

D.R. NO. 2024-3

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

Docket No. CU-2022-007

JNESO DISTRICT COUNCIL 1
IUOE, AFL-CIO

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by JNESO District Council 1, IUOE, AFL-CIO (JNESO) seeking a determination that employees in the titles of Supervisor of Clinic Nurses (SCN) and Senior Practical Nurse (SPN) employed by the City of Newark are included in its negotiations unit described in its collective negotiations agreement (CNA) as including employees in specific nursing titles. The City argued that the SCNs are managerial executives and/or would create a substantial supervisory conflict of interest in the unit. The City also argued that the SCNs and the SPNs do not fall within the parties' CNA recognition provision and do not perform unit work and/or have sufficient community of interest, in part (with respect to the SPNs) because they are Licensed Practical Nurses (LPN) and not Registered Nurses (RN) like the existing unit members.

The Director found that the SCNs and SPNs share a general community of interest with the unit and perform unit work even though their titles were not previously included in the CNA recognition provision. However, the Director found that SPNs, as LPNs, were not professional employees and were inappropriate for inclusion in the existing unit which currently consists only of professional RNs, because no evidence was presented showing that the professional employees had yet voted to include non-professional employees as required by N.J.S.A. 34:13A-6(d).

The Director found that the City did not establish that SCNs have the necessary discretion without independent analysis from others to establish managerial executive status or a substantial supervisory conflict of interest from their participation in the evaluation and hiring processes. However, the Director did find that SCNs have a substantial conflict of interest because of their authority to independently issue discipline in the form of written warnings to unit employees and were therefore inappropriate for inclusion in the unit.

D.R. NO. 2024-3

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

Docket No. CU-2022-007

JNESO DISTRICT COUNCIL 1
IUOE, AFL-CIO

Petitioner.

Appearances:

For the Respondent,
Kenyatta Stewart, Corporation Counsel
(Chane M. Jones, Assistant Corporation Counsel)

For the Petitioner,
Kroll Heineman Ptasiewicz & Parsons, attorneys
(Seth B. Kennedy, of counsel)

DECISION

On February 18, 2022, JNESO District Council 1, IUOE, AFL-CIO (JNESO) filed a clarification of unit petition, seeking a determination that employees in the titles of Supervisor of Clinic Nurses (SCN) and Senior Practical Nurse (SPN)^{1/} are included in its negotiations unit. The unit described in its 2019-2022 collective negotiations agreement's (CNA) recognition provision includes the employees of the City of Newark (City) holding the titles of Public Health Nurse (PHN), Clinic Nurse

^{1/} JNESO withdrew its petition with respect to Practical Nurse.

(CN), Public Health Nurse Pediatrics (PHNP), Pediatric Nurse Practitioner (PNP), Nurse Practitioner of Sexually Transmitted Diseases (NPSTD), Head Clinic Nurse (HCN), and Public Health Nurse Supervisor (PHNS). The City argues that the SCNs are managerial executives under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) and/or would create a substantial supervisory conflict of interest in the unit. The City also argues that the SCNs and the SPNs do not fall within the parties' CNA recognition provision and do not perform unit work and/or have sufficient community of interest, in part (with respect to the SPNs) because they are Licensed Practical Nurses (LPN) and not Registered Nurses (RN) like the existing unit members.

The City and JNESO submitted position statements on March 31 and April 1, 2022, respectively. In response to questions raised at a case conference, the City submitted an additional letter with answers and the JNESO submitted a response letter on May 31 and June 22, 2022, respectively. In response to an agency staff letter requesting specific facts and information on the issues raised by the parties, the City submitted, on October 6, 2022, a certification with exhibits from Alexandria Massey (AM Cert.), the Director of Nurses for the Newark Department of Health and Community Wellness, and a certification with exhibits from Chane Jones (CJ Cert.), Assistant Corporation Counsel for the City. On

October 7, 2022, JNESO submitted a response signed by counsel and a certification with exhibits from Roselyn Goodwin, a registered nurse who is retired from the City but served as a PHNS, HCN, and CN.^{2/} We requested any factual updates the parties might wish to present by July 28, 2023, and indicated that any decision would be based on the earlier submissions if no updates were provided. Neither party submitted any factual updates. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon my administrative investigation, I make the following:

FINDINGS OF FACT

The unit placement of the following employees and their titles are at issue: SCN (Obstetrician-Gynecologists) Nikki Awaitey, SCN (Ryan White Program) Taneja Davis, SCN (Adult Medicine) Donna McFadden, SCN (Pediatrics) Dana West, SPN Amanda Calypso, SPN Dunessa Ducrepin-Brivard, SPN Rachel Odotei, SPN Nina Richard, and SPN Aaliyah Wiggins. (AM Cert. 4). All were hired in 2022 (AM Cert. 4).

