

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

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IN THE MATTER OF  
CENTRAL FALLS DETENTION  
FACILITY CORPORATION  
-AND-  
FRATERNAL ORDER OF POLICE  
LODGE 50

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**AMENDED**  
CASE NO: EE- 3717

**DECISION AND ORDER OF ELECTION**

**TRAVEL OF CASE**

The above-entitled matter came on to be heard before the Rhode Island State Labor Relations Board (hereinafter "Board") on a Petition for Representation (hereinafter "Petition") for the positions of Major, Captains, Lieutenants, Sergeants and Investigators at the Donald W. Wyatt Detention Facility (the "detention facility"). The Petition was filed by the Fraternal Order of Police of Rhode Island, Lodge 50, on September 9, 2009, together with sufficient Cards of Interest. On September 14, 2009, all the Cards of Interest were verified by the Board's Agent and, as indicated, were of sufficient number to warrant the conducting of an election. The matter was then scheduled for an informal hearing on October 1, 2009; however, due to health considerations of the Union's representative, the informal hearing was rescheduled on two (2) occasions and was finally conducted on November 24, 2009. Upon completion of the informal process, the Board's Agent filed an investigative report with the Board on October 7, 2009 and forwarded a copy of the same to the parties. The members of the RI State Labor Relations Board met on December 17, 2009, reviewed the investigative report and made a determination that the matter should proceed to formal hearing. A formal hearing was scheduled for April 20, 2010 and was then re-scheduled on two (2) occasions, due to scheduling conflicts with the parties. On September 22, 2010, the parties submitted a joint Motion to Conduct Testimonial Depositions of Witnesses, in lieu of conducting multiple formal hearings before the Board for the same purpose. On October 12, 2010, the Board met and granted the Motion for Conduct Testimonial Depositions of Witnesses, with the understanding that same would be conducted within ninety (90) to one hundred twenty (120) days.

In May, 2011, new Counsel entered for the Union and the Board's Administrator advised Counsel that the depositions were overdue. In June, 2011, the Employer filed a

Request for Declaratory Ruling concerning the Employer's desire to implement raises for employees during the pendency of the representation petition. The Union requested that the request be tabled, until such time as it had time to review and respond to the same. The Board granted the Union five (5) days to respond, and the Board's Administrator extended this time, due to medical reasons. The Union filed its response on July 27, 2011. At its meeting in September, 2011, the Board stated that it would not be able to rule on the issue without a formal hearing, as there were too many contested facts.

In October, 2011, after the parties had failed to take the aforementioned depositions, the Board scheduled the matter for formal hearings commencing in December, 2011. On November 22, 2011, the Union amended its Petition and deleted the job title of "Major" from consideration for the unit. In December, 2011, since the matter had been pending for such a long period of time, the parties and the Board agreed to conduct a "sample" representation election, to gauge the continued level of interest in Unionization. The understanding was that if the Union secured a majority, the parties would proceed with the depositions as previously determined; and the case would then continue with the representation process. If the Union did not secure a majority, the matter would have ended, without the additional expenditure of funds and time on either the part of the Employer or the Union. An election was held on February 27, 2012, which concluded with a vote of 15-3 in favor of the Union. In March, 2012, the Board's Administrator notified the parties of the results of the election and re-set the formal hearing schedule. On May 29, 2012, the parties notified the Board that they had once again agreed to waive formal hearings for witness testimony and elected, again, to conduct depositions; and on June 4, 2012 filed a joint Motion to that effect. On June 12, 2012, the Board granted the Motion with the direction to complete the depositions within sixty (60) days.

Subsequently, the parties requested and were granted extensions of time to complete the depositions, due to scheduling conflicts, and personal conflicts. The depositions were concluded in March, 2013. Thereafter, the Administrator notified the parties of the briefing schedule, with briefs to be filed by the end of April, 2013. The Union required some extensions of this deadline and was granted the same. Both parties submitted written briefs and the matter was submitted to the Board for decision.

On July 31, 2013, the Board met to discuss and decide the case.<sup>1</sup> A Motion was made by Frank J. Montanaro and seconded by Scott G. Duhamel to include Sergeants in the proposed bargaining. After discussion, Walter J. Lanni, Frank J. Montanaro, Marcia B. Reback, Scott G. Duhamel, and Bruce A. Wolpert voted in favor of the Motion. Gerald S. Goldstein opposed the Motion. Motion passed. Next, a Motion was made by Frank J. Montanaro and seconded by Scott G. Duhamel to include Lieutenants within the proposed bargaining unit. After discussion Frank J. Montanaro and Scott G. Duhamel voted in favor of the Motion. Walter J. Lanni, Gerald S. Goldstein, Marcia B. Reback, and Bruce A. Wolpert opposed the Motion. Motion failed. Subsequently, a Motion was made by Gerald S. Goldstein and seconded by Marcia B. Reback to exclude the position of Lieutenants from eligibility in voting in an election process. After discussion, Walter J. Lanni, Gerald S. Goldstein, Marcia B. Reback, and Bruce A. Wolpert voted in favor of the motion. Frank J. Montanaro and Scott G. Duhamel opposed the motion. Motion passed. Next, a motion was made by Gerald S. Goldstein and seconded by Bruce A. Wolpert to exclude the position of Captains from eligibility in voting in an election process. After discussion, all Board Members present voted in favor of the motion. Motion passed. Finally, a motion was made by Marcia B. Reback and seconded by Bruce A. Wolpert to exclude all Investigators from eligibility in voting in an election process. After discussion, all Board Members present voted in favor of the motion. Motion passed. The Board then referred the matter to legal counsel for drafting.

### STIPULATIONS

The parties stipulated to the following factual findings:

- 1) The Central Falls Detention Facility Corporation, the Employer in this case, is a public corporation created by the Rhode Island General Assembly pursuant to Public Law 1991, Chapter 421, codified as § 45-54-1, et. seq., of the General Laws of Rhode Island.
- 2) The Corporation is operated and managed by a Board of Directors, which consists of five (5) members appointed by the Mayor of the City of Central Falls and/or the State-appointed receiver, pursuant to Rhode Island General Laws § 45-54-4 and § 45-9-7.
- 3) The powers of the Board of Directors of the Corporation are set forth in Rhode Island General Laws § 45-54-6.
- 4) The function of the Corporation is to provide detention services for both Federal and State detained prisoners on behalf of various Federal and State authorities.

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<sup>1</sup> Note: Board Member Elizabeth Dolan was absent from the July 31, 2013 meeting and did not participate in the decision of this case.

- 5) From its inception in approximately 1991 until July 30, 2007, the Corporation had contracted with Cornell Corrections of Rhode Island, Inc. ("Cornell"), a private corporation, to operate the Detention Facility on a day-to-day basis.
- 6) During the entire period of time from the inception of the Corporation to July 30, 2007, two (2) different labor Unions sought and received authorization and certification from the National Labor Relations Board ("N.L.R.B.") to represent three (3) separate bargaining units of employees of the Corporation working at the Detention Facility.
- 7) The first bargaining unit of employees was certified by the N.L.R.B. in September 1997 was a bargaining unit composed of Correctional Officers. Those Correctional Officers were represented by a labor organization known as the Rhode Island Private Correctional Officers ("RIPCO"). This unit excluded the supervisory positions of Major, Captain, Lieutenant, Sergeant, and Investigator.
- 8) During the time of private operation of the Detention Facility by Cornell, RIPCO negotiated three (3) successive Collective Bargaining Agreements, the last of which expired on or about April 1, 2007.
- 9) In August of 1999, the N.L.R.B. certified Teamsters, Local 251 ("Teamsters") as the exclusive collective bargaining representative of all full-time and regular part-time Counselors, Administrative Clerks, Accounts Payable Clerks, Records Assistant, Clerk/Typist, Human Resources Assistant, and Janitor. This bargaining unit was known as the Administrative Bargaining Unit.
- 10) Teamsters, Local 251, negotiated three (3) successive Collective Bargaining Agreements for the above-described Administrative Bargaining Unit.
- 11) In January 2002, the Teamsters, Local 251 organized another unit of Corporation employees at the Detention Facility. This unit, known as the Medical Bargaining Unit, included all full-time and regular part-time Registered Nurses, Licensed Practical Nurses, and Medical Records Clerks who are employed by the Corporation.
- 12) The Collective Bargaining Agreements for the so-called Administrative Bargaining Unit and Medical Bargaining Unit expired on November 23, 2008 and April 30, 2009, respectively; and none of the employees in the so-called Administrative Bargaining Unit or Medical Bargaining Unit were or are currently represented for purposes of collective bargaining following the expiration of those two (2) Collective Bargaining Agreements between the Corporation and Teamsters, Local 251.<sup>2</sup>

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<sup>2</sup> In EE-3730, employees of the Medical Unit recently voted to be represented by Council 94.

13) On August 1, 2007, the Corporation ended its contractual relationship with Cornell for the private operation of the Detention Facility, at which point in time the Corporation assumed day-to-day control of the Detention Facility with respect to its operation and affairs.

14) In September 2007, Teamsters, Local 251 filed a representation petition with this honorable Board, docketed as Case No. EE-3700, by which it sought to represent all employees in the three (3) bargaining units referenced above in one single Corporation-wide bargaining unit; that is to say, in September 2007, the Teamsters sought to represent in a single bargaining unit, the Correctional Officers, the employees in the so called Administrative Bargaining Unit and the employees in the Medical Bargaining Unit.

15) As a result of the Teamsters' petition, in September 2008, this Board directed an election in Case No. EE-3700, but the election was only for the employees who were in the classification of Correctional Officers, because this Board found that the Collective Bargaining Agreements between the Corporation and the Teamsters, Local 251, with respect to the bargaining unit of administrative employees and the bargaining unit of medical employees, had not yet expired. Following the direction of election by this Board and the conducting of an election by this Board, the Correctional Officers voted to reject representation by the Teamsters, Local 251.

