

P.E.R.C. NO. 2000-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Public Employer,

-and-

Docket No. CU-H-97-12

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 68, AFL-CIO,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a clarification of unit petition filed by the International Union of Operating Engineers, Local 68, AFL-CIO. The petition seeks to add four employees holding the title Supervisor Utility Operations to a unit of non-supervisory employees of Rutgers, the State University. The Commission concludes that employees in the title of Supervisor Utility Operations are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and cannot be included in a negotiations unit with non-supervisory employees.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Petitioner.

Appearances:

For the Public Employer, Monica C. Barrett, Employment
and Labor Counsel

For the Petitioner, Mary E. Moriarty, IUOE General Counsel

DECISION

On October 24, 1996, the International Union of Operating Engineers, Local 68, AFL-CIO filed a clarification of unit petition. IUOE seeks to add four employees holding the title Supervisor Utility Operations ("SUO") to its unit of non-supervisory employees of Rutgers, the State University. Rutgers opposes the petition, contending that the SUO title is supervisory and cannot be included in a unit with non-supervisory employees.

On November 10, 1997, the Director of Representation issued a Notice of Hearing. On March 26 and 27 and April 15, 1998, Hearing Officer Wendy L. Young conducted a hearing. The parties stipulated certain facts, examined witnesses, introduced exhibits and filed post-hearing briefs.

On June 22, 1999, the Hearing Officer issued her report and recommendations. H.O. No. 99-2, 25 NJPER 377 (¶30165 1999). She concluded that SUOs are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., because they have the authority to discipline cogen operating technicians ("COT"), employees within Local 68's negotiations unit.^{1/} She also found a potential conflict of interest because SUOs are designated to respond to first step grievances.

On August 9, 1999, after an extension of time, Local 68 filed exceptions. It asserts that the Hearing Officer erred by finding that:

1. Four COTs report to the SUOs,
2. SUO Gladkowski has the authority to oversee the work of the COT who is his shift partner and that part of that responsibility includes reprimanding the COT,
3. Gladkowski has the authority to direct a relief COT to remain on shift,
4. SUO Flaherty reprimanded a COT who was not following newly established procedures nor performing acceptably,
5. In January 1998, Manager Utilities Operations Bankowski relied on SUO Flaherty and SUO Foxe's recommendation to terminate a temporary mechanic,

^{1/} COTs have the same responsibilities as boiler operators in a conventional heating plant and additional responsibilities for running a cogeneration plant. A cogeneration ("cogen") plant burns fossil fuel to generate electricity and captures thermal energy contained in exhaust gases to produce hot water or steam.

6. SUOs on shift have the authority to issue grievance reports similar to the authority of the COEs,

7. SUOs on shift have the authority to discipline, up to and including termination, and that they are therefore statutory supervisors under the Act,

8. Based on the SUO's authority to discipline, the inclusion of SUOs in Local 68's negotiations unit constitutes a potential conflict of interest under West Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971),

9. Even though SUOs have no authority to make grievance decisions and have not exercised any power in grievance matters, their designation by the employer in the grievance procedure to respond at the first step creates a potential conflict of interest under Wilton,

10. All SUOs, rather than SUO Foxe alone, are supervisors within the meaning of the Act.

Local 68 argues that SUOs do not have the authority to discipline COTs. It further argues that the SUOs' designated authority under the grievance procedure does not create a Wilton conflict since none of the SUOs on shift have exercised that authority, even when such an opportunity arose. Finally, Local 68 argues that the work of SUOs on shift is different from that of the daytime SUO in statutorily relevant ways, and that the finding that daytime SUO Foxe is supervisory should be adopted.

On August 25, 1999, after an extension of time, Rutgers filed an answering brief. It argues that the Hearing Officer properly found that SUOs regularly exercise their disciplinary responsibilities. It further argues that the Hearing Officer properly excluded SUOs from the unit based on a significant potential conflict of interest.

We have reviewed the record. We incorporate the Hearing Officer's findings of fact (H.O. at 2-41).

We specifically adopt the Hearing Officer's findings that the four COTs report to the SUOs. The Utilities Department Table of Organization so provides (ER-8).

We also agree that the SUOs have the authority to reprimand COTs. SUO Gladkowski's hesitation to acknowledge that fact and his desire to view his relationship with his COT as a partnership notwithstanding, the employer has granted the SUOs that authority and it has been exercised the few times it has been necessary to do so.

We also specifically adopt the finding that SUOs have the authority to direct a relief COT to remain on shift. SUOs are responsible for the integrity and safety of the cogeneration plant facility during their shifts. Having a COT, whose presence is required, remain on shift appears to be part of that responsibility.

We reject Local 68's exception to the finding that SUO Flaherty reprimanded a COT who was not following newly established procedures. He so testified and the record supports that finding.

We also reject Local 68's exception to the finding that Bankowski relied on SUOs Flaherty and Foxe's recommendation to terminate a temporary mechanic. The record citations support the Hearing Officer's finding.

Finally, we reject Local 68's exception to the finding that SUOs on shift have the authority to issue grievance reports similar to the authority of the chief operating engineers (COEs) who work in the central heating plants. The Director of Utility Services so testified and Local 68 has not provided any basis to reject his testimony.

N.J.S.A. 34:13A-5.3 provides, in part, that:

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 power to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership....

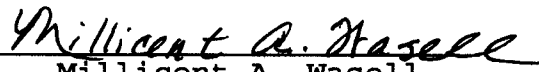
Applying that proscription, the Hearing Officer could not definitively conclude that the SUOs have the authority to hire or effectively recommend the hiring of individuals for positions in the utilities department. However, she did find that SUOs have the authority to discipline, up to and including termination, and she therefore concluded that they are supervisors under section 5.3. The record supports that conclusion. Accordingly, SUOs cannot be in a negotiations unit with COTs and the petition must be dismissed.^{2/}

^{2/} Having found that the SUOs are supervisors, we need not address whether their role in the grievance procedure creates an additional conflict of interest.

ORDER

The unit clarification petition is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: October 28, 1999
Trenton, New Jersey

ISSUED: October 29, 1999

H.O. NO. 99-2

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

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-and-

Docket No. CU-H-97-12

INTERNATIONAL UNION OF OPERATING
ENGINEER, LOCAL 68, AFL-CIO,

Petitioner.

SYNOPSIS

A Hearing Officer recommends that the Commission dismiss a unit clarification petition filed by IUOE, Local 68, AFL-CIO seeking to add four individuals holding the title of Supervisor Utilities Operations (SUO) to its non-supervisory unit. The Hearing Officer finds that SUOs are supervisors within the meaning of the Act. They have the authority to discipline up to and including termination. Also, there is a potential Wilton conflict of interest because SUOs are designated to respond at the first step of the grievance process.

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.

H.O. NO. 99-2

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Appearances:

For the Public Employer,
Monica C. Barrett, attorney

For the Petitioner
Mary E. Moriarty, attorney

**HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION**

On October 24, 1996, the International Union of Operating Engineers, Local 68, AFL-CIO filed a clarification of unit petition with the Public Employment Relations Commission seeking to add four employees holding a newly created title of Supervisor Utility Operations (SUO) to its non-supervisory unit.^{1/} Rutgers opposes the proposed clarification and contends that the SUO title is supervisory and statutorily excluded from the unit represented by Local 68.

^{1/} Local 68 does not seek to add a fifth employee holding the SUO title claiming that he is a supervisor.

On November 10, 1997, the Director of Representation issued a Notice of Hearing. I conducted a hearing on March 26 and 27, 1998 and April 15, 1998.^{2/} The parties examined witnesses, stipulated certain facts and presented evidence. The parties filed post-hearing briefs by July 31, 1998. Based upon the entire record, I make the following:

FINDINGS OF FACT

1. Rutgers, The State University is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and is the employer of the employees involved herein.

2. Local 68 is an employee representative within the meaning of the Act and is the majority representative for the following:

all fulltime [sic] salaried employees, employed as Operating Engineers I, Operating Engineers II, Operating Engineers--Relief, Operating Engineers--Service (Seasonal), H.V.A.C.. Operating Engineer--Newark, Operating Engineers H.V.A.C. [sic], Energy Management Operators in the Department of Physical Plant, and Cogen Operating Technicians by Rutgers in the State of New Jersey, but excluding the Chief Engineer, all probationary employees, supervisors, employees in the jurisdiction of other unions now recognized by Rutgers, and all other employees of Rutgers" (J-1, 1T17-1T18).

^{2/} The transcripts of each successive hearing day shall be referred to as "1T", "2T" and so forth. The Commission exhibits shall be referred to as "C-". The parties joint exhibits shall be referred to as "J-", the Employer's exhibits as "ER-", and the Petitioner's exhibits as "P-".

3. Local 68 and Rutgers are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 1999. This contract was executed on February 3, 1997 (J-1).

4. Local 68 has represented operating engineers employed by Rutgers since 1964 when, pursuant to an agreement for consent election, the New Jersey State Board of Mediation conducted an election among the 11 operating engineers and apprentice engineers employed on two of Rutgers' New Brunswick campuses. Excluded from the unit since its inception were chief engineers and other supervisors (J-6, 1T17-1T18).

