



## OPINION

Supervisors are excluded from coverage under the Act and are not, therefore, eligible for inclusion in any bargaining unit certified after the effective date of the Act in September. Consistent with this prohibition, Supervisors are expressly excluded from the unit definition.

The Administrative Secretary position was excluded from the unit definition pursuant to the agreement of the parties prior to the representation election on March 8, 1995.

The classifications of Senior Laboratory Technician and Supply Specialist are clearly included in the unit definition. The names of the incumbents were included in the list submitted by the Petitioner identifying those employees eligible to vote in the election, as determined by the unit definition. Prior to the election, when the County succeeded in excluding from the bargaining unit the Assistant Maintenance Foreman and the Administrative Secretary classifications, no objection was raised over the inclusion of either the Senior Laboratory Technician or Supply Specialist classifications. Nor was an objection to their inclusion in the bargaining unit raised in the post-election objections filed by the County.

By job description, the Senior Laboratory Technician classification does not qualify as a supervisor under the statutory definition and is, therefore, eligible for inclusion in the unit.

The County argues that because the Supply Specialist is a "professional" position it is either ineligible or inappropriate for inclusion in the certified bargaining unit. The Petitioner's reliance on Rule 1.16 of the Rules and Regulations of the Department of Labor as support for its position is misplaced. Rule 1.16, promulgated by the Department of Labor, applied to the prior 19 Del.C. Ch. 13, [Right of Public Employees to Organize](#), which was repealed by the General Assembly in 1994. That statute was replaced by the Public Employment Relations Act which does not exclude professional employees from inclusion in an appropriate bargaining unit.

Furthermore, in order to modify an existing bargaining unit, Article 3, Representation Proceedings, Section 8, Modification of a Bargaining Unit, of the Rules and Regulations of the PERB, requires one or more of the following circumstances must be present:

1. A substantial change in the nature of the duties and working conditions of a position within the bargaining unit; or
2. A new position is created; or
3. Some other compelling reason for the Board to consider modifying the designated bargaining unit.

None of these conditions is alleged in the Petition.

### DECISION

For the foregoing reasons, Petition No. 95-08-151 is dismissed.

Date: September 25, 1995

/s/Charles D. Long, Jr.

Charles D. Long, Jr.  
Executive Director,  
Del. Public Emp. Rel. Bd.