

Office of Collective Bargaining
Board of Certification

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In the Matter of
City of New York and Related
Public Employers,

Petitioners

Decision No. 11-76

-and-

Docket No. RE-24-72

District Council. 37, AFSCME,
AFL-CIO

-and-

Communication Workers of America,
Dist 1, Civil Service Division,
AFL-CIO

Respondents

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DETERMINATION AND ORDER

This decision caps the very lengthy and complex proceedings which have taken place in connection with this case. On September 16, 1974, we issued our Interim Decision No.51-74, dealing with the City's claim that certain categories of employees should be designated managerial and/or confidential employees in contemplation of §20-1.7 Cal and §214 of the New York State Civil Service Law and pursuant to §1173-4.1 of the New York City Collective Bargaining Law¹. In

¹ The City's petition, in relevant part, sought findings by this Board that employees in the following categories are managerial and/or confidential:

- (1) 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;
- (2) All personnel in all labor relations units of all departments, agencies, authorities or other units under the jurisdiction of the OCB;
- (3) All titles in the Management or Executive Pay Plans;

said Interim Decision No. 51-74, we made provisional findings as to the status of certain of the petitioned for categories. As to other categories, we established procedures and a timetable for the parties to follow in supplying us with facts and information necessary to a proper determination of all aspects of the City's petition.

In Decision No. 75-74, dated December 23, 1974, we determined that all employees of the Near York City Office of Labor Relations (OLR) and New York City Office of Collective Bargaining (OCB) are managerial and/or confidential and therefore not entitled to engage in collective bargaining.

In Decision 19-75, dated April 21, 1975, we found that all employees of the Executive Management and Executive and Administrative Services sections of the Mayor's Office are managerial and/or confidential employees and, therefore, ineligible for bargaining. Our decision was based on the fact that those sections of the Mayor's office formulate and administer executive policy and that the work of their employees is inherently confidential. The Decision also designated as managerial and/or confidential those employees in the City's Managerial and Executive Pay Plans and those employees in labor relations units for whose exclusion from bargaining the City petitioned and on whose behalf no objections were filed.

We held in abeyance that part of the City's petition which seeks to exclude from collective bargaining all employees of the Bureau of the Budget, the Department of Personnel and the Labor Law Complaint Section of the Comptroller's Office. The Board stated:

"We do so to promote informal resolution of the disagreement regarding the status of such employees and in order that we may secure additional information which may be of assistance to the parties."

The prosecution of the City's petition has required a lengthy period of investigation and has involved complicated proceedings, numerous meetings among the parties, and consideration by the Board of the many documents submitted by the City and unions. Pursuant to §2.20 (e) of the Board's Rules, we conducted informal conferences and granted extensions of time to the parties for the

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- (4) All titles in the Managerial Welfare Fund which are not included in the Management or Executive Pay Plan.

purpose of insuring due process and to accord all those concerned ample opportunity to supply us with information in support of their positions. As a sequel to our prior decisions in this protracted proceeding, and based on our examination of the records submitted, the pleadings and our conferences with all interested parties, we now act upon the City's petition with respect to the Bureau of the Budget, the Department of Personnel, the Labor Law Complaint Section of the Comptroller's Office, and the challenged labor relations positions.

We do not, however, deal herein with a few remaining aspects of the City's petition:

- a. titles in the Managerial and Executive Pay Plans for which objections and/or petitions have been filed;
- b. four uniformed employees of the Police Department alleged to perform labor relations functions and to whose exclusion objections had been filed.

Any other aspect of the City's original 1972 petition that has not been either previously decided by the Board or determined herein is dismissed in the absence of any supportive proof or documentation².

² In its original petition, the City sought the exclusion of 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 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

Bureau of the Budget

As a result of its investigation the Board has reached the conclusion that the City's Bureau of the Budget, like the Executive Management and Executive and Administrative Services Section of the Mayor's Executive Office and the Mayor's Office of Labor Relations, is centrally involved in the formulation and administration of City labor relations and executive policies. All employees of that Bureau are, therefore, deemed to be managerial and/or confidential employees and ineligible for collective bargaining.

