

In the Matter of MASSACHUSETTS TURNPIKE
AUTHORITY

and

UNITED STEELWORKERS OF AMERICA

Case No. CR-04-3729

- 17.1 *confidential employee*
17.8 *casual employee*
34.1 *appropriate unit*
34.2 *community of interest*
35.14 *casual and temporary employees - project employees*
35.63 *lawyers*
35.65 *other professional employees*

December 15, 2004

Allan W. Drachman, Chairman

Hugh L. Reilly, Commissioner

D.M. Moschos, Esq. *Representing Massachusetts*
Sharon Siegel, Esq. *Turnpike Authority*

Richard Peirce, Esq. *Representing United*
James Musgrave, Esq. *Steelworkers of and America*

DECISION AND DIRECTION OF ELECTION¹

Statement of the Case

On April 12, 2004, the United Steelworkers of America (Union) filed a petition with the Labor Relations Commission (Commission) pursuant to Section 5 of M.G.L. c. 150A (the Law) seeking to represent all full-time and part-time mid-management, supervisory, and administrative employees employed by the Massachusetts Turnpike Authority (Employer or MTA), excluding all temporary employees. On April 14, 2004, the Commission issued a notice of hearing to the parties.

On August 11, 2004, the Employer filed an unopposed motion to impound a document that the Employer had filed with the Commission on August 6, 2004 as part of the Commission's investigation of the Union's petition. On August 17, 2004, the Executive Secretary denied that motion.

On August 31, September 2, and September 14, 2004, Cynthia A. Spahl, Esq., a duly-designated Commission hearing officer (Hearing Officer), conducted a hearing at which both parties were given

an opportunity to be heard, to examine witnesses, and to introduce evidence. The Union requests that the Commission define the appropriate bargaining unit, if the Commission deems the petitioned-for unit to be inappropriate.

At the first day of hearing on August 31st, the Employer moved to dismiss the petition on the grounds that managerial and supervisory employees were not entitled to collective bargaining rights and, consequently, should be excluded from the petitioned-for unit.² The Union declined oral argument on the motion and requested to file a written opposition. The Hearing Officer agreed to the Union's request and took the Employer's motion to dismiss under advisement. On September 9, 2004, the Union filed an opposition to the Employer's motion to dismiss.

Also on the first day of hearing on August 31, 2004, the Employer moved to impound a document that already had been entered into evidence as Employer Exhibit #5. The Union noted that the Executive Secretary previously had denied the Employer's August 11, 2004 motion to impound a similar document. The Hearing Officer denied the Employer's August 31, 2004 motion to impound.

On September 2, 2004, the Employer filed interlocutory appeals of the Executive Secretary's August 17, 2004 ruling and the Hearing Officer's August 31, 2004 ruling. The Union did not file an opposition to these interlocutory appeals. On September 13, 2004, the Commission issued a ruling on the interlocutory appeals affirming the Hearing Officer's ruling and declining to rule on the interlocutory appeal of the Executive Secretary's ruling.

The Employer and the Union filed post-hearing briefs on October 19 and October 20, 2004, respectively. On November 5, 2004, the Union filed a motion to strike portions of the Employer's post-hearing brief. On November 15, 2004, the Employer filed an opposition to that motion and a motion to strike portions of the Union's post-hearing brief. On November 16, 2004, the Union filed an opposition to the Employer's motion to strike.³

Joint Stipulations

1. The Commission's jurisdiction is uncontested.
2. The Union is an employee organization under Section 2 of the Law.
3. The job classifications contained in Part I(A) of Attachment A are MTA classifications. The MTA contends that "supervisors" within the meaning 29 U.S.C. 151(11)⁴ and "managerial" employees under the test set forth in the U.S. Supreme Court's decision in *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974),⁵ are not "em-

1. Pursuant to 456 CMR 13.02(1), the Commission designated this case as one in which the Commission shall issue a decision in the first instance.

2. In light of the outcome reached here, we deny the Employer's motion to dismiss.

3. We deny both motions to strike.

4. This statute provides: "The term 'supervisor' means 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. 151(11).

5. Under *Bell*, employees are managers if they "formulate and effectuate management policies by expressing and making operative decisions of their employer." *NLRB v. Bell Aerospace Co.*, 416 U.S. at 288.

employees" under Chapter 760 of the Acts of 1962.⁶ The Union contends that 29 U.S.C. 151(11) and *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974), do not govern who is or is not an "employee" under Chapter 760 of the Acts of 1962. The Union contends that the meaning of "employees" under Chapter 760 of the Acts of 1962 is determined by reference to M.G.L. c. 150A, and the Commission's decisions thereunder, including *Brookline Hospital*, Case No. CR-3402 (slip op. January 28, 1974).⁷ The parties agree that the individuals in the classifications set forth on Part I(A) are "supervisors" within the meaning of 29 U.S.C. 151(11) and that some of those individuals are managerial under *Bell*. The parties further agree that the individuals in the classifications set forth on Part I(A) are "employees" within the meaning of M.G.L. c. 150A and would not be excluded from bargaining under the test set forth in *Brookline Hospital*, Case No. CR-3402 (slip op. January 28, 1974) if that test applies. The parties agree that if found to be employees under Chapter 760 of the Acts of 1962, the individuals set forth on Part I(A) share a community of interest with each other and those other individuals identified in Part I(B), Part II(A), and Part II(B).

4. The job classifications contained in Part I(B) of Attachment A are Central Artery/Tunnel (CA/T) classifications. The MTA contends that "supervisors" within the meaning 29 U.S.C. 151(11) and "managerial" employees under the test set forth in the U.S. Supreme Court's decision in *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974), are not "employees" under Chapter 760 of the Acts of 1962. The MTA further contends that the individuals in the job classifications set forth on Part I(B) are not employees under Chapter 760 of the Acts of 1962 because they are casual employees. The Union contends that 29 U.S.C. 151(11) and *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974), do not govern who is or is not an "employee" under Chapter 760 of the Acts of 1962. The Union contends that the meaning of "employees" under Chapter 760 of the Acts of 1962 is determined by reference to M.G.L. c. 150A, and the Commission's decisions thereunder, including *Brookline Hospital*, Case No. CR-3402 (slip op. January 28, 1974). The parties agree that the individuals in the positions set forth on Part I(A) (sic)⁸ are either managerial under *Bell* or are "supervisors" within the meaning of 29 U.S.C. 151(11) and that some are both. The parties agree that the individuals in the classifications set forth on Part I(B) are "employees" within the meaning of M.G.L. c. 150A; and would not be excluded under the test set forth in *Brookline Hospital*, Case No. CR-3402 (slip op. January 28, 1974) if that test applies. The parties agree that if found to be employees under Chapter 760 of the Acts of 1962, the individuals set forth on Part I(B) share a community of interest with each other and those other individuals identified in Part I(A), Part II(A), and Part II(B).

5. The job classifications contained in Part II(A) of Attachment A are professional classifications at the MTA. Such classifications should be included in a new bargaining unit.

6. The job classifications contained in Part II(B) of Attachment A are professional classifications at the CA/T. It is the MTA's position that the individuals in such classifications are not employees for the purposes of Chapter 760 of the Acts of 1962, because they are casual employees. It is the Union's position that the individuals in such classifications are employees for purposes of Chapter 760 of the Acts of 1962 and are not casual employees.

7. The job classifications contained in Part III(A) of Attachment A are MTA classifications. The MTA and the Union agree that individuals in such classifications are employees under Chapter 760 of the Acts of 1962 and should be accreted to the existing bargaining unit. If it is found to be necessary for the Union to file a petition to accrete into the existing bargaining unit any of the positions set forth in Part III(A) of Attachment A, the MTA agrees that it:

- a. will not oppose such petition, including but not limited to, objecting to an employee's accretion on any grounds;
- b. will in a prompt and timely manner inform the Commission of its support for that petition and otherwise undertake reasonable efforts in support of that petition; and
- c. will remain neutral in any election which occurs in connection with such a petition.

If it is found not to be necessary for the Union to file an accretion petition with the Commission, the MTA will take whatever reasonable steps are necessary to facilitate the recognition of those positions identified in Part III(A) of Attachment A.⁹

8. The job classifications contained in Part III(B) of Attachment A are CA/T classifications. It is the MTA's position that individuals in such classifications are not employees for purposes of Chapter 760 of the Acts of 1962, because they are casual employees. It is the Union's position that the individuals in such classifications are employees for purposes of Chapter 760 of the Acts of 1962 and are not casual employees. The MTA concedes that if individuals in such classifications were employees for purposes of Chapter 760 of the Acts of 1962, they should be accreted to the existing bargaining unit. After this legal issue is finally resolved, if the Union prevails and if it is found to be necessary for the Union to file a petition to accrete into the existing bargaining unit any of the positions set forth in Part III(B) of Attachment A, the MTA agrees that it:

- a. will not oppose such petition, including but not limited to, objecting to an employee's accretion on any grounds;

6. Section 1 of Chapter 760 of the Acts of 1962 states in pertinent part: "Notwithstanding any provision of the law to the contrary, the provisions of section four, four A, four B, five, six, six A, six B, six C, seven, and eight of chapter one hundred and fifty A of the General Laws, so far as apt, shall apply to [the MTA, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority] and their employees."

7. In determining whether an employee is managerial under the *Brookline Hospital* case, the Commission considers the following factors: "...the extent of the individual's input into policy making, especially labor relations; the exercise of supervisory authority, especially appellate authority; the ability of the individual to alter or affect, on his [or her] own initiative and judgment, the working conditions of other

employees; and the legitimate expectations of the employer of the continuing loyalty of the individual." *Brookline Hospital*, Case No. CR-3402, slip op. at pp. 16-17.

8. Because the majority of Joint Stipulation #4 discusses Part I(B) of Attachment A, we construe this reference to Part I(A) of Attachment A to be a typographical error and infer that the parties intended to refer to Part I(B) of Attachment A instead.

9. By letter dated September 30, 2004, the Union clarified that by entering into Joint Stipulation #7, it had withdrawn the positions in Part III(A) of Attachment A from its petition.

b. will in a prompt and timely manner inform the Commission of its support for that petition and otherwise undertake reasonable efforts in support of that petition; and

c. will remain neutral in any election which occurs in connection with such a petition.

After this legal issue is finally resolved, if the Union prevails and if it is found not to be necessary for the Union to file an accretion petition with the Commission, the MTA will take whatever reasonable steps are necessary to facilitate the recognition of those positions identified in Part III(B) of Attachment A.

9. This stipulation does not resolve, and leaves for the Commission, the factual and legal issues arising from the MTA's objection to the inclusion of the following positions within the proposed unit: associate general counsel and all other attorney positions.

10. The Union hereby withdraws from its petition the following positions, to which the MTA has objected on the grounds that they are confidential employees: secretary and legal assistant. The Union does not agree that the secretary and legal assistant are confidential positions.¹⁰

11. The job descriptions in Joint Exhibits 2, 3, 4 and 5 are fair and accurate representations of the incumbents' job duties.

Findings of Fact

Background

In 1952, the Massachusetts Legislature created the MTA to construct, operate, and maintain an approximately 135-mile toll road between the New York border and downtown Boston. The 123-mile roadway between New York and Route 128 was completed in 1957. The remaining 12-mile roadway between Route 128 and downtown Boston known as the Turnpike Extension was finished in 1965.

In 1958, the Legislature expanded the role of the MTA to acquire and to repair the Sumner Tunnel and to build the adjacent Callahan Tunnel. In 1995, the Legislature again expanded the MTA's role by charging it with operating and maintaining the Ted Williams Tunnel.

In 1997, the Legislature shifted responsibility for managing the Central Artery/Tunnel construction project (Project), also known as the "Big Dig", from the Massachusetts Highway Department to the MTA.¹¹ Further, the Legislature charged the MTA with operating and maintaining the Project's tunnels, bridges, and other facilities once they were completed. The Legislature also split the MTA's facilities into two cost centers: the Western Turnpike and the Metropolitan Highway System (MHS). The Western Turnpike extends west of Route 128, while the MHS includes the Turnpike Extension, the Sumner, Callahan, and Ted Williams Tunnels, and all future Project facilities.

General Finance Information

After enactment of the 1997 legislation, the MTA refinanced its existing debt and divided that debt between the two new cost centers: \$298 million for the Western Turnpike and \$1.5 million for the MHS. The MTA also borrowed funds in 1997 to pay for its share of the Project. In 1999, the MTA borrowed an additional \$809 million for the MHS. Only the MTA's board of directors approves the amount of money borrowed.

The MTA issues revenue bonds. In connection with issuing these bonds, the MTA provides assurances to bond rating agencies and investors that it has sufficient revenues to cover its operating and maintenance expenses, debt service, capital reinvestment, and any other financial commitments. Members of the MTA's finance department attend meetings of the rating agencies and regularly remain in contact with them. The revenue bonds are the sole responsibility of the MTA.

The MTA funds a portion of its \$1.9 billion share of the Project through tolls for the Turnpike Extension and the Ted Williams Tunnel. Other sources of revenue for the Project include the federal and state governments as well as MassPort. The MTA budgets any Project costs separately, because these costs are considered one-time expenditures.

The MTA's 2004 budget is broken down as follows. Its operating budget is approximately \$150 million with \$73 million allocated to the Western Turnpike and \$76 million allocated to the MHS. The MTA's capital budget amounts to \$50 million with \$27 million allocated to the Western Turnpike and \$23 million allocated to the MHS. The MTA pays a debt service of approximately \$27 million to the Western Turnpike and about \$73 million to the MHS. The debt service is covered by toll revenues in the amount of around \$322 million. In addition to the toll revenues, the MTA has approximately \$88 million in reserve funds for total revenues of \$410 million. The MTA's board of directors approves its budget. Neither the Legislature nor any state agency reviews the MTA's budgets. The MTA's finance department handles the revenues received by it. Either the MTA's chairperson or chief financial officer signs checks on behalf of the MTA.

As of June 2004, the MTA employed 1,237 employees. Approximately 166 of these employees work on the Project. The MTA bills the Commonwealth of Massachusetts (Commonwealth) for the costs of the 166 positions and receives reimbursements for them from state and federal funds.¹² Another 160 employees are state police troopers from Troop E. Although the troopers are Commonwealth employees, the MTA pays their salaries, benefits, and retirement costs using primarily toll funds. None of the positions at the MTA is Civil Service.

10. The Union also withdrew from its petition the positions of deputy general counsel and deputy chief of operations.

11. The Project moved the I-93 roadway underground and extended I-90 through the Ted Williams Tunnel to connect with Logan Airport and Route 1A.

12. The 166 employees are considered to be MTA employees. Like other MTA employees, these 166 workers are subject to the same general personnel policies, are under the authority of the MTA's board of directors, and receive similar fringe benefits.