The City and JNESO both cite to the Civil Service Job Specifications for the SCN and SPN titles and existing unit titles in their position statements and certifications. SCNs and

^{2/} JNESO's response signed by counsel does not cite to certified facts; any findings of fact in this decision thus come from the certifications.

SPNs work alongside unit titles under the supervision of the Director of Nursing, with HCNs and PHNSs establishing schedules and assigning day to day tasks as with other unit nurses. (RG Cert. 13).

SPNs are LPNs and the unit currently consists only of RNs (AM Cert. 14.b, RG Cert. 12-14). RNs assess, educate, and treat patients, are responsible for triage, have medical authorization necessary to engage in the assessment of patient for purposes of determining the patient's condition and appropriate treatment. (AM Cert. 14.b). LPNs administer medication and reinforce teachings of the RNs, but they do not have licensure to engage in triage. (Id.). There must be an RN in the building during weekend shifts even when SPNs are present. (Id.). When a medical provider is not immediately available on weekend shifts, SPNs do not (but existing unit employees do) have the skills and licensure to provide triage. (Id.). JNESO employees do not work on weekends, so the Department hires temporary RNs for weekend shifts. (Id.). RNs and LPNs are each responsible for the tasks which fall within the scopes of practice for their respective licenses. (RG Cert. 14). SCNs are RNs. (AM Cert. 14.a).

I take administrative notice from the agency's certification and contract databases that we certified a different organization, the New Jersey State Nurses' Association (NJSNA) in 1971 as the representative for three separate units of public

health nurses, public health supervisors, and public health directors of the City. It is not clear whether these units included professional and non-professional (i.e., practical) nurses at the time. Separate contracts continued until at least the 1979-1981 contracts of NJSNA. After these contracts, we do not have contracts in our database covering nurses in the City until the 2003-2007 contract with JNESO, which states in its recognition provision that the City voluntarily recognized JNESO as the representative for a unit that now combined public health nurses and public health nurse supervisors and was specifically described with and limited to the more specific titles of the unit as it currently exists today.

Although SCNs have not yet participated in hiring interviews for unit positions, they have participated in interviews for non-unit positions. (AM Cert. 8). They are expected to participate in interviews for unit positions. (RG. Cert. 9). On July 7, 2022, SCN Dana West participated in an interview of a patient care coordinator candidate with a second interviewer, Administrator of Clinic Nurses Kathleen Schappa, a non-unit employee. (AM Cert. 8). On August 18, 2022, SCN Donna McFadden also participated in an interview with Schappa for a certified medical assistant candidate. (Id.). In both situations, separate personnel interview evaluation forms were filled out by the interviewers with individual recommendations. (AM Cert. Exhibit

J, K). With respect to interviews for unit positions, it appears that SCNs will participate with HCNs, PHNSs, and the Director of Nurses, and after consultation, the Director of Nursing would present a recommendation to the Department Director, who would submit a request to hire to the Business Administrator. (RG Cert. 9, AM Cert. 8).

SCNs have not yet had any situations in which they have had to exercise disciplinary authority over unit employees. (AM Cert. 7). But they have already issued discipline for non-unit employees. SCN McFadden issued a written reprimand to an employee on August 10, 2022. (AM Cert. Exhibit I). On the Employee Warning Notice, McFadden marked it as a written second warning, filled in the "Supervisor Statement" section, indicated that the action taken was "Written Reprimand", indicated that the consequence for a repeat incident would be another written warning, and alone signed the form. (Id.). The Director of Nursing certifies that SCNs have that authority with respect to unit employees. (AM Cert. 7).

SCNs attend Quality Control Meetings, and during one meeting after the Quality Consultant identified an issue, SCN Niki Awaitey determined that the OB-GYN clinic needed a new intake process/system form, coordinated directly with a healthcare consultant hired by the City to develop a new template form, and provided information as to what the template form needed to

include for the purposes of addressing the gap in care within the clinic. (AM Cert. 5.a.i., 13, Exhibit D). The City provided emails showing Awaitey discussing the documentation template, asking the consultant to make changes, indicating what should be on the form, and providing an example form to base it on. (AM Cert. Exhibit D). The email chain includes the Director of Nurses, Chief Operations Officer, and Chief Executive Officer/Department Director, among others on the "OB-GYN Team". (Id.).