The Bureau of the Budget is part of the Mayor's office. It prepares the annual expense budget, surveys agencies for the purpose of ascertaining budgetary requirements, installs performance standards for agencies and their employees and directs the adoption of work load data on program achievements and costs. The Bureau reviews management procedures in agencies and surveys wage and salary problems and interrelationships. All of the foregoing directly affect labor relations in the City and may be expected to affect any particular municipal employee union, if not all such unions, at any given time.

A key function of the Bureau of the Budget is the preparation of data for, and both direct and indirect participation in, collective negotiations on behalf of the City in conjunction with the Office of Labor Relations. The Bureau recommends to the Mayor, in cooperation with the Department of Personnel, salaries and levels of positions in various pay plans, some of which may affect union positions and demands in collective bargaining. The Director of the Budget has traditionally been a member of the Mayor's labor policy committee and plays a major role in determining the extent to which the City may meet the demands of the unions representing its employees. The Bureau's various sections collect, sort and analyze data and transmit it to the City's Office of Labor Relations for direct use in collective bargaining. Staff members of the Bureau are frequently called upon to sit at the collective bargaining table or at impasse hearings to rebut union negotiating positions.

The Board also takes administrative notice of the fact that in recent months, the Bureau of the Budget has played an active role in labor relations as a result of the City's fiscal crisis. Every City agency has consulted with members of the Bureau's staff, not only at the highest levels, but in each department. Decisions on budget cuts affecting layoffs have

involved the entire Bureau and have been applied to all City agencies.

The operations of the Bureau of the Budget clearly warrant a finding that the work of its employees is inherently managerial/ confidential. Moreover, our finding is supported by the New York State Public Employment Relations Board's identical conclusion with regard to the State Budget Division, which is the parallel of the New York City Bureau of the Budget. In the Matter of State of New York, 2 P.E.R.B. 3335 (1969), PERB concluded that the State Division of the Budget should be excluded in its entirety because of the intimate relationship of its mission to public employment labor relations. After the 1971 amendment to the Taylor Law created a statutory definition of managerial and confidential employees, PERE reaffirmed its determination that the State Bureau of the Budget was excludable from collective bargaining under the new definition set forth in the Taylor Law, 6 P.E.R.B. 3044 (1973)³.

The major responsibilities of the State Division of the Budget are to provide fiscal advice for the Governor, coordinate the development and execution of State programs and budgets, strengthen the New York State government management process and coordinate intergovernmental fiscal relations. The Board perceives these functions to be analogous to those carried out by the City Bureau of the Budget. We, therefore, reach the conclusion that all employees of the City Bureau of the Budget are within the Board's criteria for exclusion as managerial and/or confidential, and they are accordingly declared ineligible for collective bargaining.

Department of Personnel

Our conclusion with respect to the City's Department of Personnel differs, however, from that with respect to the Bureau of the Budget. We noted in Decision No. 70-68,

³ Section 201.7 (a) of the Taylor Law states, in relevant part:

Employees may be designated as managerial only if they are persons (i) who formulate policy (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not a routine or clerical nature and requires the exercise of independent judgement. Employees may be designated as confidential only if they are persons who assist and act in a confidential to managerial employees described in clause (ii).

“The Personnel Department is the central personnel agency of the City. It is responsible for recruitment of personnel; the preparation and holding of civil service examinations; certification of positions; participation in the determination of wages and salary ranges, including salary studies, investigation of out-of-title work, providing consultative services to other City agencies in personnel matters, and advisory services in collective bargaining negotiations and in salary and classification appeals.”

Prior Board decisions have recognized that the functions of some, but not all, employees of this Department are so intimately related to labor relations matters and collective bargaining as to warrant their designation as managerial/confidential⁴. Our administrative investigation of the City's petition in the instant case leads us to conclude again that certain employees of the Department regularly assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations and personnel administration. For this reason, we hold them to be confidential and, therefore, ineligible for collective bargaining. Their exclusion is based upon potential or inherent conflicts of interests and "the right of the employer to formulate, determine and effectuate its labor policies with the assistance of employees not represented by the union with which it deals" (Westinghouse Electric Corp. v. N.L.R.B. (1968), 398 F.2d 669 , 68 LRRM at 2850-2851. See also, to same effect, N.L.R.B. v. Quaker City Life Insurance Co., 319 F.2d 690, 53 LRRM 2519).

