

CWA, Local 1180, 2 OCB2d 13 (BOC 2009)
(Rep) (Docket No. RU-1159-94).

Summary of Decision: The Union filed a petition to amend Certification No. 41-73 to add the title Administrative Manager, Levels I and II. The City and NYCHA argued that the title was excluded from collective bargaining as managerial and/or confidential. The Board found that, with certain exceptions, the title was eligible for collective bargaining and appropriately added to the certification. (***Official decision follows.***)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,

Petitioner,

-and-

**THE CITY OF NEW YORK and
THE NEW YORK CITY HOUSING AUTHORITY,**

Respondents.

DECISION AND ORDER

On April 5, 1994, Communications Workers of America, Local 1180, (“Union”) filed an amended petition, seeking to add the title Administrative Manager, Levels I and II (Title Code No. 10025) to Certification No. 41-73. There are approximately 440 employees in the Administrative Manager title working in a wide variety of in-house positions at over thirty agencies of the City of New York (“City”) and at the New York City Housing Authority (“NYCHA”). The City and NYCHA argued that the title was managerial and/or confidential and, therefore, excluded from collective bargaining. After the parties explored a resolution through mediation for several years,

the Office of Collective Bargaining conducted a survey of the duties and responsibilities of employees in the Administrative Manager title and held 38 days of hearing. Based on this extensive evidence, the Board finds that employees in the title Administrative Manager, Levels I and II, are eligible for collective bargaining with the exception of certain employees in positions that this Board finds managerial and/or confidential. Eligible Administrative Managers, with a limited exception, are appropriately placed in the Union's bargaining unit. Therefore, with certain exceptions, the title Administrative Manager, Levels I and II, is added to Certification No. 41-73.

BACKGROUND

According to the job specification, the title Administrative Manager ("AM") has several assignment levels "permitting various degrees of latitude and various levels of direction." (Employer Ex. 1.) "Under general or broad direction, with wide latitude for independent initiative and judgment," AMs perform duties such as the following:

Serves as the manager of a large office engaged in data entry, or in a large agency, of an office engaged in such agency-wide personnel functions as payroll processing or timekeeping. Manages all aspects of clerical/administrative and related activities in a large scale administrative operation concerned with the intake and processing of information such as inquiries, complaints, or forms, or with the collection of fines, taxes and other revenue. Is responsible for the overall operation of an office performing difficult and responsible fiscal and bookkeeping work or performing administrative or management work required for the conduct of hearings. Serve as director of a large general administrative or departmental services office with responsibility for such functions as facilities management, duplicating, mail, and records management.

In the office of an agency head, deputy commissioner or other very high level executive responsible for administrative, departmental, analytic or management work, oversees difficult and responsible work

in the capacity of an executive assistant or principal assistant; may represent the executive at meetings.

(*Id.*). The job specification lists the following the qualification requirements:

1. A baccalaureate degree from an accredited college and four years of satisfactory, full-time progressively responsible clerical/administrative experience requiring independent decision-making concerning program management or planning, allocation of resources and the scheduling and assignment of work, 18 months of which must have been in an administrative, managerial, executive or supervisory capacity. The supervisory work must have been in the supervision of staff performing clerical/administrative work of more than moderate difficulty; or
2. An associate degree or 60 semester credits from an accredited college and five years of satisfactory, full-time progressively responsible experience as described in “1” above, 18 months of which must have been in an administrative, managerial, executive or supervisory capacity. The supervisory work must have been in the supervision of staff performing clerical/administrative work or more than moderate difficulty; or
3. A four-year high school diploma or its educational equivalent and six years of satisfactory, full-time progressively responsible experience as described in “1” above, 18 months of which must have been in an administrative, managerial, executive or supervisory capacity. The supervisory work must have been in the supervision of staff performing clerical/administrative work of more than moderate difficulty; or
4. Education and/or experience equivalent to “1,” “2,” or “3” above. However, all candidates must possess the 18 months of administrative, managerial, executive or supervisory experience as described in “1,” “2,” or “3.” Education above the high school level may be substituted for the general clerical/administrative experience (but not for the administrative, managerial, executive or supervisory experience described in “1,” “2,” or “3”) at a rate of 30 semester credits from an accredited college for 6 months of experience up to a maximum of 3½ years.