16) In 2009, the Fraternal Order of Police (FOP) Union, Lodge 50, filed a petition seeking to represent Correctional Officers. That petition was docketed by this Board as Case No. EE-3714. That petition was initially filed seeking to represent a bargaining unit composed of Correctional Officers, as well as security staff at the Detention Facility holding the rank and job classifications of Major, Captain, Lieutenant, Sergeant and Investigator. Subsequent to that petition being filed, the Union modified the petition to exclude from the proposed bargaining unit, the classifications of Major, Captain, Lieutenant, Sergeant, and Investigator.

17) On June 15, 2009, following an election, the Union was certified as the exclusive collective bargaining representative of Correctional Officers. That certification specifically excluded the classifications of Major, Captain, Lieutenant, Sergeant and Investigator.

18) Since the inception of the Corporation and the Detention Facility, the classifications of Captain, Lieutenant, Sergeant, and Investigator have not been certified or represented for purposes of collective bargaining.

19) In September 2009, the Union filed the petition, which is the subject matter of these proceedings, docketed as Case No. EE-3717. In this petition, the Union seeks to represent five (5) positions: Major, Captain, Lieutenant, Sergeant, and Investigator.

20) Subsequent to the filing of petition EE-3717, the Union amended its original petition by seeking to represent only four (4) positions: Captain, Lieutenant, Sergeant, and Investigator. (TR. 6/7/12, pgs. 3-11)

In addition to the agreed upon facts, the parties also agreed that the Board could consult certain sections of the Corporation's website, ([www.wyattdetention.com](http://www.wyattdetention.com)) and use those sections as evidence to the extent desired. The stipulated sections of the Corporation's website that can be used as evidence in this proceeding are: the "Home" section, the "About Us" section (with the exception of subsections pertaining to annual reports), the "Administration" section and the "Employment section. (TR. KOR Central Falls Detention Facility Corporation Depo. TR. 3/1/13 pgs. 4-5)

The Corporation is a public corporation, which is an instrumentality and agency of the City of Central Falls, with a distinct legal existence separate and apart from the City. R.I.G.L. 45-54-1. The Corporation is a unique creature of state law. Lacedra v Donald W. Wyatt Detention Facility, 334 F.Supp. 2d 114, 121 (2004). Notwithstanding that the Corporation is not a "part" of the City of Central Falls, the parties previously stipulated and agreed that all of the Corporation's Correctional Officers "fall within the Municipal Employees' Arbitration Act." (See EE-3714, Issued June 15, 2009)

The Detention Facility is a maximum-security facility, located within the City of Central Falls, which operates to serve the U.S. Marshalls' Service to house detainees who are awaiting sentencing. (TR. Coburn Depo. 6/7/12, pg. 17) The facility has a capacity of 770 detainees and operates on a year-round basis. Every three (3) years, the facility must undergo accreditation by the American Correctional Association. (TR. Coburn Depo. 6/7/12, pg. 36) Within the facility, there is a "security side" and an "administrative/medical" side. On the "security side", the lowest ranking employees are the Correctional Officers (C.O's) who work one of several different types of "posts", including housing, transport, and non-contact posts (control center, lobby and visitation areas). (See Joint Exhibits #27, #38 and #39) The "chain-of-command" within the facility is as follows: CO, Sergeant, Lieutenant, Captain, Major, Deputy Warden, and Warden. (TR. Coburn Depo. 6/7/12, pg. 18)

## DISCUSSION

Under Rhode Island Law, certain municipal employees are permitted to engage in collective bargaining. (See Title 28, Chapter 9.4-1 et seq., the Municipal Employees Arbitration Act) supervisory, confidential or managerial employees are excluded from collective bargaining for various public policy and labor stability concerns.

### Supervisory Employees:

In the Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185, 1189 (R.I. 1997), the Rhode Island Supreme Court adopted the following federal definition of "supervisor":

"any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."  
(29 U.S.C. § 152(11))

Under federal labor law, this list of supervisory functions has been determined to be disjunctive; that is, a supervisor is an individual with the authority to undertake any one of these functions. Rest Haven Living Center, Inc. 322 NLRB, No. 33, 153 LRRM 1132 (1996). It also includes individuals who possess the authority to recommend any of the foregoing actions. However, as a practical matter, an individual who fails to exercise any of the indicia of statutory authority will rarely be found to be a supervisor. Capitol Transit Company, 114 NLRB 617, 37 LRRM 1005 (1955) enforced, 38 LRRM 2681 (D.C. 1956)

Determining whether an individual uses independent judgment in the exercise of functions indicative of supervisory status is an extraordinarily fact intensive analysis. N.L.R.A. Law & Practice 2.03 (4) In analyzing the indicia of "assignment" and "responsibly directing" employees, it is clear that "not all assignments and directions given by an employee involve the exercise of supervisory authority. As stated by the Fifth Circuit:

"If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order giver is not a supervisor. Even the traffic director tells the president of a company where to park his car." N.L.R.A. Law & Practice 2.03 (4) citing Providence Hospital, 320 NLRB 717 (1996).

Determining whether an employee has used independent judgment in making an assignment requires careful analysis of the facts. For example, work assignments made to equalize work on a rotational basis, or assignment based on skills when the differences in skills are well known to the employee, is routine. Further, assigning tasks that clearly fall within an employee's job description does not require the use of

“independent judgment”. Likewise, issuing discipline according to a set schedule set forth in company handbooks is merely ministerial and does not require the use of independent judgment.

**Confidential Employees:**

In Barrington School Committee v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1992) the Rhode Island Supreme Court considered the question of which employees qualify as “confidential” and held:

“Two categories of employees are recognized as confidential under the test and are therefore excluded from collective bargaining. The first category comprises those confidential employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. ... The second category consists of employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (Barrington at pg. 1136, quoting NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 at 189)

The definition of “confidential” for collective bargaining purposes, as set forth in Barrington, is purposefully and narrowly constricted to two (2) types of employees, because “a more expansive application of the exclusionary rule would deprive a great number of employees, in an unwarranted fashion, of the statutory right to collectively bargain”. Barrington at 1136, referencing, Note, “The Labor-Nexus” Limitation on the Exclusion of Confidential Employees - NLRB v. Hendricks County Rural Electric Membership Corp., 16 Ga. L. Rev. 745, 754 (1982).

Thus, the word “confidential” within the scope of labor relations has a very specific legal meaning, which departs significantly from the routine dictionary definition of confidential (treated with confidence, private, secret). In all employment situations, there are countless types of information that are considered “private” or “secret”, depending upon the relationship of the party seeking the information to the person who has control of the information. For instance, most employee personnel information is private or secret (i.e. “confidential”) to the individual employee and designated members of a department of human resources. This does not mean that clerks or secretaries in human relations or personnel departments are ineligible for collective bargaining. Further, employees with access to investigative pre-employment reports and reports of disciplinary actions, including written reprimands, do not meet the definition of “confidential” for collective bargaining purposes.

**Managerial Employees:**

“Managerial” employees are employees who “formulate and effectuate management policies by expressing and making operative the decisions of their



Employers.” Fraternal Order of Police, Westerly Lodge 10 v. Town of Westerly, 659 A.2d 1104,1107 (1995); State v. Local 2883 AFSCME, 463 A.2d 186, 190 (1983) citing and quoting in part NLRB v. Bell Aerospace Co., 416 U.S. 267, 278 (1974). Managerial employees must exercise discretion within or even independently of established Employer policy and must be aligned with management. N.L.R.B. v Yeshiva University, 444 U.S. 672 (1980). An employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that control or implement Employer policy. Id. “Employees whose decision-making is limited to the routine discharge of professional duties in projects, to which they have been assigned, cannot be excluded from coverage even if Union membership arguably may involve some divided loyalty. Only if an employee’s activities fall outside the scope of the duties routinely performed by similarly situated professionals, will he be found aligned with management.” Id at 690.

Therefore, each of the contested positions must be examined in light of the foregoing definitions of supervisory employee, confidential employee, and managerial employee. In the event that an employee is either supervisory, managerial or confidential, the employee is precluded from participating in collective bargaining.

### **SUMMARY OF FACTS AND TESTIMONY**

#### **INVESTIGATOR**

The Corporation employs one “Investigator”, who also happens to hold the rank of “Captain”, Robert H. Brown, Jr.; and who has been employed by the Corporation since September of 2007, after retiring from a law enforcement career with the City of Cranston, R.I. (TR. Brown Depo. 12/11/12, pgs. 6-7)<sup>3</sup> At the time he was hired, the department was referred to as the “professional standards unit.” (TR. Brown Depo. 12/11/12, pg. 7) The function of the investigative unit is to investigate staff misconduct, detainee misconduct, assaults within the facility, and to serve as a liaison to outside law enforcement agencies - whether municipal, state or federal. (TR. Brown Depo. 12/11/12, pg. 8) The Investigative Unit is currently staffed with one (1) Investigator and one (1) Administrative Assistant. (TR. Brown Depo. 12/11/12, pg. 12) The position of “Director” of Investigations is presently vacant and so Investigator Brown reports to the Deputy Warden. Id. Investigator Brown testified that his job description (Joint Exhibit #12) accurately describes his duties and responsibilities. (TR. Brown Depo. 12/11/12, pg. 15) Investigator Brown also testified that within the scope of his investigations, he alone,

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<sup>3</sup> The position of “Investigator” is also referred to in these proceedings as an “Inspector.”