As we noted in Decision No. 70-68:

"This principle takes on special significance in view of §1173-5.0b(1) of the Act, which requires that bargaining units shall be 'consistent with the efficient operation of the public service

⁴ See Schedule A, Decision No. 51-74.

and sound labor relations."

Thus, employees in the office or civil service titles or Department sections listed below, some of whom are currently eligible for collective bargaining by virtue of the certification of their civil service titles to a public employee union by this Board, should be excluded from bargaining by virtue of the particular function served in the position they occupy in the Department of Personnel:

All employees in the Bureau of Examinations who work on the preparation of examinations (approximately twelve, as of this date).

All clerical employees working in the Custody Division (currently, one Computer Operator, one Clerk, one Senior Clerk, and one Supervising Clerk).

All employees in the legal division (currently an Attorney and an Associate Attorney, a Supervising Stenographer and a Senior Stenographer, all of whom are under the direction of the Department's Counsel), including anyone doing Taylor Law work in the legal department who is assigned to do so on a regular fulltime basis (currently, one Stenographer). We make this exclusion of employees in the legal division because of the nature of their work on personnel and labor relations matters. For example, these employees are in direct consultation with the Personnel Director who, under the Taylor Law, is charged with the administration of penalties for violations of the statutory strike prohibition.

Secretary to the City Personnel Director

Motor Vehicle operator assigned to the City Personnel Director

Secretary to the Executive Assistant to the City Personnel Director

Secretary to the Special Assistant to the City Personnel Director

Secretary to the Deputy Personnel Director Assistant to the Deputy Personnel Director

Secretary to the Assistant to the Deputy Personnel Director

Secretary to each Civil Service Commissioner (currently, an Administrative Associate and a Typist)

Secretary to the Secretary of the Civil Service Commission

Secretary to the Assistant Personnel Director for Examinations

Secretary to the Assistant Personnel Director for Administrative Services⁵

Office Appliance operators (currently, two incumbents) preparing examinations in the Bureau of Personnel Administration, Division of Plant Management and Services

Head of the Payroll Certification

Division Head of the Control and Service Division

Head of the Examination Certification Division

The foregoing exclusions are made by virtue of the functions performed in the Department of Personnel and do not constitute a precedent for determining collective bargaining eligibility of employees of similar titles in other agencies. New employees who are appointed to the above positions and who perform substantially the same duties, irrespective of civil service title, will also be ineligible for collective bargaining.

All other employees of the Department of Personnel previously found eligible for collective bargaining retain their eligibility.

Labor Law Complaint Section of the Comptroller's Office

The Labor Law Complaint Section of the Comptroller's office is primarily engaged in preparing surveys of prevailing rates in private industry for determinations and negotiations in prevailing rate proceedings pursuant to Section 220 of the Labor Law. The surveys are factual documents that are distributed to the unions involved; these are not confidential.

Our administrative investigation of this section leads us to conclude that these employees do not formulate policy or assist directly in the conduct of collective bargaining within the meaning of

⁵ The permanent incumbent of this position is an Administrative Assistant who has been on leave of absence without pay for some months and may return shortly. Because the permanently assigned employee may return shortly, and the present incumbent is only on temporary assignment and expects to be reassigned to covered employment, the incumbent may continue membership in and representation by the Union, pending such reassignment. If at any time, however, the assignment of the present temporarily assigned incumbent is made permanent, she will be immediately ineligible for union representation.

Section 201.7(a) of the Taylor Law. They are involved with the preparation of material which is used by the Comptroller and craft unions in their "negotiations" pursuant to another statute. The functions of the Labor Law Complaint Unit are directed toward prevailing rate employees whose wages are not negotiated in collective bargaining but rather, are determined by the Comptroller under Section 220 of the Labor Law. Thus, there is no conflict in permitting the employees of the Labor Law Complaint Section to be represented in collective bargaining under the NYCCBL with respect to their own wages and working conditions.