(*Id.*). The direct lines of promotion are from Principal Administrative Associate and Principal Police Communications Technician, titles which are represented by the Union. The title does not have a

history of collective bargaining.¹

A. City

There are approximately 400 AMs Levels I and II employed at over 30 City agencies. As part of the Board's investigation, 388 AMs submitted surveys, and 29 days of hearing were held, during which 305 AMs testified.

Within each City agency, AMs serve in a wide range of positions and have varying duties and responsibilities. Many oversee a program, department, or unit. Their tasks can be ancillary to the agency's main function, such as relating to personnel, purchasing, technical support, or security, or can involve activities inherent in the agency's mission. The 77 positions addressed by the City in its brief are discussed in detail below. An illustrative list of remaining City positions held by AMs can be found in Appendix C.

B. NYCHA

Approximately 39 AMs, Levels I and II, are employed by NYCHA. During nine days of hearing, NYCHA offered testimony from 11 AMs and eight higher level employees, most of whom supervise AMs.

The 19 AMs addressed by NYCHA in its post-hearing brief are described below in the Discussion. The remaining AMs hold positions such as Information Manager; Manager, Input/Output Operations; Office Manager; Manager of the Miscellaneous Payment Section; Chief

¹ In *DC 37*, 18 OCB 26 (BOC 1976), the Board held that the AM title was managerial, primarily on the basis that the City had included these employees in the managerial pay plan, a factor that no longer precludes eligibility. *See, e.g., Assistant Deputy Wardens Ass'n*, 56 OCB 11, at 19 (BOC 1995). Reconsideration of the managerial or confidential status of the AM title is warranted since this standard is no longer applicable. *See* § 1-02(v)(6) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") (permitting reconsideration when warranted by a material change in circumstances).

of Screening and Data Entry; Assistant Compliance Officer; Manager of the Document Control Unit; Program Specialist; State Legislative Representative; Borough Supervisor of Administrative Services; Manager of Administrative Training Services; Manager; Construction and Apprenticeship; Analyst; Micrographics Supervisor; Manager of A.P. Standard Processing; Assistant to the Director; Assistant Chief of Fleet Administration; Contract Terminations Specialist; Borough Coordinator; Supervisor, Payment Section; Insurance Manager; Fleet Operations Coordinator; Law Librarian; Deputy Coordinator, and Fuel Oil Remediation and Heating Unit.²

NYCHA's mission is to provide safe and affordable housing to low and moderate income New Yorkers. As of July 2006, NYCHA owned 2,686 residential buildings in 344 developments in the five boroughs of New York City. In addition, NYCHA rents more than 80,000 apartments from nearly 30,000 private landlords, through its Section 8 Leased Housing Program.

NYCHA's Board consists of a Chairman and two Board members. The Chairman's Cabinet, also known as the executive staff, consists of the General Manager, seven Deputy General Managers, six Assistant Deputy General Managers, and eight employees who report directly to the Chairman.³ The Chairman's Cabinet advises the Board, and the Board formulates policy and determines the direction of NYCHA. In addition, regarding employee discipline, the Board decides whether to accept the disciplinary recommendations of outside arbitrators in general trials held pursuant to Civil Service Law § 75, in which the penalty can be termination.

Deputy General Managers and Assistant Deputy General Managers are responsible for

² Not all AMs have an alternative in-house title.

³ The employees who report directly to the Chairman are the Secretary, the General Counsel, the Director of Equal Opportunity, the Director of Communications, the Inspector General, the Director of Intergovernmental Relations, the Chief of Staff, and the Chairman's Special Assistant.

several departments. Departments are headed by Directors, who report to either the Chairman, the General Manager, a Deputy General Manager, or an Assistant Deputy General Manager. Deputy Directors are responsible for several units or divisions within a department. Assistant Directors and Chiefs are responsible for a unit or division within a department. Two AMs are Assistant Directors; three are Chiefs.

