

P.E.R.C. NO. 94-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Public Employer,

-and-

Docket No. RO-H-91-200

AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES, COUNCIL 73,

Petitioner.

SYNOPSIS

The American Federation of State, County and Municipal Employees, Council 73 filed a petition seeking to represent a unit of all professional and upper level supervisors employed by the New Jersey Turnpike Authority. The Authority opposed the petition and refused to consent to a secret ballot election. It alleged that all of the petitioned-for titles are inappropriate for inclusion in the unit because employees in those titles are either managerial executives, confidential employees or because they have a conflict of interest with other unit employees. The Commission finds that one of the petitioned-for employees is a managerial executive, some are confidential employees, some are not supervisors within the meaning of Act, and some have a conflict of interest with other unit employees. The Commission remands the matter to the Director of Representation to conduct an election consistent with its opinion.

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AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES, COUNCIL 73,

Petitioner.

Appearances:

For the Public Employer, Schwartz, Tobia & Stanziale,
attorneys (Kent A.F. Weisert, of counsel)

For the Petitioner, Gerard J. Meara, Representative

DECISION AND ORDER

On June 17, 1991, the American Federation of State, County and Municipal Employees, Council 73 ("AFSCME") filed a petition seeking to represent a unit of all professional and upper level supervisors employed by the New Jersey Turnpike Authority. The Authority opposes the petition and has refused to consent to a secret ballot election. It alleges that all of the petitioned-for titles are inappropriate for inclusion in the unit because employees in those titles are either managerial executives or confidential employees or because they have a conflict of interest with other unit employees.

The Director of Representation determined that substantial and material disputed facts warranted an evidentiary hearing. Hearing Officer Elizabeth J. McGoldrick conducted 14 days of hearing

ending December 19, 1991. The parties examined witnesses and introduced exhibits. The Authority filed a post-hearing brief on August 12, 1992. AFSCME did not file a brief.

On March 18, 1993, the Hearing Officer issued a 163 page report. H.O. No. 93-2, 19 NJPER 303 (¶24154 1993). She found that AFSCME has petitioned for an appropriate higher level supervisory unit of 73 employees, none of whom are managerial executives or confidential employees. She further found no conflict of interest among the employees precluding inclusion of all of them in the same negotiations unit. The Hearing Officer recommended that 14 other employees be excluded from the unit because they are either managerial executives, confidential employees or nonsupervisors.

On May 24, 1993, after an extension of time, the Authority filed exceptions. It argues that the Hearing Officer erred by failing to: find that certain employees were managerial executives; exclude various nonsupervisory personnel from a unit containing supervisors; find that certain positions were confidential; and exclude certain supervisory positions that have significant conflicts of interest with other positions in the proposed unit.

Pursuant to N.J.A.C. 19:11-8.8, we transfer this case to ourselves for appropriate action. We have reviewed the record. We incorporate the Hearing Officer's extensive findings of fact.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. affords public employees the right "to form, join and assist any employee organization." However, managerial

executives and confidential employees, as defined by the Act, are excluded from its protections.

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

In applying that statutory definition, we have held that:

a managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or 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. [Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 509 (¶11259 1980)]

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

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

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained our approach to determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

Under N.J.S.A. 34:13A-5.3, supervisors are employees who have the power to hire, discharge, or discipline other employees or who can effectively recommend these personnel actions. Supervisors have the right to negotiate collectively, except that N.J.S.A. 34:13A-5.3 and 6(d) prohibit new collective negotiations units made up of supervisors and nonsupervisors. In addition, the Supreme Court has 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. West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971).

Against this backdrop, we must determine the appropriate unit structure for higher level supervisors at the Authority. We first determine whether any of the petitioned-for employees are managerial executives ineligible for inclusion in any negotiations unit.

The Authority's Commissioners are ultimately responsible for all policies, the budget, personnel actions, negotiations, and contract administration, subject to the Governor's general direction and veto. The Executive Director is responsible for the Authority's day-to-day management and reports to the Commissioners. The Authority is then divided into nine departments. The directors of five departments -- human resources, administrative services and

technology, law, public affairs, and finance/budget -- report to the Executive Director. The directors of the remaining four departments -- engineering, tolls, maintenance, and operations -- report to the Chief Engineer who reports to the Executive Director.

The petitioned-for employees are the administrators, managers, engineers, assistant directors, coordinators and supervisors below the level of director. Some of these employees make policy recommendations within their areas of expertise that work their way up through the chain of command. Some make budget recommendations for their departments that work their way up through the Comptroller to the Commissioners. Most of them do not exercise a level of authority and independent judgment sufficient to broadly affect the Authority's purposes or means of effecting these purposes. See State of New Jersey (Trenton State College), P.E.R.C. No. 91-93, 17 NJPER 246 (¶22112 1991) (director/assistant to dean not managerial executive despite duty to represent dean at meetings and make policy recommendations within his area of expertise). Given the Authority's management structure and the Act's policy favoring organization of all employees desiring it, and in the absence of exceptions from AFSCME, we conclude that except for Assistant Comptroller Zeigler, the petitioned-for employees do not meet the narrow definition of managerial executive.

We next consider the supervisory status of the petitioned-for employees. Most are supervisors. Those who are not

cannot be included in the proposed unit of supervisory employees. N.J.S.A. 34:13A-5.3; -6(d). Should any of these nonsupervisors seek to be represented for purposes of collective negotiations, they would have to be in a unit of nonsupervisory employees.

We adopt the Hearing Officer's conclusion that these employees are not supervisors:

Administrative Services & Technology Department

Senior Projects Engineer (Albert Isaacs)
Program Manager, New Business Development (Jeanette Thompson)
Supervising Engineer (Harry Loewengart)

Operations Department

Manager, Employee Safety Division (John O'Keefe)

Engineering Department

Landscape Architect (John Kosztyo)

Law Department

Environmental Coordinator, (Tim Doolan)
Real Estate Analyst (Walter Luger)

Public Affairs Department

Publications Specialist (Samuel Donnellon).

We add that these other employees are not supervisors:

Maintenance Department

Assistant Equipment Manager (Timothy Foster)^{1/}

Engineering Department

Project Supervisor (Richard Brundage)
Project Supervisor (Larry Williams)

^{1/} The Hearing Officer found that Foster was not a supervisor but inadvertently failed to exclude him from the unit in her proposed order.

Project Supervisor (S. Buente)
Construction Supervisor (John Tuminelli)^{2/}

We exclude all these employees from the proposed unit.

There is also the issue of actual or potential conflict of interest between different levels of supervision. Wilton. 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 nonsupervisors. 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 levels of supervision 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). That is an important fact. Also, while we have been sensitive to the problems associated with the proliferation of units, it is the Authority itself that is asserting objections to having multiple

^{2/} The Hearing Officer found that the majority of all project and construction supervisors supervise other employees. But at the time of the hearing, four of them did not supervise any employees and we will exclude them from the proposed unit, subject to an appropriate petition should circumstances change.

levels of supervision in one unit. Any determination that more than one level of supervision cannot be in the same unit would not defeat the representation rights of any of the supervisory employees. Any supervisors excluded from the proposed unit would be free to organize into another negotiations unit. Similarly, higher level professional employees excluded from this unit because they are not supervisors are free to organize into an appropriate unit of nonsupervisory employees.

Given all the facts in this case, we conclude that it would be inappropriate for the proposed unit to include supervisors who supervise and evaluate other supervisors. Because there have not yet been any collective negotiations for these employees, no actual conflict of interest connected with the collective negotiations process can be demonstrated. Nevertheless, we believe the potential for a substantial conflict of interest is real and that the employees and the employer would be better served if they began any collective negotiations relationship protected from the possibility of substantial conflicts of interest materializing that would require breaking up the negotiations unit.

These titles are inappropriate for inclusion in the proposed unit because inclusion would create an impermissible conflict of interest:

Administrative Services and Technology Department

Manager, Systems & Programming (John Maklary)
Computer Systems Manager (Leonard Goldrosen)
Admin. of Office Services (Raniero Trivasano)
Manager, Office Services (Lawrence Goerke)
Ass't. Director of Purchasing (Warren Luther)

Operations Department

Traffic Engineer, Operations (Spencer Purdum)

Maintenance Department

Administrative Maintenance Manager (Richard Walley)
Buildings Manager (Brian Campbell)
Division Manager, Roadway, North (Robert Geberth)
Division Manager, Roadway, South (Russell Anderson)
Manager, Communications (Dayton Elyea)
Maintenance Engineer (David Wingeter)

Finance and Budget Department

Assistant Comptroller (Cynthia Zeigler)
Manager, Payroll Section (Charlotte Maindelle)
Chief Accountant (Pam Varga)

Engineering Department

Supervising Engineer (Stanley Wisniewski)
Supervising Engineer (Richard Zipp)
Supervising Engineer (John Kunna)
Senior Project Engineer (Howard Byrnes)
Senior Project Engineer (Joseph Veni)^{3/}
Project Engineer (Brian Meara)
Project Engineer (Robert Grimm)

Public Affairs

Director (Gordon Hector)

Law Department

Contract Administrator (Diane Scaccetti)

Finally, we consider the Authority's arguments that some of the remaining petitioned-for employees are confidential employees within the meaning of N.J.S.A. 34:13A-3(g).

^{3/} Senior Project Engineer Bing Cheo is not excluded because the four petitioned-for employees he supervises have been excluded from the unit because they are not supervisors.

Administrative Services and Technology Department

John Michalkowski provides cost estimates and other relevant data concerning negotiations proposals. His role in providing general information to the Authority's negotiations team without having knowledge of specific negotiations proposals does not make him a confidential employee. Wayne Bruzek's access to computer payroll information does not make him a confidential employee. There is no evidence that his duties involve the use of confidential labor relations information.

Tolls Department

Section Manager Richard Raymond acted as administrative liaison between the Director Burke and the Section Managers. According to the Authority, he has since retired and his position is held by former Administrative Assistant William Darragh. Darragh, in addition to assuming the responsibilities of section manager, maintains Burke's file of negotiations proposals, counter-proposals and notes and enters proposals into the department's computer information system before and during negotiations. We agree with the Hearing Officer that Darragh is a confidential employee and must be excluded from the proposed unit.

We find that the other Section Managers are not confidential employees. They are asked to make suggestions for collective negotiations and to evaluate union proposals during negotiations. But they do not help develop or know the Authority's negotiations positions before they are disclosed to the unions.

Thus, these employees do not have any functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process that would make their membership in the proposed unit incompatible with their official duties.

Charles Gallo is the Superintendent of Toll Maintenance. He reports to Burke and supervises 32 employees in the toll electronic maintenance group. He prepares his section's budget and approves the purchase of his section's equipment and supplies. Gallo has no functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process that would make his membership in the proposed unit incompatible with his official duties.

Julius Schmidt is the Manager, Toll Collection Distribution Center. He supervises four stock clerks and a clerk typist. He formulates the budget for uniforms, equipment, supplies and vehicles and submits it to Burke and the finance department for approval. He also recommends policies relating to uniforms and other supplies. His scope of responsibility is relatively narrow and he does not have any significant role in collective negotiations or contract administration. We agree with the Hearing Officer that Schmidt is not a confidential employee.

Operations Department

Traffic Engineers Kraft and Purdum, Traffic Operations Center Manager Comeau, and Manager Emergency Systems Lyon are asked for suggestions during negotiations by Director of Operations Dale. They are not privy to discussions about proposals. Even Dale has

not known the offers and counter-offers made at negotiations. These employees are not confidential employees.

Maintenance Department

Director of Maintenance Ralph Bruzzechesi is on the Authority's negotiations team. While he gets some input from his staff in preparing for collective negotiations, the record does not specifically support the Authority's contention that his managers have advance knowledge regarding key proposals and strategies as they relate to the Maintenance Department. And, while some of the managers handle grievances and act as hearing officers early in the grievance process, those duties and costing out proposals do not make an employee confidential within the meaning of the Act. Thus these employees in the Maintenance Department are not confidential.

Human Resources Department

Joseph Citrino is the benefits director. He administers and implements medical and health benefits for the Authority's employees. He reports to Mary Elizabeth Garrity, the Director of Human Resources and a member of the Authority's negotiations team. Citrino makes recommendations but does not participate in negotiations sessions and often does not know the results of his recommendations. He alerted Garrity to a reopener clause, suggested a change in long term disability benefits, and advised Risk Manager Lorraine Parola about a flaw in a negotiated clause. The Authority has informed us that Citrino has been promoted and now reviews and devises confidential collective negotiations strategies relating to

possible changes in employee medical insurance benefits. Under these circumstances, we conclude that Citrino is a confidential employee.

Finance and Budget Department

Renate Wachtler is the audit operations manager. She investigates and reports irregularities and error patterns in the collection of toll revenues. Her involvement in disciplinary actions against unionized members of the Toll Department does not give her responsibilities or knowledge in connection with the issues involved in the collective negotiations process. She is therefore not a confidential employee.

Dale Jones is a Budget Analyst. While the Authority's exceptions claim that his role in the budgetary process requires that he attend Budget Committee meetings where operational budgets are discussed and finalized and that his job responsibilities thus require that he have access to advanced confidential labor relations information; the evidence in the record does not bear out that assertion and instead concerns capital budgets only. In the absence of any specific evidence in the record, we cannot conclude that Jones is a confidential employee. The Authority is free to file a petition in the future should Jones become part of a collective negotiations unit and perform confidential tasks.

Constance Kuchtyak was the Manager of Disbursements. According to the Authority, she has retired and Dale Jones has

assumed her duties. None of those duties made her a confidential employee.

Francis O'Connor is an Internal Auditor. He provided union representatives with information necessary to verify that a contract provision was being executed properly. He has no direct role in collective negotiations and his duties are not incompatible with membership in a collective negotiations unit. He is not a confidential employee.

Cynthia Zeigler is Assistant Comptroller; Charlotte Maindelle is Manager, Payroll Section and Pam Varga is Chief Accountant. In the absence of AFSCME exceptions, we adopt the Hearing Officer's recommendation that they are confidential employees.

Law Department

Michael Gravelle is the Insurance Administrator. He provided a "wish list" in preparation for negotiations, but did not otherwise participate. None of his wishes has ever been incorporated into a contract and he is not made aware of what is discussed at the negotiations table. Gravelle is not a confidential employee.

Diane Scaccetti is a Contract Administrator. In the absence of AFSCME exceptions, we adopt the Hearing Officer's recommendation that she is a confidential employee.

These titles are inappropriate for inclusion in the proposed unit because they are filled by confidential employees:

Tolls Department

Section Manager (William Darragh)

Human Resources Department

Benefits Director (Joseph Citrino)

Finance and Budget Department

Assistant Comptroller (Cynthia Zeigler)
Manager, Payroll Section (Charlotte Maindelle)
Chief Accountant (Pam Varga)

Law Department

Contract Administrator (Diane Scaccetti)

We conclude that AFSCME, Council 73, AFL-CIO has petitioned for an appropriate higher level supervisory unit. We order an election among these titles to determine whether a majority of employees wish to be represented for purposes of collective negotiations by AFSCME Council 73, AFL-CIO. The appropriate unit is:

INCLUDED: all professional and upper-level supervisory employees employed by the New Jersey Turnpike Authority, including:

Administrative and Technology Department

Systems Projects Coordinator (John Michalkowski)
Systems Project Coordinator, Tolls (Marco Remache)
Ass't. Computer Systems Manager (Wayne Bruzek)
Microprocessor Systems Coordinator (Robert Socha)
Project Engineer (Alfonse Voza)
Manager, Motor Pool Fleet (Jim Malone)
Manager, Patron Services (Ray Ashworth)
Manager, Purchasing (June Corcoran)

Toll Collection Department

Section Manager, Administration (Richard Raymond)
Section Manager (Richard Magerkurth)
Section Manager (Gerald DeVan)
Section Manager (Harrold Schmitz)

Section Manager (Jim Lefforts)
Section Manager (Frank White)
Superintendent, Toll Maintenance (Charles Gallo)
Manager, Toll Collection Distribution Center (Julius Schmidt)

Operations Department

Traffic Engineer, Design & Planning (Jerry Kraft)
Traffic Operations Center Manager (Henry Comeau)
Traffic Operations Assistant (Ed Ferrari)
Manager-Emergency Systems (Jeffrey Lyon)

Maintenance Department

Supervisor of Inventory Control (Walter Kowalski)
Senior Buildings Engineer (William Hill)
Superintendent of Buildings, South (Ernest Cerino)
Superintendent of Buildings, North (Edward Bachonski)
Superintendent of Roadway, North (Michael Stankowitz)
Superintendent of Roadway, South (James Colby)
Assistant Manager for Communications (Winston Chafin)
Senior Project Engineer (Michael Rotolo)
Engineering Coordinator (Daniel McNamara)
Safety & Environmental Affairs Manager (Harris Galary)
Supervisor of Maintenance Systems (James Forest)
Equipment Manager (Leroy Willever)

Engineering Department

Senior Project Engineer (Bing Cheo)
Senior Project Engineer (Hans Steinbeis)
Project Supervisor (Jim Dougherty)
Project Supervisor (Walter Eskiewicz)
Project Supervisor (Robert McGowan)
Project Supervisor, Buildings (Andrew Takacs)
Chief Draftsman (John Ferrandino)
Construction Supervisor (Joseph Vitale)
Construction Supervisor (Tom Wilson)

Finance and Budget Department

Manager, Audit Operations (Renate Wachtler)
Manager, Revenue & General Accounting (Elizabeth Bodnar)
Budget Analyst/Capital Programs & Manager of Disbursements
(Dale Jones)
Internal Auditor (Francis O'Connor)

Law Department

Insurance Administrator (Michael Gravelle)

Public Affairs Department

Community/Public Relations Assistant (Jean Adubato)

EXCLUDED: all other employees, all employees represented in other negotiations units, managerial executives, confidential employees, craft employees, police, firefighters and nonsupervisory employees, including

Administrative Services & Technology Department

Senior Projects Engineer (Albert Isaacs)
Program manager, New Business Development (Jeanette Thompson)
Supervising Engineer (Harry Loewengart)
Manager, Systems & Programming (John Maklary)
Computer Systems Manager (Leonard Goldrosen)
Admin. of Office Services (Raniero Travasano)
Manager, Office Services (Lawrence Goerke)
Ass't. Director of Purchasing (Warren Luther)

Tolls Department

Section Manager (William Darragh)

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Assistant Equipment Manager (Timothy Foster).
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Chief Accountant (Pam Varga)

Law Department

Environmental Coordinator (Tim Doolan)
Real Estate Analyst (Walter Luger)
Contract Administrator (Diane Scaccetti)


Public Affairs Department

Director of Public Affairs (Gordon Hector)
Publications Specialist (Samuel Donnellon).

ORDER

This matter is remanded to the Director of Representation to conduct an election consistent with this opinion.

BY ORDER OF THE COMMISSION



O.F. Wenzler
Acting Chairman

Acting Chairman Wenzler, Commissioners Bertolino, Goetting, Grandrimo, and Smith voted in favor of this decision. None opposed. Commissioner Regan was not present. Chairman Mastriani abstained from consideration.

DATED: August 24, 1993
Trenton, New Jersey
ISSUED: August 24, 1993

H.O. NO. 93-2

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

In the Matter of

New Jersey Turnpike Authority,

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-and-

Docket No. RO-H-91-200

AMERICAN FEDERATION OF STATE, COUNTY
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Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that a negotiations unit composed of approximately 75 upper level supervisors employed by the New Jersey Turnpike Authority is appropriate and an election should be conducted to determine the majority representative, if any, of these employees. The Hearing Officer recommends that the upper level supervisors are neither managerial executives nor confidential employees within the meaning of the Act and, therefore, are eligible for representation. The Hearing Officer also finds that no Wilton conflict of interest exists among the proposed unit titles. The Hearing Officer recommends that approximately 11 of the petitioned-for titles are inappropriate for inclusion because they are either managerial executives or confidential employees within the meaning of the Act, or they are not supervisors.

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.

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Petitioner.

Appearances:

For the Public Employer
Schwartz, Tobia & Stanziale, attorneys
(Kent A.F. Weisert, of counsel)

For the Petitioner
Gerard J. Meara, Representative

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On June 17, 1991, the American Federation of State, County and Municipal Employees, Council 73 ("AFSCME") filed a timely Representation Petition with the Public Employment Relations Commission, seeking to represent a unit of all professional and upper level supervisors employed by the New Jersey Turnpike Authority, approximately 88 positions.^{1/} The Turnpike Authority opposes the petition and refuses to consent to a secret ballot election. It alleges that all of the petitioned-for titles are

^{1/} These positions are listed in Appendix "A".

inappropriate for inclusion in the unit because they are either 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"), or a conflict exists among petitioned-for positions.

The Director of Representation determined that substantial and material disputed factual issues warranted an evidentiary hearing. On June 27, July 15, August 13, 15, September 9, October 16, 21, 23, 31, November 1, 20, 25, 27 and December 19, 1991, I conducted a hearing at which the parties examined witnesses and introduced exhibits.^{2/} The Turnpike Authority filed a post-hearing brief, received by August 12, 1992. AFSCME did not file a post-hearing brief. Based upon the entire record I make the following:

FINDINGS OF FACT

The Turnpike Authority is a public employer within the meaning of the Act. It employs the 88 employees whose positions are the subject of this petition.

The Authority is organized into nine departments: toll collection, maintenance, operations, human resources, administrative services and technology, engineering, law, finance and budget, and public affairs (R-1, 1T14). The petition seeks a professional and

^{2/} The transcript citations 1T1 through 14T-- refer to the transcripts developed on the above dates in order, respectively. Exhibits received in evidence marked as "C" refer to Commission exhibits, those marked "P" and "R" refer to the Petitioner's and Respondent's exhibits, respectively. Those exhibits marked "J" refer to joint exhibits.

upper level supervisory unit across all of these departments (J-1, C-1); the parties stipulated that the petition excludes all non-supervisory titles and titles in salary range 17 and above (1T9).

AFSCME seeks to represent the titles listed in Appendix A.

Hierarchy, Policy and Budget Formulation, Collective Negotiations

The Authority's board of commissioners is ultimately responsible for all policies, budget formulation and control, personnel actions, and negotiations and contract administration, subject to the Governor's general direction and veto. The executive director is responsible for the day-to-day management of the Authority and reports directly to the commissioners. Reporting directly to the executive director on behalf of four of the nine departments, engineering, tolls, maintenance and operations, is the chief engineer. The other five departments, human resources, administrative services/technology, law, public affairs and finance/budget, are managed by department directors and the comptroller who also reports to the executive director (1T19).

"Significant" Authority-wide policies are implemented after the executive director and commissioners approve them at regular meetings and they are not vetoed by the Governor (1T16, 1T38-1T39). Policy recommendations originate at lower managerial levels and are approved through the chain of command or they originate with the executive director and commissioners (1T15, 1T18). Policy recommendations from below must be approved by the department

director before they are presented to the executive director (1T15-1T17). Minor policies may be implemented by department directors.

The Authority is funded by revenues from tolls, service areas, rentals and gas stations (1T59). Its annual budget is divided into capital and operating expenditures (1T60). The operating budget is approved by the commissioners at a December meeting (1T61). Very extensive budget preparation is required for the maintenance and engineering departments (1T62). The engineering department operating budget is \$2.5 million dollars annually, and the maintenance department commands a \$35 million dollar annual operating budget (1T63). Budget preparation is "zero based"; but, historical data, price escalators, and current roadway and structural conditions are also used to prepare the budget (1T64-1T65).

Upon the comptroller's direction, department directors prepare their annual projected budgets in August of each year. These budgets are compiled within departments before being sent to the finance and budget department for review and approval (1T44). The budget is then forwarded to the executive director who may alter the proposal before presenting it to the commissioners for final approval, subject to the Governor's veto (1T44). Department directors are questioned about their proposed budgets directly by the comptroller, executive director or commissioners. Directors rely on data gathered by their supervisory/management staff. Budget

preparation at the Authority therefore extends to management levels below directors, primarily in compiling data on which the budget is based (1T68). In compiling budget information, many of the petitioned-for titles prioritize items for a reduced successor budget. These priorities may be changed by department directors (1T48). Prioritizing requires directors to consult with their subordinates. Directors have final approval authority within their respective departments, and the chief engineer has final approval authority over his or her four departments (1T48). The chief engineer depends on others' budget recommendations but reviews them independently (1T49).

Historically, the commissioners generally approved the executive director's recommended budget and did not participate in its development (1T49). However, the newest commission has created a budget subcommittee to which each department submits its proposed budget. The subcommittee discusses the proposals before presenting them to the full commission for approval (1T50).

Authority to purchase goods or services on the Authority's behalf beyond the approved budget must be approved by at least department directors. Purchasing within the approved budget is supported by purchasing requisition forms which must be signed or initialed by specific supervisory and management employees and by employees in the finance and budget office (4T38).

There are two other negotiations units at the Authority, one represented by IFPTE, Local 194, and the other represented by

the NJ Turnpike Supervisors' Association (1T30). The Authority's negotiations committee consists of the directors of tolls, maintenance, human resources and law (1T29). These directors solicit suggestions from all levels of supervision and management on additions, deletions, or changes to successor contracts (1T29-1T30). The director of maintenance reviews and modifies the suggestions before presenting them to the subcommittee (1T30). The director confers with staff as necessary in the course of negotiations (1T75-1T76). The committee coordinates and finalizes all proposals and counter offers and negotiates with the unions. Final terms are approved by the executive director and commissioners.

LEGAL STANDARDS

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization..." However, under the Act, managerial executives and confidential employees do not have the statutory right to organize and negotiate collectively.