using his own independent judgment, makes determinations as to what rules, regulations or policies may have been violated. When Investigator Brown interviews the employee "targets" of his investigations, they come with representation from the Union or with an attorney, or both. (TR. Brown Depo. 12/11/12, pg. 21-24) Upon conclusion of an investigation, Investigator Brown prepares a written report and submits the same to the Deputy Warden. (TR. Brown Depo. 12/11/12, pg. 25) As a result of these investigations, employees have been terminated from employment. (TR. Brown Depo. 12/11/12, pgs. 25-26) In at least one recent case, where a termination was challenged by a discharged employee, Investigator Brown met with Legal Counsel, the Corporation's Human Resources Director, the Warden, and others to prepare for a hearing before a Referee of the Department of Labor & Training's Unemployment Division. At that meeting, Investigator Brown was made privy to the legal and evidentiary strategies of the corporation as it pertained to defending against the unemployment claim. (TR. Brown Depo. 12/11/12, pgs. 30, 61) In addition, Investigator Brown has also assisted the corporation in its defense against a grievance filed by the discharged employee and has aligned himself with the interest of the corporation in defending against the employee's termination. (TR. Brown Depo. 12/11/12, pgs. 31, 62, 64, 65, 66) In connection with another discharge, Investigator Brown assisted in the preparation of the strategies and tactics in defense of an arbitration hearing that lasted five (5) days. (TR. Brown Depo. 12/11/12, pgs. 33, 63) In doing so, Investigator Brown testified that he aligns himself with the defense of the corporation. (TR. Brown Depo. 12/11/12, pgs. 35, 61, 62, 64)

In addition to these duties, Investigator Brown also conducts pre-employment background checks for both Union and non-Union positions and submits the reports, which contain highly confidential personal and financial information, to the Deputy Warden. (TR. Brown Depo. 12/11/12, pg. 36) Investigator Brown also indicated that as part of his regular duties and responsibilities, he has access to information relating to the corporation's positions or strategies in defending grievances filed by the Correctional Officers' Union. (TR. Brown pgs. 37-38, 61) Investigator Brown reviewed the SLRB's definition of "confidential employee" found at 1.01.10 of the Board's Rules and Regulations and then testified that he assists and acts in a confidential capacity to persons who either formulate, determine and effectuate management policies in the field of labor relations. (TR. Brown Depo. 12/11/12, pg. 39) Investigator Brown also read the definition of managerial employee found at Rule 1.01.10 and agreed that he determines whether management policies have been violated and that he exercises discretion within

or even independently of the corporation's policies. (TR. Brown Depo. 12/11/12, pg. 41) Investigator Brown also testified that an example of how he exercises discretion would be his recommendations that he makes following his confidential investigations of Correctional Officer misconduct. Id. He also agreed that when he makes his recommendations, he is doing so by recommending actions that effectively control or implement the Corporation's policies. (TR. Brown Depo. 12/11/12, pgs. 41-42)

On cross-examination, Investigator Brown acknowledged that not all investigations result in a subsequent requirement for his testimony in a proceeding. (TR. Brown Depo. 12/11/12, pg. 45) He also acknowledged that in his reports concerning misconduct, he does not make any recommendations as to employee discipline, nor does he participate in the decision making. Id. He also acknowledged that he did not draft the policies that he is examining for Officer misconduct. Id. Investigator Brown also testified that he does not participate in collective bargaining negotiations or attend labor/management meetings. (TR. Brown Depo. 12/11/12, pg. 46) While Investigator Brown does not normally receive notes from labor/management meetings, there has been one occasion where he has received the notes in the course of an investigation. (TR. Brown Depo. 12/11/12, pgs. 47-48) Investigator Brown has not ever been consulted by management or apprised by management of its proposals for collective bargaining. (TR. Brown Depo. 12/11/12, pg. 48) Investigator Brown does not participate in the management decision of whether the corporation will fight a claim such as unemployment or a grievance, but he simply presents the factual information he has gathered in the course of an investigation. (TR. Brown Depo. 12/11/12, pgs. 50-51) While Investigator Brown has participated in developing strategies on how to defend at hearings, he does not make the ultimate decision. (TR. Brown Depo. 12/11/12, pgs. 52-53) In addition, Investigator Brown has not actually testified at an arbitration hearing, against a Correctional Officer. (TR. - Brown Depo. 12/11/12, pg. 55) In the pre-employment reports, Investigator Brown, using his experience and independent judgment, identifies "potentially disqualifying" employment information, but does not make recommendations as to hiring. Additionally, some people have been hired, despite the presence of disqualifying information. (TR. Brown Depo. 12/11/12, pgs. 56-57)

The Employer argues that Investigator Brown's position is excludable from collective bargaining as a supervisory, managerial and confidential employee. The Union argues that Investigator Brown's position is neither supervisory, managerial nor

confidential. The Union argues that the fact that Investigator Brown may provide testimony at a grievance or unemployment hearing is not dispositive of whether he is a confidential employee and that any employee (even those represented by the same bargaining unit) could be called upon to provide factual testimony at any hearing. The Union also argues that it is persuasive evidence as to confidentiality that Investigator Brown's prior position with the City of Cranston was similar to this position and yet he was a member of a bargaining unit. The Union also argues that Investigator Brown's participation in pre-hearing conferences with Legal Counsel and other members of the corporation cannot exclude him as a confidential employee; and that an employee's "alignment with management" in the course of an arbitration function is not confidential as that term is defined by the Municipal Employees' Arbitration Act. The Union argues that the position of Investigator cannot be excluded as confidential because it does not meet either prong of the labor-nexus test set forth in Barrington: (1) Investigator Brown is not a confidential employee who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. (2) Investigator Brown does not regularly have access to confidential information concerning anticipated changes, which may result from collective bargaining negotiations. The Union did not address the issue of whether Inspector Brown's position could be considered managerial.

In reviewing the testimony and evidence, the Board finds that Inspector Brown effectively recommended disciplinary action for an Officer Slater and an Officer Letourneau and later participated in management's strategic preparation for unemployment hearings and arbitrations. (TR. Brown Depo. 12/11/12, pgs. 26-35) Thus, this Board finds that in this capacity, Inspector Brown's actions were supervisory and managerial. Inspector Brown effectively recommended discipline, which was enforced by management. The Union argues that Inspector Brown's participation in subsequent management preparations for hearings was essentially a perfunctory element of Inspector Brown's duty of "loyalty", which is required of all employees generally. However, Inspector Brown's participation in these meetings was not, by his own un rebutted testimony, merely witness testimony preparation, as argued by the Union. Inspector Brown specifically testified that he aligned himself with the interest of the corporation in defending the termination grievance of Officer Slater. In the case of Officer Letourneau, Inspector Brown testified that he assisted in the preparation of "strategies" and "tactics" used by management in defending a five-day arbitration case. (TR. Brown

Depo. 12/11/12, pgs. 33, 37) It is abundantly clear that Inspector Brown "aligns" himself with management both subjectively and objectively. (TR. Brown Depo. 12/11/12, pgs. 35, 61, 62, 64) Thus, the Board unanimously finds that the position of Inspector is both a supervisory and managerial position and is excluded from the proposed bargaining unit.

### CAPTAINS

The Detention Facility has four Captains - one (1) assigned to each shift and one (1) assigned to administration, with one (1) vacancy. (TR. Coburn Depo. 6/7/12 pgs. 22-23) (TR. Samos Depo. 10/5/12, pg. 64). In addition to Investigator (Captain) Brown, Captain Daniel Samos was deposed on October 5, 2012 and Captain Gregory Richard was deposed on November 16, 2012.

Captain Daniel Samos first became employed at the facility in 1999 as a Correctional Officer and worked his way up the ranks to his current position of Captain in either late 2008 or 2009. (TR. Samos Depo. 10/5/12, pgs. 4-6) Captain Samos testified that he had reviewed Joint Exhibit #11 and stated that it accurately reflected the general scope and responsibilities of a Captain. (TR. Samos Depo. 10/5/12, pgs. 6-7) He also agreed that even if he has not, to date, executed some of those functions, that if called upon in the future, these would be his responsibility. Id. In addition, he also testified that Joint Exhibit #5 accurately represented the duties of a Shift Commander. (TR. Samos Depo. 10/5/12, pgs. 7-8) Captain Samos testified that Captains and Lieutenants serve as Shift Commanders and that while Sergeants had in fact also done so in the distant past, the same was not the case currently. (TR. Samos Depo. 10/5/12, pg. 9) Captain Samos testified that he believes that Sergeants were the "first line" supervisors, with supervisory authority over Correctional Officers. He also testified that Captains have supervisory authority over the Lieutenants, Sergeants, and Correctional Officers under their commands. (TR. Samos Depo. 10/5/12, pgs. 11-12)

As for the indicia of supervisory authority, Captain Samos testified that he can make a recommendation for hiring, but does not do the hiring himself. (TR. Samos Depo. 10/5/12, pg. 15) Captain Samos testified that to him, the words "independent judgment" mean "making a decision based on my knowledge of the situation." He testified that in making hiring recommendations, he uses his own independent judgment. Captain Samos has participated on several "academy boards" which is the process used to determine acceptance into a training academy for new Correctional Officers. (TR. Samos Depo. 10/5/12, pgs. 15-16) Within that process, he uses his discretion and

independent judgment to “vet and screen recruits to determine their fitness and capacity to serve as a correction Officer.” (TR. Samos Depo. 10/5/12, pgs. 16-17) Captain Samos estimated that as many as fifty (50) of the recruits that he had previously screened had been hired by the Corporation.

