluded from the proposed unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Appearances:

For the Respondent,
Genova Burns and Vernioia, attorneys
(Douglas E. Solomon, of counsel)

For the Petitioner,
Loccke, Correia, Schlager, Limsky, and Bukosky,
attorneys
(Marcia J. Tapia, of counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

On June 7, 2006, the New Jersey State Troopers Captains Association (Captains Association or Association) filed a card check representation petition seeking to represent a unit of approximately 45 captains employed by the New Jersey Department of Law and Public Safety, Division of State Police (Division or State). The captains are unrepresented. The State opposes the petition asserting that captains are managerial executives or confidential employees within the meaning of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and ineligible for inclusion in any negotiations unit.

On October 12, 2006, the Commission began developing a factual record.^{1/} I conducted six investigative sessions, all transcribed by a court reporter, at which witnesses were examined and cross-examined and documents were presented. The Director of Representation concluded from the sessions that substantial and material disputed factual issues warranted a formal evidentiary hearing and that it was no longer appropriate to proceed informally. On February 1, 2007, the Director issued a Notice of Hearing.^{2/} The six recorded sessions held on October 12 and 31, 2006, December 7 and 19, 2006, January 8 and 29, 2007, are included in the formal record. I also conducted seven formal hearings on February 6, 2007, June 21, 2007,^{3/} July 24, 2007, August 7, 2007, October 16, November 28, 2007 and January 9,

1/ Prior to October 12, 2006, two investigatory conferences were held where facts and position statements were solicited.

2/ On February 6, 2007, Counsel for the State attempted to place the State's objection to the Director's decision on the record but I ruled that this objection was improperly placed before me. N.J.A.C. 19:14-4.6.

3/ In early 2007, the parties engaged in voluntary settlement discussions and the hearing was suspended. They did not resolve the question concerning representation, however, and the hearing resumed in June 2007.

2008,^{4/} at which the parties examined witnesses and introduced documents. A post-hearing dispute about certain evidentiary documents, for which position statements were filed by April 11, 2008, was resolved on May 8, 2008. The parties submitted post-hearing briefs and reply briefs by June 25, 2008.

Based upon the entire record I make the following:

Findings of Fact

Organizational Structure

1. The Division is part of the New Jersey Department of Law and Public Safety (LPS); its core missions include protecting the public, preventing and investigating crime, apprehending offenders, and providing homeland security by responding to all crimes and hazards.

2. At the top of the Division's organizational structure is the Superintendent and colonel, Superintendent Joseph R. Fuentes (Superintendent or Colonel) (9T4). Fuentes reports to the Attorney General and the Governor in broadly determining the Division's priorities (9T6). Significant policy issues are brought to the attention of the Office of the Attorney General (OAG) (2T92-2T93, 2T98, 2T111). Certain of the Division's

^{4/} The transcripts from the hearings are referred to as "1T-" through "13T-" respectively. Due to a midday change in court reporters on June 21, 2007, the transcript of the morning session is referred to as "8TA-" and the afternoon session as "8TB-". Commission exhibits are referred to as "C-", the Captains Association's exhibits are referred to as "P-", and the State's exhibits are referred to as "R-".

administrative functions, discussed in greater detail below, are subject to the LPS Administrator's approval.

3. Reporting to Colonel Fuentes are two lieutenant colonels and three deputy superintendents. The second in command is Lieutenant Colonel Thomas R. Gilbert.

Over the past decade, the Division has become more complex, as evidenced by increases in the number of lieutenant colonels and majors. In 1998, there were two lieutenant colonels and eight majors (11T22-11T24; P-3).^{5/} In 2001 there were two lieutenant colonels, a deputy superintendent of administration, deputy superintendent of investigations, deputy superintendent of operations and nine majors (11T22; P-3). Today, the Division's total employment consists of 4,400 employees. Enlisted personnel are organized in a paramilitary hierarchy: five lieutenant colonels/deputy superintendents, 14 majors, 49 captains, 198 lieutenants, 961 first class, detective and staff sergeants, 272 detectives, and 1,506 troopers (2T120; R-104). The Division has operations throughout the state in approximately 110 facilities (4T20-4T21).

4. The Division is organized into four branches: administration, investigations, field operations and homeland security, and the office of the chief of staff is equivalent to a

^{5/} P-3 is a collection of Division organization charts from 1998, 2001 and 2004 (11T20-11T28; P-3).

fifth branch. Each branch is headed by a lieutenant colonel or deputy superintendent. Branches are further subdivided into sections, supervised by majors, and sections are subdivided into bureaus or offices, supervised by captains (R-104). The smallest organizational segment is the unit, supervised by lieutenants or sergeants (7T18; R-104).

5. The Colonel's management philosophy recognizes that innovation can come from all ranks and he promotes the initiation of ideas from any rank, teamwork and consensus in problem-solving within the Division's paramilitary structure (1T73, 9T62-9T63). Nevertheless, the Division is characterized by adherence to the chain of command typical of paramilitary police organizations (2T120).

6. The Division also employs approximately 1,500 civilian employees in administrative, clerical and professional titles (2T122-2T123; R-104). Civilian hiring, promotions and certain other terms of employment fall under Department of Personnel rules, whereas enlisted personnel are subject to the provisions of Title 53 (2T122-2T123).

Consent Decree and Accreditation

7. In 1999, the Division and the federal government entered into a court-approved consent decree (R-4), an agreement that resolved litigation brought by the United States government against the State over alleged unconstitutional and

discriminatory practices (R-4). The consent decree addressed a broad range of policies and procedures in the Division, including, traffic stop procedures, supervisory and management methods, investigations of alleged misconduct and training (1T6; R-4). The decree provided for increases in annual reporting and data collection, enhanced oversight by the OAG, the elevation of the office of professional standards, and the establishment of an independent monitor to review the Division's implementation of the decree (1T86-1T89, 1T92, 13T34; R-4). The Division was subjected to an audit by the independent monitors twice a year (13T35). Any change in policy that implicates a subject covered under the consent decree is also subject to the OAG's review and approval (11T8).

8. The decree caused many changes in the office of professional standards (OPS), field operations and training from 1999 to 2005 (1T6, 1T8, 1T80, 1T84, 6T61-6T63, 9T87, 13T5, 13T10, 13T32, 13T34; R-18). In 2001, the OPS was expanded, elevated from a bureau to a section, assigned to the Superintendent's office and its commanding officer elevated to a major (11T23-11T24). The consent decree directed that the Superintendent establish formal eligibility criteria for the head of the OPS and for the staff who supervise and conduct internal investigations (8TB25-8TB27, 9T87-9T88; R-18). Eventually,

because the OPS performed in an exemplary fashion, federal monitoring of the OPS ceased (1T6).

9. The consent decree mandated enhancements to training and established a training bureau to centrally control and oversee all training. Further, the decree mandated that there be rank-specific leadership and supervisory training (6T61-6T63, 13T5, 13T10, 13T32). Training is monitored, evaluated and analyzed for its costs and benefits and must have a measurable positive impact on performance (13T10-13T11). Lesson plans are reviewed by the Office of State Police Affairs in LPS to ensure compliance with the tenets of the consent decree (2T49, 6T67, 6T74-6T75, 13T34-13T35).

10. Another external influence on the Division's policies is the law enforcement agency accreditation sought by the Division in 2007 (12T43-12T44). The Division was accredited by the Commission for the Accreditation of Law Enforcement Agencies (CALEA) (2T117, 8TA69). Subject matter experts, throughout the Division, drafted the procedures leading to accreditation (2T117).

Strategic Planning, Management Accountability Conferences and Standard Operating Procedures (SOPs)

11. The Division's strategic planning process was a result of the consent decree (9T92). An important goal in strategic planning is consent decree compliance (1T108-1T109).

12. Strategic plans are documents containing, in descending specificity, vision, values and mission statements, goals and objectives, and most specifically, strategies and tasks for achieving goals and objectives. Strategic plans identify responsible persons and time lines for achievement that lay out the methods and means by which the Division will achieve its goals (9T17, 13T42). All bureaus have strategic plans (9T16). Strategic plans are goal-oriented, look to the future in defining what is to be achieved and state in detail how the particular unit, bureau, section, and troop will achieve the goal or objective (11T15).

13. P-2 is an Operations Instruction for strategic planning (1T33, 8TA46, 8TA50-8TA52; P-2). P-2 defines strategic planning as:

the process by which a law enforcement agency examines its internal and external environment in order to determine the best strategy for achieving its desired end. Strategic planning is . . . a management tool (2T39; P-2).

Under P-2, only executive level commanders, defined as captains, majors and lieutenant colonels, prepare strategic plans (8TA66). Captains are held accountable for the achievement of the goals, objectives and strategies in their bureaus' plans (8TA59). P-2 specifies when they are to be submitted (8TA46, 13T26; P-2).

14. Strategic plans did not exist prior to 2006 (5T10, 9T35). In that year, the Division contracted with an expert who

led all majors, most captains and some lieutenants through the strategic planning process (5T13, 12T11). The process began in 2006 but was not fully implemented that year (5T13).

15. Strategic planning begins with the agreement of the Governor, Attorney General, and Superintendent about the Division's overarching goals; in the past they have included law enforcement's approaches to the problems of illegal guns, gangs and drugs; recently, official corruption has been added (9T17-9T18, 9T92, 13T22). The Superintendent develops the global strategic plan for the entire Division, containing statements of mission, goals, vision and values for the upcoming year (1T20, 1T31, 1T107, 4T28, 11T13, 13T22). These terms of art are defined in P-2. The Superintendent communicates his priorities to all of the lieutenant colonels and each prepares the branch strategic plans in the same template (5T13, 5T16, 7T10, 11T13). Approved deputy superintendents' strategic plans are issued to their subordinate majors, who prepare section strategic plans (5T14). Majors communicate their plans to captains who prepare bureau strategic plans. At each level, the goals, objectives, strategies, time lines and responsible parties become more specific, refined and focused (13T22; P-2). The strategic plans that follow the Superintendent's plan parallel and complement the overall Division plan (1T30-1T31). The plans collectively

outline how the vision will be accomplished in specific detail bureau by bureau (1T31).

16. At the section level, a major sets forth the general strategies that will be used to accomplish the goals and objectives that the deputy superintendent and the Superintendent developed (5T18). Within the confines of the policy objectives set up by the Superintendent, deputy superintendents and majors, captains establish the specific strategies to be used within their bureaus to accomplish those goals and objectives (5T18).

17. In the investigations branch, the majors in the forensic sciences, special investigations and intelligence sections develop plans consistent with the deputy superintendent's plan, further breaking down the goals and objective into those which are germane to their areas, containing responsible parties and due dates (5T14). R-20 is the Intelligence Section strategic plan for the 2006 fiscal year (FY) (5T14).

18. Captains in the field operations branch do not prepare strategic plans. In the field operations section, after a major has issued the section plan, troop commanders, who are also majors, develop strategic plans (11T13-11T14). The plans are sent to the section major for approval (11T14).

19. P-2 defines strategies as:

the specific action which measures in terms of work outcomes. Strategies include all the

work products, statistics and measures along with the associated time frames for the accomplishment of the work . . . [and include] the responsible . . . person.

According to P-2, strategies are not policy. Captains determine the strategies in a bureau's strategic plan, relying on majors' strategic plans and prior years' bureau plans to guide their preparation (4T28, 6T37, 6T98, 6T108-6T109, 7T33, 8TA41-8TA43, 8TA45-8T46, 9T28, 9T92-9T93, 12T12). Captains also consult with the lieutenants and sergeants in charge of each unit, because their expertise provides the most realistic way to arrive at the strategies (5T36, 6T37, 8TA45, 9T45-9T47, 9T92-9T93, 10T46, 13T24-13T25). Captains resolve the conflicts among and prioritize all units' strategies (4T28, 9T45-9T47). Units do not have formal strategic plans (6T41, 9T93). A captain may direct lieutenants and sergeants to produce strategies that will best work for their units (5T36, 6T89, 9T28, 9T93, 10T46). This builds dual accountability for achieving goals (6T89). Goals are committed to a prioritized list that both will be required to accomplish (6T89-6T90, 9T27-9T28). Completed bureau strategic plans are discussed between the captain and major (6T90). Some bureaus' goals remain highly consistent over time, requiring less re-invention (12T36-12T37).

20. New or reassigned captains have 60 days to become familiar with the bureau's strategic plan and can prepare a new plan (9T92, 12T17-12T18, 12T20). Plans keep bureaus on task - -

achieving what is necessary or expected, despite changes in leadership (9T92).

21. Whether a captain can use discretion in coming up with strategic plan strategies to achieve the goals depends upon the degree of specificity in the major's strategic plan (12T13, 12T15-12T16, 12T31-12T32). Retired Captain Daniel Kelly prepared three strategic plans, two for the casino gaming bureau and one for the computer crimes bureau (11T45). Kelly received a copy of a strategic plan from the major who had received the lieutenant colonel's plan (11T45). Kelly used the goals and objectives his major directed almost verbatim (11T45). This was because the major's strategic plan objectives were very specific, leaving Kelly little wiggle room (11T46). Kelly consulted with his unit heads but the casino gaming bureau's goals had changed little over the previous three years and his major was very hands-on and directive about what he wanted (11T46).

22. In the investigations branch, the strategic plans in recent years reflected a direct tie-in with intelligence-led policing (5T79-5T81, 11T47). Intelligence-led policing describes an investigative process wherein decisions and priorities about what crimes to investigate are made at the highest levels and investigations which do not fit into the model are regarded as inappropriate (11T48). Intelligence-led policing is strategic

policing - - deploying personnel and resources in a way that has the greatest impact on the criminal threat (5T79).

23. Intelligence-led policing is adopted from the UK, New Zealand and Australia (5T79). It has been the guiding principal in the Division since October 2005 (5T79). Previously, detectives would set their own agendas, depending on what their informants and other information sources would tell them (5T80). In the past, before strategic planning and intelligence-led policing, captains could initiate or conduct any investigations they thought were necessary (11T58). Since 2005, information brought into the database has been analyzed by regional intelligence analysts (5T80). At a higher level, another group of analysts conducts more global strategic intelligence analysis. Based on all of these analyses, majors and above direct investigations by the Division's detectives, instead of the reverse (5T80-5T81).

24. This allows majors to be very focused about what they want and, therefore, captains have had less discretion than in prior years (11T47). Kelly found that earlier strategic plans allowed more leeway and discretion than more recent ones (12T13-12T15, 12T36-12T37).^{6/} Captains and majors' strategic

^{6/} On cross examination, Kelly acknowledged that the elements of a bureau strategic plan are not verbatim recitations of section strategic plans, but stated that while captains could determine a plan's strategies, there were limitations:
(continued...)

plans are very consistent with similar goals, objectives and strategies (11T61-11T62, 11T66).

25. Deputy Superintendent Rogers described the strategic planning process in its early stage:

Q: [Do] you and the Colonel and Major leave to the discretion of the captains how they feel it is best to achieve the goals and objectives set forth in the bureaus' strategic plans? (7T33)

A: I wouldn't necessarily say [we] leave it to them. They propose and we accept them, I know in many cases...most [of the strategic plans] were returned for more work, you know, to tighten them up to be in closer compliance [with] what we [were] looking for, not the least of reasons is the fact that this was the first time we did it (7T33).

Q: For what types of reasons would they be returned?

A: Number one, being inconsistent with my priorities and not being specific enough. In many cases they were either too general or overly ambitious [and] due dates weren't realistic (7T34). We were looking to establish a contract with those different bureaus that was realistic and obtainable (7T34).

Captains' plans are necessarily consistent with the colonel's and lieutenant colonel's objectives (7T34).

6/ (...continued)
strategies could not conflict with the recommendations in the intelligence-led assessments or with the deputy superintendent's goals for the branch, also called the "intent" (12T23, 12T40-12T45).

26. The plans are sent through the chain of command to the superintendent for approval. Captains submit their bureau-level plans to majors or their executive officers who review, approve, ask for revisions, and then prepare and revise the section strategic plan using a few of the highest priority goals from each bureau (9T94-9T95, 10T48).

27. Majors may reject the captains' proposed strategies and there can be a lot of give and take before they are finalized (5T37, 7T33-7T34, 7T38). The majors' plans are then vetted through the lieutenant colonel (13T42). The lieutenant colonels' plans go back to the superintendent for approval (13T42-13T43). Implementing the Division's goals is the responsibility of all employees (13T44-13T45).

28. Lieutenant colonels and deputy superintendents review, approve and incorporate certain priorities from captains' and majors' plans into branch-level strategic plans (7T33-7T34, 7T38). Former Lieutenant Colonel Meddis (administration branch) took the sections' strategic plans to develop a branch strategic plan, further refining and reducing the number of priorities he submitted to the Superintendent (6T40, 10T48).