MTA Organizational Structure

The petitioned-for employees at the MTA work in the following departments: 1) Benefits; 2) Communications; 3) Development and Planning; 4) Engineering; 5) Environmental Engineering; 6) Facilities Management; 7) Fiscal; 8) Finance; 9) Highway Maintenance; 10) Information Systems; 11) Legal; 12) Maintenance; 13) Marketing; 14) Occupational Safety; 15) Office of Civil Rights; 16) Patron Services; 17) Real Estate; 18) Secretary Treasurer; and 19) Toll Collection. The petitioned-for positions within each department will be reviewed below.¹³

1. Benefits

The administrative and benefits manager reports to the director of benefits and training. The administrative and benefits manager performs the following job duties: 1) manages day-to-day operations as they relate to employee benefit plans and employee programs; 2) assists the director of benefits in preparing requests for proposals and negotiations with benefit carriers as they relate to MTA-sponsored benefit programs, acts as liaison with health and life insurers; 3) prepares reports and compiles statistical analyses of benefits plans, investigates and evaluates new programs, evaluates benefit carrier competitiveness, recommends additions, changes, or deletions based on empirical data; 4) researches similar in-state and/or out-of-state organizations in an effort to make comparative analyses of MTA sponsored benefits, compares and contrasts MTA benefit programs with those available in the marketplace; 5) develops and coordinates annual health fairs, ensures maximum vendor participation is achieved; 6) oversees the MTA's training programs to ensure compliance with the established policy and procedure directive; 7) interacts with various division/department heads as well as outside vendors in an effort to maximize the MTA's training efforts, ensures training initiatives are developed and implemented in a timely and cost effective manner, ensures that the allocation of resources available is prioritized to meet multiple and diverse needs; 8) administers the tuition reimbursement/rehabilitation assistance program, maintains a database of all applicants and reimbursements, calculates and coordinates all payments to employees with the Accounts Payable Department to ensure prompt payment to employees; 9) oversees and manages a variety of employee programs like performance recognition, charitable campaigns, and discount programs; 10) provides professional administrative support to the Human Resources Unit on an as needed basis; 11) provides information and assistance to Retirement Board staff as requested; and 12) coordinates special projects as required. The position requires at least five years of experience in the human resources field with three of those years acting in a supervisory capacity.

2. Communications

The communications engineer reports to the director of communications and electronics. The communications engineer performs

the following job duties: 1) plans, designs, and oversees installing, operating, and maintaining all MTA communication and electronic systems; 2) assists consulting engineers and MTA communications personnel in planning, designing, and preparing contract documents involving Turnpike systems and facilities; 3) directs communications personnel in maintaining MTA communication and electronic systems including, but not limited to, the fiber optic system, the telephone system, the radio system, the AM highway advisory radio system, the automatic gate control system, the toll electronic system, and any electronic or communication electronics;¹⁴ 4) aids in negotiating with vendors for non-MTA systems that may be installed on Turnpike property; 5) reviews bid documents and participates in selecting consultants and contractors for the design and/or installation of communications or electronic systems or equipment; 6) aids in creating all departmental procedures in coordination with communications personnel and other MTA departments; 7) ensures all operator and user training and instruction manuals are kept up to date; and 8) complies with all policies, practices, and safety procedures. The position requires: 1) a B.S. in electrical or electronic engineering; and 2) a minimum of five years' professional experience in communication and electronic engineering and systems.

The communications/technical support supervisor reports to the director of communications and electronics. The communications/technical support supervisor performs the following job duties: 1) supervises technicians in installing, operating, maintaining, and repairing all electronic systems and equipment; 2) coordinates on a daily basis the operation, maintenance, and repair of all electronic systems and equipment with the other communications/technical support supervisors, the telecommunication assistant, and the maintenance engineer; 3) schedules departmental workload and assigns projects to all technicians in coordination with the other communications/technical support supervisors, the telecommunication assistant, and the maintenance engineer; 4) provides ordering information regarding materials and supplies necessary to ensure timely completion of all assignments; 5) conducts training sessions for technicians and/or other MTA personnel as directed by the communications engineer; and 6) ensures compliance with all policies, practices, and safety procedures. The position requires a high school diploma or GED and a minimum of five years of field experience in installing, testing, troubleshooting, and repairing communication systems and electronic equipment with two of those years in a supervisory capacity.

The operations control center (OCC) supervisor reports to the superintendent of OCC and performs the following job duties: 1) supervises the daily operations of the OCC and updates the superintendent of OCC on a daily basis on all matters affecting the operations of the OCC and satellite locations; 2) assigns and manages on-site control center operators' work schedules to assure full coverage of OCC workstations on every shift as well as monitors

13. Parts I(A) and II(A) of Attachment A indicate that the petitioned-for unit includes the following MTA positions: 1) assistant manager of toll audit; 2) deputy director of highway maintenance; 3) supervisor of field operations; 4) supervisor of toll equipment program; and 5) permit administrator. However, there is no information in the record concerning these positions.

14. The record does not reflect to whom the communications engineer gives direction.

and audits operator functions for accuracy and professionalism; 3) directs the training of new OCC operating personnel, maintains and updates all training materials and ensures that operators are updated and understand all procedures, as well as prepares specific training material on an as needed basis; 4) supervises the senior control center operators in coordinating with control center operators in evaluating information from the IPCS detection system and, when necessary, conducts diagnostic and general system response; 5) gathers data and/or generates reports in response to special requests; 6) communicates and coordinates special events with the appropriate personnel, e.g. contractors, tours, system maintenance; 7) coordinates all requests and/or repairs of control, traffic, or facilities systems with appropriate personnel; 8) supervises the documentation (electronic or manual) of all incidents; 9) conducts tours and informational briefings on all OCC equipment and operations for visiting groups/dignitaries; 10) assists the superintendent of OCC in monitoring, testing/startup, and in the future, calibrating and maintaining the IPCS; and 11) independently types memos, bulletins, requisitions, reports, and other similar materials as required. The position requires: 1) a high school diploma or GED; and 2) a minimum of four years of technical experience in a recently computerized operations control/dispatch center with at least one of these years as a supervisor.

3. Development and Planning

The deputy director of real estate reports to the director of development and planning. The deputy director of real estate performs the following job duties: 1) provides the director of development and planning with recommendations on the acquisition and disposition of MTA owned land; 2) manages the acquisition of real property needed to carry out MTA projects, including interdepartmental coordination, property valuation, preparation of information and materials required for transactions, and relocation activities; 3) manages the disposition of MTA owned real estate, working with the deputy director of planning to make recommendations for the sale and lease of real estate, including financial feasibility studies of various development options; 4) maintains liaison with property owners, residents, public utilities, contractors, public officials, engineers, and lawyers to expedite real estate activities, and maintains favorable relations with the public; 5) maintains relations with cities, towns, and state agencies to negotiate right-of-way problems and exchange information as needed; 6) with assistance from the Legal Department, coordinates the preparation of material and evidence for legal hearings related to real estate activities; 7) manages and monitors all leases and licenses, except for service area leases; 8) maintains a database of MTA holdings, leases, and licenses and develops real estate revenue projections; 9) participates in setting departmental goals annually and assists in budget preparation; 10) supervises the work of the development and planning assistant. The position requires: 1) a Bachelor's Degree in planning and development, public policy, or business management; and 2) a minimum of three years' professional experience in the real estate field with knowledge of right-of-way activities, lease negotiations, and financial analysis skills.

4. Engineering

The assistant division engineer reports to the division engineer and performs the following job duties: 1) reviews plans, specifications, or other contract documents, monitors contractors to assure that contractual obligations are being maintained; 2) maintains complete, accurate, and concise daily records of the job and quantities and prepares monthly summary reports; 3) assesses measurements of quantities for purpose of payment; 4) assists in preparing contractors' pay estimates and progress reports by supplying records of quantities and work performed, as requested; 5) takes samples of materials for testing as may be required; 6) directs and supervises surveying parties in identifying the line and grade for structures, grading, and paving; 7) plots survey notes and makes engineering computations when required; 8) prepares permanent records of construction projects, recording total quantities; and 9) confers and coordinates with the division engineer to assure daily on-site inspections of all projects being performed and verifies construction inspector assignments. The position requires the following: 1) a B.S. in civil engineering or a related engineering discipline; 2) at least five years of experience in highway and/or bridge engineering with a minimum of one of those years in a supervisory capacity; and 3) must have or be eligible for certification as an engineer in training (EIT).

The civil engineer reports to the design engineer or division engineer and performs the following job duties: 1) prepares and develops engineering specifications, drawings, quantity estimates and cost estimates for engineering projects; 2) collects and distributes file documents and other information necessary for the design and preparation of specifications for engineering projects to MTA consulting engineers; 3) operates the computer system to prepare design plans and specifications, prepares reports on construction, traffic, and maintenance projects as requested; 4) maintains and updates records of construction projects, designs, drawings and other engineering project documents; 5) designs and reviews designs associated with MTA facilities including but not limited to roadways and bridges; 6) coordinates and collects land transfer plans and proposals, checks parcels for acceptance from engineering perspectives, and reviews and checks deeds; 7) assists in administering the oversize and overweight permit program; 8) processes and reviews contractor submittals for ongoing construction projects; 9) assists the assistant division and division engineers in construction inspection and administration; and 10) supervises construction inspectors as directed and prepares pay estimates. The position requires: 1) a B.S. in civil engineering or a related engineering discipline; and 2) at least three years' experience in civil engineering, design, or construction.

The design engineer reports to the chief engineer and performs the following job duties: 1) develops and recommends to the assistant chief engineer policies, plans, and schedules for the administration and management of the design functions of the Department; 2) is responsible for the planning and preparation of contract documents prepared by Department personnel for construction projects; 3) coordinates the work of consulting engineers in the planning, design, and preparation of contract documents for construction projects involving MTA highways, bridges, tunnels, buildings, and related facilities; 4) administers the design section

of the Department; 5) administers and assists in preparing and reviewing requests for proposals for engineering, testing, survey, and related services; 6) is responsible for planning, preparing, and reviewing contract documents prepared by engineering firms retained by the MTA for preparing contracts and related documents; 7) directs the bridge inspection program, including issuing reports and keeping records; 8) administers the preparation of permits, licenses, environmental documents, budgets and similar items of work; 9) assists the Office of the Chief Engineer in miscellaneous items like correspondence, items related to state, cities, and towns, property changes, developments, complaints, and related items of work; 10) supervises the preparation of plans, specifications, and related documents for construction or purchase; and 11) represents the Engineering Department in conferences to resolve important questions and to plan and coordinate work involving the MTA's facilities. The position requires: 1) a B.S. in civil engineering or a related engineering discipline; 2) registration or eligibility for registration as a professional engineer; and 3) a minimum of six years of experience in highway and bridge design and construction engineering with at least three of those years in a senior supervisory capacity.

The division engineer reports to the assistant chief engineer and performs the following job duties: 1) supervises the contractors' performance to assure that the quality of work meets the MTA's standard and that contractual obligations are being met; 2) coordinates, supervises, and directs the work of the assistant division engineers, construction inspectors, survey parties, and maintenance personnel to assure that the MTA's standards, policies, and procedures are being maintained; 3) coordinates, supervises, and directs field and laboratory testing of materials and work to assure quality control standards and that contractual obligations are updated; 4) supervises the maintenance and records of quantities incorporated in the work performed by contractors to control the MTA's expenditures and assures that projects remain on schedule, within budget, and in conformance with the requirements of the contract documents; 5) reviews and reports on permit applications by outside organizations requiring access to the MTA's right-of-way and coordinates implementing work performed under permits and licenses; 6) supervises maintenance operations and provides engineering and surveying services to maintenance projects; and 7) consults with the assistant chief engineer in all matters involving field changes and extra work orders. The position requires: 1) a B.S. in civil engineering or a related engineering discipline; 2) six to eight years of experience with two of those years at a supervisory level in highway and bridge construction engineering; and 3) registration or eligibility for registration as a professional engineer.

The senior civil engineer reports to the assistant chief engineer and performs the following job duties: 1) performs office engineering duties related to constructing, maintaining, and repairing MTA highways, bridges, tunnels, buildings, and facilities, including supervising work performed by MTA engineering personnel as-

signed to the engineering office;¹⁵ 2) participates in planning and reviewing designs of major projects performed by the MTA's consulting engineers; 3) makes investigations, examinations, and reports in relation to special engineering problems; 4) coordinates with MTA consulting engineers regarding assembling materials for planning and designing engineering projects; 5) directs and participates in administering the oversize and overweight permit program, processes and reviews applications for special permits; 6) coordinates preparing contract documents for projects designed in-house; 7) maintains records, reports, and correspondence required in the engineering office; and 8) coordinates compiling traffic data. The position requires: 1) a B.S. in civil engineering or a related engineering discipline; 2) six years' experience in a position of responsibility in highway and/or bridge construction engineering; and 3) registration or eligibility to register as a professional engineer.

The tunnel project manager reports to the superintendent of tunnels and performs the following job duties: 1) supervises and administers the general engineering consultant and other engineering consultant services in accordance with the current agreements and reviews plans and specifications at various review stages; 2) supervises and administers contractors' performance to assure that the quality of work meets the MTA's standards and that contractual obligations are being met; 3) coordinates, supervises, directs, and administers the work of the tunnel engineer, construction inspectors, and survey parties assuring that the MTA's standards, policies, and procedures are being maintained; 4) coordinates, supervises, directs, and administers the field and laboratory testing of materials and work to assure quality control standards and that contractual obligations are accepted; 5) supervises and administers the recording and maintenance of quantities, diaries, invoices, pay estimates, and records for control of expenditures by consultant engineers and contractors performing work for the MTA, assures that projects are kept on schedule, within budget, and conform with the requirements of the agreements and contract documents; 6) reviews and comments on permit applications by outside organizations requiring access to the MTA's right-of-way and coordinates with maintenance work performed under permits and licenses; 7) assists maintenance operations as required and provides engineering and survey services to maintenance projects; and 8) obtains approval of the superintendent of tunnels and the MTA's chief engineer for all field changes, extra work orders, consultant service agreements, contract time extensions, invoice payments, pay estimates, and other documents that change agreements and/or contracts and expenditures of MTA funds. The position requires: 1) a B.S. in civil engineering or a related engineering discipline; 2) six to eight years of experience, including at least two years in responsible positions in a tunnel or related engineering discipline; and 3) registration or eligibility for registration as a professional engineer.

15. It is unclear from the record what employees the senior civil engineer supervises and what degree of supervisory authority the senior civil engineer exercises.

5. *Environmental Engineering*

The environmental analyst reports to the manager of environmental engineering and performs the following job duties: 1) reviews design efforts associated with developing plans for major land development, highway, bridge, and tunnel improvement projects, focusing upon coordinating work required to ensure responsible engineering design affecting landscape and environmental issues; 2) prepares and/or reviews plans, permit applications, specifications, and estimates for environmental mitigation measures associated with the highway program like landscape architectural issues, contaminated soil management, surface stormwater management, and air quality conformance; 3) represents engineering in interagency meetings and public hearings during preliminary planning and design of transportation facilities; 4) reviews ENF's, EIR's, and associated environmental documents and prepares sections as required; 5) monitors compliance status of existing operational environmental permits, coordinates preparation of monitoring reports, permit renewals, and new applications as necessary; 6) coordinates with environmental engineer to ensure that necessary environmental compliance audits and investigations are conducted in accordance with permits or licenses or sound environmental practices; 7) performs field investigations and reviews written data relative to environmental considerations, including natural resources (air, water, vegetation, and wildlife) and social environment (noise, existing land use, and displacement issues); 8) reviews and analyzes change orders and scopes of work for mitigation measures and provides recommendations and approvals based on the analyses; 9) represents the MTA before federal, state, and local agencies when issues deal with environmental and landscape matters; 10) prepares scopes for environmental consulting, permitting, and engineering services, negotiates fee proposals, estimates time needed to complete services, reviews bids, and manages contracts; 11) coordinates with Development and Planning Office regarding tenant environmental compliance; and 12) supervises employees of lower grade as assigned based upon project scope. The position requires: 1) a Bachelor's degree in environmental science related to ecology, land use, and infrastructure development; 2) a minimum of four years' professional experience in design, construction, and maintenance of transportation facilities with at least two of those years in a supervisory capacity; and 3) certificate of acceptance for registration (equivalent to EIT certificate).