5. For many years, Rutgers has operated central heating plants on the College Avenue, Cook/Douglas and Busch/Livingston campuses in New Brunswick and Piscataway which provides heating and cooling services for approximately seven million square feet of buildings on those campuses (1T19).

The chief operating engineers (COEs)^{3/} at each of the central heating plants have been the immediate supervisors of operating engineers at these facilities. They also supervise other subordinates represented by another union (1T19).

On the College Avenue and Cook/Douglas campuses, the central heating and cooling plants provide heating and cooling utilities and the COEs at each plant supervise the operating engineers and other employees assigned to them (1T19-1T20).

^{3/} The chief engineer and chief operating engineer are the same title.

6. To serve the Busch/Livingston campus, a cogeneration plant (cogen plant) was built on the site adjacent to a central heating plant on the Busch/Livingston campus. In December 1995, this cogen plant commenced operations. The plant is a high technology facility operating on a 24-hour, 7-days-a-week, year-round schedule (1T20, 1T22).

The cogen plant is designed to burn fossil fuel in order to generate electricity and capture thermal energy contained in exhaust gasses for use in producing hot water or steam. It is a power generation plant which utilizes three gas turbines to convert chemical energy from fuel into mechanical energy, a heat recovery system to recycle the exhaust gasses and an electrical distribution system (ER-1, 1T20).

The cogen plant provides heating and electricity to five million square feet of buildings on the Busch/Livingston campus. In addition, the staff of the cogen plant remotely control and monitor building operations and chilling equipment on the campus.^{4/}

7. Paul Meierdierck, Director of Utility Services, is responsible for planning, directing and overall management and

^{4/} Many of the buildings on the Busch/Livingston campus house extensive scientific facilities used by faculty, staff and students (1T20-1T21). Severe damage and personal injury to students, staff and research facilities can result from neglect, misuse or lack of knowledge in operating and responding to emergencies at the cogen plant generally and to emergencies in the heating and electrical distribution system provided to the entire Busch/Livingston campus (1T22).

supervision of utilities, maintenance and operations on the New Brunswick campuses including the central heating plants and the cogen plant (1T19).^{5/}

8. Richard Bankowski, Manager Utilities Operations, oversees the day-to-day operations of the utilities department, which includes maintenance of the central heating plants as well as the cogen plant and directing the delivery of high voltage electrical power, high temperature water, cooling and sewer collection (1T21-1T22, 2T82). He reports directly to Meierdierck (ER-8).

9. The five SUOs report to Bankowski along with the COEs on the College Avenue and Cook/Douglas campuses, the water services supervisor, high voltage electrical supervisor and the instrumentation and controls specialist (P-15, ER-8, 1T22).

Reporting to the SUOs are four cogen operating technicians (COT) and one relief COT (ER-8).

The following individuals are employed as SUOs and hold various types of licenses/seals: Don Androwski (gold seal), Ed

^{5/} Meierdierck also consults with the Newark and Camden campuses of Rutgers on operations and maintenance of their utilities systems (2T5).

Gladkowski (blue seal), James Morey (blue seal), John Flaherty (red seal) and Jack Foxe (gold seal) (1T25).^{6/}

The following individuals are employed as COTs and hold various licenses/seals: Michael Snyder (gold seal), James Barber (blue seal), Greg McElroy (blue seal), David Chao (red seal) and Gary Marvosa (red seal) (2T22, 2T25).

CHIEF OPERATING ENGINEERS

10. COEs are paid on salary range 23 which is about 10% less salary than the range 25 salary of the SUOs (J-4B, 1T24, 2T34-2T35, 2T39).

11. Currently, there are two COEs: one at the College Avenue plant and one at the Cook/Douglas plant.^{7/}

The general roles and responsibilities of the two COE positions are as follows:

A. Establish methods and procedures for the operation and maintenance of the Heating Plant (and Cooling Plant on the Cook/Douglas campus), Chilled Water Network, and High Temperature Hot Water Distribution System.

^{6/} The State of New Jersey has a four-tiered licensing system for engineers. The lowest license or seal is a black seal followed by a blue seal, a red seal and a gold seal. The licensing system is based on the size and capacity of the plant. In order to operate the cogen facility, SUOs and COTs need a blue seal. The designated chief of any facility is required to hold a gold seal license (2T85-2T87). Bankowski has a red seal license (2T86).

^{7/} Prior to the opening of the cogen plant, Androwski held the title of COE at the Busch/Livingston central heating plant (2T39-2T41, 2T46-2T47, 2T51).

- B. Insure all subordinate personnel are at the appropriate levels of competence through certification, on-the-job training, formal training and educational programs.
- C. Document and accounts for fuel delivery and consumption.
- D. Responsible for boiler inspection.
- E. Research sources of supplies and services, initiates requests for requisitions, oversees work provided by the Alterations Department, and contract service vendors.
- F. Coordinate regular and preventive maintenance through facilities maintenance mechanics.
- G. This position may act as the Chief Operating Engineer for College Avenue Central Heating Plant or [sic] C/D Campus in his absence (J-2, J-3).

The authority of these COEs is to operate "under the broad guidance of the Manager, Utilities Services and to move independently within these guidelines to accomplish the functions listed above" (J-2, J-3).

Both COE positions require a red seal boiler license, five years of boiler operating experience in a plant with 1000 h.p. or more including three years in a supervisory capacity and a bachelor of science degree in engineering. Both positions are responsible for the general safety of the plants and personnel and for compliance with OSHA standards (J-2, J-3).

Jim Kirchner is assigned as COE at the College Avenue plant which is a smaller and less complex facility than the cogen plant because it has no electrical generation capacity (2T37-2T38). He generally has responsibility for the central heating plant and chilled water system (2T90). He has four boiler operators,^{8/} an

^{8/} The terms boiler operator and operating engineer are interchangeable.

operating engineer trainee and a maintenance mechanic reporting to him (ER-8, J-2, P-15, 2T75-2T79). His level of expertise is the same as the five SUOs. He acts as a relief for the SUOs (2T14, 2T26).

Charles Gregory is the COE at the Cook/Douglas central heating plant. He has responsibility for a number of central heating plants and a chilled water system (2T90). He has a maintenance mechanic and a high voltage electrician who reports to him (ER-8, P-15, 2T75-2T79). Although Gregory has not acted as a relief for the SUOs in the past, the intent is for him to act as a relief SUO in the future (2T160).

12. In order to satisfy State regulations, there is also a designated COE at the cogen plant which replaced the central heating plant on the Busch/ Livingston campus (2T46).

The Mechanical Inspection Bureau of the State requires that the holder of a gold seal license be a designated chief engineer for any facility based on boiler power such as a central heating plant. SUO Don Androwski is the designated COE at the cogen plant (ER-13, P-20, 2T87, 2T161, 3T51-3T53, 3T99-3T103). However, other than accepting the title to satisfy State regulations, Androwski has not

exercised any responsibility or authority related to that position (2T43, 3T52).^{9/}

13. COEs have always been vested with authority to take disciplinary action against the employees whom they supervise, both operating engineers and employees in other negotiations units who are assigned to work under their direction, and they have exercised that authority (J-7, 1T21, 2T54-2T63, 3T56).

Androwski, who held the position of COE at the Busch/Livingston central heating plant for six years before he became a SUO at the cogen plant (3T45-3T46), was responsible for disciplining employees whom he supervised. He kept employee attendance records and disciplined employees for infractions related to attendance. He also disciplined employees for infractions of work rules and for work performance. The employees he disciplined were members of Local 68 and Local 888 (J-7, 2T54-2T57, 3T36-3T58). Androwski did not have to consult with any supervisor before issuing written warnings. However, if a discipline involved a suspension, he would consult with the director of the facility (3T57-3T58, 3T96-3T97).

When Jack Foxe was a COE at the College Avenue plant, he issued a letter of termination and a notice of reprimand (J-7,

^{9/} Usually the COE at a plant accompanies the insurance inspector on annual inspections. However, at the cogen plant, the representative from Factory Mutual, the insurance carrier, is usually taken through the plant on its annual inspection by SUO Jack Foxe who is assigned to the day shift Monday through Friday (2T161-2T162, 3T52-3T53, 3T108).

2T61-2T62). Moreover, when Declan Walsh was COE at the College Avenue plant, he issued a written warning (J-8, 2T67). Pedro Townes as COE issued a notice of reprimand as did John Pawlowski who was a COE (2T67, J-8).

14. COEs have always been vested with the authority to make grievance decisions when the grievances challenge actions they have taken (J-8, 1T21, 3T57, 3T59, 3T108-3T109).^{10/}

15. As COE, Androwski was responsible for hiring several employees. He received the applications, reviewed them and made recommendations to Meierdierck. Sometimes there would be an interview committee if there was to be a hiring of an employee outside of the University. If the applicant were from within the University, Androwski interviewed, selected the candidate to fill the position and recommended the individual to Meierdierck (3T55-3T56).

16. As COE, Androwski was generally responsible for the day-to-day operation of the central heating plant which included daily checking of the log books maintained by boiler operators (3T62). He was also responsible for the allocation of mandatory overtime to ensure shift coverage,^{11/} approval of absenteeism, signing off on payroll to validate hours, scheduling training and finding relief coverage (3T60).