29. All strategic plans are submitted to the Superintendent who accepts, rejects or modifies them (1T32, 2T42, 9T29-9T30).

30. Not all captains prepare strategic plans. For example, Captain Annemarie DeAngelo has not prepared a strategic plan

because the five majors to whom she reported preferred "to . . . make one strategic plan" (10T56-10T57). There, the major assembled all of the captains, lieutenants and sergeants together to develop a single plan for the entire troop (10T57). In field operations, the troop commander is ultimately responsible for the goals and objectives in the strategic plan (11T14).

31. Strategic plans are dynamic documents that will change during the year - goals turn out to be not reachable, or have been achieved and no longer belong in the plan (8TA40-8TA41, 8TA60-8TA61, 10T46). Every six months strategic plans are reviewed, updated and may be revised (8TA41).

Management Accountability Conferences (MACs)

32. Since they contain specific goals, time lines and responsible parties, strategic plans enable progress to be monitored (4T31, 6T8, 10T51-10T52). The goal of strategic plans is to enhance the Division's effectiveness (6T8). The Colonel, lieutenant colonels and majors hold monthly management accountability conferences (MACs) where selected sections and bureaus are reviewed (1T96, 1T106, 4T30, 6T38-6T39, 11T14). At these meetings, strategic plans and performance data generated by the office of strategic initiatives are reviewed with managers, thus enabling lieutenant colonels, majors and above to evaluate bureaus' performance (1T95). Captains attend MACs only where their bureaus are reviewed or on behalf of their majors (4T35,

10T58, 10T63). MACs facilitate accountability, the identification of obstacles or problems in achieving goals and provide a forum for problem-solving (1T97, 6T38-6T39).

33. MACs can result in requests for additional personnel and budget and do result in the "after-action" reports that identify who will take further action (1T97, 1T99). The commander running the MAC conference decides who will perform the tasks (1T106). In field operations, MACs are run by troop commanders (majors) and every troop and section has them (11T15).

Standard Operating Procedures, Operations Instructions and Strategic Plans

34. Strategic plans' goals and objectives are the guides to where the Division is headed, whereas SOPs are the procedures that make plain how the Division carries out its mission (2T110-2T111, 8TA41-8TA43). Both contain and embody policies but are not policies per se.

35. Captains do not have authority to issue SOPs or strategic plans independent of the planning bureau's oversight and procedures and the chain of command (2T111). SOPs are issued under the Superintendent's authority (2T111).

36. SOPs are directives that stay in place until changed; they have no automatic expiration and are more permanent than strategic plans (2T112-2T113). An operations instruction (OI) is a temporary order, distributed under the Superintendent's authority and used in lieu of creating SOPs (8TA51). Operations

instructions are policies or procedures designed to be in effect for a relatively short period of time and often have an expiration date (2T112-2T113). Both OIs and SOPs are orders (8TA51). SOPs, OIs, and rules apply to the entire Division, whereas strategic plans apply to one bureau, section or branch and may not affect the entire Division (8TA75).

37. SOPs are prepared by the planning bureau for endorsement and authorization by the Superintendent (2T113). Captains may propose modifications to SOPs that are then reviewed by the planning bureau for submission to and approval by the Superintendent (2T113-2T114).

38. SOPs are drafted initially by an office with primary interest (OPI) in the subject of the SOP; OPIs consult with the planning bureau on form and content (2T114). The Superintendent can reject proposed modifications to SOPs (2T114).

39. Another difference between orders (OIs and SOPs) and strategic plans lies in the consequences of failure to follow orders versus failure to reach the goals and objectives in strategic plans. If someone violates an order, he or she can be brought up on disciplinary charges, but this would not be the case if the bureau does not achieve the goals set forth in the bureau's strategic plan (8TA53).

One can be disciplined for not carrying out responsibilities under the strategic plan but only as a by-product of a violation

of an SOP, rule or regulation (8TA65). An illustration of the different functions of strategic plans and SOPs is seen in traffic safety. A strategic plan would contain traffic safety or reducing fatal crashes as a major goal of the Division(11T15). This goal would not appear in an SOP; but there would be an SOP specifying how motor vehicle stops should be conducted (11T15).

Reassignment of Captains

40. The frequency with which captains are reassigned depends upon their branch (5T63-5T64). In the investigations branch, most captains remain for the majority of their careers and generally do not move around (5T64). There is no formal cross-training program for captains (5T64). All captains in the branch were in their positions between October 2005 and February 2007 (5T63-5T65). In contrast, since July 2005, the planning bureau has had four captains (3T67-3T68). The official rosters of personnel in evidence show that only 16 of 49 captains were in the same positions over a 15-month period from June 27, 2006 to October 2, 2007 (R-104, R-105).

Executive Officers

41. Nine captains serve as executive officers to majors in the management of sections (R-104):

1. In the Administration Branch, Administration Section, Captain Paul White is the section executive officer (3T5, 4T7-4T9, 4T48-4T49; R-104).

2. In the Administration Branch, Human Resources Management Section, Captain Robin Blaker is the section executive officer (3T6; R-104).

3. In the Administration Branch, Identification and Information Technology Section, Captain James Beshada is the executive officer (3T6).

4. In the Intelligence Branch, Intelligence Section, Captain Matthew Hartigan is the executive officer (5T6-5T7; R-104).

5. In the Intelligence Branch, Special Investigations Section, Captain Thomas Alexander is the executive officer (7T6-7T7; R-104).

6. In the Field Operations Branch, Field Operations Section, Captain Louis Klock is the executive officer (11T5; R-104).

7. In the Homeland Security Branch, Emergency Management Section, Captain Jerome Hatfield is the section executive officer (R-104, pg. 88).

8. In the Homeland security Branch, Special Operations Section, Captain Annemarie DeAngelo is the executive officer (10T53; R-104, pg.102).

9. In the Office of Professional Standards, Captain Keith Hackett is the executive officer to Major Thomas Flarity (R-104, pg. 7). At the time of the hearing, Captain William Toms was the executive officer reporting to Major Robert Cicchino (1T35-1T36).

42. Captains who serve as executive officers are their majors' principal assistants, managing the section's day-to-day administrative functions and screening problems for their majors (5T6-5T7, 7T6-7T7). They act as section supervisors in their

majors' absence and are the major's principal assistant in the preparation of section strategic plans (1T45-1T47, 5T6, 5T10-5T13, 6T26; R-20).

43. In the intelligence section, the executive officer, Captain Matthew Hartigan, is expected to be "on top of" everything going on in the section's 5 bureaus, and to assist and consult with the major on all section business (5T7-5T8). In the human resources section, Major Marshall Brown is ultimately responsible for the 3 bureaus' effectiveness, but his executive officer supervises them and acts as major in Brown's absence (6T26).

44. Executive officers, despite holding the same rank as captains in charge of bureaus or troops, are regarded as higher in the chain of command and bureau captains are obligated to go through them to have their concerns presented to majors (6T33-6T34, 9T33-9T34, 9T84-9T85, 10T54; R-15). In investigations branch, a captain's decision to move staff around to facilitate a wiretap or something similar, would be made with the major's or his or her executive officer's approval (7T27). In OPS, the captains in charge of the two bureaus report to the executive officer and are considered "a level below" him (1T34-1T36). In the human resource management section Captain Ed Fanelle is in charge of the human resource management bureau, but as executive officer Captain Dan Morocco is "a half-step" above

Fanelle and Fanelle is obligated to go through Morocco to Major Brown (6T27, 6T33-6T34).

45. Other captains report to executive officers (4T6-4T7). For example, in the administration section Captain Scowcroft, head of the logistics bureau, reports to the section's executive officer, Captain White (4T7). In the investigations branch, Major James Fallon is in charge of the special investigations section; his executive officer is Captain Thomas Alexander (7T6-7T7). Alexander has day-to-day oversight of all five bureaus; he is "the number two person in charge," and all matters that get to the major are screened and/or handled by Alexander (7T7). In the administration branch, Planning Bureau Captain Kathleen Devlin sent her recommendations for changes in the reporting of violations to Captain Toms, the executive officer in OPS at the time (9T84-9T85; R-15). Toms screens all suggestions before sending them on to be considered and approved by those higher in the chain of command (9T85). In field operations, Captain Annemarie DeAngelo is the executive officer in the special operations section of the homeland security branch (10T53). The section has seven bureaus. The captains in charge of these bureaus report to DeAngelo or the major (10T53-10T54).

46. A second-in-command at the section level is required because of the wide span of control in certain sections. For example, the administration section has 189 employees in five

bureaus; human resources section has 157 employees; intelligence section has 230 employees in five bureaus; field operations section has 64 employees in seven units; identification and information technology section has 278 employees in four bureaus and the special operations section has 920 employees in more than 20 distinct units across the state (5T8-5T9, 6T75, 10T53-10T54; R-104).

47. Executive officers assist in preparing sections' strategic plans. Executive officers screen bureau strategic plans (9T29). Captain Edward Donovan was the executive officer in the OPS (1T46). Donovan authored R-3, the strategic plan for OPS for FY 2006 (1T45-1T47). In the intelligence section, the executive officer prepared R-20, the FY 2006 section strategic plan (5T10-5T12; R-20). Executive officers compile and consolidate bureau strategic plans into draft section plans (6T38).

48. Captains serving as executive officers also have a role in evaluating whether bureaus' goals were achieved (9T33). According to Colonel Fuentes, "The responsibility to make sure that the bureau chief is . . . meeting those goals is the responsibility of the branch commander, section commander [and] executive officer. [These] are the intervening layers of command." (9T33-9T34).

49. Captains are expected to introduce well-researched ideas, taking into account where the idea has been implemented, the results, the pros-and-cons, cost analysis, and how the idea fits in with the Division's priorities. These ideas will be considered by executive officers and above, and may be previewed at the Superintendent's daily morning meeting before their presentation at a monthly command meeting (9T54-9T56).

50. Major Matthew Walker has been a major since August 2005 (11T3). Walker was the executive officer in the field operations section, which has about 13 troop and regional captains (11T4). In field operations, captains' suggestions for initiatives are vetted by the troop commander (a major) and reviewed by the section executive officer and major (10T57, 10T74-10T75, 11T6-11T7, 11T19-11T20).

51. Executive officers attend MACs and other management meetings and interact with the Superintendent and deputy superintendents more often than do other captains (1T77, 5T25, 9T22-9T23, 10T58, 10T63, 11T15, 11T19-11T20).

Superintendent's Office, Office of the Chief of Staff and Office of Professional Standards

52. Colonel Fuentes has been Superintendent for four and one half years. Fuentes began as a trooper and was promoted through several ranks, including captain, before becoming Superintendent (9T4-9T5). Fuentes, the Attorney General and Governor determine the Division's priorities (9T6). In 2006, for

example, the Governor became very concerned about reducing gun violence in the State and this became a priority strategic initiative (2T25, 6T15, 9T24; R-7). Division priorities include implementing the provisions of the consent decree, reducing the number of illegal guns, gangs and gang violence, interdicting the possession and sale of illegal drugs and, recently, official corruption was added (9T17-9T18).

53. The Superintendent's office consists of a staff of 11, including Captain Christopher O'Shea, who works in the office of state police affairs, located in the OAG (1T87, 2T50, 11T15, 11T18, 11T35; R-104). O'Shea attends meetings where significant events, policy and major initiatives are discussed, along with the Superintendent's command staff, composed of the chief of staff, lieutenant colonels, deputy superintendents, troop commanders, the captain in strategic initiatives and, at times, members of the OPS staff (11T15, 11T36). O'Shea plays an important role in dealing with the OAG about the Division's issues that require OAG approval and oversight, such as ensuring compliance with the consent decree, training and promotions (1T87, 6T63, 9T7, 9T38-9T39, 13T34-13T35).

Office of the Chief of Staff and Office of Professional Standards (OPS)

54. The office of the chief of staff and OPS together consist of 208 staff in approximately 30 bureaus, offices and units (R-104). Lieutenant Colonel Thomas R. Gilbert has been

employed by the Division for more than 25 years, and he is the chief of staff, reporting directly to Superintendent Fuentes (1T1, 1T11). Reporting directly to Gilbert are Captain Richard Rosell, in charge of the office of strategic initiatives (OSI), and Captain Albert Della Fave, in charge of the public information office (1T2, 1T34-1T35, 1T79, 2T15-2T16, 9T32; R-104).

Office of Strategic Initiatives (OSI)

55. Captain Richard Roselle, in charge of the office of strategic initiatives (OSI), reports directly to Lieutenant Colonel Gilbert because he oversees the key management database (1T79, 1T106-1T107). Roselle supervises two units: the Management Awareness and Personnel Performance System (MAPPS) and a Special Projects unit (1T80).

56. Approximately 12 civilian and enlisted personnel work in MAPPS (1T90). MAPPS is a database that aggregates information from different information systems and is used to maintain and track disciplinary history, commendations, awards, training and performance (1T80). It came about as a result of the consent decree (1T80).

MAPPS enables Division management to record and compare the law enforcement activities of troopers, particularly, their traffic stops, written summons, warnings, arrests, etc. (1T81). The breadth of MAPPS information available to Division managers

is relative to their position and rank (1T82). Captains generally have access to information on the stations, units or personnel under their commands (1T82). Roselle has access to the entire system (1T83).

Roselle oversees policies relating to MAPPS (1T85). Ideas and suggestions for creating policies for MAPPS emanate from many sources, including the federal monitors who monitor the Division's performance and compliance with consent decree (1T86-1T88). SOPs delineate the policies and procedures governing the use of all of the Division's computer systems, and an operations instruction describes how systems should be used (1T84).

57. The seven personnel in the special projects unit conduct special technology projects, and analyze data (1T94-1T95). The unit generates data to facilitate monthly MAC conferences (1T95). Roselle ensures that useful data is available for MAC sessions (2T5). The information can go into individuals' evaluations (1T96). The special projects unit maps trends or spikes in activities - like particular types of crimes such as burglaries, car theft, and traffic accidents, thereby allowing commanders to initiate enforcement strategies and schedules (2T4-2T5). Data is sent to field commanders to develop solutions, along with the Superintendent (2T13).

58. Roselle maintains all after-action reports and oversees the tracking of tasks that result from MAC conferences (1T99, 1T106). Project managers are identified and required to report their progress on the task (1T100). There are approximately one hundred such projects on the system (2T7-2T8). Many projects have Division-wide relevance (1T100-1T101). Examples include spiking of overtime, delays in processing, evidence being analyzed and turnaround times (1T101).

59. Roselle oversees projects to make sure progress is being made (2T9-2T10). Roselle ensures there is a project tracking system, maintained at the Superintendent's level, to follow up on their progress (2T5-2T6). For example, the Turnpike troop may identify a high number of break-ins at a particular service area at a MAC session and that becomes a project, assigned to a specific person, with strategies for reducing the number of break-ins. Progress is entered into a diary system (2T6-2T7). Roselle monitors the data to ensure that responsible parties are following through (2T7, 2T9-2T10). Roselle communicates with responsible parties, advising and facilitating their access to the diary system, and reminding them that they and their projects will be tracked (2T8).

60. Roselle contacts responsible parties on Gilbert's behalf to underscore the necessity for attention to projects not progressing quickly and to avoid a build-up of unfinished or

unclosed projects (1T102-1T103). Roselle's bureau keeps Gilbert apprised on how projects are progressing (1T101-1T102).

61. Roselle, the Superintendent, Gilbert and others who attend MAC conferences, decide who will be responsible for projects (2T8-2T9). There is often a consensus as to who will handle what, depending on the complexity of the issue (2T9). Roselle may attend MAC sessions or may delegate staff to attend and present the data (2T10). Roselle has no role in preparing the budget (1T97).

Office of Public Information and Recruiting and Equal Opportunity Bureau

62. The office and bureau are in the Superintendent's office (2T15). Formally, Captain Albert Della Fave, head of public information, and Captain Timothy Goss, chief of recruiting and equal opportunity, report to Major Wendy Galloway in the Office of Community Outreach, and Galloway reports to Gilbert (2T15, 2T21, 2T58; R-104). Major Galloway is briefed on both Della Fave's and Goss' activities, however, her job requires her to be away from headquarters, making contacts for the Division and she does not closely supervise either captain (2T63). They have regular contacts with Lieutenant Colonel Gilbert and Colonel Fuentes (2T21-2T22).

Office of Public Information

63. Captain Della Fave has 20+ years with the Division, including several years as a captain (2T15-2T16). Della Fave is

the bureau chief of the Office of Public Information, responsible for issuing press releases, responding to all inquiries from the news media, keeping the OAG and the Governor's office informed, and coordinating the Division's awards board (2T16-2T17).