In regard to budget formulation, in 2003, NYCHA implemented a change from a top-down structure, whereby upper-level management makes all monetary decisions, to a department-based budget structure, whereby lower-level employees make decisions to be approved by upper-level management. Once the budget department issues its annual four-year financial plan and the budget has been adopted and given to the departments, each department is responsible for maintaining control over their other than personnel services (“OTPS”) and personnel services (“PS”) budgets. For these budgets, some departmental employees have the authority to reallocate funds between accounts based on need and availability of funds. In addition, departments must develop ideas to generate revenue, which are submitted to the General Manager and the Budget Department for review and presented to the Board for consideration. If the Board approves a proposal, the department can implement the initiative.

According to NYCHA, internal policy and procedure development usually originates with the identification of a need at either the executive or departmental Director level and with the request for the formulation of a committee. Initial committees generally begin with the top two employees in a department and expand to lower levels of management. At the next stage, which involves the drafting of a procedure, committees can include lower titles and sometimes non-managerial staff. Committees draft recommendations for approval by a Deputy General Manager or the General

Manager. Some changes to policies and procedures must be submitted to the Board for approval. A committee may be assisted by the Program Assessment and Policy Development Department, which is responsible for issuing standard procedures, manuals, and general memoranda.

The Authority Productivity Tracking System (“APTS”) is a performance-based management tool used by executive staff to critique one area of NYCHA at each meeting. APTS meetings are held every other week and chaired by the General Manager, and evaluators include Deputy General Managers and Assistant Deputy General Managers.

POSITIONS OF THE PARTIES

City’s Position

The City argues that the surveys and testimony presented demonstrate that the title of AM, Levels I and II, is managerial and/or confidential and, thus, excluded from collective bargaining. According to the City, all employees in labor relations units of City agencies must be designated managerial and/or confidential. Further, the City asserts that the vast majority of AMs have “active roles in City-wide programs aimed at increasing productivity, efficiency and safety through the development of new programs and devising alternative means of carrying out established programs.” (City Brief at 9). Some AMs represent management in labor-management meetings and negotiations and initiate and develop standard operating procedures. Therefore, the City concludes, “all [AMs] regularly participate in the essential process which results in policy proposals and the formulation of methods of fulfilling established purposes.” (City Brief at 10). The City contends that each employee need not possess all the indicia of managerial status in order to be designated managerial. The City notes that AMs have broad discretion in effectuating the mission of the employer, latitude

for independent decision making, policy-making authority in a variety of contexts, and authorization to represent their agency in meetings with Commissioners, Deputy Commissioners, Assistant Commissioners, and the public. Further, they have been assigned duties relating to labor relations, budget allocation and formulation, personnel administration, and discipline. In addition, the City alleges that AMs, Levels I and II, should be designated confidential because they act in confidential capacity to high-level agency executives. In its post-hearing brief, the City specifically addressed 77 employees, whom it alleges are representative of the title.⁴ Based on the evidence in the record, the City argues that it has met its burden of proving that AMs are managerial and/or confidential.

NYCHA's Position

NYCHA seeks a determination that the title AM, Levels I and II, is managerial and/or confidential and, therefore, ineligible for collective bargaining under the NYCCBL. NYCHA asserts that the record establishes that the duties and responsibilities of all employees at issue satisfy some, if not all, of the indicia that this Board considers when determining managerial and/or confidential status.

First, NYCHA argues that, collectively, all AMs, Levels I and II, at NYCHA are managerial since NYCHA has made a concerted effort to properly assign these employees managerial duties because of NYCHA's unique organizational structure based on a system of well-defined in-house titles, its policy formulation processes, and its department-based budgeting. According to NYCHA, a determination that AMs are eligible for collective bargaining will disrupt NYCHA's way of doing

⁴ The City acknowledged that, at the time of that the post-hearing briefs were filed, some of these employees were no longer AMs, Level I or II, and, thus, are ineligible for representation in this proceeding.

business because NYCHA uses a committee system open only to managerial-level employees to formulate policy and has a department-based budget system.