6. *Facilities Management*

The manager of facilities operations reports to the director of facilities management and performs the following job duties: 1) oversees all matters relating to allocating office space for the State Transportation Building, Gateway, and Weston offices, develops floor plans, directs all changes in floor plan layout or construction of offices and cubicles, and directs all reorganizations and relocations as necessary; 2) inspects building and office areas to determine suitability for occupancy by MTA staff, taking into consideration MTA specifications and compliance with applicable building codes; 3) maintains inventories, determines distribution, and maintains operating condition for all office furniture, photocopying equipment, and business machines; 4) serves as liaison with STB, Gateway, and Weston management in all matters pertaining to general services; 5) reviews and approves purchasing of

business machines, including photocopying and reproduction equipment and office supplies, as well as negotiates all applicable services and maintenance contracts with vendors; 6) develops and implements MTA standard operating procedures as it relates to general services; 7) oversees and directs all operations of mailroom and motor pool activities, ensures mailroom operations are fully functional and mail is delivered in an efficient and timely manner, provides for scheduled maintenance and repairs of all vehicles, provides for transportation requirements for STB personnel, and ensures vehicles are available and operational; and 8) reviews and authorizes payments for all bills related to office space, leasing contracts, utilities, repairs, and maintenance as well as develops plans to reduce expenses and general cost savings where possible. The position requires at least three years of full-time professional or supervisory experience in office management, property management, business administration, or business management.

7. *Fiscal*

The accountant reports to the chief accountant and performs the following job duties: 1) assembles, prepares, and documents the transactions of various accounts and funds of the MTA for input to the automated general ledger system; 2) reviews transaction edits performed by Computer Services, both manually and through computer programs, on the various accounts and funds of the MTA for possible editing of the general ledger system and notifies the chief accountant of any re-entries that may be required; 3) prepares and maintains routine working papers, work sheets, schedules, and other supporting accounting data to document transactions and balance of accounts, and provides an audit trail for future investigations, if required; 4) reviews journals, ledgers, trial balances, and financial statements for completeness and accuracy; 5) reviews, investigates, and reports on the results of financial operations as compared to monthly and annual approved fund accounting budgets; 6) reviews receipts and bank deposits together with supporting documentation to ascertain validity, accuracy, and proper account coding; 7) examines paid invoices and the weekly cashbook to verify vendor accuracy in determining discounts and prices, payments, and account coding; 8) reviews data received from banks, toll audit, maintenance, and other sources, reconciles with MTA personnel, and reconciles discrepancies; 9) advises the chief accountant of unusual or questionable accounting data or account balances and makes remedial recommendations, as required; 10) investigates and compiles data and prepares accounting and administrative reports, as assigned; and 11) prepares transactions and maintains accounting records concerning the overall accounting system in conformity with the MTA's established policies and procedures, as directed. The position requires: 1) a Bachelor's degree in finance, accounting, or a related field; and 2) a minimum of two years of professional experience in maintaining general accounting records and preparing trial balance and financial statements as well as a sound understanding of the accounting cycle and automated accounting systems.

8. *Finance*

The manager of cash management reports to the director of financial management and performs the following job duties: 1) in col-

laboration with the director of financial management and the budget director, establishes monthly funding requirements in accordance with the trust agreements and operating and capital budgets, prepares the required documentation, and oversees the daily, weekly, monthly, and special transfer of funds to meet the MTA's financial obligations; 2) manages and tracks investment portfolios for non-trustee held funds, works with brokerage firms, banks, and other financial institutions in consultation with the director of financial management; 3) works on the management of all financial holdings, including invested funds, and researches various investment opportunities to ensure that they are consistent with MTA objectives; 4) reviews and tracks balances for operating and custodial funds with the Accounting Department, prepares periodic reports for senior managers, and addresses discrepancies when they arise; 5) verifies investment income and reviews all activity reported on monthly trust reports, guaranteed investment contracts, as well as REIBT and EIBT accounts; 6) assists in preparing annual operating budgets for cash management to include all bank fees and costs as well as periodically monitors and reviews charges and fees; and 7) oversees the installation and maintenance of software and web-based access for each financial institution conducting financial transactions with the MTA, including providing appropriate access to other departments for reporting purposes only. The position requires: 1) a Bachelor's degree in a relevant financial field; and 2) a minimum of four years of professional experience in business or public administration with the primary duties including the financial management and/or strategy of significant portfolios.

The senior financial/statistical analyst reports to the director of financial management and performs the following job duties: 1) initiates all funds transfers, including special transfers, and ensures that all accounts are properly funded to meet the MTA's financial obligations and interacts with various departments and outside financial institutions, including banks and trust institutions; 2) manages and monitors invested funds in all MTA accounts to ensure that investments meet with MTA objectives and cash flow needs as well as initiates investments in various securities to mature in a timely manner consistent with spending/funding requirements; 3) monitors all investment activities, including preparing investment income reports, calculating expected investment income, verifying investment income on various accounts, and when necessary, addressing all discrepancies with appropriate financial institutions; 4) analyzes and interprets economic and MTA data, prepares financial and statistical reports, makes forecasts, projections, and estimates; 5) contacts various supervisors and department heads within the MTA and contacts outside organizations like engineering consultants, government agencies, and financial institutions to collect data relative to financial and statistical analyses; 6) reviews all activities in trustee, custodial, escrow, operating, GIC, and off-balance sheet accounts to ensure that monthly activity is properly reflected in each report as well as addresses all discrepancies when required; 7) reviews all monthly bank charges associated with operating and capital accounts for accuracy, analyzes charges and resolves discrepancies, and prepares reports on charges; 8) establishes new accounts at various institutions, prepares documentation required, establishes transfer procedures, and provides instruction and authorization; and 9) compiles vari-

ous investment reports and participates in special projects as required by the director and/or chief financial officer. The position requires a Bachelor's degree in business administration, finance, accounting, or a related field and a minimum of three years of professional experience in the area of financial management, financial analysis and reporting, accounting, or a related field.

9. Highway Maintenance

The supervisor of custodians reports to the director of highway maintenance and performs the following job duties: 1) oversees and monitors all services that are regularly performed by the custodial staff, including the planning and scheduling of all areas covered; 2) meets regularly with the senior custodian of each section to rectify any problems and to ensure that all supplies needed are in stock; 3) purchases tools as required to assist custodians to complete particular job assignments; 4) checks all facilities weekly to ensure custodians are cleaning and maintaining the cleanliness of the MTA's facilities and performing minor maintenance or repair work as assigned; 5) assigns custodians to perform specific duties at specific locations like floor stripping/waxing and carpet cleaning in accordance with cleaning schedules; 6) educates and instructs new and inexperienced custodians on cleaning products used daily as well as ensures all personnel who enter custodial services are properly trained in all aspects of custodial services, including proper chemical usage and safety protocols; 7) maintains records, prepares reports on personnel, and implements safety training as needed; 8) reviews and monitors custodians in performing their duties to ensure they are performing efficiently and in accordance with safety procedures; and 9) reassigns custodians to ensure proper coverage of facilities when absences occur as a result of illness, vacations, or unfilled job vacancies. The position requires a high school diploma or its equivalent and a minimum of three years' experience in directing and supervising custodial services.

10. Information Systems

The lead analyst/programmer reports to the director of information systems application engineering and performs the following job duties: 1) designs, develops, implements, and maintains data processing systems and programs assigned by the manager and/or assistant manager to meet the needs of specific departments within the MTA who will use the systems and programs; 2) confers with supervisory personnel in the assigned departments to identify functional specifications of data processing systems and programs as well as to determine the feasibility and schedules for meeting the department's requirements; 3) develops systems and programs for the computer to efficiently process information and to provide data or reports as required by the MTA; 4) directs and participates in the functional testing and debugging of programs; 5) directs and participates in preparing program documentation; 6) evaluates and directs the revision of existing programs to meet changing management needs or to achieve greater computer efficiency; and 7) instructs and trains less experienced analysts/programmers. The position requires: 1) a B.S. or B.A. with a concentration in computer science, business management, and accounting; and 2) four to six years of experience working in and with systems design,

COBOL programming and documentation, and other areas of financial systems development.

The personal computer/network coordinator reports to the client server network manager and performs the following job duties: 1) installs personal computers and associated equipment and controls their upgrading and relocation; 2) orders, upgrades, and distributes personal computer software; 3) maintains an inventory of personal computer hardware and software as well as an inventory of all computer terminals and peripherals; 4) acts as systems administrator for the local area network and Macintosh installations; 5) acts as a consultant on new personal computer applications and recommends the appropriate software to be used; and 6) conducts personal computer software training sessions for users. There are no requirements for this position.

11. Legal

There are four attorneys who work in the MTA's Legal Department: the general counsel, the deputy general counsel, and two associate general counsels. There also is a fifth attorney who is affiliated with the MTA's Legal Department.¹⁶ All of the attorneys are admitted to practice in the Commonwealth and are subject to the Rules of Professional Conduct.

The attorneys in the MTA's Legal Department have access to a majority of that department's computer files. However, the general counsel and, to a lesser extent, the deputy general counsel may restrict the associate general counsels from accessing some computer files.

Eileen Fenton (Fenton) holds one of the MTA associate general counsel positions. Fenton performs the following job duties: 1) attends board meetings and executive sessions where collective bargaining matters are discussed;¹⁷ 2) takes minutes at board meetings and subsequently reviews and prepares them;¹⁸ 3) performs legal research; 4) provides legal advice to the board of directors and to the general counsel; 5) reviews proposed legislation; 6) prepares language with respect to changes in the Code of Massachusetts Regulations; 7) assists with processing defect claims like pothole claims; 8) drafts legal memoranda; and 9) represents the MTA in state court.

Gerald Pugsley (Pugsley) is the other MTA associate general counsel. Pugsley's primary responsibilities are to handle worker's compensation cases at the MTA and to oversee outside counsel handling the same cases.

Ronald Traylor (Traylor) is the attorney holding the position that is affiliated with the MTA's Legal Department. The majority of Traylor's work involves labor relations and human resources matters. In particular, Traylor attends grievance hearings and arbitrations, provides legal advice regarding disciplinary proceedings, and performs legal research concerning labor issues.

The job description for the MTA associate general counsel position lists the following duties and responsibilities: 1) assists managers in ensuring compliance with legal, regulatory, and other applicable principles governing organizational accountability; 2) reviews, investigates, reports, and/or acts upon specific legal matters that may implicate the operations and liabilities of the MTA; 3) reviews claims and court actions against the MTA by employees, patrons, or contractors to determine the basis for the claims, the extent of the MTA's liability, and the extent of protection through insurance and bonds; 4) reviews bonding policies and the MTA's insurance coverage as it relates to potential liability and recommends resolution of or, as authorized, resolves such matters within the scope of the delegated authority; 5) initiates correspondence to and claims against employees, patrons, and contractors to recover debts and damages on behalf of the MTA; 6) supports the employment management function by providing advice, guidance, and investigatory and litigation support as assigned; 7) prepares draft documents like requests for proposals, contracts, leases, licenses, deeds, and permits; 8) researches and drafts legal opinions on a variety of the MTA's activities and responsibilities; 9) prepares interrogatories, pleadings, and other documents for cases in which the MTA is involved as a plaintiff or a defendant; 10) advises the MTA's professional staff in the conduct and presentation of materials when appearing as witnesses in court proceedings; and 11) prepares draft regulations and procedures for MTA approval, conducts or supervises c. 30A hearings, and reviews and opines on the implementation of the MTA's regulations, policies, and procedures.

12. Maintenance

The electrical engineer-tunnels reports to the maintenance engineer and performs the following job duties: 1) oversees electrical maintenance for buildings, fans, pumps, and all other mechanical appurtenances; 2) keeps the maintenance engineer informed on all related electrical maintenance issues; 3) coordinates with the highway supervisors, facility engineer, as well as maintenance and systems engineers for the safe and efficient operation of the tunnels and related facilities; 4) provides necessary budgeting and purchasing information to the maintenance engineer for all electrical maintenance; 5) coordinates and directs all electrical maintenance operations and works with the Facilities Department to ensure efficient and timely maintenance on the tunnels and related facilities; 6) establishes and maintains the preventive maintenance schedule and provides all necessary information for the tunnels' maintenance management program; 7) reviews plans and specifications as required for contracts prepared by the Engineering Department; 8) maintains records, reports, and correspondence required for all assigned electrical maintenance projects; 9) supervises and monitors all electrical service and construction contracts of the Maintenance Department at the tunnels and related facilities; 10) inspects work performed by the Maintenance Electrical Department to ensure adherence to quality and productivity standards; 11) provides

16. The record does not: 1) indicate this attorney's job title; or 2) explain the nature of this attorney's affiliation with the Legal Department.

17. The board of directors meets twice a month. The board and the post meetings are open to the public but not the executive session meetings.

18. The minutes of the board and the post meetings are accessible to the general public, but the minutes of the executive session meetings may not be. Executive session minutes concerning collective bargaining are confidential.

a safe work environment as prescribed by the MTA's Safety Department; and 12) provides in-house electrical engineering design services and engineering feasibility studies, including cost estimates. The position requires: 1) a Bachelor's degree in electrical engineering or a related engineering degree; 2) six years of professional experience in facilities engineering with two of those years in a supervisory capacity; and 3) registration or eligibility for registration as a professional engineer.

The maintenance engineer reports to the superintendent of maintenance and performs the following job duties: 1) provides general engineering support to the Maintenance Division; 2) functions as lead manager for the MTA's facilities, maintains all records and databases associated with these facilities, and advises the MTA on any repairs or rehabilitation programs necessary to maintain its facilities cost effectively; 3) provides a point of contact for all environmental and hazardous material issues associated with the MTA's facilities; 4) supervises and directs the activities of maintenance employees assigned to the Special Projects and Building Maintenance Departments; 5) oversees and/or designs various projects carried out by Maintenance Department employees like the design and construction of snow plow ramps, park and ride lots, drainage layouts, retaining walls, toll plaza approach slabs, and toll booth conversions; 6) oversees the maintenance and operation of the MTA's Fuel Management System and Fiberoptic Display Message System, including designing and recommending new system updates; 7) coordinates the Maintenance Department's interface in the planning, review, and design of major projects performed by the MTA's consulting engineers; 8) investigates special engineering problems for the Maintenance Department, designs and recommends solutions for these problems, and then coordinates and directs MTA personnel and equipment in the rectification work; 9) coordinates preparing contract documents for projects designed in-house; 10) maintains records, reports, and correspondence required for all assigned maintenance projects and departments; 11) develops and prepares specifications for various Maintenance Department proposals, including solid waste disposal and hazardous material disposal; 12) reviews purchases and specifications for all materials and services contracted by the Maintenance Department; 13) as a member of the Maintenance Safety Committee, oversees meetings, coordinates responses, and implements corrective action; and 14) in conjunction with other MTA departments, coordinates disposing and storing hazardous materials at all MTA locations as well as trains and oversees maintenance personnel in handling and cleaning up materials for final disposal. The position requires: 1) a Bachelor's degree in civil engineering or a related engineering degree; 2) six years of professional experience in highway and/or bridge construction engineering with two of these years in a supervisory capacity; and 3) registration or eligibility for registration as a professional engineer.