64. The office consists of Della Fave, Lieutenant Lewis, two sergeants and one civilian employee (2T17). Della Fave assigns work and personally develops the Division's responses to reporters (2T18-2T19). Della Fave ensures that information disseminated by the Division is accurate, handled with appropriate protocols, sensitivity to victims and their families, and responsiveness to the public's interest (2T19-2T20). Della Fave participates in and advocates for what is to be disseminated and ensures the accuracy of such information (2T20-2T21). Captain Della Fave keeps Gilbert and Fuentes apprised of issues or events about which the press is interested, particularly those involving trooper conduct (2T18). According to Gilbert, in especially sensitive or tragic situations:

Captain Della Fave plays a very important role putting information out . . . that is responsive to the public but does not in any way violate the investigative protocol, the protections accorded to the trooper . . . (2T20).

Although we may know all the facts, decisions have to be made as to what information goes out there as to something that is still pending and what should not go out at [a] point in time (2T21).

65. He is relied upon to balance the public's interest and right to know and the Division's need to maintain control over sensitive information (2T21). Della Fave advises the Colonel about what should be shared at a particular moment. (2T21). Many responses are cleared by the Attorney General's office (2T20).

66. Gilbert meets with Della Fave daily (2T22). Gilbert is confident in Della Fave's handling of routine matters and judgment about keeping him and the Superintendent in the loop about sensitive or unusual incidents and appropriate responses (2T23).

67. Della Fave constructs press releases which he, the lieutenant colonel, the Superintendent, Attorney General, or in rare cases, Governor may deliver (2T23-2T24). The Superintendent places heavy reliance on Della Fave, but retains the authority to alter a message (2T23-2T24). Normally, Della Fave presents acceptable final products that are reliable and meet the Division's needs (2T24, 2T25). Della Fave has advised the colonel and lieutenant colonel for ten years (2T24, 2T25). Lieutenant Colonel Gilbert does not review the routine press releases issued by the Division but he and the Colonel are involved in releases concerning major incidents or "volatile" issues (2T29-2T30).

68. The office communicates with the subject matter experts within the Division, crafting messages containing the "who, what,

where and when" of programs that are easily understood by the public and the Division's constituent groups (2T26). R-7 is a typical press release announcing Operation Cease Fire, a Division initiative dealing with gun violence (2T25-2T26). Della Fave reviews, edits and approves press releases prepared by the staff, and obtains the Superintendent's approval (2T28). Della Fave writes speeches, and supervises others in writing speeches (2T29).

69. The development of a media coordinator program is one of the goals of the office (2T30; R-6). The program will enable field offices to communicate with communities about issues (accidents, crimes, incidents) of local interest and concern (2T30). The program will more efficiently deliver information by directing reporters to contact local barracks commanders instead of Division headquarters (2T30-2T31). Field office or barracks' contact persons will be trained in the public information mission and how to properly disseminate information (2T31, 2T46). Consistency in handling press inquiries or issuing information is a goal (2T31).

70. Della Fave appears on television and speaks over the radio, without having previously cleared all statements with the Superintendent (2T31-2T32). Della Fave uses his judgment in deciding when he must discuss statements to the press (2T32).

71. Major Galloway is often out of the headquarters office performing duties related to the Division's community outreach functions (2T32). In most cases Galloway is not part of the decision-making in public information because of Della Fave's knowledge and experience (2T53, 2T56). Galloway previously worked in the public information office (2T53). As necessary, Della Fave discusses the office's activities with Galloway (2T33, 2T57). For many issues that are emergent his actions are independent of Galloway (2T31-2T33). The public information office could not function efficiently if Della Fave were not able to act independently of Galloway's daily supervision (2T31). Issuing public information, in addition to being fact-sensitive, requires timely and rapid responses (2T31-2T33).

72. The Division's Awards Board is under Captain Della Fave; the program is coordinated by Lieutenant Lewis, who obtains reports and recommendations for awards, sends them to Board members, who vote on recommendations, and then sends them to the Superintendent for final approval (2T44-2T45).

73. Media relations training is going to be added to recruit and supervisory training to enhance the knowledge of media contacts by everyone in the Division (2T47-2T48). The focus in media relations training is the commanders - - either station or barracks commanders - - who are likely to be contacted about incidents like shootings or accidents (2T46). In addition,

sometimes press releases refer the press to contact a local "clipboard officer" who will handle the press release (2T46).

74. Captain Della Fave developed a media relations lesson plan (2T48-2T49).

75. The Superintendent is the major check and balance and has final approval of Della Fave's activities (2T53-2T54).

76. Lieutenant Lewis can issue press releases or respond to inquiries in Della Fave's absence, but would decide whether an issue warranted the lieutenant colonel's or Superintendent's approval (2T54-2T55). He could handle routine things independently (2T55).

77. The Superintendent's office operates as a team environment; the office of public information is in close proximity to the Superintendent's and chief of staff's offices (2T57, 2T93).

Recruiting and Equal Opportunity Bureau

78. Captain Timothy Goss is bureau chief of the recruiting and equal opportunity bureau (2T58; R-104). The bureau is assigned to the Superintendent's office to address discrimination, equal opportunity or affirmative action issues that arise, that are of significant concern in the Division and were mandated in the consent decree (2T60-2T61). Goss supervises five investigators, who also report to the Attorney General's office, and eight to ten recruiters (2T59-2T60, 2T108).

The Recruiting and Selection Units

79. An overarching recruiting goal is to attract sufficient qualified candidates to maintain a diverse workforce (2T102-2T104). The recruiting unit locates candidates, whereas the selection unit administers tests to evaluate their qualifications through written, physical and psychological fitness tests and a two-day indoctrination (2T103). The recruiters conduct marketing campaigns designed to attract suitable candidates for trooper positions (2T59).

80. Goss has recommended enhancements to the strategies and policies in the recruiting plan (2T104). He directed the development of selection strategies, including a new form of examination, an overnight stay at the state police academy -- to briefly expose candidates to the training program and new strategies for obtaining a more diverse force (2T105-2T106).

81. The OAG is involved in the development of new recruit standards, application forms, tests and analyses of applications (2T98).

82. Goss is a member of a joint State Police-OAG committee which considers proposals for consultants (2T94-2T95, 2T99). He did much of the legwork leading to the committee's decision to use a particular consultant for the recruiting and testing of candidates for trooper positions (2T97). The Colonel has the final say about the use of a consultant (2T98).

83. Goss leads the effort to ensure that recruitment, hiring and training work in sync to bring in and train trooper candidates who are good matches for employment in the Division (2T90-2T92). He coordinated with Academy staff to update the Academy's physical fitness requirements (2T90-2T91). Goss works directly with consultants and the OAG on all issues (2T89, 2T91-2T92).

84. The committee does not hire recruits (2T98).

Investigations

85. The bureau also investigates allegations, mainly brought by employees, that the Division's anti-discrimination or equal opportunity policies were violated (2T59, 2T64-2T65).

86. The investigators' workload is response-driven (2T61). Investigative procedures are contained in Attorney General's Guidelines and a State Police manual (2T61). Goss has input into the investigations guidelines (2T62). Investigators work in the OAG and report to both the OAG and Goss (2T70, 2T74). They decide, in conjunction with OAG office personnel, whether a matter should be investigated formally, resolved informally or whether no action is warranted (2T70-2T73, 2T76-2T77, 2T79). Goss may give an opinion on how the investigations will proceed (2T74-2T75).

87. Completed investigations are sent directly to deputy attorneys general (DAGs) (2T65, 2T75-2T76). DAGs decide whether

the EEO/AA policy has been violated, and transmit their recommendations to the Superintendent, who under title 53 is the only person authorized to administer discipline (2T66, 2T76-2T77). Captain Goss is advised about the results, even when the recommendation is "lack of sufficient evidence", or unfounded allegations (2T66-2T67).

88. If the OAG recommends discipline, the Superintendent's office receives the full investigative package, which is transferred to the OPS for processing under the Division's disciplinary procedures (2T67, 2T80, 2T81-2T83). Goss participates with Gilbert and Colonel Fuentes in discussions and decisions about the policy implications of investigations (2T68). Goss meets with the DAGs to get their feedback after the investigations process is complete (2T68). There are approximately fifty investigations per year (2T69). In certain situations the Division takes remedial steps other than discipline such as training enhancements or policy changes (2T67).

89. Captain Goss is involved in the Superintendent's analysis of the DAG's reports and their non-disciplinary management implications (2T84-2T86). Goss is included in discussions with the Superintendent about those cases which are not sent to OPS/discipline but which may implicate other responses (2T79). Goss also advises the lieutenant colonel and

Superintendent on situations that have the potential to become problems and formal complaints before they develop (2T86-2T87). He is a sounding board on any issue related to equal opportunity/affirmative action and recommends early interventions to forestall problems (2T87-2T88).

90. On a day-to-day basis, Goss is not closely supervised - - Gilbert defers to him and his staff and their abilities to execute their part of the Superintendent's vision and the Division mission (2T91). Goss has recently presented Gilbert with a proposal, approved by Galloway, outlining a recruitment initiative (2T92). Once any issues are resolved, the plan will be sent to the administration branch and the OAG for their approvals (2T92-2T93). R8, the strategic plan (FY 2006) for the recruiting and EEO bureau, was authored by Captain Goss (2T99; R-8).

91. Goss also supervises the staff of the New Jersey State Police Museum, which is owned by the State Police Memorial Association (2T106-2T107). The museum is used as a recruiting and outreach tool (2T107).

Office of Professional Standards

92. Also reporting to Gilbert is Major Robert Cicchino, the head of OPS, equivalent to a section (1T63). Reporting to Cicchino are Captain William Toms, executive officer, Captain Robert Manney, in charge of the internal affairs investigation

bureau and Captain Keith Hackett, in charge of the internal affairs intake and adjudication bureau (1T34-1T36, 1T63, 1T72).

93. The OPS is an internal affairs office that investigates all complaints about trooper conduct and incidents that could lead to discipline (1T63, 1T65). The office consists of approximately 72 employees (1T34-1T36, 1T63, 1T72).

94. Toms runs the section's day-to-day operation and deals with issues brought to the major (1T3, 1T4). He has a more global perspective than the other captains and more authority (1T70-1T71, 1T72-1T73). Toms plays a key role in the discipline of all enlisted personnel, in conjunction with Major Cicchino (1T50). Toms and Cicchino review all investigations to ensure that they are sufficient and properly conducted (1T51). Toms reviews the entire course of the investigation -- phone calls, letters, inquiries, etc. -- for thoroughness (1T53-1T54). Toms prepares a summary of the investigation to be forwarded to the Superintendent's office for approval (1T51-1T52). Toms contributed to the upgrading of the investigations process after the consent decree (1T38). Toms cannot unilaterally change procedures but is expected to recommend needed changes (1T38).

95. Captains in OPS also attend the Colonel's daily morning meeting and are part of the command staff (9T32). There is a continuous dialogue between OPS and the Office of the Superintendent (1T44-1T45).

96. When an inquiry comes from the public it is classified as a "reportable incident" and must be followed up in a prescribed, codified manner (1T8-1T9). There are a sizeable number of investigations every year because of the decree; the Division has little latitude in classifying complaints (1T8).

97. Investigations begin with the filing of a performance incident disposition report (PIDR). These become either performance investigations or internal affairs investigations (1T47). A PIDR is a less intrusive, less intense form of investigation (1T47). PIDRs are sent to local command for follow up as these involve performance as opposed to disciplinary issues (1T47-1T48). One of the goals of the PIDR is to create solutions to performance deficiencies -- such as training or retraining (1T48).

98. A reportable incident can be filed by any member within the Division, including captains (1T11-1T12). Division employees are required to file a report if information comes to their attention which they believe the Division should investigate, according to the rules and regulations; the form would be referred to the OPS (1T12).

Intake and Adjudication Bureau

99. Captain Hackett is in charge of the intake and adjudications Bureau (1T35-1T36). The bureau decides how to handle reportable incidents: as criminal issues, internal

administrative issues or performance related issues (1T13). The classification is up to the captain (1T13-1T14).

100. Intake and adjudication has five units: intake, administrative internal proceedings, staff inspection, management review, and civil proceedings units. In the ordinary case, the intake bureau decides, without a higher level review, which direction the investigation goes and how each situation is classified (criminal, performance, administrative) (1T15-1T16).

101. The administrative internal proceedings unit prepares and enters into the Division's computer data system and prepares the paperwork containing the disciplinary charges and specifications against personnel for transmittal before and after the Superintendent decides what the charges are (1T68). The unit also coordinates the subsequent actions - i.e., issuance of written reprimands, or notices of hearings (1T68). The unit logs all matters into the Division's system and ensures matters are tracked and closed properly (1T68). PIDRs and their subsequent activities/actions also become part of the personnel tracking system (1T68).

102. The staff inspection unit conducts planned and unannounced on-site visits of Division facilities to make sure the Division's rules, policies and procedures are being followed (1T66). They retrieve and review records to review compliance and timeliness with established policies and procedures

(1T66-1T67). They make sure grant programs and funds are being utilized properly and efficiently (1T67).

The Management Review unit ensures that the Division is maximizing the use of the budget, "that dollars allocated toward a certain effort are being used efficiently" (1T67).

103. The civil proceedings unit consists of enlisted and civilian staff responsible for tracking lawsuits filed against the Division, coordinating with and assisting Division of Law and outside attorneys in discovery issues or other trial matters (1T65).

104. The captain in intake and adjudication is ultimately responsible for ensuring the delivery of a PIDR in compliance with the recommendation (1T48-1T49). The OPS Captain sends the PIDR to the particular bureau and a report of the proposed finished product flows back to the OPS for final review (1T49). It does not go any higher in the chain of command for review (1T49).

Internal Affairs Investigation Bureau

105. Captain Manney is in charge of the investigations bureau, composed of three geographical units: north, central, and south (1T4, 1T35-1T36, 1T64; R-104). Manney supervises and oversees approximately 25 lieutenants, sergeants and detectives who conduct internal investigations (1T5-1T6). Manney is responsible for allocating staff to effectively manage the

workload (1T7-1T8). He deploys personnel who are located at various sites throughout the State (1T5, 1T8). An Internal Affairs investigation manual and protocols are used to analyze and classify investigations (1T18-1T19). Classifying reportable incidents is a fact-specific determination (1T28). Manney's determinations on the classification of investigations are given much deference (1T14).

106. The first step is an investigation conducted by a sergeant and then checked by a lieutenant and the assistant bureau chief (1T28). The captain checks for thoroughness and makes an initial recommendation as to whether there has been a violation (1T29-1T30). These recommendations are discussed with the executive officer and major in the intake and adjudication section (1T50-1T51). If the major agrees, he or she forwards it to Lieutenant Colonel Gilbert.

107. Gilbert reviews cases to ensure that the proposed charges, specifications and potential disciplinary sanctions are in accordance with the Division's philosophy, based on precedent and consistent with progressive discipline and then he briefs the Superintendent (1T53-1T55). By statute, the Superintendent authorizes all discipline (1T60, 9T15). Gilbert may sign on the Superintendent's behalf (1T55).

108. Gilbert has great confidence in Toms and Cicchino and defers to their determinations on the burden of proof. He does

not review their recommendations for no sanctions where the allegations are unfounded or there is insufficient evidence supporting them (1T50-1T51, 1T52-1T53, 1T55-1T58). Gilbert reviews several recommendations for sanctions per week or a couple of hundred per year, of these, only 10-15 are returned for additional information (1T57). The Superintendent changes only a few per year (1T58). It is rare for Gilbert to send a recommendation back for additional investigation (1T54-1T58). Once the Superintendent approves the recommendation, it is returned to OPS to execute the process (1T29-1T30, 1T55). The captain in the intake and adjudication unit notifies the trooper or his immediate supervisor of the result (1T55-1T56).

109. When the trends that emerge from investigations suggest that training is warranted, Captain Manney is expected to coordinate with other commanders in the Division to ensure training is provided (1T24).

110. OPS is included and represented by either Captain Toms or Major Cicchino in the Superintendent's daily meetings with the branch commanders (1T77). Major Cicchino is the usual attendee (1T77). The daily meeting consists of discussions about ongoing events, the Division's programs, shifts in philosophy, and both immediate and long-term issues (1T78). Attendees make the Colonel aware of the developments and future of their programs (1T78).

Administration Branch

111. The administration branch consists of the administration, human resources, and identification and information technology sections (3T4). As of the hearing, Lieutenant Colonel William P. Meddis was in charge of the branch (3T3-3T4). Reporting to Meddis at the time of this proceeding were Major Gayle Cameron in administration,^{2/} Major Marshal Brown in human resources and Major Fran White in identification and information technology (3T5). The structure has not changed and reporting to these majors are 13 captains (R-104).

Administration Section

112. In the administration section, Major Cameron oversees the fiscal control bureau, grants administration bureau, budget operations bureau, logistics bureau and planning bureau (3T5). Reporting directly to Cameron is Captain Paul White, the section's executive officer. All other captains report to the executive officer and he is considered higher in the chain of command (4T47-4T49).

