

Torres Rojas, Genara

FOI#13315

From: mdoulis@cbcnny.org
Sent: Wednesday, July 11, 2012 11:32 AM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Maria
Last Name: Doulis
Company: Citizens Budget Commission
Mailing Address 1: Two Penn Plaza
Mailing Address 2: Fifth Floor
City: New York
State: NY
Zip Code: 10121
Email Address: mdoulis@cbcnny.org
Phone: 212.279.2605
Required copies of the records: Yes

List of specific record(s):

Please provide the 1976 Labor Relations Instruction and any updates to the document made subsequently. In addition, please provide any additional documents that govern collective bargaining and arbitration proceedings for port authority police officers. Information can be provided via email or mail.

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

July 20, 2012

Ms. Maria Doulis
Citizens Budget Commission
Two Penn Plaza, 5th Floor
New York, NY 10121

Re: Freedom of Information Reference No. 13315

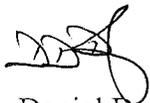
Dear Ms. Doulis:

This is a response to your July 11, /2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") copies of records related to the 1976 Labor Relations instructions and any updates that govern collective bargaining and arbitration proceedings for PA police officers.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/13315-O.pdf>. Paper copies of the available records are available upon request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

10/15/76

Revised Port Authority Labor Relations Instruction

It was reported that the Board, at its meeting on October 14, 1971 for the first time adopted by resolution a formal labor relations instruction setting forth the policies for the conduct of employee relations at the Port Authority. Experience under this Instruction indicated to both staff and employee organizations that a number of changes were desirable and more than two years ago staff undertook the preparation of a substantially revised labor policy. A number of drafts of a proposed new revised Instruction were prepared which were submitted to the employee organizations for their review and their oral and written comments. Comments and recommendations were also solicited from public sector labor officials in the two States and in the Federal sector. During the course of preparing these revisions in 1974 Governors Wilson and Byrne appointed Dr. Robert D. Helsby, Chairman of the New York State Public Employment Relations Board and Lewis B. Kaden, Counsel to Governor Byrne, as a labor relations analysis committee to study Port Authority and Waterfront Commission labor relations and to make appropriate recommendations. The committee initially recommended that sound labor relations policies for the two bi-State agencies could most effectively be established by resolution of their respective governing bodies. Subsequently, working with the drafts prepared by the Port Authority, the committee at the request of Governors Byrne and Wilson prepared a tentative labor relations instruction which was the subject of a public hearing on April 9, 1975 attended by representatives of the two agencies and their employee organizations. Following the hearing, the committee prepared a further revised Labor Relations Instruction which together with proposed legislation was transmitted to the Port Authority and the Waterfront Commission by Governors Carey and Byrne under date of October 9, 1975.

Subsequently, meetings were held among representatives of the two States, the Port Authority and the unions in an effort to resolve certain legal and policy problems raised by the proposed Instruction and the legislation. Over the course of the past several months, certain additional changes were incorporated into the proposed Instruction which is now before the Board for adoption. The Instruction contains provisions:

Establishing a three-member Employment Relations Panel to supervise the conduct of Port Authority labor relations, with responsibility for identifying managerial, confidential and supervisory employees, assisting in resolving negotiating impasses, processing improper labor practice charges and processing petitions for certification or de-certification of employee

organizations as negotiating representatives of Authority employees.

Providing for the Chairman of the Panel to be appointed by the Commissioners of the Port Authority subject to the joint written recommendation of the Chairman of the New York Public Employment Relations Board (PERB) and the New Jersey Public Employment Relations Commission (PERC), with each of the other two members to be appointed subject to the written recommendation of the Chairman of PERB or of PERC, respectively. No person appointed by the Commissioners could serve on the Panel without such recommendation.

Providing for the members of the Panel to serve three-year overlapping terms and to be compensated at the rate of \$150 per diem in addition to expenses actually incurred by them in the performance of their duties.

Confirming the right of Port Authority employees freely to join or refrain from joining employee organizations of their own choosing.

Setting forth definitions of managerial, confidential and supervisory personnel and a procedure for their identification.

Establishing criteria for the determination of appropriate negotiating units.

Establishing criteria for dues check-off for employee organizations.

Requiring the Port Authority to negotiate agreements concerning terms and conditions of employment with recognized employee organizations, such agreements to be subject to the approval of the Commissioners of the Authority.

Establishing impasse procedures involving mediation and non-binding fact-finding by neutral parties.

Providing for termination or suspension of dues check-off for employee organizations found by the Panel to have engaged in, supported or condoned work stoppages or slowdowns or interference with the operation of any Port Authority facility.

Establishing procedures for processing improper practice charges by the Panel.

Establishing representation procedures providing for the certification or de-certification of employee organizations and specifying rules for the conduct of employee elections.

All orders of the Panel would be subject to judicial review and enforcement under the provisions of a proposed statute discussed with the representatives of the two States and the unions and which would be recommended to the Legislatures for enactment upon the adoption of the

proposed Instruction by the Port Authority Board of Commissioners. The Instruction would remain in effect until further amended or rescinded by the Port Authority Board of Commissioners or until any bi-State statutes were enacted directly or indirectly affecting the conduct of Port Authority labor relations, other than the legislation referred to above.

Whereupon, the following resolution was unanimously adopted:

RESOLVED, that the resolution of the Board of Commissioners of The Port Authority of New York and New Jersey adopted at its meeting on October 14, 1971 (appearing at page 379 of the Official Minutes of that date) and the Labor Relations Instruction set out in full at pages 380 et seq. of the Official Minutes of that date are hereby rescinded and cancelled; and be it further

RESOLVED, that the Board of Commissioners of The Port Authority of New York and New Jersey hereby adopts a new Labor Relations Instruction, which Instruction is now before this meeting and which shall be set out in full in the Minutes of this meeting; and be it further

RESOLVED, that this resolution shall be known as the "Port Authority Labor Relations Resolution", and the Instruction adopted hereby shall be known as the "Port Authority Labor Relations Instruction"; and be it further

RESOLVED, that this resolution and the Labor Relations Instruction set forth in the Minutes of this meeting shall remain in effect until further amended or rescinded by the Authority or until the effective date of any legislation of the States of New York and New Jersey affecting directly or indirectly the conduct of labor relations at the Port Authority, including the responsibilities of the Panel created by said Instruction or the judicial review or enforcement of the orders of such Panel or the statutory limitations on suits against the Port Authority, except that this resolution and said Labor Relations Instruction shall remain in effect upon the enactment by the State of New York of a statute, and the enactment by the State of New Jersey of legislation having an identical effect with the provisions of such statute, consisting of two sections as follows:

"Section 1. Orders of the employment relations panel established by resolution of The Port Authority of New York and New Jersey adopted September 29, 1976 made pursuant to the provisions of such resolution shall be (i) enforceable either in a special proceeding upon petition of such panel by the Supreme Court in the State of New York or upon application by the panel for an appropriate enforcement order by the Appellate Division of the Superior Court in the State of New Jersey, and (ii) reviewable either under Article 78 of the Civil Practice Law and Rules in the State of New York or by action in lieu of prerogative writ in the State of New Jersey, upon petition filed by an aggrieved party, including The Port Authority of New York and New Jersey acting in its capacity as

employer, within thirty days after service by registered or certified mail of a copy of such order upon such party. In any such proceeding to enforce or review an order of such panel, the court shall, notwithstanding sections five and nine of chapter three hundred one of the Laws of New York, nineteen hundred fifty, and chapter two hundred four of the Laws of New Jersey, nineteen hundred fifty-one, have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of such panel.