The manager of motor equipment maintenance reports to the director of fleet operations and performs the following job duties: 1) assists the director of fleet operations in planning and scheduling the overall maintenance of all MTA vehicles; 2) assists the director in ensuring that all MTA motor equipment is in proper working order and that all maintenance depots are performing repairs in a uni-

form manner; 3) assists in developing specifications for motor equipment to be purchased by the MTA; 4) supervises motor equipment foremen and mechanics in scheduling and repairing all MTA motor equipment, works with the Safety Department to ensure that all new vehicles meet established safety standards; 5) oversees all motor vehicle warranty work performed on MTA vehicles, reviews requests for repair work orders on all MTA equipment to determine if work is under warranty, and initiates appropriate claims to vendors for reimbursement for the warranty work performed; 6) assists in preparing for and conducting public and municipal auctions, determines what vehicles and equipment will be auctioned, develops auction booklets, establishes municipal auction minimum bid amounts, and supervises the physical disposition of auction items; 7) is responsible for the Fleet Maintenance Information System which maintains information on all MTA motor vehicle equipment, including make, model, year, cost, fuel capacity, warranty, mileage, service, and repair records; 8) assists in the development and subsequent supervision of the driver training program for all maintenance personnel; and 9) reviews all accident reports and repair estimates for MTA vehicles involved in motor vehicle accidents and submits reports to appropriate departments and agencies. The position requires four years of professional or supervisory experience in business administration including motor equipment/vehicle maintenance with two of these years in a supervisory or managerial capacity.

The supervisor of maintenance reports to the director of maintenance and performs the following job duties: 1) plans, schedules, and directs the daily activities of supervisory and maintenance staff assigned to Highway Maintenance, Special Projects, and Building Maintenance working on maintaining highway bridges, ramps, and surrounding adjacent areas within an assigned section; 2) completes specific maintenance projects as assigned by the director of highway maintenance; 3) assigns maintenance tasks and schedules to supervisory personnel for assignment and task completion; 4) patrols and inspects highways and grounds of the MTA throughout the assigned maintenance section, notes maintenance services that may be required, and notifies the director of maintenance of major maintenance needs; 5) oversees and/or coordinates the completion of maintenance projects and provides work zone traffic protection and other services, as requested; 6) coordinates with the Engineering Department for the maintenance or reconstruction of drainage ditches and property lines, evaluating structures, and the traffic control set up (i.e., cone set ups and lane closures) for contracted maintenance services; 7) inspects completed assignments and records related to the work to ensure that it was performed efficiently, economically, safely, and according to quality standards; 8) ensures that the equipment for each assigned section is operating properly and arranges for repairs, if necessary; 9) ensures that adequate supplies and tools are available for maintenance tasks and initiates requisitions, if required; 10) schedules and calls in employees and contract plow services for snow and ice control emergency work and directs overall operations during snow and ice emergencies throughout the assigned section; 11) maintains budget records and prepares reports on maintenance personnel, budget expenditure material, equipment, and the services utilized in each maintenance task, especially snow and ice control emergencies, records labor hours and quantities of salt

used as well as maintains accurate cost records for accidents, licenses, and permits for work performed by maintenance and work required outside of normal maintenance activities; 12) reviews reports prepared by depot inventory, records specialists, and warehouse receivers on snow and ice control, industrial accidents, and monthly inventory of materials and supplies; and 13) directs and supervises the training of personnel in the proper and safe operation of maintenance equipment, correct maintenance methods, and established policies and procedures of the MTA. The position requires: 1) a high school education or GED; 2) at least seven years of experience in highway and maintenance; 3) a valid CDL Class "B" with air brakes endorsement; and 4) a valid Massachusetts Class C hoisting license with endorsements to operate a front end loader and backhoe.

13. *Marketing*

The retail/marketing coordinator reports to the director of marketing and performs the following job duties: 1) manages the daily operations of receiving and processing orders, inventorying merchandise, and ensuring positive and responsive vendor and customer relations as well as tracks financial transactions, sales, shipping, merchandise and proper bank reconciliation to ensure that the MTA's financial investments are fully protected; 2) supervises support staff for the department and schedules employees; 3) assists in conceptualizing and developing marketing programs and promotional activities aimed at increasing the MTA's non-toll revenue opportunities; 4) coordinates/markets approved marketing programs to outside entities; 5) negotiates with vendors to determine pricing, quantity, type, and fashion of merchandise as well as delivery and return protocols and schedules; 6) coordinates and manages special programs like the tourism grant program, the Farmers Market program, and the Park-n-Ride program, 7) provides overall support and guidance as necessary on various initiatives like general phone calls, handling Fast Lane and patron complaints, assisting patrons and commercial customers, and resolving issues; and 8) ensures proper statistical reporting and organization of records. The position requires: 1) a B.S. in marketing or communications; and 2) at least four years of experience in business or public administration where the major duties included marketing, communications, customer service, program coordination, or related experience.

14. *Occupational Safety*

The manager of occupational safety reports to the director of occupational safety and performs the following job duties: 1) manages the occupational safety function within MTA and departmental guidelines to assist in ensuring that employees have safe workplaces and are adhering to safe work practices; 2) prepares and presents training programs on all safety policies and procedures including respiratory training, confined space entry, lock-out/tagout, and hazard communications; 3) provides advice, assistance, and guidance with respect to industrial hygiene as well as conducts monitoring and other data gathering and analyses to ensure the safety or safe entry into workplaces; 4) assists in preparing

policies, procedures, and training programs; 5) prepares statistical data for workers' compensation injuries, accident trends, and safety program effectiveness and makes recommendations as necessary; 6) participates in and supports designated safety meetings; 7) responds to emergencies as needed on the Turnpike and in the tunnels; 8) conducts accident investigations thoroughly and in a timely manner in accordance with accepted investigatory techniques; 9) participates in reviewing construction plans to determine if safety measures and precautions are taken into consideration and assists in ensuring that contractors comply with contractual safety requirements; and 10) supervises department personnel.¹⁹ The position requires: 1) a Bachelor's degree in safety management, industrial hygiene, or related disciplines; and 2) a minimum of four years of professional experience in safety and industrial hygiene.

15. *Office of Civil Rights*

The manager of employment diversity reports to the director of civil rights and performs the following job duties: 1) develops, coordinates, and implements civil rights programs, policies, and procedures related to equal opportunity, affirmative action, and disability access; 2) works with other staff and departments in developing guidelines and mechanisms to ensure that employment decisions are made in concert with standards of fairness, in an equitable manner, and do not discriminate against any person on the basis of protected class membership; 3) mediates and/or investigates employee discrimination and harassment complaints in accordance with MTA policy and procedures, ensures timely disposition and resolution of all complaints and inquiries, and provides assistance to all levels of employees in addressing issues and concerns regarding workplace diversity; 4) prepares reports on the MTA's compliance with federal, state, and local EEO/AA and ADFA laws, regulations, and policies, interacts and coordinates activities with federal, state, local, and other agencies to improve the effectiveness of employment diversity programs, and represents the Office of Civil Rights as required in meetings and conferences related to employment diversity programs; 5) assists in developing and planning systems to track progress of goals and timetables with respect to the MTA's workforce profile, develops with other staff and departments recruitment plans for enhancing and diversifying the pool of applicants for employment with the MTA, as well as screens, interviews, assists, and refers potential applicants and current employees; 6) develops, conducts, and presents workshops on sexual harassment, diversity, and disability awareness to all levels of the MTA; 7) develops, in consultation with the director, changes in workplace diversity programs and plans based on new developments and laws governing those programs; and 8) assists the director in managing the staff of the Office of Civil Rights by establishing annual goals and objectives, assigning work, monitoring performance, and conducting special projects and programs. The position requires: 1) a B.S. in human resources management, public administration, or a related field; and 2) five years of professional administrative work with two of

19. The record is silent regarding who the manager of occupational safety supervises.

those years in a position dealing directly with AA/EEO and/or ADA related policy issues.

16. Patron Services

The manager of violation enforcement system reports to the director of patron services and performs the following job duties: 1) implements and manages policies and procedures for all areas related to the hearing forum and appeals process for Fast Lane violations; 2) manages and directs a hearing procedure for suspected Fast Lane violators as well as ensures guidelines and standards are adhered to for all proceedings; 3) manages and directs all hearing examiners, assists in developing and providing training programs for all hearing examiners, and provides advice and counsel to hearing examiners as needed; 4) assists the MTA as a point of contact with vendors related to violation enforcement; 5) responds on behalf of the MTA to letters and inquiries from violators of the Fast Lane program; 6) serves as keeper of the records for all matters related to ETC violations as well as produces documentation, reports, statistics, and data as required; and 7) conducts hearings on an as needed basis. The position required a high school diploma or GED and at least four years' experience in auditing and revenue collection.

17. Real Estate

The manager of patron services reports to the director of real estate and performs the following job duties: 1) plans, directs, and supervises the activities of emergency services patrol officers in providing roadside services for patrons experiencing mechanical problems or requiring roadside service; 2) investigates and monitors contract services relating to the restaurant franchises and service stations operating on the property of the MTA as well as towing services supplied by contract on the Turnpike; 3) performs periodic and scheduled inspection of restaurants and service stations to assure that they are maintained, clean, neat, and attractive, and that all terms of the contract are being met or exceeded; 4) conducts periodic meetings with representatives of all contract services to review performance, discuss deficiencies, plan corrective measures, and provide a forum to discuss problems related to providing service to patrons; 5) plans, develops, and implements performance measures, plans, and procedures related to roadside service to improve its effectiveness and efficiency; 6) investigates patron complaints on contract and roadside services and notifies the responsible contractor, as necessary, for corrective action; 7) reviews and approves roadside service invoices to assure that they are completed accurately and correctly and forwards invoices to Accounts Receivable for the collection of fees; 8) reviews patron services statistics and makes recommendations to improve collecting fees and to change fees as necessary; 9) reviews and approves ambulance and towing service invoices, reconciles any discrepancies with contractors, and forwards approved invoices to Accounts Payable for processing; 10) maintains daily records of emergency service patrol officers' assignments as well as materials dispensed and consumed and prepares a monthly summary report on all activities of Patron Services; and 11) requisitions materials and supplies to assure that all emergency service patrol vehicles are fully equipped and maintains records of materials and supplies. The position requires: 1) a Bachelor's degree in business administration or a related field; and 2) four years of experience including at least

two years of experience in supervising and managing a service-oriented function.

18. Secretary-Treasurer

The manager of payroll services reports to the deputy secretary-treasurer and performs the following job duties: 1) manages the payroll services of the MTA in accordance with established government regulations and MTA policies and procedures; 2) maintains the master file records of each employee's classification and compensation data, union or non-union status, payroll deductions, and fringe benefit balances, adjusting as necessary, as well as forwards pertinent information to Information Systems for processing; 3) directs the distribution of blank timecards and follows up to assure that all timecards are properly completed, approved, and returned to Payroll as scheduled and in accordance with existing policies and procedures; 4) directs and may participate in pre-auditing of approved timecards to assure that they are prepared correctly, properly signed and approved, and that the employee is eligible for all reported payment classifications; 5) assembles timecards, supporting documentation, and control figures from each department's supervisory staff and submits this material to Information Systems on a timely basis for payroll reports received from Information Systems; 6) directs the distribution of paychecks to employee location centers for employee payment and issues special checks as necessary; 7) contacts field managers, employees, and the Information Systems Division to reconcile problems relative to preparing paychecks and related payroll reports; 8) computes and issues paychecks to State Police for special detail assignments as well as computes the sick leave incentive payroll checks for payment to retiring employees; 9) maintains payroll records and prepares reports on payroll, tax deductions, deductions of employee benefits, union dues, and vacation and sick leave accrual credits; and 10) prepares other special payroll reports and analyses as requested to support contract negotiations and budgets. The position requires: 1) a Bachelor's degree in business administration or a related field; and 2) a minimum of five years' experience in administering a payroll system with three of those years in a supervisory capacity.

19. Toll Collection

The assistant manager of toll collection reports to the manager of toll collection and performs the following job duties: 1) assists in scheduling and posting tours of duty for plaza supervisors, senior toll collectors, and toll collectors as well as arranges for reassigning employees within the section in the event of an emergency; 2) notifies the manager of toll collection in the event of a shortage of toll collectors and obtains additional toll collectors as directed; 3) interprets and understands the provisions of the collective bargaining agreements pertaining to employees within the section; 4) visits toll collection plazas and booths during each tour of duty to evaluate the performance of employees, traffic conditions, and the condition of equipment and facilities; 5) notifies appropriate personnel of equipment malfunctions and the need for repairs as well as performs minor repairs to the equipment, as necessary, to facilitate the toll collection operation; 6) monitors financial transactions, examines toll audit reports, brings significant items to the attention of the manager of toll collection, and assists in

investigating problems; 7) assists in maintaining employee work and payroll records; 8) trains new toll collectors concerning toll collection policies and practices as well as evaluates their performance during their probationary periods; 9) compiles data for reports and assists in preparing administrative reports for the section; 10) maintains records of needed supplies, uniform inventory, and equipment; 11) assists in directing, training, and supervising all toll collectors in executing the MTA's toll procedures to assure that all functions are performed promptly, efficiently, and in accordance with established policies and procedures; and 12) conducts periodic night security checks at the request of the manager of toll collection. The position requires: 1) a high school diploma or its equivalent; and 2) at least three years of professional or supervisory experience in business administration, business management, or public administration with a minimum of one year in a supervisory capacity.