Awaitey also authored the Pregnancy Test Patient Policy for the Department. (AM Cert. 11.a, Exhibit L). The form provided by the City shows a box to input a policy number, and in the "Policy" section states "Implementation of procedures for conducting urine pregnancy test," and describes the purpose and procedures that employees should perform. (AM Cert. Exhibit L). It appears there are spots on the form for the Governing Board, Director/CEO, Medical Director, Chief Operating Officer, and Director of Nursing to sign or initial and boxes for indicating when the policy would be reviewed and revised, although the form provided by the City has these blank. (Id.).

On July 7, 2022, SCN Donna McFadden made an incident report concerning information about the scheduling and safety of service providers, reporting to the Director of Nurses. (AM Cert. 5.a.ii, Exhibit E). Following the report, McFadden investigated the

matter, identified the issue, and instructed staff on the appropriate actions to take in resolving the matter. (Id.). One of the issues involved use of the language line, and McFadden wrote the policy for employees on the proper use of it. (AM Cert. 11.b, 13, Exhibit M). The form provided by the City shows a box to input a policy number, and in the "Policy" section states "Language line protocol to increase access to quality care due to language barriers," and describes the purpose and procedures that employees should perform. (AM Cert. Exhibit M). It appears there are spots on the form for the Governing Board, Director/CEO, Medical Director, Chief Operating Officer, and Director of Nursing to sign or initial and boxes for indicating when the policy would be reviewed and revised, although the form provided by the City has these blank. (Id.).

After SCNs draft a policy, the Director of Nursing reviews it, may provide feedback, and submits it to the Department Director and the Governing Board of Members for approval, though if a policy is submitted in response to an emergency, the SCN's policy requires approval only from the Department Director. (AM Cert. 12).

ANALYSIS

SCNs interact with each other in the same locations, share common supervision, and perform nursing related duties. I find

that they share a community of interest.^{3/} I also find that SCNs and SPNs perform patient-care tasks and nursing duties within the public health clinics and thus are performing unit work even if those titles were not listed previously in the unit recognition provision of the CNA.^{4/}

However, SPNs are LPNs and the unit currently consists only of RNs (AM Cert. 14.b, RG Cert. 12-14). RNs assess, educate, and treat patients, are responsible for triage, and have medical authorization necessary to engage in the assessment of patients for purposes of determining their conditions and appropriate treatment. (AM Cert. 14.b). LPNs administer medication and reinforce teachings of the RNs, but they do not have licensure to engage in triage. (Id.). There must be an RN in the building during weekend shifts even when SPNs are present. (Id.). When a medical provider is not immediately available on weekend shifts, SPNs do not (but existing unit employees do) have the skills and licensure to provide triage. (Id.). JNESO employees do not work on weekends, so the Department hires temporary RNs for weekend

3/ See Hamilton Tp., D.R. No. 2022-4, 49 NJPER 49 (¶10 2022); E. Windsor Tp., D.R. No. 97-2, 22 NJPER 348 (¶27180 1996), req. for rev. denied P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996); Rutgers University, D.R. No. 2023-7, 49 NJPER 291 (¶67 2022), aff'd P.E.R.C. No. 2023-35, 49 NJPER 395 (¶97 2023); University Hospital, P.E.R.C. No. 2023-52, 50 NJPER 9 (¶4 2023).

4/ See Union Cty. Vo-Tech. Bd. of Ed., D.R. No. 2023-5, 49 NJPER 505 (¶122 2022); Rutgers, P.E.R.C. No. 2024-1; N.J.S.A. 34:13A-5.11.

shifts. (Id.). RNs and LPNs are each responsible for the tasks which fall within the scopes of practice for their respective licenses. (RG Cert. 14).

In its position statement, JNESO cites Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989) for the Commission's rejection of the notion that mixed units of RNs and LPNs are never appropriate. But as indicated in that decision itself, RNs are considered professional employees under the Act and LPNs are considered non-professional employees. Although our regulation defining professional employees refers to nurses without explicitly specifying registered nurses, our caselaw does make the distinction between RNs and LPNs. Mercer Cty. Cf. Maple Shade Nursing Home, Inc., 228 N.L.R.B. 1457, 96 L.R.R.M. 1411, 228 NLRB No. 188 (1977).