^{10/} J-8 provides examples of various grievance reports signed by COE from 1982 through 1992.

^{11/} Discretionary overtime was approved by Meierdierck (3T61).

17. As COE, Androwski performed 30, 60 and 90 day evaluations on new employees.^{12/} However, other than these initial evaluations on new hires, he performed no formal evaluation process as COE (3T62-3T63, 3T113-3T114).

STAFFING HISTORY OF THE COGEN PLANT

18. Prior to the construction of the cogen plant, there was a conventional central heating plant at the Busch campus staffed by four boiler operators as well as a half-time operator shared with the College Avenue plant and a COE who was Androwski (2T7). Approximately a year before the cogen plant began operating in November 1995, a determination was made as to the number of personnel, their level of expertise and the structure of their reporting relationships was made (2T6-2T8).

Meierdierck and Bankowski discussed the staffing of the cogen plant. Bankowski drew on his experience with power generation plants. He concluded that the cogen plant should be a two-person operation on each shift particularly if there was a problem (2T9, 2T94). Bankowski considered the SUO to be an around-the-clock chief presence because of the complexity of the job (2T84). Bankowski and Meierdierck view the SUO as having broader responsibilities than the COE because in the evenings and on weekends they are responsible for

^{12/} Specifically, he evaluated Jay Soto as a new employee to determine whether he met the qualifications of the position, and if he did not, Androwski could terminate him (3T113-3T114).

utilities emergencies in the cogen plant and throughout the New Brunswick campuses (2T37, 2T47-2T48).^{13/}

The COT is the second presence on each shift. The COT retains the same responsibilities as boiler operators with additional responsibilities for running the new equipment at the cogen plant (2T53, 2T95-2T96).^{14/} Bankowski has given the SUOs instructions that they supervise their shift COT as well as any other COTs on duty with them and any mechanics and other personnel assigned to them (2T169).

19. The official job description for the SUO position defined the duties and responsibilities as follows:

1. This position has the 24 hour 7-day per week responsibility for the operation, maintenance and troubleshooting of the Busch Cogeneration Plant, The Busch Central Heating Plant, the High Temperature Hot Water Distribution System and The Busch Central Chilled Water Systems. Supervises the activities of the Cogen Operators. Responsible for the safety and environmental compliance for personnel and equipment, in his area of responsibility.
2. Responsible for responding to emergency situations involving all Utilities Department

^{13/} The title of Cogen Operations Supervisor/Lead Supervisor created for use at the cogen plant but was never used. It became the SUO title (ER-9, P-19, 2T31-2T32). Originally, Bankowski contemplated having four cogen operations supervisors and one lead supervisor but a decision was made that the titles were too similar, and it would be preferable to have five SUOs (2T92-2T93).

^{14/} On February 26, 1998, Bankowski issued a memorandum to cogen staff explaining that the Bureau of Boiler and Pressure Vessel Compliance determined that the Busch Cogen/Central Heating Plant must have two licensed personnel, physically in the plant at all times (P-1).

- equipment during off shift periods. The [SUO] will be responsible for investigating, troubleshooting and assessing emergency situations and contacting the appropriate Utilities Department Supervisor. The [SUO] will be in charge of effecting repairs until the Utilities Department Supervisor, normally responsible for the affected equipment, responds.
3. Manages the activities and accounts for the costs of various highly skilled internal and external contractors, in order to maintain and improve the equipment and systems listed above.
 4. Maintains logs and assists The Manager, Utilities Services, in preparing the required reports for EPA, DEPE and other Local, State and Federal Agencies.
 5. Responsible for assisting The Manager, Utilities Services, in the development and implementation of preventive and predictive maintenance programs in order to maintain maximum equipment reliability and cost effectiveness.
 6. Responsible for assisting The Manager, Utilities Services, in the documenting and accounting for over \$2.5 million of purchased fuels, \$3 million of purchased electric power, [sic]13.5 million watts of electric power production and over \$1 million per year in operations and maintenance costs.
 7. Assists The Manager, Utilities Services, in V[sic]alidating the savings of the operation of the Busch Cogen Plant as compared to purchased electric power.
 8. Assists The Manager, Utilities Services, in developing and implementing Standard Operating Procedures.
 9. Researches sources of equipment, supplies and services, initiates requests for requisitions and oversees the installation of equipment and the use of services and supplies.
 10. In addition to normal duties, may be required to provide vacation coverage for the Chief Engineers for College Avenue and Cook/Douglas Central Heating Plants and The High Voltage Electrical Supervisor, during off-shifts and in emergency or other assigned situations.
 11. Responsible for performing high voltage electrical switching in the absence of the high voltage electrical supervisor during

off-shifts and in emergency or other assigned situations.

12. Responsible for verifying the accuracy of prints and documents pertaining to plant and system equipment (ER-9).

20. The SUO title requires a blue seal boiler license "with substantial boiler operating experience in a plant with over 3000 h.p. capacity " (ER-9). In addition it requires knowledge of H.V.A.C equipment, experience with high voltage electrical equipment, and "extensive supervisory experience including supervising equipment repair contractors" as well as a thorough understanding of the fundamentals of power generation, electrical theory, and certain principles of physics, chemistry and thermodynamics among other skills (ER-9).

21. On May 18, 1995, Androwski as COE at the Busch central heating plant was offered the job of SUO and designated chief at the new cogen facility (ER-13, 3T46). Androwski accepted the both positions on May 29, 1995 (P-20, 3T111-3T112). However, Androwski officially assumed the SUO title in September of 1995 (P-19, 2T98). Jack Foxe assumed the title of SUO on July 1, 1995 (P-19, 2T98).

22. In late May or early June of 1995, Bankowski, Androwski and Foxe interviewed John Flaherty for the SUO position (1T37). Flaherty applied for the SUO position through an ad in the Star Ledger and received a telephone call from Bankowski after he submitted his resume (1T37).

Flaherty was interviewed for the SUO position by Bankowski, Androwski and Foxe (1T37, 3T111). At the interview, Bankowski told

Flaherty that he would be directly supervising other individuals and asked Flaherty about his supervisory experience (1T41). At the end of the interview Flaherty was offered the job and told that it was pending approval of Affirmative Action and other groups (1T99-1T100).

Bankowski, Androwski and Foxe acted as a search committee to hire the other SUOs. They received resumes from personnel, sifted through them, interviewed prospective candidates, arrived at their choices and submitted their recommendations to various levels of authority for sign-off such as Affirmative Action. Offers were extended based on the people they initially recommended (2T126-2T127). The other SUOs were hired prior to July 1, 1995 (2T99, 2T125).

23. Bankowski developed the criteria for the COT job description with Foxe and Androwski in late spring of 1995 in anticipation of the cogen plant opening in the fall and in anticipation of the primary training which was to begin on July 1, 1995 (2T96, 2T125). Bankowski consulted with Foxe and Androwski, who at the time were still COEs at the College Avenue and Busch campus central heating plants because they were familiar with the personnel and had knowledge of the operation (2T98, 2T125).

The job description (ER-10) for the COT position sets forth the following responsibilities, duties and tasks:

1. This position has the 24 hour 7-day per week responsibility for the operation and routine maintenance of the Cogeneration Plant, Central Heating/Cooling Plants, High/Medium Temperature Water, Chilled/Condenser Water Distribution Systems, and Building Automation

- Systems (EMS). Responsible for performing preventive and remedial maintenance tasks necessary to ensure the continuous safe and efficient operation of these systems. This includes basic mechanical and electrical work.
2. Responsible for operation of Cogen and Central Heating/Cooling Plants and distribution systems as required by the Cogen/Operations Supervisor.
 3. Responsible for taking readings and maintaining logs as required.
 4. Responsible for housekeeping in all plant areas.
 5. Responsible for water treatment monitoring and chemical application and system cleaning as required.
 6. Decision making responsibilities as required when supervisor is not on site....

The COT position requires a high school/vocational education and a blue seal license with three years boiler operating experience. Newly hired COTs are paid on a salary range 18. Promotion to range 20 is possible after six months of experience in the cogen plant and successful completion of Operators Qualification Testing (ER-10, J-4A, 2T35, 2T188-2T189).

Bankowski sent a memo (ER-15) to the boiler operators on the College Avenue campus and the Busch campus asking if they were interested in becoming COTs (2T97-2T98). Eight or nine boiler operators applied (2T8). The memo (ER-15) was developed by Bankowski, Androwski and Foxe as a guideline document to evaluate those who were interested. The memo set out the following criteria for the COT position:

1. Proven mechanical aptitude.
2. Proven ability to understand and execute complex instructions.
3. Thoroughness in documenting plant operating conditions.

4. Proven ability to perform routine and preventive maintenance tasks independently with minimum supervision.
5. Ability to learn and understand new concepts and technology.
6. Proven ability to perform tasks in a safe and efficient manner.
7. Proven adherence to University policies and procedures (ER-15).

Out of a pool of eight or nine boiler operators, six operators expressed an interest and five were chosen by Bankowski, Androwski and Foxe to become COTs (2T8, 2T97- 2T98). The three voted together on who would be chosen (2T99). Their recommendations were forwarded to Meierdierck for approval (3T71-3T73). In one instance Meierdierck ordered Bankowski to drop David Chao from consideration as a COT and to replace him with Mike Snyder as a political favor. Eventually, Chao was also hired because one of the original choices, Danny McCallister, dropped out of consideration (P-21, 3T71-3T73).^{15/}

TRANSITIONAL PERIOD PRIOR TO COGEN START-UP IN DECEMBER 1995

24. In July and August of 1995 all SUOs and COTs as well as the instrument and control specialist and Bankowski attended a six week training program conducted by the manufacturing representatives from all the major pieces of equipment that were installed in the cogen plant (P-4, 1T24, 1T100, 2T99-2T100, 3T130).

^{15/} Meierdierck also vetoed the selection of John Munoz for the position of instrument and control specialist because he failed his reference check (P-21, 3T72).

After this formal training, each SUO was assigned an area of specialty. They worked directly with the installation start-up engineers for the various types of equipment (P-22, 2T100-2T101, 3T78). After the cogen plant opened, the COTs received on-the-job training given by the SUOs (2T101).

25. A booklet entitled The Busch Cogeneration Project was prepared by Flaherty with the assistance of Controls Specialist Niuman, Bankowski and COT Snyder (ER-1, 1T43). The booklet explains the cogeneration project and gives an overview of the various facility systems.

26. Standard operating procedures for the cogen plant were developed by all of the SUOs (ER-4, 1T57).

27. As to scheduling, Bankowski sat down with the SUOs and COTs before operation began, and they all agreed to assume the existing 12-hour work schedule. Bankowski asked whether they wanted to rotate separately or to work as teams. The decision was made to work as teams as opposed to having different COTs and different SUOs on each rotating 12-hour shift (2T101-2T103). The work schedule is a rotating shift for a cycle of 28 days with two shifts a day, namely a day shift from 6:00 am to 6:00 pm and a night shift of 6:00 pm to 6:00 am (1T52, 2T30, 3T74, 3T101-3T102).

NORMAL SUO SHIFT

28. At the beginning of his 12-hour shift, Androwski speaks with the SUO he is relieving about anything which may have

come up on the prior shift requiring follow-up. Afterward he makes a quick tour of the control room, checks various controls and systems, reviews the logbook and then tours the plant and does a series of readings on the heat recovery, water and other operating systems which takes about one to one and a half hours (3T74-3T76).^{16/} Androwski then returns to the control room and relieves the COT to do his rounds which includes doing a water analysis and treatment which takes about one and a half hours (3T75-3T76). Once the COT returns, Androwski goes back outside and take care of any required plant maintenance. The COT and SUO alternate in the control room during the day (3T76).

As SUO, Androwski is responsible for the integrity and safety of the cogen plant facility and everyone in it during his shift (3T130).

29. Gladkowski follows the same routine as Androwski except that he may do his tasks in a different sequence (3T133). He describes his relationship with his COT as a partnership -- a two-person operation (3T151, 3T164).

Gladkowski is ultimately responsible for what goes on during his shift including making sure that there are enough people staffing the shift, so that if his COT did not report for his shift,

^{16/} On each shift there are two log books maintained, one for the SUO and one for the COT. Each makes the appropriate entries about his shift in that book (1T109-1T111).

he would ask the relief to stay or ask him to stand by until he could get a replacement (3T151).17/

Gladkowski has the authority to oversee the work of his COT and part of that responsibility includes ensuring that work is performed in a safe and efficient manner including telling his COT if he is doing something incorrectly and reprimanding him (3T157-3T165).18/

17/ On direct examination Gladkowski was clearly hesitant to state that he had the authority to instruct a COT to stay on shift until a replacement arrived. He preferred to characterize his response to such a situation as a "request" (3T151-3T152). However, this testimony was inconsistent with his statement that he was responsible for making sure that there were enough people staffing his shift. I find that he does have the authority to direct a relief COT to remain on shift.

18/ When questioned as to whether he was responsible for overseeing the work of the COT on his shift, Gladkowski's answers were evasive (3T157-3T164). Despite the fact that Gladkowski admitted that he as SUO is ultimately responsible for the safe operation of the plant during the shift, he was hesitant to admit that he had the authority to direct a COT who was on his shift to perform his duties in a proper manner preferring to characterize his actions as a "discussion" with the COT (3T162-3T163, 3T165). Gladkowski explained that he does not assign work to his COT. He states that he and his COT just know what to do on their shift and they do it (3T144).

Based on the contradictions within Gladkowski's testimony relative to his ultimate responsibility for the safe operation of the plant and his description of his relationship with his COT, I find that Gladkowski has the authority to oversee the work of his COT and part of that responsibility included ensuring that work was performed in a safe and efficient manner which includes disciplining the COT to ensure proper procedures are followed (3T165).

Gladkowski described several instances when 2 COTs covered a shift in the absence of an SUO. He recalls that these deviations from the normal shift which is one SUO and one COT occurred on the day shift when Foxe was the SUO on duty and Foxe had to go to a meeting leaving the COTs by themselves at the cogen plant (3T142-3T143).

30. When Morey works with his COT he communicates the procedures which he expects the COT to follow in case of power outage and plant shut down and expects that the COT will follow his instructions (3T14-3T16). If Morey works with someone other than his regular shift partner, he first inquires how they normally perform their job, then he tells what he would like them to do and what he anticipates they will do. He expects that they will follow his procedures (3T16).

31. Flaherty assigns his COT duties on their shift (1T54). The nature of the job on any particular shift may change, for instance, if a new system is being installed. Flaherty instructed a COT to come up with a plan to install a sample cooler. The COT installed them under Flaherty's supervision (3T54). A COT on shift with Flaherty would report to him if he has a question about the plant (1T146).

32. Shift scheduling for the SUOs and COTs is done on a monthly basis and is produced by Morey (J-5, ER-12, 2T148). However, there is no discretion involved in creating the schedule (2T185). At one time, the schedule was prepared by a COT (2T185-2T186).

Vacation requests can be made to the SUO on shift with the COT and signed off by the SUO (P-26, 1T55). However, Foxe handles vacation schedules for the most part as well as administrative leave and personal day requests although Flaherty has signed one (1T55, 1T116).

SUOs verify the overtime hours worked by their shift COT (P-26, 3T85).^{19/} Discretionary overtime has been eliminated for COTs (3T117). Attendance of COTs is monitored by the payroll department (3T76, 3T88, 3T136-3T137).

33. Foxe, Androwski and Bankowski share an office in the cogen plant, although Bankowski usually spends about one hour per day or 20% of his time on the day to day operation of the cogen plant (2T163-2T166). Bankowski's official office is on the Livingston Campus (2T164-2T165). The other SUOs use the control room as their office or they can use Bankowski's desk as needed (2T164-2T165).

EMERGENCIES

34. Meierdierck and Bankowski have told the SUOs that in the evenings and on weekends SUOs have the responsibility for monitoring and handling emergency repairs to the utilities systems on the New Brunswick campuses (1T37, 2T47-2T48, 2T91, 3T88,

^{19/} This sign-off by the SUO has only been required since 1996. Prior to that time, Foxe or Bankowski signed off on the payroll forms for overtime of COTs (3T86-3T87).

3T144).^{20/} However, on each campus there is a shift supervisor who also works a twelve-hour shift and who is responsible for emergencies that arise concerning buildings on that campus. Unlike the SUO whose primary responsibility involves maintaining equipment and for providing water, heat and cooling to the buildings, the shift supervisor, who works for the facilities department, is primarily responsible for the buildings themselves. Therefore, the responsibilities of the SUO and the shift supervisor might overlap (2T156, 3T91). If there is a utilities emergency, the shift supervisor for the facilities department will contact the SUO on duty at the cogen plant (2T157).

In the event of an emergency such as an utilities failure on one of the campuses, the SUO contacts Bankowski. If Bankowski is not available, the SUO is to contact Meierdierck. The SUO is also responsible for calling in emergency crews if necessary and for calling the appropriate supervisor. For instance, in the case of a water emergency, the SUO would call Statscewich, the water services supervisor. Generally, the call to any emergency crew would be made before a call to Bankowski or Meierdierck particularly if the emergency involved the cogen plant (2T49-2T50).

PSE&G is required to notify the cogen plant 12 hours prior to curtailing the use of natural gas and switching to oil at the cogen plant. The contact list for this information contains the names of all the SUOs (ER-5, P-3, 1T63-1T66, 1T122-1T123).

^{20/} Androwski and Gladkowski have not been told that they are responsible for staff on other campuses (3T89).

35. In March 1998, there was an emergency involving a hot water leak and a burst pipe. Heat had to be shut down to one-half of the campus to effectuate repairs. Gladkowski was the SUO on duty. This emergency occurred during the week on the 6:6:00 am to 6:6:00 pm shift (2T137-2T138).

Bankowski was at the cogen plant that day. While he was on the phone discussing the situation with an assistant director of the building, Gladkowski made the decision to shut down (2T139, 3T147-3T148). SUOs have similar responsibilities for emergencies occurring on the night shift (3T144).

Gladkowski described another incident which occurred when he was SUO on the night shift. He was called by a shift operation supervisor because there was sewage coming out of the ground on the College Avenue campus. Gladkowski telephoned Statscewich, the water services supervisor, and when he could not reach him, Gladkowski telephoned Ted Elonis, the senior mechanic under Statscewich (P-15, 3T145). Gladkowski does not recall the outcome of the incident although he does recall that he only made phone calls to get somebody else to look into the problem (3T145).

In another incident on the day shift, Gladkowski received a telephone call from an operator at the College Avenue campus that the plant was down. Gladkowski went to Foxe who was on duty with him because Foxe had been COE of that plant. Foxe handled the emergency (3T146).

36. Androwski admits that emergencies do not happen often, but he has handled one emergency on the night shift. The emergency occurred in a psychology building on the Busch campus. A shift supervisor, Walter School, discovered a ruptured hot water line in the absorber. The mechanical room was billowing steam. Androwski had noticed a drop in the water levels at the central heating plant. School asked Androwski to assist him in the shutdown of the system because it required two people for safety reasons. Androwski assisted School to shutdown the system (3T89-3T91).

As an SUO, Androwski has never been involved in an emergency where emergency crews were utilized, although he was involved in such a situation as a COE (3T92).

37. SUO Morey called in an emergency repair crew when he was working on a Saturday during an electrical outage which effected a few buildings on the campus. The shift supervisor had first alerted Morey who contacted the electrical contractor (2T155-2T156).

EVALUATION

38. On or about June 7, 1996, Bankowski together with the five SUOs and Tom Niuman, an instrument and control specialist, developed a four-part test consisting of subjective and objective questions and a hands-on practical application to be given to COTs. The purpose of the test was to determine whether those selected to become COTs were qualified to do the work in the cogen plant and whether they had the skill level and knowledge of cogen operations

to qualify for an increase in salary range (ER-7, ER-11, 3T37). Passing the test resulted in a change in title to COT and a salary increase of ten percent which was a salary range change from range 18 to range 20 (1T134-1T135, 2T188).^{21/} The test was administered on a one-time basis to qualify for the position of COT and is not given on a yearly basis to requalify (1T85). The concept for the test came from Flaherty and Niuman (2T117).

The test consisted of four parts. Part One was an open book format requiring the tracing out of major plant systems and identifying the main components of the systems. Part Two was a hands-on practical test. Part Three consisted of 60 written questions. Part Four was an oral test consisting of five questions (ER-7, ER-11, 2T117). Bankowski developed the grading system which consisted of three levels: sufficient knowledge (two points), partial knowledge (one point) and insufficient knowledge (no points). A passing score was 80% (ER-7).

Each SUO and Niuman were required to submit to Bankowski ten questions (five of a general nature and five specific to their original areas of specialty) by July 1, 1996 (ER-7, 3T152, 3T154). These questions comprised the 60 questions contained in Part Three (2T118). Bankowski did not change the questions which were submitted (2T121).

^{21/} The individuals originally hired as COTs retained their boiler operator titles until they passed the test (1T81, 1T83, 2T97-2T98, 2T122, 3T37).

Each SUO evaluated and graded the questions which they had submitted (2T119-2T120, 3T154-3T155). Bankowski informed the SUOs that each of their section grades would stand and that he would not change them (1T91-1T92). Bankowski did not override the SUO evaluation of the responses to the tests (2T121-2T122). Bankowski signed off on the bottom of each test page to verify to the COTs that he was aware of their marks and to validate the marks that each SUO gave the COTs (2T120).

Bankowski conducted Part Four of the test himself which had to do with operating scenarios (2T117-2T118). Part Two of the test which was a hands-on demonstration of different procedures was administered by each SUO in their area of specialty (1T136-1T138, 2T178-2T179).

If a COT failed the test, he would go through an up-grade session where the weak areas would be evaluated and instruction given. The COT would be given the test again. The COTs would be given the test two or three times before any action was taken (1T82-1T83, 1T92, 3T25). All of the COTs passed the test (1T83).

The test was administered in the fall of 1996 (1T88, 3T152). The test is also given to new candidates for the COT position (1T85). Gary Marvosa who was hired in 1997 for the position of COT is in the process of completing the test (1T86-1T87).

39. Bankowski gave no formal training to the SUOs on evaluating the work performance of COTs (2T168). Other than this qualification test, the SUOs perform no formal evaluation on the

COTs either written or oral (1T92-1T93, 2T103-2T105, 3T77-3T78). At monthly meetings between Bankowski, the SUOs and the instrument and control specialist, the SUOs discuss the achievements of the COTs and any problems in work performance (2T103-2T105).

HIRING

40. In general at Rutgers, if a job needs to be filled, the department completes a job requisition which it forwards to the personnel department for evaluation. The job is posted at the university and sometimes in outside newspapers. Any resumes received will either go to the personnel department or directly to the department if it prefers to receive them initially (3T28-3T29).

The Department for Administrative, Professional, Supervisory jobs almost always has a search committee which reads resumes, ranks them and interviews the most qualified candidates. Subsequently, the successful candidate will need to be reviewed by the budget department to determine if there is funding to fill the job (3T29).

Affirmative Action will then review the position to determine that the pool of candidates was large enough if there is a determination that the job is underutilized under EEO standards. Affirmative Action has no veto power over any hiring although if the pool is determined to be too narrow, the position would have to be re-advertised (3T29-3T30).

A vice president or provost of a particular campus would then sign-off on the hire in order to have a sense of who is being hired within the various departments. Although they have veto power over a particular hire, it has not been exercised in the experience of Christine Mowry, Assistant Vice President for Staff Affairs and Director of the Office of Employee Relations (3T31).

41. In the Utilities Department, the process of hiring is conducted by a committee which is comprised of the person or persons who will directly supervise the candidate as well as other individuals who provide cultural and sexual diversity. Occasionally, a customer or another department will assist in determining the best candidate. The committee's recommendation is submitted for ratification to the director of the department (2T73-2T74).

42. In the summer of 1997, Bankowski together with COEs Kirchner and Gregory formed a committee to hire a boiler operator at the College Avenue heating plant. The three interviewed approximately 20 candidates and recommended Carlos Rodriguez (1T87, 2T129, 3T129).^{22/} However, the recommendation was not approved by Martin Rogers, assistant vice-president for facilities who is

^{22/} There was conflicting testimony from Morey that SUO Jack Foxe was on the original committee with Bankowski, Gregory and Kirchner (3T7). However, since Morey was not on this original committee and Bankowski testified as to its composition I credit Bankowski's testimony that the original committee consisted of himself, Gregory and Kirchner (2T133).

Meierdierck's direct supervisor, because he wanted the committee expanded to include SUOs since the position would probably be utilized as a COT position in the cogen plant eventually (2T129-2T130). Bankowski broadened the committee to include SUOs Flaherty and Morey (1T66-1T67, 2T129, 2T131).

At the time that Rodriguez was selected by the original committee, Flaherty was told by Bankowski of the selection. Flaherty communicated to Bankowski that he had information on that individual (1T72-1T73). Flaherty felt that the candidate selected was overqualified for the position and that he would be a good manager but not a good operating engineer (1T124, 1T131, 2T182-2T183). Flaherty then contacted other people in the industry who knew the candidate and communicated their opinions to Bankowski (1T126-1T128).

Bankowski had Flaherty and Morey interview the three candidates the original committee had already interviewed including Rodriguez (1T129, 2T131). Bankowski gave Morey and Flaherty no direction as to how the search should work or as to decision making during the search (1T67) except that Bankowski instructed them not to be influenced by the original committee's decision and to look at all three candidates with no preconceived notions as to who would be the best candidate (2T132).

After Flaherty and Morey interviewed the three candidates the entire committee met (1T131, 2T131-2T132). Flaherty and Morey explained how they had rated the candidates which was different than

the original committee (2T132). Both Flaherty and Morey rated the candidate selected by the original committee as their third choice. A committee vote resulted in a unanimous decision to offer the job to a candidate named "Bill"^{23/} (1T75-1T76, 1T131-1T132). Bill was offered the job but subsequently refused to accept the position (P-25, 1T74, 1T76, 1T132, 3T79-3T80).

The committee then met individually and spoke with each other on the telephone (1T74). It was agreed that the committee would not meet formally, unless after discussing the remaining two candidates, they could not reach a unanimous decision (1T133). Flaherty and Bankowski met personally. Flaherty also met with Morey (1T76-1T77). The unanimous decision was to offer the position to Gary Marvosa who accepted (1T78, 2T133, 2T182). The candidate who had originally been considered as the best candidate by the committee of three was not offered the position in this final round because of the concerns raised by Flaherty (1T79, 2T183).

43. Foxe together with other SUOs has participated in the hiring of mechanics to work at the cogen plant (2T184). Specifically, Androwski assisted Foxe in hiring a temporary mechanic. There was no criteria established for the interview. Androwski interviewed two candidates, although there were interviews conducted of other candidates on days when Androwski was not present (3T64-3T65). Androwski had a conversation with Foxe about one of

^{23/} None of the witnesses was certain of the last name of this particular candidate. However, the name is not dispositive.

the candidates he interviewed but gave no feedback as to the other candidate (3T109-3T110).^{24/}

44. SUO Gladkowski was asked by Bankowski to sit in on interviews of two candidates for a mechanic's position.^{25/} The mechanic was being hired to work on the Busch campus for the underground water distribution supervisor, Frank Statscewich (3T140). On the interview committee was Statscewich, Gladkowski, Kirchner and Henrietta Chilton, Meierdierck's secretary (3T139). Statscewich asked a majority of the questions of each candidate although Gladkowski asked several questions (3T140). Afterward each committee member was asked for their opinion as to the most qualified candidate. Gladkowski felt that there was only one qualified candidate since the other individual had no experience for the position. The recommendation of the committee was unanimous. The recommendation was forwarded to Meierdierck and that candidate was offered the job (3T141-3T142).

DISCIPLINE

^{24/} Initially, Androwski testified that he gave no feedback on the candidates he interviewed (3T65-3T66). However, on cross examination he modified his answer (3T109). I find that, as to at least one candidate, he gave Foxe feedback based on his interview.

^{25/} Gladkowski was reluctant to sit in on the interview because he was somewhat prejudiced against one of the candidates (3T140).

45. Christine Mowry is an Assistant Vice President for Staff Affairs and Director of the Office of Employee Relations at Rutgers. Her job responsibilities include negotiations with non-faculty unions, hearing grievances, representing the university at arbitrations and providing group and individual training to supervisors and employees in general concerning their rights (3T28).

Mowry conducted a review of the supervisory structure at Rutgers University as a result of a CWA effort to organize the administrative professional supervisory employees (3T31). The review revealed that there were many one-on-one supervisory situations and that these situations did not diminish the authority of the supervisors generally in regard to discipline (3T31-3T32). Mowry feels that the authority is not diminished because it is the supervisor's job to take corrective action when there is a problem (3T32).

Although supervisors at Rutgers have the authority to discipline, in the experience of Mowry, not many Rutgers' employees are disciplined (3T33).

46. Training in discipline and grievance handling is provided by Mowry's department in the monthly training bulletin,^{26/} through personal appearances in specific departments

^{26/} Monthly training bulletins are sent to administrative professional staff including SUOs but are not sent to COTs (ER-16, ER-17, ER-18, 3T39-3T40). Generally, attendance is not required (3T42, 3T82-3T84, 3T115-3T116). Unless the SUOs have coverage and can go on their personal time, the seminars are not available (3T19, 3T115-3T116).

to explain personnel policies and procedures, through available audio tapes, through advice to any supervisory individually who comes to her office to discuss disciplinary problems or grievance handling and, if a particular department demonstrates a large number of disciplinary problems, through reaching out to the department for training (3T37-3T38).

47. Recently, someone from Mowry's office spent an hour and a half with Morey and Foxe discussing disciplinary procedures because Morey was going to testify at a grievance hearing relative to an incident involving employee smoking (3T18, 3T23-3T24, 3T26-3T27, 3T44).

48. Meierdierck and Bankowski feel that the SUOs are responsible for disciplining COTs and that they have the same authority to discipline as the COEs (2T57-2T58, 2T63, 2T133-2T134).

Since the SUO title has been created, Bankowski has never conducted formal training with the SUOs about the principles of progressive discipline or when and how to effect discipline with respect to the COTs (2T167-2T168, 2T170). The formal disciplinary process is counseling, oral reprimand, written reprimand, three to five day suspensions up to and including termination (2T108).^{27/}

Bankowski did explain the disciplinary procedures to Morey when the latter came to him to ask for guidance relative to the performance of mechanics and COTs (3T19, 3T23). At a monthly staff

^{27/} Androwski admitted that he was familiar with the disciplinary process when he was a COE (2T54-2T57).

meeting on May 1, 1997, Bankowski told the SUOs that discipline was to be done by the immediate supervisors, but that he was to be consulted before anything is put in writing (P-26, 3T81, 3T103-3T108). Although Bankowski would need to be aware of the discipline, he would not actively be involved unless it went to a grievance. He would then be involved at step two in the grievance process (2T109). Bankowski as manager has never issued a written discipline or suspension of a COT (2T113).

49. Flaherty feels that he has authority to discipline COTs but there is very little need for discipline because they are doing a good job (1T46-1T47).

He has the authority to discipline COTs for not following standard operating procedures (1T58). In the summer and fall of 1995, when the cogen plant was being converted from a central heating plant to the cogeneration facility, Flaherty who was in charge of the chemistry program orally reprimanded^{28/} one COT who was not following newly established procedures nor performing acceptably, including possible falsification of a log sheet (ER-2, ER-3, 1T48-1T49, 1T50, 1T52-1T53, 1T103-1T113). Flaherty spoke to a second COT who was not following procedures because the COT did not understand the correct procedures. Flaherty instructed the second COT in the proper procedures (1T115).

^{28/} The term oral reprimand is used by Flaherty to describe this incident (3T52), while Bankowski uses the term counseling to describe this incident (2T108). It is not necessary for me to resolve this discrepancy since both witnesses view this action as the first step in the process of progressive discipline.

Flaherty spoke to Bankowski about the general problems with the chemistry program and communicated to him the problems with the two COTs in particular. Flaherty did not use the word reprimand when he spoke to Bankowski about the first COT who had possibly falsified the log sheet nor did Flaherty ask Bankowski to place a disciplinary notice in the individual's file (1T114-1T115). Bankowski told Flaherty that he had the authority to deal with the individuals and that there was a formal disciplinary process. Flaherty informed Bankowski that he wanted to deal with the problem informally first and it seemed to Bankowski that the informal discipline worked (2T107-2T108).

50. In January 1998, Flaherty was involved with the termination of a temporary employee holding the title of mechanic. The employee had called in sick five or six times in a three week period. Flaherty discussed the situation with Foxe and Bankowski. Bankowski instructed Flaherty to terminate the employee (1T58-1T62, 1T119-1T122, 2T135). Bankowski did not conduct a separate investigation but relied on Flaherty and Foxe's recommendations to terminate (P-27, 2T136, 3T148).^{29/}

51. Morey has spoken to different COTs about their work performance and indicated any changes which he felt needed to be

^{29/} The mechanic had been discussed at a monthly supervisor's meeting where a number of the SUOs raised a concern about his attendance and punctuality (2T134-2T135). The concerns raised specifically by Flaherty occurred about a week after this meeting (2T134).

made (3T18). Specifically, Morey counseled Barber, a COT, because he was not following Morey's directions. Morey informed Barber that he was not happy with his work performance, namely Barber was not alerting Morey when he was not going to perform a task (3T17). Morey explained to Bankowski what had happened and Bankowski accepted Morey's judgment (2T112).

52. Androwski was told by Bankowski to discipline Frank Kazuk,^{30/} a maintenance mechanic, because of his poor attendance record (3T66-3T67, 3T125). Androwski told Bankowski that he had not worked with the employee, that the employee did not report to him directly, that he was unfamiliar with Kazuk's attendance record and that it was Foxe's responsibility to discipline the employee who reported to Foxe (P-23, 3T67-3T68).

Bankowski gave Androwski a copy of Kazuk's attendance record and ordered Androwski to discipline Kazuk (3T67, 3T69-3T70). Androwski gave Kazuk a verbal warning (3T68, 3T125-3T126). After the warning, Androwski did not follow-up on Kazuk's attendance record (3T126).^{31/} Androwski does not track the attendance of the COT working with him (3T77, 3T87).

^{30/} The transcript reflects different spellings of Kazuk's last name although ER-8 lists the spelling as Kazuk.

^{31/} There was conflicting testimony from Androwski on direct as to whether he did a follow-up. However, upon reviewing the record it appeared to me that Androwski's answer on direct may not have been responsive to the question asked (3T70). Therefore, I credit his response on cross examination that he did not follow-up after the verbal warning in terms of tracking Kazuk's attendance (3T126).

With the exception of Kazuk, Androwski has not taken any disciplinary action against a COT. He works with one COT on a regular basis and would refer any disciplinary problem to Bankowski or Foxe even if his shift COT, Chao, was not following standard operating procedures (3T81, 3T97-3T98, 3T103-3T104, 3T127).

53. Gladkowski has never disciplined any COT or any other employee at the cogen plant (3T137-3T138). However, Gladkowski feels he has the authority to verbally reprimand the COT he is working with if he is doing something wrong because Gladkowski as SUO is responsible for his shift (3T165). He is primarily responsible for the safe operation of the plant when he is on shift (3T159).

GRIEVANCES

54. There are four steps to the grievance procedure (2T69). The SUOs have the authority to issue grievance reports similar to the authority of the COEs (2T69). Step one is the grievance submitted by the COT in writing to his immediate supervisor, the SUO, who has 24 hours to respond. Step two is handled by Bankowski. The last step is handled by the Office of Employee Relations (2T70).

55. If an SUO issues a letter of discipline, he is expected to participate in the grievance process. However, since the opening of the cogen plant in 1995 there have been few grievances (2T70-2T71). In January 1997, several grievances were

filed by four COTs related to mandatory training and plant coverage (P-17). Barber filed the grievance with Morey. Morey as his SUO brought the grievances to Bankowski who determined that he would handle the grievance at step one rather than a single SUO because it involved several COTs on different shifts (2T141-2T142, 2T172).

56. Bankowski has never provided a copy of the Local 68 contract to the SUOs (2T168) nor has he formally explained the contractual grievance provisions or how to handle grievances or the grievance procedures (2T168-2T169, 2T171-2T172). However, when a grievance was filed by an employee against Morey accusing him of harassment, the Office of Employee Relations provided special training to Foxe and Morey on how to handle grievances (3T18-3T19, 3T26-3T27).

JACK FOXE

57. The duties of the five SUOs are interchangeable but Foxe is essentially the relief person, not scheduled on the regular rotation, working primarily nine to five, Monday through Friday (ER-9, 1T118, 1T149, 2T93, 2T143, 3T122-3T123). Foxe's name appears on the vacation board kept in his office as a relief for any SUO who is on vacation (ER-11, 2T149, 2T170).

For the first year after the start-up of the cogen plant, Foxe only relieved on the day shift, but in the last year, he has rotated into relief on the off-hour shifts (2T158-2T160). COE Kirchner is also now qualified to cover SUOs as a relief (3T123).

Foxe has also acted as a relief for Bankowski when he goes on vacation. Foxe is the only SUO to act as Bankowski's relief but other supervisors have acted as Bankowski's relief such as COE Kirchner, High Voltage and Electrical Supervisor Hylemon and Water Services Supervisor Statscewich (2T153, 3T7-3T8). There is ordinarily a SUO assigned to the day shift with Foxe (1T148).

58. Foxe is responsible for the care of equipment not physically located in the cogen plant, particularly the chilled water loop which is a decentralized system outside the cogen plant (1T146-1T153, 3T92). When Foxe is absent or on off-hour shifts, the other SUOs are responsible for the equipment he usually covers.

In addition, he has certain administrative duties such as coordinating employee vacations, approving meal allowances, tracking sickness and overtime (P-12, 2T36-2T37, 2T143-2T145, 2T147, 3T69, 3T87, 3T92). He has issued various written memoranda giving directives related to these administrative duties (P-11). Foxe receives no additional compensation for his administrative duties (2T147).

The SUOs sign off on overtime slips but Foxe verifies them again so that he can field questions from the personnel department which might occur during his day shift as opposed to having personnel wait for an answer from the SUO who are on rotating off-hour shifts (2T145-2T146, 3T84, 3T86).

Foxe also handles a morning report for the outside operations. Another morning report is generated by the SUO relative

to the inside operations of the plant. When Foxe is on vacation, the report on the outside equipment is generated by the SUO on Foxe's day shift (P-10; P-13; 2T146).

59. The other SUOs do not report to Foxe nor does Foxe have the authority to discipline them (2T151, 3T122-3T123).

When Flaherty has worked with Foxe on the day shift, if the COT has a question about his duties, he goes to Flaherty. If the COT has a question about his vacation, he would go to Foxe. If Foxe has a meeting, Flaherty assumes his responsibilities in his absence (1T145-1T146, 1T149).

60. The full-time mechanic (Kazuk) as well as other part-time mechanics at the cogen plant normally report to Foxe (P-13, 2T183). He determines what schedule they will work, although schedules are basically fixed (2T184). Foxe can approve discretionary overtime for Kazuk although discretionary overtime has been eliminated for COTs (3T117).

Foxe has served on a committee responsible for hiring mechanics together with other SUOs such as Morey and Gladkowski. Bankowski has also participated in hiring mechanics when asked by Foxe to assist him (2T184).

ANALYSIS

Local 68 contends that the four SUOs share a community of interest with members of the existing non-supervisory unit at the cogen plant. It argues that the relationship between the SUO and

COT represents a "classic working lead situation" distinguishable from a supervisory relationship (Petitioner's Brief at page 12). Moreover, it asserts that Jack Foxe, a fifth SUO, performs a different job from the others in that title, does not share a community of interest with those in Local 68's unit and is not a supervisor. Specifically, Local 68 argues that Bankowski has not provided the SUOs with training in areas such as discipline, handling of grievances, guidelines for handling vacation requests and taking attendance, and evaluating performance nor has he provided them with a copy of collective negotiations agreement covering the terms and conditions of employment of the COTs.

Rutgers opposes the petition. It asserts that the SUOs are supervisors within the meaning of the Act. It contends that the five SUOs and two COEs would be an appropriate negotiations unit. In support of its position, Rutgers argues that the SUOs are responsible for staffing of the cogen plant, training of the COTs, disciplining and evaluating COTs and ensuring that COTs adequately perform their jobs.

Finally, Rutgers argues that Jack Foxe has similar duties to the other SUOs except to the extent that he works the day shift to perform administrative duties and to fill in as relief when the other SUOs are on vacation or ill. His duties differ to the extent that he is responsible for the care of equipment outside the cogen plant, but in his absence, the other SUOs take over his job responsibilities.

The standards to be followed in analyzing whether four individuals working in the SUO title should be included in or excluded from Local 68's non-supervisory unit are well established. 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, supervisors may not be placed into negotiations units with non-supervisory employees. N.J.S.A. 34:13A-5.3 provides:

...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....

N.J.S.A. 34:13A-6(d) provides:

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 (1) both supervisors and non-supervisors....

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Dept of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend these actions. An indication that the power claimed to be possessed is exercised is needed. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

Applying these supervisory standards to the facts, I find that the four individuals holding the SUO title are supervisors within the meaning of the Act and not appropriately included in the existing non-supervisory unit represented by Local 68.

There is no doubt that when Rutgers created the SUO title in order to staff the cogen plant, a new facility at the Busch Livingston campus, it intended that the SUO would function in a supervisory capacity similar to the COE title. It is undisputed that the COEs have always been excluded from the Local 68 unit and that they are supervisors having the ability to hire, discipline, and handle grievances. Like the COE at the central heating plants, the SUO is in charge of the day to day operations of their assigned facility, the cogen plant. Like the staff in the central heating plants which reports directly to the COE, the staff at the cogen plant report directly to the SUOs. Like the COEs, the SUOs report directly to the manager of utilities operations. Like the COE, the administrative duties such as attendance, vacation scheduling and overtime verification are performed by the SUO who works the day shift. The COEs provide relief for SUOs when necessary due to vacation or illness.

However, the intentions of Rutgers when creating the SUO position do not control a determination of supervisory status. Moreover, the additional responsibilities related to being in charge of sophisticated equipment in a critical operation during evenings and weekends and having responsibilities during emergencies

also do not control a determination of supervisory status. I must examine the specific facts to establish whether the statutory criteria have been met.

HIRING

In the Utilities Department, the hiring is done by a committee comprised of the person or persons who will directly supervisor the candidate as well as others. The recommendation is sent to the Director for approval.

During the staffing phase of the cogen operation, Androwski and Foxe together with Bankowski interviewed and hired Flaherty and others for the SUO position. After submission to the final approval process at Rutgers including Affirmative Action and budget departments, offers were extended to those they initially recommended.

Androwski and Foxe also assisted Bankowski to develop criteria for the COT job description during the spring of 1995 and formed a committee to hire the four COTs. In only one instance was their recommendation vetoed by Meierdierck. Although Androwski and Foxe may not have officially held the SUO title during this staffing phase,^{32/} they had accepted the position of SUO in contemplation of the opening of the cogen plant and the training which began in July 1995. The fact that they did not officially hold the title is

^{32/} Both held the COE title until the summer of 1995.

not significant because their authority to hire and their participation in the process was controlled by their prospective positions as SUOs in the new cogen operation.

In the summer of 1997, Flaherty and Morey participated on a committee with Bankowski and two COEs to hire a relief COT. Although Flaherty and Morey were not on the original committee interviewing candidates because the position to be filled was for the central heating plant, they were asked to participate when it was determined that the position to be filled would be utilized in the cogen plant as a COT.

Flaherty and Morey recommended a candidate other than the one chosen by the original committee. The committee voted and agreed with one of the choices recommended by Morey and Flaherty. Subsequently, that candidate was offered the position but declined. The job was then offered to Flaherty's and Morey's second choice -- Gary Marvosa -- not the candidate originally selected by Bankowski and the two COEs.

In another instance, Gladkowski was requested by Bankowski to participate on a committee consisting of a COE, the water services supervisor and Meierdierck's secretary to hire a mechanic for the Busch campus. He sat in on interviews of two candidates for a mechanic's position and asked several questions of the candidates. Afterwards Gladkowski together with the other committee members was asked for his opinion as to the best candidate. Gladkowski felt that only one candidate was qualified. The committee's decision was

unanimous, and the candidate Gladkowski and the committee had recommended was offered the job.

Finally, SUO Foxe together with other SUOs have hired mechanics for the cogen plant. Foxe and Androwski interviewed candidates for the position of temporary mechanic. One of the recommended candidates was hired.^{33/} Bankowski has only participated in the hiring when asked by Foxe to do so.

An effective recommendation is one that is adopted without independent review and analysis by a higher level of authority. Borough of Edgewater, D.R. No. 92-27, 18 NJPER 230 (¶23103 1992). The fact that the candidate selected by the hiring committee is submitted for final approval to budget and affirmative action as well as the vice president or provost of a particular campus does not diminish the authority of SUOs to hire or effectively recommend a candidate to hire where there is no evidence that the candidates recommended by the SUOs are rejected by those in higher authority. County of Passaic, D.R. No. 94-18, 20 NJPER 128 (¶25066 1994).

However, there are at least two examples in the record where the committee's recommendations were vetoed by Meierdierck, one involved the hiring of a COT (Chao was replaced by Snyder at Meierdierck's direction) and another involved the hiring of a candidate for instrument and control specialist (Munoz was rejected

^{33/} Androwski only interviewed two candidates.

by Meierdierck because of a failed reference check). In both instances, Meierdierck's independent review defeats a claim of effective recommendation to hire.

In Atlantic County Department of Social Services, P.E.R.C. No. 90-21, 15 NJPER 594 (¶20243 1989), the Commission found that participation in a collective hiring process, on a rotating basis, was insufficient to constitute effective recommendation of hiring. The Commission held that when the employees acted collectively and made a joint recommendation, no individual employee whose status was in dispute was responsible for the hiring recommendation and that no individual appeared to be responsible for the hiring recommendation. Applying this standard, the hiring of Marvosa and the hiring of the COTs do not satisfy the statutory criteria of the authority to hire or effectively recommend hiring.

However, Foxe has interviewed and hired or recommended the hiring of mechanics with the assistance of other SUOs and without Bankowski. This hiring is distinguishable from Atlantic County where most, if not all, case managers made one collective recommendation. Although assisted by other SUOs, Foxe was primarily responsible for the hiring decision.^{34/} Nevertheless, the evidence is not conclusive that the other SUOs have the same authority to hire or effectively recommend hiring as Foxe.

^{34/} Androwski assisted Foxe in the hiring of a mechanic by interviewing two of several candidates. He gave Foxe feedback on only one of the two candidates interviewed. Androwski's participation in the hiring process was limited.

Based on the foregoing, I cannot definitively conclude that the SUOs have the authority to fire or effectively recommend the hiring of individuals for positions in the utilities department.

DISCIPLINE/DISCHARGE

Bankowski has told the SUOs that they have the authority to discipline although he wants to be consulted before anything is put in writing. There have been few disciplinary actions taken since the opening of the cogen plant. However, Rutgers provided several examples of the authority of the SUOs to discipline.

In the summer and fall of 1995 during the start-up phase of the cogen plant, Flaherty orally reprimanded two COTs for not following standard procedures relating to the chemistry program. Moreover, in January 1998 with Bankowski's approval, Flaherty terminated a temporary mechanic who had an attendance problem. Flaherty discussed the situation with Foxe and Bankowski. Bankowski did not conduct a separate investigation but relied on Flaherty's and Foxe's recommendation to terminate.

In another instance, Bankowski instructed Androwski to discipline a mechanic because of his poor attendance record. Androwski gave the mechanic a verbal warning although he protested to Bankowski that he did not feel comfortable doing so because he was not the direct report of the mechanic and was not personally familiar with the mechanic's attendance record. I do not find Androwski's hesitancy to exercise his authority to discipline

dispositive of possessing the authority to do so or effectively recommend discipline which he clearly had.

Another SUO, Morey has had occasion to counsel COTs about their work performance, specifically where a COT was not following his directions. In the one instance, Morey consulted with Bankowski to explain that he was not happy with a COT's work and that he had counselled the COT. Bankowski accepted Morey's judgment.

Gladkowski has never disciplined any COT or other employee reporting to him but states that he has the authority to verbally reprimand the COT he is working with if the COT is doing something wrong.

Petitioner argues that it is significant that the SUOs never received training from Bankowski in progressive discipline. I disagree. Several of the SUOs previously held the title of COE. Having exercised discipline as COEs, it is presumed that they were familiar with the process. Furthermore, Bankowski was available to assist and/or guide an SUO on an individual basis through the process of progressive discipline. Finally, Mowry is available for consultation if requested by the supervisors. The fact that there were few disciplines at the cogen plant appears to be consistent with the Rutgers experience in general according to Mowry's undisputed testimony. However, even if the SUOs received no training in disciplinary procedures, the level of employer training does not undermine the effectiveness of the discipline or the authority to do so.

Based on the above examples, I find that SUOs have the authority to discipline up to and including termination. Therefore, I find that the SUOs are statutory supervisors within the meaning of the Act.

Further, in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 at 425-427 (1971), the New Jersey Supreme Court held that public employees who exercise significant power and responsibilities over other personnel should not be included in the same negotiations unit as their subordinates because of the conflict of interest between these employees and their supervisors. Applying this standard to the following facts, I find that the inclusion of the SUOs in Local 68's unit constitutes a potential conflict of interest.

GRIEVANCES

Since the cogen plant opened there have been few grievances filed. The grievance process is a four step procedure with the first step being handled by the SUO as the immediate supervisor of the COTs. In January 1997 several COTs filed a grievance relating to shift coverage during required training. Although the grievance was submitted to Morey by his shift COT Barber, Bankowski determined that he would handle the grievances at step one rather than a single SUO because they involved several COTs on different shifts. There have been no other grievances files.

Morey and Foxe attended a special training session conducted by the Office of Employee Relations in how to handle

grievances when Morey was required to testify at a grievance filed by an employee who accused Morey of harassing him. There is no testimony on the record as to how this grievance was handled when it was originally filed.

I cannot conclude based on the paucity of evidence presented relative to the processing of grievances together with the evidence that Bankowski handled in the 1997 group grievance that the SUOs have the authority to make grievance decisions or that the SUOs have exercised any power in grievance matters which would render them ineligible for inclusion in Local 68's unit. However, since the SUOs are designated by the employer in the grievance procedure to respond at the first step in the grievance process, there is a potential Wilton conflict. Watchung Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-116, 11 NJPER 368 (¶16130 1985), Somerset Cty. Library Assn., D.R. No. 96-18, 22 NJPER 189 (¶27098 1996), No. Arlington Bd. of Ed., D.R. No. 92-31, 18 NJPER 315 (¶23133 1992), Ogdensburg Boro. Bd. of Ed., D.R. No. 91-25, 17 NJPER 175 (¶22075 1991). Therefore, the SUOs are ineligible for inclusion in the unit sought.

EVALUATIONS

Rutgers argues the SUOs evaluate unit employees in that they helped to develop the test to determine which employees would become COTs and which is a promotion from the title of boiler operator. Each SUO developed questions in their area of expertise

and graded their section. Although Bankowski signed off on the grade, he did not override the SUO evaluation of the responses to the test. In the event a COT did not pass the test, he was given other opportunities for retesting. The test is only given to new candidates for the COT position.

I do not find that participation in the development and administering of this test creates a sufficient conflict of interest preventing the inclusion of the SUOs in the Local 68 unit, where there is no evidence that the test results were considered in any adverse personnel actions. Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). Any candidate for the COT position is given several opportunities to pass tests including an up-grade session in demonstrably weak areas. Marvosa is in the process of completing the test.

There are no annual formal or informal evaluations of performance conducted by the SUOs for the COTs. Although job performance is discussed at monthly meetings attended by Bankowski and the SUOs and disciplinary action may result, there is not sufficient evidence to establish that SUOs evaluate COTs.^{35/} Therefore, I do not find a potential conflict of interest based on this factor. Accordingly, I cannot find that these employees

^{35/} Flaherty did write a memorandum commending the performance of two COTs to Bankowski. However, he admitted that he could take no official action and Bankowski did not take any personnel action as a result. Therefore, I do not find that these commendations are dispositive on the issue of whether SUOs evaluate COTs.

exercise the power to evaluate in a manner that renders them ineligible for inclusion in Local 68's unit.

EMERGENCIES

Rutgers asserts that on weekends and on night shift the SUO is the highest authority on the New Brunswick campuses to deal with utilities emergencies. Rutgers provided several examples of recent emergencies which resulted in SUOs exercising their authority to resolve the emergencies. However, I do not find this circumstance dispositive on the issue of supervisory status.

JACK FOXE

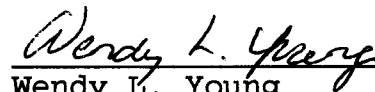
Since neither Rutgers nor Local 68 contend that Foxe is a non-supervisory employee and since I have concluded that the four SUOs petitioned for are ineligible for inclusion in the Local 68 unit because they have the power to discipline or effectively recommend the same and because there is a potential conflict of interest in the processing of grievances, it is not necessary for me to provide an extensive analysis of the evidence submitted by the parties relative to Foxe's duties and responsibilities. I find that all SUOs are supervisors within the meaning of the Act.^{36/}

^{36/} Rutgers states that it would consent to an election among the five SUOs and two COEs provided that there was an adequate showing of interest (Respondent's brief at p. 2).

RECOMMENDATION

Based on all of the above, I recommend that the Commission find that the SUOs are supervisors within the meaning of the Act and cannot be included in Local 68's non-supervisory unit.

Accordingly, I recommend that the Commission dismiss the unit clarification petition.



Wendy L. Young
Hearing Officer

DATED: June 22, 1999
Trenton, New Jersey