Captain Samos testified that he exercises independent judgment when he is involved with the transfer of Correctional Officers on a daily basis. (TR. Samos Depo. 10/5/12, pg. 20) Captain Samos has used his independent judgment to make an effective recommendation for employee discipline, even though he has not made the ultimate decision to discipline. (TR. Samos Depo. 10/5/12, pgs. 20-21) Captain Samos specifically identified an Officer Letourneau as one who he recommended be suspended and who was suspended. (TR. Samos Depo. 10/5/12, pg. 21-22) (See Joint Exhibit #28) Captain Samos also testified that he has used his independent judgment, in the interest of the corporation when he participated on “promotional boards” or “oral boards” for the advancement of Correctional Officers to the rank of Sergeant. He stated that he has interviewed (with others) and made effective recommendations for hiring, including a Sergeant Ilesha Brown and a Sergeant San Souci. Captain Samos testified that he believes he has the authority to reward employees and has exercised this authority by issuing letters of commendation that are then added to personnel jackets. (TR. Samos Depo. 10/5/12, pg. 26) In reviewing candidates for promotion, Captain Samos has reviewed personnel files and has looked for letters of recommendation to consider during the promotional process. (TR. Samos Depo. pgs. 26-27) Captain Samos also testified that he understood the words “responsibly direct” to mean “give direction within parameters” and that he has used his independent discretion to responsibly assess subordinates and re-direct them, if necessary. (TR. Samos Depo. 10/5/12, pg. 28) Captain Samos stated that he may coach, retrain or even reprimand. (TR. Samos Depo. 10/5/12, pg. 29) As for adjusting grievances, Captain Samos indicated that he would be responsible to advocate for the propriety of discipline that he had recommended and if challenged at grievance/arbitration, he would support and align himself with management. (TR. Samos Depo. 10/5/12, pg. 30) Captain Samos testified that he uses his independent judgment in evaluating Correctional Officers, but does use a form provided by the facility for that purpose. (TR. Samos Depo. 10/5/12, pgs. 31-32)

On cross-examination by the Union, Captain Samos testified that when he is working, the Major is not working and that Samos only has to review certain actions with the Major, if time permits. Otherwise, Captain Samos will undertake necessary actions

and then notify the Major afterwards. (TR. Samos Depo. 10/5/12, pg. 45) As for granting time off, Captain Samos follows the staffing pattern. If he wants to deviate from that, he will have to consult with the Major (TR. Samos Depo. 10/5/12, pg. 47) Captain Samos clarified that he was last involved with an interview panel for hiring onto his shift (from the academy) approximately two (2) years prior to his testimony. On redirect examination, Captain Samos testified that he has worked on the formulation of policy. (TR. Samos Depo. 10/5/12, pg. 66) On occasion, Captain Samos has had to send employees under his command home for gross insubordination. (TR. Samos Depo. 10/5/12, pg. 67) Captain Samos also clarified that Correctional Officers are not permitted to transfer any of their fellow Officers on a shift and that such assignment is left to the supervisory ranks. (TR. Samos Depo. 10/5/12, pg. 68)

Captain Gregory J. Richard was deposed on November 16, 2012. He has been employed at the Detention Facility since 2006, working his way up through the ranks from Correctional Officer to Captain. (TR. Richard Depo. 10/5/12, pg. 5) He testified that the Detention Facility operates as a paramilitary organization that utilizes a chain-of-command, with the Correctional Officer being at the bottom line of authority, on up through Sergeant, Lieutenant and then Captain. (TR. Richard Depo. 10/5/12, pg. 9) Captain Richard testified that he understood the words "independent judgment" to mean his "own judgment, not coerced in any way." (TR. Richard Depo. 10/5/12, pg. 11) Captain Richard testified that he has the authority to transfer employees from one post to another and to transfer them from one shift to another. (Richard Depo. pg. 12) Captain Richard testified that he does not have the authority to lay-off, recall from layoff, promote or discharge employees. (TR. Richard Depo. 10/5/12, pg. 13-14) He does have the ability to reward employees, such as the issuance of a letter of recommendation or letter of achievement, which are then placed in personnel jackets. (TR. Richard Depo. 10/5/12, pg. 15) Captain Richard testified that he has the authority to issue discipline in the form of oral and written warnings, but when it came to suspensions, he could only recommend the same and not implement them. (TR. Richard Depo. 10/5/12, pg. 15-16) Captain Richard testified that he believes that the words "responsibly direct" mean to make sure he's following guidelines, policy and procedures and not trying to veer off that...when issuing tasks to employees and following through with them. (TR. Richard Depo. 10/5/12, pg. 16-17) Captain Richard testified that he oversees the day-to-day work performance of employees "every day." (TR. Richard Depo. 10/5/12, pg. 17) Captain Richard stated that he would be held accountable if he did not responsibly direct

the staff on their day-to-day duties. Id. Captain Richard testified that he has some responsibility, through the use of his independent judgment and in the interest of his Employer, for the promulgation of policy. As an example, Captain Richard testified that he has had input into annual revisions of policies. (See Joint Exhibits #30, #31, #32, #33) and that his recommendations have always been implemented. (TR. Richard Depo. 10/5/12, pg. 29) Captain Richard testified that he uses his independent judgment when insuring that employees are adhering to the standards expected of each rank. (TR. Richard Depo. 10/5/12, pg. 30) Captain Richard testified that he evaluates employees under his command. (TR. Richard Depo. 10/5/12, pg. 31) (See Joint Exhibits #34, #35, #36) When asked why he would use his own independent judgment in evaluating employees, Captain Richard replied "It's important for the Wyatt and for the Officers to monitor their progression, to see if they're meeting the standards required set forth by the facility." (TR. Richard Depo. pg. 33) As an example, Captain Richard testified that for one Correctional Officer, he recommended that his probation be extended for an additional three (3) months and that the recommendation was accepted and was a favorable result ultimately for the probationary Officer. Captain Richard testified that it was his intention to give the Officer a second chance to improve his performance and that he made these recommendations using his own independent judgment. Ultimately, the Officer did improve and then Captain Richard effectively recommended his hiring. (TR. Richard Depo. 10/5/12, pg. 37) Captain Richard believes that he has effectively recommended the hiring of three (3) to four (4) people. He has also sat on the "academy boards." Captain Richard testified that he has the authority, through the use of his own independent judgment, to effectively recommend the transfer of employees within the facility and to recommend discipline. (TR. Richard Depo. 10/5/12, pg. 38) Captain Richard testified that he has the authority to effectively recommend the layoff and recall of an employee and to effectively recommend the promotion of an employee, giving Officer Dillon's promotion to Sergeant as an example. (TR. Richard Depo. 10/5/12, pg. 39) In that case, he did not sit on the interview board, but rather participated in the "end" process - submitting recommendation letters to the Major, and verbal conversations with the Major, Deputy Warden, and Warden. Id. Conversely, Captain Richard has also had the occasion to effectively recommend the termination of an employee, Officer O'Connor, and another Officer whose name he could not recall. (TR. Richard Depo. 10/5/12, pgs. 40-41)



On cross-examination, Captain Richard clarified that he can transfer individuals who are not performing to standards, provided they are still probationary Officers and are not yet covered by the Collective Bargaining Agreement. (TR. Richard Depo. 10/5/12, pg. 44) Captain Richard also testified that letters of commendation that he issued to a number of Officers after a fire in approximately 2008 were given directly to the Officers and he assumed that they were placed in personnel files as well. He was not able to testify as to whether they were ever looked at or used by someone with higher authority. (TR. Richard Depo. 10/5/12, pgs. 48, 61) He did state, however, that when he has sat on Sergeants' boards, he has considered the written evaluations in their personnel files. (TR. Richard Depo. 10/5/12, pg. 60) Captain Richard has sat on many review boards, but does not personally know how the recommendations are reviewed by the person with the hiring authority, the Warden. (TR. Richard Depo. 10/5/12, pg. 61) He will sit at the table with the Warden, the Deputy Warden, Chief of Security and other members of the panel, to discuss back and forth on the outcome of the interview process. (TR. Richard Depo. 10/5/12, pg. 63) He also does not know whether his specific recommendations have had a persuasive effect on the hiring authority. Id. As for discipline, Captain Richard could not recall, off the top of his head, a specific name of anyone whom he has disciplined, but stated that if he went back through his files, he could pull one up. (TR. Richard Depo. 10/5/12, pg. 64) While Captain Richard did recommend that probationary Correctional Officer O'Connor not be appointed on a permanent basis and he was not, Captain Richard has no knowledge what, if any, role his recommendation played. (TR. Richard Depo. 10/5/12, pg. 67) As for management policies, Captain Richard testified that while he does annual reviews of facility policies, and may make recommendations for changes, he has not created policies or changed them on his own. (TR. Richard Depo. 10/5/12, pg. 53) For example, based upon his experiences with an incident in one of the housing pods, Captain Richard recommended a change to the video monitoring of cells. (TR. Richard Depo. 10/5/12, pgs. 57-58)

Based upon the foregoing testimony, the Union argues that the evidence simply does not support a finding that the Captains are statutory supervisors. The Union argues the fact that no one testified as to the actual effectiveness of the Captains' hiring recommendations and that it would be an improper inference to assume that the recommendations, when followed, had any effect on the decision to hire. This Board does not agree that the hiring authority must come before the Board and present testimony as to all the reasons that a person was hired for there to be a reasonable

inference that the interviewing and recommendation process has meaning to the hiring authority. What sense would there be to have an elaborate process and to create and staff an interview panel if it was meaningless? We cannot ascribe such a result to what is a common method of screening employees. We believe that it is a reasonable inference that the Captains' recommendations for hiring and discipline, as outlined above, were effective. While the hiring authority may not always agree with a recommendation, that is the nature of advisory opinions. The one with the decision-making authority may have a good reason to deviate from a recommendation; to perhaps award a "second-chance" at a higher level. The direct testimony of both Captains supports a finding that they effectively recommend both hiring and firing, especially Captain Samos' testimony that at least fifty (50) persons he recommended for employment were in fact hired. Captain Richard has effectively recommended the hiring of three (3) to four (4) Correctional Officers. (TR. Richard Depo. 10/5/12, pgs. 37-38) (Also see Joint Exhibits #36 and #44).