Hiring

113. In general, captains in the administration branch work with human resources to identify suitable candidates for civilian positions. Captains and the human resources bureau chief

^{2/} Cameron has since been promoted in another branch (R-104).

interview and recommend the hiring of civilian staff (4T8-4T9). Majors are likely to adopt captains' recommendations (4T10-4T12).

Fiscal Control Bureau

114. Captain Robin Blaker was in charge of the fiscal control bureau at the time of the hearing (3T20, 8TA4-8TA5; R-104). Captain Patrick Caughey replaced Blaker (R-104). Blaker manages all fiscal matters of the Division's \$700 million budget and creates the Division's spending plan (8TA6). Fiscal control is a key bureau, providing the financial support of the Division's programs (8TA75).

115. Blaker supervises approximately five enlisted and 26 civilian employees in the accounting, budget allocation, central purchasing and payroll units (3T7, 3T13, 8TA37). Accounting ensures that debits and credits in the Division's various accounts are properly posted and balance at the end of the year (3T35-3T36). Budget allocation maintains accounts so that the Division's bills can be paid when they are due (3T36-3T37). Central purchasing pays the Division's bills, processes invoices and ensures Treasury Department guidelines are followed (3T37-3T38). The payroll unit compiles payroll records and ensures that paychecks are generated on time (3T38). The central purchasing unit processes requests for purchases if the items have been previously authorized in the spending plan (8TA14).

Most routine requests for items such as fuel, auto parts and the like are pre-authorized.

116. The Division's budget is subject to approval and some control by the administrator in the OAG (8TA55). For example, in early 2007, the LPS administrator placed a moratorium on spending in two accounts because of a concern about the possibility that the Division would be in a deficit before the end of the fiscal year (8TA54-8TA55). Two weeks later, the administrator informed Blaker that, despite the spending freeze, approval would be given for important or emergency circumstances (8TA55).

117. Unanticipated expenditures must be approved through the chain of command and in some cases by the administrator in LPS (8TA16-8TA17, 8TA31-8TA32). Fiscal control evaluates requests and advises the major, lieutenant colonels and Colonel about whether funding is authorized, whether the timing of the request will be a problem, whether the items require special approvals (i.e., for technology items), or relate to the safety of troopers (8TA23, 8TA28-8TA30). Majors and above can deny a request and end the process (8TA33-8TA35). Blaker would be notified if an authorization he approved was later overridden, though this has not happened (8TA35-8TA36).

118. Purchasing begins with the initiation of written requests at the unit level through the chain of command to a lieutenant colonel of the unit's branch and is reviewed and

tentatively approved at each level (8TA12). The request then goes to the administration branch head, Lieutenant Colonel Meddis, who, if he approves it, sends the request through Major Cameron to Blaker in fiscal control to the central purchasing unit to check for available funding in the spending plan (8TA12-8TA13). If no funding is available, that is communicated back through the chain of command, and the requester may appeal the decision (8TA13). An appeal will be successful if the item is connected to a designated Division priority operation (8TA13-8TA14). For example, in July 2007, a request was made for the purchase of 16 cell phones. The request went through two chains of command (8TA26, 8TA28-8TA33; P-1). Blaker, aware that normally few requests are approved during the fiscal year closeout, initially placed the request on hold (3T29, 8TA23, 8TA19; P-1; R-10, R-11). The request was initiated by the homeland security branch and was processed there through the chain of command and then to the administration branch (to Lieutenant Colonel Meddis and to Blaker for authorization (3T30, 8TA24-8TA26; P-1; R-10). Cell phones are closely controlled and the request had to be specially approved in the OAG (8TA30-8TA31). Because the phones were needed for the particular investigation and involved the safety of troopers, Blaker expedited the request and obtained all approvals (8TA21-8TA22, 8TA29-8T31).

119. Blaker also oversees the processing of all travel requests and assures that the Division's requests comply with the OAG guidelines for travel (3T8). Approval for out-of-state travel must be approved by the Governor's office; the OAG approves all other travel expenses (3T8). Blaker can recommend the rejection of a travel request, but in most cases requests are processed and forwarded to the OAG and/or Governor's office (3T9). The Superintendent approves unanticipated investigations-related travel (3T9-3T10). Blaker oversees the processing of this type of travel reimbursement (3T10-3T11).

120. Captain Blaker leads and guides the strategic planning process for the fiscal control bureau (8TA68). He prepared the bureau's strategic plan for FY2008 (8TA40). Blaker held a roundtable discussion with his unit heads about their units' goals and directed them to prepare unit strategic plans (8TA42). The unit heads sent the plans to Blaker's administrative officer who consolidated them (8T42-8T43). Blaker held another roundtable discussion to narrow and prioritize the goals to the ten highest priority goals, and this became the bureau's strategic plan, forwarded to the major (8TA42-8TA43, 8TA46). The major and executive officer reviewed the plan and could have communicated goals or initiatives they wanted included (8TA43, 8TA46, 8TA48). Blaker's strategic plans have not been revised by his major or lieutenant colonel (8TA47).

121. Blaker cannot independently approve the addition of personnel within his bureau (3T11). He is consulted in the preparation of the Division's budget (3T13). Blaker may recommend staffing changes through the chain of command, initially to the major -- who would advise the administration branch lieutenant colonel of both Blaker's and her own recommendations, and these are considered in the final decision made by the Superintendent (3T14).

122. Blaker cannot independently hire, fire or discipline other employees (8TA36). He can recommend discipline and the transfer of other employees, subject to approval by the major, lieutenant colonel and Colonel (8TA36). Blaker has not had to discipline anyone. He evaluates his assistant bureau chief and one civilian professional employee and is evaluated by his major (8TA36-8T37). Completed evaluations are sent to the human resources management bureau (8TA39). Neither Blaker nor Major Cameron have a role in Division collective negotiations (3T16).

123. Blaker has not handled any grievances (8TA40).^{8/}

^{8/} Lieutenant Colonel Meddis testified that for grievances initiated in their section, Major Cameron and Captain Blaker would be steps in the grievance procedure. Although that is logical, Meddis was not aware of any grievances. I credit Blaker's testimony that he has not dealt with any grievances.

Budget Operations Bureau

124. The Division's budget is approved by the administrator in LPS (6T5, 6T21). The Superintendent is responsible for the budget (6T23). Captain Jeff Elgrim is in charge of the budget operations bureau, prepares and oversees the processing of the budget and is the liaison with the administrator in the OAG (6T5-6T6, 6T24). The budget development unit coordinates all budget documents, monitors expenditures, prepares a quarterly spending plan, and updates the budget as necessary (6T24).

In the early part of the calendar year Elgrim and his staff gather information from the various branches and sections to develop a budget briefing book (6T10-6T11). The briefing book contains historical data, an overall view of the Division's activities and a funding proposal that Elgrim determines will enable the Division to operate in the next fiscal year (6T5, 6T21; R-29). Elgrim looks at the prior year's budget and, after discussions with his major, Lieutenant Colonel Meddis, and other lieutenant colonels, he determines if each line item was sufficiently funded in the prior fiscal year, what impact it will have in the next year, and whether to request additional funding (6T21). He outlines all of the initiatives and funding requests for the Division and consolidates all in a package for submission to the Administrator (6T21). Lieutenant Colonel Meddis is responsible for making sure any of the Colonel's specific

initiatives are included in the document and that all priorities are addressed in the document (6T22). Also prepared are cost analyses of initiatives which have already been undertaken and that the Division wishes to undertake (6T5). R-29 is the Division's FY 2007 Budget Briefing book. Elgrim is the Division's primary contact with the AG's administrator or deputy administrator in compiling the budget briefing book (6T22-6T23).

125. Captain Elgrim also identifies costs that represent emergent needs, new initiatives or unforeseen increases (6T11). He suggests how initiatives will be funded (6T11). A planning budget initiative documents these expenses that arise after the budget briefing book was prepared (6T13-6T14). R-28 consists of several planning budget initiatives, including, for example, the request for \$726,728 to replace the inventory of aging patrol rifles (6T13; R-28). These initiatives put LPS on notice about projects or expenses requiring additional funding (6T14). There are several different ways that budget initiatives are handled: they may be incorporated into the budget briefing book and become line items in a future budget, they may be forwarded to the OAG as forfeiture fund requests or there may be a funding source available to the department that is not available to the Division (6T13-6T15). Forfeiture funding is money available from seizures made in the course of criminal investigations, ordered by a Court to be turned over to the State's general fund (6T15-6T16). The

OAG can access some forfeiture funds for law enforcement initiatives (6T16). For example, in 2006-2007 the OAG set aside funding to specifically address gang and gun violence and some of this was available for the Division's use (6T15).

126. Elgrim is very familiar with all of the Division's programs, their costs, including the operations costs (salaries), which are 80 percent of the budget (6T17). He identifies current and future staffing. He is familiar with the ongoing costs of materials, fuel, and knows when the budget allocation for these items is at risk of depletion; he is responsible for alerting the Division and OAG to avoid the consequences (6T17).

127. He does not limit other managers' requests; he ensures that their requests are vetted through his major who brings them to the lieutenant colonel (6T18). Meddis, Cameron and Elgrim meet with the administrator twice a month to review some of these initiatives (6T18).

128. Captain Elgrim is responsible for costing out promotions (6T18). He is responsible for insuring that the Division adheres to the budget as well as possible, and is expected to give the lieutenant colonel a monthly report card on how well the Division is adhering to the budget (6T18). He is responsible for bringing to the lieutenant colonel's attention such facts as the effects of spikes in fuel, telephone, and facilities' costs (6T19).

129. The executive summary is a prediction of what the Division is expected to spend, or, a spending plan, developed by the budget operations bureau and OAG at the beginning of the fiscal year (8TA6-8TA10). The fiscal control bureau is consulted by the budget operations bureau because fiscal control knows more directly what is going on in the Division (8TA10).

130. R-27 is the 2005 fiscal year (FY) strategic plan for the budget operations bureau (6T7-6T8; R-27). Elgrim was an acting captain when he prepared R-27 (R-27; 6T8-6T9). Elgrim determined the strategies in R-27 based on his decisions about the bureau's priorities and goals (6T10).

Grants Administration Bureau

131. Captain Carl Kleeberg is in charge of the grants administration bureau, composed of 3 units: grants accounting, grants program management and grants auditing unit (4T41). Kleeberg reports to Major Cameron and executive officer Captain White (4T48-4T49). Kleeberg oversees approximately 100 federal grants, 60 memoranda of understanding (MOUs), numerous other state appropriations and all funding sources that supplement the Division's budget (4T37). The grants bureau is a fairly new entity (4T47-4T48). Annually, the Division receives \$475 million in grants (4T50).

132. A typical MOU is an agreement between the Division and an outside organization (Rutgers University, NJ Highway

Authority, etc.) detailing that organization's reimbursement to the Division for police services (4T37-4T38). MOUs are administered by the bureau in coordination with administrators in LPS to ensure the monies are properly disbursed and that agreements' renewals are timely executed. The bureau reviews grant applications and researches potential sources of funding for the Division's priorities (4T39). An example of a grant is one provided by the federal highway traffic safety agency for enhanced holiday drunk driving patrols (4T39). The bureau's expertise is in knowing what grants are available and how the Division can obtain funding from available grants (4T40). The bureau also manages the fiscal aspects of grants (4T40).

133. Grants accounting has five civilian and one enlisted employees and is responsible for ensuring purchases are conducted within treasury regulations, grant guidelines and sound accounting principles (4T42-4T43). They approve grant expenditures after reviewing and insuring they are within the particular grant's constraints and are authorized (4T42). The grants program management unit is also a liaison with the OAG. It ensures compliance with required program reporting under grants (4T45).

134. The grants auditing unit conducts financial audits, ensuring that the grant terms are fulfilled and that the funds

are used for the stated purposes (4T46). The unit serves as an internal check and balance (4T46-4T47).

135. Captain Kleeberg's role in hiring and staffing decisions is similar to other captains' role: he can request additional personnel after identifying a need (4T49). Kleeberg does not have any role in collective negotiations (4T52).

Logistics Bureau

136. Captain Steven Scowcroft is in charge of the logistics bureau which consists of 116 employees. The bureau oversees the leasing and maintenance of facilities, a fleet unit, mail room, printing unit, warehouse unit, and armory unit (4T6). Scowcroft reports to Cameron and to Captain Paul White, Cameron's executive officer (4T7).

137. The facility and project management unit manages the Division's use of 110 state-owned and leased facilities. (4T20-4T21). The unit handles complaints and works with the State Treasury department to identify suitable places to accommodate the Division's programs and stations (4T21-4T22). Captain Scowcroft relies upon Lieutenant Miranda regarding facilities issues. For major issues, Scowcroft passes recommendations on to Major Cameron (4T22-4T23).

138. The maintenance unit is comprised of 40 civilian employees who maintain, clean, remove trash, shovel snow, remove debris, perform minor plumbing and repair and paint the

Division's facilities (4T12-4T13). There are 110 state-owned or leased facilities (4T13).

139. The fleet management unit has 51 civilian staff responsible for maintaining the Division's fleet of 2200 vehicles (4T14). Captain Scowcroft would become involved in resolving grievances in his bureau (4T15). Unresolved grievances would be advanced to the major (4T16). Reliance is placed on captains' judgment in deciding whether to advance employees' suggestions (4T17-4T19).

140. The mail room handles intake and mailing out of all of the Division's mail (4T24-4T25). The printing unit has 6 civilian employees and processes requests for all high-speed copying, offset printing and design of all graphic materials (4T8).

141. The warehouse unit receives, tracks and distributes inventory used by the Division, including uniforms, weapons, laboratory supplies, janitorial, medical supplies, office machines and all equipment (4T19-4T20).

142. The armory unit maintains and tracks all weapons and identifies new weapons (4T23-4T24). The unit works with a weapons and tactics committee investigating best practices and the efficiency of weapons used in other jurisdictions (4T24).

143. R-19 is the Fiscal 2006 strategic plan for the logistic bureau, prepared by Captain Guy Madison (Scowcroft's predecessor) (4T26-4T27; R-19).

Planning Bureau

144. Since July 2005, the planning bureau has had four captains (3T67-3T68). It appears that it is now headed by a lieutenant (R-104). Captain Kathleen Devlin was head of the planning bureau for five months until her retirement in 2007 and Devlin testified at the hearing (2T118, 3T43).

145. The bureau is composed of the policy and procedures, research development and legislative coordination units. The bureau creates and maintains all of the Division's several hundred standard operating procedures and orders. The SOPs and orders provide in detail the Division's organization, functions and procedures (3T44). The bureau monitors legislative activity that affects the Division and researches and identifies the best practices of law enforcement agencies nationwide (3T39-3T40, 8TA73). R-12 is the FY 2005 strategic plan for the planning bureau, prepared by former Captain Daniel Morocco (3T49, 9T91-9T92; R12). R-12 indicates that the bureau's mission is to provide leadership and direction in the analysis, formulation, maintenance and dissemination of policies and procedures and manage research and development (8TB13).

146. Captains are required to periodically review their SOPs and ensure that the SOPs are accurate by proposing appropriate changes that are processed through channels, including the planning bureau, to the Superintendent, who approves all SOPs (2T113-2T115, 3T45, 3T46-3T48, 8TB13, 8TB16-8TB18, 8TA73, 9T79). Reorganizations are required to be recorded in SOPs (8TB17). Revisions may be relatively minor - renaming an office, changing accounting code numbers, etc. (8TB19-8TB20, 9T91-9T92). Changes are reviewed for their legality, entailing the planning bureau's judgment about when to get an opinion from the OAG (3T46, 8TB21-8TB22, 9T79).

147. Any rank may initiate a new SOP, for example, the SOPs establishing a motorcycle unit were initiated by a trooper and a sergeant created the SOPs to establish a canine program (2T115, 10T57). SOPs initiated by lower ranks go through the chain of command and are vetted through captains (2T118). Then SOPs go through planning to the lieutenant colonel and the Superintendent for approval (2T119). The Superintendent can reject proposed modifications to SOPs (2T114).

148. Several memos, identified as R-13 through R-18, are representative of the documents processed by the planning bureau (3T66, 9T80-9T81).

149. R-13 is an interoffice memo, proposing an SOP to record the change in the communications bureau structure in 2006

(3T50-3T54, 9T80-9T81; R-13). On January 25, 2006, then-Planning Bureau Captain Olcheski requested that Captain Nutt, the head of the communications bureau, review draft SOP-J5, and give his input (8TB16; R-13). J5 records the restructuring.

R-13 was sent through the planning bureau's chain of command (Administration branch) to the communications bureau's chain of command (Homeland Security branch) (3T50-3T54; R-13). Everyone in the two chains of command signed the revision (3T51; R-13). The above is a good example of the path that planning bureau requests take (3T50-3T51, 3T66).