Section 2. This act shall take effect upon the enactment into law by the State of New Jersey of legislation having an identical effect with the provisions of this act; and if the State of New Jersey shall have already enacted such legislation, then this act shall take effect immediately."

(Board - 12/8/83)

Amended Port Authority Labor Relations Instruction and Memorandum of Agreement with the Maintenance Division of the Building and Construction Trades Council of Greater New York

It was recalled that the Board, at its meeting on September 29, 1976, adopted a revised Labor Relations Instruction setting forth the policies for the conduct of employee relations at the Port Authority. Since that time several employee organizations have indicated a desire to negotiate for a representation fee or agency shop provision concerning the employees which they represent. In recent months, negotiations have been conducted with representatives of the Maintenance Division of the Building and Construction Trades Council of Greater New York (BTU) for a successor to the Memorandum of Agreement between the Port Authority and the BTU, which expired on September 24, 1983. These negotiations have culminated in a proposed 37½-month agreement, effective September 25, 1983, which has been ratified by the BTU membership.

Among the items which the BTU sought was a representative fee provision. In view of productivity improvements, including the use of contract services, which were agreed to, a provision was agreed to, subject to adoption of an amendment to the Labor Relations Instruction, which, effective March 1, 1984, would require all employees in the covered classes who are not members of the BTU to pay a representation fee which may amount to no more than 85% of the BTU's membership dues. Although, under the laws of the States of New York and New Jersey, other public employers are authorized to agree to a system of representation fee deductions, the Port Authority Labor Relations Instruction does not presently permit such a system for employees as defined therein. It is therefore recommended that the Instruction be amended to authorize the negotiation of and agreement to a representation fee system or systems with employee organizations. The Instruction, as amended, is attached hereto. The amendments to the Instruction would be effective immediately.

In addition to the representation fee provision, which is consistent with the proposed amendment to the Instruction, the proposed Memorandum of Agreement with the BTU would include the following changes:

1. effective September 25, 1983, an average salary increase costing 6.7% annually; effective October 7, 1984, an average salary increase costing 6.7% annually; effective October 20, 1985, an average salary increase costing 6.7% annually;
2. effective September 25, 1983, the freezing of Salary Step 2 and Salary Step 3 of all ranges at the rate in effect since September 26, 1982 for the duration of the Agreement for new employees and employees not yet in those steps;
3. changes in dental benefit coverage, weekday shift differential payments, major medical benefit limits, group life insurance continuation plan coverage, compensatory time off limits, tuition reimbursement limits and safety shoe allowances coupled with the reduced lead pay payments, all of which are not expected to have a significant financial impact; and

(Board - 12/8/83)

4. productivity improvements as a result of the BTU's agreement to permit management greater flexibility to use contract services for work presently performed by the covered membership.

The proposed Memorandum of Agreement, the form of which is subject to approval by General Counsel, covers approximately 668 skilled and semi-skilled maintenance personnel with a current annual payroll of \$15,671,000. The estimated total annual increase is \$1,058,000 in the first year and a maximum of \$2,980,500 over the full term of the Agreement.

It was therefore recommended that the Board:

1. adopt amendments to the Port Authority Labor Relations Instruction in connection with representation fee deductions; and
2. authorize the Executive Director to execute a proposed Memorandum of Agreement pursuant to and subject to the Labor Relations Instruction, as amended, with the Maintenance Division of the Building and Construction Trades Council of Greater New York relating to wage increases, improvements in benefits and other terms and conditions of employment for the period commencing September 25, 1983 and ending November 1, 1986.

Whereupon, the following resolution was unanimously adopted:

RESOLVED, that the Board of Commissioners of the Port Authority hereby adopts certain amendments to the Port Authority Labor Relations Instruction, effective immediately, which Instruction, as amended, is now before this meeting and a copy of which shall be filed with and made a part of the Minutes of this meeting; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized on behalf of the Port Authority to execute a Memorandum of Agreement pursuant to and subject to the Labor Relations Instruction, as amended, with the Maintenance Division of the Building and Construction Trades Council of Greater New York relating to wage increases, improvements in benefits and other terms and conditions of employment for the period commencing September 25, 1983 and ending November 1, 1986; and it is further

RESOLVED, that the form of such Memorandum of Agreement be subject to the approval of General Counsel or his authorized representative.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
LABOR RELATIONS INSTRUCTION

I. DEFINITIONS

- A. The term "Authority" shall mean The Port Authority of New York and New Jersey.
- B. The term "Chairman" shall mean the Chairman of the Authority Employment Relations Panel.
- C. The term "employee" shall mean an employee of the Authority (1) whose position has not been designated as managerial or confidential or (2) whose employment is not subject to the provisions of the Railway Labor Act, or (3) who is not a supervisor, provided that no member of the Port Authority Police Force shall be excluded from the definition of "employee" solely because he is a supervisor.
- D. The term "employee organization" shall mean an organization having as a purpose the representation of employees of the Authority concerning terms and conditions of employment.
- E. The term "Panel" shall mean the Authority Employment Relations Panel created by this Instruction.
- F. The term "managerial" shall mean personnel who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices.
- G. The term "confidential" shall mean personnel whose functional responsibilities or knowledge in connection with issues involved in the collective negotiation process would make their membership in any appropriate negotiating unit incompatible with their official duties.
- H. The term "supervisors" shall mean personnel having the power to hire, discharge, evaluate, discipline, or to effectively recommend the same.
- I. The term "recognized" shall mean an employee organization designated as the negotiating representative of employees in an appropriate unit by the Authority.

J. The term "certified" shall mean an employee organization designated as the negotiating representative of employees in an appropriate unit by the Panel.

K. The term "working days" shall mean calendar days exclusive of Saturdays, Sundays and public holidays.

II. EMPLOYEE RIGHTS

A. Employees of the Authority shall, in accordance with the provisions of this Instruction, have the right, free from coercion, interference or restraint, to form, join or participate in, or to refrain from forming, joining or participating in, any employee organization of their own choosing, except as provided in Sections VII and VIII of this Instruction.

