

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK and
RELATED PUBLIC EMPLOYERS,

DECISION NO. 51-74

Petitioners,

-and-

DOCKET NO. RE-24-72

DISTRICT COUNCIL 37, AFSCME, AFL-CIO;
COMMUNICATIONS WORKERS OF AMERICA,
DISTRICT 1, CIVIL SERVICE DIVISION,
AFL-CIO; and MUNICIPAL LABOR COMMITTEE
ON BEHALF OF ITS CONSTITUENT UNIONS,

Respondents.

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INTERIM DECISION

On December 11, 1972, the City of New York filed
its petition herein.

Notice of said petition was duly given by
publication thereof in accordance with the requirement of §2.8
of the Consolidated Rules of the Office of Collective Bargain-
ing. In connection with the objection raised by the Municipal
Labor Committee by letter dated May 15, 1973, to its citation
as a party herein, we find that the MLC is not a proper party
for the purpose apparently intended by the City, i.e., as a
representative and agent of "its constituent unions" or any of
them in a proceeding such as this. Publication of the petition
pursuant to Rule §2.8 constitutes the required notice of the
matter to all interested parties.

The City's petition, as amended by application
made in the course of oral argument before this Board on
June 3, 1974, seeks findings by this Board that employees in
the following categories are Managerial and/or Confidential
employees in contemplation of §214 of the New York State Civil

Service Law and of §1173-4.1 of the New York City Collective Bargaining Law;

- (1) Personnel in the following titles:
 - a. All secretaries (including Stenographers, Senior Stenographers and Supervising Stenographers)
 - b. All Administrative personnel (including Administrative Assistants, Administrative Associates, Senior Administrative Assistants, all levels of Engineers, all levels of Human Resources Specialists, and all levels of Social Service Supervisors)
 - c. Other assistants

who report directly to Departmental, Agency, Authority, Corporation, Office, or other such unit:

1. Administrators
2. Deputy Administrators
3. Assistant Administrators
4. Commissioners
5. Assistant Commissioners
6. Agency Heads
7. Deputy Agency Heads
8. Personnel Directors or Heads

As to the above category, procedures for dealing with this portion of the City's petition have been agreed upon amongst the parties. Therefore, titles within this category are not dealt with in this decision unless they also fall within other categories dealt with elsewhere in this decision. In the event that the agreed upon procedures fail to produce a final resolution of the issues presented with regard to titles in this category, the parties may request further action by the Board.

- (2) All personnel in the following offices:
 - a. Office of Labor Relations
 - b. Office of Collective Bargaining
 - c. Mayor's Executive Office
 - d. Comptroller's Office -
"Labor Law Complaint Unit"
 - e. Bureau of the Budget
 - f. Department of Personnel
- (3) All personnel in all labor relations units of all departments, agencies, authorities or other units under the jurisdiction of the Office of Collective Bargaining.
- (4) All titles in the Management or Executive Pay Plans.
- (5) All titles in the Managerial Welfare Fund which are not included in the Management or Executive Pay Plans.

The processing of this complex petition has been marked by considerable delay. During the pendency of this petition, the Board has engaged in numerous conferences with the parties in an effort to reach a settlement on some or all of the categories raised in the City's petition and to establish procedures for a sound resolution of the matters upon which no agreement could be reached. Improper practice charges have also been brought by DC 37 and CWA against the Office of Labor Relations concerning certain matters related to the processing of the petition. Such charges are pending before the PERB. In this decision, however, we do not consider it necessary to detail these background events in order to proceed with our interim determination.

The lack of specific allegations by the City of facts necessary to the processing of this matter, and the failure of the petition clearly to identify precisely the titles covered thereby have been the basis of motions to dismiss filed by District Council 37, AFSCME, AFL-CIO (DC 37), on May 9, 1973, and by Communications Workers of

America, District 1, Civil Service Division, AFL-CIO (CWA), on May 11, 1973. In the course of the oral argument of June 3, 1974, at which permission to amend the petition was requested by the City, the unions opposed the application as untimely. As to all of the shortcomings in the presentation of this matter to date, including but not limited to those referred to above, it is the position of the Board that this is not intended by the law to be an adversary proceeding but a fact-finding proceeding in which the Board is required by the law which it administers to determine whether or not certain employees are managerial and/or confidential employees and, if so, to exclude them from collective bargaining.

It is the function of the parties herein to aid the Board in the fact-finding process. The Board cannot allow the validity and soundness of its findings herein to be adversely affected either by the inartful efforts of one party or by the technical and procedural demands and objections of the others. We, therefore, permit and welcome the

amendment of the petition, so far as it goes, as a step in the direction of resolution of the issues with which we must deal herein. Toward this same end, we have made certain preliminary and provisional findings and determinations as to the procedures to be employed in arriving at a final resolution of this matter. They are as follows:

1. We find, provisionally, that all employees of the Mayor's Executive Office, the Labor Law Complaint Section of the Comptroller's Office, the Office of Labor Relations and the Office of Collective Bargaining, by reason of the nature and function of the said offices and agencies, are involved in the formulation or administration of labor relations and executive policies and are, therefore, deemed to be managerial and/or confidential employees. The unions shall be allowed thirty (30) days from the date of this decision. in which to provide the Board with facts and information in support of any opposition they may have to this provisional finding.