150. R-14 represents a change in the SOP of the traffic bureau (9T83). On February 28, 2006, the planning bureau sent a memo, through channels, to Captain Wolcott in the traffic bureau, asking that Wolcott review a draft copy of the vehicular pursuit SOP (3T54; R14). Planning did not initiate the change, which came about through processes outside of planning, but planning notified the office of primary interest that the SOP for that bureau needed to be updated (9T83-9T84).

151. At some point prior to March 2006, captains in the OPS were ordered to review the Office's SOPs (9T78, 9T85). On March 20, 2006, Captain Devlin sent a memo to Captain William Toms (also in OPS) asking that he review SOP B10 suggesting that the word "intentional" be removed because she believed that if the word remained members could argue that they are only required to

report intentional violations as opposed to unintentional violations and performance issues (3T55-3T57, 3T58, 9T84-9T85; R-15). R-15 states: "if the wording stands as is we could greatly reduce the number of incidents that require investigation" (3T58; R15). The ultimate decision was made by the Division command staff but was Devlin's responsibility to raise (3T58; R15). Devlin does not know what Captain Toms did with the suggestion (9T85).

152. Also illustrative of the process are R-16 and R-17. R-16 is a memorandum dated June 12, 2006, that amends an SOP on drug testing, adding a step to ensure compliance with the Attorney General's random drug testing policy (3T60-3T61, 8TB22-8TB23, 9T86; R-16). It was sent from Captain Pat Reilly in the Planning bureau to the Superintendent via Major Cameron and Lieutenant Colonel Meddis (3T60-3T61; R-16). The Superintendent was being asked to review, approve, sign and return the notice to the Planning bureau for dissemination (3T61). The Division had been exchanging versions with the OAG to ensure compliance and consistency with the policy and the OAG ultimately approved the SOP (8TB23).

R-17 is a memo dated June 13, 2006, from Captain Reilly in Planning to the Superintendent, through channels, asking the Superintendent to approve changes to SOP C1, reflecting the duties and responsibilities of the newly created grants

administration bureau and all other bureaus and units in administration (3T62-3T63, 8TB24-8TB25; R-17). Reilly could not have approved the change on his own (8TB24-8TB25). R-17 came about because of the need for a new grants administration bureau, consolidating all of the Division's grants oversight and coordination in one bureau; the reorganization came at the request of the LPS Administrator and OAG (8TB25; R-17).

153. There are times when outside entities precipitate changes to SOPs. The consent decree mandated the establishment of eligibility criteria for those who supervise and conduct internal investigations (8TB25-8TB27, 9T85, 9T87-9T88; R-18).

154. Captain Devlin did not have authority to hire or fire other employees, spend funds or prepare a budget (9T95).

Human Resources Section

155. The section consists of 3 bureaus: human resources management, training and employee services. The human resources section is under the direction of Major Marshall Brown and his executive officer Captain Dan Morocco (3T6, 6T26). Major Brown is ultimately responsible for the section's effectiveness, whereas Captain Morocco supervises the bureaus and acts as Major in Brown's absence (6T26).

156. Morocco holds the same rank as the other captains in the section, but Morocco, as executive officer, is a half-step above them and they are required to go through Morocco to Major

Brown (6T33-6T34). All recommendations for new initiatives go to Captain Morocco, then to Major Brown, and Lieutenant Colonel Meddis for approval (6T63).

Human Resource Management Bureau

157. Captain Ed Fanelle is in charge of the Human Resource Management Bureau, composed of the medical services, compliance, records management, employee services and labor relations units (6T27, 6T33). Fanelle reports to the executive officer (6T27).

158. The medical services unit updates status reports on Division employees who are out on extended sick leaves and oversees the Division's annual medical exams (6T27). The compliance unit ensures that those out on extended leaves comply with the conditions for such leaves, and administers the Division's random drug testing program (6T28). The records management unit processes personnel orders, maintains the human resource database and manages the personnel management information system (PMIS), containing data on civilian employees (6T29-6T30). The employee services unit coordinates health benefits, processes new hires and retirements and handles family leave issues (6T31, 6T34). The labor relations unit handles grievances, provides guidance on interpretation of the various collective negotiations agreements and coordinates civilian disciplinary processes (6T31-6T32). With respect to civilian discipline, the unit investigates alleged violations, recommends

discipline and works with a Deputy Attorney General assigned to facilitate civilian discipline (6T32). The administrative absence unit is a list of those who are out on sick leave (6T34-6T35).

159. R-30 is the FY 2006 strategic plan for the Human Resource Management Bureau (6T36; R-30). It contains the goals and objective that Captain Fanelle identified for that year to enhance the bureau's effectiveness (6T36). He prioritized each unit's strategies, submitted the strategic plan to Major Brown and Captain Morocco. They consolidated all bureaus' plans into a section plan and submitted them to Lieutenant Colonel Meddis (6T38). For the most part, the lieutenant colonel and Colonel relied on the captains' recommendations for goals, objectives and time lines for the next year (6T38).

Training Bureau

160. Lieutenant Thomas Soucek is bureau chief of the Division's Training Bureau (6T56, 13T3-13T4, 13T6). The training bureau is composed of the law enforcement science, recruit training, in-service training, managerial development, training support and firearms/self-defense units (6T58, 13T4). R-32 is the FY 2006 Strategic Plan for the Training Bureau prepared, authored by the then-Captain Thomas Flaherty (6T70).

161. In 1999, all training was revised because the consent decree mandated rank-specific training (13T32). All lesson plans

in leadership and supervision are reviewed by the OAG to ensure compliance with the tenets of the consent decree and "best practices" principles (13T34-13T35). Training is monitored evaluated and analyzed for its cost-benefit and positive impact on performance (13T10-13T11).

162. The training of new recruits is a residential 25-week program held at the Academy in Sea Girt, established by the Police Training Commission in the OAG (6T56). The law enforcement science unit provides basic police training to troopers (6T59-6T60, 6T61-6T63). The in-service training unit administers continuous training required under the Attorney General's guidelines (6T64). The firearms and self-defense unit develops and administers firearms instructions and self-defense ground fighting (6T65). The training support unit provides administrative support and maintains the training database (6T67). The managerial development unit identifies, develops and provides managerial seminars and the executive leadership courses for future lieutenants and handles all supervisory training delineated in the consent decree (6T68, 13T5).

163. Captains, majors and lieutenant colonels all receive "Phase" training, which has 5 components (13T30). Phase IV is strategic planning (13T31). The other components are basic self awareness, budget issues and discipline (13T5-13T6).

164. A strategic planning course was developed and given by Dr. Bub Kovacs from the College of New Jersey (5T13, 13T8-13T11). The course consists of writing mission statements, evaluating strengths, and goal-writing (13T20-13T21). Captains were taught the Division's top-down approach to strategic planning (11T47, 13T21-13T22). The process starts with the Superintendent's goals, then the lieutenant colonels develop their strategic plans, majors prepare their plans and these are given to captains (13T22). The Superintendent sets broad standards and overarching goals but does not identify the specific programs or activities to be implemented (13T22). As it travels down the chain of command strategic planning becomes more specific (13T22). Captains were instructed to solicit ideas from unit heads in deciding how the bureau will support the overarching goals at the unit level (13T22-13T23, 13T24-13T25). Captains author plans and are held accountable for their bureaus' performance (13T25).

Employee Services Bureau

165. Captain Patrick Walker oversees the promotional systems, professional development and organizational analysis and assessment units in the Employee Services Bureau (6T50).

166. The employee services bureau manages the Division's promotional process, which is currently being revised (6T45-6T47). Walker searches for a suitable consultant and coordinates a working group to design valid processes for all ranks (6T53; R-

91). His recommendations will carry weight with the lieutenant colonel, Colonel and OAG (6T50-6T51). Once a qualified consultant is identified, Walker will initiate the bidding procedures or requesting a waiver of bidding (6T54). The Division has come up with its own promotional procedure but is missing a validation step and is attempting to solve this problem (6T55). The lieutenant colonel has relied on Walker and his team in the development of the promotional system already in place (6T55).

167. The professional development unit identifies and develops partnerships with educational institutions to locate in-state training and supervisory programs and develops a lecture series for enlisted personnel (6T50). The unit also conducts one-on-one career development sessions (6T50).

168. Walker also recommends best practices used by similar law enforcement entities for use by the Division (6T51). The organizational analysis and assessment unit researches practices used by other law enforcement agencies and studies them for their feasibility in the Division (6T51-6T52). Of particular interest are performance evaluation processes, and supervisory, leadership and management practices (6T52). For example, the Division enlists corporate executives for discussions about methods used in the business community (6T52). The unit examines and recommends the Division's adoption of these practices (6T52).

169. R-91 is the bureau's 2007 strategic plan, prepared by Walker (6T48; R-91).

Identification and Information Technology Section

170. The section oversees the maintenance of all of the Division's criminal and information databases and compiles traffic, criminal and uniform crime reports (6T75). The section is composed of three bureaus: criminal justice records, the State Bureau of Identification and information technology (6T76). Major Francis White is the section supervisor; reporting directly to White is the section executive officer is Captain Plaza (6T76).

The Criminal Justice Records Bureau

171. The criminal justice records bureau, headed by Captain Guy Madison, compiles, classifies and analyzes all crimes committed in New Jersey, produces uniform crime reports, receives traffic-related reports generated by the Division and handles discovery requests (6T76). It supports the computer aided dispatch system (CADS) and the records management system (RMS), the computerized system used by troopers in the field (6T77).

172. The bureau consists of the uniform crime reporting, criminal records, traffic records, micrographic, CADS, court disposition reporting and data entry units (6T77). The uniform crime reporting unit produces an annual report of the crime statistics throughout the State, compiled from the Division's and

local police departments' statistics (6T78). The uniform crime report is submitted to the FBI (6T78). The unit ensures that crime data is captured properly and according to guidelines (6T80-6T8). The criminal records unit maintains all of the Division's criminal and operation reports (6T79). Operations reports are incidents which do not rise to the level of a crime but which involve damage to property (6T79). This unit also provides discovery support (6T79). The traffic records unit serves as the repository of all traffic accidents and drunken driving reports generated by the Division; it obtains the records, and organizes them so that they are accessible (6T82). The micrographic unit transfers written documents to microfiche, according to guidelines (6T82). The CADS unit is responsible for insuring that the CADS database and RMS function properly (6T83). The RMS enables troopers to generate reports in their vehicles via computers (6T83). The court disposition reporting unit receives and processes court disposition documents such as the outcome of traffic tickets and municipal criminal charges (6T84). The unit tracks and disposes of those cases (6T85). The data entry unit coordinates data entry and verifies documents (6T85).

173. R-33 is the strategic plan (FY 2006) for the criminal justice records bureau prepared by Lieutenant Stephen Scowcroft who was the acting caption of the bureau at the time R-33 was prepared (6T87). The goals and objectives were developed by the

unit heads and then approved by Scowcroft before being submitted to the chain of command for approval (6T87-6T88).

The State Bureau of Identification

174. Captain Bice oversees the eight units in the bureau and prepared the strategic plan, R-34, for FY 2006 (6T96-6T97; R-34). Bice determined the strategies, goals and objectives in the plan (6T98). The bureau consists of the data reduction unit, automated fingerprint identification unit, criminal justice information system control unit (CJIS), criminal information unit, records assembly unit, national instant criminal background check unit, identification records unit and expungement unit (6T94-6T95).

175. The data reduction unit creates, maintains and updates all criminal history records contained in the crime history system, that interfaces with the Administrative Office of the Court and Department of Corrections (6T98). The automated fingerprint identification unit searches, classifies and verifies all fingerprint submissions (6T98). The expungement unit handles court orders that mandate the removal of convictions from a criminal history file (6T100). The records assembly unit maintains the list of convicted sexual offenders registered pursuant to Megan's Law and operates the internet site on which the Division lists all sexual predators (6T100-6T101). The criminal information unit receives and processes all non-criminal

justice fingerprint card requests and criminal history record information requests (6T102). The identification records unit receives, reviews and forwards all incoming fingerprint cards and court documents (disposition, requests for discovery) and updates and maintains a mailing list of all criminal and non-criminal justice agencies (6T103-6T104). The CJIS control unit manages the New Jersey Criminal Justice Information System terminal. It controls the State's use of the New Jersey Wanted Persons System, National Crime Information Center files, and any law enforcement telecommunication system messages sent between law enforcement agencies (6T105). This unit updates warrants on interagency correspondence (6T104-6T105). The National Instant Criminal Background Check System unit conducts criminal background checks for all firearms purchases within the State (6T105-6T106).

Information Technology Bureau

176. The bureau is headed by Captain Beshada and consists of nine units (87 staff), all associated with information technology -- programming databases, maintaining and supporting existing programs and staffing the help desk (6T107). Beshada's authority is very similar to the other captains (6T108).

Investigations Branch

177. Lieutenant Colonel Frank Rodgers is deputy superintendent for the investigations branch, consisting of the office of operation cease fire, the office of forensic sciences,

the special investigations section and the intelligence section (5T4-5T5).

178. The Division's investigative priorities are decided at the highest levels. On February 2, 2006, Rodgers issued a document setting the priorities for the investigations bureaus, which he termed the "commander's intent" (5T69-5T70). The commander's intent set the Division's priorities: public corruption, drug trafficking networks, enhancing the Division's relationship with the Joint Terrorism Task Force (JTTF) and attacking the most violent and fear-invoking gangs (5T70-5T71). Priorities are also developed from annual assessments about organized crime, resources and executive branch priorities (5T83). Attention is also given to reports in the media (5T83).

179. A reorganization of the branch was initiated in 2005, and formalized under the Superintendent's signature on October 1, 2005 (7T24). It began in Spring 2005, when Deputy Superintendent Rodgers assembled all captains, assistant bureau chiefs, lieutenants, and inspection staff, briefed them on his objectives, and directed them to submit proposals (7T23-7T24).

180. Rodgers relied on the captains' proposals, developed collaboratively with their subordinates, to a great extent (7T24-7T25). The lieutenant colonel and his staff reviewed all of them and their suggestions formed a good part of the reorganization (7T25). The captains could not have unilaterally

implemented these plans; final authority rested with the Superintendent, who required Rodgers to personally brief the Attorney General and "it wasn't until the Attorney General approved it that the Superintendent signed off on it" (7T25).

181. Captains' discretion is limited by approvals above their level but also by the paramilitary nature of the Division.

Rodgers testified:

Q: Do Captains have authority to do any kind of reorganizing within their bureaus?

A: The Division is a very structured organization. Every entity in the Division right down to the unit has a code and all personnel actions are affected by that code. All detectives and trooper bill their hours using the codes and the Division is very strict in adhering to the use of the codes. It is like a law firm billing-time sheet system (7T26).

182. A captain has the latitude to temporarily move staff around among units to facilitate a project or investigation (7T26). Temporary is defined in an SOP as less than 30 days (7T26-7T27). If a captain moved staff around to facilitate a wiretap or something similar, he or she would not do so without the major's or executive officer's approval (7T27). In the past, before strategic planning and intelligence-led policing, captains could initiate or conduct any investigations they thought were necessary (11T58).

On at least one occasion, the Division has had to layoff employees because of budget cuts (7T59). The Superintendent

produced a list of potential employees and met with his staff and four deputy superintendents/lieutenant colonels, who assisted him in deciding where the Division could most afford to lose positions (7T58-7T59). Captains were not consulted in this process (7T58).

Office of Operation Cease Fire

183. Captain Christopher Andreychak is in charge of the Office of Cease Fire Operations (10T32). Andreychak reports directly to Lieutenant Colonel Cameron (10T42). Cease fire is a specialized office dealing with particular crimes in 14 designated cities (10T33).

184. In October 2004, then-sergeant Andreychak was asked by Colonel Fuentes to create an investigative response team in Irvington to address and close the large number of nonfatal shootings cases there (10T33-10T34). Fuentes and the police chiefs of Newark and Irvington wanted to start a task force that would mirror the Division's major crimes unit (10T34).

185. Around this time, Andreychak was attending a series of lectures at Rutgers University where he learned about a similar operation (also called cease fire) in place in other jurisdictions (10T34). A weakness in these other operations was the lack of a community outreach component (10T34). Andreychak proposed to the Colonel that the new task force should be modeled on these other cease fire operations, including community

outreach (10T34-10T35). This raised a mere shooting response team to a more sophisticated level, a New Jersey version of cease fire (10T35). Mapping the incidence of shootings in Irvington revealed that most occurred on the eastern border of Irvington and western border of Newark and Andreychak proposed that the new operation would cover a two square mile area, called the cease fire zone (10T36). Andreychak sold this better model to Colonel Fuentes (10T36). The unit became a functional State police unit on May 1, 2005. Between January and May 2005, local police officers were recruited by Andreychak (10T37). In September 2005, Andreychak became a lieutenant (10T37-10T38). In May 2006, there was a sudden increase in shootings in Trenton that concerned the Governor and Colonel and thus, Cease Fire became a statewide operation and was ultimately implemented in 14 cities (10T38).