Second, NYCHA argues that the Board should make its determination by level. According to NYCHA, AMs Level II have higher in-house titles with a higher level of authority because of NYCHA's unique policy and budget systems. NYCHA asserts that managerial levels I and II (M-1 and M-2) have specific meaning that employees have strived for and take pride in. The existence of a few individuals who do not meet the standards of those levels does not warrant disrupting NYCHA's career ladder.

Lastly, NYCHA argues that reviewing a title by position results in highly impractical and unrealistic decisions that fail to recognize that positions do not remain stagnant. NYCHA asserts that its positions evolve over time according to an individual's talent and as they gain experience. Should the Board review individual positions, NYCHA addresses 19 AMs who either serve as executive assistants, have unique positions, are assigned to the Department of General Services, or are assigned to smaller departments. NYCHA seeks managerial and confidential designations for 13 of these employees and just a managerial designation for the remaining six.

Union's Position

The Union argues that the employers have failed to overcome the presumption that AMs, Levels I and II, are eligible for collective bargaining. The Union specifically addressed 256 AMs employed by the City and 16 AMs employed by NYCHA. According to the Union, these AMs do not regularly formulate policy. Instead, for example, they exercise discretion and professional judgment within established guidelines, policies, and procedures; oversee day-to-day operations; serve as resource people by gathering and analyzing data necessary for the development of policy;

provide technical recommendations; update established procedures, and recommend procedures to improve operational efficiency or save money. Their recommendations must be approved by higher level employees. The Union contends that, to the extent that some AMs are involved in personnel administration or labor relations, their duties are merely supervisory, not managerial. Further, the Union alleges that AMs do not assist in a confidential manner managers involved in collective bargaining negotiations, administration of collective bargaining agreements, or personnel administration. The Union asserts that the Board has found similarly situated employees eligible for collective bargaining. Accordingly, the Union argues that, with few exceptions, AMs, Levels I and II, should be accreted to its bargaining unit.

DISCUSSION

In granting public employees the right to bargain collectively, the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) provides a limited exception for those employees whom this Board finds to be managerial and or confidential:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organization of their own choosing and shall have the right to refrain from any or all such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that *public employees shall be presumed eligible for the rights set forth in this section*, and no employee shall be deprived of these rights unless, as to such employee, a determination of managerial and confidential status has been rendered by the board of certification

NYCCBL § 12-305 (emphasis added). The definitions of managerial and confidential are set forth in § 201.7(a) of the Civil Service Law Article 14 (“Taylor Law”). NYCCBL § 12-309(b)(4).

Accordingly, when evaluating a public employer's assertion that employees should be excluded from collective bargaining as managerial or confidential, the Board applies the following statutory standard:

Employees may be designated as managerial only if they are persons (i) who formulate policy or (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 of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

Taylor Law § 201.7(a); *see, e.g., DC 37, 78 OCB 7, at 39 (BOC 2006), aff'd sub. nom City of New York v. NYC Bd. of Certification, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007); see also Shelofsky v. Helsby, 32 N.Y.2d 54, 58 (1973) (finding that the statutory criteria for managerial and confidential designations are not unconstitutionally vague). Significantly, "the exclusions for managerial and confidential employees are an exception to the Taylor Law's strong policy of extending coverage to all public employees and are to be read narrowly, with all uncertainties resolved in favor of coverage." Lippman v. PERB, 263 A.D.2d 891, 904 (3d Dept. 1999); NYCHHC v. Board of Certification of the City of New York, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007).*

Only two types of managers are excluded from collective bargaining. The first is a manager "who formulate[s] policy." Taylor Law § 201.7(a)(i). The second type of manager is one "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 of a routine or clerical nature and requires

the exercise of independent judgment.” Taylor Law § 201.7(a)(ii). A employee is excluded from collective bargaining as confidential only if he or she “assist[s] and act[s] in a confidential capacity to” the second type of manager. Taylor Law §201.7(a).