In petitioning this Board to declare all employees of the Labor Law Complaint Section ineligible for collective bargaining, the City bore the burden of proof in establishing the manageriality and/or confidentiality of the petitioned for employees. The City has not substantiated its claim, however, either through the submission of affidavits or other material documenting the functions of the subject employees. Moreover, at a conference held with representatives of the parties in the Board's offices on October 0, 1975, a representative of the Comptroller informed us that the Comptroller took no position as to the eligibility or ineligibility for collective bargaining of the employees in the Labor Law Complaint Section.

Based upon the findings of our own administrative investigation and in light of the City's failure to sustain its burden of proof with respect to the alleged manageriality/confidentiality of employees in the Labor Law Complaint Section of the Comptroller's Office, we deny that aspect of the City's petition which seeks the exclusion of these employees from collective bargaining.

Labor Relations Positions

The unions have challenged the City's position on certain employees whom the City has alleged perform labor relations functions in City agencies other than those listed in the thirteen formally designated labor relations units set forth on page 6 of Decision No. 19-75. Our administrative investigation reveals that the unions' position should be sustained with respect to those employees on whose behalf an objection to such exclusion was filed, with the exception of Helen Lynch, an Administrative Assistant at the Board of Water Supply; Suzanne G. Smite, the Personnel and Fiscal Director of the Commission on Human Rights; and David S. Fader, the Personnel Manager of the Kings County District Attorney's Office; C. Haynes, Personnel Director in the Model Cities Administration; Joel M. Berman, Director of Personnel in the New York City Taxi and Limousine Commission; and James O'Reilly, an Administrative Associate in the Office of

the Chief Medical Examiner (Civil Service Title: Clerk, Grade 5).

The remaining challenged employees, listed as follows, are not ineligible for collective bargaining. Such labor relations duties as they perform are not of the type which would require their exclusion from collective bargaining.

<u>AGENCY</u>	<u>CIVIL SERVICE TITLE</u>	<u>OFFICE TITLE</u>
<u>Board of Elections</u>		
P. Biondo	Administrative Assistant	Administrative Asst.
M. Ciraola	Clerk to the Board	Clerk to the Board
D. DeFrancisco	Administrative Assistant	Administrative Asst.
<u>Board of Standards and Appeals</u>		
A. Latham	Administrative Associate	Chief Clerk
<u>City Sheriff's Office</u>		
M. Swiezer	Clerk, Grade 5	Secretary to Sheriff
<u>Commission on Human Rights</u>		
A. Ifill	Administrative Associate	Administrative Asst.
<u>Finance Administration</u>		
M. Legutko	Sr. Admin. Assistant	Asst. Personnel Office
G. Skelly	Administrative Associate	Chief Position Control
<u>Model Cities Administration</u>		
V. Herman	Administrative Associate	Asst. Personnel Dir.
<u>Municipal Services Administration</u>		
H. Bulik	Administrative Assistant	Secretary to Dir. of Labor Relations
R. Markowitz	Administrative Assistant	Secretary to Deputy Commissioner (Purch.)
<u>N.Y.C. Tax Commission</u>		
K. Lind	Sr. Admin. Assistant	Sr. Admin. Assistant
<u>Office of the Borough President of Brooklyn</u>		
T. Dowling	Sr. Admin. Assistant	Sr. Admin. Assistant
<u>Office of the Borough President of Manhattan</u>		