Thus, while the SPNs, as LPNs, share a general community of interest with the existing unit titles, all of which are currently RN titles, the existing unit is currently inappropriate for inclusion of the SPNs until a majority of the professionals vote to include non-professionals in the unit. N.J.S.A. 34:13A-6(d). The provisions of the Workplace Democracy Enhancement Act (WDEA) allowing accretion on the basis of the performance of unit work did not eliminate the professional option requirement of our Act for proposed mixed units. Jefferson Tp. Bd. of Ed., P.E.R.C. No. 2019-11, 45 NJPER 149 (¶38 2018) ("[T]he WDEA's unit work

provisions (N.J.S.A. 34:13A-5.11(a) and (b)) neither explicitly nor implicitly repealed N.J.S.A. 34:13A-6(d) of our Act.”), aff’g D.R. No. 2019-1, 45 NJPER 39 (¶11 2018). No evidence has been presented in this case that shows that a professional option vote has occurred.

I take administrative notice from the agency’s certification and contract databases that we certified a different organization, the New Jersey State Nurses’ Association (NJSNA) in 1971 as the representative for three separate units of public health nurses, public health supervisors, and public health directors of the City. It is not clear whether these units included professional and non-professional (i.e., practical) nurses at the time. Separate contracts continued until at least the 1979-1981 contracts of NJSNA. After these contracts, we do not have contracts in our database covering nurses in the City until the 2003-2007 contract with JNESO, which states in its recognition provision that the City voluntarily recognized JNESO as the representative for a unit that now combined public health nurses and public health nurse supervisors and was specifically described with and limited to the more specific titles of the unit as it currently exists today. The unit recognized by the 2003-2007 contract was not substantially the same unit that we certified. It is undisputed that the unit today only includes RNs. Thus, regardless of whether a professional option was

exercised for the old unit represented by NJSNA, in order for the current unit consisting only of professional employees represented by JNESO to become a mixed unit of professional employees and non-professional employees, a professional option must first be exercised by the professionals. N.J.S.A. 34:13A-6(d). As this has not yet occurred, JNESO's petition with respect to the SPNs is dismissed on this basis. This does not preclude JNESO from filing a representation petition seeking to add the SPNs to the unit after the professionals have opted to form a mixed unit.

SCNs on the other hand are RNs. (AM Cert. 14.a). However, the City argues that their inclusion in the unit would create a substantial potential supervisory conflict of interest. The City indicates that SCNs are responsible for completing annual evaluations of unit members but has not provided examples of this occurring, even for non-unit members, despite an opportunity for further factual submissions. The City has not explained the evaluation process and whether there would be further evaluations from higher authority or whether these evaluations could act as effective recommendations of personnel actions without further independent review. Accordingly, I find that the SCNs do not effectively recommend personnel actions of unit members through evaluations and do not create a substantial conflict of interest through evaluations. See Union Tp., D.R. No. 2024-2 _ NJPER _ (¶_

2023) (finding that recommendations were not "effective" and did not create a substantial supervisory conflict of interest where independent analysis from others occurred before personnel actions).^{5/}

Although SCNs have not yet participated in hiring interviews for unit positions, they have participated in interviews for non-unit positions. (AM Cert. 8). They are expected to participate in interviews for unit positions. (RG. Cert. 9). However, the examples provided of SCN participation in the interview process do not show that they have the power to hire or make effective recommendations without independent analysis from others, because they make their recommendations with others. On July 7, 2022, SCN Dana West participated in an interview of a patient care coordinator candidate with a second interviewer, Administrator of Clinic Nurses Kathleen Schappa, a non-unit employee. (AM Cert.

^{5/} See also Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) ("While evaluating alone is not one of the statutory criteria, we have looked to it as it relates to other actions such as renewal, tenure, promotion and salary We consider a supervisor's role in evaluations because evaluations can serve as effective recommendations for the statutorily mandated criteria.") contrasting Wilton v. West Orange Bd. of Ed., 57 N.J. 404 (1971) ("If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present [A] conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable[.]").