2. The City's allegations that all employees of the Bureau of the Budget and the Department of Personnel are managerial and/or confidential employees are not supported by sufficient information as to the functions and duties of all such employees and the activities conducted by the various subdivisions of which these agencies are composed. We note that in prior decisions we have held that certain of the employees of these agencies are managerial or confidential; a list of these employees is set forth in Schedule A hereof. Preliminary investigation indicates that there is probable cause for a finding that other employees of these agencies are managerial or confidential employees. Accordingly, we direct that within thirty (30) days of this decision the

City furnish this Board with facts substantiating its claim that all employees of these agencies are managerial or confidential employees. The unions shall be allowed thirty (30) days from the service and filing of the City's submission in which to provide the Board with facts and information in support of any opposition they may have to the City's allegations in this regard;

3. The City has submitted a list of employees in sixteen (16) agencies, who are alleged to be managerial or confidential employees by reason of their functions in the respective agencies in which they are employed.

A copy of said list is set forth in Schedule B hereof. Objections to a finding that said employees are managerial or confidential, offers of evidence in contravention thereof, and requests for hearing or oral argument supported by affidavits showing the basis for and purpose of such requests may be filed by any interested party within thirty (30) days of the date of this decision;

4. The City is directed to file, within thirty (30) days of the date of this decision, a supplemental list of all other employees, by title and agency, who are alleged to be managerial or confidential employees by reason of their labor relations functions in the respective agencies in which they are employed.

The unions shall be allowed thirty (30) days from the service and filing of the City's submission in which to provide the Board with facts and information in support of any opposition they may have to the City's allegations in this regard.

We have established no procedure for the resolution of the City's allegations that "All titles in the Management or Executive Pay Plans" and "All titles in the Managerial Welfare Fund which are not included in the Management or Executive Pay Plans" should be excluded as managerial and/or confidential because the parties are still exploring procedures for the resolution of such allegations. Moreover, it may be assumed that a number of those titles falling within these two categories will be dealt with under the procedures provided for herein. In the event the parties do not resolve these questions, the Board will establish further procedures for dealing with the remaining titles.

DATED: New York, N.Y.

September 16, 1974.

ARVID ANDERSON

Chairman

WALTER L. EISENBERG

Member

ERIC J. SCHMERTZ

Member

Schedule A

Titles from City's list of employees of the Bureau of Budget and the Department of Personnel which were previously found managerial ("M") or confidential ("C") by the Board of Certification.

<u>Title</u>	<u>Number</u>	<u>Title Code</u> <u>Positions</u>	<u>Number of Filled</u> <u>Positions</u>	<u>Finding</u>	<u>Board of Cert.</u>
<u>BUREAU OF THE BUDGET</u>					
Administrative Manager		10025 16		"M" for some	"predecessor" titles (stipulation).
Assistant Personnel Examiner	12710	1		"C" in Personnel	Department
Associate Methods Analyst	13109	8		"M" & "C" for	predecessor titles (stipulation)
Classification Analyst, Grade 2	93656	1		"M" & "C" for	Rule XI equivalents in Personnel Dept.
Clerk, Grade 5		93074 7		"M" & "C" for higher	Rule XI equivalents (stipulation).
Methods Analyst		13110 1		"M" & "C"(stipulation).	
Methods Analyst (X)		93773 1		"M" & "C" for Rule XI	equivalents (stipulation).
Principal Methods Analyst	10064	6)		"M" & "C" for lower titles (stipulation).	
Principal Quantitative Analyst	10065	10)			
Quantitative Analyst		60951 8)		"M" & "C"(stipulation).	
Sr. Quantitative Analyst	60952	7)			

<u>Title</u>	<u>Number</u>	<u>Title Code</u>	<u>Number of Positions</u>	<u>Filled</u>	<u>Finding</u>	<u>Board of Cert.</u>
<u>DEPARTMENT OF PERSONNEL</u>						
Administrative Assistant (IBM Equipment)(X)	93833		1		"M" & "C" for higher Rule XI equivalents (stipulation).	
Administrative Manager		10025	4		"M" for some "predecessor" title (stipulation) .	
Administrative Personnel Examiner	(10027		58 (12784		"C" for "predecessor" and lower titles.	
Assistant Personnel Examiner	12710		39		"C"	
Associate Personnel Examiner	12735		37		"C" for predecessor titles.	
Civil Service Examiner, Grade 2	93651		1		"C" for Rule XI equivalents.	
Clerk, Grade 5		93074	3		"M" & "C" for higher Rule XI equivalents (stipulation).	
Personnel Assistant	13715		1		"C" for one employee (Frank Durso) in this Department (stipulation).	
Assistant Personnel Technician (EEA)	03361		2		"C" for "civil service" equivalent.	