The manager of toll collection reports to the administrator of toll collection and performs the following job duties: 1) ensures effective scheduling for all shifts, reviews traffic statistics, toll audit reports, and the calendar of upcoming events, as well as develops work schedules so each toll plaza within the Turnpike is staffed to efficiently handle anticipated traffic volumes; 2) ensures the security of all transactions within the Turnpike by assisting in developing, managing, and monitoring departmental procedures and controls; 3) interviews new toll collection personnel and orients them on MTA policies and procedures, ensures that they are adequately trained on operating toll collection equipment, and reports to the administrator of toll collection on these employees' performance during their probationary period; 4) maintains controls throughout the Turnpike to ensure that all employees having direct contact with patrons in collecting tolls are properly uniformed, well groomed, courteous, prompt, and accurate in performing their duties; 5) receives and reviews toll audit reports, assesses and monitors toll collectors' performance within the Turnpike, and investigates problems related to monies, unusual occurrences, or patron complaints; 6) ensures that complaints are investigated from patrons related to the Turnpike, evaluates the situation, reports the findings to the administrator of toll collection, and makes recommendations on actions to be taken; 7) investigates variances, reconciles daily bank deposits, accounts for toll tickets, and assists the Toll Audit Department in any other area necessary to ensure the smooth operation of the Toll Department; 8) ensures collective bargaining contracts are adhered to within the Turnpike and resolves, if possible, grievances that may arise;²⁰ 9) represents the MTA in employee relations proceedings providing factual evi-

dence on the circumstances leading to the issues that arise; and 10) reviews time and attendance ensuring the accurate reflection of hours worked, absenteeism, sick leave, and overtime as well as initiates actions necessary to reduce attendance problems and improve overtime utilization. The position requires a minimum of five years' professional experience in a business or management environment with at least three of these years in a supervisory/managerial capacity.

Project Employees In General

Managers at the Project perform an annual cost and schedule update for the purpose of adjusting the Project's annual finance plan. As part of the cost update, the managers review all Project positions, including positions at the MTA, the Massachusetts Highway Department, and management consulting firms, to estimate their abolition dates. A position's abolition date is calculated based on the remaining functions for the employee in that position to perform.²¹ As of June 2004, the Project was 94% complete and was estimated to be substantially complete by mid to late 2005.²² However, certain Project positions are anticipated to exist through at least 2007 due to ongoing functions like billing and contract close-outs. Moreover, a position's scheduled abolition date may be extended for an indefinite time, if there is an identified need for that position to continue on the Project. Additionally, at least two MTA employees working on the Project were transferred to the MTA once their Project positions were abolished: the bridge engineer and the deputy project director.²³

MTA employees working on the Project hold either full-time or regular part-time positions. These employees have access to the Project's Human Resources Department as well as the Employer's Human Resources Department. The Project's Human Resources Department coordinates with the Employer's Human Resources Department when determining whether to discipline MTA employees working on the Project. The Employer's Human Resources Department handles the following issues for MTA employees working on the Project: benefits like health insurance, pay increases, and review of disciplinary actions.

Project Organizational Structure

The petitioned-for employees at the Project work in the following departments: 1) Communications; 2) Legal; and 3) MHS Start-Up. The petitioned-for positions within each department will be reviewed below.²⁴

20. The record does not reflect if the manager of tolls conducts hearings on grievances.

21. Employer Exhibit #5 contains abolition dates for various Project job titles. During cross examination, however, the Union established that some of the employees whose positions are listed as abolished on that exhibit are still employed. Further, the Employer's witness, Project Director Michael Louis (Louis), did not have personal knowledge about whether certain other positions that were scheduled for abolition according to Employer Exhibit #5 had, in fact, been abolished. Consequently, we do not find the abolition dates listed in Employer Exhibit #5 to be trustworthy evidence and decline to rely on that exhibit.

22. The Project's anticipated substantial completion date has changed at least twice. In the 1980's, the Project was estimated to be substantially complete in 1998. More recently, the Project's substantial completion date was moved from December of 2004 to between May and September of 2005.

23. Prior to his transfer, the bridge engineer, Tony Ricci (Ricci), worked in a split position with his time divided between both the Project and the MTA. However, the deputy project director, whose name does not appear in the record, worked full-time at the Project.

24. Part II(B) of Attachment A indicates that the petitioned-for unit includes the training administrator, CA/T position. However, there is no information in the record concerning that position.

1. Communications

The manager of public affairs reports to the director of communications and performs the following job duties: 1) directs the activities of the Project's public information staff, distributes assignments, reviews output, monitors progress, and evaluates results; 2) schedules, organizes, and conducts briefings and site visits for the Project with groups that may include federal, state, and local officials, foreign representatives, business associations, media representatives, or the general public; 3) composes fact sheets and public information materials for distribution to a wide range of audiences as well as contributes information to the web site; 4) works with Project personnel on various projects and/or special events like creating weekly traffic updates; 5) prepares information kits and press packets as well as organizes press conferences, forums, and special events; 6) maintains a library of relevant media clippings and distributes weekly to staff as well as maintains a photographic history of the Project for historical purposes; 7) publicizes community meetings and exhibits by means of advertisements, notices, and articles in newspapers; 8) oversees news and informational publications and brochures, audiovisual presentations and video productions as well as coordinates staff efforts in producing these items; 9) reviews and recommends for approval by senior managers speeches, papers, photographs, and any other relevant materials used for presentations, publications, and displays; 10) identifies opportunities for the chairman, Project director, and director of communications to promote the ultimate benefits of the Project; and 11) in the absence of senior management, manages and conducts media briefings. The position requires: a B.S. and a minimum of five years of experience in media relations/public affairs with three of these years as a manager.

2. Legal

There are four associate general counsels at the Project who are under the direction of the MTA's Legal Department. Like the associate general counsels at the MTA, all of the Project's attorneys are admitted to practice in the Commonwealth and are subject to the Rules of Professional Conduct.

According to the job description for the Project associate general counsel position,²⁵ the incumbents perform the following job duties: 1) review, investigate, report, and/or act upon specific legal matters that concern the operations and liabilities of the Project; 2) review claims and court actions against the Project by employees, patrons, or contractors to determine the basis for the claims, the extent of liability, and the extent of protection through insurance and bonds; 3) review bonding policies and insurance coverage as it relates to potential liability; 4) initiate correspondence to and claims against employees, patrons, and contractors to recover debts and damages on behalf of the Project; 5) prepare draft documents like

requests for proposals, contracts, leases, licenses, deeds, and permits; 6) research and draft legal opinions on a variety of activities; 7) prepare interrogatories, pleadings, and other documents for cases in which the Project is involved as a plaintiff or a defendant; 8) advise the professional staff in the conduct and presentation of materials when appearing as witnesses in court proceedings; and 9) prepare draft regulations and procedures for approval and review as well as opine on the implementation of regulations, policies, and procedures.

3. MHS Start-Up

The accountant/auditor 1, CA/T reports to the accountant/auditor 3, CA/T²⁶ and performs the following job duties: 1) prepares specified transactions under the direction and guidance of a more senior position; 2) maintains designated financial records following established procedures; 3) prepares and maintains routine work papers, schedules, and other related accounting data to document transactions and balances as well as provides an audit trail for future inquiries; 4) reviews various accounts, databases, agreements, and statements for completeness and accuracy; and 5) prints and distributes reports as required. The position requires a high school diploma or GED and one year of experience in accounting or accounting-related functions.

The accountant/auditor 2, CA/T reports to the accountant/auditor 3, CA/T²⁷ and performs the following job duties: 1) prepares and maintains routine work papers, schedules, and other related accounting data to document transactions and balances in accordance with established procedures as well as provides an audit trail for future inquiries; 2) prepares and/or reviews more complex reports, analyses, payments, and transactions; 3) reviews various accounts, databases, agreements, and statements for completeness and accuracy; 4) reviews, investigates, and reports on financial operations as compared to approved budgets or forecasts; 5) reviews and reports on data related to Project contracts; and 6) advises supervisors of problems or abnormalities that occur and recommends solutions when appropriate. The position requires: 1) either a B.S. in accounting, an equivalent degree in a related field, or additional years of relevant work experience in substitution for a degree; and 2) at least one year's experience in accounting.

The accountant/auditor 3, CA/T reports to the director of financial control and performs the following job duties: 1) oversees, analyzes, and reviews transactions, payments, audits, and financial statements prepared by the accounting department; 2) monitors and analyzes the accounting process to identify operational problems and implement solutions and improvements; 3) designs payment systems that are compliant with state and federal regulations; 4) advises financial managers, consultants, and vendors on issues

25. MTA Deputy General Counsel Dawna McIntyre (McIntyre) testified on cross examination that Project associate general counsels might prepare agenda items related to the Project for MTA board meetings. However, upon further questioning, McIntyre did not appear to have personal knowledge of the duties and responsibilities performed by Project associate general counsels. Therefore, we do not rely on her testimony with respect to the duties performed by the Project associate general counsels.

26. Although the job description for the accountant/auditor 1, CA/T position does not identify the title of the supervisory employee to whom the incumbent reports, the job description for the accountant/auditor 3 position indicates that the incumbent in that position supervises staff accountants. Because the accountant/auditor 1, CA/T is a staff accountant position, we infer that the accountant/auditor 3, CA/T supervises the accountant/auditor 1, CA/T.

27. For the reasons articulated in the preceding footnote, we infer that the accountant/auditor 3, CA/T supervises the accountant/auditor 2, CA/T.

that may arise; 5) prepares and/or reviews more complex reports, analyses, payments, and transactions; 6) reviews, investigates and reports on financial operations as compared to approved budgets or forecasts; and 7) supervises staff accountants.²⁸ The position requires: 1) a B.S. in accounting, an equivalent degree in a related field, or additional years of relevant work experience in substitution for a degree; and 2) a minimum of five years of experience in accounting with at least two of these years as a supervisor.

The area construction manager, CA/T reports to the director of construction, CA/T and performs the following job duties: 1) prepares bids, awards construction contracts, negotiates changes and claims, proposes remedies to problems, as well as prepares documentation for payment; 2) ensures construction operations meet designated schedules and quality specifications, ensures work is performed in the most cost-effective manner possible, as well as advises senior management of any changes, delays, or problems that may arise; 3) reviews, monitors, and inspects construction to ensure adherence to contract specifications and timeliness; 4) oversees management consultants in construction-related matters; and 5) interacts and coordinates with design team, governmental agencies, utilities, contractors, community leaders, and citizens on any matters related to Project construction. The position requires: 1) a B.S. in civil engineering; and 2) a minimum of eight years' experience in construction engineering with six of these years spent in major multi-contract construction projects.

The assistant office engineer 1, CA/T reports to the office engineer and performs the following job duties: 1) assists in processing correspondence for resident engineers and in designating incoming items for action and/or distribution as well as prepares routing of correspondence for appropriate signatures; 2) informs field engineers as to the status of contractors' signatures; 3) reviews and processes daily reports for legibility, accuracy, and completeness as well as coordinates requests for information and meetings with appropriate participants; 4) assists in maintaining files on engineering correspondence and specifications; and 5) assists, as required, in field-related duties of a field engineer by monitoring contractors' activities, assisting in inspecting construction activities, as well as recording and reporting daily construction activities. The position requires a B.S. in civil engineering or a related discipline and at least two years' experience in construction operations.

The assistant office engineer 2, CA/T reports to the office engineer and performs the following job duties: 1) processes all correspondence for resident engineers, designates incoming items for action and/or distribution, and routes correspondence for appropriate signatures; 2) informs field engineers as to the status of contractors' signatures; 3) reviews and processes daily reports for legibility, accuracy, and completeness as well as coordinates requests for information and meetings with appropriate participants; 4) assists in reviewing contract drawings and specifications marked by the contractor to reflect "as built" conditions; and 5) performs, as required, the field-related duties of a field engineer by monitoring contractors' activities, inspecting construction activities, and re-

cording and reporting daily construction activities. The position requires a B.S. in civil engineering or a related discipline and at least three years' experience in construction operations.

The assistant office engineer 3, CA/T reports to the office engineer and basically performs the same job duties as the assistant office engineer 2, CA/T. However, instead of duty #4, above, the assistant office engineer 3, CA/T performs the following duty: reviews and updates contract drawings and specifications marked by the contractor to reflect "as built" conditions. The position requires a B.S. in civil engineering or a related discipline and at least four years' experience in construction operations.

The bridge engineer, CA/T reports to the senior bridge engineer, CA/T and performs the following job duties: 1) prepares and/or reviews designs and reports as directed as well as coordinates the elements of superstructures or substructures to develop drawings required for the preliminary design of work in accordance with AASHTO specifications; 2) reviews final design submissions from consultants and prepares alternative plans and engineering studies; 3) coordinates the design efforts of other engineers to ensure accuracy, consistency, and adherence to Project objectives, and analyzes both static and dynamic computer designs; 4) represents the bridge design group at meetings with consultants or other relevant entities; 5) prepares responses or questions to design consultants regarding plans, specifications and drawings, and prepares other reports or correspondence as required; 6) implements the Project-wide inventory and rating program, coordinates services of section design consultants to ensure program compliance, interacts with FHWA on issues relating to federal requirements, and prepares inspection rating reports and submits them to the owners of the bridges; and 7) reviews contractors' submittals for requests for information and provides responses to the field. The position requires: 1) a B.S. in civil engineering or an equivalent degree in a related field; and 2) a minimum of six years' experience in structural engineering as well as designing steel and concrete viaducts/bridges with at least four of these years in major multi-contract construction projects.

The building operations supervisor, CA/T reports to the director of administrative services, CA/T and performs the following job duties: 1) supervises building operation and maintenance functions for both in-house and contracted services, including but not limited to air conditioning, electrical, plumbing, carpentry, repairs, alarms, elevators, janitorial services, pest control, and snow removal; 2) supervises the vehicle service operations as well as the construction, build-out, and fit-up of office layouts, configurations, and relocations; 3) schedules and supervises service contractors to ensure required levels of service and compliance with all service contracts and agreements; 4) enforces guidelines for energy consumption to ensure heating and air conditioning operate at peak efficiency; 5) develops procedures and processes for implementation by service contractors to ensure that facility equipment operates in accordance with federal, state, and local code regulations; 6) prepares cost effective operating budgets and monitors

28. The record does not indicate what supervisory authority the accountant/auditor 3, CA/T exercises.

expenditures to ensure budgetary levels are not exceeded; 7) interacts with various department managers and service contractors to effectively resolve problems; and 8) approves invoices and addresses billing issues for all building services and contracts. The position requires: 1) a high school diploma or GED; and 2) at least four years' experience in facilities management utilizing building trade disciplines with a minimum of two years in a supervisory role.

The distribution services supervisor, CA/T reports to the director of administrative services, CA/T and performs the following job duties: 1) supervises the daily activities of the mailroom and ensures timely and accurate delivery of all relevant items; 2) develops, coordinates, and approves purchase orders and FMRs for supplies and office equipment; 3) supervises all activities related to ordering, receiving, and dispensing office supplies and office equipment; 4) assigns priorities for reproduction and distribution of bid packages and addenda; 5) oversees contracted courier services; and 6) monitors administrative services annual budgets and evaluates departmental procedures to improve services and cost effectiveness. The position requires: 1) a high school diploma or GED; and 2) a minimum of two years' experience in providing services support to an organization with at least one of those years in a supervisory capacity.

The environmental engineer 1, CA/T performs the following job duties: 1) develops databases for documenting and tracking environmental conditions and analyzes data to evaluate project-wide variations before, during, and after construction; 2) evaluates data from construction contractors for technical accuracy and completeness as well as evaluates contractors' compliance with permit and contract specifications; 3) inspects and monitors construction areas and the work of environmental subcontractors for permit and specification compliance; 4) helps coordinate day-to-day field operations related to environmental programs; 5) assists with public education presentations, public relations efforts, and interagency communications; and 6) trains resident engineers and contractor field technicians on environmental issues and procedures.²⁹ The position requires: 1) a B.S. in civil engineering or environmental engineering or an equivalent degree in a related field; and 2) a minimum of four years' experience in environmental engineering with an emphasis in air pollution control and noise/vibration analysis.

The environmental engineer 2, CA/T performs the same duties as the environmental engineer 1, CA/T as well as the following additional duty: coordinates with abutters and municipal agencies for environmental services.³⁰ The position's requirements are identical to the requirements of the environmental engineer 1, CA/T position.

The environmental engineer 4, CA/T reports to the director of environmental, CA/T and performs the following job duties: 1) prepares summary engineering reports and regulatory analyses; 2) co-

ordinates the review of contractor prepared technical reports to include environmental assessments and studies relating to permitting needs; 3) analyzes data in support of project-wide permitting needs; 4) reviews and prepares contract specifications pertaining to air pollution control and air quality management during construction periods; and 5) advises senior management as to the impact of new and existing state and federal environmental laws and regulations on Project plans. The position requires: 1) a B.S. in civil engineering or environmental engineering or an equivalent degree in a related field; and 2) a minimum of six years' experience in environmental engineering with an emphasis in air pollution control, air quality management, and/or air quality management during construction.

The executive secretary, CA/T reports to a senior manager³¹ and performs the following job duties: 1) maintains and ensures organization of and immediate accessibility to a senior manager's files in operational and administrative issues; 2) arranges and ensures coordination of all appointments with internal and external parties, including standing weekly meetings with senior staff members; 3) maintains briefing materials for meetings and provides advanced preparation as required; 4) receives all mail; logs prioritizes, and tracks flow of correspondence exercising discretion on confidential items and making judgements on referring pertinent items to appropriate staff requiring immediate attention; routes materials as necessary to senior staff and department heads and monitors actions or responses; 5) operates all types of automated office equipment including computers, work processors, copy machines, and fax machines; 6) receives all visitors; ensures positive working relationships with internal and external parties when responding to inquiries; appraises the senior manager frequently during the day of matters requiring attention like inquiries, telephone calls, and changes in schedule or incoming mail; and 7) acts as liaison with senior staff and departmental heads on all matters pertaining to coordinating meetings and tracking correspondence. The position requires a minimum of five years of administrative/secretarial experience with two of those years served in an executive administrative/secretarial capacity directly reporting to a senior manager or an executive-level employee.

The manager of environmental procedures and permits, CA/T reports to the director of environmental, CA/T and performs the following job duties: 1) manages and directs the process to obtain permits, amendments, modifications, and compliance certificates from over twenty participating federal, state, and local agencies; 2) manages and directs the development of environmental permit and compliance strategies; tracks permits in coordination with design, engineering, and construction; 3) negotiates and administers interagency service agreements and programs with the Department of Environmental Protection; 4) prepares, reviews, and approves permit-related correspondence, reports, and other documentation prior to sign off by Project officials; represents the Project at hear-

29. The record is silent with respect to who supervises the environmental engineer 1, CA/T.

30. The record does not demonstrate who supervises the environmental engineer 2, CA/T.

31. The record fails to show the titles of the senior managers to whom the executive secretary, CA/T reports.

ings and meetings to advance the permitting process; 5) oversees environmental support services in air quality, dust, and odor control, noise abatement and control, water quality, pest control and sanitation, wetlands, planting and plantable soils, and compliance field inspections; 6) manages and directs Project management consultants in developing and refining environmental procedures and contract specifications; 7) acts as the technical representative for environmental subcontracts covering pest control, air and water quality, noise control, wetlands management, and analytical labs; and 8) represents the Project at meetings, hearings, forums, conferences, legislative sessions and committees, and public gatherings; establishes and maintains effective communications with the legislators, public officials, and various representatives of the general public. The position requires: 1) a J.D.; 2) membership in the Massachusetts bar; and 3) a minimum of five years of managerial experience in business administration, public administration, or transportation with at least three of these years in a senior management position.

The manager of materials control, CA/T reports to the director of construction, CA/T and performs the following job duties: 1) develops and maintains material control requirements for re-cast concrete; assists in coordinating the funding requirements to support materials control inspection at fabrication plants and sites; 2) coordinates and facilitates RMS testing of materials; 3) prepares for the gradual assimilation of Project materials testing by RMS as the Project draws to completion; 4) implements interface activities between two laboratories in separate locations; and 5) monitors VECP field reporting and coordinates interaction with engineering on VECP issues as requested by the area construction managers and the engineering VECP coordinator. The position requires: 1) a B.S. in civil engineering or an equivalent degree in a related field; and 2) at least five years of experience in construction contracts.

The MMIS engineer, CA/T reports to the director of system start-up and performs the following job duties: 1) administers all aspects of the MMIS; 2) develops and manages the database for the preventative maintenance program; 3) develops and implements an MMIS work order system; 4) coordinates related issues with the MTA, MHD, the Project, and contractors; 5) creates and generates reports using a crystal reports database report writer; and 6) instructs field and officer personnel in using MMIS as well as conducts training sessions as needed. The position requires: 1) a B.S. in engineering or a related discipline; and 2) a minimum of five years of experience in systems operations pertaining to maintenance engineering.

The records management supervisor, CA/T reports to the director of administrative services, CA/T and performs the following job duties: 1) supervises and directs the Project's Document Control Center, oversees and updates departmental procedures, and supervises the entry and recovery of all submitted documents; 2) supervises the archiving and retrieving of all Project documents, plans, engineering specifications, and correspondence; tracks over 11,000 boxes of documents and 2,400 packages of engineering drawings; 3) supervises the processing and distribution of all correspondence from the Project director; 4) meets regularly with department managers to review workflow and expected document

turnover; 5) serves as the records retention focal point, develops and administers the Project's record retention schedules, and oversees destroying dated materials in relation to approved schedules; 6) supervises and maintains the master file index for all Project documents; 7) administers the Project's inventory control system and inventories and tracks by means of bar codes all assets valued in excess of \$100; supervises department managers in annual physical inventories; and 8) creates and approves Project forms, phone directories, and organizational charts. The position requires: 1) a high school diploma or GED; and 2) a minimum of four years of experience in an automated records management system with at least two of these years in a supervisory capacity.

The resident engineer, CA/T reports to the area construction manager, CA/T and performs the following job duties: 1) directs assigned field personnel in performing on-site inspections; 2) represents the Project in related public relations matters and interfaces with related agencies and organizations as required; 3) provides technical assistance and recommendations in administering change orders and processing claims in instances that exceed the incumbent's designated authority; 4) evaluates design and construction problems during the construction phase as well as develops alternate courses of action when appropriate; and 5) is responsible for issuing stop work directives as authorized by the contract in question. The position requires: 1) a B.S. in civil engineering or an equivalent degree in a related field; and 2) at least five years of experience in construction contracts with three of these years in a supervisory capacity.

The risk manager, CA/T reports to the deputy director of the Project and performs the following job duties: 1) provides strategic advice and counsel to senior management on all items related to risk management and insurance programs; 2) negotiates, drafts, and implements insurance coverages and renewals to include workers' compensation, general liability, builders' risk, professional liability, and employers' liability; 3) acts as a primary contact for all claims and claims management actions and negotiates disputes and settlements; 4) develops and implements cost containment and regulatory relief initiatives for risk management; 5) coordinates with a variety of federal and state agencies on a variety of insurance issues as well as responds to inquiries and reports as directed; 6) identifies and evaluates risk exposure losses arising from Project activities as well as recommends actions and/or changes to minimize exposure; and 7) supports and assists in Project health and safety initiatives through the administration of the SHARE program. The position requires: 1) a B.S. in finance, economics, or a related discipline, however, additional years of experience can be substituted for a degree; and 2) at least five years' experience in risk management or insurance administration.

The senior bridge engineer, CA/T reports to the deputy project manager and performs the following job duties: 1) establishes structural design criteria for Project bridges and viaducts, defines design standards throughout the Project, reviews designs for quality and cost effectiveness, and resolves design issues; 2) reviews findings of the Value Engineering Program and directs changes resulting from the reviews; 3) ensures all structural activities are managed in a quality, cost-effective manner and ensures all Project

standards and specifications are met; 4) acts as technical advisor on compliance issues related to design standards; 5) develops and implements a formal structural review process to be utilized for all structural design activities; 6) provides consistency for all structural designs throughout the Project; and 7) represents the Project at meetings, hearings, forums, conferences, legislative sessions, and committees. The position requires: 1) a B.S. in civil engineering or an equivalent degree in a related field; and 2) a minimum of eight years' experience in structural engineering with at least six of these years in major multi-contract construction projects.

The senior data analyst, CA/T reports to the director of administrative services, CA/T and performs the following job duties: 1) designs and develops databases and reports to support the designated unit, modifies work periodically while evaluating the effectiveness of the program, and ensures the accuracy of data and work product; 2) prepares narrative and/or statistical reports as needed; 3) develops a reporting system in conjunction with the department manager to track specific levels and types of activity; 4) prepares questionnaires to elicit information, monitors responses, and analyzes results; and 5) assists in or conducts special studies as directed. The position requires: 1) a B.S. in computer science or an equivalent degree in a related field; and 2) at least five years' experience working in database programming and design.

The senior electrical engineer, CA/T reports to the director of systems start-up and performs the following job duties: 1) reviews design packages and develops electrical test plans and associated appendices for assigned contracts; 2) identifies and coordinates with the resident engineer the related submittals required for contractor turnover packages; 3) reviews contractor and vendor test procedures; 4) witnesses contractor tests to verify accuracy, completeness, and integration into the overall start-up program; 5) attends contract status meetings and participates in contract site walkdowns to verify status; 6) coordinates testing across contract boundaries; and 7) reviews system operating and maintenance procedures. The position requires: 1) a B.S. in electrical engineering or a related engineering discipline; 2) at least five years of experience in engineering with a minimum of three years in electrical engineering; and 3) registration or eligibility to register as a professional engineer.

The traffic manager, CA/T reports to the deputy project director, engineering and construction, CA/T. The traffic manager, CA/T performs the following job duties: 1) manages and maintains an efficient and effective traffic management program throughout the construction phase of the Project; 2) ensures milestones that may alter traffic patterns are effectively planned and subsequent changes are implemented with minimal disruption; 3) effectively and timely communicates upcoming changes in traffic patterns to the motoring public; 4) interacts and communicates with Project personnel to stay abreast of work schedules and their effect on existing plans as well as reacts to changes in a timely manner; and 5) meets and coordinates with Project personnel, the City of Boston, Mass. Highway, and any other relevant entities regarding traffic management issues. The position requires: 1) a B.S. in civil engineering, public administration, or a related discipline or additional years of relevant experience in substitution of a degree; and 2) at

least five years of experience in traffic management, urban planning, or a related field.

Opinion

There are several threshold issues that the Employer raises for our consideration. First, the Employer argues that the petitioned-for workers are supervisors and managers that are not entitled to collective bargaining rights, because they are not employees pursuant to Chapter 760 of the Acts of 1962. Second, the Employer asserts that Project employees are casual employees and should be excluded from the petitioned-for bargaining unit. Third, the Employer contends that the MTA attorneys are ineligible to participate in collective bargaining due to the loyalty requirement imposed on them by the Massachusetts Rules of Professional Conduct. In the alternative, the Employer argues that the MTA attorneys are confidential employees. We will address each of these arguments in turn.

Supervisory and Managerial Employees

The Employer points out that Chapter 760 of the Acts of 1962 does not apply Section 2 of the Law, which defines the term "employee", to the MTA and its employees. As a result, the Employer theorizes that the Commission must define that term using precedent established under the National Labor Relations Act (NLRA) for two reasons.

First, the Employer contends that the Legislature intended the MTA to operate as a private business as opposed to a public employer. In support of that argument, the Employer points to: 1) its power to fix tolls, to issue notes and bonds, and to employ staff under its current enabling statute, M.G.L. c. 81A, as well as earlier statutes; 2) the SJC's dictum in *Levy v. The Acting Governor*, 436 Mass. 736, 747-748 (2002), that the MTA is "more like a business than a government agency"; and 3) the facts found in the *General Finance Information* section of our decision in this matter. However, *Levy v. The Acting Governor* is inapposite to the issues presented here. That case dealt with the Acting Governor's authority to remove two members of the MTA's board and did not pertain to the definition of "employee" under Chapter 760 of the Acts of 1962. *Levy v. The Acting Governor*, 436 Mass. at 736. Additionally, the Massachusetts Bay Transportation Authority (MBTA) shares a similar structural complexity to the MTA and employs at least as many, if not more, employees as the MTA. See, *MBTA*, 22 MLC 1111 (1995) (total payroll of 6,000 employees); *MBTA*, 6 MLC 1419 (1979) (numerous departments and divisions). Nevertheless, the Commission repeatedly has treated the MBTA as a public employer under the Law. See, *MBTA*, 22 MLC at 1111; *MBTA*, 6 MLC 1814 (1980); *MBTA*, 6 MLC at 1419; *MBTA*, Case No. CR-3270 (slip op. October 16, 1972). Significantly, Chapter 760 of the Acts of 1962 specifically denies MTA employees the right to strike. The inability to strike demonstrates the public nature of the employment relationship between the MTA and its employees. *Massachusetts Port Authority*, Case No. CR-2940 (slip op. March 23, 1965) ("A further argument that appears to be conclusive with respect to the public or governmental nature of their employment arises when we consider that the economic weapon permitted to employees in industry and trade has

been taken away from employees of the Port Authority, namely, the right to strike.”). Moreover, the Employer overlooks its own enabling statute stating that the MTA is a “public instrumentality” performing “an essential governmental function.” M.G.L. c. 81A, §1. Accordingly, we are not persuaded by the Employer’s argument.

Second, the Employer contends that the NLRA was the only labor relations statute in existence when the Massachusetts Legislature enacted Chapter 760 of the Acts of 1962. The Employer infers that the Legislature must have intended for the Commission to define the term “employee” by using that statute. The Employer notes that the Taft-Hartley Act excluded supervisory employees from the collective bargaining process under the NLRA in 1947. The Employer further asserts that the U.S. Supreme Court exempted managers from collective bargaining under the NLRA in *NLRB v. Bell Aerospace Co.*, 416 U.S. at 267, and *NLRB v. Yeshiva University*, 442 U.S. 672, 682-683 (1980).

In *Massachusetts Port Authority*, Case No. CR-2940 (slip op. March 23, 1965), the Commission held that the petitioned-for unit of foremen and supervisors was entitled to bargain collectively. The Massachusetts Port Authority (Port Authority) subsequently challenged the petitioned-for employees’ right to vote on the grounds that they were supervisory, executive, or managerial employees. *Massachusetts Port Authority*, Case No. CR-2940 (supp. decision June 7, 1966). The Port Authority also filed motions to reconsider and to admit additional evidence. The Commission allowed these motions and conducted a hearing on the issues presented by the Port Authority. In its supplementary decision, the Commission noted that the Massachusetts Legislature had not amended the Law to exclude supervisors as Congress did by passing the Taft-Hartley Act. The Commission further noted that, although it used precedent established by the National Labor Relations Board (NLRB) to guide some of its decisions, the Commission was not bound by that case law. After confirming that the petitioned-for employees were public as opposed to private employees, the Commission sustained its March 23, 1965 decision and granted supervisors and foremen the right to bargain collectively. *Id.* Because the Port Authority is subject to Chapter 760 of the Acts of 1962 like the MTA, the holding in Case No. CR-2940 means that supervisors at the MTA are employees within the meaning of that Act. Nevertheless, the Employer asserts that Case No. CR-2940 is inapplicable to the MTA, because the MTA is structured and operated like a private business unlike the Port Authority. For the reasons articulated above, however, we reject that contention and conclude that Case No. CR-2940 is controlling in the case presently before us.

The Employer alternatively argues that, even if precedent developed under the NLRA is inapplicable here, the Commission excluded supervisors from bargaining units in cases dating prior to 1962. The Employer cites the following cases in support of that ar-

gument: *The Country Club, a Massachusetts Corporation, Located in Brookline, Massachusetts*, Case No. CR-2380 (slip op. February 9, 1956); *Garden City Print, Inc.*, Case No. CR-2364 (slip op. December 5, 1955); *Townhouse, Inc. of Boston*, Case No. CR-2365 (slip op. December 7, 1955); *Allen Stationery Company of Lynn, Inc.*, Case No. CR-2231 (slip op. November 16, 1954). The Employer remarks that it could not locate any precedent reversing these earlier decisions. However, in *Brookline Hospital*, Case No. CR-3402 (slip op. January 28, 1974), the Commission specifically referenced its prior decisions that had excluded supervisors from bargaining units under the Law. The Commission explained that these prior decisions were the result of either consent agreements or the Commission’s determination that supervisors were grouped inappropriately with non-supervisors. As a result, the Commission concluded that these decisions did not prevent it from determining whether supervisors were appropriately included in a bargaining unit. *Id.* at p. 12. The Commission went on to hold that supervisors were appropriately included in the petitioned-for unit. *Id.* at p. 18. The SJC noted the *Brookline Hospital* case with approval in *MBTA v. Labor Relations Commission*, 425 Mass. 253, 260 (1997). Because the Commission cases cited by the Employer are similar in nature to the precedents discussed in *Brookline Hospital*, we conclude that the cited cases are not dispositive of the issues presented here.

In addition to the *Massachusetts Port Authority* and *Brookline Hospital* cases, the Commission consistently has granted supervisors the right to bargain collectively under Section 5 of the Law. See, e.g., *MBTA*, 22 MLC at 1111 (Commission noted the Law does not contain a statutory exception for supervisors); *Ogden Suffolk Downs*, 7 MLC 1593 (1980) (separate unit of supervisory uniformed guards created); *MBTA*, 6 MLC at 1814 (Commission severed starters and inspectors from existing bargaining unit and directed election in separate supervisory unit); *MBTA*, 6 MLC at 1419 (Commission directed election in unit consisting of all unfiliated supervisory employees); *MBTA*, Case No. CR-3270 (slip op. October 16, 1972) (reaffirming *Massachusetts Port Authority* decision). Based upon the foregoing case law, we hold that the term “employee” in Chapter 760 of the Acts of 1962 includes supervisors.

The Employer next contends that some of the employees in Parts I(A) and I(B) of Attachment A are managerial as that term is defined in the *Bell* case. As explained above, however, the Commission first examines its own case law to determine if there is applicable precedent before seeking guidance from the NLRB’s precedent. Accordingly, we turn to analyze our precedent to determine if a definition of managerial employee exists apart from Section 2 of the Law.

Similar to Chapter 760 of the Acts of 1962, M.G.L. c. 161A, §19A³² applies Section 5 of the Law to the MBTA but does not apply the definitions listed in Section 2 of the Law. In *MBTA*, 22

32. Section 19A of M.G.L. c. 161A provides:

Notwithstanding any provisions of law to the contrary, the provisions of section five of chapter one hundred and fifty A shall so far as apt apply to the authority and its employees, excepting directors, executives and those con-

fidential employees representing the authority and dealing with employee organizations. Nothing in this section shall be construed as conferring upon the employees of the authority the right to strike, nor as detracting from the obligations of the authority and the employees to submit all grievances and other disputes to arbitration.

MLC at 1111, the Commission grappled with defining the term “executive” contained in M.G.L. c. 161A, §19A. After concluding that the term executive was equivalent to the term managerial, the Commission proceeded to define the term managerial. *Id.* at 1138. Specifically, the Commission combined the definitions of managerial employee under *Bell* and *Yeshiva University*, after noting that these definitions were consistent with the definition of managerial employee in *Brookline Hospital*, to establish a workable definition of the term managerial. *Id.* at 1139-1141. The Commission defined a manager as an employee that formulates and effectuates the employer’s policies and exercises discretion within and independent of established employer policy. In determining whether an employee is a manager, the Commission stated that it would consider the following criteria: 1) the extent to which an employee directs and controls the operation and performance of a department or major sub-division; and 2) the extent to which an employee’s interests, in the exercise of discretion, become so closely aligned with that of their employer that their inclusion in any bargaining unit would lead to a divided loyalty or conflict of interest. *Id.* at 1141. Because that definition also yields a workable definition of managerial employee under Chapter 760 of the Acts of 1962, we adopt the definition in the *MBTA* case here. After independently reviewing the job duties of the employees listed in Parts I(A) and I(B) of Attachment A, except for the positions for which we have no job descriptions, we conclude that these employees are not managers as defined by the *MBTA* case. Accordingly, these employees are not excluded from collective bargaining.

Project Employees

The Employer asserts that the Project employees are casual and not entitled to bargaining rights, because their positions are scheduled for elimination on a specific date. The Employer urges the Commission to adopt the “date certain test” found in *New England Lithographic Company, Inc.*, 589 F.2d 29, 33 (1st Cir. 1978). According to the Employer, an employee with a termination date that is fixed by either a calendar date or a reference to complete a specific task is a temporary employee under that test. The Employer argues that the Project employees meet the date certain test because: 1) the Project is approximately 94% finished with a scheduled completion date of May 2005; and 2) various positions are scheduled for incremental abolition between now and the scheduled completion date. Although the Employer acknowledges that the Project’s completion date has been extended over the years, the Employer contends that these extensions do not alter the fact that every Project employee’s position will be abolished on a date certain (i.e., completion of the Project). As stated above, however, precedent established under the NLRA does not bind the Commission when deciding cases under the Law. As a result, we will look first to Commission case law for guidance rather than to the case cited by the Employer.

The Employer, nevertheless, argues that no Commission case has dealt with the situation where, as here, the positions as opposed to the employees are temporary. However, the Employer overlooks *MBTA*, 6 MLC at 1419. In that case, the employer created the position of temporary change foreman for the purpose, among other things, of handling long-term projects that would end on an undetermined date in the future but were not permanent. *Id.* at 1436.

The Commission held that employees in the temporary change foremen position for six months or more were eligible for inclusion in the petitioned-for bargaining unit, because they were not casual and shared a community of interest with the other petitioned-for employees. *Id.* at 1444. The *MBTA* case directly applies to the issue presented here.

Additionally, we note that the Commission traditionally has extended bargaining rights under M.G.L. c. 150E to employees in positions characterized as temporary but whose working conditions demonstrate that their employment relationship is substantial enough to warrant collective bargaining rights. See, *Board of Trustees of the University of Massachusetts*, 28 MLC 225, 233 (2002) (resident assistants and community development assistants); *Worcester County*, 17 MLC 1352, 1358-1361 (1990) (jail positions); *Board of Regents of Higher Education Southeastern Massachusetts University*, 11 MLC 1486, 1491-1492 (1985) (visiting lecturers); *Boston School Committee*, 7 MLC 1947, 1951 (1981) (sixty-day substitute teachers); *City of Cambridge*, 2 MLC 1450, 1464-1465 (1976) (hospital interns, residents, and fellows). In rendering these decisions, the Commission examines factors like continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the amount of work performed by the employee to determine whether an employee is casual. No one factor is necessarily dispositive. Rather, the Commission looks at the function, nature, and character of the worker’s employment relationship to the employer. *Board of Trustees of the University of Massachusetts*, 28 MLC at 233; *Worcester County*, 17 MLC at 1358-1361; *Board of Regents of Higher Education Southeastern Massachusetts University*, 11 MLC at 1491-1492. To assess continuity of employment and regularity of work, the Commission examines employees’ work schedules and has excluded employees from collective bargaining where, among other things, the employees’ work schedules demonstrated that the workforce was unstable, its hours were irregular, and the contours of the proposed unit were poorly defined. *Town of Wenham*, 22 MLC 1237, 1245 (1995). Usually, the necessary continuity is satisfied if a significant proportion of the proposed unit works regularly, as opposed to sporadically, over the course of a year or more, so the confines of the unit at any given time are identifiable. *Massachusetts Board of Higher Education*, 13 MLC 1173, 1183 (1986).

In the case before us, the Employer proffered unreliable evidence of the abolition dates of Project employees’ positions, as described in more detail above. As a result, we cannot determine with any degree of certainty the length of each position’s existence. Further, there is no evidence indicating that Project employees work variable schedules. Rather, the record demonstrates that these employees work in full-time or regular part-time positions. Moreover, Project employees perform work that is integral to the Employer’s mission, as demonstrated by the fact that Project employees’ positions may be extended indefinitely based on the Project’s needs. After considering all of these factors, we conclude that the Project employees in Parts I(B), II(B), and III(B) of Attachment A are not casual and have the right to bargain collectively.

Attorneys

The Employer generally argues that attorneys are not appropriate for inclusion in any bargaining unit, because their own negotiating interests would conflict with the duty of loyalty owed to their clients under Rule 1.7 of the Massachusetts Rules of Professional Conduct.³³ Contrary to the Employer's assertion, this argument is not novel. In *MBTA*, Case No. CR-3270 (slip op. October 16, 1972), the employer contended that all attorneys' membership in or representation by a labor organization was incompatible with their status as attorneys-at-law. The Commission rejected that contention and indicated that Section 5(b) of the Law specifically provides for units of professional employees. Because the Commission found that attorneys were professional employees under that section of the Law, the Commission concluded that the attorneys were appropriately included in the petitioned-for unit, unless they represented the employer in dealing with employee organizations. *Id.* We also note that attorneys employed by the Commonwealth of Massachusetts already participate in collective bargaining in Statewide Bargaining Unit 6 and have done so for over twenty-five years without any apparent conflict in representing their client. *See, Commonwealth of Massachusetts*, Case No. SCR-2103 (slip op. April 7, 1977) (decision and direction of election including attorneys in Unit 6). The Employer makes no effort to reconcile that fact with its argument here. Accordingly, we find that the Employer's argument lacks merit and decline to exclude the petitioned-for attorneys from the proposed unit.

The Employer also contends that the Commission should exclude the attorneys working at the MTA from the proposed bargaining unit, because they are confidential employees. While the Union agrees that McIntyre and Traylor are confidential employees, it disputes whether Fenton and Pugley are. We turn to examine the standard for determining whether the disputed positions are confidential before applying that standard to the facts in this case.

In *MBTA*, 22 MLC at 1142-1143, the Commission found that attorneys dealing with employee organizations and handling employment-related litigation, including labor relations work, were confidential pursuant to Section 5 of the Law. As noted above, the Commission's earlier holding in *MBTA*, Case No. CR-3270 (slip op. October 16, 1972), similarly excluded attorneys from the proposed unit, if they represented the employer in dealing with employee organizations.

Here, one of Fenton's job duties is to take the minutes of the MTA board's executive sessions where collective bargaining matters are discussed. The Union argues that this bimonthly job duty is not the primary responsibility of Fenton's job. The Union further contends that Fenton's involvement in these meetings is too limited to categorize her position as confidential. Notwithstanding these arguments, we find that Fenton's advance knowledge of and exposure to collective bargaining matters at the board's executive sessions are sufficient to render her position confidential. The Union

also asserts that Fenton's presence at the board's executive sessions is unnecessary, because two other attorneys in the MTA's Legal Department attend those sessions. However, as a general policy matter, the Commission will not require an employer to re-allocate job duties to insulate an employee from confidential materials, unless there is cause to believe that the employer contrived to remove that position from the bargaining unit by broadly allocating confidential duties. *Fall River School Committee*, 27 MLC 37, 40 (2000); *Framingham Public Schools*, 17 MLC 1233, 1237-1238 (1990). There is no evidence that the Employer has done so here. Consequently, we conclude that Fenton's position is properly excluded from the petitioned-for bargaining unit due to its confidential status.

Pugsley's primary responsibilities are to handle worker's compensation cases at the MTA and to oversee outside counsel handling the same cases. The Union contends that Pugsley's position is not confidential, because he does not engage in collective bargaining or have access to collective bargaining proposals and policies. However, the Union's focus on labor relations matters is too narrow. The Commission specifically stated in *MBTA*, 22 MLC at 1142-1143, that attorneys handling employment-related litigation were confidential employees. Because workers' compensation litigation is employment-related, we conclude that Pugsley's position is confidential and appropriately excluded from the proposed bargaining unit.

Appropriate Unit

In *Jordan Marsh Company v. Labor Relations Commission*, 36 Mass. 748 (1944), the Supreme Judicial Court stated that bargaining units established pursuant to Section 5 of the Law should be comprised of "the largest number practically possible of employees having the requisite community of interest." Consequently, the Commission considers the following factors in analyzing whether a petitioned-for unit is appropriate: 1) the community of interest of the employees sought to be represented; 2) the efficiency of the employer's operations and effective dealings; and, 3) the rights of employees to effective representation. *MBTA*, 22 MLC at 1143; *MBTA*, 6 MLC at 1438. The Commission is also mindful of pertinent provisions of Section 5(b) of the Law providing, in pertinent part, that:

[T]he unit appropriate for the purposes of collective bargaining shall be the employer unit, profession or craft unit, plant unit, or subdivision thereof, ... provided that, in any case where the majority of employees of a particular profession or craft shall so decide, the Commission shall designate such profession or craft as a unit appropriate for the purposes of collective bargaining....

The Commission interprets these provisions of Section 5(b) of the Law to permit it to determine the appropriate bargaining unit first. After making that determination, the Commission next examines if professionals or craft employees are included within the bargaining unit description. If so, the Commission allows them to de-

33. That rule states: "A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: 1) the lawyer rea-

sonably believes that the representation will not be adversely affected; and 2) the client consents after consultation."

cide by majority vote whether they wish to be included in the bargaining unit. *MBTA*, 22 MLC at 1144; *MBTA*, 6 MLC at 1438.

1. Community of Interest

If the parties are in agreement or stipulate to all or specific issues raised by a representation petition, the Commission will adopt the parties' agreement as the basis of its decision provided the agreement does not conflict with applicable law or established Commission policy or practice. *MBTA*, 27 MLC 67, 70 (2000); *MBTA*, Case No. CR-3270 (slip op. January 18, 1973).

Here, the parties agree in Joint Stipulations #3 and #4 that, if the workers in the disputed positions listed in Parts I(A) and I(B) of Attachment A are found to be employees under Chapter 760 of the Acts of 1962, then the incumbents in these positions share a community of interest with each other and with the employees identified in Parts II(A) and II(B) of Attachment A. For the reasons articulated previously, we find that the workers in the disputed positions listed in Parts I(A) and I(B) of Attachment A are employees under Chapter 760 of the Acts of 1962. Moreover, the parties' proposed bargaining unit does not appear to be in conflict with Section 5 of the Law.³⁴ Accordingly, we adopt Joint Stipulations #3 and #4 and find that the employees in Parts I(A), I(B), II(A), and II(B) of Attachment A constitute an appropriate bargaining unit with the exception of the following positions: 1) assistant manager of toll audit; 2) deputy director of highway maintenance; 3) supervisor of field operations; 4) supervisor of toll equipment program; 5) permit administrator; and 6) training administrator, CA/T. We expressly decline to include these six positions in the petitioned-for bargaining unit, because the parties failed to provide us with any information about the incumbents' job duties and responsibilities. Further, we make no finding with respect to the positions described in Parts III(A) and III(B) of Attachment A because: 1) the Union withdrew the positions in Part III(A) of Attachment A from its petition; and 2) it is our understanding from Joint Stipulation #8 that the parties will accrete the positions in Part III(B) of Attachment A into the Union's existing bargaining unit in light of our decision here that the Project employees are not casual.

2. Professional Employees

To be a professional employee, the work performed must satisfy the following criteria: 1) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; 2) involving the consistent exercise of discretion and judgment in its performance; 3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and 4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from training in the

performance of routine mental, manual or physical processes. Because these four criteria are conjunctive, the work of professional employees must fully comply with the entire definition. *Old Colony Elder Services, Inc.*, 6 MLC 1893, 1898 (1980); *Wesley Child Care Center*, 1 MLC 1098, 1100 (1974). Additionally, the Commission considers the following requirements to be the minimum necessary to qualify as a professional employee: 1) specialized instruction leading to a specialized degree; 2) prolonged training of generally three or four years; and 3) in most cases, either certification, registration, or licensing. *Wesley Child Care Center*, 1 MLC at 1101, citing *Beth Israel Hospital*, Case Nos. CR-3404/3405 (slip op. March 8, 1974).

Although technical employees have some of the hallmark characteristics of professional employees, they do not meet the specific requirements for qualification as a professional employee. The Commission considers the following factors when determining whether employees are technical employees: 1) specialized training and knowledge; 2) performing work of a predominantly intellectual character requiring the use of independent judgment; 3) higher levels of skill and pay; and 4) usually, but not necessarily, licensing or certification by a state or private agency. *City of Worcester*, 6 MLC 1104, 1106 (1979), citing *Beth Israel Hospital*, Case Nos. CR-3404/3405 (slip op. March 8, 1974).

In Joint Stipulations #5 and #6, the parties agree that the employees listed in Parts II(A) and II(B) of Attachment A are professional employees. However, for the reasons articulated below, the following positions listed in Parts II(A) and II(B) of Attachment A are not professional: 1) accountant/auditor 1, 2, and 3; 2) administrative and benefits manager; 3) assistant office engineer 1, 2, and 3; 4) executive secretary; 5) lead analyst/programmer; 6) personal computer/network coordinator; 7) risk manager; 8) senior financial/statistical analyst; and 9) traffic manager.

The accountant/auditor 1 and 2 positions do not require an advanced degree, certification, registration, or licensing. The job duties performed by the incumbents in these positions consist of maintaining financial records, preparing paperwork, and reviewing information for completeness and accuracy. These duties involve routine mental work and do not require exercising discretion and judgment consistently. Although the accountant/auditor 3 performs more responsible job functions than the accountant/auditor 1 and 2, the accountant/auditor 3 does not need an advanced degree, certification, registration, or licensing to qualify for that position.

The administrative and benefits manager does not need a college degree, certification, registration, or license to qualify for that position. Some of the job duties listed in the job description for the administrative and benefits manager position include: 1) providing administrative support services to the Human Resources Divi-

34. Although some of the petitioned-for positions supervise other positions in the proposed unit, the record contains scant evidence of the indicia of supervisory authority exercised by the supervisory employees (i.e., authority to hire, fire, transfer, suspend, evaluate, and promote employees, or to adjust their grievances, or effectively recommend those actions). *MBTA*, 22 MLC at 1139; *MBTA*, 6 MLC at 1816. Without sufficient evidence of these indicia, we cannot conclude that placing the

supervisory and non-supervisory employees in the same unit will produce an inherent conflict between them. *Compare*, *MBTA*, 6 MLC at 1814 (because starters and inspectors possessed significant supervisory authority, they were severed from existing bargaining unit). Thus, the supervisory and non-supervisory employees appropriately are placed in the same bargaining unit.

sion; 2) assisting the director of benefits in preparing requests for proposals and negotiations with benefits carriers; and 3) recommending changes to benefits plans based on empirical data. These job duties demonstrate that the incumbent in the disputed position does not exercise discretion and judgment consistently in his or her work.

The assistant office engineer 1, 2, and 3 positions do not require certification, registration, or licensing. Further, none of these positions involve predominantly intellectual work or the exercise of judgment or discretion. Rather, the work performed by the incumbents in the three disputed positions consists of routine mental work like processing correspondence, informing field engineers as to the status of contractors' signatures, and reviewing and processing daily reports for legibility, accuracy, and completeness.

The executive secretary does not need a degree, certification, registration, or license to qualify for that position. The incumbent performs clerical functions that involve routine mental and manual work like filing, scheduling appointments, and typing.

Although the lead analyst/programmer must have a Bachelor's degree, that degree is not specialized and may come from a variety of academic areas like computer science, business, management, or accounting. The incumbent in the disputed position is not required to possess a certification, registration, or license. Moreover, the incumbent primarily maintains data processing systems, performs functional testing, and debugs programs. Taken together, these facts demonstrate that the lead analyst/programmer is a technical employee.

The personal computer/network coordinator does not need a college degree, certification, registration, or license to qualify for that position. The incumbent in that position primarily installs personal computers and related equipment as well as distributes software. These job duties are manual in nature and do not involve exercising judgment and discretion.

The risk manager is not required to have a degree, registration, certification, or license. The incumbent must possess specialized knowledge of the risk management and insurance programs and exercises a significant degree of independent judgment in performing the position's job duties. Thus, we conclude that the risk manager is a technical employee.

Like the lead analyst/programmer, the senior financial/statistical analyst must have a Bachelor's degree, but that degree is not specialized and may come from a variety of academic areas like business administration, finance, or accounting. The incumbent in the disputed position is not required to possess a certification, registration, or license. The senior financial/statistical analyst's major job responsibilities include monitoring invested funds and investment activities, analyzing and interpreting statistical data, and reviewing account activities. These facts show that the senior financial/statistical analyst is a technical employee.

The traffic manager is not required to have a degree, registration, certification, or license. Moreover, maintaining an efficient traffic management program and communicating changes in traffic pat-

ters to commuters is routine mental work rather than intellectual work.

Additionally, the following employees listed on Parts I(A) and I(B) of Attachment A meet the four criteria for professional employees: 1) division engineer; 2) environmental analyst; 3) maintenance engineer; 4) tunnel project manager; and 5) manager of environmental procedures and permits. We explain our reasoning in detail below.

The division engineer and tunnel project manager must have a B.S. in civil engineering or a related engineering discipline. Further, the incumbents must be registered or eligible for registration as professional engineers. Both the division engineer and the tunnel project manager supervise: 1) contractors' work to ensure conformance with MTA standards and contractual obligations; and 2) field and laboratory testing of materials and work for quality control purposes. The incumbents also provide engineering and surveying services on maintenance projects.

The environmental analyst position requires a Bachelor's degree in environmental science and a certificate of acceptance for registration examination. The incumbent's job duties include reviewing engineering designs for issues affecting landscaping and the environment, preparing specifications for environmental mitigation measures, and performing field investigations regarding environmental considerations.

The maintenance engineer must possess a Bachelor's degree in civil engineering or a related engineering degree. The incumbent also must be registered or eligible for registration as a professional engineer. The maintenance engineer designs projects for the Maintenance Department like snow plow ramps, drainage layouts, and retaining walls as well as prepares specifications for solid waste and hazardous material disposal.

The manager of environmental procedures and permits is required to have a J.D. and must be a member of the Massachusetts bar. The incumbent: 1) represents the Project at meetings, hearings, forums, conferences, and legislative sessions; 2) acts as the technical representative for environmental subcontracts covering pest control, air and water quality, noise control, wetlands management, and analytical labs; 3) oversees environmental support services; and 4) negotiates and administers interagency service agreements and programs with the Department of Environmental Protection.

For the foregoing reasons, we conclude that Joint Stipulations #4 and #5 conflict with the Law by including the following non-professional positions: 1) accountant/auditor 1, 2, and 3; 2) administrative and benefits manager; 3) assistant office engineer 1, 2, and 3; 4) executive secretary; 5) lead analyst/programmer; 6) personal computer/network coordinator; 7) risk manager; 8) senior financial/statistical analyst; and 9) traffic manager. We further conclude that these stipulations conflict with the Law by excluding the professional positions of: 1) division engineer; 2) environmental analyst; 3) maintenance engineer; 4) tunnel project manager; and 5) manager of environmental procedures and permits. Additionally, because the parties failed to provide us with information concerning the job duties performed by the permit administrator and the training administrator, CA/T, we expressly decline to find that

these employees are professional. In all other respects, however, we adopt Joint Stipulations #5 and #6.

Conclusion and Direction of Election

Based on the record and for the reasons stated above, we conclude that a question of representation has arisen concerning certain employees of the Employer, and that the following bargaining unit is an appropriate unit within the meaning of Section 5 of the Law:

All full-time and regular part-time employees employed by the Employer in the positions listed in Parts I(A), I(B), II(A), and II(B) of Attachment A, including the Project associate general counsels, and excluding the assistant manager of toll audit, deputy director of highway maintenance, supervisor of field operations, supervisor of toll equipment program, permit administrator, training administrator, CA/T, MTA associate general counsels, all managerial, confidential, and casual employees, and all other employees employed by the Employer.

IT IS HEREBY DIRECTED that an election by secret mail ballot shall be conducted to determine whether a majority of the employees in the above-described unit desires to be represented by the United Steelworkers of America or by no employee organization. Because the above-described unit includes professional positions within the meaning of Section 5(b) of the Law, employees holding those positions shall be given a separate ballot offering them the choice of placement within the above-described unit or in a separate professional unit. The eligible voters shall include all those persons within the above-described unit whose names appear on the payroll of the Employer for the payroll period immediately preceding this decision and who have not since quit or been discharged for cause. To ensure that all eligible voters shall have the opportunity to be informed of the issues and their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Employer with the Executive Secretary of the Commission, 399 Washington Street, 4th Floor, Boston, Massachusetts, 02108-5213, not later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit this list in a timely manner may result in substantial prejudice to the rights of the employees and the parties, therefore, no extension of time for the filing of the list will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

SO ORDERED.

ATTACHMENT A

I. A. Supervisory/Management Classifications at MTA³⁵

1. Assistant Manager of Toll Collection
2. Assistant Manager of Toll Audit
3. Communications/Technical Support Supervisor
4. Deputy Director of Real Estate
5. Deputy Director of Highway Maintenance
6. Division Engineer
7. Environmental Analyst
8. Maintenance Engineer
9. Manager of Cash Management
10. Manager of Employment Diversity
11. Manager of Facilities Operations
12. Manager of Occupational Safety
13. Manager of Patron Services
14. Manager of Payroll Services
15. Manager of Toll Collections
16. Manager of Violation Enforcement Systems
17. OCC Supervisor
18. Retail Marketing Coordinator
19. Supervisor of Field Operations
20. Supervisor of Maintenance
21. Supervisor of Toll Equipment Program
22. Tunnel Project Manager
23. Supervisor of Motor Equipment Maintenance
24. Supervisor of Custodians

I. B. Supervisor/Management Classification at the Project³⁶

1. Area Construction Manager
2. Building Operations Supervisor
3. Distribution Services Supervisor
4. Manager of Environmental Procedures and Permits
5. Manager of Materials Control
6. Manager of Public Affairs
7. Records Management Supervisor

II. A. Professional Classifications at MTA³⁷

1. Accountant
2. Administration and Benefits Manager
3. Assistant Division Engineer
4. Civil Engineer
5. Design Engineer

35. Subject to the MTA supervisor/management objection.

36. Subject to the MTA supervisory/management objection and casual employee objection.

37. Attorney classifications are in dispute.

6. Electrical Engineer
7. Lead Programmer/Analyst
8. PC Network Coordinator
9. Permit Administrator
10. Senior Civil Engineer
11. Senior Financial Analyst
12. Communication Engineer

II. B. Professional Classifications³⁸ at the Project³⁹

1. Accountant/Auditor
2. Assistant Office Engineer (1,2, 3)
3. Bridge Engineer
4. Environmental Engineer (1,2, 4)
5. Executive Secretary
6. MMIS Engineer
7. Resident Engineer
8. Risk Manager
9. Senior Bridge Engineer
10. Senior Data Analyst
11. Senior Electrical Engineer
12. Traffic Manager
13. Training Administrator

III. A. Accreted Classifications at MTA⁴⁰

1. Administrative Assistant (1, 2)
2. Affirmative Market Inspector
3. Associate Data Base Analyst
4. Community Outreach Specialist
5. Departmental Aide
6. ETC Marketing Coordinator
7. Facilities Coordinator
8. Financial Assistant
9. Financial Assistant N
10. Senior Affirmative Market Inspector
11. Workers Compensation Adjuster
12. Environmental Technician

III. B. Accreted Positions at the Project⁴¹

1. Access Work Request Coordinator
2. Accountant/Auditor I
3. Administrative Assistant (1, 2, 2F, 1F, 1N, 1PTF, 2N)

4. Archives Specialist
5. Lead Archives Specialist
6. Building Operations Specialist (1, 2)
7. Community Outreach Specialist (2, 3, 4, and 3PT)
8. Compliance Officer
9. Construction Administrator (1, 2, 3)
10. Contract Administration Clerk
11. Contracts Administrator
12. Correspondence Specialist
13. Courier/Driver
14. Data Entry Specialist
15. Data Entry
16. Distribution Specialist
17. Legal Support
18. Lockout/Tagout Coordinator
19. Machinery Facilities Liaison
20. MMARS Coordinator
21. Nighttime Noise Technician
22. Project Administrator
23. Project Assistant (1, 2)
24. Project Coordinator (1, 2)
25. Public Information Specialist/Graphic Arts
26. Public Information Specialist/Internet
27. Public Information Assistant
28. Public Information Specialist (1, 2)
29. Reprographics Clerk
30. Senior Contract Specialist (1, 2)
31. Stock Inventory Specialist
32. Support Services Specialist
33. Technical Coordinator
34. Word Processor

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38. Subject to the MTA casual employee objection.

39. Attorney classifications are in dispute.

40. The parties disagree regarding the Secretary as to her confidential status.

41. Subject to MTA casual employee objection.