N.J.S.A. 34:13A-5.3. The Authority claims that all of the petitioned-for employees are either managerial executives, confidential, or in supervisory conflict with other titles in the proposed unit.

The statute defines managerial executives as:

"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)

This definition was first applied in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, the lifeguard captain was not found to be a managerial executive, although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the workweek, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough's and Mayor's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis. The Commission stated:

[T]he term "managerial executive" shall be narrowly construed, and...the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by [the lifeguard captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives --excluded from coverage-- from supervisors--eligible to be represented in appropriate units. (Emphasis added)
Id. at 374.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), the Commission stated:

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 for 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 broadly affect the organization's purposes or 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. (Emphasis added)

Id. at 509.

In Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), three titles were found not to be managerial although they were in the fourth step of the chain of command. The positions had only department-wide authority, not hospital-wide authority. Accord, State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991), where supervising conservation officers were found not to be managerial executives where they were six levels below department head and their authority was limited to a single bureau.

Confidential employees, like managerial executives, are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). The Commission has narrowly construed the term confidential employee.^{3/} A finding of confidential status requires a case-by-case examination of an

^{3/} See, Brookdale Comm. College, D.R. No.78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

employee's knowledge and use of information which could compromise the employer's position in the collective negotiations process.^{4/}

N.J.S.A. 34:13A-3(g) defines "confidential employees" as: employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

The Commission requires more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. dism. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Conflict of Interest

The Authority argues that certain petitioned-for titles must be excluded from the unit because they exercise supervisory authority over other included titles. In West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971), ("Wilton") the N.J. Supreme Court determined that:

^{4/} See, River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), aff'g. D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

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 of interest between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisors is not present. 57 N.J. at 425.

While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. 57 N.J. at 425.

...where a substantial actual or potential conflict interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking and that a unit which undertakes to include all of them is not an appropriate unit within the intendment of the statute. 57 N.J. at 427

In applying these principles, the Director of Representation has removed employees from units where conflicts of interest existed due to performance evaluation and disciplinary responsibility. See, Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1989) (construction code official excluded from unit where he had expanded and reorganized the department and recommended that subordinate building inspector be promoted and also recommended several other promotions and hiring).^{5/}

5/ See also, Ridgewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (¶11102 1980) and Paramus Borough Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶12247 1981); Cf., Town of West New York, P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987) (superior officers removed from rank-and-file unit in military-like organization where responsibilities placed them in intolerable conflict of interest).

But in Edison Twp. Bd. of Ed., D.R. 82-8, 7 NJPER 560, 561 (¶12249 1981) the Director held that: "The mere finding of an evaluative responsibility does not, per se, give rise to the conclusion that there is a potential for substantial conflict." There, a unit of supervisors, principals and vice-principals was appropriate where principals' input into supervisors' evaluations was insignificant because supervisors were evaluated by an assistant superintendent, and where principals' evaluations of vice-principals showed de minimis conflict of interest. Evaluations alone do not necessarily create a conflict of interest sufficient to exclude the evaluator from the unit.^{6/} More recently, in Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) the Commission found that the Board violated the Act when it unilaterally removed two employees from the secretaries' unit and set their salaries; the positions were not supervisory where they had never hired or disciplined, and where evaluations they prepared were signed by a higher level supervisor. The Commission stated: "we consider a supervisor's role in evaluations because evaluations can serve as effective recommendations for the statutorily mandated criteria. Recommendations for another's evaluations which might then serve as recommendations for another's personnel decisions are too far

^{6/} See also, Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1987) and Borough of Fair Lawn, D.R. 70-30, 5 NJPER 165 (¶10091 1979) (unit of superior officers left intact even though superiors had an evaluative role among themselves).

removed from the personnel decisions to create a conflict of interest substantial enough to remove the titles from the unit." Id. at 637.

Although some conflict between supervisory employees may always be present, only actual or substantial potential conflict warrants excluding a supervisory employee from an otherwise appropriate unit. The policy of the Act favors broad, inclusive units. State v. Professional Ass'n. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

The Authority asserts that certain employees are professionals. AFSCME asserted no specific position on this issue. The Act does not prevent professionals from organizing or being represented. The Act states: "The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes . . . (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit . . ." N.J.S.A. 34:13A-6. I do not recommend that the Commission order a separate professional

option ballot because I find that all of the included employees are professional within the definition of N.J.A.C. 19:10-1.1.^{7/}

In particular, because these employees are all higher level supervisors or mid-managers, their work cannot be "accomplished or standardized in relation to a given period of time." Further, there is precedent for this result in the broad-based State of New Jersey higher level supervisory unit. And finally, this recommendation avoids proliferation of negotiations units. State v. Professional Ass'n. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

Administrative Services and Technology Department

FINDINGS OF FACT

AFSCME has petitioned for these titles (J-1):

Management Information Systems Section

Manager, Systems & Programming (J. Maklary)
Senior Projects Engineer (A. Isaacs)

^{7/} That section provides: "Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

Systems Projects Coordinator (J. Michalkowski)
Systems Project Coordinator, Tolls (M. Remache)
Computer Systems Manager (L. Goldrosen)
Assistant Computer Systems Manager (W. Bruzek)
Project Engineer (A. Voza)
Microprocessor Systems Coordinator (R. Socha)
Supervising Engineer (Harry Loewengart)

Office Services Section

Administrator of Office Services (R. Travasano)
Manager, Office Services (L. Goerke)
Manager, Motor Pool Fleet (J. Malone)
Manager, Patron Services (R. Ashworth)
Program Manager, New Business Development (J. Thompson)

Purchasing Section

Assistant Director of Purchasing (W. Luther)
Manager, Purchasing (J. Corcoran)

Hierarchy, Policy and Budget Formulation, Collective Negotiations

The administrative services and technology department is responsible for all technological systems and data processing support for the Authority; procurement for these systems, and patron services (6T3). The department is headed by Director Robert Hatala, and divided into three sections: management information systems ("MIS"), office services, and purchasing (6T4, 6T6). Reporting directly to Hatala are John Maklary, Manager, Systems & Programming; Leonard Goldrosen, Computer Systems Manager; Harry Loewengart, Supervising Engineer; Alfonse Voza, Project Engineer; Raniero Travasano, Administrator of Office Services; and, Warren Luther, Assistant Director of Purchasing (R-17).

Hatala describes his management style for developing department policy as participative. In managing the operation, he

meets weekly with key subordinates from all sections (6T7, 7T44-7T46). The MIS group consists of Hatala, Goldrosen, Maklary, Voza, Bruzek, and Loewengart. The office/patron services section is represented by Raniero Travasano and Larry Goerke (6T7). The procurement section is represented by Warren Luther and June Corcoran (6T7).

Management Information Systems Section

MIS is responsible for automated toll collection, traffic surveillance and administrative support systems (6T6). In creating and implementing MIS policy, Hatala seeks input from many higher level subordinates, including most of the petitioned-for MIS section titles (6T34-6T35). Toll collection and traffic surveillance technologies require that upper level supervisors be updated regularly about projects, problems, and methods of operation. Hatala meets weekly with a team of MIS employees to be updated and, if necessary, to discuss proposed new methods, procedures or policies. Policy and procedures discussions are held to work out differences (6T6, 6T35). Some of Hatala's departmental policy decisions are influenced by these discussions (6T34-6T35). For example, he was persuaded to change his mind about the relative benefits of three computers versus one computer (6T35).

In the MIS section, John Maklary, Manager, Systems & Programming, reports directly to the director. He supervises John Michalkowski, Marco Remache and Albert Isaacs and 13 other employees

(R-17). He writes their performance evaluations which are forwarded to Hatala for endorsement. In Hatala's absence, Maklary is in charge of the entire department and attends executive director meetings, but Maklary has performed these functions infrequently (6T8, 6T11, 7T53). Maklary has not made major decisions in Hatala's absence.^{8/} Maklary participates in policy making but cannot adopt and implement policies on his own. He must discuss these with Hatala and others and get approval (6T37).

Maklary supervises 13 employees, only 3 of whom are also the subject of this petition (R-17). He interviews prospective MIS section employees, but the authority to hire is subject to approval by Hatala, the Authority's personnel committee, Executive Director Watson, and the commission (6T12-6T13, 7T48). With respect to disciplinary action, any action stronger than oral warning must be discussed with and approved by Hatala (6T15). Maklary has not recommended disciplinary action of Isaacs, Michalkowski or Remache.^{9/}

^{8/} Hatala testified that when he is absent Maklary has full authority to make decisions. Hatala later qualified the asserted delegation of authority. He testified that Maklary would be expected to await his return for decisions concerning major expenditures and that Maklary's role is to enforce established policy and not to alter it (6T8-6T9, 7T46-7T47, 7T50). Hatala also testified that he expects Maklary to await his return for major policy decision making (7T46-7T47). Accordingly, I do not credit Hatala's testimony that Maklary has "full authority" in his absence. Maklary, therefore, has not exercised independent judgment on policy matters.

^{9/} No evidence was offered suggesting Maklary has recommended discipline of these employees and, therefore, I infer that he has not done so.

Maklary provides cost estimates of negotiations proposals to the Authority's negotiations team before and during collective negotiations (7T40-7T43). He does not know if the Authority uses any particular estimate in collective negotiations, nor is he informed of the Authority's negotiations positions before their disclosure to the unions. He and others in the department are asked to propose changes in the existing agreements before negotiations begin. He has no other role in negotiations or contract administration.

Other petitioned-for employees who report to Maklary are:

Senior Projects Engineer (A. Isaacs)
Systems Projects Coordinator (J. Michalkowski)
Systems Project Coordinator, Tolls (M. Remache)

Albert Isaacs is Senior Project Engineer responsible for evaluating mechanical projects contracts, especially those for toll terminals, treadles, air conditioning and site installations (6T35). He works directly for Maklary and conveys his recommendations to him before they are passed to Hatala for approval (6T35-6T36). He does not prepare performance reviews of other petitioned-for employees (6T35). He has no duties concerning collective negotiations or contract administration.

John Michalkowski and Marco Remache are Systems Projects Coordinators reporting directly to Maklary (R-17). They supervise employees who are not at issue in this matter (R-17). Michalkowski is responsible for the development and maintenance of computer applications systems such as payroll, toll audit, maintenance and

many other non-roadway systems (6T51-6T52). He implements changes to the computer payroll system (6T51). Along with Maklary, he has produced negotiations scenarios for the payroll department and Authority's negotiating team by making the appropriate programming changes (6T52). Remache is responsible for all programming improvements to the toll application system (6T54). His position is parallel to Michalkowski's, but concerns a different area of responsibility. He has not been involved in negotiations, contract administration or informed about confidential negotiations information.

Computer Systems Manager Leonard Goldrosen and Assistant Computer Systems Manager Wayne Bruzek supervise that part of MIS which has to do with computer equipment (hardware) and the software which operates the main computer. Bruzek reports to Goldrosen. Both Goldrosen and Bruzek supervise employees who are not included in the petition. Both meet with other MIS team members when policies concerning the management information system operation are considered. Goldrosen reports directly to Hatala and is responsible for hardware, scheduling and input/output operators (6T33). Bruzek is responsible for the computer operating systems, that is, software which relates to how the machine functions. Computer security is also one of Bruzek's responsibilities (6T40). He assists Hatala in monitoring passwords which give certain employees access to all applications systems. He has the greatest access to information stored in the Authority's computer system (6T43). These records

include payroll information and information which is not available to the public. Despite his access, Bruzek has not accessed any confidential labor relations information (6T43-6T45).

Project Engineer Alfonse Voza and Microprocessor Systems Coordinator Robert Socha are technical professional supervisors who work on microprocessor programming and the MIS network. Socha and Voza are responsible for microprocessing programming and network design for those applications which use microprocessor logic (6T47).^{10/} Voza reports to Hatala and supervises Socha (R-17, 6T64). Socha supervises Barry Wang and Al Zehnbauser (R-17, 6T66). No evidence was presented of actual or substantial conflict because of their reporting relationship; both have a similar level of technical expertise and responsibility for the operation of microprocessor technology. Socha has worked on integrating automatic coin machines and upgrading the traffic surveillance system (6T64-6T65). Neither have any role in collective negotiations or contract administration.

Supervising Engineer Harry Loewengart (Manager, Special Projects and Planning) reports directly to Hatala and is part of the department's MIS team (J-1, R-17, 6T27-6T28). Loewengart does not supervise any other employees (R-17). He assists in consolidating

^{10/} Microprocessor programming includes computer programming which records activities within toll terminal and lane controllers. Lane control microprocessors in each toll lane calculate the toll, flash it upon a board and transmit it to a central processor where it is displayed and can be audited every six seconds (6T47-6T50).

MIS and data processing at the Authority (6T27). He is the Authority's representative to an interagency tolls and traffic management group with representatives from Pennsylvania and New York (6T27-6T29, 6T32). He is assigned to investigate and make recommendations on specific automation projects (e.g., electronic tolls, traffic management systems, and automatic coin machines) (6T27). He assists in developing the computer technology for these projects (6T32). Loewengart cannot commit the Authority to adopt specific policies or to acquire technology without Hatala's approval and review by other MIS staff (6T32-6T33).

Office Services Section

Administrator of Office Services Raniero Travasano oversees the office and patron services functions. Office services consists of mail distribution, reception, motor pool, procurement and quality control of all supplies, including toll tickets. Patron services includes monitoring the fuel and rest stop services contracts with Shell Oil and Marriott Corporations (7T2-7T3).

Travasano reports directly to Hatala (7T8). He is responsible for writing performance reviews of Larry Goerke and Ray Ashworth which could include recommendations for disciplinary action, although he has not recommended discipline or made negative comments about them (7T8-7T9). Travasano has authority to impose some discipline but is expected to discuss any serious discipline problem with Hatala before imposing a sanction (7T64).

Travasano develops marketing of Requests for Price ("RFP") for service area contracts (7T5). The complete RFP is reviewed by the finance and budget department; successful bidders must be approved by the commissioners (7T4-7T6). Travasano also recommends the purchase of supplies and consulting services to Hatala; his recommendations are usually followed (7T7). Travasano compiles the office/patron services annual budget and discusses it with Hatala; his budget recommendations may include recommendations for promotions (7T9-7T10).

Lawrence Goerke, Manager of Office Services, reports directly to Travasano and supervises supervisors Malone, Schurr, Belloff and Sahli (J-1, R-17, 7T135-7T138). Malone is the only employee who is also included in the proposed unit. He writes their performance reviews but believes his recommended pay increases for them have not been approved (7T105-7T107, 7T135). Performance reviews and any proposed disciplinary actions are sent to Travasano and then Hatala for approval and implementation (7T134-135, 7T137). Goerke has occasionally issued written reprimands but does not have authority to impose suspensions (7T135). In 1989 or 1990, Goerke evaluated Jim Malone and recommended that he receive a pay increase (7T98-7T99). Hatala required Goerke to clarify his rating of Malone before processing the recommendation further (7T104, 7T99, 7T102). After a long delay, Malone received an increase (7T98). Hatala endorses and may alter Goerke's evaluations (7T100).

Goerke has not formulated department policies, although Travasano has consulted him on policies already devised by others (7T95-7T96, 7T126-7T127). Goerke has authority to purchase \$1,000 worth of supplies at any one time, but, Travasano's initials must appear on all purchase requisitions issued in the section (7T96-7T97, 7T115-7T116). In general, large purchases must be cleared through the purchasing department and may be subject to the public bidding procedure (7T143). Toll tickets are purchased through the bidding system; specifications must be strictly followed (7T143-7T144). Goerke and his staff control toll ticket inventory and quality control; (i.e., if there is a problem with tickets, Goerke must contact the vendor to correct it, and may recommend that the Authority cease doing business with vendors whose products are inadequate) (7T129-7T132).

Goerke has a limited role in budget preparations; he and his subordinates prepare a projected budget for their section (7T97-7T98). Goerke then presents and discusses it with Travasano who presents it to Hatala to be incorporated into the department's budget (7T11-7T12, 7T98).

Goerke does not participate in collective negotiations for the Authority in his current position (7T92). Formerly, as a systems programmer, he developed and ran the computer programs which produced cost scenarios for the Authority's negotiations team before negotiations began (7T92-7T93, 7T124). The scenarios were developed by applying various percentage increases to salary information which was available to the public (7T92, 7T124).

James Malone, Motor Pool Fleet Manager, supervises two employees who are not subject to this petition; he in turn reports to Lawrence Goerke (J-1, R-17, 7T11). Malone fills requests for the use of cars in the motor pool and maintenance of pool vehicles, and monitors the use and condition of vehicles (7T16, 7T84). Malone provides budget data about the Authority's motor pool to Goerke and Travasano (7T10). He has limited authority to spend money on fleet maintenance; his recommendation to buy new vehicles are subject to the director's approval and budget limits (7T17, 7T85). Sometimes, maintenance work must be subcontracted but those decisions are subject to existing vendor contracts and must be approved by Goerke (7T18-7T20).

Ray Ashworth, Manager of Patron Services, supervises 5 other employees and reports to Travasano, Administrator of Office Services (J-1, R-17, 7T20). He is responsible for overseeing the Authority's service areas and for acting as liaison with the fuel and restaurant contractors (currently, Shell Oil and Marriott Corporations) (7T20-7T21).

Jeanette Thompson, Manager, New Business Development, reports to Ashworth and conducts surveys, investigates customer complaints and evaluates innovations in the service areas (J-1, R-17, 7T20-7T22). She does not formulate policy and does not supervise other employees (R-17, 7T21-7T22, 7T83-7T84).

Purchasing Section

Warren Luther, assistant director of purchasing, reports to the director and supervises June Corcoran (R-17, 7T22, 7T30). He is responsible for the procurement of goods needed by the department, including computer hardware and software (7T22-7T23). He is not involved in the choice of computer technology; rather he insures that public bidding rules and procedures are followed (7T23-7T24).

He does recommend vendors who sell non-computer goods and services needed by the department (7T23). Luther also develops the Authority's relationships with minority businesses, a priority concern of Executive Director Watson (7T27-7T29). Luther suggests means by which the Authority may insure compliance with bidding laws and procedures. However, his recommendations must be approved by the director and, occasionally, by the executive director (7T24-7T25). Luther also approves requisitions and compiles data for the department's budget (7T31, 7T35).

June Corcoran, purchasing manager, is responsible for generating requisitions, insuring their completeness, and attaching all documents. Corcoran supervises 4 other employees and reports to Luther (R-17, 6T21, 7T30).

ANALYSIS AND RECOMMENDATIONS

The Authority objects to the inclusion of these employees, alleging they are either managerial executives, confidential employees or in supervisory conflict with others in the proposed unit.

Supervising Engineer; Senior Projects Engineer; and, Program Manager, New Business Development

I find that three of the petitioned-for employees: Albert Isaacs, Harry Loewengart and Jeanette Thompson are not supervisors within the meaning of the Act and are inappropriate for inclusion in the proposed unit. Further, I find that none of these employees are either managerial executives or confidential employees and therefore they may be included in an appropriate unit. None has broad policy formulation or implementation authority as contemplated in Montvale; none has a significant role in collective negotiations or contract administration.

Albert Isaacs, Senior Project Engineer and Harry Loewengart Supervising Engineer/Manager, Special Projects work in the MIS section and do not supervise any other Authority employees. Isaacs reports to Maklary and advises Maklary about contracts for mechanical equipment and site installation. His policy recommendations pertain solely to this narrow, albeit important, responsibility and are subject to approval by at least three other management levels.

Managerial executives must possess sufficient authority to broadly affect the organization's objectives. Montvale at 504. Isaacs' position is too low in the Authority's hierarchy and the scope of his responsibility is too narrow to be considered managerial. Loewengart works on special MIS projects and represents the Authority at interagency conferences. He cannot commit the Authority to policies, interstate projects, or to the acquisition of

technology without subjecting proposals to prior review and approval by upper level MIS staff and obtaining the director's approval (6T32-6T33). His level of independent authority is limited, circumscribed and is not managerial.

Jeanette Thompson, Manager of New Business Development is a high level advisor, but does not have sufficient decision-making authority to be managerial executive. Her position is three levels below the department director. The scope of her authority is limited to service area concerns. She is not involved in policy formulation or decision making (7T21-7T22). She does not meet the standards for managerial executive. Montvale; Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982) (titles not managerial where they were fourth step of the chain of command and had only department-wide authority, not hospital-wide authority); State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991) (titles not managerial executives where they were six levels below department head and authority limited to single bureau). These three employees have no role in preparing for or conducting collective negotiations and contract administration. Accordingly, I find that they are neither managerial executives nor confidential and recommend that they are appropriate for inclusion in an appropriate unit.

Manager, Systems and Programming

Although John Maklary, Manager, Systems and Programming, reports directly to the director and is in charge of the entire department in Hatala's absence, the evidence shows that Maklary has substituted infrequently for Hatala at executive meetings and is in charge occasionally. He has not made major decisions. Hatala admitted that although Maklary has discretion to make important decisions, he expects Maklary to await his return for major decisions (7T46-7T47).

Maklary develops many of the standards and policies for the MIS section and some of which affect other departments' operations, however, his authority to independently implement policies is circumscribed and, therefore, not managerial. The Commission wrote in Montvale that managerial executives must "possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuation of these purposes." Montvale at 509. Maklary's recommendations must be approved by at least three of management levels, including the commission. Further, his authority to purchase items not included in the annual budget is limited by the finance and budget decisions on spending levels. Finally, his authority to create positions and hire personnel is limited by human resources department procedures, and the personnel committee's authority over staffing levels, promotions, and hiring. Maklary does not meet Montvale's standards for managerial executive status.

The Authority argues that employees who have access to all information stored in its computer system are confidential. However, the Commission and courts have held that access to confidential information is a relevant factor in assessing an employee's responsibilities, but it is not enough, standing alone, to make an employee confidential.^{11/} The negotiations team asks Maklary to provide cost estimates of bargaining proposal scenarios before and during collective negotiations. He and others are canvassed for ideas for changes in existing agreements before negotiations begin. However, Maklary is not informed of the significance of these cost scenarios to the Authority's negotiations positions or informed of proposals before their disclosure to the unions. Therefore, he is not placed into a conflict of loyalties which the Act seeks to avoid. Maklary does not have functional use or knowledge of other confidential labor relations information, such as the Authority's counter-proposals, its strategies in bargaining, or the Authority's bottom line. He has no other role impacting upon negotiations or contract administration. Based upon these facts, I find Maklary is not a confidential employee within the meaning of the Act.

^{11/} State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Accord, Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Although Maklary is alleged to be in supervisory conflict with other petitioned-for employees, no evidence of actual conflict was presented. If Maklary reports misconduct by another supervisor, any disciplinary action stronger than an oral warning or counselling would have to be discussed with and approved by Hatala. Maklary interviews and evaluates job candidates for MIS section staff, but his ability to hire is circumscribed by the personnel committee, Hatala, Executive Director Watson, and the commission. Accordingly, I find that no actual conflict exists and that Maklary may be included in the proposed unit. If these circumstances change, either party may file an appropriate clarification petition.

Systems Projects Coordinators

John Michalkowski and Marco Remache are both Systems Projects Coordinators reporting directly to Maklary. I find that neither are managerial executives within the Act primarily because they are too low in the Authority's hierarchy and, accordingly, their degree of independent authority does not broadly affect the organization's mission.^{12/} Their contributions to policy matters in the director's participative management style are too minor to form the basis for finding of managerial executive status. Further, neither are confidential employees. Their limited role of providing

^{12/} State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991); Bergen Pines Hospital, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982).

Hatala with ideas for bargaining proposals does not give them knowledge of, or functional use of confidential negotiations information. Finally, neither are in any position of authority over other petitioned-for employees, thus, there is no supervisory conflict of interest.

Accordingly, based upon the foregoing, I recommend the Commission find that Maklary, Michalkowski, and Remache are appropriate for inclusion in the proposed unit.

Computer Systems Manager and Assistant Computer Systems Manager

Leonard Goldrosen and Wayne Bruzek, Computer Systems Manager and Assistant Computer Systems Manager are high level technical supervisors but are not managerial executives within the meaning of the Act. Neither has sufficient independent authority to formulate and implement policies since these are reviewed and approved by the MIS team and Director Hatala. Any Authority-wide policies which might originate with Goldrosen or Bruzek would be subject to additional approvals by the executive director and commission. Further, Bruzek is not in any supervisory conflict with any other proposed unit title, and while Bruzek reports to Goldrosen, there is no evidence of an actual conflict of interest. Bruzek appears to be regarded by Hatala as Goldrosen's peer; he is part of the MIS team, and reports directly to Hatala on computer security matters. Accordingly, I recommend that Goldrosen and Bruzek are appropriate for inclusion in the proposed unit.

Project Engineer and Microprocessor Systems Coordinator

Alfonse Voza and Robert Socha, Project Engineer and Microprocessor Systems Coordinator are often consulted and included in policy formulation discussions because of their level of expertise in a technical area which affects other MIS areas. They participate in the team discussions and may recommend policy issues directly to the director. Their recommendations concern two important Authority functions: toll collecting and toll audit. However, their authority to independently implement policy, methods of operation, or technology is limited, and their level in the overall Authority hierarchy is too low to qualify them as managerial executives. Montvale; Bergen Pines Cty. Hosp. and Council No. 5, NJCSA. There is no evidence that these employees have any role in collective negotiations or contract administration. There is no evidence of actual conflict of interest between them because of their reporting relationship. I conclude that they are neither managerial executives nor confidential employees, nor are they in any supervisory conflict that would prevent them from being in the same negotiations unit.

Accordingly, I recommend the Commission find that Voza and Socha are appropriate for inclusion in the proposed unit.

Administrator of Office Services and Manager, Office Services

Administrator of Office Services Raniero Travasano and Manager, Office Services Lawrence Goerke's responsibilities in

managing the office/patron services sections involve major support services to the Authority's overall mission, especially to the development of service area contracts, procurement and control of toll tickets, and maintenance of the Authority's motor pool. They must make important recommendations which are often adopted. But, much of their authority to implement policies and make decisions is circumscribed by higher levels of approval and procedures designed to insure the integrity of the purchasing function, i.e., bidding procedures. Their authority is not sufficiently independent to compel a finding that they are managerial executives. This finding is underscored by their limited ability to impose discipline and their largely ministerial role in formulating the budget.

Neither Goerke nor Travasano have any significant role in collective negotiations or contract administration other than to suggest changes to contracts before negotiations, which are then compiled and approved by Hatala and others, and then given to the negotiations team. Accordingly, I find that neither employee is confidential within the meaning of the Act.

Finally, in the absence of evidence of actual conflict between Travasano and Goerke because of their reporting relationship, I will not recommend that they be in different negotiations units. Accordingly, based upon the above, I recommend that Travasano and Goerke be included in the proposed unit.

Motor Pool Fleet Manager and Manager of Patron Services

James Malone, Motor Pool Fleet Manager and Ray Ashworth, Manager of Patron Services, are upper level supervisors who oversee important support services but whose responsibilities are not sufficiently broad in scope to be managerial executives within the meaning of the Act. Their roles in assisting with budget preparation are primarily information gathering and concern only one or two narrow aspects of the overall budget. Neither has any role in collective negotiations or contract administration and, accordingly, do not qualify as confidential employees. Neither supervise anyone else in the proposed unit. I recommend that Malone and Ashworth be included in the proposed unit.

Assistant Director of Purchasing and Purchasing Manager

Warren Luther, Assistant Director of Purchasing, and June Corcoran, Purchasing Manager, are supervisors who are responsible for the procurement of goods needed by the department. Neither has any significant role in developing department policy but, under Hatala's direction, are expected to insure that the department's procedures comply with public bidding and purchasing rules and policies. Their responsibility is shared with others in the law and finance and budget departments. Luther approves requisitions and compiles information for use in formulating the department's budget but does not direct how budget resources will be allocated.

In the absence of evidence of actual conflict between Luther and Corcoran because of their reporting relationship, I will

not recommend that they be in different negotiations units. Neither has any role in collective negotiations or contract administration and so do not qualify as confidential employees. Neither supervise anyone else in the proposed unit. Accordingly, I recommend that Luther and Corcoran be included in the proposed unit.

RECOMMENDATIONS

Based upon all of the foregoing, I recommend that the Commission find the following titles in the Administrative and Technology Department appropriate for inclusion in the proposed unit:

Management Information Systems

Manager, Systems & Programming (J. Maklary)
Systems Projects Coordinator (J. Michalkowski)
Systems Project Coordinator, Tolls (M. Remache)
Computer Systems Manager (L. Goldrosen)
Ass't. Computer Systems Manager (W. Bruzek)
Project Engineer (A. Voza)
Microprocessor Systems Coordinator (R. Socha)

Office Services Section

Admin. of Office Services (R. Travasano)
Manager, Office Services (L. Goerke)
Manager, Motor Pool Fleet (J. Malone)
Manager, Patron Services (R. Ashworth)

Purchasing Section

Ass't. Director of Purchasing (W. Luther)
Manager, Purchasing (J. Corcoran)

Further, I recommend that the Commission find Senior Projects Engineer Albert Isaacs; Program Manager, New Business Development Jeanette Thompson; and, Supervising Engineer Harry Loewengart inappropriate for inclusion in the proposed unit because they are not supervisors.

Toll Collection DepartmentFINDINGS OF FACT

AFSCME has petitioned for these titles (J-1):

Section Manager, Administration (R. Raymond)
Section Manager (R. Magerkurth)
Section Manager (G. DeVan)
Section Manager (H. Schmitz)
Section Manager (J. Lefforts)
Section Manager (F. White)
Superintendent, Toll Maintenance (C. Gallo)
Administrative Asst., Toll Collection (W. Darragh)
Manager, Toll Collection Distribution Center (J. Schmidt)

Hierarchy, Policy and Budget Formulation, Collective Negotiations

William Burke, director of the toll collection department, reports to the chief engineer (1T79). The department's mission is to collect tolls efficiently, maintain and operate toll collection equipment, and supply and support the toll collection operation (1T25). The department has 1200 employees and an annual budget of \$50 million and it operates 24 hours per day, every day of the year (1T78-1T79).

The department is organized into four units: administrative, supply, electronics maintenance, and five geographical turnpike sections (R-2, 1T86-1T92). Five section managers oversee each of the geographical sections; each section manager reports directly to Burke; Section Manager Richard Raymond acts as administrative liaison between the director and the five field section managers (1T107-1T108). Administrative Assistant William Darragh processes all personnel matters, prepares

directives, investigates fraud and theft, and responds to various administrative inquiries. Charles Gallo, superintendent of tolls electronics maintenance, supervises 32 foremen, toll technicians, toll mechanics and a clerk typist and is responsible for the maintenance of mechanical and electronic equipment necessary to carry on the toll collection operation. Julius Schmidt, section manager, tolls distribution center, is responsible for ordering and maintaining inventory of toll collection supplies (i.e., tickets, forms, utilities) for all 27 interchanges; he supervises 3 stock workers and 1 clerk.

Toll collection department policies emanate from the executive director, toll collection director and department supervisors (1T80, 1T147, 2T139). Burke has solicited section managers' policy ideas at staff meetings (2T9-2T10, 2T139-2T140). Burke holds monthly staff meetings at which all upper level supervisors are informed about the commission agenda items, negotiations and safety matters. Policies are discussed at these meetings (1T89-1T91). Policies which section managers initiate are analyzed by the department's administrative assistant and discussed with the director before implementation (1T83-1T84). Toll collection policies or methods which concern other departments are subject to interdepartmental approval (1T81). For example, the sale of tokens to the public would be considered by the engineering and finance departments and then approved by the executive director and commissioners (1T81-1T82).

Toll collection rules contained in policy/procedures manuals and labor agreements are implemented by middle and lower management (1T80, 1T137, 1T148). The Authority is standardizing operational procedures and writing them into manuals (1T148). Draft manuals have been sent to Burke for review and he has asked Richard Raymond and William Darragh to comment on the effect of these proposed procedures on the department's operations (1T142-1T143). Section managers have not been asked for their comments (1T144). Procedures are also detailed in the toll collectors' manual of conduct and equipment operation, and in dress codes (1T148).

The comptroller directs the toll collection department to prepare a proposed annual budget in September of each year (1T160-1T161). Ninety percent of the department's budget is allocated to pay for salaries and overtime compensation (1T162, 2T122). Section managers prepare estimates of costs above the previous year's expenses and request additional staff or overtime allotments (2T26-2T30). This information is compiled by William Darragh and then reviewed and approved by Burke before it is sent to finance and budget, and then to Executive Director Watson and the commission for final approval. Section managers must statistically prove a need for additional staff/overtime (1T163-1T164).

Burke is a member of the Authority's negotiations team and was chief negotiator in the 1986 and 1989 negotiations with the Supervisors' Association and Local 194, IFPTE (1T95). He asks managers and his administrative assistant, William Darragh, to

assess the impact of various union proposals (1T97, 1T154-1T157, 2T75, 2T116, 2T143). Darragh compiles and evaluates the responses and then Burke incorporates and presents the proposals to the team (1T154). Department managers do not know the Authority's negotiations positions before they are disclosed to the unions.^{13/}

Section Managers

Each of the five geographical units is headed by a section manager, all are subjects of this petition and share similar duties. They are assigned as follows (1T85-1T86):

Section 1	Gerald DeVan	140 employees
Section 2	Richard Magerkurth	150 employees
Section 3	Frank X. White	295 employees
Section 4	Jim Lefforts	276 employees
Section 5	Harrold Schmidtz	280 employees

^{13/} Burke testified that the section managers and other supervisors are informed about the Authority's counter-proposals before they were disclosed to the union (1T156). Burke later stated that he did not think his managers were aware of what the Authority's team had decided to offer before it was offered and that these managers were probably not aware until "the document is signed" (1T157). I do not credit Burke's conflicting testimony that managers know negotiations positions in advance, but find that others' testimony corroborates the managers' lack of advance knowledge. William Darragh testified that while he knows the Authority's negotiations positions before they are disclosed to the unions, he did not believe any other department supervisors knew this information (2T145). And, Section Manager Magerkurth testified that he had not been made aware of which suggestions are adopted as proposals by the negotiations team (2T33, 2T61-2T62).

These section managers supervise the day-to-day toll collection operation at assigned locations and supervise assistant section managers, plaza supervisors, toll collectors, and utility workers (R-3, 1T98, 1T107-1T108). Many toll department policies and procedures are codified in "Toll Collectors' Bulletins," "Supervisory Bulletins," and the toll collectors manual (2T56, 2T66-67). Many work rules are contained in the supervisors' and Local 194 labor agreements. Section managers enforce rules within their sections and recommend new rules (2T49-50).

Vacation scheduling is partially covered in collective negotiations agreements (P-4, 2T53, 2T58-2T59). Director Burke formulates vacation relief and tour swaps rules (2T56). Schedules and vacation selections are controlled by contractual seniority provisions (2T52, 2T58-2T59). Section Manager Magerkurth requests Burke's approval to authorize overtime, add more employees or change the schedule; Burke has not always approved these requests (2T32-2T33, 2T51). Burke also controls the department's overtime (2T32-2T33).

Section managers supervise between 140 and 280 employees, but do not supervise any petitioned-for employees (J-1, 2T70). Their authority to discipline is limited by collective negotiations agreements and must be approved by Burke (1T98). They are authorized to impose on-the-spot one day suspensions without prior approval, and then they and Burke decide whether the suspension should continue (1T109). In a 7-8 year period the department has

had to terminate 24 employees following criminal investigations (1T98). Burke has altered his section managers' disciplinary recommendations but generally he approves them (1T99-1T100, 2T60). Burke's termination recommendations have always been approved by the commission (1T99). Section managers evaluate their employees at 6-months, one and two year intervals (2T46). They also oversee toll collectors' training and retraining, which is carried out by assistant section chiefs under a program developed by the accounting and administrative departments (2T49-2T50).

Burke holds monthly staff meetings with section managers at which he discusses matters raised by the commission and policy matters of all types and solicits policy ideas. Magerkurth was asked to consider the issue of preventable accidents (R-7, 2T10, 2T37-2T38). He suggested an interview procedure, but does not know whether this was adopted (R-8, 2T37-2T38).

Burke solicits negotiations proposals from the section managers and decides which ones to include in the Authority's negotiations (1T97, 2T33). During negotiations, Burke asks section managers to evaluate the effect union proposals will have on their sections' scheduling and overtime (1T97, 2T60, 1T154). Responses are collected by Burke and evaluated with the rest of the negotiations team before the Authority responds to the unions (1T97). Magerkurth suggested a change in toll collectors' hours. He does not know whether his proposal was used in negotiations but it was not implemented (2T33). Magerkurth does not know what

proposals are going to be offered by the Authority's negotiations team (2T33, 2T61-2T62).

Section managers play a minor role in formulating the department's budget. At Burke's request, each section manager prepares a list of proposed budget increases for wages, overtime and supplies (2T27-2T30). The department's needs do not change drastically from year to year (2T30). Magerkurth asks his subordinates for ideas and then sends them to Burke (2T26). He does not prepare a "budget" for his section; section managers do not see the approved budget (2T26-2T27).

Administrative Section Manager --R. Raymond

Administrative Section Manager Richard Raymond reports to Burke and supervises two secretaries and two audit clerks (2T77, 2T113-114). Raymond's duties are unique in that he is not in the field with direct responsibility for toll collection but performs a myriad of administrative support duties (2T79-2T80). He also supervises training of toll collectors and the utilities department, consisting of one toll plaza supervisor, one lieutenant, the supervisor of utilities and 20 utilities employees (2T113-114). He coordinates administrative matters among department sections and between the toll collection department and other Authority departments (2T75).

Burke appoints Raymond "acting director" in his absence; in this role, Raymond is limited to enforcing existing policies. He

has not independently formulated or implemented new policies (1T94, 2T78-2T79, 2T111). Burke is away from the Authority approximately four weeks per year (2T113).

Raymond reviews and comments on department policies and rules (1T94-1T95, 2T77). Burke, and not Raymond, determines the department's staffing standards and work procedures (2T78). Raymond investigates problems which field section managers report and resolves them or presents them to Burke for resolution. When Raymond resolves them he is limited to clarifying or enforcing existing policy (2T80-2T81). Burke accepts Raymond's recommendations 75 percent of the time; on certain matters Burke must get a higher authority's approval (2T83). Raymond communicates Burke's responses and directives to other supervisors (2T85-2T86). He has not recommended discipline of any employees who are the subject of the petition (1T57, 2T76, 2T87).^{14/} He participated in a discussion between Burke and another section manager about an incident involving traffic congestion management at that section's interchanges (2T88). Burke has not asked Raymond's opinion about hiring decisions, but has asked his opinion on discipline of toll collectors (2T86).

^{14/} Although Burke stated that Raymond has authority to discipline other section managers, I do not credit this testimony. Burke also stated that Raymond has not disciplined any other section manager and that Raymond has the same rank as other section managers (1T157-1T158). And, Raymond stated he does not directly supervise anyone in the petitioned-for unit but may indirectly supervise them (2T76).

He compiled other section managers' negotiations suggestions but did not know the Authority's negotiations proposals before they were revealed to the unions (2T75, 2T116). Raymond has access to all departmental personnel records (2T84, 2T106). He has acted as a hearing officer for a disciplinary grievance filed on behalf of a member of the rank and file toll collectors union (2T101). Raymond's hearing report was not final and binding; it was sent to Burke for review; Burke has authority to overturn Raymond's recommendations (2T112).

Superintendent, Toll Maintenance

Charles Gallo, superintendent, toll maintenance, reports directly to Director Burke and supervises 32 employees in the toll electronic maintenance group, including a foreman, toll mechanics, toll technicians and a clerk typist (1T87). Gallo schedules and assigns these employees to perform all maintenance work relating to the computerized toll collection system at the Authority's 27 interchanges and 300 toll lanes (1T110-1T111). He also controls the payroll, inspects contractors' work and coordinates maintenance work with other departments (1T111). For example, he coordinated the installation of new equipment to accommodate the expansion of interchanges in the southern roadway division with the engineering department (1T111). Gallo recommends discipline, interviews and recommends hiring of job applicants; he evaluates probationary employees and recommends their dismissal or retention, and insures

that all of his employees are properly trained (1T112-1T114). His personnel recommendations are usually followed (1T116). Gallo prepares his section's budget and approves the purchase of equipment and supplies for his section (1T111-1T112). Gallo attends monthly toll collection department meetings and assists in formulating department policy (1T112-1T113). He is at the same hierarchical level as section managers (1T111-113).

Manager, Toll Collection Distribution Center

Julius Schmidt is the manager, toll collection distribution center and is also on the same level as section managers and the superintendent, toll electronic maintenance (1T90). He supervises four stock clerks and a clerk typist who order, receive, document, and deliver supplies daily (R-5, 1T88-1T89, 1T117). Schmidt's section supplies all interchanges with toll tickets, cleaning and utility supplies, forms and correspondence (1T88). Schmidt controls the inventory in the distribution center, valued greater than \$500,000, including toll collectors' uniforms (1T88).

Schmidt formulates the budget for uniforms, equipment, supplies and vehicles before it is approved by Burke and the finance department (1T118). He also recommends policies relating to uniforms and other supplies (1T118, 1T122). Schmidt participates with Section Manager Raymond in training and evaluating toll collector trainees at the Distribution Center (1T119-1T120). Schmidt maintains the department's payroll records and rebid system,

whereby toll collectors can bid on new shift assignments twice a year (R-5, 1T120). He also drafts bulletins from Burke to toll collectors relating to dress codes (1T122).

Administrative Assistant, Toll Collection

William Darragh is the department's administrative assistant. He reports directly to Burke and does not supervise any other employees (2T120, 2T134). Darragh coordinates and compiles the department's budget, investigates and prepares disciplinary matters, processes other personnel matters and prepares and responds to correspondence for Burke (1T89).

Darragh prepares and finalizes the department's budget for submission to Burke (2T120). He confirms all budget information received from the other sections and costs out the department's operating and capital budgets (2T121-2T122). Cost estimates are based on information gathered from the finance and budget, engineering, and administrative services and technology departments (2T123).

Darragh reviews daily computer reports of vehicles per lane and tolls collected (2T127). He investigates irregularities and discrepancies to determine if there is potential illegal activity (2T126-2T127). Darragh presents his findings and recommendations to Burke (2T127). If a criminal investigation is warranted, Darragh works with the state police as the department's liaison until the case is closed; he has been a witness for the Authority in criminal proceedings (2T128).

Darragh prepares cost estimates to Burke for use in negotiations (2T129-2T130). He also maintains a computer file of proposals, counter-proposals and negotiations notes (1T154-1T155). Occasionally, Burke informs Darragh of the Authority's proposals and counter offers before they are proposed to the unions (2T131, 2T145).

ANALYSIS AND RECOMMENDATIONS

Section Managers

The Authority contends that section managers may not be included in the proposed unit because they are managerial executives or confidential employees. It alleges they formulate, implement and enforce policy; that they suggest negotiations proposals, are consulted on the effect of proposals, and act as disciplinary hearing officers.

None of the section managers have independent authority to devise and implement new policies, though all are canvassed for opinions about proposed new rules and policies. Burke determines and orders implementation of new policies. Most rules and policies are codified in bulletins, manuals and negotiations agreements. Burke has authority to hire and to approve most forms of discipline. Although each section manager independently runs his area on a daily basis, Burke is in weekly contact with each, and Burke coordinates and controls scheduling, staffing patterns and overtime. None of the section managers has department-wide

authority. Their participation in policy formulation and implementation is too attenuated and circumscribed to qualify as managerial executive duties.^{15/} "Managerial executive" is narrowly construed; a wider range of discretion than that possessed by section managers is needed. Compare, City of Newark, D.R. No. 82-18, 7 NJPER 640 (¶12288 1981), wherein deputy chiefs in the Newark fire department were found to be "managerial executives" under circumstances where they exercised total discretion in the deployment of some 748 fire fighters and had discretion to require the personnel to obtain additional training. By contrast, section chiefs cannot alter the established schedule, vacation schedule, or control overtime without Burke's approval. I conclude that none of the section managers, including Administrative Section Manager Richard Raymond, are managerial executives within the Act.

No facts were presented supporting the Authority's argument that the five field section managers are confidential within the meaning of the Act. They are asked to suggest contract changes

^{15/} See, e.g., Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977) (lifeguard captain not found to be a managerial executive, although he prepared the beach budget, authorized and modified rules, created the disciplinary system, authorized workweek changes, added guards in emergencies, participated in management meetings, influenced the Borough's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis), Cf., Atlantic City Dept. of Social Services, P.E.R.C. No. 90-21, 15 NJPER 594 (¶20243 1989) (positions not supervisory where collective input meant no individual case manager responsible for hiring/disciplinary recommendation and positions too removed from the ultimate decision makers).

which may become negotiations proposals but they are not informed which suggestions are used. In fact, the evidence suggests that one recommendation by Section Manager Magerkurth regarding toll collectors' hours was not used. They are asked to evaluate the effect of union proposals on scheduling and overtime, but this information is ascertainable by the unions. The raw information that section managers use (number of employees per shift, wages and overtime) is likely available to unions and, thus, unions can analyze the same data. Raymond compiled other section managers' suggestions for use in collective negotiations but did not know the Authority's negotiations proposals before they were revealed to the unions. Raymond has access to all departmental personnel records and has been a hearing officer but these duties do not make him confidential. The Commission requires more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. dism. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980). Burke, not section managers, ultimately determines scheduling, staffing and overtime levels. Their hearing officer status does not mean they

are "confidential" since any recommendations are reviewed by Burke and may be reversed. Based on the foregoing, I conclude that section managers are not confidential within the Act.

I conclude that toll collection section managers and the toll collection administrative section manager are neither managerial executive nor confidential employees. Accordingly, I recommend that they are eligible for inclusion in the proposed unit.

Superintendent, Toll Maintenance,

The Authority argues that Charles Gallo, superintendent, toll maintenance, should be excluded from the proposed unit because he is either a managerial executive, or a confidential employee within the meaning of the Act. Gallo participates in monthly department managers meetings and contributes to the discussions there on various policy matters. He also recommends policies to the director on matters over which he has supervisory authority, that is, maintenance work relating to the computerized toll collection system. He also recommends purchases of equipment and insures that all the employees in his section are properly trained. He does not have authority to unilaterally or independently implement new policies and the scope of his authority does not extend beyond toll equipment maintenance and support. Accordingly, although his position is a higher level supervisory one, it is not broad enough in scope or one of great discretion to act independent of the director. No facts were put into this record to support a finding

of confidential status. Gallo is not aware of negotiations positions nor does he play any role in contract administration.

I find that Charles Gallo, superintendent, toll maintenance is neither a managerial executive nor confidential employee, nor in supervisory conflict with any other proposed unit titles and recommend that he be included in the proposed unit.

Manager, Toll Collection Distribution Center

The Authority contends that Julius Schmidt, manager, toll collection distribution center, is a managerial executive because it alleges he occupies a high position in the Authority's management hierarchy, is a direct subordinate of the director of tolls, participates in monthly meetings wherein policy is discussed and assists in formulating the department's budget. Schmidt's position is three steps below the Authority's final policy-making body, the commission. More significant is the fact that Schmidt's scope of responsibility is relatively narrow when all of the Authority's functions are considered. He prepares the budget for a small component of the department's total budget: supplies, equipment and uniforms. His budget recommendations are reviewed and may be altered by an administrative assistant or the director, and then is subject to approval by the finance and budget department, commission subcommittee, executive director and commission. Thus, Schmidt has only limited control of the budget he formulates. This is not what is contemplated by the Commission's cases on managerial executive

status. In Bergen Pines Cty. Hospital, three titles were held not managerial although they had department-wide authority and were only one step further than Schmidt in the chain of command.

Schmidt does not have any significant role in collective negotiations or contract administration. I declined to find that confidential labor relations matters were discussed at the director's monthly meetings and no other facts show that Schmidt knew the Authority's negotiations positions before they were disclosed to the unions. "Confidential employee" is given a narrow construction. Absent specific evidence of his role in negotiations or contract administration, Schmidt is not a confidential employee within the Act's meaning. Brookdale Comm. College, D.R. No.78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

I find that Julius Schmidt, manager, toll collection distribution center, is neither a managerial executive nor confidential employee, nor in supervisory conflict with any other proposed unit titles and recommend that he be included in the proposed unit.

Administrative Assistant, Toll Collection

The Authority alleges that William Darragh, administrative assistant, is ineligible to be in the proposed unit because he is either managerial executive, confidential employee and/or he is not a supervisor. Darragh is not a managerial executive because he does

not have independent authority to formulate or implement policy which broadly affects the Authority's operations.^{16/}

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

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

Darragh prepares cost estimates to Burke for use in negotiations and also maintains Burke's file of proposals, counter-proposals and negotiations notes and enters proposals into the department's computer information system before and during negotiations. But most importantly, Burke informs Darragh of the Authority's proposals and counter offers before they are proposed to the unions. These duties, standing alone, make Darragh's position incompatible with membership in any negotiations unit.^{17/}

Accordingly, I find William Darragh's administrative assistant position to be confidential within the meaning of the Act and recommend his title be excluded from the unit.

^{16/} If Darragh is found not to be confidential, he nevertheless is not appropriate for inclusion in the petitioned-for unit which excludes non-supervisory employees, because he does not effectively hire, fire or discipline others, nor have authority to effectively recommend the same. N.J.S.A. 34:13A-5.3.

^{17/} See, Old Bridge Tp. Bd. of Ed., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981) (research assistant was confidential where he assisted various labor-relations functions, including preparing the initial Board's negotiations proposals, and where he had advance knowledge of the Board's maximum salary increase to unit members); and Tp. of Scotch Plains, D.R. No. 84-11, 9 NJPER 632 (¶14270 1983) (senior bookkeeping operator confidential where she had advance knowledge of township's final negotiations position).

RECOMMENDATIONS

Based upon all of the foregoing, I recommend that the Commission find the following titles in the Toll Collection Department appropriate for inclusion in the proposed unit:

Section Manager, Administration (R. Raymond)
 Section Manager (R. Magerkurth)
 Section Manager (G. DeVan)
 Section Manager (H. Schmitz)
 Section Manager (J. Lefforts)
 Section Manager (F. White)
 Superintendent, Toll Maintenance (C. Gallo)
 Manager, Toll Collection Distribution Center (J. Schmidt)

Finally, I recommend that the administrative assistant, toll collection, William Darragh, be excluded from the proposed unit because it is confidential within the meaning of the Act.

Operations DepartmentFINDINGS OF FACT

AFSCME has petitioned for these Operations department titles (J-1):

Traffic Engineer, Design & Planning (J. Kraft)
 Traffic Engineer, Operations (S. Purdum)
 Traffic Operations Center Manager (H. Comeau)
 Traffic Operations Assistant (E. Ferrari)
 Manager-Emergency Systems (J. Lyon)
 Manager-Employee Safety Division (J. O'Keefe)

Hierarchy, Policy and Budget Formulation, Collective Negotiations

The operations department ensures the continuous flow of traffic and provides communications, emergency services and police coverage on the turnpike (5T4). It also provides an employee safety program (5T5). It includes five divisions: traffic engineering, emergency services, traffic operations center, employee safety, and state police civilian employees (5T4). Director of Operations,

Robert F. Dale, reports to the chief engineer and executive director (5T5). Dale directly supervises Traffic Engineers Spencer Purdum and Jerry Kraft, Traffic Operations Center Manager Henry Comeau, Manager, Emergency Systems Jeffrey Lyon, and Manager, Employee Safety Division John O'Keefe (R-15).

Operations department staff meetings are held monthly. Kraft, Purdum, Comeau and Lyon regularly attend; information is exchanged and policies are discussed (5T36-5T37). Dale is ultimately responsible for developing and enforcing policies and procedures but he relies heavily on subordinates' recommendations (5T41, 5T47-48, 5T52). Dale is responsible for developing staffing standards within the department (5T41, 5T52). Purdum and Kraft substitute for Dale in his absence; but do not have authority to alter staffing or the budget (5T42).

Kraft, Purdum, Comeau, Lyon and Ferrari participate with Dale in formulating the department's budget (5T39). They send Dale their divisions' capital and operating budget recommendations (5T22). Dale reviews them and may alter the amounts or items. He discusses such changes with the division heads (5T22-5T23). Dale sends the completed budget to the comptroller who may alter the total amount recommended but will not alter specific items (5T24). If the approved final budget is less than requested, Dale decides what items are deferred or deleted, and in so doing, consults with his division managers to a minor degree (5T24-5T25, 5T46).

The negotiating team informally asks Dale for comments as they prepare for negotiations (5T25). Dale asks division managers who supervise union members for their suggestions (5T25). This has included Kraft, Comeau, Purdum and Lyon (5T26, 5T51-5T52). Dale has not known the offers and counter-offers made at negotiations (5T44).

The division supervisors have disciplinary authority and evaluate their subordinates (5T43). Evaluations which involve a change in pay rate are generated by the personnel department and involve a formal review (5T44). Supervisors recommend evaluations to Dale and he either endorses them or discusses the matter with the recommending supervisor (5T43-5T44). The recommendation is forwarded to personnel where it may generate additional routine approvals (5T44). None of the petitioned-for titles evaluate each other (5T44). Spencer Purdum has not evaluated Ed Ferrari within the past three years (5T44).

Traffic Engineers, Design/Planning and Operations

Spencer Purdum is traffic engineer, operations, in charge of ensuring continuous traffic flow by handling traffic problems as they occur. He reports directly to Dale and supervises a secretary, traffic operations assistant, traffic engineering aide, and four traffic control supervisors (R-15, 5T19, 5T52). Purdum's section controls traffic control devices such as signs, pavement markings, variable message signs and interchange traffic signals (5T50). He

schedules all construction and maintenance activities, manages traffic control for football games, fireworks displays, and accidents and reviews plans for other traffic safety measures such as toll plaza overhead lane controls, line striping designs, highway lighting and guardrail installation (5T20-5T21, 5T50). He records and notifies the toll department of military convoys and coordinates with other public agencies and roadways on matters affecting traffic flow (5T20-5T21). He makes policy recommendations to Dale on matters affecting traffic controls which are often followed (5T22).

Purdum is notified of major accidents, unanticipated congestion, and snow, fog or ice. He has personally gone to the scene on occasion to advise traffic control supervisors or decide where lanes should be redirected and signs posted (5T66). Once a week he meets with representatives from engineering and maintenance departments to establish lane closing schedules to accommodate their work; the engineering department resolves conflicts between two contractors (5T66-5T67). Then Purdum turns the schedule over to Ferrari and the state police for implementation (5T67). Purdum has authority to call a Maintenance roadway supervisor to deploy a crew to a major accident (5T68).

Purdum recommends hiring and firing of other employees although he has never disciplined anyone (5T51, 5T60-64). Requisitions for personnel are signed by Dale and processed by the human resources department (5T51). Purdum has not directly assisted in preparing for collective negotiations; he has recommended items

to Dale, but is not privy to discussions about proposals (5T52). Purdum has not served as a disciplinary hearing officer (5T53). Purdum develops the operating and capital budgets and forwards them to Dale (5T53).

Purdum supervises Ferrari; he has the authority to recommend discipline of Ferrari though he has not done this (5T51, 5T55-56). Purdum has not formally evaluated Ferrari within the past three years (5T44).

Purdum has substituted for Dale infrequently and would defer any major decisions for Dale's return (5T53). Jerry Kraft is traffic engineer, design and planning, and supervises one traffic data analyst and three clerical/secretarial employees (R-15, 5T12). He is responsible for compiling traffic volume data, accident data, and police statistics (5T11). He analyzes this data and forecasts traffic patterns for use in determinations about toll and traffic lane requirements (5T8). Kraft also compiles and analyzes data for special projects, including turnpike widening and expansion (5T12). His section maintains and distributes vehicle accident reports to the public (5T12).

Kraft was in charge of the department's administrative functions in Dale's absence for two weeks in summer 1991 (R-16, 5T16). This entailed processing payroll sheets, personnel matters and other office matters (5T16). During this period Kraft had access to employee personnel records (5T16). Kraft participates in Dale's monthly meetings and contributes to the department's budget along with other supervisors as noted above.

In addition to making suggestions for negotiations, Kraft has acted as hearing officer for disciplinary matters of members of Local 194 (5T17). Kraft is not aware of the Authority's negotiations positions or strategy prior to their disclosure to the unions. His hearing officer reports are not final and binding on the Authority.^{18/}

Traffic Operations Assistant

Ed Ferrari is the traffic operations assistant who reports to Spencer Purdum and supervises four traffic control supervisors. He and Purdum schedule traffic control supervisors to place and remove lane closing signs and barriers and to ensure that those working on the roadway wear safety vests, that flashing lights are operating and that rules are followed (5T71). Ferrari coordinates activities with the state police and tolls department on special events affecting traffic flow (5T71). He has recommended hiring and firing; has never formally disciplined anyone (5T72). He has not been a hearing officer nor assisted in preparing for collective negotiations (5T72). He has not known what proposals are part of the negotiations (5T73).

^{18/} I infer this because no evidence was presented to show that Kraft is aware of the authority's negotiations positions or strategy prior to their disclosure to the unions, or that his hearing officer reports are final and binding on the Authority. I note that even Kraft's director (Dale) does not have advance knowledge of the Authority's negotiations positions and that the role of other Authority hearing officers is one of recommending findings which may be changed by directors. (See, "Toll Collection Department", infra)

Ferrari issues traffic permits to contractors and recommends plans to Purdum; Purdum must sign permits which require a professional engineer's signature (5T73). Since 1968 Ferrari has been instrumental in creating and updating a fog and snow conditions procedures manual (5T75-5T77). The information was obtained from operations and other departments and compiled by Ferrari. The manual was reviewed within the operations department; Dale had authority to change these procedures and policies but most of it was accepted (5T78).

Traffic Operations Center Manager

Henry Comeau is traffic operations center manager. The center sets speed limits, controls speed warning signs, variable message signs and other displays for motorists and is the roadway communication center (5T10). He supervises five shift supervisors and ten communications dispatchers (5T26). Comeau recommends staffing needs, equipment and operational programs for the center (5T26). Comeau has made suggestions for negotiations which Dale passes on to the negotiations team (5T26). Comeau is not aware of the Authority's negotiations positions or strategies^{19/}

He has recommended an additional communications center to handle the needs of that portion of interstate 95 under the

^{19/} I infer this since Comeau's supervisor, the director of operations, is not informed of the Authority's positions and no other evidence suggests that Comeau has a greater role than Dale in collective negotiations.

Authority's jurisdiction and extension of the automatic traffic surveillance and control system (5T27-5T28). He has discussed communications concerns with members of other departments. Dale relies on Comeau's suggestions regarding communications and has forwarded some of his ideas to the chief engineer (5T26, 5T28).

Manager, Emergency Systems and Manager, Employee Safety Division

Jeffrey Lyon is manager, emergency systems and supervises two emergency services supervisors and a secretary (R-15). He establishes contracts with garages that service disabled vehicles on the turnpike (5T37). He inspects facilities, equipment, personnel to insure requirements are met (5T37). He coordinates road service vehicles from 13 service areas. His section maintains financial records of towing, records of disabled vehicles, responses and availability of wrecker trucks. He has suspended a towing service which had not performed within specifications (5T38-5T39). He establishes agreements with first aid and fire squads and checks response records of same (5T38). He coordinates with the law department and contractors concerning hazardous materials cleanup on spills on or near the roadway (5T38).

Lyon has made suggestions for negotiations items (5T26). Comeau is not aware of the Authority's negotiations positions or strategies.^{20/}

Manager, Employee Safety Division

John O'Keefe, manager employee safety, is responsible for developing safety programs for Authority employees and patrons. He does not supervise any other employees. He is primarily responsible for insuring that the employee safety manual is obeyed. However, he does not appear to have authority to discipline or sanction anyone who does not follow safety rules.^{21/} He is consulted about matters of interpretation of the Employee Safety Manual (5T33). O'Keefe meets monthly with the Employee Safety Committee, a labor-management committee, to discuss safety issues which have arisen (5T33). He reviews and updates the manual, and suggests safer work practices to other departments. He also investigates conditions to determine their safety (5T34). The Safety Policy Committee ultimately approves the Authority's safety policy (5T35).^{22/}

^{20/} I infer this since the director of operations is not informed of the Authority's positions and no other evidence suggests that Lyon has a greater role than Dale in collective negotiations.

^{21/} I infer this because the description of his duties did not indicate any such managerial authority; rather his role is more consultant-like or like a high level procedures analyst.

^{22/} The committee consists of the directors of human resources, toll collection, and law.

ANALYSIS AND RECOMMENDATIONSTraffic Engineers, Design/Planning and Operations

The Authority contends that Jerry Kraft and Spencer Purdum are managerial executives or confidential employees within the Act. These terms must be construed narrowly. A managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuating these purposes. Whether or not an employee possesses this authority is determined by his relative position in the employer's hierarchy, his functions and responsibilities, and, the extent of discretion he exercises. Montvale at 509. Kraft reports to a director and is technically four levels from the top of the hierarchy; the scope of his authority is very narrow in the context of the entire organization. He only supervises four other employees, none of whom supervise anyone else. His primary responsibility is to research, compile and analyze data for use in forecasting and planning. Kraft does not have discretion to develop or implement policies or programs implied by this data; others make such decisions.^{23/} Purdum has slightly greater authority and

^{23/} Compare, Gloucester Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 90-36, 15 NJPER 624 (¶20261 1989) (department head was a "managerial executive" under the Act because she reported directly to the County Administrator, participated in department head meetings, formulated proposals for submission to the Freeholders, oversaw compliance with REACH-funded contracts, developed the departmental budget and supervised the staff, had no higher-level interference with choices of how to realize goals of the administrative unit, exercised real authority and had discretion to make and effectuate policy (15 NJPER at 625, 626).

exercises greater discretion in his role as traffic operations engineer, however, I do not find that the size or scope of this authority is large enough to be considered managerial executive. Purdum exercises control over traffic flow, but the nature of this responsibility is responsive to roadway conditions and not policy-formulating. The roadway conditions are what drives any policies under which his division operates. His is a high level operational function rather than managerial executive.^{24/}

Kraft and Purdum are also not confidential employees. Kraft may suggest contract changes but there are no examples in the record of his having done so. Purdum has made suggestions but is not privy to discussions about proposals. Further, this form of participation in the negotiations process is too minor and indirect to qualify as confidential within the narrow construction of the Act's meaning. The Act's policy favors the organization of all employees desiring representation.^{25/} In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985) the Commission stated that it carefully scrutinizes the facts of each case to: "...find for whom each employee works, what he does, and what he knows about collective negotiations issues." Id. at 510)

^{24/} Compare, City of Newark, P.E.R.C. No. 92-116, 18 NJPER 300 (¶23128 1992) (deputy fire chiefs were not managerial executives where they were often in control of fire scenes and made all decisions about the progress of firefighting and deployment of other fire companies but did not formulate or effectuate policy).

^{25/} See, State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 253 (1974); Bor. of Avon, P.E.R.C. No. 78-21, 3 NJPER 353 (1977).

Neither Purdum nor Kraft are informed of the Authority's negotiations positions in advance of their disclosure to the union; their director is not even informed of these positions or strategies. Kraft's role as a hearing officer and access to personnel files in Dale's absence do not automatically give them confidential status. Neither work example provides any basis for concluding that they are confidential within the meaning of the Act. The Commission requires more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer."^{26/}

Accordingly, I find that traffic engineers, Spencer Purdum and Jerry Kraft are neither managerial executives nor confidential employees, thus, I recommend that they be included in the proposed unit.^{27/}

^{26/} State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87).

^{27/} Compare, Old Bridge Tp. Bd. of Ed., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981) (research assistant deemed confidential where he assisted various labor-relations functions, including preparing the Board's initial negotiations proposals, evaluating the union's proposals, keeping a record of the status of grievances and preparing information for processing grievances at the second step. Also, he had advance knowledge of the Board's maximum salary increase to unit members and had advance knowledge of the Board's position with regard to the processing of grievances).

Traffic Operations Assistant

Ed Ferrari is a high level supervisor responsible for an important traffic control function. He has recommended traffic control procedures by compiling the snow and fog manual. Ferrari did not have independent authority to formulate those procedures, rather he coordinated the information from other sources in other departments where he has no authority. He did not have authority to order their implementation. Operations department employees reviewed his work, including Spencer Purdum, traffic engineer, operations, and Dale had final approval authority. I have already found that Purdum, Ferrari's supervisor, is not a managerial executive. Therefore, I find that Ferrari is not a managerial executive within the meaning of the Act because he does not possess sufficient independent authority to implement or formulate policies. Ferrari does not have any role in the Authority's conduct of collective negotiations or contract administration, thus I also find that he is not a confidential employee within the meaning of the Act.

I find that the supervisor-subordinate relationship between Purdum and Ferrari does not amount to substantial potential conflict of interest and does not warrant placing them in different negotiations units. Purdum has never disciplined or recommended discipline against Ferrari. Dale directed Ferrari to update the fog manual without going through Purdum. Rather than as a strict chain of command operation, Purdum and Ferrari jointly control traffic flow, supervise the traffic control supervisors and coordinate with

other departments. The character of their relationship does not carry the risks for conflict which were present in the Wilton case.^{28/} Accordingly, I recommend that the titles held by Spencer Purdum and Ed Ferrari should both be included in the proposed unit.

Traffic Operations Center Manager

Henry Comeau, manager of the traffic operations center, is not a managerial executive or confidential employee within the meaning of the Act. Like the traffic engineers. Comeau has authority over only one function within a department and does not have department or Authority-wide authority.^{29/} He does not have independent authority to order policies or programs be implemented, though his recommendations have been seriously regarded and forwarded to others for direction. Comeau does not have any significant role with collective negotiations or contract administration and I find that he is not a confidential employee. Brookdale Comm. College.

I recommend that Traffic Operations Center Manager Henry Comeau should be included in the petitioned-for unit.

^{28/} Wilton holds that a substantial conflict must prevail to necessitate an exclusion from an existing unit of supervisory personnel.

^{29/} Compare, Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), three titles were found not to be managerial although they were in the fourth step of the chain of command. The positions had only department-wide authority, not hospital-wide authority and did not have discretion to formulate or effectuate policy relating to hospital's overall management goals.

Manager, Emergency Systems

Jeffrey Lyon is not a confidential employee. He makes suggestions which may be included with the Authority's proposals but he is not aware of the Authority's proposals or strategies before they are made public. He has no role in contract administration. This role is too remote and is not one whose "functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make [his] membership in an appropriate negotiating unit incompatible with [his] official duties." N.J.S.A. 34:13A-3(g)

Lyon is not a managerial executive because his area of responsibility, emergency services, albeit an important one, is too narrow and does not affect policies or procedures of the entire operations department, much less, the entire Authority. He supervises a relatively small staff. Although he has once suspended a towers' contract, this one example does not rise to the level in breadth or scope of "authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuating these purposes." Montvale at 509.

Accordingly, I recommend that the manager, emergency systems, Jeffrey Lyon, be included in the proposed unit.

Manager, Employee Safety Division

The Authority alleges that O'Keefe is both a non-supervisory employee and managerial executive within the Act's

meaning. Because we construe the term managerial executive narrowly, I conclude that O'Keefe is not a managerial executive. He has no staff; his role in developing safety policy is advisory in that he does not have the ability to independently implement or effectuate those rules and policies. The manual is already established and simply needs updating. His investigations result in findings and recommendations but without authority to direct other managers to implement his findings. Accordingly, he is not a managerial executive.

However, O'Keefe is not a supervisor. Since the petitioned-for unit excludes non-supervisory employees, I find that O'Keefe is not appropriate for inclusion in the unit.

RECOMMENDATIONS

Based upon all of the foregoing, I recommend that the Commission find the following titles in the Operations Department appropriate for inclusion in the proposed unit:

Traffic Engineer, Design & Planning (J. Kraft)
Traffic Engineer, Operations (S. Purdum)
Traffic Operations Center Manager (H. Comeau)
Traffic Operations Assistant (E. Ferrari)
Manager-Emergency Systems (J. Lyon)

Finally, I recommend that the Commission find that John O'Keefe, Manager, employee Safety Division, is not a supervisor and must be excluded from the unit.

Maintenance Department

FINDINGS OF FACT

AFSCME has petitioned for these titles (J-1):

Administrative Maintenance Manager (R. Walley)
Supervisor of Inventory Control (W. Kowalski)

Buildings Manager, (B. Campbell)
Senior Buildings Engineer (W. Hill)
Superintendent of Buildings, South (E. Cerino)
Superintendent of Buildings, North (E. Bachonski)

Division Manager, North (R. Geberth)
Superintendent of Roadway, North (M. Stankowitz)

Division Manager, South (R. Anderson)
Superintendent of Roadway, South (J. Colby)

Equipment Manager (L. Willever)
Assistant Equipment Manager (T. Foster)

Manager, Communications (D. Elyea)
Assistant Manager for Communications (W. Chafin)
Senior Project Engineer (M. Rotolo)

Maintenance Engineer (D. Wingerter)
Engineering Coordinator (D. McNamara)
Safety & Environmental Affairs Manager (H. Galary)
Supervisor of Maintenance Systems (J. Forrest)

Hierarchy, Policy and Budget Formulation, Collective Negotiations

The maintenance department is responsible for maintaining the Authority's roadways, buildings, signs, mechanical equipment, automotive fleet, and communications system (3T4). The department's director is Ralph Bruzzichesi, who reports directly to the chief engineer, Wally Grant (3T4). The department is subdivided into 7 discrete parts (R-9). Seven of the petitioned-for employees report

directly to Bruzzichesi (3T8, 3T11).^{30/} Bruzzichesi holds monthly staff meetings with the seven wherein policy matters are discussed (3T8, 3T11). Bruzzichesi is ultimately responsible for approving departmental policies but he delegates minor policy decisions to subordinates. He relies heavily on their recommendations in formulating department policy (3T67-3T68).

Bruzzichesi implements Authority-wide policies over which only the chief engineer, executive director and commission have authority (3T66-3T68).^{31/} Bruzzichesi has recommended policies to the executive director concerning signs, physical facilities, new techniques and procedures and vehicle recall. The executive director gets policy direction from the board of commissioners (3T6).

Bruzzichesi's seven direct subordinates prepare and submit their sections' annual budgets to Maintenance Engineer Dave Wingerter who assembles the entire departmental budget for Bruzzichesi's approval (3T78). The budget must be sent on to the finance and budget department for review and then to the executive director and commission for approval.

Bruzzichesi is on the Authority's negotiations team (3T69). He solicits ideas from his direct subordinates and takes

^{30/} These are Administrative Maintenance Manager Richard Walley; Buildings Manager, Brian Campbell; Division Manager, North, Russell Geberth; Division Manager, South, Robert Anderson; Equipment Manager, Leroy Willever; Manager, Communications, Dayton Elyea; and Maintenance Engineer David Wingerter.

^{31/} Bruzzichesi had only minor input into a manual of such general Authority-wide policies (3T68).

these maintenance department proposals to the team; the team determines the Authority's entire negotiations position (3T10-3T11). Bruzzichesi and his managers discuss policies during the course of negotiations but I do not find that these employees know the Authority's negotiations strategies and proposals prior to their disclosure to the unions.^{32/} Bruzzichesi has consulted with Manager of Administration, Richard Walley for clarification of the overtime clause during negotiations (3T69-3T70).

Relatively few grievances are filed in this department (4T56, 4T173). Many of the petitioned-for titles here could be assigned to act as disciplinary hearing officers, though most have not done this during Bruzzichesi's tenure (3T35). Hearing officers are assigned to matters involving employees over which they do not have supervisory authority (3T35). Their findings

32/ Bruzzichesi's testimony that his top managers are informed of the maintenance department negotiations positions was equivocal:

(Mr. Meara)Q.: ". . . Now once you've set proposals, I should say, that you're going to put on the table for negotiation, do you go back to any of the titles that we've discussed and let them know what the proposals are that are going to be put on the table with the Supervisors' Association?

(Mr. Bruzzichesi)A.: Yes, every proposal they gave me went on the table.

Q.: No, I'm talking about in general the whole proposals for the units, affect other than your department, correct?

A.: Yes, but they would not be concerned with issues relative to tolls.

Q.: So you would not --

A.: I would not share that information with them. Its not of their concern" (3T70).

are recommendations subject to Bruzzichesi's concurrence, and approval by the executive director (3T33-3T35, 4T37-4T38).

Bruzzichesi could and has changed hearing officer recommendations to maintain uniformity of punitive measures (3T76-3T77, 4T38).

Performance evaluation procedures exist only for members of the existing negotiations units (3T83). Also, for employees in the proposed unit, evaluations are done just after promotions and cease after two years (3T84).

Administrative Maintenance Manager & Supervisor of Inventory Control

Richard Walley is administrative maintenance manager. He reports directly to Bruzzichesi and supervises 25 employees, including Walter Kowalski, supervisor of inventory control (3T28-3T29). Walley's responsibilities include inventory control and processing personnel transactions. Walley is departmental liaison between the director and the labor organizations which represent maintenance department employees (3T28). He meets with union representatives regularly to discuss operational procedures and disciplinary issues (3T28). He investigates and resolves grievances informally (4T179-4T184). He has access to the department's personnel records (3T29). Walley has participated in providing negotiations recommendations which are discussed and then may be integrated with other proposals and given to Bruzzichesi (4T185).

Walley hired summer employees in conjunction with the human resources department; he determined the number of employees and the duration of their employment (3T29).

Walter Kowalski is supervisor of inventory control; he reports to Richard Walley and supervises 18 clerks and foremen (3T60). Kowalski is responsible for managing the department's central and satellite stockrooms which receive, distribute and maintain the inventory of parts, equipment, and supplies (3T60). He has prepared that part of the budget for the above equipment and materials and participated in only a limited way in the collective negotiations process (3T61).

Buildings Manager, Senior Buildings Engineer, Superintendent of Buildings, South; Superintendent of Buildings, North

Brian Campbell, buildings manager, supervises 135 employees engaged in maintenance of all turnpike buildings utilities, facilities, sign fabrication, electrical and mechanical equipment, roadway lighting and some environmental matters (3T8-3T9, 3T20). He reports directly to Bruzzichesi and makes policy recommendations which often affect other sections (3T9). Campbell prepares that portion of the department's budget concerned with buildings maintenance (3T10). He has assisted in developing the department's

positions for collective negotiations (3T11). Campbell supervises three other positions which are included in the proposed unit description: Senior Buildings Engineer, William G. Hill; Superintendent of Buildings, South, Ernest Cerino; and, Superintendent of Buildings, North, Edward Bachonski (3T20). Campbell has recommended hiring and disciplinary actions for employees in salary grades up to level 12 but has authority to recommend discipline against employees just below his own level (16) and his opinions would be considered seriously (3T14).

Senior Buildings Engineer

William Hill is senior buildings engineer; he supervises two engineering assistants and reports to Campbell (3T32). He develops and implements building systems such as heating, air conditioning and security, which are not of a large enough size to come under the engineering department, but which maintain existing buildings (3T31). Hill assists Campbell in developing the buildings division budget by preparing the budget for his projects and staff; he has no role in collective negotiations (3T32). Hill is working on a building security project with the state police, operations director and Bruzzichesi (3T36).

Superintendents of Buildings, North and South

Edward Bachonski and Ernest Cerino are the superintendents of buildings, north and south, respectively; both report to

Campbell, buildings division manager (R-9, 4T8). Bachonski and Cerino supervise approximately 50 and 70 employees respectively (3T48, 4T5). They are responsible for overseeing the inspection and maintenance of buildings within their geographical areas (4T5). This includes all electrical and mechanical systems, heating, plumbing, air conditioning, cleaning and general repair. Cerino also supervises the Authority's sign fabrication shop (3T48-3T49). They supervise foremen, craft employees and laborers (3T48). Superintendents recommend and impose discipline and act as hearing officers for members of the negotiations unit represented by IFPTE, Local 194 (4T6, 3T50). They have recommended applicants for vacancies within their divisions and made recommendations for promotions and demotions (4T9). Final approval for hiring and promotion rests with the commission.

The superintendents recommend staffing needs for their divisions. They have limited ability to decide who works overtime, when necessary (4T33). Campbell must pre-approve overtime, except in emergencies (4T33). Most division work rules are governed by the negotiations agreement between the Authority and Local 194 (4T11). As hearing officers, superintendents make preliminary judgments about whether the agreements were followed, but these recommended findings are sometimes reversed (4T36-4T37). They make policy recommendations through Campbell to Director Bruzzichesi, who must get approval for certain policies from the executive director and commission (4T10, 4T36).

Both superintendents have collected ideas for collective negotiations from subordinates and sent these and their own suggestions to Campbell and then Campbell sends them to Bruzzichesi (4T7). They are not informed about the disposition of their recommendations or otherwise involved in the collective negotiations process (4T7-4T8, 4T30-4T31). Both superintendents prepare budgets for their divisions; salary amounts are established in negotiations agreements (4T39).

Division Managers and Superintendents of Roadway, North and South

Robert Geberth and Russell Anderson are division managers, roadway, north and south, respectively; they supervise 104 and 60 employees, respectively (3T23, 3T26). Their divisions are responsible for highway maintenance, including drainage, right of way, bridge repair, and structural repair. Geberth and Anderson prepare the budgets for their respective divisions; these are submitted to Maintenance Engineer Dave Wingerter who compiles the maintenance department budget (3T24, 3T43, 3T78). Both division managers participate in Bruzzichesi's meetings and make recommendations on policy and negotiations issues (3T25).

Geberth and Anderson recommend hiring and termination, impose discipline, and recommend others for promotion (3T12). Geberth assisted in hiring Colby (3T13). The commissioners have final authority in hiring (3T30).

Michael Stankowitz, superintendent of roadway, north, reports to Geberth; James Colby, superintendent of roadway, south, reports to Anderson (3T23-3T24). These superintendents supervise the general foremen, foremen, assistant foremen, roadway maintenance workers and masons who carry out maintenance activities (3T23, 3T42-3T43). Colby and Stankowitz assist in preparing division budgets (3T43). They are consulted about operational concerns and procedures regarding safety, snow and ice removal (3T44-3T45). They have assisted in preparing the divisions' budgets; they have been asked to estimate the number of additional employees needed if the Authority acquires additional roadway (3T44-3T46). They make suggestions for collective negotiations proposals which are given to Campbell and Bruzzichesi (3T47-3T48). They are not part of the department's policy brainstorm group. They have access to employee information which could or has resulted in discipline and termination of employees Stankowitz supervises (3T47-3T48). Stankowitz does not supervise any title in the proposed unit.

They have recommended discipline and hiring which must be approved by the maintenance department director and human resources department (4T58). They have acted as hearing officers for employees in Local 194's negotiations unit; their recommendations have been reversed (4T59, 4T71).

Equipment Manager and Assistant Equipment Manager

Leroy Willever is equipment manager; Timothy Foster is assistant equipment manager; Willever reports to Bruzzichesi and Foster reports to Willever (R-9). They are responsible for supervising the maintenance of all of the Authority's cars and trucks (3T26). Willever develops the budget for his section, including recommending the purchase of trucks, cars and automotive parts (3T27). He was part of the group which developed ideas for Bruzzichesi to use in collective negotiations (3T27). He could be asked to act as a hearing officer in the same manner as other department supervisors. He has a mechanical engineering degree which is necessary for the performance of his job (3T27-3T28). Foster oversees a program called "Gas Boy," a magnetic card system by which Authority employees obtain gas at various locations without assistance (3T37). Foster does not directly supervise anyone but is considered a "specialist." He prepares the budget for the Gas Boy system (3T37). Willever supervises Foster but has not disciplined Foster.^{33/}

^{33/} I infer this because no evidence was presented showing that Willever has disciplined Foster.

Manager, Communications, Assistant Manager for Communications, and Senior Project Engineer

Dayton Elyea, manager, communications; Winston Chafin, assistant manager for communications, and Michael Rotolo, senior project engineer, are responsible for the installation, maintenance and improvement of the Authority's telephone and radio communications systems (3T15, 3T21, 3T53). Elyea supervises Rotolo and Chafin and their 23 subordinates and reports directly to Bruzzichesi. Chafin supervises foremen and communications technicians in operations; Rotolo's area is radio development (3T53). Rotolo supervises a communications specialist (3T22). Elyea recommends hiring, termination, promotion and transfers (3T15). Elyea has participated in policy formulation in the department (3T16). Elyea, Chafin and Rotolo are researching and developing a new police radio system for the Authority (3T16, 3T21, 3T52-3T53). Their recommendations will be forwarded to Bruzzichesi and higher levels for approval (3T21-3T22). All three formulate the communications' annual budget and recommend purchases (3T14, 3T22). Elyea has not had to discipline either Rotolo or Chafin.^{34/}

Maintenance Engineer; Senior Engineering Coordinator; Safety & Environmental Affairs Manager; and Supervisor of Maintenance Systems

The maintenance engineer, David Wingerter, oversees improvements to the Authority's roadways, right-of-way and

^{34/} I infer this because no evidence was offered that Elyea has done so.

structures; and researches new equipment (3T16). He reviews construction plans and monitors contractors who perform construction work at the Authority (3T16). He coordinates the maintenance department's responses on special projects (3T17). Wingerter is acting director in Bruzzichesi's absence; in this role he attends meetings (3T16). He reports directly to Bruzzichesi and directly supervises 6 employees (3T26).

Bruzzichesi supervises Senior Engineering Coordinator, Daniel McNamara; Manager, Safety and Environmental Affairs Harris Galary and Supervisor of Maintenance Systems, James Forrest; he has prepared their performance evaluations ((R-9, 3T18, 4T109-4T110). The evaluation format and criteria were devised and are distributed by the human resources department (4T111). Wingerter's recommended evaluations are forwarded to Bruzzichesi who reviews and processes them, if he concurs (4T111). The merit increase program is "on hold" at the Authority; therefore, evaluations do not lead to pay increases (4T111). Wingerter recommended the title, engineering coordinator be established and this recommendation was forwarded through channels and adopted by the commission (4T106). Wingerter has not disciplined McNamara, Chafin or Forrest (4T128).

Wingerter solicits budget information from his subordinates and compiles his budget; he also compiles the entire departmental budget and discusses it with Bruzzichesi (3T18, 4T116-4T120). He

provides budget reports, as necessary, and monitors purchasing and personnel matters (3T16). Wingerter assists in formulating collective negotiations proposals in a manner similar to Bruzzichesi's other subordinates and he compiles the suggestions for Bruzzichesi's use with the negotiations team (3T11, 3T19).

Daniel McNamara, senior engineering coordinator, reviews and recommends departmental procedures and protocol (3T55). He determines the types of equipment used in the department and supervises one employee (3T57, 3T93). He may be asked to serve as a hearing officer; in this role McNamara makes recommended findings which must be approved by Bruzzichesi (3T35). He prepares the budget for his section (3T55).

Harris Galary, manager of safety and environmental affairs, is responsible for matters relating to safety issues (3T38). He reports on accident rates and develops plans and procedures relating to safety and the handling of toxic materials (3T38). He supervises one employee and is responsible for preparing and submitting the budget for safety and environmental affairs (3T41). Galary develops protocol for access to toxic spills, dangerous sites and for the disposal of toxic substances (3T39, 3T44). He advises Bruzzichesi and recommends procedures to insure the Authority's compliance with occupational safety and health laws (3T38-3T42). He monitored and investigated a report of noxious fumes at turnpike interchange 13A in which he recommended that a consultant be engaged to monitor air samples; he will monitor that consultant's performance (3T38-3T39).

Galary has expertise in safety and environmental issues and consequently his recommendations are often given great weight (3T40). ^{35/}

James Forrest, superintendent of maintenance systems, develops and maintains the department's management information system which provides cost and productivity data. Forrest has not participated in collective negotiations or in preparing the budget (3T59). He coordinates his work with the administrative services and technology department (3T58).

ANALYSIS AND RECOMMENDATIONS

Administrative Maintenance Manager and Supervisor of Inventory Control

The Authority contends that Richard Walley, administrative maintenance manager, is either a managerial executive or confidential employee and must be excluded from the proposed unit. Alternatively, the Authority contends that Walley has a supervisory conflict of interest with Walter Kowalski, supervisor of inventory, and cannot be included in the same unit with him. The Authority also contends that Kowalski is a managerial executive. The evidence here does not support a finding of either managerial executive or confidential status for either employee.

^{35/} A safety policy composed of 4 department directors, oversee the development of the Authority's safety policies (5T35). A labor-management safety committee also meet to discuss and resolve employee safety issues (5T33).

A managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuating these purposes. Whether or not an employee possesses this authority is determined by his relative position in the employer's hierarchy, his functions and responsibilities, and, the extent of discretion he exercises. Montvale at 509. Walley does not have independent authority to devise and implement new policies, though he is part of the brainstorm group which meets monthly with Bruzzichesi to discuss policy issues. This type of involvement in policy-making is too dilute to find managerial executive status and too remote from the true policy makers. Walley's scope of control and discretion are too narrow; he does not have Authority-wide responsibility or authority. Kowalski's authority is more limited than Walley's and no facts present here support the assertion that he is a managerial executive.

"Confidential employee" is also narrowly construed. It signifies an employee: ... whose responsibilities or knowledge of collective negotiations issues makes their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g). Walley is the department's liaison with union representatives and meets with them to discuss labor relations matters. However, this does not establish that Walley has advance knowledge or responsibility for the Authority's positions with respect to contract administration. Bruzzichesi has consulted

with Walley for clarification of a policy during negotiations; but this and Walley's participation in Bruzzichesi's staff meetings where negotiations issues are discussed, does not lead to an inexorable conclusion that Walley is informed about the Authority's negotiations positions. I find that the record here does not establish that the seven managers who directly report to Bruzzichesi were actually informed about the Authority's positions and strategies prior to their disclosure to the supervisors' union.

The Authority also asserts that Walley's access to personnel files makes him confidential. Personnel files do not contain the type of information about negotiations or contract administration which automatically makes an employee who has access to them confidential within the Act's meaning.^{36/} Accordingly, I find that the evidence does not establish that Walley is a confidential employee.

Finally, there was no evidence of actual supervisory conflict with Kowalski or evidence that this section is managed in a strict chain of command such that there would be a likelihood of

^{36/} The Commission requires more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

substantial potential conflict of interest.^{37/} Based on the foregoing, I find that no substantial conflict exists between Richard Walley and Walter Kowalski, administrative maintenance manager and supervisor of inventory control, respectively. I recommend that both be included in the proposed unit.

Buildings Manager

The Authority alleges that Brian Campbell, buildings manager, is managerial executive, confidential and in supervisory conflict of interest with three other petitioned-for titles. I find that Campbell is not managerial executive for many of the same reasons I found Walley not to be managerial executive. Campbell is in the director's brainstorm group which meets with Bruzzichesi to discuss policy issues; he does not have independent authority to devise and implement new department-wide policies. This participation in policy-making is too dilute to constitute independent authority and too remote from the true policy makers to find managerial executive status. Campbell's scope of control is narrow; it concerns only one aspect of the Authority's overall

^{37/} Wilton holds that a substantial conflict must prevail to necessitate an exclusion from an existing unit of supervisory personnel.

maintenance program. Like Walley, he does not have Authority-wide responsibility or authority.^{38/}

Campbell does not have any significant role with collective negotiations or contract administration and I find that he is not a confidential employee within the meaning of the Act. He makes recommendations which Bruzzichesi may advance to the negotiations team, but he does not have any authority to determine what the Authority's negotiations positions will be, nor does he know what the Authority will propose before it is disclosed to the unions (see findings of fact above). His potential role as hearing officer carries little weight since there is no reliable evidence that he has been a hearing officer. Further, Campbell does not determine Authority policy with respect to contract interpretation, but makes recommendations, subject to ratification by a higher level manager's endorsement. The parties are not bound by these recommendations.

Finally, I do not find that the evidence indicates a substantial potential for conflict of interest between Campbell and Hill, Cerino or Bachonski which warrants placing them in separate negotiations units. The policy favoring broad-based units is well-established. The Act permits layers of supervisory employees

^{38/} Compare, Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), where three titles were found not to be managerial although they were in the fourth step of the chain of command. The positions had only department-wide authority, not hospital-wide authority and did not have discretion to formulate or effectuate policy relating to hospital's overall management goals.

to be represented within the same negotiations unit. In this situation, although some conflict between different levels of employees may always be present, only actual or substantial potential conflict shall warrant excluding a supervisory employee from an otherwise appropriate unit. Wilton

In applying these principles here, I conclude that Campbell, Hill, Cerino and Bachonski should be included in the proposed broad-based unit. Campbell has not disciplined any of these three. There are no specific instances in this record which indicate that the relations between Campbell and his immediate subordinates has created points of friction rising to a level such that their membership in the same unit would be incompatible. Compare, Town of Kearny where there were many instances of potential conflict in that the supervisor had expanded the department, had recommended several promotions and hiring and there was no evidence of multiple higher levels of approval. Here, recommendations for promotion and some forms of discipline must proceed from building manager to the department director, chief engineer, human resources department, executive director and commission for approval.

Accordingly, I find that the Buildings Manager Brian Campbell is neither managerial executive nor confidential within the meaning of the Act, nor in supervisory conflict with Hill, Cerino or Bachonski, and I recommend that his title be included in the proposed unit.

Senior Buildings Engineer

The Authority contends that Senior Buildings Engineer William Hill is a managerial executive and should be excluded from the proposed unit. Hill's responsibilities, level in the hierarchy and discretion do not support such a conclusion. I found that Hill's superior, Campbell, is not a managerial executive. Since Hill has a narrower area of authority and fewer subordinate employees than Campbell, he cannot be a managerial executive either. Further, there are five levels of management authority over policy formulation above Hill.

Accordingly, I find that the senior buildings engineer position occupied by William Hill is not managerial executive and recommend that this title be included in the proposed unit.

Superintendents of Buildings, South and North

The Authority contends that these two positions are managerial executive and confidential within the Act's meaning and are in supervisory conflict with Brian Campbell, manager of buildings division and therefore may not be included in the proposed unit.

I found that the buildings manager, Brian Campbell, is not managerial executive and for many of the same reasons underlying that decision, I find that neither superintendent is managerial executive within the meaning of the Act. Their scope of authority is even narrower than Campbell's and their ability to formulate and

effectuate policy is circumscribed by existing work rules and procedures as well as by the overarching authority of Bruzzichesi and Campbell. Their inability to approve purchase requisitions, the limits on their hearing officer role, and the need to have Campbell's approval for non-emergency overtime illustrate these limits on their discretion and level in the hierarchy. Further, I find that neither is confidential within the Act's meaning since neither has responsibilities or knowledge of collective negotiations issues which would make their membership in a negotiations unit incompatible with their duties. They do not know, in advance, the Authority's negotiations positions. They do not have any role in contract administration.

Accordingly, I find that the superintendents of buildings, north and south, Edward Bachonski and Ernest Cerino, are not managerial executive or confidential within the Act's meaning and recommend that these titles be included in the proposed unit.

Division Managers and Superintendents of Roadway, North and South

The Authority contends that division managers, roadway and superintendents of roadway, north and south are managerial executives, confidential or in supervisory conflict of interest and should not be included in the proposed unit. I find that these positions are similarly situated to the buildings manager and superintendents and for substantially the same reasons expressed above, I find that none of the roadway division managers or

superintendents are managerial executives or confidential employees within the Act or that there is a potential or actual conflict of interest which warrants placing them in separate negotiations units. These are high level supervisors in charge of the roadway maintenance function. They oversee the entire front line operation and necessarily make recommendations about policies, budget, purchases, negotiations and operations relating to roadway maintenance issues. However, none have the discretion to independently implement major policy changes. They are four levels from the top of the Authority's policy hierarchy and only have division-wide authority. Further, none are privy to confidential negotiations information or play an independent role in contract administration.

Finally, I find that the risk of substantial conflict of interest here is de minimis, and, balanced against the strong policy favoring broad-based units and disfavoring unit proliferation, the risk does not warrant placing these employees in different units. That Anderson participated in the hiring of Colby does not amount to substantial conflict since applicants are often unaware of who in the organization is really deciding who gets hired. Undoubtedly the selection of Colby would have been approved by Bruzzichesi and finally, the commissioners. There were no examples of discipline or

disputes between Geberth and Stankowitz or Anderson and Colby.^{39/}

Accordingly, I recommend that the positions occupied by Division Managers, Roadway, Geberth and Anderson and Roadway Superintendents Stankowitz and Colby be included in the proposed unit.

Equipment Manager and Assistant Equipment Manager

The Authority objects to the inclusion of Leroy Willever, equipment manager and Timothy Foster, assistant equipment manager in the proposed unit because it alleges that they are managerial executives and in supervisory conflict with each other, and that Willever is a confidential employee. The evidence does not support the Authority's allegation that either Willever or Foster are managerial executives or that Willever is a confidential employee. Willever reports directly to Bruzzichesi and is part of the group of seven high level supervisors who meet with Bruzzichesi on a monthly basis to exchange information and discuss policy ideas and negotiations proposals. There is no evidence that Willever had advance knowledge of the Authority's negotiations proposals or has

^{39/} This organization is not characterized by the para-military organizational style typical in police units where conspicuous reliance on a chain of command tends to accentuate and reinforce the presence of superior-subordinate relationships to a degree not usually found in other governmental units and which can produce marked conflicts of interest. Town of West New York (and cases cited within).

any other role in contract administration. Willever, like Bruzzichesi's other direct subordinates does not have independent authority to devise and implement new policies. This type of involvement in policy-making is too dilute to find managerial executive status and too remote from the true policy makers. Willever's scope of control and discretion are too narrow; he does not have Authority-wide responsibility or authority. Foster's area of control and authority is more limited than Willever's and no facts present here support the assertion that either are managerial executives.

I found that the record here does not establish that the seven managers who directly report to Bruzzichesi were actually informed about the Authority's positions and strategies prior to their disclosure to the supervisors' union. Therefore, I find that Willever is not a confidential employee within the narrow construction we are bound to give that term.

The mere fact that Foster reports to Willever does not mean that there is a conflict of interest justifying their placement in separate negotiations units. No instances of discipline or other evidence of conflict between Willever and Foster supports the assertion that they should be in separate units. For this reason and the rationale discussed infra under "Buildings Manager," above, I find that these two positions may be included in the same unit.

Manager, Communications, Assistant Manager for Communications, and Senior Project Engineer

The Authority claims that Dayton Elyea, manager communications; Winston Chafin, assistant manager for communications, and Michael Rotolo, senior project engineer are all managerial executives and inappropriate for inclusion in any negotiations unit; it claims that Elyea and Chafin are confidential employees and inappropriate for inclusion in any negotiations unit; and, finally, that Elyea has a supervisory conflict of interest with Chafin and Rotolo, and cannot be included in the proposed unit with them.

I do not find that Dayton Elyea, manager of communications, is a managerial executive or confidential employee within the meaning of the Act. Further, I do not find that his supervisory responsibilities place him in a conflict of interest with Chafin or Rotolo that should prevent his inclusion in the same negotiations unit. Finally, I do not find that either Rotolo or Chafin are confidential employees or managerial executives within the Act's meaning.

Elyea's sole focus is radio and telephone communications, an important maintenance support function; however, managerial executives exercise a level of authority sufficient to broadly affect the organization's purposes or means of effectuation of these purposes. Montvale at 509. I do not believe that this single focus satisfies the above criteria of broadly affecting the Authority's means of effectuating its mission. Further, Elyea does not possess

the authority to independently implement policies; his recommendations on major policies must be approved by at least four hierarchical levels, including the commission. His discretion is thus circumscribed and therefore not managerial. Elyea's participation in the group of managers who meet monthly with Bruzzichesi to discuss policy is too dilute to constitute independent authority and too remote from the true policy makers to find managerial executive status. Campbell's scope of control is narrow; it concerns only one aspect of the Authority's overall maintenance program. Like Walley, he does not have Authority-wide responsibility or authority. And since I do not find Elyea to be a managerial executive, Chafin and Rotolo cannot be managerial either. Their ability to effectuate policies and projects is even more limited than is Elyea's. For all three, major purchases are subject to Bruzzichesi's approval and limited by the annual budget, which is controlled by the finance and budget department's decisions on spending levels.

Elyea participates in Bruzzichesi's discussions about negotiations, and Chafin has been asked for suggestions for negotiations. Neither determine the Authority's negotiations positions or are knowledgeable about the Authority's proposals before they are disclosed to the unions. Accordingly, I find that neither is a confidential employee within the meaning of the Act.

Elyea supervises Rotolo and Chafin but there are no examples in this record showing that a conflict of interest would

exist were they all in the same negotiations unit. There were no examples of discipline or disputes between Elyea and the two subordinates. The Act permits layers of supervisory employees to be represented within the same negotiations unit and the policy favoring broad-based units forces us to separate these levels only where the potential for substantial conflict exists. I do not find that herein and conclude that Elyea, Chafin and Rotolo may be included in the proposed unit.

Maintenance Engineer; Senior Engineering Coordinator; Safety & Environmental Affairs Manager and Supervisor of Maintenance Systems

The Authority claims that Maintenance Engineer Dave Wingerter is a managerial executive, confidential employee and has a supervisory conflict of interest with the engineering coordinator (McNamara); manager, safety and environmental affairs (Galary); and supervisor of maintenance systems (Forrest). The Authority claims that Senior Engineering Coordinator Daniel McNamara, Manager, Safety and Environmental Affairs Harris Galary, and Superintendent of Maintenance Systems James Forrest are managerial executives and should be excluded from the proposed unit.

Wingerter is neither a managerial executive nor a confidential employee within the Act.^{40/} His responsibilities differ from other managers, but he has limited discretion and is not independent of Bruzzichesi's authority. Wingerter oversees all maintenance improvements to the roadway, surrounding area and structures; compiles and monitors the department's budget and is acting director in Bruzzichesi's absence. His policy recommendations are made in conjunction with other department managers and supervisors in the director's brainstorm group but he does not have the authority to independently determine or order the implementation of maintenance department budget, policies, procedures, or rules. His recommendations on such matters is subject to consideration by other department supervisors, Bruzzichesi's approval and sometimes, the approval of the chief engineer, executive director, budget department and commission. In City of Elizabeth, P.E.R.C. No. 36 (1970), the Commission stated that "It is the final responsibility to formulate, determine and effectuate policy and not the initial preparation of a budget or

^{40/} Under standards developed in Montvale, this term is construed narrowly; only employees whose level of authority and discretion to act are sufficient to broadly affect the organization's purposes will be found to be managerial executive under the Act.

policy proposals that distinguishes the managerial executive from other staff or line positions."^{41/}

Wingerter does not know in advance of the union the Authority's final negotiations positions or strategy. He cannot determine that strategy or individual proposals. Accordingly, I find that he is neither managerial executive nor confidential within the Act's meaning.

I also find that any conflict of interest between Wingerter and McNamara, Galary, and Forrest is de minimis and does not prohibit their being included in the same negotiations unit. Although Wingerter is their supervisor, there was no evidence of actual supervisory conflict between Wingerter and these employees; he has not had to recommend discipline any of them, and his evaluations, which are subject to Bruzzichesi's higher review, have not led to pay increases. This section is not managed in a strict chain of command such that there would be a likelihood of substantial potential conflict of interest because each has a distinct subject area; safety, management information systems, and

^{41/} Accord, Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977) (lifeguard captain not managerial executive, although he prepared the beach operations budget, authorized and modified rules, participated in management meetings, influenced the Borough's and Mayor's policies) [T]he term "managerial executive" shall be narrowly construed, and...the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by [the lifeguard captain] is needed. (emphasis added) Id. at 374.

procedures/equipment.^{42/} Based on the foregoing, I find that no substantial conflict exists between Wingerter and McNamara, Galary, or Forrest, and recommend that they be included in the same negotiations unit.^{43/}

Finally, inasmuch as I have found that Wingerter is not a managerial executive, I find that his subordinates are not managerial executive either. Their spans of authority are more limited, their level in the Authority's hierarchy is lower and their independent authority on major policy or procedures is circumscribed by others' authority. Montvale.

Accordingly, I recommend that Maintenance Engineer Dave Wingerter, Senior Engineering Coordinator, Daniel McNamara; Manager, Safety and Environmental Affairs, Harris Galary; and Superintendent of Maintenance Systems, James Forrest should be included in the proposed unit.

RECOMMENDATIONS

Based upon all of the foregoing, I recommend that the Commission find the following titles in the Maintenance Department appropriate for inclusion in the proposed unit:

Administrative Maintenance Manager (R. Walley)
Supervisor of Inventory Control (W. Kowalski)

Buildings Manager, (B. Campbell)
Senior Buildings Engineer (W. Hill)

^{42/} Wilton holds that only a substantial conflict must prevail to necessitate an exclusion from a supervisory unit.

^{43/} See also, policy discussion under "Buildings Manager" above)

Superintendent of Buildings, South (E. Cerino)
Superintendent of Buildings, North (E. Bachonski)

Division Manager, North (R. Geberth)
Superintendent of Roadway, North (M. Stankowitz)

Division Manager, South (R. Anderson)
Superintendent of Roadway, South (J. Colby)

Equipment Manager (L. Willever)
Assistant Equipment Manager (T. Foster)

Manager, Communications (D. Elyea)
Assistant Manager for Communications (W. Chafin)
Senior Project Engineer (M. Rotolo)

Maintenance Engineer (D. Wingerter)
Engineering Coordinator (D. McNamara)
Safety & Environmental Affairs Manager (H. Galary)
Supervisor of Maintenance Systems (J. Forrest)

Human Resources Department

FINDINGS OF FACT

AFSCME seeks to represent the benefits administrator position occupied by Joseph Citrino (J-1, 5T88). Citrino reports to Mary Elizabeth Garrity, director of human resources and supervises a benefits analyst (5T88, 5T101, 5T113, 5T135). Citrino is third in the department's chain of command and would be acting director only if two other employees were absent (5T101-5T103). He has limited purchasing ability and can recommend hiring or discipline but has never done so (5T105, 5T114). Citrino recommends to Garrity procedures and policies concerning benefits administration (5T92-5T93, 5T100-5T101, 5T104, 5T116-5T118).

Citrino administers and implements the Authority's employee medical and health benefits, including hospitalization, major medical, vision care, dental, prescription, employee assistance,

disability and life insurance (5T135). He is the Authority's liaison between employees and the third-party benefits administrators (5T88). He enrolls employees in these programs, assists them if they have difficulty obtaining benefits, and explains program benefits and obligations to individuals and union representatives (5T85, 5T121, 5T127). He also answers retirees' questions concerning benefits available to them (5T88). As necessary, Citrino has access to personnel files (5T89, 5T106-5T107, 5T123).

Contractual and budget aspects of benefits administration are under the law department's risk management jurisdiction, administered by Lorraine Parola, risk manager (5T89, 5T119). Parola compares coverages available from all health benefits providers and decides, in conjunction with Garrity, which companies to recommend to the Authority (5T89, 5T120). The benefits program costs are part of the law department's budget. Parola, and not Citrino, decides how to respond to fraudulent or questionable claims (5T123-5T124, 5T120).

Garrity is a member of the Authority's negotiating team (5T86). Garrity seeks clarification of matters from Citrino which relate to labor relations matters, but Citrino has not been informed of the Authority's negotiations proposals or counter-offers (5T97-5T99, 5T115, 5T128, 5T133). Citrino makes recommendations but does not participate in negotiations sessions and often does not know the results of his recommendations (5T115, 5T116, 5T128, 5T132-5T133). Citrino alerted Garrity to a contract reopener clause

which became enforceable when health benefits costs rose above a specific threshold and the parties negotiated over the issue (5T92). Citrino has also suggested a change in long term disability benefits and advised Parola about a misconceived savings clause (5T93, 5T130).

Citrino was canvassed for changes or additions to the budget by the supervisor responsible for preparing the human resources department annual budget (5T95, 5T104). He cannot implement budgetary items; however, without Garrity's prior approval (5T105).

ANALYSIS AND RECOMMENDATION

The Authority claims that Citrino is either a managerial executive or confidential employee within the meaning of the Act and should be excluded from the proposed unit. I find that Citrino is neither and recommend that he should be included in the unit.

Citrino does not possess the extent of independent authority as explained in cases interpreting the Act's definition of managerial executive. Montvale. He cannot independently affect the level or types of benefits available to employees, as these decisions are made at higher managerial levels and would be approved finally by the commissioners. Citrino has made recommendations on savings and procedures but does not have the ability to order their implementation. He is lower in the Authority's hierarchy than positions already found not managerial executive.

Citrino does not have a significant decision-making role in collective negotiations or contract administration. He makes

suggestions as do many other upper level supervisors, but does not know, nor can he individually affect the Authority's negotiations strategy or proposals to the unions. This authority rests with the team and executive director and commission. The benefits contracts which he administers are already negotiated. To the extent he advises Parola and Garrity about the pitfalls in these contracts, it is, nevertheless, for them to decide how to respond. This type of advice, furthermore, is not confidential labor relations information. In this circumstance, access to personnel files does not sufficiently alter the finding that Citrino's position is not confidential. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87); Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

I find that Citrino is neither a managerial executive nor a confidential employee within the meaning of the Act and recommend that his position be included in the proposed unit.^{44/}

^{44/} Citrino testified that on one occasion he informed Parola about a flaw in a negotiated clause. She advised the negotiations team and the clause was changed. While there is a potential for conflict of interest here, on these facts it is not substantial enough to cause Citrino's exclusion from the unit.

Engineering DepartmentFINDINGS OF FACT

AFSCME has petitioned for these titles (J-1):^{45/}

Senior Project Tracking Coordinator (S. Wisniewski)
 Supervising Engineer (R. Zipp)
 Supervising Engineer (J. Kunna)

Senior Project Engineer (H. Byrnes)
 Senior Project Engineer (B. Cheo)
 Senior Project Engineer (H. Steinbeis)
 Senior Project Engineer (J. Veni)

Project Engineer (B. Meara)
 Project Engineer (R. Grimm)

Project Supervisor (R. Brundage)
 Project Supervisor (J. Dougherty)
 Project Supervisor (W. Eskiewicz)
 Project Supervisor (R. McGowan)
 Project Supervisor (S. Buente)
 Project Supervisor (L. Williams)
 Project Supervisor, Buildings (A. Takacs)

Chief Draftsman (J. Ferrandino)

Construction Supervisor (J. Tuminelli)
 Construction Supervisor (J. Vitale)
 Construction Supervisor (T. Wilson)

Landscape Architect (J. Kosztyo)

^{45/} The Authority initially raised the issue that some or all of these employees are confidential within the meaning of the Act. However, at the hearing it acknowledged that testimony about this subject would be speculative and in its post-hearing brief did not contend that engineering titles are confidential (10T57, respondent's brief, pp. 17-30). Accordingly, I will not consider the issue of confidential status of engineering department titles. In Wayne Bd. of Ed., P.E.R.C. No. 87-82, 13 NJPER 77 (¶ 18035 1986), the Commission noted that in deciding confidential status, "we do not look to the employee's title in making that determination or even to potential job responsibilities; rather, we look to what that employee actually does." [Id. at 78].

Hierarchy, Policy and Budget Formulation, Collective Negotiations

The engineering department manages the capital budget, creates and authorizes construction and widening specifications, and procures design and construction contractors and other professional services (1T27-1T28). Wallace Grant, chief engineer, is the head of the department; reporting to him is the senior engineer, Arthur Linfante (R-19).^{46/} Reporting to Linfante and Grant are supervising engineers, Stanley Wisniewski, Richard Zipp, and John Kunna, all of whom are subjects of this petition. Supervising engineers supervise the senior project engineers, project engineers, project and construction supervisors, the chief draftsman and landscape architect.^{47/}

The department is organized into five sections: bridges, administration, planning, highways and buildings (R-19). Although these disputed titles are assigned to only one section, Grant considers them interchangeable; anyone may be assigned to another section, as needed (10T62-10T63). Grant views their assignments and titles flexibly (8T151-8T152, 10T11). In fact, Grant encourages these employees to seek a broad base of experience (8T154, 10T11, 10T15).

^{46/} Linfante is not included in the petitioned-for unit.

^{47/} The department was reorganized in August 1991. The reorganization involved shifting certain positions from one section to another. The reorganization was announced to all employees and R-19 closely represents the organization. Grant discussed the reorganization with the senior engineer and two supervising engineers, but he made all the decisions about it.

Engineering department projects are determined by the business plan and capital projects committee, composed of one or two members of each department (8T42-8T43, 8T65-8T66, 9T13-9T14, 10T65, 10T74-10T75). The committee has authority over capital budget projects. Special reserve projects are also determined by this committee and funded by toll revenues (8T43). The business plan concerns projects funded from bond financing (8T43). After projects are authorized, they are assigned by Grant or Linfante to engineers and project supervisors in appropriate sections, i.e., bridges, buildings, highways (10T65). Linfante compiles the department's budget recommendation.

Much of the department's work includes the preparing and processing requests for purchase/price ("RFPs") for projects identified by the capital budget committee. The law department and executive director determine RFP format, rules and procedures (10T84, 10T97-10T98). Almost all engineering positions prepare, review and process RFPs (8T56-8T59, 10T83-10T84). The Authority's general consulting firm, Howard Needles Tammen and Bergendoff, also reviews RFPs (10T101-10T102). Grant approves RFPs, decides which consultants will receive bid solicitations and recommends which consultants should be awarded contracts. The commission approves all contracts (8T57-8T59, 9T20-9T21).

The engineering department has not had a consistent annual performance program (8T68-8T69, 8T135-8T136, 10T20,

10T51-10T52).^{48/} Performance evaluations are written for new employees and for those recently promoted after working six months (8T69). These are submitted through the chain of command and are approved by Grant and may result in pay increases (8T138-8T139, 10T53-10T54). The executive director and commission approve pay increases (8T139).

Grant is not a member of the Authority's negotiations team, but he assists in developing the Authority's negotiations positions (8T144-8T145, 8T146-8T147, 10T37, 10T48). The petitioned-for engineering department titles have not been canvassed for negotiations recommendations (8T144, 8T147-8T148, 10T39-10T42).^{49/} Grant has never informed any department employees of negotiations proposals (10T48).

Supervising Engineers/Senior Project Tracking Coordinator

Supervising engineers Stanley Wisniewski, Richard Zipp, and John Kunna coordinate and supervise the department's engineering and administrative functions (8T16).^{50/} They report to the senior

^{48/} Brundage's evaluation early in 1991 does not contradict the assertion that there has not been a performance evaluation program inasmuch as he also stated that performance reviews "were not always annual." It is possible that a future program would be tied to prospective pay increases (8T138).

^{49/} Even if Grant consults these titles about negotiations matters in the future, he will decide which ideas merit consideration by the Authority's team (8T145-8T148, 10T38, 10T40.)

^{50/} Wisniewski's title at the time of hearing was senior project tracking coordinator but he will become a supervising engineer (8T17-8T20).

engineer and chief engineer who rely heavily on their viability recommendations (8T42). Supervising engineers monitor projects for compliance with the budget, review others' budget recommendations and participate in meetings where budget issues are discussed (8T20, 8T23-8T24).

Wisniewski tracks the status and progress of all construction projects, roadway widening projects, and capital budget projects. He monitors costs to insure they are within budget constraints. Zipp supervises project planning for the Authority's "business plan for the 1990s," and oversees environmental soundness studies, feasibility studies, and traffic studies. Zipp prepares RFPs to obtain bids on construction projects and determines and recommends the viability of certain projects (8T33-8T34). These recommendations are made to the senior engineer and chief engineer for final approval (8T41-8T42, 8T44). Zipp recommended using a truck parking area near interchange 7 (south) as a park-and-ride lot, but his recommendation was not adopted (8T63). Kunna supervises the highway section. He oversees the final design of highway related projects and monitors them to completion. His section initiates capital budget projects for resurfacing, guardrail replacement, milling and landscaping (8T51-8T52).

Wisniewski supervises the chief draftsman John Ferrandino, who is also the subject of this petition. Zipp supervises one senior project engineer (Byrnes), one project engineer (Grimm), and three project supervisors (Dougherty, Eskiewicz, and McGowan), all

of whom are subjects of the petition. Kunna supervises one senior project engineer (Cheo), the landscape architect, John Kosztyo, three project supervisors (Brundage, Williams and Buente) and two construction supervisors (Wilson and Tuminelli) (R-19, 8T21, 8T50). The record does not show that Wisniewski, Zipp and Kunna have disciplined or fired any subordinates. Supervising engineers follow established personnel procedures and policies (8T148-8T149).

Senior Project Engineers

The department's senior project engineers are Hans Steinbeis, who supervises an assistant project supervisor; Howard Byrnes, who supervises project and bid supervisors; Bing Cheo, who supervises project supervisors; and Joseph Veni, who supervises project supervisors and an engineering assistant (R-19).^{51/} Senior project engineers assist in the design and construction of engineering projects along the turnpike (10T64).

Joseph Veni, a senior project engineer in the buildings section, supervises a project supervisor and engineering assistant (10T64, 10T66). Veni participated in hiring the engineering assistant. The human resources department advertised the vacancy and two rounds of interviews were conducted by Veni, the senior

^{51/} According to the organization chart, Cheo supervises Brundage, Williams and Buente, project supervisors; Byrnes supervises Dougherty, project supervisor; Veni supervises Takacs, project supervisor. All of these subordinates are included in AFSCME's petition.

engineer and Grant. Grant forwarded the group's recommendation to the executive director and commission for approval (10T69-10T70). Veni has never formally disciplined another employee, nor been asked for information or proposals for the Authority's collective negotiations (10T71). Veni and other senior project engineers have evaluated subordinates and submitted the evaluations to Grant (8T109, 10T71-10T72). Veni does not know if his evaluation of Busch, the engineering assistant, resulted in a pay increase but normally the 6-month, 1- and 2-year evaluations automatically result in increases (10T107-10T109). The human resources department sent Veni standardized evaluation forms to complete (10T108-10T109).

Veni does not assist in preparing the department's operating budget (10T110-10T111). He requests items on requisition forms. The supervising engineer or senior engineer approves and forwards them for other required approvals (10T73-10T74).

Veni serves on a committee to develop plans and recommendations for the Authority's compliance with the federal Americans With Disabilities Act (10T75-10T76, 10T114-10T115). This committee is headed by Garrity, director of human resources and includes representatives from the human resources, law, maintenance and operations departments (10T76). The committee will recommend compliance options to the executive director. These will likely include an RFP concerning physical changes to Authority buildings and toll plazas (10T78, 10T81).

Grant and Linfante assign RFPs to engineers (10T88). All titles work on RFPs (10T90-10T91).^{52/} Veni has prepared RFPs for capital budget projects. Initially, he translates the committee's general description into one sufficiently specific for interested contractors to render bids and which meets building code standards (10T87-10T88). Once he describes a project, sets time limits and Grant approves it, he sends the RFP to several consultants known to have interests in the type of work needed (10T91). One of the supervising engineers serves on a committee which pre-qualifies consultants; prospective consultants may also be chosen from this list (10T91). Grant and Linfante decide who receives the RFP (9T20, 10T92). Proposals submitted in response to RFPs are given to the engineer who developed them and to Grant (10T92). Proposals are reviewed for conformance to the original RFP, cost feasibility and bidders' competence (10T93-10T94). The chief engineer and senior engineer select a consultant from among the bidders (10T94).

Project Engineers

Brian Meara and Robert Grimm are project engineers; Meara reports to Linfante, Grimm reports to Zipp (R-19). Meara supervises a construction supervisor; Grimm supervises two project supervisors (8T134-8T135, 9T8, 10T6).

^{52/} Lower engineering titles are not required to go through the chain of command when working on RFPs (10T94).

Project engineers plan and supervise field and office work; represent the Authority with engineering consultants, architects, government and transportation agencies. They recommend consultants and prepare documents relating to project plans, specifications, budget requisitions, bidder qualifications, property acquisition claims, advertisements, utility relocations, and agreements (8T132-8T133, 9T11-9T12). They prepare and revise RFPs, recommend capital budget projects and work on business plan projects (8T140, 9T24-9T25). The chief engineer does not always follow their recommendations (9T20, 9T27, 10T8). They represent the Authority, at meetings with N.J. Transit, N.J. Department of Transportation, and other roadway and governmental agencies to discuss projects of mutual concern (10T7-10T8, 9T38, 9T39). At such meetings, project engineers represent the Authority's position within guidelines and policies and explain technicalities, but cannot commit the Authority's resources to interagency projects (9T42, 9T38-9T39, 10T8).

Project engineers oversee consultants' work. They set and monitor schedules, review invoices, answer consultants' questions, monitor and distribute consultants' reports for comment and send comments to consultants (9T19-9T20, 9T50-9T51). Project engineers also facilitate consultants' work by obtaining traffic permits and arranging for protective devices such as cones (T28, 9T31-9T32,

9T35-9T37, 9T43).^{53/} Consultants are required to follow procedures in preparing designs and specifications and must use the Authority's design manual and standard design drawings. Project engineers did not create these manuals and drawings (9T77).

Project engineers' assignments come from supervising engineers, the senior engineer and the chief engineer (9T5-9T6, 9T16, 9T19). Grimm discusses all phases of his work with his supervising engineer (9T53). They do not hire or fire other employees, create positions, formulate department policies, rules or staffing standards (9T7, 9T9-9T11, 9T64, 9T66-9T67). They have not disciplined or recommended discipline of any subordinate employees (9T9). Grimm has not evaluated any employee (9T9).

Project engineers prepare cost estimates for projects they supervise and submit them to Grant and the capital budget committee (9T12). Their cost projections have often been reduced by either Grant or the capital budget committee (9T13, 9T75-9T76).

Project Supervisors, Construction Supervisors

(R. Brundage, J. Dougherty, W. Eskiewicz, R. McGowan, S. Buente, L. Williams, A. Takacs, J. Tuminelli, J. Vitale, T. Wilson)

Project and construction supervisors' duties are similar across all engineering department sections (8T122, 8T125, 10T11, 10T17, 10T25). Project supervisors assemble inputs from Authority

^{53/} The maintenance department sets up protective devices. John Tuminelli, a construction supervisor, meets weekly with maintenance and operations department representatives to coordinate consultants' needs (9T29-9T30).

departments and outside agencies to describe projects, review as-built drawings and expired contracts, and prepare plans and specifications for approved projects (8T56, 8T107). Once a project has been designed, it proceeds to the construction phase (8T88-8T89).

Construction supervisors become "project" supervisors after construction contracts are awarded (8T122). During a project's construction phase, construction supervisors act as liaisons between contractors, engineers and project engineers (8T118). They inspect sites and act as on-site engineers, review contracts and documents related to construction projects, and prepare plans for projects which Authority employees will carry out (8T129-8T130). They recommend modifications to projects and insure that contractors comply with plans and specifications (10T25, 10T26). They refer major issues to their supervisors and to the chief engineer (10T27-10T29, 10T32).

The majority of all project and construction supervisors supervise other employees (R-19, 8T99-8T101, 8T130). Grant will assign subordinates to project supervisors who do not supervise anyone (8T101, 8T120). Grant treats these positions interchangeably and will assign them to a variety of projects. Project supervisors do not determine staffing standards or hire or fire other employees (8T61, 8T63-8T65).

Project supervisors in the planning section determine feasibility or prepare RFPs for others to determine project feasibility. Other project supervisors handle projects during the

design phase when specifications and plans are developed (8T125). Project supervisors can reject suggestions by other departments involved in projects, but must advise senior project engineers on significant items (8T70-8T72, 8T119). Project and construction supervisors exercise discretion in performing their duties but must check with senior or supervising project engineers periodically to insure that projects are progressing according to a plan and schedule (8T70-8T72, 8T113).^{54/}

Project supervisors prepare project descriptions, discuss project proposals and select consultants with a supervising engineer, Linfante or Grant (8T57). Project descriptions may be altered by the senior engineer (8T74-8T75). Project supervisors recommend that certain consultants be awarded bids; these recommendations are sometimes followed (8T57-8T59, 8T79, 8T116-8T117, 10T15-10T16). Grant decides which consultant to recommend to the commission. The commission approves all contract awards (8T59). Project supervisors did not assist in formulating policies concerning the Authority's use of consultants (8T79). Project supervisors meet with the selected consultants, provide them with as-built plans, Authority design manuals and standard drawings, and establish a schedule (8T80-81). Project engineers also provide

^{54/} Project and construction supervisors are expected to initiate project ideas based upon their personal observations of the roadway and structures. These ideas are forwarded and scrutinized through the chain of command before becoming Authority projects. No examples of project supervisors' having initiated projects were provided (8T115-8T116).

technical information concerning the Authority to utilities companies, other departments and agencies, as necessary (8T83-8T86).

Chief Draftsman

John Ferrandino is the chief draftsman. He supervises other employees who are not subjects of the petition (R-19, 8T156, 10T23). He administers all department plans and specifications and supervises the preparation of plans (10T22). He maintains the plans and specifications file room (10T23). Ferrandino recommends operational policies concerning his area but does not formulate Authority policies (10T23). He reports to a supervising engineer (R-19).

Landscape Architect

John Kosztyo, the landscape architect, reports to supervising engineer John Kunna in the highways section and coordinates the Authority's landscape program (R-19, 10T35-10T36). Kosztyo does not supervise other department employees. He coordinates the turnpike beautification program with other agencies and coordinates landscaping with project and construction supervisors on projects requiring landscaping (10T34). His recommendations are almost always accepted. He submits a proposed budget which is reviewed and submitted for approval; Kosztyo has complete discretion as to how that money will be allocated (10T36-10T37).

ANALYSIS AND RECOMMENDATIONS

Supervising Engineers/Senior Project Tracking Coordinator

The Authority claims that supervising engineers and the senior project tracking coordinator are managerial executives or possess a Wilton-type conflict of interest with their subordinates.^{55/} Applying the standard for managerial executive status here, I find that supervising engineers' decisions do not "broadly affect" the Authority's mission or the way it accomplishes that mission. Control of policies and ultimate decisions on

^{55/} The statute defines managerial executives as: "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). In light of the Act's policy favoring the organization of all employees desiring it, we have construed this definition narrowly. State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 253 (1974); Bor. of Avon, P.E.R.C. No. 78-21, 3 NJPER 353 (1977). A person formulates policies when he develops a particular objectives designed to further the organization's mission and selects courses of action from available alternatives. A person directs policy effectuation when he develops the methods, means and extent for reaching a policy objective and coordinates policy implementation by line supervisors. A managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuating those purposes. Whether or not an employee possesses this level of authority is determined by 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. Borough of Montvale. The Appellate Division has approved the Montvale standards: Bergen Pines Cty. Hosp., D.R. No. 83-8, 8 NJPER 535 (¶13245 1982), rev. den., P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982), aff'd. App. Div. Dkt. No. A-564-82T2 (1983).

projects rests with higher managerial levels and each supervising engineer has narrow, not broad Authority-wide, jurisdiction. Supervising engineers do not develop the "particular objectives" which further the Authority's mission; rather, objectives are mandated by the capital budget committee and assigned to supervising engineers by Grant or Linfante. Supervising engineers do not choose the methods and means of achieving these objectives. RFP policies and procedures, contractors proposals and choice of bids are determined by the law department, executive director, and chief engineer. And, the extent to which objectives will be achieved is initially determined by committee preferences on projects and budget allocation and supervising engineers have a very limited role, if any, in modifying those choices.

These employees are four levels below the Authority's highest policy making body, the commission, where all major policies are approved and many are initiated. Supervising engineers' recommendations about construction projects and the budget are tentative, subject to Grant's approval. Their discretion is limited by the narrow bounds of each one's zone of control; Wisniewski tracks and monitors capital projects costs, Zipp oversees planning and feasibility projects, and Kunna oversees highway projects. Accordingly, supervising engineers are not managerial executives.

The Authority also asserts that supervising engineers have a supervisory conflict of interest with the senior project engineers and other subordinates who are included in AFSCME's petition.

The Act permits units of layers of supervisors and favors inclusive, broad-based units over unit proliferation and fragmentation.^{56/} Although some conflict between supervisory employees may always be present, only actual or substantial potential conflict warrants excluding a supervisory employee from an otherwise appropriate unit. Here, there is no evidence of disciplinary actions by supervising engineers and they do not have independent authority to hire.^{57/} Further, evaluations of subordinate employees must be reviewed and signed by the chief engineer before going to human resources, and the evidence that evaluations result in pay increases appears only to have applied to employees receiving a six-month review.^{58/} Supervisory levels do not even determine the criteria on which employees are rated; standardized evaluation criteria are developed by the human resources department and forms are distributed to supervisors to complete (10T108-10T109). Accordingly, the risk of substantial conflicts of interest between supervising engineers and the other petitioned-for employees is slight. I recommend that supervising engineers be included in the proposed unit.

^{56/} See, State v. Professional Ass'n. of N.J. Dept. of Ed., 64 N.J. 231 (1974)

^{57/} As in all other departments, the authority to hire is subject to approval by the department director, the Authority's personnel committee, Executive Director Watson, and the commission (6T12-6T13, 7T48, 10T69-10T70).

^{58/} This comports with maintenance department procedures where evaluations of employees in the proposed unit are performed six months post-promotion and then annually, but cease after two years (3T84).

Senior Project Engineers

The Authority claims that senior project engineers are managerial executives within the Act and have conflicts of interest with other petitioned-for titles. The Commission wrote in Montvale that managerial executives must "possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuation of these purposes." Montvale at 509. I find that decisions by each senior project engineers are not sufficiently broad in scope to have far reaching impacts on the Authority's operations and are subject to higher level approvals. The policies surrounding RFPs are determined by the law department and the executive director and not by either supervising engineers or senior project engineers. Furthermore, I have already concluded that supervising engineers are not managerial executives and no circumstances exist which lead to the conclusion that their subordinates should have that status either. Their recommendations on RFPs must be approved by higher management levels. Further, their ability to purchase items is subject to a higher level departmental approval and the finance and budget department's spending levels. There is no evidence that these titles have authority to create positions and hire personnel, as these responsibilities are governed by human resources department

procedures, and others' authority over staffing levels, promotions, and hiring.^{59/}

No evidence here supports a finding of a Wilton-type conflict of interest between senior project engineers and their subordinates. There have not been any disciplinary actions, grievances or other indicators of conflict. While senior project engineers evaluate subordinates, the evaluation criteria are determined elsewhere and senior project engineers' recommendations must be signed by the chief engineer, at least. Evaluations cannot result directly in significant personnel actions because pay increases are nearly automatic and evaluations cease at the end of two and a half years after one is hired or promoted.^{60/} Accordingly, I recommend that senior project engineers be included in the proposed unit.

^{59/} City of Newark, P.E.R.C. No. 92-116 18 NJPER 300 (¶23128 1992) (deputy chiefs not managerial executive where their authority circumscribed by limits on their scope of responsibility, extent of control exercised by director, and comprehensive agreements, policies, rules and procedures).