B. Employees of the Authority shall, in accordance with the provisions of this Instruction, have the right to be represented by employee organizations to negotiate collectively with the Authority in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

III. EMPLOYMENT RELATIONS PANEL

A. A Panel is hereby created, to be known as the Port Authority Employment Relations Panel, which shall consist of three members appointed by the Authority as hereinafter provided. One such member (hereinafter called the New Jersey member) and each of his successors shall be appointed subject to the written recommendation, after consultation with the employee organizations, of the Chairman of the New Jersey Public Employment Relations Commission; another such member (hereinafter called the New York member) and each of his successors shall be appointed subject to the written recommendation, after consultation with the employee organizations, of the Chairman of the New York Public Employment Relations Board; and the third such member and each of his successors, who shall be Chairman of the Panel, shall be appointed subject to the joint written recommendation, after consultation with the employee organizations, of the Chairmen of the New Jersey Public Employment Relations Commission and of the New York

(Board - 12/8/83)

Public Employment Relations Board. Each member of the Panel shall be appointed for a term of three years, except that of the members first appointed, the New Jersey member shall be appointed for a term to expire on December 31, 1977 the New York member shall be appointed for a term to expire on December 31, 1978, and the Chairman shall be appointed for a term to expire on December 31, 1979. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed. A member whose term has expired shall continue to serve on the Panel until his successor is appointed; but no period during which any such member shall hold over shall be deemed to be an extension of his term for the purpose of computing the date on which his successor's term expires. No person shall serve on the panel who has not been recommended as provided in this Paragraph. No member of the Panel shall be subject to removal or dismissal except upon charges and after a hearing before a hearing officer appointed jointly by the Chairman of the New York Public Employment Relations Board and the New Jersey Public Employment Relations Commission.

B. The members of the Panel shall be compensated by the Authority at the rate of \$150 for each day spent in attendance at meetings or consultations or in the preparation of reports or determinations, and shall be reimbursed for expenses actually incurred by them in the performance of their duties.

C. The Panel may appoint such persons, including any hearing officer, mediator, factfinder or attorney as it may from time to time deem necessary for the performance of its functions, prescribe their duties, and fix their responsibilities, and provide for reimbursement of their expenses within amounts made available therefor, but no such person may be retained at a rate of compensation in excess of \$150 per diem without the approval in writing of the Authority. The services of the New Jersey Public Employment Relations Commission and the New York Public Employment Relations Board should be utilized whenever feasible.

D. In addition to the authority provided in other sections of this Instruction, the Panel may adopt rules of procedure consistent with this Instruction which are necessary to carry out its functions efficiently. In all matters relating to this Instruction, including determinations as to mandatory and non-mandatory subjects of negotiation, Panel members and other persons appointed by the Panel shall be guided but not bound by administrative and judicial interpretations of the public sector labor law of the States of New York and New Jersey. Notwithstanding the foregoing, the mission and management responsibilities of the Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations.

E. The Panel shall submit a report to the Governor of New Jersey and the Governor of New York on the 15th day of December each year beginning in 1977. Such annual report shall be submitted to the Authority and to recognized or certified employee organizations by the preceding November 15th and any reactions and comments received from the Authority and recognized or certified employee organizations by December 5th shall be appended to the Panel's report to the Governors.

IV. MANAGERIAL AND CONFIDENTIAL AND SUPERVISORY PERSONNEL

Personnel holding managerial and confidential positions shall not be members of any employee organization, and such personnel and non-police supervisory personnel shall not be included in any negotiating unit and shall not be covered by agreements with employee organizations.

Employees shall not have the right to be represented for any purpose under this Instruction by an employee organization or representative thereof providing representation for persons they supervise or by whom they are supervised. Furthermore, employees who are members of the Investigative Unit of the Police Force of the Authority shall not have the right to be represented for any purpose under this Instruction by an employee organization or representative thereof providing representation for any other employees of the Authority.

**V. PROCEEDINGS WITH RESPECT TO DESIGNATION OF MANAGERIAL AND
CONFIDENTIAL AND SUPERVISORY PERSONNEL**

A. Managerial and confidential and supervisory positions shall be initially designated on a list prepared by the Authority within forty-five days from the effective date of this Instruction. Thereafter, supplementary lists of such designations shall be prepared from time to time by the Authority. Any such list shall be posted on bulletin boards throughout the Authority's facilities for at least fifteen working days and filed with the Secretary of the Authority.

B. A notice of objection from any designation of managerial and confidential and supervisory positions may be filed with the Panel by any affected member of the Authority staff, or by an employee organization that claims to represent such affected staff. Any such notice of objection shall be filed in writing on a form prescribed by the Panel, and shall fully set forth the nature of the objection and any recommendation of the part filing the notice. A copy of any such notice shall simultaneously be served on the Authority, which shall be a party to the proceeding. Upon receipt of any such notice, the Chairman shall schedule an informal conference of the parties. If the matter raised in a notice of objection are not resolved at such conference, the Chairman shall appoint a hearing officer, who may or may not be any one of the three Panel members, to conduct a hearing.

C. A hearing conducted pursuant to this Section shall be open to all parties having a direct interest in the matter before the hearing officer. It shall be the duty of the hearing officer to inquire fully into all matters in issue and the hearing officer shall obtain a full and complete record of the proceedings. A designated recorder shall make the only official transcript of such proceedings. A copy of the official transcript may be obtained by each party upon payment of the cost of preparation thereof.

D. A party shall have the right to appear at such hearing in person, by counsel or by other representatives, to call and examine witnesses, and to introduce into the record relevant documentary or other evidence. The technical rules of evidence shall not apply. Stipulations of fact may be introduced into evidence with respect to any issue.

(Board - 12/8/83)

After completion of the hearing, the hearing officer shall submit his report and recommendations together with the record of the proceedings, to the Panel. The Panel shall cause the report and recommendations of the hearing officer, if any, to be promptly served on all parties to the proceeding. Written comments on the report and recommendations of the hearing officer, if any, may be submitted to the Panel by any party within ten days after receipt of the report and recommendations of the hearing officer, provided that the Panel may extend the time during which comments may be submitted because of extraordinary circumstances.

E. Upon receipt of the comments of the parties, if any, the Panel shall issue its decision, either upon the record of the proceedings and the comments of the parties, or, if it so determines, upon such record and comments and after oral argument or further hearings before the Panel.

F. Any material submitted to the Panel pursuant to this Section shall be in the form of an original and four copies.

VI. NEGOTIATING UNITS

A negotiating unit shall consist of classes of employees of the Authority which comprise an appropriate group for the purpose of collective negotiations with the Authority. Determinations as to the appropriate composition of negotiating units in representation proceedings instituted pursuant to Section XII of this Instruction shall, if the parties to the proceeding do not agree on the composition of a unit, be made by the Panel. Any such determination by the Panel shall be made with due regard for the community of interest among the employees concerned, the promotion of effective negotiations and efficiency of Authority operations, the avoidance of undue unit fragmentation and the joint responsibilities of the Authority and the employees to serve the public.