For facility of discussion, we will address each of the three categories of designations separately. The first section addresses formulation of policy (“Policy Formulation Section”); the second section, involvement in labor relations/personnel administration (“Labor Relations/Personnel Administration Section”); and the third section, confidentiality (“Confidentiality Section”). Each section begins with an overview explaining the applicable legal standard. Then, by public employer, we discuss, first, those employees who meet the criteria for that designation and, second, those employees who do not meet the criteria for that designation.⁵

I. Formulation of Policy

The first type of manager excluded from collective bargaining under the Taylor Law definition is one “who formulate[s] policy.” Taylor Law § 201.7(a)(i). Policy has been defined as “the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.” *State of New York*, 5 PERB ¶ 3001, at 3005 (1972); *see EMS Superior Officers Ass’n*, 68 OCB 10, at 21 (BOC 2001); *Unif. Sanitation Chiefs Ass’n*, 66 OCB 4, at 26 (BOC 2000). Employees who formulate policy “include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such proposal into effect.” *State*

⁵ To the extent that the public employers argued that some employees satisfied the criteria for more than one category, we address those employees in each applicable section.

of New York, 5 PERB ¶ 3001, at 3005; *see OSA*, 78 OCB 1 (BOC 2006).

The Board has held that “[p]articipation in the formulation of policy must be ‘regular,’ ‘active,’ and ‘significant’ to support a finding of managerial status.” *CWA*, 78 OCB 3, at 11 (BOC 2006) (citing *Unif. Fire Officers Ass’n, Local 854*, 50 OCB 15, at 20 (BOC 1992)). “The formulation of policy does not extend to the determination of methods of operation that are merely of a technical nature.” *City of Binghamton*, 12 PERB ¶ 3099, at 3185 (1979). The definition of policy formulation is limited to “those relatively few individuals who directly assist the ultimate decision-makers in reaching the decisions necessary to the conduct of the business of the governmental agency.” *State of New York (Dept. of Env’tl. Conservation)*, 36 PERB ¶ 3029, at 3083 (2003) (finding managerial an employee who initiated a regulatory change proposal with “significant statewide implications,” formulated the long-term policy for the direction of the New York State (“State”) Nursery program, and in response to a shortage of funds, decided to reallocate funding from efficiency studies to promoting trade shows).

The exercise of discretion, alone, is insufficient for a managerial designation. “It is the conditions under which discretion may be exercised, not the exercise of discretion itself, which we find relevant in determining manageriality. Employees who exercise their discretion only when permitted by policy, and exercise it within the specified guidelines of that policy, do not have the degree of freedom or authority to make decisions necessary to invoke managerial status.” *Unif. Fire Officers Ass’n, Local 854*, 50 OCB 15, at 23; *see Local 621, SEIU*, 78 OCB 2, at 20 (BOC 2006).

An employee who participates in the policy making process in an advisory role, as a resource person, or in a clerical capacity does not formulate policy. *See, e.g., OSA*, 78 OCB 1, at 19, 27 (BOC 2006) (finding eligible employees who gather and analyze data for use by upper management and

employees who provide technical advice); *Local 1180, CWA*, 46 OCB 3, at 10 (BOC 1990) (finding eligible employees who are informed of new objectives, are asked to prepare procedures for achieving them, and attend conferences for the purpose of providing technical advice); *County of Rockland*, 28 PERB ¶ 3063, at 3144 (1995) (finding eligible a “high level supervisor with a great degree of technical skill” who evaluated current and future traffic safety policies and made recommendations). In interpreting policy formulation, the courts have noted that “all employees who advise the ultimate decision makers are not automatically policy formulators to be designated managerial.” *Lippman*, 263 A.D.2d at 900-901 (finding that employees “in important and fairly-high level informational, advisory and implementer roles” did not formulate policy); *see County of Nassau v. Nassau County Public Employment Relations Bd.*, 283 A.D.2d 428, 428-429 (2d Dept. 2001) (finding that “supervisors are not involved in policy formulation merely because they attend monthly meetings at which, based upon their field experience and technical expertise, they make suggestions on how to improve upon the methods by which mental health services are presented”).