^{60/} See, Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) (Commission stated: "recommendations for another's evaluations which might then serve as recommendations for another's personnel decisions are too far removed from the personnel decisions to create a conflict of interest substantial enough to remove the titles from the unit." Id. at 637).

Project Engineers

The Authority argues that project engineers are inappropriate for inclusion in the proposed unit because they are either managerial executives or in supervisory conflict with other included employees. I find that these employees are not managerial executives. Their primary jobs involve representing the department and Authority to external departments and agencies. Their ability to commit resources and devise policy is restricted by necessary prior approvals of other employees and by established guidelines and procedures. They also monitor and facilitate consultants' work. In this role, established protocol and procedures regulate and guide their decisions. The capital budget committee, chief engineer, senior engineer and supervising engineer exercise authority over their projects, and review and approve their policy and budget recommendations. These limits on their authority and discretion are not characteristic of managerial executive status. Finally, their supervisors are not managerial executives and in a pyramid organizational model, these employees and their subordinates cannot be considered managerial executives.^{61/}

Project engineers are supervisors of project supervisors and potentially, construction supervisors. However, the evidence does not support a finding of actual or potential substantial conflict of interest. Project engineers can recommend disciplinary action, but they have not done so. There are no examples of their

^{61/} See, Montvale and Bergen Pines Cty. Hosp.

evaluations leading to significant personnel decisions. Wilton and the other cases interpreting the conflict of interest principle hold that only substantial conflicts will cause the removal of titles from an otherwise appropriate unit. I conclude that the project engineers are neither managerial executives nor are they in conflict of interest with other employees. I recommend that they be included in the proposed unit.

Project Supervisors, Construction Supervisors

The Authority claims that project and construction supervisors are managerial executives and/or are not supervisors and may not be included in the unit. These employees are not managerial executives within the meaning of the Act. First, their supervisors have been found not to be managerial executives and no circumstances peculiar to these subordinate titles require a finding of managerial executive status, either. Second, the nature of project and construction supervisors' work is highly technical and supervisory but they are not formulating or effectuating the Authority's policies. They implement already-established engineering policies and procedures. They also help create and monitor the progress of design and construction engineering projects but these duties are not characteristically managerial executive under Montvale or the cases which follow it. Managerial executive is construed narrowly. Accordingly, I recommend that project and construction supervisors are not managerial executives.

The majority of all project and construction supervisors supervise other employees. They are all likely to be supervisors eventually and that the chief engineer treats these positions interchangeably. Therefore, I recommend that those who do not supervise anyone else presently should be included in an appropriate supervisory unit. The Act's policy favors broad-based units. Accordingly, I recommend that project and construction supervisors be included in the proposed unit.

Chief Draftsman

The Authority claims that the chief draftsman is a managerial executive and that there is a conflict of interest between him and his supervisor, a supervising engineer. It asserts that Ferrandino cannot be included in the proposed unit. Ferrandino does not formulate departmental or Authority policies. He has an important operational and administrative function but does not have the ability to broadly affect the Authority's mission or means of achieving that mission. Montvale. His discretion is limited and his position is too low in the hierarchy to be a managerial executive within the Act's meaning. Any major policies he would

recommend are subject to at least four higher levels' approvals.^{62/}

The Act permits units of layers of supervisors and favors inclusive, broad-based units over the proliferation and fragmentation of units. State v. Professional Ass'n. of N.J. Dept. of Ed., 64 N.J. 231 (1974). Although some conflict between supervisory employees may always be present, only actual or substantial potential conflict warrants excluding a supervisory employee from an otherwise appropriate unit. Here, there is no evidence of disciplinary action against Ferrandino by his supervisor, Wisniewski, a supervising engineer. Further, Wisniewski's evaluation of Ferrandino must be reviewed and signed by the chief engineer before going to human resources, and the evidence that evaluations result in pay increases appears only to have applied to employees receiving a six-month review. Supervising engineers do not even determine the criteria on which employees are rated; standardized evaluation criteria are developed by the human resources department and forms are distributed to supervisors to complete. Accordingly, the risk of substantial conflict of interest between the supervising engineer and Ferrandino is slight.

^{62/} Compare, Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982) (three titles were found not to be managerial although they were in the fourth step of the chain of command; positions had only department-wide, not hospital-wide authority. See also, State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991) (supervising conservation officers were found not to be managerial executives where they were six levels below department head and their authority limited to a single bureau).

Accordingly, I recommend that the chief draftsman, John Ferrandino, be included in the proposed unit.

Landscape Architect

The Authority asserts that the landscape architect is either managerial executive or a non-supervisory employee and is inappropriate for inclusion in the proposed unit. He has complete discretion about how the budget for landscaping will be used. His landscaping decisions and recommendations are given great deference and always accepted. However, his decisions concern only one small part of the entire engineering function and consequently do not broadly affect this department's purposes. He is not a managerial executive within the Act's meaning but Kosztyo does not supervise any other employee and since the petition excludes non-supervisory employees, I recommend that his position be excluded from the unit.^{63/}

RECOMMENDATIONS

Based upon all of the foregoing, I recommend that the Commission find the following titles in the Engineering Department appropriate for inclusion in the proposed unit:

^{63/} N.J.S.A. 34:13A-5.3 states: "...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership."

Senior Project Tracking Coordinator (S. Wisniewski)
 Supervising Engineer (R. Zipp)
 Supervising Engineer (J. Kunna)

Senior Project Engineer (H. Byrnes)
 Senior Project Engineer (B. Cheo)
 Senior Project Engineer (H. Steinbeis)
 Senior Project Engineer (J. Veni)

Project Engineer (B. Meara)
 Project Engineer (R. Grimm)

Project Supervisor (R. Brundage)
 Project Supervisor (J. Dougherty)
 Project Supervisor (W. Eskiewicz)
 Project Supervisor (R. McGowan)
 Project Supervisor (S. Buente)
 Project Supervisor (L. Williams)
 Project Supervisor, Buildings (A. Takacs)

Chief Draftsman (J. Ferrandino)

Construction Supervisor (J. Tuminelli)
 Construction Supervisor (J. Vitale)
 Construction Supervisor (T. Wilson)

Further, I recommend that the Commission find Landscape Architect John Kosztyo inappropriate for inclusion in the proposed unit because he is a non-supervisory employee.

Finance and Budget Department

FINDING OF FACT

AFSCME seeks to represent these positions:

Asst. Director of Asset Management (C. Schlager)^{64/}

^{64/} AFSCME sought to represent the Assistant Director of Asset Management, but the parties agreed that this position would be eliminated (14T33). Accordingly, I will not consider this title. The Commission will not determine the eligibility of vacant or eliminated positions. See, Morris School District Bd. of Ed.

Assistant Comptroller (C. Zeigler)
Manager, Audit Operations (R. Wachtler)
Manager, Revenue & General Accounting (E. Bodnar)
Budget Analyst (D. Jones)
Manager of Disbursements (C. Kuchtyak)
Manager, Payroll Section (C. Maindelle)
Chief Accountant (P. Varga)
Internal Auditor (F. O'Connor)

Catherine Schladebeck is comptroller, the highest management position in the finance and budget department. Reporting directly to her are Cynthia Zeigler, assistant comptroller, Dale Jones, budget analyst, Francis O'Connor, internal auditor and Charles Schlager, assistant director of asset management. Zeigler directly supervises 50 employees, including: manager, audit operations, Renee Wachtler; manager, revenue & general accounting, Elizabeth Bodnar; manager of disbursements, Constance Kuchtyak; manager, payroll section, Charlotte Maindelle; and chief accountant, Pam Varga.

Assistant Comptroller

Cynthia Zeigler is the assistant comptroller; she reports to the comptroller and supervises 50 employees. She oversees general accounting, payroll, disbursements and toll audit (R-24).

Zeigler plays a key role in investing the Authority's revenues. General guidelines were established by the general counsel and chairman of the commission and are contained in a recent bond resolution. Within these guidelines, on a daily basis, Zeigler decides where to invest hundreds of millions of dollars (13T166). The Authority's bonds were refunded and, consequently, more funds

have been acquired recently which must be kept segregated for investment (13T167). Zeigler also collects information on the various accounts -- operating, widening project, capital budget, special projects, maintenance reserve and unemployment insurance contribution before allocating investments (13T164).

Zeigler reviews all calculations of negotiations proposals prepared by the chief accountant and manager of payroll before they are submitted to the Authority's negotiations team (13T93). She knows what the Authority's proposals are before they are disclosed to the unions (13T93-13T95).

Audit Operations Manager

Renate Wachtler is the audit operations manager (J-1, 13T137-13T138). She reports to Zeigler and supervises a ticket processing supervisor, a toll audit coordinator, three senior data analysts and eight data analysts (13T138, 13T148). Wachtler has recommended many operational changes and prepares her section's annual budget (13T145-13T147). She has not been involved in collective negotiations (13T147-13T148). Wachtler has authority to manage and organize the toll audit section but Zeigler can overrule Wachtler's decisions (13T147-13T148).

Toll audit operations is responsible for conducting daily audits of toll collections. Data analysts examine and reconcile records of transactions which vary by more than 5 dollars from expected receipts (13T138-13T139). They compare cash, ticket

transactions and vehicle treadle reports to identify and explain irregularities. Irreconcilable statistics are reported through the chain of command to Wachtler who reports them to the toll collection department (13T143). The information Wachtler transmits can lead to retraining, discipline, or discharge of toll collectors (13T153-13T154). Wachtler identifies error patterns and recommends corrective measures to the MIS section and toll collection department (13T143-13T144). Wachtler's section reconciles bank deposits with the Authority's records and alerts Zeigler to banking problems (13T154-13T157). The comptroller, executive director and commissioners choose the bank used by the Authority (13T156). Wachtler prepares a monthly toll revenues report which is included with the financial report to the commissioners (13T158).

Wachtler is a member of an interdepartmental committee which meets monthly to discuss computer projects (13T145). She represents finance and budget on items which concern toll audit operations (13T152). Wachtler advised the MIS section during the automation of the toll audit function (13T141-13T142, 13T150).

Chief Accountant

Pam Varga is the chief accountant. Varga reports to Comptroller Schladebeck, and Assistant Comptroller Zeigler and supervises a junior accountant, a budget statistics coordinator, and the supervisor, credit and collections (14T35, 14T37). Varga prepares and finalizes the Authority's entire operating budget

(14T35). She also prepares a monthly report representing the Authority's financial condition and assists outside auditors who conduct annual and other periodic audits (14T35, 14T36).

Varga prepared cost estimates for the Authority's collective negotiations team and discussed proposal costs with the director of tolls. She was informed by the Authority's negotiations team what the Authority was going to offer to the union before it was offered (13T103, 14T40-14T41). Varga also recommended which proposal would be advantageous to the Authority (14T36).

Manager of Revenue and General Accounting

Elizabeth Bodnar is manager of revenue and general accounting. Bodnar reports to the assistant comptroller and supervises a junior accountant, the assistant supervisor, general accounting and the account clerk (R-24, 13T161-162). Bodnar and Varga, the chief accountant, have different but parallel general accounting responsibilities. Under Zeigler's direction, Bodnar handles the Authority's investments and general revenue ledger (13T162). Bodnar prepared and compiled a draft procedures manual for revenue general accounting for submission to Zeigler (13T163). Bodnar prepares the annual open budget for her section (13T166).

Bodnar assists Zeigler in investing; she insures that investment requirements are fulfilled and she has the right to correct oversights or errors (13T166-13T168). Bodnar was not consulted on the policy changes surrounding the bond refinancing

resolution (13T168-13T170). Bodnar and her staff record Zeigler's investments, insure that investment interest is received and record and maintain daily cash balances so that Zeigler can invest the Authority's revenues (13T163, 13T171).

Bodnar supervises the record keeping of concession revenues from Shell and Marriott corporations and insures that revenues comply with terms of agreement (13T172-13T173). She also prepares bills for collection on past due accounts which are referred to the law department (13T173).

Manager of Disbursements

Constance Kuchtyak is the manager of disbursements. She reports directly to Zeigler and supervises six employees, including: the assistant disbursements supervisor, three accounts clerks, a disbursements clerk and a clerk typist (R-24, 13T120). Kuchtyak oversees the disbursements section responsible for paying the Authority's bills. She pays rents, processes invoices, and issues checks to vendors, consultants, and contractors (13T122, 13T128-13T129). She is creating a disbursements procedures manual (13T123-13T124, 13T129-13T131). Her recommendations for policies and procedures which affect the disbursements operation are often followed. She has instituted procedures necessitated by the change from a manual to computerized accounting system (13T131-13T132). These recommendations do not require commission approval because they only concern operating procedures (13T133). She has prepared

and submitted budget requests for her section to Zeigler, who approves them and sends them to the comptroller, finance committee and commissioners (13T133-13T134). She has not been involved in collective negotiations (13T126).^{65/}

Manager, Payroll Section

Charlotte Maindelle is the manager, payroll section and supervises seven other employees, an assistant payroll supervisor, a computer payroll assistant, and five computer payroll clerks (13T74, 13T88-13T91, 13T98-13T99, 13T111-13T113). She calculates, compiles and provides payroll information to the law department and to the Authority's collective negotiations team (13T89, 13T91). She was present as an Authority resource person at negotiations sessions between the Authority and the supervisors' association (13T92). She knew what the Authority intended to propose before this information was disclosed to the union and before it was public (13T93, 13T101-13T102, 13T119). She also interprets and applies negotiated contract terms as they pertain to payroll administration (13T107-13T111, 3T114-13T115).

^{65/} Zeigler testified that in preparation for negotiations, Kuchtyak could be asked to provide disbursements information which is historical and also available to the public (13T124-13T125).

Budget Analyst

Dale Jones is the budget analyst. He reports to the comptroller and supervises an accounts clerk and an inventory clerk (14T44-14T45). Jones prepares and maintains the capital budget, comprised of the maintenance reserve fund, special project reserve fund, the widening program, and fixed assets. He prepares expenditure reports for the commissioners (14T42). Jones developed a computerized accounting system in response to auditors' recommendations (14T42-44). He has no role in collective negotiations (14T45).

He developed the new capital budget reporting procedure for use by all departments which requires five and one-year plans; cost justification, and cost and completion projections (14T45-47). He meets with the capital budget committee to eliminate duplication and prioritize projects. He assists in coordinating and allocating capital budget funds; verifies transactions to comply with the bond resolution (14T46-47). Jones prepares the capital budget committee recommendations for the commissioners' approval (14T48-14T50). His recommendations are reviewed and approved by the comptroller and finance committee before submission to the commissioners for approval (14T50).

Internal Auditor

Francis O'Connor, internal auditor, reports to both the comptroller and assistant comptroller and supervises a junior internal auditor and supervisor, patron services (14T50-14T51,

14T53, 14T58). This position is new and O'Connor is charged with developing an internal audit program to determine whether operations can be streamlined (14T53). He has conducted surprise on-site audits of toll collectors' activities as they "bank-out" and follows through on these investigations (14T56-57). He also conducted an inventory of motor pool vehicles, audited the benefits administrator, Rasmussen, and was instrumental in recommending a new benefits administrator (14T51-14T52).

He has not had a significant role in collective negotiations (14T54-14T55). He provided union representatives with information necessary to verify that contract clauses were being properly executed (14T55). He has access to all of the Authority's financial records (14T56).

ANALYSIS AND RECOMMENDATIONS

Assistant Comptroller

The Authority contends that the assistant comptroller is a managerial executive and has a supervisory conflict of interest and cannot be included in the petitioner's unit. I recommend that Cynthia Zeigler, assistant comptroller, is both a managerial executive and confidential employee and that she is inappropriate for inclusion in the proposed unit.

Zeigler supervises 5 distinct areas - general accounting, revenue accounting, payroll, disbursements and toll audit and,

therefore, has substantial, comprehensive, authority-wide accounting and auditing responsibility. She is second only to the comptroller and supervises the great majority of the finance and budget departments employees and programs. Further, she makes large scale investment decisions daily, affecting virtually all of the Authority revenue accounts and thereby affecting broadly the Authority's financial condition. There is no indication that the comptroller or others interfere with her decisions. Zeigler exercises considerable discretion in carrying out these investment responsibilities. Zeigler's scope of authority, level in the hierarchy and the extent of discretion she exercises clearly make her a managerial executive as contemplated by Montvale. Zeigler was aware of the Authority proposals before they were disclosed to the supervisors association during past negotiations and thus she is also a confidential employee. Brookdale Comm. College.

Accordingly, I recommend that Zeigler is inappropriate for inclusion in the proposed unit because she is both managerial executive and confidential.

Audit Operations Manager

The Authority claims that the Audit Operations manager, Renate Wachtler, is a managerial executive. Wachtler's position is not managerial executive within the Act's meaning because her responsibilities concern only one of the finance and budget department's programs, toll audit. Wachtler exercises considerable

managerial discretion within the toll audit program, however, her span of authority is too narrow to be considered managerial executive. Wachtler has no authority over the policies or procedures of other financial programs. Wachtler has no role in collective negotiations or labor contract administration, and can only submit an operating budget for her relatively small staff. Her authority is not independent of the assistant comptroller and comptroller. Although Wachtler represents toll audits on an interdepartmental policy computer committee, any major projects are approved by at least two higher managerial levels within her department, and possibly by other directors, and the executive director.

Wachtler is a high level technical financial advisor in charge of a key functional area. Some of her decisions affect toll collection or MIS operations, but decisions as to how these operations are affected are made within those departments and not by Wachtler.

Wachtler has instituted or recommended operational procedures, but these are subject to higher approval or apply only within toll audits. She also reported problems with the Authority's bank and armored car retrieval, but the decisions about how to resolve these problems were ultimately made by higher managerial positions. The comptroller and other directors choose which bank will be used.

Because we must construe the term narrowly, only those employees whose discretion and independent authority can broadly affect the Authority's mission will be found to be managerial executive. Wachtler supervises a relatively small staff and has limited control over a small operations budget. Her discretion and authority are limited by higher managerial levels. Accordingly, I recommend that the manager, audit operations is not a managerial executive and should be included in the proposed unit.

Chief Accountant

The Authority asserts that the chief accountant, Pam Varga, is a managerial executive or confidential employee within the meaning of the Act. Varga's duties do not meet the standard for managerial executive status because she does not have authority or discretion to independently determine the operating budget or accounting policies. Her authority over the operating budget is circumscribed by decisions of the finance committee, comptroller, assistant comptroller, executive director and commissioners. Thus, she does not independently formulate or effectuate policies which broadly affect the Authority's goals. Rather, she provides important financial information to others who formulate fiscal policies and implements the accounting system used in the department.

Varga is clearly a confidential employee.^{66/} Varga's duties are very similar to the chief accountant's in the Brookdale case. Her knowledge of the employer's positions prior to their disclosure to the union makes her membership in any negotiations unit incompatible with her duties. Accordingly, I find that Varga is a confidential employee and recommend her title be excluded from the proposed unit.

Manager of Revenue and General Accounting

Elizabeth Bodnar, manager of revenue and general accounting, is alleged to be a managerial executive and inappropriate for inclusion in the proposed unit. I find that this position is not managerial executive within the Act's narrow construction of that terms. Bodnar supervises a small unit, responsible for only one aspect of the Authority financial operations, general and revenue accounting. She is third in the department's hierarchy but has no authority over six other sections. Bodnar's managerial authority is limited and subject to review and approval by Cynthia Zeigler, the assistant comptroller. Bodnar was not consulted about investment policies when a recent bond refinancing resolution was prepared. Most of her investment

^{66/} In Brookdale Comm. College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977), the chief accountant was deemed confidential since he was the principal source of information regarding wage and budget proposals during negotiations, and he prepared, revised and finalized the budget.

accounting work is under Zeigler's direction; Zeigler invests the Authority's funds. A managerial executive, according to the Act, must formulate and direct the implementation of policies having a broad effect on an employer's operation. Bodnar's responsibility does not meet the standards for managerial executive and therefore, I recommend that her position be included in the proposed unit.

Manager of Disbursements

The Authority contends that the manager of disbursements, Constance Kuchtyak, is a managerial executive or confidential employee. I conclude that Kuchtyak is neither a managerial executive nor a confidential employee. The Commission has determined that the terms shall be construed narrowly. N.J.S.A. 34:13A-5.3.

A managerial executive has broad managerial authority and a high degree of independence in functional areas that broadly affect the organization's mission or means of achieving that mission. Kuchtyak has authority over only one function, disbursements. While she has a high degree of independence in managing disbursements activities, any recommendations she makes for significant change are approved by Zeigler and Schladebeck. For example, she prepared a draft procedures manual for Zeigler's approval. Kuchtyak cannot formulate policies without higher approval and the scope of her authority is too limited to be managerial executive within the Act's

meaning.^{67/} Here, Kuchtyak does not even have department-wide authority. Therefore, I find that the manager of disbursements is not a managerial executive.

Kuchtyak has not participated in collective negotiations or contract administration and cannot be considered confidential within the Act's meaning. N.J.S.A. 34:13A-3(g).^{68/} Accordingly, I recommend that the manager of disbursements be included in the petitioned-for unit.

Manager, Payroll Section

The Authority asserts that the manager, payroll section, Charlotte Maindelle, is a managerial executive or confidential employee within the meaning of the Act. Maindelle's payroll responsibilities are not sufficiently extensive to "broadly affect" the Authority's mission or means of reaching its objectives. Borough of Montvale. However, I find she is a confidential employee and that her position is appropriate for inclusion in the petitioner's proposed unit. N.J.S.A. 34:13A-3(g)

67/ Compare, Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982) where three titles were not managerial although they had department-wide authority, but not hospital-wide authority, and did not have discretion to formulate or effectuate policy relating to the hospital's overall management goals.

68/ Compare, Tp. of Mine Hill, D.R. No. 91-33, 17 NJPER 315 (¶22139 1991) (municipal clerk was deemed a "confidential" because she was required to attend and prepare the minutes of council meetings, including closed meetings, where labor relations matters were discussed, and she was generally privy to confidential labor relations discussions by the township officials and managers).

Maindelle participated in collective negotiations by sitting in on negotiations sessions between the Authority and the supervisors' association. Further, the evidence supports a finding that Maindelle knew the Authority's bargaining position before it was disclosed to the union. Such knowledge places Maindelle in an intolerable conflict of interest between the performance of her duties for the Authority and her membership in any negotiations unit. See, e.g., State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985) and Tp. of Mine Hill, D.R. No. 91-33, 17 NJPER 315 (¶22139 1991). The municipal clerk in Mine Hill was deemed confidential because she was required to attend closed meetings, where labor relations matters were discussed, and she was generally privy to confidential labor relations discussions by the township officials and managers. Maindelle's duties are similar to those of the clerk in Mine Hill. I recommend that her attendance at negotiations sessions on the Authority's behalf and her knowledge of the Authority's positions in advance make her a confidential employee per se, inappropriate for inclusion in the proposed unit.

Budget Analyst

The Authority argues that the budget analyst is a managerial executive and is ineligible to be in the proposed unit.

The term managerial executive is construed narrowly.^{69/} See, Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977) and Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980).

Applying this standard, Jones' position is not a managerial executive. He developed a set of objectives designed to further the department's mission when he created capital budget accounting procedures in response to auditors' recommendations, but he did not have authority to direct that others use these procedures, since the authority to do so comes from higher managerial levels. His position is not high enough in the Authority's hierarchy, his span of control is not even department-wide, and, he has no authority over the operating and widening projects budgets.^{70/} Accordingly, I recommend that the Dale Jones' budget analyst position is not managerial executive and should be included in the proposed unit.

Internal Auditor

The Authority claims that the internal auditor, Francis O'Connor, is a managerial executive or confidential employee and must be excluded from the proposed unit. O'Connor is not a managerial executive. He is developing an internal audit program

^{69/} N.J.S.A. 34:13A-3(f) defines managerial executives as: "persons who formulate management policies and practices, and ... who are charged with ... directing the effectuation of such management policies and practices...."

^{70/} Accord, Bergen Pines Cty. Hosp. and Council No. 5, NJCSA and State of New Jersey, D.R. No. 91-23, 17 NJPER 167 (¶22069 1991).

for the Authority, and his position is relatively new. He has conducted surveys, investigations and recommended operational changes. His recommendations are subject to adoption and approval by higher managerial levels. Thus, O'Connor's authority concerns only one of the department's financial and accounting programs and he does not independently determine program goals or the means of reaching them. Compare, Gloucester County, P.E.R.C. No. 90-36, 15 NJPER 624, (¶20261 1989) (the county's welfare program coordinator was managerial executive where, although program was relatively small and did not significantly affect county's overall operation, coordinator was a department head over a new program, and she effectively made the policy choices which shaped the County's REACH program. She formulated goals with no evidence of higher-level interference with her choices of how to realize the goals. She implemented and managed the program, which had components involving private and public agencies working under her direction, and she oversaw compliance with program-funded contracts. She developed her department's budget and was not subordinate to any director in developing the expenditure of budget allocation).@

The Authority also claims that O'Connor is a confidential employee, but he has not participated in collective negotiations or contract administration. On one occasion he provided non-confidential information to a union. Confidential employees must possess knowledge of collective negotiations issues which makes their membership in any negotiating unit incompatible with their

official duties. The evidence here does not support a finding of confidential status.

Accordingly, I recommend that the internal auditor position is neither managerial executive or confidential within the meaning of the Act and that it be included in the petitioned-for unit.

Law Department

FINDINGS OF FACT

Environmental Coordinator (T. Doolan)
Real Estate Analyst (W. Luger)
Insurance Administrator (M. Gravelle)
Contract Administrator (D. Scaccetti)

Environmental Coordinator

Tim Doolan, the environmental coordinator, reports to the senior attorney and does not supervise any other employees (R-22, 13T4-13T5, 13T37). Doolan reviews, investigates and recommends actions concerning the Authority's environmental problems, except waste disposal, which is handled exclusively by the maintenance department (13T7-13T10, 13T16, 13T18, 13T26, 13T40-13T41, 13T67-13T68). The senior attorney or director of the law department assign Doolan work and he reports findings to them for further action (13T10-13T11, 13T23, 13T25, 13T41, 13T46-13T48, 13T53). Doolan is a member of the Authority's environmental subcommittee, formed to investigate and solve the Authority's underground storage

tank, septic system, and sewerage problems (13T13-13T15, 13T24).^{71/}

Doolan cannot direct Authority employees to wear protective apparatus in hazardous situations (13T19). Doolan has occasionally reviewed RFPs for environmental consultants along with other committee members, and they jointly recommended who should be awarded the bid (13T10-13T21, 13T24). The maintenance department awards these bids (13T57). Doolan has also acted as the Authority's liaison between consultants, general counsel and the N.J. Department of Environmental Protection to insure the Authority's compliance with environmental laws and rules (13T29, 13T43, 13T47, 13T50-13T51). He reviews regulations as they apply to matters at the Authority but, only attorneys are authorized to interpret regulations (13T36-13T37, 13T45, 13T47, 13T68-13T69).

Doolan has not been involved in collective negotiations or in preparing the Authority's budget (13T18, 13T30).

Real Estate Analyst

Real Estate Analyst Walter Luger reports to the senior attorney and does not supervise any other employees (11T152, 11T158, 12T6).^{72/} Luger maintains records, supervises and recommends the

^{71/} The environmental committee is comprised of directors and the subcommittee is comprised of lower managerial levels.

^{72/} Luger "shares" a secretary with Tim Doolan, environmental coordinator, but does not hire, fire or discipline her, or effectively recommend the same (12T41-12T42).

acquisition of new properties and disposition of the Authority's surplus properties (10T119, 11T154-11T156, 12T9, 12T23, 12T28-12T29).^{73/} Luger also analyzes, calculates and recommends the taxes which must be paid on surplus properties (10T156, 11T154).^{74/} The chief engineer and consultants determine the Authority's specific propoerty needs (11T156). The chief engineer certifies and the commission must approve the acquisition and disposition of real estate (10T120, 11T165, 12T9, 12T18-12T19, 12T28).

Luger negotiates with homeowners on the value of property value diminishment within the confines of a joint appraisal, and if agreement is reached, Luger recommends that the Authority ratify it (12T8-12T10). Luger investigates and replies to complaints from the public affecting real estate (12T20-12T22). Luger provides property information to outside counsel, but does not instruct or advise them (12T15-12T17). Luger has not participated in the Authority's collective negotiations (10T157).

^{73/} The Authority contracts real estate appraisal and sales to private appraisers and realtors (12T27, 12T30).

^{74/} Director of Law Olarsch characterized this as policy formulation, but I find that it is analysis and calculation of the Authority's property tax obligation, and that Luger can only recommend the amount necessary to meet the obligation.

Insurance Administrator

Michael Gravelle, the insurance administrator, reports to the risk manager and supervises one claims supervisor and two assistant claims supervisors (R-22, 11T3, 11T17). Gravelle provided a "wish list" in preparation for negotiations, but did not otherwise participate in negotiations or know the Authority's negotiations positions prior to negotiations (11T19-11T20).^{75/} Gravelle does not determine staffing standards or formulate the department's budget (11T21-11T22, 11T13).

Gravelle manages the property-casualty and claims functions in the law department's risk management section (10T126, 11T5). He investigates claims against the Authority by compiling and reviewing police reports and reports from other Authority departments or by physically inspecting an accident site (11T5, 11T28-11T29, 11T51). He maintains a file of each claim and sends all information to the Authority's insurers or third-party administrators (11T5, 11T35, 11T51). The administrator has discretionary authority to settle claims against the Authority for amounts under 10,000 dollars (11T39, 11T48, 11T50). The administrator must get the risk manager's authorization to settle for above that amount (11T39).

^{75/} Director Olarsch stated that the insurance administrator: "assesses all benefits and all matters concerning the collective bargaining process" (10T127). Olarsch later testified that he assumed Gravelle was informed about benefits issues during negotiations (10T127). I do not find that Gravelle participated in collective negotiations or knew the Authority's negotiations positions on the basis of Olarsch's testimony. Olarsch did not appear to have personal knowledge of Gravelle's involvement or knowledge of collective negotiations issues.

Gravelle does not have discretion to authorize settlements (11T40-11T42).

Worker's compensation claims are determined and paid by the Authority's third-party administrator; Gravelle does not decide compensability (11T18). Gravelle collects and sends information to the administrator relating to worker's compensation claims (10T126-10T127, 11T6).^{76/} Gravelle does not formulate rules, procedures or coverage for worker's compensation benefits (11T14). He analyzes claims statistics and reports trends and results to the risk manager (11T6).

Gravelle assists the risk manager's review of insurance policies, coverages and oversight of the widening project insurance (11T7). Gravelle does not decide which outside law firm, third party administrator or insurers are used by the Authority (11T10, 11T16-11T17, 11T21).^{77/}

Contract Administrator

Diane Scaccetti, the contract administrator, supervises a legal archivist and reports to the director of law (R-22). She administers consultant acquisition and sets policies regarding

^{76/} Worker's compensation coverage at the Authority exceeds the statutory minimum (11T13-11T14). The Authority's workers' compensation rules and procedures are both statutory and negotiated (11T14).

^{77/} Insurance carriers are selected by the commissioners through bidding procedures (11T16).

consultants qualifications in conjunction with the chief engineer and director of the administrative services and technology department (10T121). Scaccetti is the Authority's assistant administrator for the deferred compensation plan (10T122). She handles the department's personnel matters (10T122). Scaccetti is the Authority's liaison on regulatory matters with the N.J. Office of Administrative Law (10T123). She also interprets the Authority's code of professional ethics, and affirmative action regulations (10T122, 10T124).

Scaccetti maintains records of the Authority's negotiations, reviews all materials pertaining to contract provisions and coordinates with the Authority's outside counsel and the director of law, who serves on the Authority's negotiations team (10T123-10T124).

ANALYSIS AND RECOMMENDATIONS

Environmental Coordinator

The Authority asserts that Tim Doolan, the environmental coordinator, is a managerial executive. However, Doolan does not supervise any employees, formulate policies, or direct the implementation of programs or policies. And, Doolan is two levels below the director of the law department. He is not an attorney, so it is unlikely he would ever have managerial authority within his department. Montvale instructs that the term managerial executive

must be construed strictly and that such employees must possess a high degree of independence and managerial discretion. Doolan functions as an investigator and troubleshooter on environmental issues. He recommends procedures and responsive actions, but these are subject to higher levels of approval. Doolan's immediate supervisor assigns most of his work and Doolan must report back to him regularly. He serves on a subcommittee composed of lower managerial levels who are not empowered to act without higher managerial approval. Doolan does not have an operating budget or participate in the Authority's conduct of collective negotiations. I recommend that Tim Doolan is not a managerial executive within the Act's meaning. However, he is not appropriate for inclusion in the proposed unit because he is not a supervisor and the petition specifically excludes non-supervisory employees.^{78/}

Real Estate Analyst

The Authority asserts that the real estate analyst, Walter Luger, is a managerial executive and must be excluded from the unit. This position is not managerial executive because it is not high enough in the Authority's managerial hierarchy, does not supervise any employees, does not have authority to act independently of the senior attorney, director of law or chief

^{78/} Although Doolan and another employee share a secretary, they do not have authority to hire, discipline or fire her or effectively recommend the same (13T37).

engineer on real estate matters and, finally, does not formulate or direct the implementation of policies. Almost all of Luger's assignments are filtered through the senior attorney and director. Luger does not control the disposition or acquisition of property or make policy. Accordingly, I recommend that he is not a managerial executive.

Luger cannot be in the proposed unit, however, because he holds a non-supervisory position. Therefore, I recommend that the real estate analyst be excluded from the proposed unit.

Insurance Administrator

The Authority claims that the insurance administrator, Michael Gravelle, is a managerial executive or confidential employee and must be excluded from the proposed unit. I disagree. The insurance administrator is an administrative position, similar to the benefits administrator in the human resources department. Gravelle, like the benefits administrator, does not have authority over the level of property-casualty insurance available at the Authority. Gravelle cannot authorize settlements. He maintains claims files, gathers and provides vital information to third-party administrators and carriers, and assists the risk manager. He is lower in the Authority's hierarchy than positions already found not managerial executive.

Gravelle does not participate in collective negotiations or contract administration. He suggests negotiations items, but does

not know, nor can he determine the Authority's negotiations strategy or proposals. Therefore, I find that his position is not confidential.

Accordingly, I recommend that the insurance administrator position held by Michael Gravelle be included in the proposed unit.

Contract Administrator

The Authority alleges that the contract administrator, Diane Scaccetti, is a managerial executive and confidential employee and cannot be included in the proposed unit. I find that Scaccetti is a confidential employee within the Act's meaning. Scaccetti maintains records of the Authority's negotiations proposals, meetings and contracts. Her responsibilities place her in a conflict between performance of these duties and membership in any negotiations unit. Her review and maintenance of negotiations records, and coordination between outside counsel and the director of law on negotiations matters gives her access to and use of information which the Authority has a right to maintain confidential. Accordingly, I find that the contract administrator is confidential within the Act's meaning and recommend the position be excluded from the proposed unit.

RECOMMENDATIONS

Based upon the above, I recommend that the following department of law position are appropriate for inclusion in AFSCME's proposed unit:

Insurance Administrator (M. Gravelle)

I recommend that the real estate analyst and environmental coordinator be excluded from the unit because they are non-supervisory positions. I further recommend that the contract administrator be excluded because it is a confidential position within the meaning of the Act.

Public Affairs Department

FINDINGS OF FACT

Director of Public Affairs (G. Hector)
Community/Public Relations Assistant (J. Adubato)
Public Relations Specialist (S. Donnellon)

Director of Public Affairs

Gordon Hector, director of public affairs, oversees the department of public affairs (14T5). Hector directs all public relations, media relations and the dissemination of information to patrons and employees through two regular publications and the annual report (14T5, 14T11). Hector authorizes the budget and approves transfers of funds between accounts (14T40, 14T31-14T33). He directly supervises a secretary, the public relations assistant, Jean Adubato; and the publications specialist, Samuel Donnellon (14T18, 14T20, 14T28-14T29). He reviews and edits copy that Donnellon submits in preparation of the "Trail Blazer," a patron newsletter and the "Pike Interchange," an employees newsletter (14T18). Hector evaluates Donnellon's and Adubato's performance (14T18).

Community/Public Relations Assistant

Jean Aduato, the public relations assistant, supervises a photographer and secretary and reports to the director of public affairs, Gordon Hector (14T19, 14T29). Aduato monitors and prepares the proposed budget for the director's approval and signature (14T9). She also prepares weekly traffic advisories, advising the public of lane closings, roadway maintenance and construction projects and other events which will affect traffic flow (14T10). These are developed in conjunction with the engineering and operations departments and are reviewed by Hector before release (14T10).

Aduato also receives complaints from the public on any matter, investigates them and continues to gather information on them until resolution and communicates with the public on complaints (14T6). She reviews with Hector unusual matters or ones which require action by the law department before releasing any information (14T6-14T7). Aduato supervises a still photographer and authorizes access to the public for still and video photography (14T15-14T16). Aduato is acting director in Hector's absence, about 6 weeks per year (14T8). Aduato has no role in collective negotiations (14T24).

Publications Specialist

Samuel Donnellon, the publication specialist, reports to the director but does not supervise any other employees (14T18,

14T24). Donnellon writes copy for the department's publications, including the patron's newsletter and in-house organ, the "Trail Blazer" and "Pike Interchange," respectively (14T20, 14T23-14T24). He also prepares brochures and wrote an annual report to the Transportation Executive Council (14T20). Donnellon does not participate in collective negotiations or preparation of the budget (14T24).

ANALYSIS AND RECOMMENDATIONS

Director of Public Affairs

The Authority asserts that Gordon Hector, the director of public affairs, is a managerial executive and should be excluded from the proposed unit. I do not reach the managerial executive issue here because I find that Hector should be excluded from the unit because there is a supervisory conflict of interest between him and the other petitioned-for employees. Hector possesses considerable discretion in managing the public affairs department, including supervising and evaluating Jean Adubato, the public relations assistant, and (Samuel Donnellon, the publication specialist). Wilton held that where the supervisory duties of a position whose membership in the unit is sought creates an actual or potential substantial conflict of interest between that supervisor's interests and other included employees, the community of interest required for inclusion of such supervisors is not present. Here,

Hector is the top decision-maker in the public affairs department concerning personnel actions such as discipline, promotions and pay increase recommendations. Thus, he is in a unique position within the Authority.^{79/} I find that Hector's supervisory power amounts to a substantial conflict of interest and, therefore, he should not be included in the same unit with the other included titles.^{80/}

Community/Public Relations Assistant

The Authority asserts that the public relations assistant, Jean Adubato, is a managerial executive employee and should be excluded from the proposed unit. I find that Adubato's authority is too circumscribed, and her position too low in the Authority's hierarchy to be managerial executive. Adubato prepares press releases, answers complaints, coordinates media access for photography of the roadway, and prepares and monitors the department's budget. However, she does not authorize the budget or transfers between accounts. She supervises a very small section and does not formulate policies which "broadly affect" the Authority's

^{79/} In other departments I did not find substantial conflicts of interest existed in many supervisory-subordinate situations because a department director approved all personnel actions before recommending them to the commission. Here, there is no level above Hector, thus, increasing the potential for a conflict of interest.

^{80/} Accord, Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1989); Ridgewood Bd. of Ed., D.R. No. 80-33, 6 NJPER 209 (¶11102 1980); and Paramus Borough Bd. of Ed., D.R. No. 82-7, 7 NJPER 556 (¶12247 1981).

operations. Montvale. Accordingly, I recommend that the public relations assistant is not a managerial executive position, and that Jean Adubato is appropriate for inclusion in the proposed unit.

Publication Specialist

The Authority claims that the publications specialist, Samuel Donnellon, is inappropriate for inclusion in the proposed unit because he is a managerial executive and a non-supervisory employee. This position is not a managerial executive within the meaning of the Act. Donnellon does not formulate or effectuate policies, and has no authority over other employees, programs or the allocation of budgetary resources. However, Donnellon's position is inappropriate for inclusion in the petitioner's unit because he does not supervise any other Authority employees, and the petition specifically excludes non-supervisory employees. Accordingly, I recommend that the publication specialist, Samuel Donnellon, be excluded from the unit.

RECOMMENDATION

Based on all of the above, I recommend that the public relations assistant, Jean Adubato, is the only department of public affairs position appropriate for inclusion in the proposed unit. The director should be excluded because he has a supervisory conflict of interest with an included title. The publications specialist is a non-supervisory position and must be excluded by the petition's terms.

RECOMMENDATION

I recommend that the Commission find that AFSCME, Council 73, AFL-CIO has petitioned for an appropriate higher level supervisory unit. I recommend that the following employees employed by the New Jersey Turnpike Authority are neither managerial executives nor confidential employees within the meaning of the Act. Further, I recommend that these employees do not have a supervisory conflict of interest with other included titles. Accordingly, I recommend that the Commission order an election among these titles to determine whether a majority wish to be represented for purposes of collective negotiations by AFSCME Council 73, AFL-CIO. The appropriate unit is:

INCLUDED: all professional and upper level supervisory employees employed by the New Jersey Turnpike Authority, including:

Administrative and Technology Department

Manager, Systems & Programming (J. Maklary)
 Systems Projects Coordinator (J. Michalkowski)
 Systems Project Coordinator, Tolls (M. Remache)
 Computer Systems Manager (L. Goldrosen)
 Ass't. Computer Systems Manager (W. Bruzek)
 Project Engineer (A. Voza)
 Microprocessor Systems Coordinator (R. Socha)
 Admin. of Office Services (R. Travasano)
 Manager, Office Services (L. Goerke)
 Manager, Motor Pool Fleet (J. Malone)
 Manager, Patron Services (R. Ashworth)
 Ass't. Director of Purchasing (W. Luther)
 Manager, Purchasing (J. Corcoran)

Operations Department

Traffic Engineer, Design & Planning (J. Kraft)
 Traffic Engineer, Operations (S. Purdum)
 Traffic Operations Center Manager (H. Comeau)
 Traffic Operations Assistant (E. Ferrari)

Manager-Emergency Systems (J. Lyon)

Toll Collection Department

Section Manager, Administration (R. Raymond)
Section Manager (R. Magerkurth)
Section Manager (G. DeVan)
Section Manager (H. Schmidtz)
Section Manager (J. Lefforts)
Section Manager (F. White)
Superintendent, Toll Maintenance (C. Gallo)
Manager, Toll Collection Distribution Center (J. Schmidt)

Maintenance Department

Administrative Maintenance Manager (R. Walley)
Supervisor of Inventory Control (W. Kowalski)
Buildings Manager, (B. Campbell)
Senior Buildings Engineer (W. Hill)
Superintendent of Buildings, South (E. Cerino)
Superintendent of Buildings, North (E. Bachonski)
Division Manager, North (R. Geberth)
Superintendent of Roadway, North (M. Stankowitz)
Division Manager, South (R. Anderson)
Superintendent of Roadway, South (J. Colby)
Equipment Manager (L. Willever)
Assistant Equipment Manager (T. Foster)
Manager, Communications (D. Elyea)
Assistant Manager for Communications (W. Chafin)
Senior Project Engineer (M. Rotolo)
Maintenance Engineer (D. Wingerter)
Engineering Coordinator (D. McNamara)
Safety & Environmental Affairs Manager (H. Galary)
Supervisor of Maintenance Systems (J. Forrest)

Human Resources Department

Benefits Administrator (J. Citrino)

Engineering Department

Senior Project Tracking Coordinator (S. Wisniewski)
Supervising Engineer (R. Zipp)
Supervising Engineer (J. Kunna)
Senior Project Engineer (H. Byrnes)
Senior Project Engineer (B. Cheo)
Senior Project Engineer (H. Steinbeis)
Senior Project Engineer (J. Veni)
Project Engineer (B. Meara)
Project Engineer (R. Grimm)

Project Supervisor (R. Brundage)
Project Supervisor (J. Dougherty)
Project Supervisor (W. Eskiewicz)
Project Supervisor (R. McGowan)
Project Supervisor (S. Buente)
Project Supervisor (L. Williams)
Project Supervisor, Buildings (A. Takacs)
Chief Draftsman (J. Ferrandino)
Construction Supervisor (J. Tuminelli)
Construction Supervisor (J. Vitale)
Construction Supervisor (T. Wilson)

Finance and Budget Department

Manager, Audit Operations (R. Wachtler)
Manager, Revenue & General Accounting (E. Bodnar)
Budget Analyst (D. Jones)
Manager of Disbursements (C. Kuchtyak)
Internal Auditor (F. O'Connor)

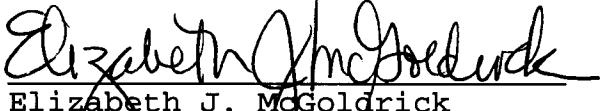
Law Department

Insurance Administrator (M. Gravelle)

Public Affairs Department

Community/Public Relations Assistant (J. Adubato)

EXCLUDED: all other employees, all employees represented in other negotiations units, managerial executives, confidential employees, craft employees, police, firefighters and non-supervisory employees, senior projects engineer (Albert Isaacs); program manager, new business development (Jeanette Thompson); supervising engineer (Harry Loewengart); landscape architect (John Kosztyo); assistant comptroller, (Cynthia Zeigler); manager, payroll section, (Charlotte Maindelle); chief accountant, (Pam Varga); environmental coordinator, (Tim Doolan); real estate analyst, (Walter Luger); contract Administrator, (Diane Scaccetti); director of public affairs, (Gordon Hector); and publications specialist, (Samuel Donnellon).


Elizabeth J. McGoldrick
Hearing Officer

DATED: March 18, 1993
Trenton, New Jersey

APPENDIX A

AFSCME seeks to represent these titles:

Toll Collection Department

1. Section Manager, Administration (R. Raymond)
2. Section Manager (R. Magerkurth)
3. Section Manager (G. DeVan)
4. Section Manager (H. Schmidt)
5. Section Manager (J. Lefforts)
6. Section Manager (F. White)
7. Superintendent, Toll Maintenance (C. Gallo)
8. Administrative Ass't. Toll Collection (W. Darragh)
9. Manager, Toll Collection Distribution Center
(J. Schmidt)

Maintenance Department^{81/}

10. Buildings Manager, (B. Campbell)
11. Division Manager, North (R. Geberth)
12. Manager, Communications (E. Dayton)
13. Maintenance Engineer (D. Wingerter)
14. Senior Project Engineer (M. Rotolo)
15. Division Manager, South (R. Anderson)
16. Equipment Manager (L. Willever)
17. Administrative Maintenance Manager (R. Walley)
18. Senior Buildings Engineer (W. Hill)
19. Assistant Equipment Manager (T. Foster)
20. Safety & Environmental Affairs Manager (H. Galary)
21. Superintendent of Roadway, South (J. Colby)
22. Superintendent of Roadway, North (M. Stankowitz)
23. Superintendent of Buildings, North (E. Bachonski)
24. Superintendent of Buildings, South (E. Cerino)
25. Assistant Manager for Communications (W. Chafin)
26. Engineering Coordinator (D. McNamara)
27. Supervisor of Maintenance Systems (J. Forrest)
28. Supervisor of Inventory Control (W. Kowalski)

81/ AFSCME also seeks to represent four vacant maintenance department positions: Administrative Assistant; Assistant Maintenance Engineer; Supervisor Equipment; and Administrative Function Manager. The Commission will not determine the eligibility of vacant positions. See, Morris School District Bd. of Ed., P.E.R.C. No. 89-42, 14 NJPER 681 (¶19287 1988).

Operations Department

29. Traffic Engineer, Design & Planning (J. Kraft)
30. Traffic Engineer, Operations (S. Purdum)
31. Traffic Operations Center Manager (H. Comeau)
32. Traffic Operations Assistant (E. Ferrari)
33. Manager, Emergency Systems (J. Lyon)
34. Manager, Employee Safety Division (J. O'Keefe)

Human Resources Department

35. Benefits Administrator (J. Citrino)

Administrative Services & Technology Department

36. Supervising Engineer (H. Loewengart)
37. Computer Systems Manager (L. Goldrosen)
38. Senior Projects Engineer (A. Isaacs)
39. Manager, Systems & Programming (J. Maklary)
40. Assistant Computer Systems Manager (W. Bruzek)
41. Project Engineer (A. Voza)
42. Systems Projects Coordinator (J. Michalkowski)
43. Systems Project Coordinator, Tolls (M. Remache)
44. Microprocessor Systems Coordinator (R. Socha)
45. Administrator of Office & Patron Services
(R. Travasano)
46. Manager, Office Services (L. Goerke)
47. Manager, Motor Pool Fleet (J. Malone)
48. Manager, Patron Services (R. Ashworth)
49. Program Manager, New Business Development
(J. Thompson)
50. Assistant Director of Purchasing (W. Luther)
51. Manager, Purchasing (J. Corcoran)

Engineering Department

52. Senior Project Tracking Coordinator (S. Wisnewski)
53. Supervising Engineer (R. Zipp)
54. Supervising Engineer (J. Kunna)
55. Senior Project Engineer (H. Byrnes)
56. Senior Project Engineer (B. Cheo)
57. Senior Project Engineer (H. Steinbeis)
58. Senior Project Engineer (J. Veni)
59. Project Engineer (B. Meara)
60. Project Engineer (R. Grimm)
61. Project Supervisor (R. Brundage)
62. Project Supervisor (J. Dougherty)
63. Project Supervisor (W. Eskiewicz)
64. Project Supervisor (R. McGowan)
65. Project Supervisor (S. Buente)
66. Chief Draftsman (J. Ferrandino)
67. Project Supervisor, Buildings (A. Takacs)

68. Construction Supervisor (J. Tuminelli)
69. Construction Supervisor (J. Vitale)
70. Construction Supervisor (T. Wilson)
71. Project Supervisor (L. Williams)
72. Landscape Architect (J. Kosztyo)

Law Department

73. Real Estate Analyst (W. Luger)
74. Contract Administrator (D. Scaccetti)
75. Environmental Coordinator (T. Doolan)
76. Insurance Administrator (M. Gravelle)

Finance & Budget Department

77. Assistant Director of Asset Management
(C. Schlager)^{82/}
78. Assistant Comptroller (C. Zeigler)
79. Manager, Audit Operations (R. Wachtler)
80. Manager, Revenue & General Accounting (E. Bodnar)
81. Budget Analyst (D. Jones)
82. Manager of Disbursements (C. Kuchtyak)
83. Manager, Payroll Section (C. Maindelle)
84. Chief Accountant (P. Varga)
85. Internal Auditor (F. O'Conner)

Public Affairs Department

86. Director of Public Affairs (G. Hector)
87. Community/Public Relations Assistant (J. Adubato)
88. Public Relations Specialist (S. Donnellon)
(J-1), 5T81-5T82)

^{82/} AFSCME sought to represent the Assistant Director of Asset Management, but the parties agreed that this position would be eliminated (14T33). Accordingly, no evidence was given and I will not consider this title. The Commission will not determine the eligibility of vacant positions. See, Morris School District Bd. of Ed.