VII. DUES CHECKOFF AND REPRESENTATION FEE

A. Except as provided otherwise in this Section, (i) an employee may request the Authority to make payroll deductions for membership dues payable to a duly recognized or certified employee organization and (ii) no employee shall be required to pay money to any employee organization except pursuant to a voluntarily executed authorization for the payment of membership dues through payroll deductions. Nothing in this Instruction shall be deemed to require an employee to become a member of any employee organization.

B. Notwithstanding any other provision of this Instruction, the Authority and any duly recognized or certified employee organization will, where requested by such employee organization, negotiate in connection with any contract or agreement entered into pursuant to this Instruction concerning the subject of requiring the payment (i) by all persons holding positions within the class or group of classes of employees in the negotiating unit represented by such employee organization who are members of such employee organization, of membership dues payable to such employee organization; and (ii) by all such persons who are not members of such employee organization, of a representation fee in lieu of membership dues.

If and as so agreed to and made a part of such contract or agreement in accordance with the requirements of this Instruction, the Authority will deduct such membership dues or such representation fee, as appropriate, from the salary or wage of each such employee and transmit the sum so deducted to the employee organization.

Any such representation fee may not exceed an amount equivalent to 85% of the amount of regular membership dues, initiation fees and assessments charged by the employee organization to its own members, and in no event shall it include the cost of any benefits financed through the dues, fees and assessments and available to or benefitting only its members and the cost of any expenditures by the employee organization that may be in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment of such employee.

A representation fee payroll deduction system may be effectuated by the Authority only in the case of an employee organization which has established and maintains a procedure providing for the refund to an employee demanding the return of any part of the representation fee which represents the employee's *pro rata* share of expenditures by the employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment of employees in the negotiating unit or applied toward the cost of any benefits available only to members of the employee organization; provided, that such procedure (i) is filed with the Panel prior to the commencement of the deduction by the Authority of any representation fee to be transmitted to the employee organization, and (ii) is in accordance with the demand and appeal provisions of Paragraph C of this Section.

C. 1. An employee who is subject to payment of a representation fee may demand of the employee organization receiving such fee, in writing, a return of all or any part of the representation fee on the grounds that such representation fee or part thereof represents the employee's *pro rata* share of expenditures by the employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied toward the cost of benefits available only to members of the employee organization.

2. Upon receipt of a demand for return of all or any part of a representation fee by an employee subject to such fee, an employee organization shall review the amount of the representation fee and substantiate the amount charged in accordance with the procedure established by the employee organization and filed with the Panel for this purpose. The employee organization shall issue its written determination of such demand, and serve the employee with a copy thereof, within sixty (60) days of its receipt of the demand. The employee may, within thirty (30) days of his receipt of the employee organization's determination, object to such determination by filing written notice of objection with the Panel.

3. Upon receipt of any such notice, the Chairman of the Panel shall review the demand and the determination and make such investigation as is necessary to resolve the matter, including the appointment of a hearing officer to conduct a hearing.

4. A hearing conducted pursuant to this Section shall be open to all parties having a direct interest in the matter before the hearing officer, which shall not include the Authority. It shall be the duty of the hearing officer to inquire fully into all matters in issue and the hearing officer shall obtain a full and complete record of the proceedings. A designated recorder shall make the only official transcript of such proceedings. A copy of the official transcript may be obtained by each party upon payment of the cost of preparation thereof.

5. A party shall have the right to appear at such hearing in person, by counsel or by other representatives, to call and examine witnesses, and to introduce into the record relevant documentary or other evidence. The technical rules of evidence shall not apply. Stipulations of fact may be introduced into evidence with respect to any issue. After completion of the hearing, the hearing officer shall submit his report and recommendations together with the record of the proceedings, to the Panel. The Panel shall cause the report and recommendations of the hearing officer, if any, to be promptly served on all parties to the proceeding. Written comments on the report and recommendations of the hearing officer, if any, may be submitted to the Panel by any party within ten days after receipt of the report and recommendations of the hearing officer, provided that the Panel may extend the time during which comments may be submitted because of extraordinary circumstances.

6. Upon receipt of the comments of the parties, if any, the Panel shall issue its decision, either upon the record of the proceedings and the comments of the parties, or, if it so determines, upon such record and comments and after oral argument or further hearings before the Panel.

7. Any material submitted to the Panel pursuant to this Section shall be in the form of an original and four copies.

D. Except as provided otherwise in this Section, the Authority will make such membership dues or representation fee deductions and will pay the proceeds over to the applicable employee organization until, in the case of voluntarily authorized membership dues deductions, (i) the employee withdraws such request or (ii) the Authority recognizes a new representative for employees in a negotiating unit other than the representative for which such dues are being withheld; or, in the case of both membership dues and representation fee deductions, such dues and representation fee deductions are terminated or suspended pursuant to the provisions of this Instruction.

E. No more than one deduction for membership dues or representation fees for an employee organization will be honored for any employee at any one time.

VIII. AGREEMENTS WITH EMPLOYEE ORGANIZATIONS

A. The Authority and duly recognized and certified employee organizations will meet at reasonable times and negotiate in good faith agreements concerning salaries, wages, hours, and other terms and conditions of employment, the payment of membership dues and representation fee deductions and questions arising thereunder and will execute written contracts incorporating any agreements reached if requested by the other party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. All such contracts or agreements shall be subject to the approval of the Board of Commissioners of the Authority or a duly authorized Committee thereof, and to ratification by the membership of any affected employee organization as may be required by its constitution or by-laws.

B. An approved agreement covers all persons holding positions within the class or group of classes of employees which have been included in the negotiating unit to which the agreement is applicable.

C. Each such agreement shall recite that it is entered into pursuant to and subject to the provisions of the Port Authority Labor Relations Instruction.

IX. RESOLUTION OF DISPUTES IN THE COURSE OF NEGOTIATIONS

A. *The Authority and employee organizations may enter into written agreements setting forth procedures to be invoked in the event of disputes which reach an impasse during the course of collective negotiations. In the absence or upon the failure of such procedures, the Authority or the employee organization may request the Panel to render assistance as provided herein.*

B. Upon receipt of such request, the Chairman shall designate a mediator who shall attempt to resolve the differences between the parties and who shall continue to serve until agreement is reached or the Chairman is notified in writing by the designated mediator or by the parties jointly that mediation assistance is no longer warranted.

C. If mediation of the dispute between the parties is discontinued without agreement being reached, and if factfinding has not been jointly requested pursuant to Paragraph A hereof, either party may submit to the Panel a request in writing that the dispute be submitted to factfinding. A copy of such request shall simultaneously be served upon the other party. The other party shall file any objections to such request for factfinding with the Panel within three working days of the receipt of such request. The Panel shall thereupon in its discretion determine whether factfinding shall be invoked, and, if it determines the factfinding to be warranted, the Chairman shall proceed with the appointment of a factfinder as provided herein.