Also, budgetary duties are not dispositive of managerial status. In applying the Taylor Law definitions, this Board has considered several factors as indicia of manageriality: number of subordinate employees; area of authority; involvement with labor relations; preparation of budget and allocation of funds; and involvement in personnel administration. *See, e.g., OSA*, 78 OCB 1; *see also Civ. Serv. Tech. Guild, Local 375, DC 37, AFSCME v. Anderson*, 55 N.Y.2d 618 (1981) (upholding the Board’s use of indicia of manageriality, when considered together, as aids in construing the NYCCBL for the reasons set forth in the dissenting opinion of the Appellate Division). These factors are not a substitute for or an expansion of the statutory definitions and do not create any additional exclusions from collective bargaining. *See Civ. Serv. Tech. Guild, Local*

375, DC 37, *AFSCME v. Anderson*, 79 A.D.2d 541 (1st Dept. 1980) (dissenting opinion, relied upon by the Court of Appeals, noted that the Board used the guidelines “not slavishly, nor without reviewing the evidence as a whole, nor without constant reference to the statutory criteria and its goals”). Accordingly, while involvement in budget formulation is one of the factors that this Board has considered in interpreting the Taylor Law definitions of managerial, those employees with budgetary duties who do not formulate policy or have a significant involvement in labor relations or personnel administration are not excluded from collective bargaining as managerial. *See, e.g., CWA*, 78 OCB 3, at 39, 45, 51 (finding employees who manage the department budget, approve bills for payment, monitor the OTPS budget, and assist in preparing the PS and OTPS budgets to be eligible for collective bargaining); *OSA*, 78 OCB 1, at 21, 25-26, 34, 36 (finding employees who prepare grant budgets, participate in allocating grant funds between facilities, allocate departmental expenses, prepare capital budget proposals, make need-based recommendations for the departmental budget, and make recommendations for the allocations of funds to be eligible for collective bargaining); *see also Village of Suffern*, 38 PERB ¶ 3016, at 3057 (2005) (finding eligible Department of Public Works’ unit heads who make departmental budget recommendations); *County of Putnam*, 20 PERB ¶ 3059, at 3128 (1987) (finding eligible a member of the Office for the Aging’s “management team” who drafts grant proposals and prepares the office budget).

Below, we address those AMs alleged by the City and NYCHA to be managerial because they formulate policy.

A. City

1. Managers Who Formulate Policy

Applying the definition of formulating policy, we find that the following individuals are

appropriately excluded from collective bargaining as managerial under the NYCCBL.

Administration for Children’s Services (“ACS”)

Nancy Hruska is the Executive Assistant to the Deputy Commissioner for the Division of Policy and Planning. She is the project manager/coordinator for multiple projects that are new to the agency. She handles policy and project development and advises the Deputy Commissioners and the Commissioner on implementation of legislative changes or best practices. She gets needed information, coordinates with different City agencies, gathers Directors and Deputy Commissioners for discussion, sets time-lines, and meets regularly with the Commissioner to advise on “what has gotten them to that point or to that decision,” what needs to be thought of, and what is the impact. (Tr. 3644).⁶ For example, when the State Family Court Act changed to increase the age limit for persons in need of supervision, the Department of Probation asked ACS to be responsible for implementing more of the statute, and Hruska was part of the development team that determined what the service model would be, what skills the workers would need to have, and the formal procedures and process steps to gather data and inform the Department of Probation and the State. As part of development, she is one of the employees who performs analysis and advises on where to make budget cuts and how to use funding. We find that the Executive Assistant to the Deputy Commissioner for the Division of Policy and Planning position held by Hruska is managerial because she has an active role in determining the means and methods by which ACS furthers its mission.

Department of Environmental Protection (“DEP”)

Mark Benedetto is the Assistant Chief of the Police Division, which protects the water supply

⁶ “Tr.” refers to citations from the hearing transcript.

system. He reports directly to the Chief and supervises three Captains, who are also AMs and are discussed below. Benedetto indirectly supervises Environmental Police Officers (“EPOs”). He is responsible for the entire Operations Division. He is on the intelligence subdivision committee of a seven-county counter-terrorism committee and on a counter-terrorism committee with the Attorney General’s Office in Binghamton. He wrote the first patrol guide a few years ago, and he and the other AMs are now revising different sections of it. Benedetto regularly discusses filtration avoidance, security enhancements, prioritization of projects, emergency mobilization plans, and drills with the Chief, and they determine the best solution to any security problems. He reviews command discipline paperwork to determine if it is warranted or excessive and then forwards it to the Chief with his recommendation. He authorizes transfers of EPOs between precincts. He assists the Chief during contract negotiations. He also has a role in deciding what equipment to purchase. As he participates in deciding how to protect the water supply system, one of DEP’s missions, Benedetto’s position as Assistant Chief of DEP’s Police Division is managerial because he has a role in policy formulation.

Department of Health and Mental Hygiene (“DOHMH”)

Lisa Green is the Director of Housing Services in the Division of Mental Hygiene.⁷ She is responsible for developing and planning housing units for the mentally ill and ensuring that the current inventory of such supportive housing is properly run by non-profit providers. For housing projects already in development, she, other DOHMH employees, and Department of Homeless Services (“DHS”) employees meet with providers to get them to agree to take a certain number of

⁷ While the City did not specifically address Lisa Green in its post-hearing brief, the evidence in the record supports a managerial designation for this AM position. We note that the Union did not argue that the position is eligible in its post-hearing brief.

long-term shelter residents into their units. In addition, she works on ideas to stimulate building of more supportive housing in collaboration with the Department of Housing Preservation and Development (“HPD”). Green and the Executive Deputy Commissioner for Mental Hygiene met with the Commissioner and Deputy Commissioner of DHS to discuss initiatives in the Mayor’s ten-year plan to end homelessness. She served on one of the four task forces, which included employees from other agencies, non-profits, and businesses, that recommended policy proposals concerning shelters, outreach programs, and permanent housing for the Mayor’s ten-year plan. At meetings within DOHMH, she has made programmatic and policy recommendations such as providing funding for supportive housing for young adults and families whose head of the household is mentally ill. She collaborates with other governmental agencies and has input into the types of housing programs DOHMH might fund. For example, she submitted program proposals to spend millions in reinvestment funds received when State psychiatric hospitals are closed. Green has a significant role in determining the means and methods by which DOHMH aids the mentally ill. Accordingly, the Director of Housing Services position is designated managerial.

Christopher Rohner is the Senior Emergency Manager in the Bureau of Emergency Management. He prepared the agency’s emergency operations plan, which included developing a plan for how to respond to emergencies, creating levels of response, developing tasks and structures for an incident management system, creating job action sheets to define individuals roles, developing a staffing notification system, and developing an emergency operations center. In writing the emergency notification system, he defined core, essential, and regular staff and decided how best to notify them of what needs to be done. For the Republican National Convention, he developed material for planning the agency’s health response and coordinated with Office of Emergency

Management, the Police Department (“NYPD”), and the Federal Bureau of Investigation (“FBI”). At regular meetings with the Deputy Commissioner and the Chief of Staff, he makes recommendations on subjects such as plan development, staff assignments, agency response plan details, spending, and interaction with other agencies. Therefore, based on the involvement in planning DOHMH’s response to emergencies, we find that the position of Senior Emergency Manager is managerial.

David Rippon is a Senior Emergency Planner in the Bureau of Emergency Management.⁸ As the strategic national stockpile coordinator for the City, he works with State and federal agencies to develop plans to treat New Yorkers in a large scale emergency, such as a small pox outbreak or a terrorist attack. He wrote the City’s strategic national stockpile plan that provides for the distribution of medical supplies and treatment of up to ten million people within four days. He incorporated comments from Assistant and Deputy Commissioners and senior employees at other government agencies, and the DOHMH Commissioner adopted the plan. Rippon wrote the contract with a pharmaceutical distribution company. Rippon and a colleague also wrote proposed federal legislation for stockpile plan funding that was submitted to the Mayor’s lobbyist. He manages the stockpile program grant and submits a list of projects to be funded by the grant to the Commissioner for approval. Similarly, he manages DOHMH’s portion of Homeland Security grant. He helped convince the Office of Management and Budget (“OMB”) to allocate \$13 million of the Homeland Security grant to DOHMH and worked with DOHMH Commissioners to develop projects to be funded. After the Commissioner decided which programs would receive Homeland Security grant