I.C. Santangelo	Sr. Admin. Assistant	Sr. Admin. Assistant
<u>Office of the Borough President of Queens</u> R. Garland	Administrative Assistant	Sr. Admin. Assistant
<u>Office of the Borough President of Richmond</u> A.M. Upton	Administrative Assistant	Acting Administrator
M.A. Dembitz	Consulting Engineer	Consulting Engineer
<u>Office of the Queens County Public Administrator</u> Betty Betts	Administrative Assistant	Administrative Asst.
<u>Teachers Retirement System</u> H.M. Kennedy	Administrative Assistant	Dir. of Administration
<u>Youth Counsel Bureau</u> A.L. Stevens	Administrative Assistant	Administrative Asst.
<u>Office of the Bronx County Public Administrator</u> K. Cooney	Clerk	Clerk
E. Groll	Senior Clerk	Senior Clerk
E. Helfer	Senior Clerk	Senior Clerk
<u>Office of the New York County Public Administrator</u> N. Blum	Senior Clerk	Secretary to the Public Administrator
<u>Office of the Kings County Public Administrator</u> S. Frankel	Administrative Associate	Admin. Assoc.
<u>Office of the Richmond County Public Administrator</u> A.M. Monigan	Supervising Clerk	Supervising Clerk
<u>Queens College</u> S. Pullman	Col. Sec. Asst. B	Secretary

The following individuals have left their positions since their petition was filed, and accordingly, no determination need be made with respect to them.

Environmental Protection <u>Administration</u> Elsie Geller	Supvg. Shorthand Reporter	Supvg. Shorthand Reporter
Office of the Bronx County <u>Public Administrator</u> Emily Man Gone	Supervising Clerk	Supervising Clerk
Office of the Richmond <u>County Public Administrator</u> Rita Elwood	Stenographer	Stenographer
Kings County District <u>Attorney's Office</u> C.Moffat	Sr. Admin. Assistant	Fiscal Manager

It should be reiterated that those employees in labor relations units who have been determined to be managerial/confidential are excluded from collective bargaining, not on the basis of their department or title, but solely by virtue of the functions they perform in connection with labor-management relations.

We also note that employees in certain titles have been removed from collective bargaining by our determination herein that they are managerial and/or confidential while other employees in the same titles remain certified for collective bargaining. As to those employees who are declared ineligible for bargaining, the City has agreed to continue to provide the salary, welfare, and training fund benefits as are provided for employees in the same titles who remain covered by collective bargaining agreements.

DETERMINATION AND ORDER

Pursuant to the powers vested in the Board of Certification_ by the New York City Collective Bargaining Law, and in contemplation of Section 201.7(a) and Section 214 of the New York State Civil Service Law and pursuant to Section 1173-4.1 of the New York City Collective Bargaining Law, it is hereby

DETERMINED, that all employees of the Bureau of the Budget are managerial and/or confidential employees; and it is further

DETERMINED, that those employees of the Department of Personnel specifically listed herein on pages 9-10 are managerial and/or confidential and it is further

DETERMINED, that employees of the Labor Law Complaint Section of the Comptroller's Office are not managerial and/or confidential; and it is further

DETERMINED, that those employees alleged by the City to be performing labor relations functions, and on whose behalf objections to their exclusion from bargaining were filed by the unions, are not ineligible for collective bargaining on the basis of labor relations functions except as otherwise noted herein.; and it is

ORDERED, that so much of the City's petition as seeks a finding by this Board that all employees of the Bureau of the Budget are ineligible for collective bargaining be, and the same hereby is granted; and it is further

ORDERED, that so much of the City's petition as seeks a finding by this Board that all employees of the Labor Law Complaint Section of the Comptroller's office are ineligible for collective bargaining be, and the same hereby is, denied; and it is further

ORDERED, that so much of the City's petition as seeks a finding by this Board that all employees of the Department of Personnel are ineligible for collective bargaining be, and the same hereby is, denied, except as otherwise set forth herein (see pages 9-10); and it is further

ORDERED, that so much of the City's petition as seeks a finding that all personnel in all labor relations units of all departments and agencies under the jurisdiction of the OCB are ineligible for collective bargaining be, and the same hereby is, granted, except as otherwise determined herein (see pages 12-15) and in Decision No. 1.9-75; and it is further

ORDERED, that any aspect of the City's original 1972 petition that has not been previously decided by the Board, determined herein, or expressly reserved for future determination on the basis of outstanding petitions or objections be, and the same hereby is, dismissed.

Dated: New York, N. Y.
March 10, 1976

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER