

P.E.R.C. NO. 84-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Public Employer,

-and-

ENGINEERING SUPERVISORY
PERSONNEL ASSOCIATION,

Docket No. RO-82-149

Petitioner,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1077,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Certification of Public Employee Representative filed by the Engineering Supervisory Personnel Association. The Association had sought to represent a unit of all supervisors in the Engineering Department of the City of East Orange, but the Commission finds that the appropriate unit is the larger one of all the City's supervisory blue and white collar employees. The Commission also finds that the City's Assistant Municipal Engineers are supervisors, not managerial executives, and that the City's Administrative Secretary is a confidential employee.

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Appearances:

For the Public Employer, Green & Dzwilewski, Esqs.
(Paul H. Green, Of Counsel)

For the Petitioner, Samuel J. Halpern, Esquire

For the Intervenor, Ann F. Hoffman, Esquire

DECISION AND ORDER

On April 14, 1982, the Engineering Supervisory Personnel Association ("Association") filed a petition seeking certification of a unit of all supervisors in the Engineering Department of the City of East Orange ("City").

The City has asserted that the most appropriate unit would consist of supervisors from all the City's departments and that the Administrative Secretary is a confidential employee.

On January 31, 1983, the Director of Representation issued a Notice of Hearing.

On June 23 and 24, 1983, Hearing Officer Joan Kane Josephson conducted a hearing. At the outset, the Communications Workers of America, AFL-CIO, Local 1077 ("CWA") moved to intervene, claiming that it represented certain employees included in the Association's petition as part of its collective negotiations units of the City's nonsupervisory white collar and blue collar employees. The Hearing Officer granted this motion, and the parties then entered stipulations,^{1/} examined witnesses, and introduced exhibits.

On January 6, 1984, Hearing Officer Judith E. Mollinger issued her report and recommended decision,^{2/} H.O. No. 84-8, 10 NJPER ____, (¶ ____ 1984). She concluded that: (1) the following titles should be included in a unit of supervisors: Assistant Municipal Engineer, Assistant Engineer, Assistant Project Coordinator, Assistant Supervisor of Refuse Collection, Chief Clerk, and Supervisory Engineering Draftsman; (2) there is no conflict of interest which would exclude the Assistant Municipal Engineers

^{1/} The parties stipulated that the following titles were supervisory: Street Foreman, Sewer Foreman, Traffic Maintenance Foreman, Assistant Street Foreman, Street Superintendent, Assistant Sewer Superintendent, Principal Engineer, Traffic Engineer, Traffic Signal Foreman, Project Coordinator Public Works, Traffic Maintenance Foreman, Tree Superintendent, Assistant Tree Superintendent, Tree Foreman, Recreation/Maintenance Superintendent, Assistant Recreation/Maintenance Superintendent, Recreation Foreman, Supervising Garage Foreman, Garage Attendant Foreman, Garage Superintendent, Mechanic Repairman Foreman, and Sanitation Superintendent.

The following titles were disputed: Administrative Secretary, Assistant Municipal Engineer, Supervising Engineering Draftsman, Assistant Engineer, Assistant Project Coordinator in Public Works, Assistant Supervisor of Refuse Collection and Chief Clerk.

^{2/} On October 17, 1983, Hearing Officer Josephson resigned from the Commission's employ and Hearing Officer Mollinger was designated to issue a report pursuant to N.J.A.C. 19:11-6.4.

from a unit of supervisors; (3) the Administrative Secretary is a confidential employee and therefore not includable in a negotiations unit; and (4) the appropriate unit includes all the City's supervisors, and a secret ballot election should be held in that unit.

On January 11, 1984, CWA filed an exception asserting that the petition should be dismissed without an election since the Association never petitioned for the unit found appropriate. The City and the Association have not filed exceptions.

We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them here.

We agree with the Hearing Officer's specific determinations concerning the status of the positions in dispute. In particular, we hold that: (1) based on her access and exposure to labor relations material, the Administrative Secretary is a confidential employee; (2) while the Assistant Municipal Engineers do have a role in implementing policy, their responsibilities do not rise to the level of managerial executives; and (3) the titles of Assistant Engineer, Assistant Project Coordinator, Assistant Supervisor of Refuse Collection, Chief Clerk, and Supervising Engineering Draftsman are supervisory.

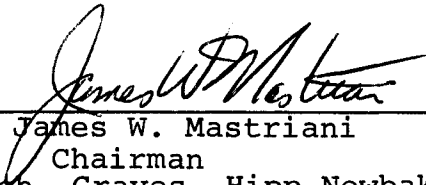
We also agree with the Hearing Officer that, in light of this State's policy favoring broad-based units, the appropriate unit here consists of the supervisors in all of the City's departments. See State v. Professional Assn. of N.J. Dept. of Ed.,

64 N.J. 231 (1974). We disagree, however, with the Hearing Officer's recommendation that an election should be directed at this time in this unit. The Association did not petition for the unit found appropriate and, in fact, indicated that it did not want to represent a unit of all supervisors.^{3/} The unit found most appropriate is substantially larger (48 employees) than the unit petitioned for (33 employees). Under all these circumstances, the petition must be dismissed. See In re Bergen County Welfare Board, P.E.R.C. No. 59 (1971); In re Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971).^{4/} The dismissal, however, is without prejudice to the Association's right to file another petition seeking an immediate direction of election in the unit here found appropriate should the Association desire to represent the overall unit and the City not extend recognition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp Newbaker and Suskin voted in favor of this decision. None opposed. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey

February 15, 1984

ISSUED: February 16, 1984

- ^{3/} The Association had asserted that the inclusion of other City supervisors would destroy the unit's community of interest, but the record does not support this assertion.
- ^{4/} In re Borough of New Milford, E.D. No. 76-42, 2 NJPER 199 (1976) is distinguishable because there the number of additional employees (two) outside the petitioned-for unit was insubstantial in relation to the size of the overall unit and there was a stipulation that an election should be ordered in the overall unit.

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COMMUNICATIONS WORKERS OF
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Intervenor.

SYNOPSIS

A Hearing Officer determined that the appropriate supervisory unit includes all the supervisory employees of the City of East Orange. Additionally, she found that the following employees of the City Engineering Department are supervisory and included in the unit. Assistant Municipal Engineer, Assistant Engineer, Assistant Supervisor for Refuse Collection, Assistant Project Coordinator of Public Works, Supervising Engineering Draftsman and Chief Clerk. She also determined that the Engineering Department Administrative Secretary is a confidential employee and excluded from the unit.

She recommends an election in which all City supervisory employees may vote to decide whether they want the Association to represent them for collective negotiations.

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 exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Appearances:

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Green & Dzwilewski, attorneys
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For the Petitioner
Samuel J. Halpern, attorney

For the Intervenor
Ann F. Hoffman, attorney

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On April 14, 1982, the Engineering Supervisory Personnel Association ("Association") filed a Petition with the Public Employment Relations Commission ("Commission") (C-1) ^{1/} seeking

1/ Commission Exhibits will be designated C- , Association Exhibits P- , City Exhibits PE- , and CWA Exhibits I- .

certification as the majority representative for a unit of all classified supervisory titles in the City of East Orange Engineering Department ("City"). ^{2/} Pursuant to a Notice of Hearing issued January 31, 1983, hearings were held June 23 and 24, 1983.

At the hearing on June 23, 1983, before Hearing Officer Joan Kane Josephson, the Communications Workers of America, AFL-CIO, Local 1077 ("CWA") moved to intervene on the basis of its contracts with the City (C-3, C-4). Intervention was allowed for the purpose of protecting the interests of employees whom CWA claims to represent; it was not for the purpose of participating in any resultant election (T1-8). ^{3/} The Hearing Officer also granted the Association's motion to amend the petition (T1-9). ^{4/} Additionally, the Hearing Officer secured stipulations that a number of titles are supervisory within the meaning of the New Jersey Employer-Employee

^{2/} The requested unit consists of the following titles: Street Foreman, Assistant Superintendent, and Superintendent; Sewer Foreman, Assistant Superintendent, and Superintendent; Assistant Engineer; Principal Engineer; Supervising Principal Engineer Draftsman; Chief Clerk; Administrative Secretary; Traffic Engineer; Project Coordinator, Public Works; Traffic Maintenance Foreman; Traffic Signal Foreman; Tree Foreman, Assistant Tree Superintendent, Tree Superintendent, Parks Maintenance Foreman; Assistant Superintendent and Superintendent; Garage Attendant and Mech. Repairman Foreman; Supervising Garage Foreman; Garage and Sanitation Superintendents, Assistant Municipal Engineer.

^{3/} Transcript references are as follows: June 23, 1983 T1- , and June 24, 1983 T2- .

^{4/} The petition was amended to add two additional contested titles: Assistant Project Coordinator of Public Works and Assistant Supervisor of Refuse Collection.

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). ^{5/} At the hearing, the parties were given the opportunity to examine witnesses, to present evidence and to argue orally. All parties submitted post-hearing briefs; the last brief was received on August 15, 1983. No reply briefs were submitted. The record was closed following the receipt of all post-hearing briefs. On October 17, 1983, Hearing Officer Joan Kane Josephson left the employ of the Commission and the undersigned was designated to issue a Report and Recommendations on the record pursuant to N.J.A.C. 19:11-6.4.

The Association contends that all of the disputed titles are supervisory positions; that the confidential nature of the Administrative Secretary's duties is de minimus and does not give rise to any conflict of interest with the other supervisory employees in the same unit; and, that the Assistant Municipal Engineer position is not a managerial executive title within the meaning of the Act. The Association also contends that CWA has never represented the petitioned-for titles. Furthermore, it argues that the unit sought is appropriate and that the inclusion of other City supervisory employees would destroy its community of interest and create the circumstances for a potential conflict of interest between unit members.

^{5/} Titles stipulated as supervisory are: Street Foreman, Sewer Foreman, Traffic Maintenance Foreman; (E.D. No. 39) Assistant Street Foreman and Street Superintendent; Assistant Sewer Superintendent and Sewer Superintendent; Principal Engineer; Traffic Engineer, Traffic Signal Foreman, Project Coordinator Public Works, Traffic Maintenance Foreman, Tree Superintendent; Assistant Tree Superintendent, Tree Foreman, Recreation/Maintenance Superintendent; Assistant Recreation/Maintenance Superintendent and Recreation Foreman; Supervising Garage Foreman, Garage Attendant Foreman, and Garage Superintendent; Mech. Repairman Foreman; and Sanitation Supervisor (T1-10 through 18, C-2).

Conversely, CWA contends that it currently represents some of these positions; ^{6/} that certain of these disputed titles are not supervisory; that the unit sought is inappropriate because it includes supervisors with nonsupervisors; that it is not broad-based because it includes only a portion of the City's supervisory titles; and, that the Assistant Municipal Engineers are managerial employees. Based on these contentions, CWA requests that the petition be dismissed.

The City does not oppose the proposed unit because supervisory employees in other City departments have not requested representation by the Association or by any other employee organization and because there are very few supervisory personnel outside the Engineering Department. However, the City does argue that the position of Administrative Secretary should be excluded from the proposed unit because her position is confidential. Additionally, it maintains that all the other positions are supervisory and that there is no potential for conflict of interest between the Assistant Municipal Engineers and other unit members; any potential for conflict is de minimus and far outweighed by the City's interest in maintaining a supervisory unit as broad-based as possible. Finally, it seeks to reserve the right to a future review of the appropriateness of the unit.

Therefore, a dispute exists concerning the composition of the collective negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

^{6/} Chief Clerk, Administrative Secretary, Supervising Engineering Draftsman, Assistant Engineer, Assistant Project Coordinator, and Assistant Supervisor of Refuse Collection.

The issues are as follows:

- (I) Are the Assistant Municipal Engineers "Managerial Executives?"
- (II) Is the Administrative Secretary a "confidential employee?"
- (III) Are the following titles "Supervisory?"
Supervising Engineering Draftsman;
Assistant Engineer (one in Plans and
Construction-Streets and one in
Traffic); Assistant Project Coordinator
in Public Works; Assistant Supervisor
of Refuse Collection; Assistant Muni-
cipal Engineer (two positions);
Administrative Secretary to the City
Engineer; and Chief Clerk for Engineering.
- (IV) Does a conflict of interest exist
among the employees in the proposed
unit?
- (V) What is the appropriate collective
negotiations unit?

FINDINGS OF FACT

Based on the entire record of these proceedings, the Hearing Officer makes the following findings of fact:

1. The City of East Orange is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding.
2. The Engineering Supervisory Personnel Association and Communications Workers of America, AFL-CIO, Local 1077 are employee representatives within the meaning of the Act and are subject to its provisions.
3. The City's administrative organization is divided into 22 departments and into numerous boards and commissions (T2-4,

7) all under management of the Mayor (T2-5). ^{7/} Some of these departments are subdivided into divisions--for example, Human Services and Engineering (T2-8). Each division is headed by a director (T2-9).

There are a total of 48 employees identified by the City as supervisors; none are in recognized collective negotiations units (T2-9). Of these 48 employees, 33 are in the Engineering department; 32 are permanent and one is provisional (T2-17, 23). ^{8/} (PE-1 shows a total of 36 supervisory positions for engineering, some of which are vacant). The Engineering department is currently one of the City's largest departments, employing 104 people (out of the 136 positions allocated to the department) (T1-20, 64) with a six million dollar annual operating budget (T1-20). Almost as large are the Health and Human Services departments (T1-144, 145).

4. The Engineering department oversees all engineering-related services provided by the City (T1-22), and prepares contract documents for all engineering work (T1-145) and for equipment (T1-145, 146). It is directed by Nelson Iglesias, the City Engineer (T1-20, 21; PE-1). He, in turn, directs two Assistant Municipal Engineers; one is responsible for operations and design and the other for personnel and accounting (T1-21, 22, 149). The City

^{7/} The Fire Department, Police Department and Library are independent of the Mayor's jurisdiction (T2-17, 24).

^{8/} The other 15 supervisory positions are distributed as follows: Mayor's Office - 2 provisional; Comptroller - 1 permanent; Tax - 1 permanent; Welfare - 1 permanent; Municipal Court - 3 permanent, 1 provisional; Human Services - 1 permanent; Inspection & License - 2 permanent; Health - 3 permanent.

Engineer from 1968 through 1977, Michael D'Altielio (Tl-78), was responsible for establishing the department's table of organization--defining its divisions and subdivisions (Tl-86 through 89; PE-1).

5. The Engineering department has ten divisions: Administrative-Clerical; Plans and Construction--Streets and Sewers (P & C - Streets); Traffic; Plans and Construction--Structures (P & C - Structures); Sanitation; Garage; Streets; Sewers; Shade Tree; Recreation/Maintenance (Tl-23 through 26). Each division is directed by a superintendent, or supervisor of equal authority (Tl-27; PE-1), who supervises assistants, foremen and other employees. Foremen generally direct the employees in the field (Tl-27, 28).

Employees below the level of foremen are organized into either the blue collar (C-4) or the white collar (C-3) collective negotiations units (Tl-140). Two divisions have no nonsupervisory employees--sanitation (Tl-96, 141) and P & C - Streets (Tl-96, 142, 143). Employees of these divisions oversee the work of independent contractors (Tl-24), seasonal employees, and employees assigned to special projects (Tl-96).

The department's current table of organization has existed since 1977 (Tl-89), except for the position of Supervising Engineering Draftsman, (Tl-91), which was added later.

6. Collective negotiations between the City and its blue collar nonsupervisory employees began at the end of 1970 (Tl-80). In September 1971, the Commission decided to exclude from the unit foremen in the City departments of Streets, Sewer and

Traffic, because they are supervisory employees (C-2). Thus, the certified unit was determined to be all nonsupervisory City employees in the Departments of Recreation, Building Maintenance, Engineering and Health excluding City clerical and professional employees (C-2). CWA currently represents this unit (C-4). None of the disputed titles in the instant case is listed in either the Recognition clause or in Schedule A of the 1981-82 collective agreement (C-4).

7. Collective negotiations between the City and its clerical employees began in 1975; the employees were then represented by Essex Council #1, Civil Service Association (RO-79-168, T2-115, 127). Since May 1979, CWA has represented these employees (T2-105). None of the disputed titles in the instant case is listed in either the Recognition clause or in Schedule A of the 1981-82 collective agreement. ^{9/}

8. The Association began organizing supervisors in 1981 (T2-73) in response to proposed layoffs and salary cuts. It attempted, without formal recognition, to represent the interests of Engineering department supervisors (T2-48, 49, 59-72), to process grievances (T2-50, 51; PE-5, PE-6), and to lobby city council against layoffs (T2-56). Engineering department employees

^{9/} CWA Local 1077 president, Toni Westry testified that CWA considers Schedule A of both the blue collar and white collar contracts as incorrect and that the matter was never settled to the union's satisfaction (T2-120). Consequently CWA filed an unfair practice charge (CO-83-49); the disposition of this charge is pending resolution of the instant RO petition. However, CWA has not negotiated corrections in Schedule A of either contract. Record testimony establishes, at best, that supervisors held dual membership in CWA and the Association. (Westry--T2-136, 137; Disbrow--T2-61, 62; Broz--T2-78).

had previously organized in an attempt to stop a pending layoff in July 1980 (T2-57, 59). Even though some of these employees voluntarily paid CWA dues (T1-102; T2-78, 86), CWA made no attempt to organize these supervisory employees (T1-102, T2-69). In August 1982, following the Association's filing of a certification petition, the City passed a resolution for voluntary recognition of an Engineering supervisory unit (PE-8; T2-67 through 71). During the ten day posting period, CWA objected to the City's proposed recognition of the Association (T2-71) and no recognition or collective negotiations ensued (T2-71, 72).

9. City employees are divided into three salary groups: elected and appointed heads, including the City Engineer; employees under collective agreements; and supervisory employees (T1-99). Those employees not covered by collective agreements receive increases in wages and benefits at the discretion of the City Engineer, Mayor and City Council (T1-100; T2-97, 109). The minimum and maximum salary for each position is established by ordinance (T2-4, 7; PE-4, PE-5, PE-7).

Increases in salary and benefits for unrepresented employees do not always follow the pattern set by the City's agreements with its represented employees (T2-26, 27, 41, 42, 100, 111, 112, 117, 118, 119). However, in the past, certain contract benefits were extended to noncontract employees (T2-110): safety shoes (T1-104, 106, 107; T2-38, 39, 117) and work clothes (T2-40, 117). All employees are permitted to join a City credit union

(T2-124) and to use the third floor employee lounge (T2-124). ^{10/}

10. Employees of the Engineering department are physically located in both City Hall (T1-149) and the Central Garage (T1-150). The department's 68 blue and white collar nonsupervisory employees (T2-91) are all in the classified service (T2-92). They are represented within city-wide units of nonsupervisory employees (T2-100). Additionally, there are 40-50 temporary and seasonal employees in the department who are not represented in these units (T2-85).

Employees work either a 35 hour week (8:30 a.m. to 4:30 p.m.) (T2-106) or a 40 hour week (7:00 a.m. to 4:00 p.m.) (T1-69). Secretaries work in the various divisions of the Engineering department (T2-108): one in the combined divisions of Sewer, Tree and Recreation; one in the Garage; one in the Streets division; and additional secretaries are assigned to the remaining divisions.

Engineering department supervisors have little, if any, contact with supervisors in other City departments (T2-102). Engineering department titles require either an engineering degree or a provisional license secured by passing a special Civil Service examination (T2-102). Supervisors are designated as either white collar or blue collar, depending on the hours worked and the nature of the work (T2-103, 105, 107).

^{10/} CWA negotiating teams for the blue collar and white collar units in 1970-71, included employees who held positions later determined to be supervisory (T1-114, 126) and excluded from the units (C-2) (1971). These employees did not bargain for themselves as supervisors (T1-125, 126).

11. Iglesias was appointed City Engineer on September 1, 1982. He serves on several City committees: collective negotiations (Tl-44), personnel (Tl-45); and civil defense (Tl-45). As part of management's negotiation team he serves with the Mayor, City Personnel Officer, three Council members, the Comptroller, and representatives of both the City Water Department and the Library (Tl-160). He negotiates with CWA for both the blue collar and the white collar units (Tl-159), evaluates union contract requests (Tl-45), and participates in the formulation of City counter-proposals (Tl-47), making suggestions both orally and in writing (Tl-162). He collects information from his two Assistant Municipal Engineers (Tl-161) though he does not apprise them of his final decisions (Tl-162-163). He adjusts employee grievances at step three of the contract procedures, the step immediately preceding binding arbitration. (C-3, C-4). However, no grievances have been submitted for his adjustment (Tl-49, 164).

Iglesias, as a member of the City Personnel Committee participates in decisions affecting employee hiring, firing and promotions (Tl-46). He makes final determinations regarding these matters for the Engineering department, subject only to Mayoral approval (Tl-27, 97, 130). He delegates limited authority for suspensions and written reprimands: Assistant Municipal Engineers may authorize suspensions of a maximum of five days, division heads may authorize suspensions of a maximum of three days, and Assistant Superintendents may authorize suspensions of a maximum

of one day. This policy was orally communicated to individual staff members (T1-27, 32, 165, 166). In the City Engineer's absence an Assistant Municipal Engineer or division head serves in an acting capacity (T1-169). There is no formal performance evaluation procedure for nonclerical department employees (T1-119, 132).

12. Administrative Secretary, Adeline Lowe, serves as personal secretary to the City Engineer (T1-34). As such, she attends all his meetings (T1-43), types and files all correspondence, opens all his mail (T1-43, 162), and maintains all his files, including all committee correspondence (labor relations (T1-45, 46) and personnel (T1-47)). She also oversees the secretarial work in the department (PE-1), and may assist in the evaluation of union negotiation requests (T1-161). She directs the Chief Clerk's work (T1-43) and has authority to discipline the Chief Clerk (for a maximum four-hour suspension) (T1-44). The Administrative Secretary is the only person who has continual exposure and access to the City Engineer's labor relations material (aside from the City Engineer himself) (T1-46).

This position was not included in the white collar unit certified May 31, 1979 (Docket No. RO-79-168). ^{11/}

13. The Chief Clerk, Bernadette Brown, serves as head of the Administrative and Clerical Division (T1-47; P-1). She has authority to discipline and suspend department secretaries (T1-47,

^{11/} In May 1979, Ms. Racanciello, held this position. She was not eligible to vote in the May 18, 1979 white collar election. No challenge was raised at that time.

49, 91; T2-82; PE-11), to prepare their written performance evaluations (T1-47, 92, 164), to direct their work (T1-23), and to adjudicate their grievances at step one of the contract grievance procedure (T1-49; C-3). All the clerical employees in the various divisions are subordinate to the Chief Clerk; they are represented by CWA in the nonsupervisory white collar unit (T1-49, C-3). Brown, as Chief Clerk, was not eligible to vote in the white collar representation election May 18, 1979 (Docket No. RO-79-168).

14. There are two Assistant Municipal Engineers--Bill Remer and Otto Broz--(T1-97; T2-35). These positions are immediately subordinate to the City Engineer (T1-22; PE-1). Each implements department policy as defined by the City Engineer, the Mayor and Council (T1-97). The Assistant Municipal Engineers have limited authority including the power to deploy personnel and equipment (T1-98); to recommend hiring (T1-98); to offer suggestions and to provide information concerning collective negotiation issues (T1-161, 163) (excluding the formulation of the City's counter proposals (T1-163)); to discipline employees for up to a maximum five-day suspension (T1-27), and to review discipline imposed by the Assistant Engineers or division heads (T2-27; P-9, P-10).

15. The Assistant Engineer position (in the P & C - Streets and in the Traffic Divisions) is at the third level below the City Engineer in the department chain of command (PE-1). This

position is on the same level as positions that have been stipulated or previously determined as supervisory positions (T1-10; C-2). 12/

In the P & C - Streets division (which prepares plans for work on city roads, sewers and other infrastructures (T1-24), the Assistant Engineer reports to the Principal Engineer (which position is stipulated as supervisory). He directly oversees the work of draftsmen and inspectors (T1-92), of seasonal employees (T1-93), of employees on loan from other department divisions (T1-59, T1-92), and of subcontractors (T1-59). He also makes hiring and termination recommendations to the Principal Engineer (T1-129).

The Assistant Engineer in the Traffic division is a graduate Civil Engineer. This division's employees control traffic design and equipment (T1-24). The Assistant Engineer supervises two foremen--one for traffic maintenance and one for traffic signals (T1-61); he informally evaluates them (T1-29), and may discipline them up to a maximum one-day suspension (T1-31, 32). Also, he generally oversees the work of employees at the job site (T1-28).

Foremen may suspend employees for a maximum of four hours (T1-30). Both Traffic Foremen are supervisory positions (C-2; PE-1).

16. The Assistant Supervisor for Refuse Collection (a position that is currently vacant) would report to the Sanitation

12/ Assistant Project Coordinator, Assistant Supervisor of Refuse Collection, Supervising Garage Foreman, Assistant Street Superintendent, Assistant Sewer Superintendent, Assistant Tree Superintendent and Assistant Recreation Maintenance Superintendent.

Superintendent (T1-69), who oversees garbage collection services provided by a subcontractor (T1-71). There are no nonsupervisory City employees in this division and no hiring of any is anticipated (T1-96). However, four times a year, employees from other divisions participate in an intensive "clean-up" supervised by this division (T1-96). If Council approves additional positions requested for this division, this position will be filled (T1-132).

17. The Assistant Project Coordinator of Public Works in P & C - Structures currently substitutes for the Project Coordinator--a vacant position. Several inspectors are currently laid off (T1-65) and two additional positions for Institutional Coordinator are planned (T1-68). There are no nonsupervisory employees in this department and no funding is anticipated with which to hire any (T1-64). If such funds become available, the City will recall the Inspectors and will hire two Institutional Coordinators (T1-68, 131). The division employees are responsible to oversee and coordinate construction of all public buildings (T1-24). The Assistant Project Coordinator had authority to recommend discipline (T1-9, 51, 96).

18. The Supervising Engineering Draftsman, currently a vacant position, is a newly constituted title in the P & C - Streets division. The job specifications are pending Civil Service approval (T1-50, PE-3). The duties include supervising civil engineers, evaluating other department laborers, evaluating draftsmen and seasonal employees (T1-53, T2-75), and making hiring and disciplinary recommendations (T1-130, T2-75).

LAW

The following is a discussion of the applicable law as it applies to: (I) defining "managerial executive", (II) defining "supervisory employee", (III) defining "conflict of interest", and (IV) defining "confidential employee".

I. Managerial Executive

Section 13A-3(f) of the Act defines "managerial executives" as those "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,..."

Section 5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees.

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980) affirming D.R. No. 80-32, 6 NJPER 198 (¶11097 1980) ("Montvale"), the Commission set forth the following standards for determining whether a person is a managerial executive as defined by the Act:

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

employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.
pp. 508-509.

See, In re County of Bergen, Bergen Pines County Hospital, D.R. No. 83-8, 8 NJPER 535 (¶13245 1982) request for review denied P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982) aff'd App. Div. Docket No. A-564-82T2 (10/18/83) ("Bergen Pines").

In applying Montvale to subsequent cases, the Director of Representation has focused on the three factors enumerated in determining whether persons exercise the requisite degree of authority to be titled "managerial executive." See, In re Gloucester County Welfare Board, D.R. No. 83-36, 9 NJPER 388 (¶14176 1983); In re City of Trenton, D.R. No. 83-33, 9 NJPER 382 (¶14176 1983) ("Trenton"); In re City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980). Such persons need not have final responsibility for decisions but the level of authority exercised must meet the criteria established in Montvale. In re City of Newark and Professional Fire Officers Association Local 1860, IAFF, AFL-CIO, D.R. No. 82-18, 7 NJPER 640 (¶12288 1981), H.O. No. 82-2, 7 NJPER 481 (¶12213 1981) fn. 57. ^{13/} The power claimed must be exercised regularly. Middlesex County Welfare Board, P.E.R.C. No. 10 (1969).

Additionally, the Director found that "those chosen for 'directing the effectuation' of policy must be empowered with a substantial measure of discretion in deciding precisely how the policy should be effectuated." Montvale, D.R. No. 80-32, slip op. page 22 (emphasis added). Further, policy in a public employment context is

^{13/} State of New Jersey and Council of New Jersey State College Locals, D.R. No. 82-35, 8 NJPER 87 (¶13036 1982).

defined as:

"...the development of particular sets of objectives of a governmental entity designed to further the mission of the agency and the methods of achieving such objectives. Those who formulate policy are those who select a course of action from among the alternatives and those who substantially and meaningfully participate in the essential processes which result in the selection of a course from the alternatives available." 6 NJPER 202.

Clearly, a managerial executive must have the power to exercise substantial discretion, independent of the employer's established policies and procedures, to set policy governing the objectives of a governmental entity and to fashion methods of achieving such objectives. The management authority to make operative decisions on behalf of the employer is distinguished from mere discretion exercised by supervisory employees.

II. Supervisory Employees

Section 5.3 of the Act describes supervisory employees as "any supervisor having the power to hire, discharge, discipline or effectively recommend the same." In establishing the standard by which supervisors' status can be measured, the Commission is guided by prior judicial and administrative decisions. Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971) ("Wilton") (broad definition of supervisors applied). See also, § 34:13A-6(d); Bergen Pines, supra; In re Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977); Middlesex County Welfare Board, P.E.R.C. No. 10 (1969) ("Middlesex Welfare Board"); In re Cherry Hill Township Department of Public Works,

P.E.R.C. No. 30 (1970); In re City of Trenton, D.R. No. 83-33, 9 NJPER 382 (¶14172 1983) ("Trenton"); In re County of Middlesex, D.R. No. 80-14, 5 NJPER 517 (¶10267 1979) ("Middlesex Supervisors"); Metuchen Borough, D.R. No. 78-27, 3 NJPER 395 (1977).

In Middlesex Supervisors, the Director found that the County Chief Inspector and Senior Sanitary Inspectors were supervisors and were therefore excluded from a collective negotiations unit of Sanitary Inspectors. (The Senior Inspectors imposed discipline on the Inspectors; the Chief Inspector was the superior next in line above the Senior Inspectors, and was a fortiori, a supervisor of the Senior Inspectors).

In Trenton, a case analagous to the instant matter, the Director found that the Street and Sanitary Superintendents, division directors within the City's Department of Public Works, were properly included in the unit of supervisors. This unit also included the Assistant Sanitation Superintendent (supervised by the Sanitation Superintendent) and the General Foreman (supervised by the Street Superintendent). These division superintendents were the only two of 24 division heads placed in the supervisory unit or represented in any negotiations unit. Although the Director found that the superintendents were placed at the upper levels of the City's organizational structure and that they initiated recommendations concerning policy determination, they did not possess either the authority or the

power of management executives. ^{14/}

In applying the definition of supervisor, the Commission looks to whether the incumbent employee has the authority to hire, discharge, discipline or effectively recommend these actions. Moreover, the power claimed must be exercised with some regularity. State of New Jersey and Council of N.J. State College Locals, D.R. No. 82-35, 8 NJPER 87 (¶13036 1982); See, Bergen Pines, supra.

III. Conflict of Interest

The presence, if any, of an actual or potential substantial conflict of interest is an important factor underlying any community of interest determination. The Court, in Wilton, said:

"There is no doubt that the Legislature intended to authorize appropriate independent negotiating units for supervisory employees (except the superintendent of schools or his counterpart) of the Board of Education. But there is no clear and unqualified direction in Sections 13A-5.3 and 13A-6(d) to permit all such supervisory employees to join a single negotiating unit and to require the Board to recognize it as their exclusive negotiating representative, regardless of gradations of duties of particular supervisors. Ordinary considerations of employer-employee relations make it sensible to say that if performance of assigned duties by a particular supervisor bespeaks such an intimate relationship with the management and policy-making function as to indicate actual or potential substantial conflict of interest

^{14/} At no point in the record did the City argue that its request to remove the Superintendents was based upon any assignment of new duties. Both Superintendents reported directly to the Director of Public Works who was responsible to the Mayor and Business Administrator. The Street Superintendent supervised 49 employees; the Sanitation Superintendent supervised 65 employees. They rarely appeared before City Council to argue a policy or budget position which they initially recommended. They did not discipline even nonsupervisory employees except for minor misconduct; they did not prepare formal employee evaluations.

between him and other supervisory personnel in a different or lower echelon of authority, such supervisor should not be admitted to the same negotiating unit. Admission would not be fair either to the other supervisory employees or to the employer. Obviously no man can serve two masters.

* * *

Whether the matter under discussion is concerned with the propriety of supervisors joining the same organization as ordinary employees, or the propriety of supervisors in various degrees of managerial proximity in relation to the employer and each other belonging to the same organization, the issue would seem to be substantially the same. Are the duties, authority and actions of the employee in question, vis-a-vis the other employees in the Association, primarily related to the management function? To what extent does the reasonable and good faith performance of the obligations a supervisor owes to his employer have capacity, actual or potential, to create a conflict of interest with other supervisors whose work he is obliged to oversee and evaluate for his employer?" Id. pp. 416-417.

In Wilton, as in the present case, the focus was on conflicts within a unit of different levels of supervisory personnel. The Court required an examination of the facts presented in each case. ^{15/}

In situations where there is no history of collective representation, the Commission gauges the potential for substantial conflict between unit members on speculative factors rather than on experiential factors. In re West Paterson Board of Education,

^{15/} In Wilton, the Court remanded the question of conflict. Had it found that the evaluation function, per se, constituted evidence of actual conflict, it would not have needed to remand. In re Edison Twp. Bd/Ed, D.R. No. 32-8, 7 NJPER 560 (¶12249 1981). Similarly in Trenton, the Director found that the informal evaluation made by the Superintendents did not present a substantial conflict of interest.

P.E.R.C. No. 77 (1973) the Commission said:

Future contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculation not benefited by hindsight. Id. slip. op. pp. 15-16.

Cf. Trenton, supra.

Therefore, in units of various grades of supervisors, the primary focus is the quantum of managerial or supervisory authority delegated by the employer to the position in question vis-a-vis other unit members.

IV. Confidential Employees

Confidential employees are excluded from the protections and rights afforded other public employees under the Act and consequently they are not eligible for inclusion in a collective negotiations unit. Section 34:13A-3(d) defines "employee" as follows:

This term [employee] shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer except elected officials, members of boards or commissions, managerial executives and confidential employees.

Section 3(g) of the Act 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.

An inquiry to determine the confidential status of an employee must focus, in each case, on evidence of that employee's access and exposure to confidential information involved in the collective negotiations process. River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180, 181 (¶14084 1983) fn. 2. See also, In re Board of Education of West Milford, P.E.R.C. No. 56 (1971). ^{16/} Recently, in In re Western Monmouth Utilities Authority, D.R. No. 82-36, 8 NJPER 140 (¶13061 1982), the Director found that the Authority's clerk was a confidential employee and excluded from the clerical negotiations unit. The clerk's responsibilities included keeping records of Authority work meetings, attending nonpublic executive sessions, transcribing minutes of nonpublic meetings and related clerical tasks.

In summary, the relevant consideration is whether the individual in question has access and exposure to information that

^{16/} Decided pursuant to N.J.A.C. 19:10-1.1 definition of confidential employee, not inconsistent with the definition found in N.J.S.A. 34:13A-3(g). Several decisions established the contours of legal analysis for a finding of confidential status, In re Passaic Cty. Reg. High School Dist. No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976); In re Woodbridge Twp. Bd. of Fire Commissioners Dist. No. 1, P.E.R.C. No. 51 (1974); Willingboro Bd. of Ed., D.R. No. 84-4, 9 NJPER 527 (¶14215 1983); Linden Free Public Library Bd. of Trustees, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Old Bridge Twp., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980); In re Twp. of Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); In re Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980); In re Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979); In re Jersey City Bd. of Ed., D.R. No. 80-15, 5 NJPER 533 (¶10273 1979); In re Rahway Bd. of Ed., D.R. No. 80-12, 5 NJPER 506 (¶10261 1979); Mercer County Community College, D.R. No. 80-13, 5 NJPER 507 (¶10262 1979); Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); In re Jersey City, D.R. No. 78-35, 4 NJPER 139 (¶4065 1978); Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); Cranford Bd. of Ed., D.R. No. 78-20, 3 NJPER 352 (1977); In re Springfield Bd. of Ed., E.D. No. 52 (1974); In re Plainfield Bd. of Ed., E.D. No. 1 (1970).

has a direct bearing on collective negotiations and the labor relations function of the public employer.

ANALYSIS AND CONCLUSIONS

Conclusions must be reached regarding: (I) the status of the disputed titles; (II) C.W.A.'s claim of representation; (III) the appropriate unit.

I. Status of Disputed Titles

A. Assistant Engineer:

There are currently two employees holding this title - one in the P & C Streets Division and the other in the Traffic Division. This title is at the same organizational level as five other titles, all either previously stipulated as supervisory or determined to be so. Each Assistant Engineer directly oversees the work of regular or seasonal employees; makes hiring and firing recommendations to the Principal Engineer; evaluates employees in an informal procedure; disciplines employees - including foremen - for minor misconduct; and may suspend employees for a maximum of four days.

Based on the foregoing, I find that the Assistant Engineer title is supervisory and properly included within the unit sought by the Association.

B. Assistant Municipal Engineer:

The Assistant Municipal Engineers report directly to the City Engineer and are responsible for implementing policy as set by the City Engineer, the Mayor and City Council. They also deploy personnel, make hiring recommendations, informally evaluate employees

and impose discipline subject to approval of the City Engineer. These employees have no responsibility for labor relations or for policy formulation affecting the Department or the City as a whole, nor do they participate in collective negotiations. I find that this title is supervisory.

Any conflict of interest with other employees which may exist is de minimus since the Assistant Municipal Engineers participate in only informal evaluations of employees and since their disciplinary actions are subject to review by the City Engineer. Therefore the degree of management authority exercised over other unit supervisors is minimal, if it exists at all.

C. Assistant Project Coordinator
and Assistant Supervisor of Refuse Collection:

These two positions are two levels below the City Engineer in the organizational scheme and at the same level as five other positions stipulated by the parties as supervisory. Each position is responsible for overseeing the work performed by subcontractors and for periodically supervising City employees when they perform special tasks. Additionally, each is responsible for informal evaluation of employees, for making hiring recommendations, and for disciplining employees. Based on these functions, I find that the two titles are supervisory.

[In the P & C Structure division, several Inspectors are currently laid off; they would ordinarily be supervised by the Assistant Project Coordinator. The Refuse Collection position is currently vacant.]

D. Chief Clerk:

The Chief Clerk is the head of the Department's Administrative and Clerical division. She is responsible for the distribution of clerical work, employee evaluations, employee discipline and adjudication of clerical grievances at step one of the contract procedure. Based on these duties I find that the Chief Clerk title is supervisory.

E. Supervising Engineering Draftsman:

This position is currently vacant. The duties include responsibility for evaluating Department Draftsmen, for evaluating laborers and seasonal employees and for overseeing work performed by subcontractors. Its placement in the organizational hierarchy is at the same level as the Foreman in other divisions, a position which has been determined to be supervisory. There is sufficient record evidence to support a finding that the title, as proposed, is supervisory. Should experience demonstrate otherwise, appropriate unit clarification procedures are available to the parties.

F. Administrative Secretary:

The City contends that this position is confidential and therefore should be excluded from the supervisory unit. The secretary acts as a personal secretary to the City Engineer, who is clearly intimately and directly involved in labor relations matters on behalf of the City. His secretary attends all committee meetings, maintains all his records and files, and has continual access to this material. She assists the City Engineer in evaluating contract proposals and has authority to discipline employees in the Administrative and

Clerical division. Based on the foregoing, she clearly works in a confidential capacity with a member of management's team who is intimately involved in the labor relations functions of the City. Therefore, I find that the Administrative Secretary is a confidential position and is properly excluded from the supervisory unit.

II. C.W.A.'s Claim of Representation

C.W.A.'s motion to intervene in the instant proceeding was granted for the limited purpose of protecting the interests of employees whom C.W.A. claims to represent.

On May 31, 1979, C.W.A. was certified as the majority representative for a unit of "all full-time professional and non-professional white collar nonsupervisory employees." The election for that unit was held on May 18, 1979. The titles "Administrative Secretary" and "Chief Clerk" did not appear on the voter eligibility list; neither of the incumbents voted. No challenge was raised by C.W.A. at that time. The current collective agreement between C.W.A. and the City does not include these two titles in either the Recognition clause or in Schedule "A" which is a listing of unit titles. Therefore, I find that C.W.A. does not represent the Administrative Secretary or the Chief Clerk.