D. Upon the invocation of factfinding, the Chairman shall submit simultaneously to each party to the dispute an identical list of names of at least five (5) factfinders. Each party to the dispute shall have five (5) working days from the date of transmission of the list in which to examine said list, cross off any two names to which it objects, number the remaining names indicating the order of its preference and return the list to the Chairman. When any party fails to return the list within the specified time, all persons named therein shall be deemed acceptable to that party.

The Chairman shall appoint a single factfinder giving recognition to the designated orders of preference, if any. If the appointed factfinder declines or is unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the Chairman shall be authorized to appoint a factfinder not previously rejected by either party without submission of any additional list. *The roster of factfinders submitted by the Chairman shall not include the mediator appointed pursuant to this Section unless the parties mutually agree in writing requesting such mediator to serve as the factfinder.*

E. Unless all parties agree, the factfinder shall not consider demands involving other than mandatory subjects of negotiations.

F. The factfinder shall, as soon as practicable after appointment, meet with the parties or their representatives, hold hearings and take such other steps as may be deemed appropriate. If the dispute between the parties is not settled during the course of factfinding, the factfinder shall make findings of fact and recommend the terms of settlement as soon as practicable after the completion of the factfinding procedures. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately and to the Chairman. Findings and recommendations of the factfinder may be made public by the Chairman if the impasse is not resolved within five (5) working days after the receipt of the recommendations of the factfinder by the parties. If the parties are able to reach agreement on the matters in dispute during such five-day period, the findings of fact and recommendations for such settlement shall not be made public unless the parties mutually agree to do so.

G. In the event that the findings of fact and recommendations are made public and the impasse between the parties continues, the Panel shall take whatever steps it deems expedient to effect a voluntary settlement of the impasse by the parties.

H. Unless the parties agree otherwise, mediators and factfinders shall be sought from either the New Jersey Public Employment Relations Commission or the New York Public Employment Relations Board.

(Board - 12/8/83)

X. STRIKES, WORK STOPPAGES, SLOWDOWNS, OR INTERFERENCE WITH FACILITY OPERATIONS

A. Any employee organization which, acting itself or through its agents, employees, members or designees, engages in or causes, supports, encourages or condones a strike, work stoppage, work slowdown, or disruption of or interference with the operation of any Authority facility, shall be subject to termination or suspension of dues checkoff and representation fee deductions.

B. If the Authority determines that an employee organization may have violated the provisions of Paragraph A hereof, it shall institute proceedings before the Panel pursuant to this Section.

C. Proceedings against an employee organization under this Section shall be commenced by service upon it and on the Panel of a written notice, together with a copy of the charges. The employee organization shall have six (6) working days within which to serve its written answer to such charges. The Panel shall hold a hearing promptly thereafter and at such hearing the parties shall be permitted to be represented by counsel and to summon witnesses on their behalf. Compliance with the technical rules of evidence shall not be required.

D. In determining whether an employee organization has violated the provisions of Paragraph A of this Section, the Panel shall consider whether the employee organization called a strike, work stoppage, work slowdown, or disruption of or interference with the operation of any Authority facility, or tried to prevent it, and whether the employee organization made or was making good faith efforts to terminate the strike, work stoppage or work slowdown or any disruption of or interference with the operation of any Authority facility.

E. If the Panel determines that an employee organization has violated the provisions of Paragraph A hereof, it may order termination or suspension of dues checkoff and representation fee deductions, to be effective upon service of written notice of such action to the employee organization.

In fixing the duration of such termination or suspension of dues checkoff deductions, the Panel shall consider all the relevant facts and circumstances including but not limited to: (i) the extent of any willful defiance of the provisions of Paragraph A hereof; (ii) the impact of any strike, work stoppage or work slowdown on the public health, safety and welfare of the community; and (iii) the financial resources and liabilities of the employee organization; and the Panel may consider (i) the willingness of the employee organization or the Authority or the representatives thereof to submit to the mediation and factfinding procedures provided in Section IX of this Instruction, and (ii) whether if so alleged by the employee organization, the Authority or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for any strike, work stoppage or work slowdown.

F. No compensation shall be paid by the Authority to any employee with respect to any day or part thereof during which such employee participated in a strike, work stoppage, or work slowdown.

G. Nothing in this Instruction shall in any way preclude the Authority from taking disciplinary action pursuant to its rules and regulations against any employee who has engaged in or who has caused, supported, encouraged or condoned a strike, work stoppage, work slowdown, or disruption of or interference with the operation of any Authority facility; nor shall anything in this Instruction preclude the Authority from invoking any other legal, judicial or administrative remedy with respect to any employee or employee organization in connection with any strike, work stoppage, work slowdown or disruption of or interference with the operation of any Authority facility which the Authority shall, in its discretion, pursue.

XI. IMPROPER PRACTICES

A. Practices by or on Behalf of Employer

It shall be an improper practice for the Authority or its agents or designees deliberately

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(a) to interfere with, restrain or coerce employees of the Authority in the exercise of the rights granted in Paragraph A of Section II of this Instruction for the purposes of depriving them of such rights; (b) to dominate or interfere with the formation, existence or administration of any employee organization for the purpose of depriving employees of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of any employee organization; (d) to refuse to negotiate salaries, wages, hours, and other terms and conditions of employment, and payment of dues and representation fee deductions in good faith with the duly recognized representatives of its employees; or (e) to refuse to produce in any proceeding instituted under this Instruction information in its or their possession properly deemed material and relevant by the person or persons presiding at such proceeding.

B. Practices by or on Behalf of Employee Organization

It shall be an improper practice for an employee organization or its agents or designees deliberately (a) to interfere with, restrain or coerce employees of the Authority in the exercise of the rights granted in Paragraph A of Section II of this Instruction, or to cause or attempt to cause the Authority to do so, (b) to refuse to negotiate salaries, wages, hours, hours and other terms and conditions of employment, and payment of dues and representation fee deductions, in good faith with the Authority or its agents or designees, or (c) to refuse to produce in any proceeding instituted under this Instruction information in its or their possession properly deemed material and relevant by the person or persons presiding at such proceeding.

C. Charge

(1) A charge that the Authority or its agents or designees, or any employee organization or its agents or designees, has engaged in an improper practice may be filed with the Panel within three months from the commencement of the alleged improper practice by one or more Authority employees or by any employee organization acting in his or their behalf, or by the Authority. Any such charge timely filed with the Secretary of the Authority under the Labor Relations Instruction adopted by the Authority on October 14, 1971 which has not been finally determined may be filed with the Panel for determination within thirty days after the Panel first convenes.

(2) The charge shall be in writing and shall be signed and sworn to before any person authorized to administer oaths, and a copy thereof shall be served on every other party. It shall include the following: (a) the name, address and affiliation, if any, of the charging party, and the title of the any representative filing the charge; (b) the name and address of the respondent or respondents and any other party named therein; (c) a clear and concise statement of the facts constituting the alleged improper practice, including the names of the individuals involved in the alleged improper practice, the time and place of the occurrence of each particular act alleged, and the subsections of Paragraphs A and B of this Section alleged to have been violated; and (d) a statement that the charging party is available to participate in a pre-hearing conference and a formal hearing immediately.