186. In September 2006, Andreychak moved into an acting captain's position and was placed in charge of the expanded operation, reporting to a deputy superintendent (10T38-10T39). Andreychak recommended the staff needed in the program and effectively determined the staffing of the operation (10T43-10T44). Andreychak also proposed procedures and policies for the operation as early as 2005, and when the program was expanded he created the strategic plan (10T39-10T40). He prepares the budget for Cease Fire, submits it to the deputy

superintendent and after it is approved, submits it directly to the OAG for approval (10T41).

187. Andreychak does not have independent authority to hire, fire, or transfer other employees. He effectively recommends discipline and evaluates subordinates' performance, which can lead to performance notices for minor problems (10T40-10T41). In spring of 2006, Andreychak issued a performance notice about an investigator assigned to Cease Fire (10T43).

Intelligence Section

188. The intelligence section is supervised by Major William Toms; there are five bureaus in the section: intelligence management, counter terrorism and the north, south and central regional organized crime bureaus (5T22). Captain Matthew Hartigan, the section's executive officer reports to Toms (5T6). Hartigan is Tom's principal assistant, managing the section's day-to-day administrative affairs and screening all matters before they are sent to the major (5T6-5T7). Hartigan is "on top of" the activity in the five bureaus (5T7-5T8). There are 200 personnel in the section, including 30 civilian analysts and support personnel (5T8-5T9).

Intelligence Management Bureau

189. Captain William DiGiuseppe heads the intelligence management bureau, consisting of the witness relocation,

intelligence center, and the statewide intelligence management system (SIMS) units (5T22, 5T29). The witness relocation unit works closely with the United States Marshall Service to relocate witnesses and informants whose lives are in danger because of their help in the Division's handling of cases (5T25). The intelligence center unit warehouses information that local police and other members of the Division can access (5T26). The unit analyzes information in SIMS and disseminates it to state and local police (5T27-5T28). The unit searches for, analyzes and provides tactical intelligence and warning intelligence, as opposed to strategic intelligence, handled elsewhere (5T29). Anything going on around the world that would have an impact on New Jersey is monitored by the unit (5T29). SIMS is a computer database that catalogs criminal intelligence, much of which is sensitive and will lead to investigative strategies or become evidence (5T23). SIMS is regulated by Federal protocols for handling information and used by 333 local police departments (5T22-5T23). The Division provides hardware, software and training to local departments that opt into the system (5T25).

190. Captain DiGuseppe supervises 42 staff (5T46). He cannot independently determine how many staff members are in his bureau though he can request additional staff (5T32). He can recommend the allocation of employees to the units under him but cannot unilaterally allocate them (5T33-5T34). Those numbers are

set by the deputy superintendent based upon the branch's resources and priorities (5T33).

191. R-21 is the FY 2006 intelligence management bureau's strategic plan prepared by Captain DiGiuseppe after he was made aware of the Superintendent's, deputy superintendent's and major's strategic plans (5T30). The goals developed in R-21 are in line with these other strategic plans (5T31).

Counter Terrorism Bureau

192. Captain Joseph Campbell, who heads the counter terrorism bureau, also reports to Major Toms (5T54). The bureau works with the Federal Bureau of Investigation (FBI) (5T47). Everyone in the bureau except Campbell, his assistant, secretary and administrative officer are detailed to the FBI. They are paid by the State, given top secret security clearances and sworn as JTTF task force officers with the rights and authority of deputy U.S. Marshals and they report to the Assistant Special Agent in Charge at the FBI (5T47-5T48). Their equipment is issued by the FBI (5T48). The FBI controls their work through an MOU's provision that they will perform investigative functions of a classified nature under the FBI's supervision (5T53-5T55). Captain Campbell is the liaison with the Assistant Special Agent in Charge, the United States Department of Homeland Security (DHS) and the Central Intelligence Agency (CIA) (5T50-5T51).

Campbell and everyone in the chain of command above him have top secret security clearances (5T51).

193. R-23 is the strategic plan for the counter terrorism bureau, prepared by Campbell's predecessor Captain Edward Thornton (5T54).

194. The New Jersey JTTF consists of county prosecutors, transit police, port authority police and local police departments (5T57-5T58). The Superintendent is a member of the task force "board of directors" (5T59-5T60).

North, South and Central Organized Crime Control Bureaus

195. Each bureau (north, south, central) has about 60 detectives (5T76). The Major in charge meets with the three captains daily, as they are all located in headquarters (5T88). The bureaus investigate crimes and gather information on targets identified by the major's strategic intelligence group (5T85).

196. Captains may initiate an investigation of a major street gang, or a subset of a street gang, only after obtaining approval from the deputy superintendent through their major (5T84). Captains do not independently decide the targets. The goal of continuous assessment of street gangs is a branch and section level goal, as well as a bureau goal (5T85-5T86). Captains do not have authority to determine such goals independently of section and branch level goals. Captains propose the means of achieving objectives and goals but these

proposals are approved by majors and the deputy superintendent (5T86-5T87).

197. Elements of organized crime have different levels of influence in the 3 geographic areas on the state (5T77). The Division targets its efforts accordingly: the Philadelphia organized crime families have greater influence in the southern part of the state and around Atlantic City and other New York crime families have more influence in the north (5T77).

198. Captain Mark Wettengel is in charge of the central organized crime control bureau (5T67). Jeff Simpkins is captain of the south organized crime control bureau and Mark Doyle is captain of the North organized crime control bureau (5T65-5T66). These bureaus are the principal proactive enforcement bureaus responsible for investigating organized crime, gangs, narcotics, cargo theft, casino investigations and official corruption (5T67).

199. The bureaus all have organized crime and drug trafficking units and the central bureau has the statewide unit responsible for political or governmental corruption (5T68). The drug trafficking units' efforts are focused on transportation networks along the I-95 corridor in the State, targeting the wholesale shipment of controlled substances (5T71). The street gang units develops contacts and networks among each police department in their areas, to target the most violent gangs,

identifying who they are, attempting to infiltrate them, disrupting their activities, arresting and incarcerating them (5T72).

200. Captain Wettengel supervises 60 employees (5T73). R-24 is the 2006 organized crime central bureau strategic plan prepared by Wettengel (5T73-5T74; R-24). The strategies contained in R-24 were developed by Captain Wettengel and his staff and had to be consistent with the branch and the section strategic plans (5T74-5T75).

201. The north organized crime control bureau has a similar structure to the central and southern bureaus and, in addition, a cargo theft unit (5T76). The cargo theft unit's focus is on organized crime in and around the Port of Elizabeth, because it is one of the busiest container shipping ports in the world (5T76). R-25 is the strategic plan for the Organized Crime Control Bureau, South. R-26 is the Strategic plan for the Organized Crime Control Bureau, North (5T78; R-25, R-26).

Special Investigations Section

202. Major James Fallon is in charge of the section; his executive officer is Captain Thomas Alexander (7T6-7T7). Alexander has day-to-day oversight of all five bureaus, he is the number two person in charge, and all matters that get to the major are screened and handled by Alexander (7T7). There are about 250 employees in the special investigations section, 72 in

casino gaming and about 50 in each of the other bureaus (7T13). Most matters do not rise to the lieutenant colonel's level, though he receives daily briefings of the previous day's most significant events (7T7-7T8).

203. The section is comprised of the computer crimes and high technology surveillance bureau, casino gaming bureau, violent crimes bureau, applicant investigations and compliance bureau and forensic investigations bureau (7T5-7T6). The casino gaming bureau is the investigative arm of the Division of gaming enforcement in Atlantic City, where it assists in the enforcement of statutes on the casino floors (7T6).

Computer Crimes and High Technology Surveillance Bureau

204. Computer crimes and high technology surveillance is part of a network of allied law enforcement agencies (7T6). Captain Dan Kelly was in charge of the bureau until he retired in 2007 (7T14). The bureau is the Division's link to the National Center for Missing and Exploited children in Washington, D.C., and the Internet Crimes Against Children Task Force (7T16, 11T41). Through several memoranda of understanding, the bureau receives thousands of investigative referrals from the task forces (7T16). A lieutenant is the principal contact with the task forces and he decides which investigations are kept by the Division and which are referred to other agencies (7T16-7T17).

205. The bureau consists of the digital technology, electronic surveillance and cyber-crime units (R-104). The bureau investigates internet predator crimes, child sexual exploitation on the internet, internet fraud, and internet attacks on businesses (7T13-7T14). The digital technology investigations unit has about 50 detectives (7T15). It is supplemented by a task force of officers on loan from local police departments who help in the investigations (7T15).

206. The bureau works with prosecutor's offices, DAGs and U.S. Attorneys' Offices to distribute the investigations (7T16). The captain resolves issues that cannot be handled by the lieutenant (7T16-7T17, 11T41). The captain does not supervise units directly (7T17).

207. The electronic surveillance unit installs electronic surveillance ordered by a court for the majority of law enforcement agencies in the state, county prosecutors and federal agencies, except for the FBI (7T17-7T18). The unit also researches new surveillance techniques (7T17-7T18). The cyber-crimes unit investigates fraud including hacking, e-bay fraud, computer intrusions for the purpose of injuring a competitor, or violations of intellectual property rights (7T19).

208. R-37 is the strategic plan for FY 2006 for the computer crime and high technology surveillance a bureau, prepared by then-acting Captain Ken Schairer in collaboration

with all the unit heads (7T20-7T22; R-37). The plan's goals and objectives were consistent with those developed by the Superintendent and deputy superintendent (7T22). The unit was created by Deputy Superintendent Rodgers with the Superintendent's approval (7T23).

Applicant Investigation and Compliance Bureau

209. The bureau conducts background checks for various purposes and regulatory inspections (7T27-7T29). There are approximately 50 employees in the bureau, headed by Captain Ken Schairer (7T30). The bureau's strategic plan, R-38, was prepared by Schairer's predecessor (7T32; R-38). The bureau performs investigations leading to the licensing of entities that transport or dispose solid hazardous waste (7T27). The bureau conducts character investigations to insure that the principals of these companies are not engaged in, or likely to engage in, terrorism, do not have criminal backgrounds and are not associated with known criminals (7T27-7T28). The firearms investigation unit licenses firearms dealers and regulates the firearms industry in the State (7T28). The unit also performs background investigations on private detectives, security guards and those who want to become State Troopers or members of the Division (7T28).

Violent Crimes Bureau

210. The violent crimes bureau investigates complex or violent crimes. It has approximately 60 employees and is headed by Captain Mark Dietrich. Dietrich's predecessor Captain Matt Hartigan prepared the bureau's FY 2006 strategic plan (7T35, 7T37-7T38; R-39). Violent crimes encompasses the polygraph unit, auto unit, fugitive unit, major crime unit and missing persons and child exploitation unit (R-104, R-105).

Casino Investigations Bureau

211. Formerly, the casino investigations bureau was headed by a captain but is now headed by a lieutenant (11T37-11T38; R-40, R-105). The bureau is responsible to both the major in special investigations and the director of the Division of Gaming Enforcement in LPS. The Divisions cooperate in setting investigative priorities (7T49-7T51). Neither Division unilaterally determines the bureau's activities (7T51).

212. The bureau consists of several casino investigations units, a financial crimes unit and a few special investigations units. The bureau patrols and investigates crimes committed by anyone on casino floors, casino employees to ensure they are not involved in corrupt or criminal activities and money laundering (7T44). It works with the casino intelligence unit and the FBI (7T42-7T44). The casino services units handle evidence seized

from investigations (7T43). Lieutenant Robert Bratty prepared the bureau's FY 2006 strategic plan (7T45-7T48; R-40).

213. Captain Daniel Kelly was in charge of the casino gaming bureau (7T45, 11T37-11T38). Kelly implemented policy changes directed by his majors but, on his own, did not make any policy (11T39). Policies were generated from state and federal statutes and agreements (MOUs) with other agencies (11T40). Some investigations that began in the casino bureau led investigators outside the jurisdiction of the casino industry. Approval to continue these investigations was sent through the chain of command above the Captain's level (11T44).

Forensic Investigations Bureau

214. The forensic investigations bureau manages the Division's laboratory system through three regional crime scene investigations units whose detectives collect and process physical evidence (composite sketches, photography, finger prints, fibers, blood, etc.) from crime scenes (7T52; R-97, R-104). The bureau has 60 employees and is headed by Captain Harold Brigham (7T56). An evidence management unit manages moves, secures and stores all evidence gathered from the 450 arrests made each week by the Division (7T52). The unit retrieves evidence, and handles requests from the courts for evidence (7T53). The ballistics unit processes, 1,000 cases each year, test-firing every firearm seized by the Division for its

operability and to enter the shell casings into a national ballistic network that enables investigators to matches them to other crime scenes (7T53-7T54). The forensic anthropology unit extracts information from skeletons to determine victims' ages and gender. The forensics photography unit photographs crime scenes and prepares sketches and there are also three alcohol and drug testing units (7T54-7T55; R-104). R-41 and R-97, respectively, are the Bureau's 2006 and 2007 strategic plans (7T56-7T57; R-41).

Field Operations Branch

215. The field operations branch consists of the field operations section and five Troops. The branch is headed by Lieutenant Colonel Gayle Cameron (R-104). The field operations section is run by a major who supervises an executive officer (captain), a captain in charge of the criminal investigation office, and a captain in charge of the traffic bureau (11T5). The five troops provide regional police services: Troop A serves the southern geographical portion of the state. Troop A consists of eight stations and provides primary police services for several municipalities. Troop B serves the northern geographical portion of the state. Troop B provides police coverage to many municipalities and patrols several interstate and state highways. Troop C consists of six stations located in the central part of

the State. Troops D and E, respectively, patrol the New Jersey Turnpike and Garden State Highway (10T60).

216. There are approximately 1500 to 1600 troopers in field operations (11T5). A Major is the highest ranking officer in a troop (10T61, 11T5). Captains are designated as either regional troop commanders or deputy troop commanders. Every captain reports to a major; troop majors report to the section major. Captains' authority to take personnel actions such as promotions and transfers are reviewed and approved by both the major in charge of the troop and the major in charge of the section (11T6). Captains' authority to purchase equipment and supplies goes through the chain of command (11T6).

217. Troops' strategic plans are prepared by Majors (10T61-10T62). The process starts with the Superintendent's office issuing its strategic plan, outlining where the Division is going next year (11T13). Then the Field Operations Lieutenant Colonel -- the Branch Commander -- issues a strategic plan containing the branch's goals and objective (11T13). This is sent to Field operations section that will issue a section strategic plan (11T13). Then the individual Troops' majors develop strategic plans from input from their staff officers, captains and the station commanders (11T13-11T14). The troop commander, a major, is ultimately responsible for the goals and objectives in the strategic plan (11T14).

218. About ten years ago the Division's budget preparation was centralized by the administration branch (5T19-5T20). Since then, sections and troops no longer prepare budgets and "in fact have very little to say about their budgets." (5T20).

219. All five troops are staffed with lieutenants who report directly to the troop major and serve as the troop's liaison with the office of professional standards (OPS). All other lieutenants in the troop report to the Captain (10T15, 10T54). These "Integrity officers" investigate complaints about trooper attitude and conduct by checking data systems, recorders in vehicles interviewing troopers to determine whether further action is warranted (10T6, 10T8-10T9). Integrity officers' recommendations include misconduct investigation, performance investigation or no further action (10T6).

220. Jordan Maskowitz is a lieutenant assigned as the Troop D integrity officer (10T5-10T6). Maskowitz' recommendations are sent to OPS, which will agree or make an independent determination (10T7). OPS keeps misconduct investigations (10T8). Others are sent back to Maskowitz for further action or to follow up (10T8).

221. Maskowitz has held two first-step grievance hearings (10T10). In both instances he scheduled the hearing, asked questions, and filed a report containing findings and disciplinary recommendations with the office of labor relations

(10T10-10T12). Maskowitz' recommendations (on the grievance hearings) came back directly from the Colonel's office -- in one case he was upheld, in the other he was reversed (10T12-10T13).

222. If a complaint is a more serious type of misconduct issue, Maskowitz will discuss his recommendation with the major before the recommendation goes to OPS; often in less serious cases, he initials the recommendation for the major who has confidence in his judgments (10T17-10T19). The major is aware of every complaint and of Maskowitz' findings and recommendations (10T19-10T20). He gives her weekly reports of what comes in and what their recommendations are (10T19-10T20). In the design of Maskowitz' position, the major decided that Maskowitz would be the troop grievance officer (10T21-10T24). He does not consult with either a captain or major before making his recommendations on grievances; he has discretion to make findings (10T23-10T24).

223. Captain Annemarie DeAngelo has been a deputy troop commander in Troop D, and regional commander in Troop C (10T59). As deputy troop commander and regional troop commander Captain DeAngelo was the liaison between the major in charge of the troop and the station commanders and supervised six lieutenants (10T62). She brought issues raised at the three stations under her supervision to the major with recommendations as to how they should be handled and the major decided how to handle them (10T62-10T63).

224. As a deputy troop commander, DeAngelo did not have a role in hiring or firing any of the lieutenants or civilians (10T54-10T55). She issued reprimands as a directive for the Superintendent's office (10T55). She had a limited role in promotions, did not handle grievances or prepare a budget (10T55).

225. DeAngelo can initiate discipline of a lower ranking or any rank officer; an SOP obligates all troopers and superior officers to initiate a report upon observing or learning about another's violation of a rule or policy (10T71).

226. DeAngelo has participated in the Division's promotional process by convening with other Captains and lieutenants to advocate for and discuss the qualifications of lower ranking troopers in order to reach a consensus and make a collective recommendation through the submission of a ranked list of candidates to be sent through the chain of command (10T71). She is also familiar with the recruitment unit's process of screening, interviewing and testing trooper candidates, though she has never played a role in it (10T72).

227. In 1985, when she was a road trooper stationed at Bordentown, DeAngelo initiated a proposal to establish a canine program in the Division (10T72-10T73). She was certified by the canine academy and then worked with narcotics detectives when the canine program was first established as a squad in the

investigations section (10T73, 10T76). The station commander, a captain, could have decided not to forward the idea any further (10T75).

228. In 2000, the canine program became a unit in field operations and DeAngelo was promoted to sergeant first class as the unit head (10T74). When the program became a unit, DeAngelo drafted the initial canine unit policies and SOPs (10T74, 10T76, 10T57). As with all SOPs, these were sent through the chain of command to be approved by the Colonel (10T77).

229. A captain in field operations can investigate or initiate a program or idea but it will be vetted and may be modified by the troop commander (a major) to make sure it fits in with the troop's goals and strategic plan objectives, and then through the Field operations section executive officer and major (11T6-11T7). Thus, captains in field operations make their recommendations, subject to review and approval by another captain and two majors before proceeding to the branch lieutenant colonel (11T7).

230. Any direct contact between captains in field operations and the Superintendent is task-related; captains mostly go through their troop commanders and section majors and have very sporadic interaction with the Superintendent (11T18-11T19). Captains in field operations do not meet regularly with the Superintendent (10T65).

231. Troop commanders (majors) attend monthly command staff meetings along with the Superintendent, lieutenant colonel, deputy superintendent, captain in the office of state police affairs, captain in the office of strategic initiatives and captain in the recruiting bureau captain (11T15-11T18).

232. In field operations, captains do not impose discipline; any disciplinary recommendations go to the OPS through an integrity officer or troop commander (11T7).

Homeland Security Branch

233. The homeland security branch consists of the emergency management section and special operations section, both headed by majors. Lieutenant Colonel Drew Leib is in charge of the branch (R-104). Reporting to Leib are Major Richard Arroyo, in charge of the emergency management section and Major John D. Hunt, in charge of the special operations section.

234. Reporting to Hunt are the executive officer, Captain Annemarie DeAngelo, and through DeAngelo are Captain Edward Centar in charge of the technical response bureau, Captain James O'Neil in charge of the State governmental security bureau, Captain Christopher Simmermon, in charge of the marine services bureau, and Captain John McKevitt, bureau chief of the aviation bureau.

235. Reporting to Major Arroyo through executive officer Captain Jerome Hatfield are Captain Kenneth McCarthy, in charge

of the emergency preparedness bureau and Captain Joseph Hines, in charge of the recovery bureau.

236. These captains have limited authority over staffing, personnel, promotional, disciplinary, purchasing, financial and budgetary policies because of the centralized administration of these matters. No evidence suggests that they participate in managerial level meetings with greater frequency than do the captains in the field operations branch. They prepare strategic plans but no evidence suggests that they can independently create policies or reorganize their bureaus without higher level approval.

Analysis

The Captains' Association seeks to represent all state police captains but the Division opposes the petition, asserting that all captains are either managerial executives or confidential employees within the meaning of the Act and ineligible to form a negotiations unit. For the reasons below, I recommend the Commission find that the Captains Association seeks an appropriate negotiations unit, except for those captains who are managerial executives, confidential employees or would be in a conflict of interest with other captains.

Article I, ¶19 of the New Jersey Constitution guarantees public employees the right to organize and to choose a representative to present their proposals and grievances. The

Act implements this guarantee by entitling the public employees it covers 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). The Legislature sought to promote the public interest in labor relations stability and to improve morale and efficiency by granting employees a means of access to their employer over those working conditions intimately and directly affecting them, most notably their compensation.

Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980); West Windsor Tp. v. P.E.R.C., 78 N.J. 98, 113-114 (1978). The Legislature, however, also determined that an employer's interests in determining governmental and managerial policies without negotiations and the risk of divided loyalties in decision-making justified restricting negotiations over proposals or grievances that would significantly interfere with governmental policymaking; requiring that supervisors be placed in negotiations units apart from the employees they supervise; and excluding some employees from the Act's protections altogether.^{9/} The Legislature thus chose to protect both the interests of employees in negotiating over their own pay and working conditions and the interests of governmental

9/ N.J.S.A. 34:13A-3e; Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 163 (1978); West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971).

employers in not having their policymaking deliberations compromised by divided loyalties.

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" The only exclusions from the definition of "public employee" are "elected officials, members of boards and commissions, managerial executives and confidential employees."

The Act permits supervisors to organize. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-6(d).^{10/} The only exclusions from the definition are elected officials, members of boards and commissions, managerial executives and confidential employees. By permitting supervisors to organize, the Legislature accepted the view that employees can negotiate over their own wages and working conditions without being disloyal in carrying out their supervisory responsibilities.^{11/}

"Managerial executives" are excluded from the Act's coverage. N.J.S.A. 34:13A-3(f) defines "managerial executives" as:

persons who formulate management policies and practices, and persons who are charged with

^{10/} Supervisors are defined as employees "having the power to hire, discharge, discipline or to effectively recommend the same." N.J.S.A. 34:13A-5.3.

^{11/} See Packard Motor Car Co. v. NLRB, 330 U.S. 485, 19 LRRM 2397, 2399 (1947).

the responsibility of directing the effectuation of such management policies and practices . . .

Our Supreme Court examined this exclusion in New Jersey Turnpike Auth. and AFSCME Council 73, 150 N.J. 331 (1997) (Turnpike Authority). That case partially modified, but otherwise approved standards set forth in Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1981).

The Montvale standards had provided:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. [Turnpike Authority at 337.] [Emphasis added].

The Supreme Court concluded that the underlined requirement was unduly restrictive, especially as applied to large organizations in which some managers might not possess "organization-wide power" yet still have "significant power,

discretion and influence within their own departments." Excising that requirement, the Supreme Court approved these revised standards:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.
[Turnpike Authority at 356.]

While holding that a managerial executive need not possess organization-wide power, the Supreme Court also rejected portions of the lower court's opinion that would have expanded the managerial executive definition to exclude all employees above first-line supervisors and to adopt the private sector exclusion of all managerial employees who effectuate managerial policies. The Supreme Court reasoned that the problem of divided loyalties is of less concern in the public sector than in the private sector because public employees do not have a right to strike; public employees have a much narrower scope of negotiations; public employers are not seeking to maximize profits; and public

employers and public employees share a stronger common interest in the mission of the organization. The Court emphasized that the Legislature had rejected a managerial executive definition, proposed by Governor Cahill, that would have excluded persons "effectuating and making operative" management policies and practices and had instead confined that part of the exclusion to persons "directing the effectuation" of such policies and practices."^{12/} The Court concluded that "directing the effectuation" connotes a higher level of authority than does "effectuating and making operative." Id. at 355.

Under Turnpike Authority, the line between managerial executives and lower-level employees must be located case-by-case. The analysis in each instance will focus on the weight and interplay of multiple factors such as the employee's position in the hierarchy, functions and responsibilities, and extent of discretion. The goal is to determine whether the employee has the authority and accountability of a managerial executive to formulate or direct the effectuation of management policies and practices.

^{12/} The Legislature simultaneously rejected several other proposals of Governor Cahill that would have contracted organizational rights to match the private sector model he favored. Those proposals included denying representation to supervisors; deleting the limitation of the managerial executive exclusion in the school board context to superintendent-level employees; and continuing to automatically deny representation to all heads and deputy heads of departments and agencies.

Applying the Turnpike Authority standards to a dispute over State section chiefs in the NJ Department of Environmental Protection (DEP), the Commission observed in NJ State (DEP-Section Chiefs), P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998), recon. den. P.E.R.C. No. 2000-34, 25 NJPER 461 (¶30200 1999):

An employee need not be at the top of an organization to be a managerial executive. But the higher an employee is in the hierarchy and the fewer levels of decisional review, the more likely it is that the employee has authority to formulate or direct the effectuation of management policies and practices. In examining the hierarchy, we will also consider the number and positions of employees reporting to an employee asserted to be a managerial executive; the more employees who report to a person and the higher and broader range of positions they hold, the more likely it is that the person has managerial executive status.

And we will consider the extent to which an employee regularly participates in management-level committees convened to discuss and adopt managerial policies and strategies. Compare County of Rensselaer (Hudson Valley Community College), 18 N.Y. PERB 3001 (¶3001 1985) (Director of Learning Resources who participated in weekly meetings of college deans and served in president's cabinet formulated policy).

We finally repeat that the Legislature contemplated the possibility that some employees holding managerial titles would be eligible for representation when it limited the managerial executive exclusion in the school board context to superintendent-level employees and when it limited that exclusion in other contexts to employees who formulate policies and practices or direct their effectuation. Thus, merely holding a

managerial title in the employer's hierarchy does not make one a managerial executive.

[Id. at 52]

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

. . . whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.

The Commission has narrowly construed the term confidential employee. The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes and whether his or her responsibilities would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee were included in a negotiations unit. Turnpike Authority; State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER at 510 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985).

Under N.J.S.A. 34:13A-5.3, supervisors have the right to negotiate collectively, except that N.J.S.A. 34:13A-5.3 and 6(d) prohibit new negotiations units of supervisors and nonsupervisors. In West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971) (Wilton), the Supreme Court has also determined that where "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," then a unit which includes all supervisors is not appropriate.

The Act promotes broad horizontal units. Thus, the Courts have sanctioned employer-wide units, even if it means having one unit for all professional employees throughout the State. State v. Prof. Ass'n of N.J. (Dept. of Ed.), 64 N.J. 231 (1974). But the Act does not promote deep vertical units that foster supervisory conflicts of interest. It specifically precludes units of supervisors and non-supervisors. And Wilton prohibits conflicts of interest between supervisors in the same unit.

Because this is a petition for a new unit, any determination that there is a potential for a conflict of interest between captains will not disturb an existing unit structure and destabilize labor-management relations. Contrast Town of Harrison, P.E.R.C. No. 93-104, 19 NJPER 268 (¶24134 1993).
Executive Officers

Nine captains serve as executive officers, reporting directly to and assisting majors in the management of sections, and forming another layer in the hierarchy between majors and other captains. Executive officers screen and resolve issues, many raised by captains, before they are presented to majors. Executive officers have a say in what goes into strategic plans and participate in management sessions where performance is evaluated. Executive officers carry out administrative

functions, speak for majors and act as majors in their absences. The structure that has developed in the Division has essentially created a higher level of authority/rank for executive officers than other captains and invested those executive officers with the responsibility to direct other captains and approve or disapprove their requests. Their greater authority thus reduces their community of interest with other captains. This is especially so because the strict adherence to the chain of command, characteristic of police organizations, reinforces superior-subordinate relationships. Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987) (West New York), South Plainfield, D.R. No. 78-18, 3 NJPER 349 (1977) Union City, P.E.R.C. No. 71 (1972). Generally, it is inappropriate to include supervisors who have authority over other supervisors in the same negotiations unit. Wilton. While no actual conflict of interest connected with the collective negotiations process has been demonstrated regarding executive officers, I conclude that the potential for a substantial conflict of interest between executive officers and other captains is heightened, especially given the paramilitary structure of the Division. Because of the potential for a substantial conflict of interest, the nine

executive officer positions should be excluded from the proposed unit.^{13/}

Office of the Superintendent, Chief of Staff and Office of Professional Standards

The Captain assigned to the Superintendent's Office and Attorney General's Office of State Police Affairs, Captain Christopher O'Shea is a managerial executive. O'Shea serves as a liaison between the Division and the Office of Attorney General and participates in meetings with the highest officials in both organizations. He attends the Superintendent's daily meetings and I infer that he contributes to the formulation of many fundamental managerial policies; his position at the top of the Division is significant in this determination. This captain's position at the highest level of the Division, role as Superintendent's liaison with the OAG and attendance at managerial meetings make his position incompatible with membership in an organization for collective negotiations. I recommend that the position be excluded from the petitioned-for unit.

Captain Albert Della Fave, the captain in charge of the Office of Public Information, regularly reports directly to Superintendent Fuentes and Lieutenant Colonel Gilbert. They rely

^{13/} Having found that executive officers should be excluded from the unit because of a Wilton conflict, it is unnecessary to decide whether they are managerial executives within the meaning of the Act.

on his judgments about all public information issues. He also works collaboratively with personnel in the Attorney General's and Governor's offices on press releases and other announcements. He functions relatively independently of the Major to whom he reports and has significant authority over the public information function, including decision-making authority over the Division's policies, content, form and timing of the release of information. He designed and oversees a Division-wide decentralized media relations program. Based on his formulation of public information policies and position in the hierarchy, I recommend that Captain Della Fave's position is a managerial executive and inappropriate for inclusion in the petitioned-for unit.

The captain in charge of the office of strategic initiatives, formerly Captain Roselle, oversees the production of information used by higher level managers to evaluate the performance of sections, bureaus and units and to formulate new approaches to the Division's responses to crime. This information also facilitates the federal government's monitoring of the Division under the 1999 consent decree. He oversees a key database system and has formulated the policies and SOPs for its use. The data produced under Captain Roselle's direction facilitates monthly management accountability conferences (MACs) and tracks individual performance and employment. The information that Roselle provides can go into individual

evaluations and is used to develop new projects. The captain represents the chief of staff to other Division personnel in following through on tasks identified at the MACs. This role creates for him the potential for a substantial conflict of interest with other captains. Wilton, West New York , Union City. His position in the hierarchy and formulation of technology policies also makes this position a managerial executive within the meaning of the Act. The combined potential for substantial conflict of interest with other captains and managerial executive authority make this position inappropriate for inclusion in the proposed negotiations unit.

The captain in charge of the office of recruiting and equal employment opportunity has a very significant role in the formulation of the Division's hiring, recruiting and testing policies and the Division's implementation of the consent decree. He reports directly to the chief of staff who needs the undivided loyalty of this executive captain to fulfill the Division's policy needs. Accordingly, I recommend that this captain is a managerial executive and ineligible for inclusion in the proposed unit.

In the office of professional standards, the two captains in charge of the intake and adjudication and investigations bureaus are confidential employees and ineligible for membership in the petitioned-for unit.

The captain in intake and adjudication independently classifies internal investigations and is aware of proposed discipline of any employee before the Superintendent decides whether to go along with the recommended discipline and penalty. The staff inspection unit conducts reviews of Division entities where it learns of non-compliance with policies, procedures and deadlines that could lead to discipline. The captain's functional knowledge of and responsibilities with regard to potential discipline place him in a position of potential substantial conflict between the performance of his duties and loyalty to these obligations and his membership in any negotiations unit represented by an organization whose role would include negotiating for and defending provisions governing disciplinary actions and appealing discipline. Therefore, I conclude that this captain is a confidential employee within the meaning of the Act and should be excluded from the proposed unit. Turnpike Authority; N.J.S.A. 34:13A-3(g).

The captain in charge of the investigations bureau recommends whether discipline is warranted based on investigative findings. Accordingly, he has significant influence on the Division's progressive discipline policy; his recommendations are mainly ratified by his major, the chief of staff and Superintendent. His recommendation for discipline must be based on precedent and thus, he implements two important aspects of

Division policy -- progressive discipline and consistency with past disciplinary actions.

Both of the OPS captains are aware of and participate in decisions about potential discipline before decisions are disclosed to affected employees or their union representatives. Their duties place them in a conflict of interest incompatible with membership in any collective negotiations unit. These captains are confidential employees within the meaning of the Act and should be excluded from the proposed unit. Turnpike Authority; N.J.S.A. 34:13A-3 (g).^{14/}

Administration Branch

Administration Section

I recommend that the Commission find that four of the five captains in the administration branch are managerial executives.^{15/} The Commission has previously observed:

We also note that the statutory definition of managerial executive does not require that an employee be responsible for formulating or directing the effectuation of labor relations policies. Compare Bell Aerospace (rejecting NLRB's adoption of such a test). But in applying the statutory definition, we believe it is proper to keep in mind the competing legislative concerns: the Legislature saw

^{14/} Having decided that the captains of intake and adjudication and investigations are confidential employees, it is not necessary to decide whether they are also managerial executives within the meaning of the Act.