8). On August 18, 2022, SCN Donna McFadden also participated in an interview with Schappa for a certified medical assistant candidate. (Id.). In both situations, separate personnel interview evaluation forms were filled out by the interviewers with individual recommendations. (AM Cert. Exhibit J, K). Thus, an individual SCN's independent judgment alone has not been relied upon by the hiring authority, and further independent judgment occurs when deciding between conflicting recommendations.

With respect to interviews for unit positions, it appears that SCNs will participate with HCNs, PHNSs, and the Director of Nurses, and after consultation, the Director of Nursing would present a recommendation to the Department Director, who would submit a request to hire to the Business Administrator. (RG Cert. 9, AM Cert. 8). Accordingly, the diffuse involvement of the SCNs means that their hiring recommendations, considered along with independent judgment from others, are not effective recommendations as meant under our caselaw and would not create a substantial conflict of interest. See Union Tp.

However, I find that SCNs do have a substantial conflict of interest because of their disciplinary authority over unit employees. SCNs have not yet had any situations in which they have had to exercise this disciplinary authority over unit employees. (AM Cert. 7). But they have already issued discipline

for non-unit employees. SCN McFadden issued a written reprimand to an employee on August 10, 2022. (AM Cert. Exhibit I). On the Employee Warning Notice, McFadden marked it as a written second warning, filled in the "Supervisor Statement" section, indicated that the action taken was "Written Reprimand", indicated that the consequence for a repeat incident would be another written warning, and alone signed the form. (Id.). The Director of Nursing certifies that SCNs have that authority with respect to unit employees. (AM Cert. 7).

Given the documentary evidence that SCNs can perform personnel actions by issuing discipline on their own through written warnings (which has not been rebutted by JNESO), and given the Director of Nursing's certification that SCNs have that authority with respect to unit employees, I find that SCNs would have a substantial conflict of interest with the unit. See Union Tp.; Warren Cty. H.O. No. 86-2, 12 NJPER 73 (¶17029 1985) (finding certain nurses to impose actual discipline and be statutory supervisors where they could unilaterally issue Employee Awareness Slips, which were found to be written warnings viewed as discipline, a second step in the process of progressive discipline, placed in the employee's personnel file, and used as justification for possible further disciplinary action which

might carry more severe penalties).^{6/} This is so even if the power to impose or effectively recommend disciplinary penalties more severe than written warnings is reserved to higher positions than SCN. (See RG Cert 8, 10).

I also find, however, that the City has not established that SCNs are managerial executives under the Act. For non-State and non-school district employees, managerial executives are "persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices[.]" N.J.S.A.

34:13A-3(f). Whether an employee possesses this level of authority generally depends on the interplay of their relative position in the employer's hierarchy, their functions and responsibilities, and the extent of their discretion. New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331, 356 (1997).^{7/}

^{6/} Cf. Rutgers, The State Univ., P.E.R.C. No. 91-74, 17 NJPER 156 (¶22064 1991) (clause providing that letters of reprimand in employee's record are deemed removed found mandatorily negotiable as a component of a progressive discipline system); Commercial Tp., D.R. No. 91-9, 16 NJPER 511 (¶21223 1990) (where the township clerk had so far taken notes at all open and closed township council sessions and would but had not yet had the occasion to do so at closed sessions discussing confidential collective negotiations information, clerk was excluded from the unit because of the clear job functions and certain implementation of them for the future contingency).

^{7/} With respect to the discretion factor, see Hopewell Tp.,
(continued...)

SCNs attend Quality Control Meetings, and during one meeting after the Quality Consultant identified an issue, SCN Niki Awaitey determined that the OB-GYN clinic needed a new intake process/system form, coordinated directly with a healthcare consultant hired by the City to develop a new template form, and provided information as to what the template form needed to include for the purposes of addressing the gap in care within the clinic. (AM Cert. 5.a.i., 13, Exhibit D). The City provided emails showing Awaitey discussing the documentation template, asking the consultant to make changes, indicating what should be on the form, and providing an example form to base it on. (AM Cert. Exhibit D). The email chain includes the Director of Nurses, Chief Operations Officer, and Chief Executive Officer/Department Director, among others on the "OB-GYN Team". (Id.).