(3) The Chairman or hearing officer designated by the Chairman may permit a charging party to amend the charge before, during or after the conclusion of the hearing upon such terms as may be deemed just and reasonable. The charge may be withdrawn by the charging party before the issuance of a final order based thereon upon approval by the Chairman. Whenever the Chairman approves the withdrawal of a charge, the case will be closed.

D. Administrative Processing by Chairman

(1) After a charge is filed, the Chairman shall review the charge to determine whether the facts as alleged may constitute an improper practice as set forth in Paragraphs A or B of this Section. If he determines that the facts as alleged do not constitute a violation within the meaning of said Paragraphs, the charge shall be dismissed by the Chairman.

(2) Not later than ten (10) working days after the Chairman renders any such decision, the charging party may file a written notice of appeal with the Panel. Such notice shall set forth the reasons for the appeal, and a copy thereof shall be served upon each respondent. Not later than five (5) working days after receipt of such notice of appeal, each respondent may submit a response there to to the panel, and to the charging Party. The Panel shall thereupon either affirm the dismissal of the charge by the Chairman or order the charge processed pursuant to the provisions of this Section.

(3) If the charge is not dismissed pursuant to subparagraphs (1) and (2) of this Paragraph, the Chairman shall appoint a hearing officer to conduct a hearing.

E. Disputes Relating to Scope of Negotiations

(1) If, upon review of the charge, the Chairman determines that it involves primarily a dispute between the parties as to the scope of negotiations under this Instruction, he shall forthwith schedule a conference for the purpose of inquiring further into the matter. Immediately subsequent to the conference, and if one or more of the parties have made a request that a dispute involving primarily a disagreement as to the scope of negotiations under the Instruction be processed expeditiously, the Chairman shall so notify the Panel and transmit the papers to the Panel. The Panel shall then inform the parties as to whether it will accord expedited treatment to the matter. If the Panel determines that the matter will be expedited, it will also notify the respondent of the due date for its answer, and the parties of the due date for submission of additional material. The Panel may also direct that oral argument be held before it, or that a hearing be held before the full Panel, one of its members, or a hearing officer. If the Panel determines that expedited treatment will not be accorded, the matter will be handled in regular course.

(2) If an expedited hearing is held, there shall be no intermediate report from a Panel member or a hearing officer who may be assigned to hold the hearing unless the Panel orders that there be one. Upon the completion of the hearing, such Panel member or hearing officer shall transmit the record, including any material submitted by the parties, to the full Panel for a determination without making any recommendations.

F. Answer

(1) Unless the charging party or the Panel shall agree to a later date, the respondent shall file an answer with the Panel within ten (10) working days after receipt of notice of the appointment of a hearing officer and a copy thereof shall be served upon all other parties. The original shall be signed and sworn to before any person authorized to administer oaths.

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(2) If the charge is believed by a respondent to be so vague and indefinite that it cannot reasonably be required to frame an answer, the respondent may, within ten (10) working days after receipt of notice of the appointment of a hearing officer, file a request with the hearing officer for an order directing the charging party to file a statement supplying specified information. The filing of such request will extend the time during which the respondent must file and serve his answer until ten (10) working days from the ruling of the hearing officer on the request, or until such later date as the hearing officer may set. Such a request must be served upon the charging party simultaneously with its filing with the hearing officer.

(3) The answer shall include a specific admission, denial or explanation of each allegation of the charge or, if the respondent is without knowledge thereof, he shall so state and such statement shall operate as a denial. Admission or denials may be made to all or part of an allegation, but shall fairly meet the circumstances of the allegation. The answer shall also include a specific detailed statement of any affirmative defense. The hearing officer may permit the respondent to amend the answer for reasonable cause at any time before or during the hearing, or at any time prior to the issuance of the hearing officer's report and recommendations.

G. Hearing

(1) The hearing officer designated by the Chairman shall schedule a hearing for the purpose of taking evidence upon the charge within a reasonable time after receipt of the answer of the respondent.

(2) At least five (5) working days prior to the scheduled date for the hearing, the hearing officer shall hold a pre-hearing conference for the purpose of clarification of issues.

(3) Any party shall have the right to appear at the scheduled hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have the power to call and examine witnesses and to introduce into the record documentary and other evidence. It shall be the duty of the hearing officer to inquire fully into all matters at issue to obtain a full and complete record. The technical rules of evidence shall not apply. Stipulations of fact may be introduced into evidence with respect to any issue.

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(4) Any party shall be entitled upon request made before the close of the hearing, to file a brief within such time as fixed by the hearing officer, who may himself direct the filing of briefs when he deems their submission warranted. A copy of such brief filed with the hearing officer shall be served upon all other parties.

(5) After completion of the hearing, the hearing officer shall issue a report and recommendations and submit the record of the proceedings including any briefs filed by the parties, to the Panel. The Panel shall cause the report and recommendations of the hearing officer to be promptly served on all parties to the proceeding. A designated recorder shall make the only official transcript of the proceedings. A copy of the official transcript may be obtained by each party upon the payment of the cost of preparation thereof.

H. Exceptions and Briefs

(1) Not later than fifteen (15) working days after service of the report and recommendations, a party may file with the Panel written exceptions thereto or to any other part of the record or proceedings, and a supporting brief may be filed with the Panel simultaneously; at the same time, copies of such exceptions and brief shall be served upon all other parties.

(2) Not later than seven (7) working days after service of exceptions, any party may file a response thereto. A copy of such response shall be served upon each party to the proceeding.

(3) A request for extension of time within which to file exceptions and briefs shall be in writing; and filed with the Panel at least two (2) working days before the expiration of the required time for filing. Copies of such request shall be served on each party to the proceeding.

(4) If a party desires to argue orally before the Panel, a written request with reasons therefor shall accompany the exceptions filed or the response thereto. The Panel may grant such a request; it may also direct oral argument on its own motion.

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I. Decision and Order of Panel

After receipt of the report and recommendations of the hearing officer and the record of proceedings, the Panel shall render its decision with respect to the charge and prepare a tentative order. If any party is found to have committed an improper practice, such order may, as appropriate, require such party to cease and desist from such improper practice, and to take such reasonable affirmative action as will effectuate the policies of this Instruction. Said decision and tentative order shall be served upon all parties to the proceeding who may submit comments with respect thereto not later than five (5) working days after receipt thereof. Upon receipt of such comments, if any, the Panel shall issue a final binding order.

J. Form of Submission

Material submitted to the Panel pursuant to this Section shall be in the form of an original and four copies.