^{15/} The planning bureau is now headed by a lieutenant, a title that is not sought by this petition.

both a public interest in permitting a broad range of public employees to organize and negotiate over their own terms and conditions of employment and a public need to deny representational rights to managerial executives because of a concern about divided loyalties. The more power employees have over labor relations and personnel policies and such key matters as staffing, budgeting and financial determinations, the greater the concern about potential divided loyalties and the more likely it is we will find an employee to be a managerial executive. (Emphasis added)
[Id. at 59.]

The captains in charge of the budget operations, fiscal control, grants administration and logistics bureaus in the administration section are managerial executives and ineligible for inclusion in the proposed unit. All of these captains formulate or recommend policies concerning the Division's acquisition, accounting, budgeting and spending of funds and property.

Higher levels of review have the authority to approve the budget and spending plans but to a large extent the captains in budget operations, fiscal control and grants administration develop the budget and spending documents, determine the practices and influence the policies governing the Division's budget. In State of New Jersey (DEP section chiefs), section chiefs were not managerial executives where they did not attend any of the meetings held by assistant commissioners, division directors, assistant directors and bureau chiefs to formulate

budgets, discuss budget initiatives, fiscal account balances, financial difficulties, and administrative items such as salary increases. In contrast, the captains in the Division's fiscal control and budget operations bureaus regularly take the lead in addressing these matters and regularly discuss them with higher ranks.

The logistics bureau captain assists in the formulation of policies concerning the acquisition and control of all of the Division's equipment, supplies, facilities, leases and vehicles. The captain in grants administration oversees and ensures the integrity of many large scale grants programs, totaling \$475 million.

These four captains are near the top of the Division's managerial hierarchy with only three or four levels to the Superintendent and administrator in LPS. Their responsibilities are closely linked to the Division's management and control of funds and property. They are in positions of recommending budgetary or fiscal policies and priorities and their recommendations carry weight. It is foreseeable that these priorities will conflict with the Association's salary or benefit objectives. Accordingly, because of their positions in the hierarchy, the nature of their duties and responsibilities and the potential for divided loyalties, they are managerial executives and may not be included in the unit.

Human Resources Section

I recommend that two captains in this section should be excluded from the unit.^{16/} The captain in charge of the human resources management bureau oversees the Division's personnel, labor relations and benefits units. These units monitor employees on extended leaves for compliance with conditions for such leaves, administer random drug tests, investigate and determine discipline of civilian employees, handle grievances, including guiding and interpreting various collective negotiations agreements for the Division. Because of these duties, the captain has "functional responsibilities or knowledge in connection with issues involved in the collective negotiations process," and his inclusion in the petitioned-for unit is incompatible with these duties. He is a confidential employee within the meaning of the Act and I recommend he be excluded from the proposed unit. N.J.S.A. 34:13A-3(g).

The captain in charge of the employee services bureau, Captain Patrick Walker, oversees promotional processes, career counseling, and an organizational analysis unit. Those higher in the chain of command give much weight to his recommendations. Certain promotional procedures are negotiable.^{17/} Because of his

^{16/} The training bureau is now headed by a lieutenant, a title that is not sought by the petition.

^{17/} A wide range of promotional procedures have been held
(continued...)

role in developing and refining the Division's promotional process, he will be aware of the Division's objectives and strategies regarding those mandatorily negotiable aspects of promotions prior to their disclosure to any collective negotiations representative. These duties place this position in a conflict of interest that is characteristic of confidential employee status. Accordingly, this captain is a confidential employee within the Act's definition and ineligible for inclusion in the proposed unit.

Identification and Information Technology Section

The three captains in the identification and information technology section are not managerial executives or confidential employees and should be included in the petitioned-for unit. The captain in the criminal justice records bureau oversees the Division's collection, classification and analysis of key crime reports, technical systems support of troopers, provision of court discovery requests, interface with court databases and maintenance of the database and data processing systems. The captain in the State bureau of identification oversees the

17/ (...continued)
mandatorily negotiable. See, State v. State Supervisory Employees Ass'n., 78 N.J. 54, 90-91 (1978), Department of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981), Tp. of Piscataway and Piscataway Tp. PBA Local 93, P.E.R.C. No. 2005-79, 31 NJPER 176 (¶71 2005), aff'd 32 NJPER 417 (¶172 App. Div. 2006), NJIT, P.E.R.C. No.97-065, 23 NJPER 26 (¶28019 1996).

automated fingerprint identification, criminal justice information systems unit, criminal information unit, records assembly unit, national instant criminal background check unit and identification records and expungement units. The captain in charge of the information technology bureau oversees units responsible for programming databases, maintaining and supporting existing programs and staffing the help desk. These captains do not have input into the Division's budget, cannot hire, or terminate other employees and have limited ability to transfer or reassign personnel. They effectuate and supervise others' implementation of information and technology policies in relatively important but limited areas of the Division's operations but do not formulate fundamental management policies. The evidence does not support the existence of a risk of divided loyalties between their duties and their ability to negotiate over their terms and conditions of employment. No evidence suggests that they are confidential employees. Accordingly, I recommend that their positions be included in the proposed unit.

Investigations Branch

Operation Cease Fire

Captain Andreychak, in charge of operation cease fire, is a managerial executive. He reports to a deputy superintendent and is only two steps from the Superintendent. Andreychak initiated and shaped the cease fire operation and promoted it to the

Superintendent. He effectively determined the program's staffing, policies, procedures and he prepares the operational budget before it is approved by others. Andreychak is similar to the REACH program coordinator in Gloucester Cty., P.E.R.C. No. 90-036, 15 NJPER 624 (¶20261 1989), who centrally managed the implementation and operation of the REACH program, wrote the REACH plan, made the policy choices behind it, developed the department's budget and supervised the staff. Like the REACH coordinator, Andreychak "appears to have the status, responsibility and discretion to be classified as a managerial executive." The fact that operation cease fire's impact on the Division's overall operation is limited does not disqualify him from being a managerial executive. The Commission stated: "What [matters] is whether the employee is really deciding how to accomplish a governmental mission." Gloucester Cty. at 626. Andreychak is the person responsible for the cease fire operation in New Jersey. Accordingly, the captain in charge of the office of operation cease fire is a managerial executive and is not eligible to be included in the petitioned-for unit.

Intelligence Section

The captains^{18/} in the intelligence section are not managerial executives or confidential employees. The captains in

^{18/} I have already recommended that the captain serving as executive officer should be excluded from the unit.

the intelligence management^{19/} and counter terrorism bureaus oversee very important, high level intelligence experts and federal investigators, however, these duties do not rise from high level supervisory status into the managerial executive category. The evidence does not support a finding that they determined the policies for these bureaus apart from approvals by their major, the branch's deputy superintendent and the Superintendent. The captains in the intelligence management and counter terrorism bureaus have limited discretion and independence from those ranks above them. They cannot hire, promote, or deploy staff without the Major's approval and have no role in determining the budget. Most of the enlisted employees in the counter terrorism bureau report to an FBI special agent.

The captains in charge of the regional organized crime bureaus^{20/} have very high level supervisory responsibilities over segments of the Division that are relatively narrow and there is no evidence that they formulate or determine the policies for these bureaus, apart from the three levels of approval above them. Like most other captains in the Division, they have no role in the formulation of the budget and limited authority about

19/ As of October 2007, the position in charge of the intelligence management bureau is a lieutenant (R-104). Lieutenants are not at issue in this petition.

20/ The position in charge of the Organized Crime Control Bureau North appears to be a lieutenant (R-104) and not subject to the petition.

staffing levels. Discipline, hiring and deployment decisions must be cleared by their superiors. Nothing in the record suggests that the ability of these captains to be represented for negotiations with the Division over their terms and conditions of employment (wages, hours, benefits) would conflict with their duties to accomplish their missions. I recommend that these four captains -- intelligence management, counter terrorism, central and south regional organized crime bureaus - are eligible to be included in the proposed negotiations unit.

Special Investigations Section

The four captains in the special investigations section are not managerial executives within the meaning of the Act.^{21/} These captains have the same positions in the hierarchy as most other captains. They report to their major through an executive officer and important decisions are reviewed and approved by the deputy superintendent and Superintendent. Matters such as purchasing, hiring, promotions and changes to their standard operating procedures are reviewed and approved through their branch's chain of command and the administration branch's chain of command. They have no role in the Division's budget. They participated in the deputy superintendent's reorganization in 2005, and their recommendations were given weight, but subject to

^{21/} The head of the casino gaming bureau is now a lieutenant (R-104).

his and the Superintendent's approval, and they did not have authority to override or independently effect a reorganization. Many of these bureaus' policies, practices and procedures are codified in Memoranda of Understanding, SOPs, IOs, forensic protocols and a myriad of federal and state statutes and regulations. Their authority to formulate management policies and discretion is thereby limited. These positions effectuate and make operative policies through their supervision and oversight of the investigative units. The significant authority in this section rests with the managerial layers above them and is circumscribed by many existing policies and procedures. I recommend that the captains in the forensic investigations, violent crimes, computer crimes/high technology and applicant investigations bureaus are not managerial executives within the meaning of the Act and should be included in the proposed unit.

Field Operations

I recommend that the Commission find that the captains in the field operations section, Office of Criminal Investigations, Office of Division Operations and Operations Safety Bureau are not managerial executives because no evidence in the record supports their having proposed or directed the establishment of any policies.

I recommend that the nine captains in the five roadway and patrol troops, Troops A, B, C, D and E are not managerial

executives and may seek representation for collective negotiations over their terms and conditions of employment. These captains report to a major who reports to another major, who reports to the deputy superintendent for field operations. Thus, they are lower in the hierarchy than their counterparts in the other branches. None of these captains have division-wide areas of responsibility and many have jurisdiction over a specific geographical area. For promotions, transfers and other personnel actions, their authority is diffuse and limited by the authority of the majors above them. This limitation is seen in the Division's current system of ranking promotional candidates by consensus, and the fact that these captains cannot even effectively veto a candidate for promotion. They have no role in the preparation of the budget. The Troop integrity officers and the office of professional standards play a more significant role than do captains in effectively recommending disciplinary actions to be approved by the Superintendent. No evidence suggests these captains have initiated and effectively determined policy. As with many other captains, their authority is circumscribed by the hundreds of SOPs, IOs, rules and statutes and the limits on discretion inherent in a quasi-military working environment. Thus, I recommend that these captains may be included in the proposed negotiations unit.

Homeland Security Branch

No facts in this record suggest that the captains in the homeland security branch are managerial executives or confidential employees. They do not appear to be high enough in the hierarchy in their limited participation in management meetings, they have limited authority over particular segments of the Division but do not have discretion over staffing, budgeting and disciplinary policies. Thus, they do not direct the formulation of policy and are not managerial executives. I recommend that they are eligible to be included in the petitioned-for unit.

The State argues that captains are managerial executives in part because of their role in strategic planning. Quoting Montvale, the State argues that "any employee who is charged with developing the method, means and extent of reaching a policy objective and . . . oversees or coordinates policy implementation by line supervisors" is a managerial executive. However, the Supreme Court followed this statement with one requiring us to look at the employee's position in the hierarchy, functions and responsibilities and extent of discretion exercised by the employee. Montvale at 508-509.

In recommending that certain captains are managerial executives, I did not rely on their role in strategic planning. The captains' discretion in that role is limited by approvals,

disapprovals and modifications by their superiors and by the fact that strategic planning is a top-down process requiring captains' plans to conform to those generated by majors, lieutenant colonels, deputy superintendents and the Superintendent. Captains' choices of the methods or means in strategic planning is subject to approval by the ranks above them.

The extent to which a captain exercises discretion in developing plan strategies depends upon the specificity in the major's strategic plan. (See facts #21 and 25). In some bureaus, strategies do not change very much over time. Most captains in the field operations branch do not even prepare strategic plans. I found that determining strategies for accomplishing goals are not equivalent to formulating policy. Policies underlie the content of the Division's strategic plans and are embedded within them. The primary purpose of strategic planning is to organize the Division's goals and objectives. The evidence here does not support a conclusion that captains are managerial executives solely because of their role in the Division's strategic planning process.

The State also argues that we should treat all captains the same because they move among a variety of positions frequently. The Division does not regularly rotate captains among positions for training purposes. In the investigations branch, there is

some evidence that captains remain in their positions for the majority of their careers (fact #40).

By giving public employees the right to organize for collective negotiations and limiting the exceptions (managerial executives, confidential employees, etc.), I believe the Legislature did not intend to exclude employees from the rights guaranteed by the Act because other employees in the same title or rank exercise other duties, exempting them from the Act's protections. The Court in N.J. Turnpike reiterated that we consider claims of managerial executive status on a case-by-case basis and I found that all captains should not be treated the same. The facts show that several captains are managerial executives, confidential employees or their inclusion in the captains unit creates a conflict of interest. I also found that other captains do not exercise the level of authority nor have duties in connection with collective negotiations processes that warrant excluding them from an appropriate unit. In my view, these recommendations are in keeping with the Court's mandate to assess asserted exemptions on a thorough case-by-case analysis of the relevant facts.

The Captains Association argues that captains are not responsible for the establishment of the policies, goals and objectives of the Division and do not prepare strategic plans independently of all other ranks. The Captains Association

argues that the paramilitary hierarchy limits the authority of captains and requires them to seek approval by their superiors before making major decisions.

The Association also argues that captains may run bureaus and act as deputy and regional troop commanders for day-to-day decisions but do not make, change, implement or adopt policy. The Association asserts that the Division's standard operating procedures further circumscribe and limit the captains' policy and decision-making authority. The Association points out that other agencies dictate many of the Division's policies, further restricting the captains' decision-making authority, especially the Office of the Attorney General, LPS Division of Gaming Enforcement, the federal government, FBI, Joint Terrorism Task Force and other task forces through many memoranda of understanding.

The Captains Association also argues that captains are not managerial executives because they have no authority to devise a budget, limited authority to make expenditures, have no authority to hire, fire or lay off personnel, approve transfers or reassign personnel, have no authority to promote personnel, play a limited role in the disciplinary process, play no role in the collective negotiations process and only a limited role in the grievance procedure.

I considered these arguments and agree with the Association, particularly as to many captains in the information technology section, investigations branch, field operations branch and homeland security branch. However, I found captains in the Superintendent's office, chief of staff's office, office of professional standards and several sections in the administration branch are either managerial executives, confidential employees or their inclusion in the unit creates Wilton conflict of interest because they exercise significant authority or influence over the Division's budget, fiscal control, property management, purchasing, grants management, recruiting and equal opportunity programs, internal affairs, discipline, hiring and promotions. Accordingly, I recommend that these captains be excluded from the proposed unit.

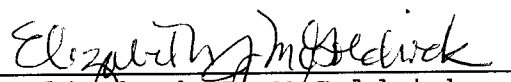
RECOMMENDATION

I recommend the Commission find that the New Jersey State Troopers Captains Association has petitioned for an appropriate higher level supervisory unit, but that several individual captains positions should be excluded from the unit because they are either managerial executives, confidential employees or their inclusion would create a conflict of interest. Accordingly, I recommend that the Commission order that the petition be processed to determine whether a majority wish to be represented

for purposes of collective negotiations by the New Jersey State Troopers Captains Association. The appropriate unit is:

Included: All captains employed by the Division of State Police, including but not limited to the captains in the Identification and Information Technology Section (Administration Branch); Intelligence Services Section (Investigations Branch), Investigations Section (Investigations Branch); Field Operations Section, Troops A, B, C, D and E and Homeland Security Branch.

Excluded: Managerial executives, confidential employees, non-supervisory employees, non-police civilian employees, captains serving as section executive officers, captains in the following offices and bureaus: Office of State Police Affairs, Regional Operations and Intelligence Center Task Force, Office of Strategic Initiatives, Office of Public Information, Office of Recruiting and EEO, Internal Affairs Investigation Bureau (OPS), Internal Affairs Intake and Adjudication Bureau (OPS), Fiscal Control Bureau, Budget Operations Bureau, Grants Administration Bureau, Logistics Bureau; Human Resources Management Bureau, Employee Services Bureau, Office of Operation Cease Fire, all personnel represented in other negotiations units, lieutenants, sergeants first class, sergeants, detectives, and all troopers.


Elizabeth J. McGoldrick
Hearing Officer

DATED: October 30, 2008
Trenton, New Jersey

Pursuant to N.J.A.C. 19:11-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:11-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:11-7.4(c).

Any exceptions are due by November 10, 2008.