C.W.A. also claims to represent the Assistant Engineers as part of this same nonsupervisory white collar unit. This title does appear on the May 18, 1979 professional unit voter eligibility list and some Assistant Engineers voted. But, in fact, this title is not listed in the current white collar collective agreement Recognition clause or in Schedule "A". No other documentary evidence was offered to support C.W.A.'s claim to represent this title. The

testimony of Toni Westry, C.W.A. Local 1077 President, on this point, indicates, at best, that the parties could not agree on the listing of titles in Schedule "A". [Neither the Recognition clause nor Schedule "A" lists the three other positions claimed by C.W.A.-- Supervising Engineering Draftsman, Assistant Project Coordinator and Assistant Supervisor of Refuse Collection. None of these titles were listed on either the white collar or blue collar voter eligibility lists.] Since I have decided that these four titles are supervisory, C.W.A. can not represent these positions in either of its nonsupervisory units. In fact, C.W.A. argued against the appropriateness of mixed supervisory/nonsupervisory units.

III. Appropriate Unit

While the City does not contend that the unit sought is inappropriate, it does not contend that it may not be the most appropriate. It does not object to the Engineering group as a separate unit, however, it reserves the right to future review. It contends that a residual unit of other City supervisors would not constitute undue fragmentation of collective negotiations. ^{17/} Additionally, it argues that C.W.A. has no standing to question the appropriateness of the unit.

In Middlesex Supervisors, supra, the intervenor raised an issue concerning the proposed unit. However, the Director determined that the intervenor could not continue to represent supervisors in its unit, and therefore, he found its question concerning the appropriate unit was moot.

^{17/} In support of this position, it cites U.M.D.N.J., 9 NJPER 293 (¶14136 1983); Essex County Sheriff's Office, 8 NJPER 477 (¶13223 1982); County of Middlesex, 6 NJPER 423 (¶11212 1980); Parsippany-Troy Hills Bd. of Ed., 4 NJPER 394 (¶4177 1978).

In the instant case, C.W.A.'s motion to intervene was granted for the limited purpose of protecting the interest of employees it claimed to represent. However, I have determined, first, that C.W.A. does not represent any titles in the proposed unit and second, that the disputed titles are either supervisory or confidential. Therefore, the questions raised by C.W.A. are moot. In fact, it has no further interest in the instant matter.

The interested parties' positions are clear. The City's conditional acceptance of the Engineering department supervisory unit must be interpreted as a rejection of the proposed unit. Any objections to the proposed unit must be raised at this time while the dispute is before the Commission.

The Association objects to a city-wide unit of supervisory employees claiming that Engineering department supervisors have no community of interest with other City supervisors.

In Borough of New Milford, E.D. No. 76-42 (1976) ("Milford"), the Executive Director said:

The Commission's elections procedures and its duty to determine in each instance the appropriate unit for collective negotiations are not separate functions. They must be viewed as the component parts of an integral whole. The duality of this function is clearly expressed in N.J.S.A. 34:13A-6(d), which provides in pertinent part:

'The Commission...is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiations...'

Should the Borough's interpretation prevail, the Commission might be placed in a position of being required to certify the result of an election conducted in a unit which may be in contravention of the purposes and provisions of the Act. Slip op. pp. 6-7 18/

The Executive Director continued, citing In re State of New Jersey and Professional Association of New Jersey Department of Education, 64 N.J. 231, 257 (1974) affirming P.E.R.C. No. 68 (May 23, 1972) in which the New Jersey Supreme Court said:

Since, as already indicated, more than one proposed unit may well have attributes of appropriateness, and it is essential for the functioning of the statutory scheme that a designation of a single unit be arrived at in a contested case, as here, the Commission had no choice but to determine the unit it deemed best and accordingly to designate either a unit proposed by one of the parties or to specify one of its own conception, as guided by the evidence, its expertise and the statutory criteria. 19/

The Commission has adopted a clear policy of finding broad-based units to be appropriate, thus rejecting the claims of employees for separate status based upon particular occupational or departmental groupings.

18/ In New Milford, the Commission determined that the appropriate unit was comprised of all blue-collar employees employed by the Borough including two custodial employees at the Borough Municipal Building. The Commission rejected the Borough's argument that these employees did not share a community of interest because custodians did primarily inside work while the Public Works' employees did essentially outside work. See also, County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

19/ In State of New Jersey, the Commission had determined that the appropriate unit consisted of a state-wide unit of all professional employees rather than separate units of professionals based upon their district occupational identities.

Therefore, in the instant dispute, I must reject the claim of the Association for a separate unit of Engineering department supervisors. The appropriate unit here is a city-wide unit of all supervisory employees. This determination is consistent with the prior Commission decisions certifying city-wide units of blue-collar and white-collar employees of the City of East Orange. ^{20/}

RECOMMENDATIONS

Based on the foregoing, I recommend a finding that:

1. The following positions are supervisory within the meaning of the Act and should be included within the collective negotiations unit: Assistant Municipal Engineer, Assistant Engineer, Assistant Project Coordinator, Assistant Supervisor of Refuse Collection, Chief Clerk, Supervising Engineering Draftsman.

2. The position of Administrative Secretary is confidential within the meaning of the Act and should be excluded from the collective negotiations unit.


3. There is no potential for a substantial conflict of interest which compels the exclusion of the Assistant Municipal Engineers from the collective negotiations unit.

4. The appropriate supervisory collective negotiations unit is: all supervisory employees of the City of East Orange excluding managerial executives, confidential employees, nonsupervisory employees within the meaning of the Act and all other employees.

^{20/} This determination to broaden the unit requested does not adversely effect the adequacy of the showing of interest submitted by the Association in support of its petition.

5. A secret ballot election be conducted wherein eligible employees shall vote as to whether they wish to be represented by the Petitioner.

Respectfully submitted,



Judith E. Mollinger
Hearing Officer

DATED: January 6, 1984
Trenton, New Jersey