XII. REPRESENTATION PROCEDURES

A. Retention of Recognized Status

Any employee organization which prior to the effective date of this Instruction has been granted recognition as the exclusive representative of a group of employees shall retain its recognized status until a different employee organization is granted exclusive recognition, or exclusive recognition has been withdrawn, in accordance with these Representation Procedures.

B. Recognition as Exclusive Representative Without Election

Upon receipt of a request for exclusive recognition by an employee organization, the Authority may grant recognition without an election, provided:

(a) It is satisfied that the employee representative is the freely chosen representative of a majority of the employees in an appropriate negotiating unit;

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(b) A Notice has been posted conspicuously in places where notices are normally posted affecting employees in the negotiating unit involved, for a period of at least ten (10) consecutive days, advising all persons that it intends to grant such exclusive recognition for the specified negotiating unit without an election to a named employee organization;

(c) Written notification is served upon any employee organization that has filed a petition for exclusive recognition within the year preceding the request for recognition to represent any of the employees in the negotiating unit involved. Such notification shall be made at least ten (10) days prior to the grant of recognition and shall contain the information set forth in the preceding subparagraph;

(d) Another employee organization has not, within the ten-day period notified the Panel of a claim to represent any of the employees in the negotiating unit and has not within such period filed a valid petition for exclusive recognition with the Panel.

(e) Such recognition shall be in writing.

C. Who May File Petitions for Certification or Decertification

(1) A petition to determine whether an employee organization should be certified as the exclusive representative of employees of the Authority in a negotiating unit, or should replace another employee organization as the exclusive representative of employees in a negotiating unit, may be filed with the Panel by any employee organization seeking certification, or by the Authority.

(2) A petition to determine if an employee organization should be decertified as an exclusive representative because it does not represent a majority of employees in a negotiating unit or because the negotiating unit is inappropriate may be filed with the Panel by any employee or employees or an individual acting on his or their behalf, or by the Authority.

D. Petition for Certification

(1) A petition by an employee organization for certification shall contain the following:

(a) A description of the negotiating unit for which the petitioner seeks exclusive representation.

(b) Name, address and telephone number of the recognized representative, if any, and the date of such recognition and the expiration date of any applicable agreement, if known to the petitioner.

(c) Names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner.

(d) Name and affiliation, if any, of the petitioner and its address and telephone number.

(e) A statement that the petitioner has submitted to the Panel a current roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(f) A clear and concise statement of any other relevant facts.

(g) A declaration by the person signing the petition that its contents are true and correct to the best of his knowledge and belief.

(h) The signature of the petitioner's representative, including his title and telephone number.

(i) The petition shall be accompanied by a showing of interest in the form of dues deduction authorization cards which have not been revoked, designation cards or petitions, signed and dated within the previous six months by not less than thirty percent (30%) of the employees in the negotiating unit, and an alphabetical list of names constituting such showing. Such showing of interest shall be maintained in a confidential status by the Panel.

(2) A petition by the Authority to determine whether an employee organization should be recognized as the exclusive representative of employees in a negotiating unit shall contain the information set forth in this Paragraph except for subparagraphs (e) and (i).

E. Petition for Decertification

A petition to determine if an employee organization should be decertified as the exclusive representative of employees in a negotiating unit shall contain the following:

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(1) A petition by the Authority shall contain the information set forth in Paragraph D of this Section except for subparagraphs (e) and (i), and a statement that the negotiating unit is inappropriate or that the Authority has a good faith doubt that the currently recognized employee organization represents a majority of the employees in the negotiating unit. Attached to the petition shall be a detailed explanation of the reasons supporting such good faith doubt.

(2) A petition by an employee or employees or an individual acting on his or their behalf shall contain the information set forth in Paragraph D of this Section, except for subparagraphs (e) and (i), and it shall be accompanied by a showing of interest in the form of a petition or petitions signed within the previous six months by not less than thirty percent (30%) of the employees in the negotiating unit indicating that the employees no longer desire to be represented for the purposes of collective negotiations by the currently recognized employee organization and an alphabetical list of names constituting such showing. Said petition or petitions shall be maintained in a confidential status by the Panel.

F. Showing of Interest

Where a showing of interest is required pursuant to any paragraph of these Representation Procedures, the person submitting such showing of interest shall simultaneously file with the Panel a declaration of authenticity of such showing of interest, signed and sworn to by any person authorized to administer oaths, containing the following:

(1) The name of the person executing the declaration and, if such showing of interest is submitted on behalf of an employee organization, his position with the employee organization and a statement of his authority to execute the declaration on its behalf; and

(2) A declaration that upon his personal knowledge or inquiries that he has made, the persons whose names appear upon the evidences submitted have themselves signed such evidences on the dates specified thereon.

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G. Filing and Service of Petitions

An original and four copies of a petition (including any supplementary data) for certification or for decertification shall be filed pursuant to Paragraphs D or E respectively, with the Panel, and copies thereof, excluding any showing of interest, shall be served by the petitioner on all known interested parties. A statement of such service shall be filed with the Panel.

H. Timeliness of Petitions

(1) When no employee organization is recognized or certified as the exclusive representative of employees in a negotiating unit, a petition will be considered timely filed provided (a) there has been no valid election within the preceding twelve-month period in the requested negotiating unit or any part thereof, and (b) the petition is filed (i) within thirty (30) days after a request for exclusive recognition has been refused by the Authority, or (ii) between thirty (30) and sixty (60) days after a request for exclusive recognition has been made and has not been denied by the Authority.

(2) When an employee organization is recognized or certified as the exclusive representative of employees in a negotiating unit, a petition will not be considered timely if filed *within twelve (12) months after such recognition or certification is granted, provided, however,* that if an agreement covering employees in such unit has been entered into by the Authority and an employee organization, said petition will not be considered timely unless filed between 90 and 120 days prior to the expiration of such agreement, or between 90 and 120 days prior to the expiration of three years from the effective date of such agreement, whichever is the shorter period.

(3) The extension of an agreement prior to its terminal date shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided in subparagraph 2 hereof.

(4) A petitioner who withdraws a petition shall be barred from filing another petition for the same negotiating unit for twelve (12) months.

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I. Posting of Notice of Petition

Upon the request of the Chairman, after the filing of a petition, the Authority shall post copies of a notice to employees on bulletin boards where notices are normally posted affecting the employees in the negotiating unit involved. Such notice shall remain posted for ten (10) days and shall set forth:

- (1) The name of the petitioner;
- (2) The description of the negotiating unit involved;
- (3) A statement that all interested parties are to advise the Panel in writing of their interest or position within ten (10) days from the date of posting of such notice.

J. Processing of Petition

(1) The Chairman shall determine the adequacy and timeliness of a showing of interest administratively, and a determination that any showing of interest required under these Representation Procedures is sufficient shall not be subject to collateral attack at any hearing conducted in accordance with subdivision 2 hereof.

(2) Upon the filing of any petition, the Chairman shall direct an investigation of the petition to determine the facts, including whether the showing of interest requirement has been met, whether the petition has been timely filed, whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit, and whether there is agreement among the parties as to the appropriateness of the alleged unit. If the Chairman determines after investigation that questions exist with respect to any such matters, he may order a hearing to be conducted. If he determines after investigation that the petitioner has not made the requisite showing of interest, or that the petition has not been timely filed, or that no valid question concerning the representation of employees exists in the negotiating unit, he may request the party filing such a petition to withdraw it without prejudice to refile at any future time or he may, in the absence of such withdrawal, dismiss the petition. Upon any such dismissal, a request for review by the Panel with or without hearing may be filed by the affected petitioner within ten (10) days from the date of such dismissal. If review without a hearing is requested, the Panel shall

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render its decision based on the material submitted to the Chairman, the information compiled in the course of his investigation, and such additional material as shall be submitted to the Panel by the petitioner at the time review is requested.

K. Hearing

(1) A hearing pursuant to Paragraph J hereof shall be conducted by a hearing officer appointed by the Panel not less than ten (10) nor more than twenty (20) days from the date of his appointment. Notice of such hearing shall be served by the hearing officer upon the Authority and any employee organization which represents, or has requested or filed a petition for certification, of any employees in the allegedly appropriate negotiating unit.

(2) The hearing shall be open to all parties having a direct interest in the matter before the hearing officer. It shall be the duty of the hearing officer to inquire fully into all matters in issue and the hearing officer shall obtain a full and complete record of the proceedings. A designated recorder shall make the only official transcript of such proceedings. A copy of the official transcript may be obtained by each party upon payment of the cost of preparation thereof.

(3) The hearing is to be considered investigatory and not adversary. Its purpose is to develop a full and complete factual record and the technical rules of evidence do not apply.

(4) A party shall have the right to appear at any hearing in person, by counsel, or by other representatives, and to introduce into the record documentary or other relevant evidence.

(5) Upon the close of the hearing, the hearing officer shall submit the record of the proceedings to the Panel, which shall include the petition, notice of the hearing, official transcript of the hearing, exhibits, and any other material properly submitted by the parties. At the request of the Panel, the hearing officer may make recommendations regarding the petitioner or other issues in the hearing. The decision of the Panel will be transmitted to the parties within twenty (20) days from receipt of the hearing record from the hearing officer.

L. Intervention

(1) Subject to the provisions of subparagraph 2 hereof, an employee organization may be permitted to intervene in any proceeding to resolve a question concerning the representation of employees provided (a) it has submitted a showing of interest in the form of dues deduction authorization cards which have not been revoked, designation cards or petitions, signed and dated within the previous six months by not less than thirty percent (30%) of the employees in the negotiating unit involved in the petition, and an alphabetical list of names constituting such showing, or (b) it currently is recognized as the exclusive representative of employees in the negotiating unit.

(2) No employee organization may participate to any extent in any representation proceeding unless it has notified the Panel of its desire to intervene within ten (10) days after the posting of the notice of petition as provided in Paragraph I, and the Chairman has determined that the proposed intervention has met the requirements of this section.

(3) The Authority may in its discretion by a party to any representation proceeding.

M. Conduct of Elections

(1) If it is determined that an election shall be held, appropriate notices of election shall be posted on all bulletin boards where notices are normally posted affecting the employees in the negotiating unit involved. Such notices shall set forth the details and procedures for the election, the negotiating unit involved, the date, hour and place of the election and shall contain a sample ballot.

(2) All elections shall be by secret ballot supervised by an election supervisor which shall be the Chairman or an independent balloting organization designated by the Chairman.

(3) An employee organization other than the petitioning employee organization may be placed on the ballot if it is recognized as the exclusive representative of employees in the negotiating unit or, if not so recognized, upon submission to the Chairman of a showing of interest in the form of dues deduction authorization cards which have not been revoked, designation cards or petitions, signed and dated within the previous six months by at least thirty percent (30%)

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of the employees in the negotiating unit, as long as notification is given to the Chairman at least fifteen (15) days prior to the scheduled date of the election.

(4) After an election is scheduled, the names and addresses of the eligible voters in the negotiating unit involved in the election as such information is currently reflected in the files of the Authority, shall be made available upon request to any party to the election.

(5) Whenever two or more employee organizations are included as choices in an election, or in any proceeding involving a petition for decertification, any employee organization may request the Chairman to remove its name from the ballot. The request must be received not later than five (5) days before the date of the election. Such request shall be subject to the approval of the Chairman, whose decision shall be final; provided, however, that in a proceeding involving a petition for decertification, the employee organization currently recognized may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Chairman, disclaiming any representation interest among the employees in the unit.

(6) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the election supervisor may prescribe.

(7) Any party or the election supervisor may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

(8) Upon the conclusion of the election, the election supervisor shall cause to be furnished to the parties a tally of ballots.

(9) Within five (5) working days after the tally of ballots has been furnished, any party may file with the Chairman an original and four (4) copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made.

(10) If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in numbers to affect the result of the election, and if no runoff election is to be held, the Chairman shall forthwith issue to the parties a certification of the results of the election, including notice of certification or decertification, where appropriate.

(11) If objections are filed to the conduct of the election or conduct affecting the result of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the Panel shall investigate such objections or challenges, or both.

(12) Where objections are filed, or challenges are determinative, the Panel shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating the Chairman or hearing officer to hear the matters alleged and to issue a report and recommendations. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election. Upon the conclusion of the investigation, the Panel shall render a decision as to the validity and/or the results of the election.

N. Runoff Election

(1) The Chairman shall provide for a runoff election when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast and the number of valid ballots cast totals at least thirty percent (30%) of the number of eligible voters in the negotiating unit and any objections filed have been disposed of as provided in Paragraph M hereof. Only one runoff election shall be held pursuant to this Paragraph.

(2) Employees who were eligible to vote in the original election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(3) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(4) Upon the conclusion of the runoff election, the provisions of subparagraphs 8-12 of Paragraph M shall govern insofar as applicable.

O. Certification of An Employee Organization After Election

An employee organization shall be certified as the exclusive representative of employees in a negotiating unit following an election upon petition for certification if such employee organization was designated on a majority of the valid ballots cast in the election and the valid ballots cast in the election equalled in number at least thirty percent (30%) of the number of eligible voters in the negotiating unit.

P. Decertification of An Employee Organization After Election

An employee organization shall be decertified as the exclusive representative of employees in a negotiating unit following an election held upon petition for decertification if such decertification was specified on a majority of the valid ballots cast in the election and the valid ballots cast in the election equalled in number at least thirty percent (30%) of the number of eligible voters in the negotiating unit.

XIII. JUDICIAL REVIEW

Nothing in this Instruction shall preclude any party from invoking judicial review of any decision, determination or order of the Panel in the courts of the State of New York or the State of New Jersey pursuant to applicable State law and court rules.

Whereupon, the meeting was adjourned.

Secretary