7/ (...continued)
D.R. No. 2011-14, 38 NJPER 165 (¶48 2011) (municipal housing liaison found not to be a managerial executive where recommendations were not "rubber-stamped" by management) cited in Burlington Cty., P.E.R.C. No. 2019-25, 45 NJPER 237 (¶62 2019) (finding that Director applied the appropriate standard that an employee who does not have independent decision-making authority over the formulation and implementation of employer policies is not a managerial executive); Ocean Cty. Util. Auth., P.E.R.C. No. 98-120, 24 NJPER 212 (¶29100 1998) (comparing the requirement that managerial executives effectively determine what policies will be adopted to the effective recommendation requirement for supervisors in N.J.S.A. 34:13A-5.3); Camden Housing Auth., D.R. No. 2014-7, 40 NJPER 219 (¶84 2013) (holding that an evidentiary showing of this independent authority is required to establish managerial executive status).

Awaitey also authored the Pregnancy Test Patient Policy for the Department. (AM Cert. 11.a, Exhibit L). The form provided by the City shows a box to input a policy number, and in the "Policy" section states "Implementation of procedures for conducting urine pregnancy test," and describes the purpose and procedures that employees should perform. (AM Cert. Exhibit L). It appears there are spots on the form for the Governing Board, Director/CEO, Medical Director, Chief Operating Officer, and Director of Nursing to sign or initial and boxes for indicating when the policy would be reviewed and revised, although the form provided by the City has these blank. (Id.).

On July 7, 2022, SCN Donna McFadden made an incident report concerning information about the scheduling and safety of service providers, reporting to the Director of Nurses. (AM Cert. 5.a.ii, Exhibit E). Following the report, McFadden investigated the matter, identified the issue, and instructed staff on the appropriate actions to take in resolving the matter. (Id.). One of the issues involved use of the language line, and McFadden wrote the policy for employees on the proper use of it. (AM Cert. 11.b, 13, Exhibit M). The form provided by the City shows a box to input a policy number, and in the "Policy" section states "Language line protocol to increase access to quality care due to language barriers," and describes the purpose and procedures that employees should perform. (AM Cert. Exhibit M). It appears there

are spots on the form for the Governing Board, Director/CEO, Medical Director, Chief Operating Officer, and Director of Nursing to sign or initial and boxes for indicating when the policy would be reviewed and revised, although the form provided by the City has these blank. (Id.).

After SCNs draft a policy, the Director of Nursing reviews it, may provide feedback, and submits it to the Department Director and the Governing Board of Members for approval, though if a policy is submitted in response to an emergency, the SCN's policy requires approval only from the Department Director. (AM Cert. 12).

Although the City references SCN's duties with respect to employee evaluations and supervision as further support in its argument that the SCNs are managerial executives, I do not find those duties actually performed to establish managerial executive status under the Act. State of New Jersey, P.E.R.C. No. 99-59, 25 NJPER 48 (¶30021 1998) (noting that employees are not excluded from the Act simply because they have the authority normally exercised by a supervisor or professional employee), recon. den. P.E.R.C. No. 2000-34, 25 NJPER 461 (¶30200 1999). I also do not find that the SCNs providing input in quality control meetings and in email chains with higher-level managers and providing draft policies that are subject to feedback, independent review, revision, and approval by several other people to establish

managerial executive status. Hopewell Tp; Burlington Cty.; Ocean Cty. Util. Auth.; Camden Housing Auth.

The Director of Nursing independently provides feedback on draft policies and the forms provided by the City show that several other people would sign off on and can revise draft policies. The City has not demonstrated that SCNs effectively determine policy or direct its effectuation without independent analysis and review. Even in emergencies, an SCN cannot immediately implement a policy and must have proposals still approved by the Department Director. (AM Cert. 12). Even if I were to assume that the Department Director is signing off merely because of statutory and regulatory requirements and is rubber-stamping the policy (which the City has not clearly shown is the case), these occasional on-the-spot recommendations from SCNs to ride out the emergencies would not evidence the kind of longer-term policy planning expected from managerial executives. See Avon Boro., H.E. No. 77-21 n.21, 41 NJPER 124 (¶45 1977) (authority to add extra employees to the payroll during emergency conditions was limited authority itself subject to continued approval by higher authority and thus not found to establish managerial executive status), adopted P.E.R.C. No. 78-21, 3 NJPER 373 (1977) (modifying remedy). Accordingly, I find that the City has not established that the SCNs are managerial executives.

ORDER

JNESO's clarification of unit petition is dismissed.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Representation

DATED: August 30, 2023
Trenton, New Jersey

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

Any request for review is due by September 11, 2023.