There is evidence in the record to support a finding that both Captain Samos and Captain Richard have used their independent judgment to make decisions concerning the assignment of work and transfers of employees from one post to another. (TR. Samos Depo. 10/5/12, pgs. 19-20) and (TR. Richard Depo. 10/5/12, pgs. 12)

The evidence in the record supports a finding that the Captains have the authority to effectively recommend promotions. Captain Samos has served on promotional boards and has effectively recommended promotions for Sergeant Brown and for Sergeant San Souci. (TR. Samos Depo. 10/5/12, pgs. 24-25 and 41-42.) Captain Richard annually evaluates all those under his command and evaluations are used in promotions. (TR. Richard Depo. 10/5/12, pgs 59-61)

The evidence in the record supports a finding that the Captains have the authority to effectively recommend discipline. Captain Richard recommended that Officer O'Connor be discharged and this recommendation was followed. (TR. Richard Depo. 10/5/12, pg. 40) Captain Samos has recommended discipline which has been implemented. (TR. Samos Depo. 10/5/12, pgs. 21-22. (Also see Joint Exhibit #28)

The evidence in the record supports a finding that the Captains both have the authority to effectively reward employees by writing letters of recommendation/commendation, which are later used in annual reviews and the consideration of promotions. (TR. Samos Depo. 10/5/12, pg. 26) and (TR. Richard Depo. 10/5/12, pg. 15)

The evidence in the record supports a finding that the Captains have the authority to effectively recommend changes to management policies. (See Joint Exhibits #30, #32, and #33) (Also see TR. Richard Depo. 10/5/12, pg. 29)

Since the indicia of supervisory authority are disjunctive and only one need be present to establish supervisory status, it is overwhelmingly clear, based upon the foregoing, that the Captains are supervisory, and we therefore, will not belabor the record with additional, cumulative findings in this regard; even though there are additional reasons within the record to support this finding. Furthermore, we find that the Captains are also managerial employees, based upon their demonstrated involvement with the annual policy reviews as described in detail above.

### LIEUTENANTS

The Detention Facility has three (3) Lieutenants - one assigned to each shift. (TR. Coburn Depo. 6/7/12, pg 26) The Lieutenants are "second-in-command" on the security shift. Their job duties include: corrections work of supervising an assigned shift or functional unit; ensuring the welfare of detainees; supervising, evaluating, scheduling, and monitoring the activities of an assigned unit of corrections personnel; recommending personnel and disciplinary actions to command Officers; conducting shift briefings; scheduling Officers to duty posts and making regular inspections to insure proper levels of staffing; supervising checks of detainees housing and cell searches for detainee census and detection of contraband. (See Joint Exhibit #6 and #10)

Lieutenant Kieshon Hamrick was the only Lieutenant to provide testimony in this proceeding. She testified that she first became employed at the facility in 2006 and worked her way up to Lieutenant by sometime in 2010. On direct testimony, Lieutenant Hamrick testified that she did not feel that her duties varied that much from when she was a Sergeant, except for when she is also acting as the Shift Commander (twice per week) (TR. Hamrick Depo. 10/1/12, pg. 7) She stated that when she is serving as the Shift Commander, there is no Captain on duty. She testified that everything "falls" on the Shift Commander and that they make "all the calls", such as determining the aggressor in fights that may occur or determining if a detainee is going to be placed on suicide watch. (TR. Hamrick Depo. 10/1/12, pgs. 7-8) She testified that she interacts with the Correctional Officers on duty and that if she sees something being done incorrectly, such as cells or windows being blocked, she will correct them. (TR. Hamrick Depo. 10/1/12, pg. 11) She makes sure that the Sergeants on her shift are doing their rounds. (TR. Hamrick Depo. 10/1/12, pg. 12) She also testified that they come to her on things

and that she could not think of anything that the Sergeants might do, of which she would not be aware. (TR. Hamrick Depo. 10/1/12, pg. 14) Lieutenant Hamrick testified on direct examination that she has never been involved in the processing of any Union grievances or been involved in any labor management meetings. Id. She has not participated in the hiring process or served on any interview panels. Id. She has not been involved in transferring employees from one post to another. (TR. Hamrick Depo. 10/1/12, pg. 15) She has not participated in any decision to suspend or terminate an employee. Id. She testified that she has never written any recommendation for another employee or rewarded an employee in any way. Id. Similarly, she has not participated in any decisions concerning layoff of employees. (TR. Hamrick Depo. 10/1/12, pg. 16) Lieutenant Hamrick can facilitate the granting of time off, provided there is adequate coverage on the daily roster. Id. Lieutenant Hamrick does not normally prepare the rosters, which are done three (3) months in advance. She simply deals with the various changes that take place on the actual work day or as it gets closer, by consulting the overtime lists and filling the roster. (TR. Hamrick Depo. 10/1/12, pgs. 17-18) If she cannot secure a volunteer to work the overtime, she will then use the "force" list. (TR. Hamrick Depo. 10/1/12, pg. 18)

Lieutenant Hamrick testified that she will occasionally evaluate Correctional Officers and that she did one Sergeant evaluation, a few weeks prior to her deposition, upon an order from Captain Samos. (TR. Hamrick Depo. 10/1/12, pg. 22) When she does evaluations for Correctional Officers, she completes the forms, writes some comments on the back and then sits down with the Officer to review it. (TR. Hamrick Depo. 10/1/12, pg. 23) Lieutenant Hamrick testified that she has not ever personally disciplined any employee. Id. She occasionally decides that training is necessary on a particular subject (such as code red drills or firefighting drills) and makes sure that the same gets executed. (TR. Hamrick Depo. 10/1/12, pg. 24) Lieutenant Hamrick testified that she has not participated in any changes to policies. (TR. Hamrick Depo. 10/1/12, pg. 26)

On cross-examination, Lieutenant Hamrick testified as to the chain of command structure within the facility. (TR. Hamrick Depo. 10/1/12, pgs. 28-30) She also testified that she needs to use her independent judgment to issue orders to Officers serving under her command. (TR. Hamrick Depo. 10/1/12, pg. 31) She also acknowledged that she is responsible for using independent judgment to make tactical command decisions. (TR. Hamrick Depo. 10/1/12, pgs. 31-32) She testified that she uses her own thinking,

discretion, and assessment when making her daily decisions in her capacity as Lieutenant. She also indicated that twice per week, when she is Shift Commander, she is actually performing the supervisory functions of a Captain. (TR. Hamrick Depo. 10/1/12, pg. 34) Lieutenant Hamrick also testified that when she uses her independent judgment to issue corrections to Officers on their command that this was a function and responsibility that is distinct and different from those under her command. (TR. Hamrick Depo. 10/1/12, pg. 35) She also acknowledged that even though there were things contained on her job description that she has not yet had the opportunity to perform, that in the future, if asked, it would indeed be her responsibility to perform the same. (TR. Hamrick Depo. 10/1/12, pg. 37) She acknowledged that she considered the Sergeants at the facility to be "first-line" supervisors and that they are generally able to make decisions on their own. (TR. Hamrick Depo. 10/1/12, pg. 39) Lieutenant Hamrick also testified that if a subordinate Officer failed to execute one of her directives, she would take action against that Officer. (TR. Hamrick Depo. 10/1/12, pg. 41) Lieutenant Hamrick also agreed that even if she didn't have the ultimate authority to carry out discipline at higher levels, part of her duty was to align herself with management and make the appropriate recommendation to go up the chain of command. (TR. Hamrick Depo. 10/1/12, pg. 42) She also acknowledged that she has the authority to "force" Officers to stay on shift or hold them over when there are vacancies on the roster.

Lieutenant Hamrick further testified that she has the responsibility and authority to evaluate the Sergeants under her command. (TR. Hamrick Depo. 10/1/12, pg. 47) She agreed that she uses her independent judgment, in the interest of her Employer, when completing evaluation forms. Id. (Also see Joint Exhibit #26.) Lieutenant Hamrick also testified that when conducting drills, she would use her independent judgment to correct and re-train Officers who were not performing adequately. (TR. Hamrick Depo. 10/5/12, Vol. II, pgs. 7-10) Lieutenant Hamrick stated that she believed that all the Union and non-Union employees at the facility received the same benefits. (TR. Hamrick Depo. 10/5/12, Vol. II, pgs. 16-17) On further cross-examination, Lieutenant Hamrick testified that she has the authority to make changes to duty rosters, if necessary. (TR. Hamrick Depo. 10/5/12, Vol. II, pg. 25)

Based upon Lieutenant Hamrick's own testimony, she acknowledged that twice per week she serves in the capacity of Shift Commander, and as such is performing the supervisory duties of a Captain. The foregoing evidence in the record supports a finding that the Lieutenants have the authority to issue discipline, if and when necessary. The

foregoing evidence in the record also supports a finding that Lieutenants use their independent judgment, in the interest of their Employer to evaluate subordinate Officers. As such, we find that the Lieutenants are supervisory employees and as such, are not eligible for collective bargaining.

### SERGEANTS

Sergeant Ryan San Souci, an employee with the facility since November 2007 and a Sergeant since January 2010, testified on September 18, 2012. (TR. San Souci Depo. 9/18/12, pgs. 4-5) He agreed that Joint Exhibit #9 generally describes the scope of his duties and responsibilities, with an exception about the level of authority to hire, fire, discipline, etc. He testified that as a Sergeant, he is a "first-line" supervisor. (TR. San Souci Depo. 9/18/12, pg. 8) Sergeant San Souci also testified that Joint #7, a document entitled, "Post Orders for a Sergeant", is a detailed listing of the specific responsibilities and duties of a Sergeant in the facility. (TR. San Souci Depo. 9/18/12, pgs. 9-10) Sergeant San Souci testified that he believed that the term "independent judgment" meant that he's making his "own decisions, pretty much on the spot" and "making the decision in the best interest of the safety and security of the facility." (TR. San Souci Depo. 9/18/12, pg. 14) Sergeant San Souci testified that he did not have the authority to suspend or fire an employee, but he would have the authority to recommend such actions. Id. San Souci testified that he has the authority to write letters of appreciation, which then are filed in personnel jackets. (TR. San Souci Depo. 9/18/12, pg. 15) He stated that as far as discipline is concerned, he can issue verbal warnings to other employees, but that a recommended written discipline is forwarded up the chain of command for approval. (TR. San Souci Depo. 9/18/12, pgs. 16-17) Sergeant San Souci testified that he has the judgment to direct others in assigned tasks. (TR. San Souci Depo. 9/18/12, pg. 20) San Souci testified that in his capacity as Sergeant, he will sometimes oversee the "shakedown" of a cell being done by other Correctional Officers. He will determine whether the Officer is performing the shakedown correctly and will correct any deficiencies. (TR. San Souci Depo. 9/18/12, pgs. 22-23) He will sometimes even remove an Officer from that duty and replace that Officer with another employee. (TR. San Souci Depo. 9/18/12, pg. 23) San Souci testified that he has the authority in the interest of his Employer and through the use of independent judgment to review the work of other Officers and to instruct them in the day-to-day work requirements. Id. Sergeant San Souci testified that he did not have the authority to adjust any grievances that might be filed under the Correctional Officers' FOP contract. (TR. San Souci Depo.

9/18/12, pg. 24) San Souci testified that as a Sergeant, he is responsible for insuring compliance to performance standards by Correctional Officers. (TR. San Souci Depo. 9/18/12, pgs. 25-26) Sergeant San Souci testified that he has sat on "academy boards" and has participated in the recommendation of persons for employment as Correctional Officers. (TR. San Souci Depo. 9/18/12, pg. 28) The academy board consists of three (3) persons who ask pre-determined questions and who record their reactions to the candidates' answers. Sometimes at the conclusion of the interviews, the academy board members will discuss the candidates' qualifications. In doing so, Sergeant San Souci testified that he uses his independent judgment in forming his opinions. (TR. San Souci Depo. 9/18/12, pg. 30) He also testified that he has the authority through the use of his independent judgment to effectively recommend that an employee be suspended. (TR. San Souci Depo. 9/18/12, pgs. 31-33)

Sergeant San Souci testified that he has the authority to use his judgment and make day-to-day determinations on post assignments. (TR. San Souci Depo. 9/18/12, pg. 34) San Souci also testified that his job may require him to make post re-assignments based upon the "climate" or general mood or state of agitation of the inmates of the unit. (TR. San Souci Depo. pg. 35-37) He clarified that he can only recommend a schedule change for probationary employees, not for employees who have become members of the Correctional Officers' Union. (TR. San Souci Depo. 9/18/12, pg. 37) San Souci has made effective recommendations about assignment rotations. (TR. San Souci Depo. 9/18/12, pg. 38) He has also done evaluations of probationary employees. (TR. San Souci Depo. 9/18/12, pg. 39) (Also see Joint Exhibit #24) Sergeant San Souci also testified that he concurred that both he and Sergeant Cloud were considered "first-line supervisors" and that their job duties were distinct from the Correctional Officers. (TR. San Souci Depo. 9/18/12, pg. 42) Sergeant San Souci also testified that both he and Sergeant Cloud ensure compliance to the facility's policies and procedures by the Correctional Officers. (TR. San Souci Depo. 9/18/12, pg. 46)

On cross-examination, San Souci testified that all the employment evaluations he has performed have been for probationary Officers. After completing the final evaluation, the Sergeant forwards it to a Shift Commander for review, who in turn forwards it to the Major. After the Major reviews it, the evaluation comes back to the Sergeants to review with the probationary employee and they both sign it. Then, the recommendation goes back up the chain of command, eventually landing with the Warden for his signature.

(TR. San Souci Depo. 9/18/12, pgs. 49-50) San Souci does not participate in any discussions with the Deputy Warden or Warden as to whether an Officer will become a permanent employee. He does not have any first-hand knowledge as to how his recommendations are used or considered. (TR. San Souci Depo. 9/18/12, pg. 51) San Souci described his decision to move Officer Anderson, who was a "filler", out of the Segregation Unit because the unit climate was too high. He also acknowledged that he did speak to the shift supervisor before moving Anderson. (TR. San Souci Depo. 9/18/12, pg. 58) Sergeant San Souci also described having had some input into revisions to Policy 205 and stated that some of his recommendations were incorporated. (TR. San Souci Depo. 9/18/12, pgs. 59-60) Sergeant San Souci also described some of the job differences between Correctional Officers and Sergeants: Sergeants are the ones who have to make a determination if an inmate is sent to medical; Sergeants monitor the food line; Sergeants handle certain paperwork; Sergeants monitor the counts; Sergeants monitor drills with other staff and personnel; Sergeants monitor the inmates' medication line to make sure they are actually taking their medications and are not hoarding them. (TR. San Souci Depo. 9/18/12, pg. 63-65) Sergeant San Souci stated that he had once made a recommendation to suspend an Officer, but that the Officer voluntarily left the job before any action could be taken. (TR. San Souci Depo. 9/18/12, pg. 66-67) San Souci has never participated in any discussions to terminate employment for any other employee. (TR. San Souci Depo. 9/18/12, pg. 67) Sergeant San Souci described a process known within the facility as a "non-discipline" as being essentially a warning or notice of corrective action needed. San Souci can issue a non-discipline. (TR. San Souci Depo. 9/18/12, pg. 73-75) Sergeant San Souci also described a process known as "pass-on" which is a quick informal generalization (discussion) of what took place on a shift, getting passed on to the next shift. (TR. San Souci Depo. 9/18/12, pg. 79) Sergeant San Souci testified that he has not participated in any collective bargaining negotiations. (TR. San Souci Depo. 9/18/12, pgs. 81-82)

On re-direct examination, Sergeant San Souci testified that he prepared evaluations for three (3) probationary Correctional Officers: Quinn Rogan, Crystal Carniglia, and Demetrius Nunally. (TR. San Souci Depo. 9/18/12, pg. 83) He acknowledged using his independent judgment in formulating those evaluations and that his recommendations were followed. Sergeant San Souci also testified that he successfully made suggestions, in conjunction with others, for a change in the segregation policy. (TR. San Souci Depo. 9/18/12, pg. 90) Sergeant San Souci



acknowledged that he uses his independent judgment, skills and trainings when overseeing cell searches and unit shakedowns. (TR. San Souci Depo. 9/18/12, pg. 95) Sergeant San Souci also described how he recommended that a probationary Officer be suspended, because San Souci observed that he was not performing inmate counts on multiple occasions. (TR. San Souci Depo. 9/18/12, pg. 96) Sergeant San Souci described the verbal warning and written non-discipline process used at the facility; and indicated that he uses his independent judgment when issuing the same. (TR. San Souci Depo. 9/18/12, pg. 103) He has had the occasion to formulate rosters and assigned staff to posts. He has assigned staff to emergency hospital details and filled vacancies.

On cross-examination, Sergeant San Souci acknowledged that the daily rosters are made months in advance by the Shift Commander and that the type of assigning San Souci performs is daily adjustments, due to vacancies. (TR. San Souci Depo. 9/18/12, pg. 106) He cannot move an Officer from a post to another rotation. When assigning overtime, he has to follow the collective bargaining agreement's provisions. Id.

Sergeant Antonio Santos was hired on March 3, 2003 and is currently employed as a Sergeant on the second shift. (TR. Santos Depo. 7/2/12, pgs. 3-4) In this capacity, Sergeant Santos "floats" around the housing units, "doing rounds, checking on Officers to see if they need anything." (TR. Santos Depo. 7/2/12, pg. 5) Sergeant Santos testified that he is aware of the "post" description for Sergeants, as well as the job description, but that he played no role in drafting either document. (TR. Santos Depo. 7/2/12, pgs. 10-11) Sergeant Santos testified that the position of "Shift Commander" is not held by a Sergeant. (TR. Santos Depo. 7/2/12, pg. 12) He testified that he is responsible for monthly evaluations for Officers and sometimes he does the "roster" to assist the Shift Commander. By this, he meant that he calls on the voluntary overtime list when there is an absence, following accepted procedures. (TR. Santos Depo. 7/2/12, pgs. 13, 18, 20) He also reviews housing unit checklists that are turned in by Correctional Officers on a shift. On occasion, Sergeant Santos will go to the housing unit and double check the list that he has received from the Correctional Officer. (TR. Santos Depo. 7/2/12, pg. 14)

Sergeant Santos was not involved in the negotiation of the Collective Bargaining Agreement for the Correctional Officers, who are represented by the Fraternal Order of Police (FOP). (TR. Santos Depo. 7/2/12, pg. 22) He has not been involved in handling any grievances or participated in any labor management meetings involving the FOP. (TR. Santos Depo. 7/2/12, pg. 23) Sergeant Santos has never sat on any interview panels for hiring or been involved in transferring employees. Santos has participated in a

“non-discipline” by reporting an incident of roll-call insubordination by Officer Heath Letourneau, to Santos’ Shift Commander. (TR. Santos Depo. 7/2/12, pgs. 25-26) Santos testified that the Shift Commanders have files for Officers and that he has access to those files and can place documentation, such as monthly evaluations for probationary Officers, but not disciplines, in the files. (TR. Santos Depo. 7/2/12, pgs. 29, 31) He does not have access to the personnel files at Human Resources. Santos described the “monthly” evaluation for probationary Officers as a document that provides for both a rating system and a section for written comments. (TR. Santos Depo. 7/2/12, pg. 32) After the document is finalized, Santos sits down with the Officer to review it with him and secures a signature. (TR. Santos Depo. 7/2/12, pgs. 34) Santos does not participate in the yearly evaluations of the non-probationary Correctional Officers. Santos has not been involved in any decisions to discipline or layoff. He has been asked for his verbal opinion when it comes to promotions for Sergeants. He has also participated in group discussions and throws in his input on Employee of the Quarter and Employee of the Year programs. (TR. Santos Depo. 7/2/12, pg. 37) The group decides, as a whole, who will be selected for this recognition. (TR. Santos Depo. 7/2/12, pg. 39) Santos testified that he has not been involved in any decisions as to the wages of Correctional Officers or to give time off. He has never recommended discipline for a probationary employee on the monthly evaluation. (TR. Santos Depo. 7/2/12, pg. 40) He has never been involved in the termination of an employee. (TR. Santos Depo. 7/2/12, pg. 43) Santos testified that his oversight of Correctional Officers includes him inquiring if they have conducted counts of detainees, if they have made sure the unit is clean, or if they are conducting pat-downs. In the event that he sees a problem, he corrects it on the spot. (TR. Santos Depo. 7/2/12, pg. 45)

Santos also testified that he volunteers sometimes at the PT exam given to new recruits and that he voluntarily engages in CERT (Correctional Emergency Response Team) training. (TR. Santos Depo. 7/2/12, pg. 47) Santos testified that he engages in training for drills according to facility policy. (TR. Santos Depo. 7/2/12, pg. 51) He also testified that every couple of months or so he is required to participate in joint meetings called by the Major for the Sergeants, Captain and Lieutenants. Santos does not participate in the drafting of any policies. (TR. Santos Depo. 7/2/12, pg. 56)

On cross-examination, Santos agreed that the Wyatt is a paramilitary organization with a chain of command and that he holds a position of supervisory authority as a Sergeant. (TR. Santos Depo. 7/2/12, pgs. 60-61) He testified that he is a

first-line supervisor. (TR. Santos Depo. 7/2/12, pg. 62) Sergeant Santos also testified that he uses his own independent judgment in discharging his first-line supervisory duties. (TR. Santos Depo. 7/2/12, pgs. 62-70) Santos makes independent judgments when correcting Correctional Officer deficiencies. (TR. Santos Depo. 7/2/12, pg. 71) Although Santos has not personally served on an interview panel for hiring, he knows of at least one other Sergeant who has. He also acknowledged that if he were asked to serve on such a panel in the future, he certainly would do so. (TR. Santos Depo. 7/2/12, pg. 78)

As for evaluations, Santos testified that has not yet performed any yearly evaluations of non-probationary Officers, but that he is aware that this is a duty of the job description and that when he is ordered to perform them in the future he will certainly comply. (TR. Santos Depo. 7/2/12, pg. 81) He also testified that he performed evaluations for the following probationary Officers: Brian Cote, Nicholas DiCarlo, Brian Enright, Nathan Dumas, Russell Gorham, Nicholas Hemond, Megan Joly, Robin Laroque, Chris Montround, and Eric Moscarelli. (Also see Joint Exhibit #15) In conducting these evaluations, Sergeant Santos testified that he used his independent judgment. (TR. Santos Depo. 7/2/12, pg. 89) On the issue of discipline, Sergeant Santos testified that if a Correctional Officer does not follow his directives, it is the Sergeant's responsibility to impose some level of discipline. (TR. Santos Depo. 7/2/12, pg. 97) He also agreed that if circumstances were to warrant it, it would be his responsibility to issue a written warning to a Correctional Officer. (TR. Santos Depo. 7/2/12, pg. 98)

On re-direct examination, Santos testified that conducting rounds in the facility is a routine matter and that facility policy dictates how often rounds are to be performed. (TR. Santos Depo. 7/2/12, pgs. 113-114) Santos also agreed that his assignments of Officers to G-pod are based upon his prior familiarity and knowledge of the Officer. Santos also acknowledged that when he fills overtime slots, he simply follows facility policy and the overtime list. (TR. Santos Depo. 7/2/12, pgs. 114-115) Santos also indicated that the type of tasks or functions that he might assign to a Correctional Officer on a daily basis would be to make sure the showers are cleaned. (TR. Santos Depo. 7/2/12, pg. 116-117) When cross-examined on the "confidential" matters discussed between the Lieutenants, Captain and Majors, Sergeant Santos indicated that these matters did not pertain to labor relations or interactions with the FOP Union. Santos also testified that when a "Code White" (medical code) is called, this is an issue of policy and training. (TR. Santos Depo. 7/2/12, pg. 118) In regards to making probationary

employees permanent, Sergeant Santos stated that he has no knowledge as to what impact or weight probationary evaluations play or what other factors might be considered in determining permanent employees. Id. As to the evaluations themselves, the grading is all done according to policies and standards. For instance, there is a policy on the Officers' appropriate appearance and Santos will evaluate on whether the employee meets the policy. Santos does not set a goal or appearance standard for the employee. The same is true for logbook evaluations; these are also governed by policies and standards. (TR. Santos Depo. 7/2/12, pg. 119) As for the "sign-offs" for the evaluations, the Sergeant is only one of many. The Shift Commander, Major, Deputy and the Warden all sign employee evaluations. (TR. Santos Depo. 7/2/12, pg. 121) The Sergeants have the same requirement as all other employees; to have forty (40) hours of in-service training per year. (TR. Santos Depo. 7/2/12, pgs. 122-123)

Sergeant Cory Cloud has been employed by the Detention Facility since 1994 and held the position of Sergeant since 2008. Sergeant Cloud testified on July 13, 2012. (TR. Cloud Depo. 7/13/12, pgs. 4-5) Sergeant Cloud is employed on the 7-3 shift as the G-pod supervisor and the H-pod supervisor. (TR. Cloud Depo. 6/13/12, pg. 6) He testified that his duties include patrolling with the Correctional Officers to make sure there are no discrepancies; checking the fences, showers, law library, and the integrity of the cells; to make sure there is no security breaches. (TR. Cloud Depo. 6/13/12, pg. 9) He also described the use of housing checklists to make sure that things are in order. Sergeant Cloud testified that the detainees in G-pod are locked down for twenty-three (23) hours per day and the lock-down period for detainees in H-pod varies. (TR. Cloud Depo. 6/13/12, pg. 10)

On direct examination, Sergeant Cloud testified that he had no involvement with the handling of any grievances that get filed by the FOP on behalf of the Correctional Officers. Nor has he participated in any contract negotiations or sat in on any labor management meetings. (TR. Cloud Depo. 6/13/12, pg. 11) Although Sergeant Cloud has sat in on interview panels for hiring, he stated that it wasn't often, perhaps less than five (5) times. When he sat on these panels, he did so at the request of a higher ranking Officer. (TR. Cloud Depo. 6/13/12, pgs. 12-13) The committee would generally consist of approximately four (4) people, including someone from Human Resources; and the panel would utilize a pre-printed list of questions, with a rating scale. (TR. Cloud Depo. 6/13/12, pg. 14) Upon conclusion of the interview, the panel will discuss the candidates, rate them, and vote on them. Sergeant Cloud has also participated with a group on

second interviews for hire. (TR. Cloud Depo. 6/13/12, pg. 18) Sergeant Cloud can make recommendations for reassignment of posts for Officers, but a higher ranking Officer will make the determination. (TR. Cloud Depo. 6/13/12, pg. 27) For instance, even when he determined that an Officer had violated state law in regards to seatbelt use (by failing to use utilize the seatbelt) he had to provide a report to a superior Officer and recommend remedial training. (TR. Cloud Depo. 6/13/12, pgs. 29-30) Thereafter, he was involved in drafting a seatbelt policy to be consistent with state law.

When it comes to selection for Correctional Officers for the G-pods, Sergeant Cloud prepares a list of recommendations for his supervisor and then reviews the same with him to collaborate on selections. (TR. Cloud Depo. 6/13/12, pg. 40) Sergeant Cloud has not evaluated probationary Officers, but has evaluated permanent Officers, by completing an evaluation form provided by Human Resources, which then gets forwarded up the chain of command for approval. (TR. Cloud Depo. 6/13/12, pgs. 43-44) As far as discipline is concerned, Sergeant Cloud has issued written warnings concerning the lack of seatbelt use by three (3) transportation Officers. (TR. Cloud Depo. 6/13/12, pg. 46) In addition, he also investigated an Officer Sanchez for the inappropriate use of a firearm. Cloud completed a report and recommended that Sanchez be removed from transportation. (TR. Cloud Depo. 6/13/12, pgs. 53-54) Cloud was also involved with some type of discipline concerning an Officer Brown, some time ago, but had a very hazy recollection of the details of that event. (TR. Cloud Depo. 6/13/12, pg. 57-59)

Sergeant Cloud has never participated in a decision to layoff an employee or to recall an employee. (TR. Cloud Depo. 6/13/12, pg. 59) He has not been involved with wage increases or bonuses, but did write a letter of recommendation for an Officer Petteruti. (TR. Cloud Depo. 6/13/12, pg. 61) While Cloud accepts time-off request forms from Officers, he forwards those to his own supervisor, without signing off on the form. (TR. Cloud Depo. 6/13/12, pgs. 63-64) When it comes to sick time vacancies, he would get in touch with the Shift Commander and would apply the voluntary and mandatory overtime policies and rosters in filling vacancies. (TR. Cloud Depo. 6/13/12, pg. 66)

On cross-examination, Sergeant Cloud adequately demonstrates that he understands the term "responsibly direct." (TR. Cloud Depo. 6/13/12, pgs. 83-87) He testified that he has the authority to responsibly direct Officers with respect to the discharge of their duties and responsibilities. He also agreed that Joint Exhibit # 7 fairly and accurately described his duties. (TR. Cloud Depo. 6/13/12, pgs. 88-89) He felt that

Joint Exhibit # 9 was mostly, but not entirely accurate. (TR. Cloud Depo. 6/13/12, pg. 91) Sergeant Cloud considered Sergeants as the immediate supervisor of the Correctional Officers. (TR. Cloud Depo. 6/13/12, pg. 92) He agreed that he uses independent judgment to implement corrective measures if the policies and procedures of the facility are not being followed by the Officers. (TR. Cloud Depo. pgs. 93-94) Sergeant Cloud agreed that he uses his own independent judgment when assessing interview candidates and formulating his recommendations. (TR. Cloud Depo. 6/13/12, pgs. 105, 108-109, 134-136)

Sergeant Cloud agreed that he assesses the "climate" on the pods and takes the result into consideration when making assignments to various Officers. (TR. Cloud Depo. 6/13/12, pg. 117) Sergeant Cloud acknowledged that he has extensive experience as the transportation supervisor and that he was involved in drafting transportation policies, utilizing his own independent judgment, as well as the law and recommendations from other staff. (TR. Cloud Depo. 6/13/12, pg. 129)

In between Sergeant Cloud's first day of deposition and his second day on September 18, 2012, he was transferred from his long time assignment as transportation supervisor to the Training Division. (TR. Cloud Depo. 6/13/12, Vol. II, pg. 3) In this new position, Sergeant Cloud serves as an instructor in the academy and does not supervise anyone in this position. (TR. Cloud Depo. 6/13/12, Vol. II, pg. 4) At the time of his testimony, Sergeant Cloud was not apprised of what classes he would be instructing when the next recruit class came in. Sergeant Cloud will also be serving as the discipline coordinator for detainees and conducting hearings for them. (TR. Cloud Depo. 6/13/12, Vol. II, pgs. 7-8)

#### **FINDINGS OF FACT**

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Petitioning Union is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with Employers in grievances or other mutual aid or protection and as such is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) The Central Falls Detention Facility Corporation is a public corporation created by the Rhode Island General Assembly, pursuant to Public Law 1991, Chapter 421, codified as § 45-54-1, et. seq., of the General Laws of Rhode Island.

- 4) The Corporation is operated and managed by a Board of Directors, which consists of five (5) members appointed by the Mayor of the City of Central Falls and/or the State-appointed receiver pursuant to Rhode Island General Laws § 45-54-4 and § 45-9-7.
- 5) The powers of the Board of Directors of the Corporation are set forth in Rhode Island General Laws § 45-54-6.
- 6) The function of the Corporation is to provide detention services for both Federal and State detained prisoners on behalf of various Federal and State authorities.
- 7) From its inception in approximately 1991 until July 30, 2007, the Corporation had contracted with Cornell Corrections of Rhode Island, Inc. ("Cornell"), a private corporation, to operate the Detention Facility on a day-to-day basis.
- 8) During the entire period of time from the inception of the Corporation to July 30, 2007, two (2) different labor Unions sought and received authorization and certification from the National Labor Relations Board ("N.L.R.B.") to represent three (3) separate bargaining units of employees of the Corporation working at the Detention Facility.
- 9) The first bargaining unit of employees was certified by the N.L.R.B. in September 1997 was a bargaining unit composed of Correctional Officers. Those Correctional Officers were represented by a labor organization known as the Rhode Island Private Correctional Officers ("RIPCO"). This unit excluded the supervisory positions of Major, Captain, Lieutenant, Sergeant, and Investigator.
- 10) During the time of private operation of the Detention Facility by Cornell, RIPCO negotiated three (3) successive Collective Bargaining Agreements, the last of which expired on April 1, 2007.
- 11) In August 1999, the N.L.R.B. certified Teamsters, Local 251 ("Teamsters") as the exclusive bargaining representative of all full-time and regular part-time Counselors, Administrative Clerks, Accounts Payable Clerks, Records Assistant, Clerk/Typist, Human Resources Assistant, and Janitor. This bargaining unit was known as the Administrative Bargaining Unit.
- 12) Teamsters, Local 251, negotiated three (3) successive Collective Bargaining Agreements for the above-described Administrative Bargaining Unit.
- 13) In January 2002, Teamsters, Local 251, organized another unit of Corporation employees at the Detention Facility. This unit, known as the Medical Bargaining Unit,

included all full-time and regular part-time Registered Nurses, Licensed Practical Nurses, and Medical Records Clerks who are employed by the Corporation.

14) The Collective Bargaining Agreements for the so-called Administrative Bargaining Unit and Medical Bargaining Unit expired on November 23, 2008 and on April 30, 2009 respectively, and none of the employees in the so-called Administrative Bargaining Unit or Medical Bargaining Unit were or are currently represented for purposes of collective bargaining following the expiration of those two (2) Collective Bargaining Agreements between the Corporation and Teamsters, Local 251.<sup>4</sup>

15) On August 1, 2007, the Corporation ended its contractual relationship with Cornell for the private operation of the Detention Facility, at which point in time the Corporation assumed day-to-day control of the Detention Facility with respect to its operation and affairs.

16) In September 2007, Teamsters filed a representation petition with this honorable Board, docketed as Case No. EE-3700, by which it sought to represent all employees in the three (3) bargaining units referenced above in one single Corporation-wide bargaining unit, that is to say, the Teamsters, Local 251 sought to represent in a single bargaining unit, the Correctional Officers, the employees in the so called Administrative Bargaining Unit and the employees in the Medical Bargaining Unit.

17) As a result of the Teamsters, Local 251 petition, this Board directed an election in Case No. EE-3700, but the election was only for the employees who were in the classification of Correctional Officers, because this Board found that the Collective Bargaining Agreements between the Corporation and the Teamsters with respect to the bargaining unit of administrative employees and the bargaining unit of medical employees had not yet expired. Following the direction of election by this Board and the conducting of an election by this Board, the Correctional Officers voted to reject representation by the Teamsters, Local 251.

18) In 2009, the Fraternal Order of Police (FOP) Union, Lodge 50, filed a petition seeking to represent Correctional Officers. That petition was docketed by this Board as Case No EE-3714. That petition was initially filed seeking to represent a bargaining unit composed of Correctional Officers, as well as security staff at the Detention Facility holding the rank and job classifications of Major, Captain, Lieutenant, Sergeant, and Investigator. Subsequent to that petition being filed, the Union modified the petition to

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<sup>4</sup> In EE-3730, employees of the medical unit recently voted to be represented by Council 94.



exclude from the proposed bargaining unit, the classifications of Major, Captain, Lieutenant, Sergeant, and Investigator.

19) On June 15, 2009, following an election, the Union was certified as the exclusive collective bargaining representative of Correctional Officers. That certification specifically excluded the classifications of Major, Captain, Lieutenant, Sergeant, and Investigator.

20) Since the inception of the Corporation and the Detention Facility, the classifications of Captain, Lieutenant, Sergeant, and Investigator have not been certified or represented for purposes of collective bargaining.

21) In September 2009, the Union filed the petition, which is the subject matter of these proceedings, docketed as case number EE-3717. In this petition, the Union seeks to represent five (5) positions: Major, Captain, Lieutenant, Sergeant, and Investigator.

22) Subsequent to the filing of petition EE-3717, the Union amended its original petition by seeking to represent only four positions: Captain, Lieutenant, Sergeant, and Investigator. (TR. 6/7/12, pgs. 3-11)

23) There is evidence in the record to support a finding that both Captain Samos and Captain Richard have used their independent judgment to make decisions concerning the assignment of work and transfers of employees from one post to another.

24) The evidence in the record supports a finding that the Captains have the authority to effectively recommend promotions. Captain Samos has served on promotional boards and has effectively recommended promotions for Sergeant Brown and for Sergeant San Souci. Captain Richard annually evaluates all those under his command and evaluations are used in promotions.

25) The evidence in the record supports a finding that the Captains have the authority to effectively recommend discipline. Captain Richard recommended that Officer O'Connor be discharged and this recommendation was followed.

26) Captain Samos has recommended discipline which has been implemented.

27) The evidence in the record supports a finding that the Captains both have the authority to effectively reward employees by writing letters of recommendation/commendation, which are later used in annual reviews and the consideration of promotions.

28) The evidence in the record supports a finding that the Captains have the authority to effectively recommend changes to management policies.

29) The evidence in the record supports a finding that Lieutenants often serve in the based capacity of Shift Commander and perform the supervisory duties of a Captain.

30) The evidence in the record supports a finding that the Lieutenants have the authority to issue discipline, if and when necessary.

31) The evidence in the record supports a finding that Lieutenants use their independent judgment, in the interest of their Employer to evaluate subordinate Officers.

In addition to the foregoing enumerated facts, we also incorporate the summary of facts as set forth above.

#### **CONCLUSIONS OF LAW**

1) The position of Investigator is managerial and supervisory and is, therefore, precluded from engaging in collective bargaining.

2) The position of Captain is supervisory and is, therefore, precluded from engaging in collective bargaining.

3) The position of Lieutenant is supervisory and is, therefore, precluded from engaging in collective bargaining.

4) The position of Sergeant is not supervisory, managerial, or confidential, and is, therefore, permitted to engage in collective bargaining.

#### **DIRECTION OF ELECTION**

By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby:

**DIRECTED** that an election by secret ballot shall be conducted within sixty (60) days hereafter, under the supervision of the Board or its Agents, at a time, place and during hours to be fixed by the Board, among the Sergeants employed by the Central Falls Detention Facility who were employed on September 9, 2009 to determine whether they wish to be represented, for the purposes of collective bargaining, as provided for in the Act, by Fraternal Order of Police (FOP), Lodge 50, or by no labor organization.

#### **NOTE: Amended June 23, 2014**

**The Decision and Order has been amended to reflect that the "Notice of Right to Appeal Agency Decision, pursuant to R.I.G.L. 42-35-12" has been removed from said Decision and Order; said Notice is not applicable at this instant, as a Certificate of Representatives has not issued.**

RHODE ISLAND STATE LABOR RELATIONS BOARD



WALTER J. LANNI, CHAIRMAN



FRANK J. MONTANARO, MEMBER



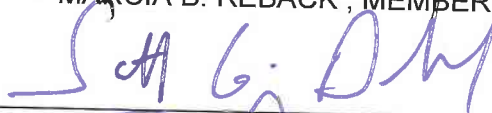
GERALD S. GOLDSTEIN, MEMBER



ELIZABETH S. DOLAN, MEMBER



MARCIA B. REBACK, MEMBER



SCOTT G. DUHAMEL, MEMBER



BRUCE A. WOLPERT, MEMBER

**NOTE:** On July 31, 2013, the Board Members voted as followed:

Elizabeth S. Dolan was absent and did not participate in the preliminary vote;

**Sergeants:** Walter J. Lanni, Frank J. Montanaro, Marcia B. Reback, Scott G. Duhamel, and Bruce A. Wolpert voted in favor of the Motion; Gerald S. Goldstein opposed the Motion.

**Lieutenants:** Frank J. Montanaro and Scott G. Duhamel voted in favor of the Motion; Walter J. Lanni, Gerald S. Goldstein, Marcia B. Reback, and Bruce A. Wolpert opposed the Motion.

**Captains:** All Board Members present voted in favor of the Motion.

**Investigators:** All Board Members present voted in favor of the Motion.

Entered as an Order of the  
Rhode Island State Labor Relations Board

Dated: June 18, 2014

By:   
Robyn H. Golden, Administrator