Schedule B

List submitted by the City of employees alleged to be managerial or confidential by virtue of their labor relations functions in the respective agencies.

<u>Title</u>	<u>Number</u>	<u>Title Code</u>	<u>Number of Filled Positions</u>
<u>COMMISSION ON HUMAN RIGHTS</u>			
Administrative Associate	10130		1
Sr. Administrative Assistant	10139		1
<u>DEPARTMENT OF CONSUMER AFFAIRS</u>			
Administrative Manager	10025		1
Executive Assistant to the Commissioner	13232		1
<u>DEPARTMENT OF PROBATION</u>			
Principal Probation Officer	08420		1
<u>DEPARTMENT OF PUBLIC EVENTS</u>			
Administrative Manager	10025		1
Senior Stenographer	10216		1
<u>ENVIRONMENTAL PROTECTION ADMINISTRATION</u>			
Admin. Labor Rel. Spec.	10022		1
Chief Lab. Rel. Asst. (EPA) Clerk	-	10106	1
Foreman of Mechanics (MV)	92570		1
Sanitationman	70112		2
Secretary to Dept. of San.	-		1
Senior Clerk	10111		1
Senior Stenographer	10216		1
Supervising Shorthand Reporter	10415		1
Supervising Stenographer	10220		1
<u>FINANCE ADMINISTRATION</u>			
Admin. Accountant	10001		1

Admin. Associate	10130		1
Admin. Manager	10025		1
Asst. Administrator (Management Planning)	95309		1
Associate Accountant	40517		1
First Deputy Administrator	95301	1	
Sr. Admin. Assistant	10139		1

Schedule B (Cont'd)

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<u>Title</u>	<u>Number</u>	<u>Title Code</u>	<u>Number of Filled Positions</u>
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FIRE DEPARTMENT

Administrative Associate	10130		1
Asst. Personnel Examiner	12710		1
Battalion Chief	70370		1
Deputy Chief	70380		1

HEALTH AND HOSPITAL CORPORATION

Administrative Assistant	10125		1
Asst. Director of Labor Relations	00100	1	
Director of Labor Relations	00093		1
Senior Personnel Representative	03962		1
Senior Stenographer	10216		1

HEALTH SERVICES ADMINISTRATION

Administrative Assistant (Sec.)	10122		1
Admin. Labor Relations Spec.	10022		1
Asst. Admin. (Personnel and Labor Relations)	95414		1
Asst. Personnel Examiner	12710		1
Senior Typist	10310		1

THE JUDICIAL CONFERENCE OF THE STATE OF N.Y.

Employee Relations Officer	-		1
Sr. Personnel Analyst	-		1

MAYOR'S EMERGENCY CONTROL BOARD

Administrative Manager	10025	1	
Director of Mayor's Emergency Control Board	71495	1	
Stenographer	10205		1

MODEL CITIES ADMINISTRATION

Administrative Assistant	10125	1	
Sr. Administrative Assistant	10139	1	
Supervising Stenographer	10220	1	

<u>Title</u>	<u>Number</u>	<u>Title Code</u>	<u>Number of Filled Positions</u>
<u>NEW YORK CITY HOUSING AUTHORITY</u>			
Administrative Accountant	10001		1
Administrative Housing Manager	80205		2
Administrative Manager	10025		4
Administrative Personnel Examiner	12784		2
Assistant Personnel Examiner	12710		1
Associate Attorney	30126		1
Chairman of the Housing Authority	-		1
Controller (HA)	40538		1
Counsel		30136	1
Deputy Controller (HA)	40531		1
Deputy Director of Management	80275		1
Deputy Director of Planning	22140		1
Director of Management	80281		1
Director of Personnel (HA)	13079		1
Director of Research & Statistics	40650	1	
Executive Director (Gen. Mgr.)	10173		1
Housing Assistant	80201		1
Member of the Housing Authority	-		2
Principal Human Rel. Spec.	02597		1
Supervising Human Rights Spec.	55036		1
<u>POLICE DEPARTMENT</u>			
Captain		70265	1
Deputy Chief Inspector	70265		2
Inspector	70265		3
Lieutenant	70260		1
<u>QUEENS BOROUGH PUBLIC LIBRARY</u>			
Principal Librarian	60267		1
<u>TRANSPORTATION ADMINISTRATION</u>			
Admin. Lab. Rel. Spec.	10022		1
Supervising Clerk	10120		1
<u>TRAFFIC</u>			

Deputy Commissioner	95971	1
Senior Stenographer	10216	1

MARINE AND AVIATION

Administrative Associate	10130	1
Dir. of Admin. Services	10025	1