⁸ While the City did not specifically address David Rippon in its post-hearing brief, the evidence in the record supports a managerial designation for this AM position. We note that the Union did not argue that the position is eligible in its post-hearing brief.

funds, Rippon assisted in developing the scope of services for each project, worked with the federal Department of Homeland Security to get each project approved, and worked with other government agencies on procurement for these projects. He also assists in managing DOHMH's portion of the bioterrorism grant. At meetings with other government agencies concerning the Republican National Convention, he recommended staging medical supplies. Similar to Christopher Rohner, Rippon has significant involvement in planning DOHMH's response to emergencies. Accordingly, the Senior Emergency Planner position is managerial.

Department of Small Business Services ("SBS")

Jeremy Waldrup was the Executive Director of NYC Business Solutions in the Division of Business and District Development.⁹ He evaluated and reported on seven NYC Business Solutions centers contracted out to nonprofit economic development organizations and managed their marketing and promotional activities. He also made sure that data in the web-based business client relations management system was up to date and reported on that data. He worked with the Director of Curriculum Development to staff a range of seminars, kept the curriculum up to date, and found new classes and seminars to offer. Waldrup oversaw the volunteer program, the affiliate program, and trade show promotions. He interviewed the directors of the centers, conducted site visits to review day-to-day operations and to ensure that the centers are clean, ensured that the fiscal department had the information needed to process their invoices, reviewed the centers' performance numbers to ensure that the vendors were meeting their goals, and had briefed the Deputy Mayor concerning outreach at these centers. He was responsible for allocating funds for the centers,

⁹ In its post-hearing brief, the City indicated that Jeremy Waldrup is no longer the Executive Director of NYC Business Solutions and sought a managerial or confidential designation for successors in that position.

managing their resources, and addressing their requests for additional funding. He had bi-monthly strategic planning meetings with the centers to discuss operations and data and to evaluate which outreach initiatives were working. He, the Assistant Commissioner to whom he reported, and the Deputy Commissioner were responsible for creating the goals in the center contracts. He was involved with creating new centers. He met weekly with the Deputy Commissioner to discuss how to set up contracts for industrial business solution centers and determine the contractual goals and requirements. His role in developing the NYC business solutions' customer service model and the service model was discussing the needs of the small business community, the services provided at SBS and other agencies, and the role of the private sector and creating the training curriculum for the business solutions center staff. He recommended not relying on internal resources to provide direct services and, instead, referring clients to nonprofits that provide those services. We find that he had a significant role in determining the means and methods by which SBS will offer services to the small business community. Accordingly, the Executive Director of NYC Business Solutions position formerly held by Jeremy Waldrup is managerial to the extent that AMs, Levels I and II, who succeed him have substantially the same duties and functions. *See DC 37, 34 OCB 16, at 3 (BOC 1984)* (noting that designation runs to successor employees "who perform substantially the same duties and functions as performed by their predecessors").

2. Employees Who Do Not Formulate Policy

In contrast, we find that the following employees have a significant amount of responsibility, often report to high level managers, and/or have a wide range of discretion to oversee the functions of a unit or division. However, their duties do not demonstrate a regular and/or significant role in formulating policy that furthers the mission of the agency. Rather, they are primarily involved with

implementation of policy and operational concerns.

To the extent that these or other employees have budgetary duties, such as preparing budget proposals, overseeing and maintaining unit budgets, overseeing OTPS budget, preparing management reports and tracking spending; calculating overtime needs based on prior years' expenditures, determining historical trends and anticipating expenses, implementing budget reductions, budget reconciliation, grant oversight, and entering into contracts with vendors to have office equipment maintained, we reiterate that these budgetary duties alone are insufficient to establish that an employee formulates policy.¹⁰

ACS

Christiana Cummings is the Project Manager for the Common Core Training System and the Acting Executive Deputy Director of Professional Development and In-Service Training at the James Satterwhite Academy, a unit responsible for training ACS employees and employees of contracted private agencies. She reports to the Executive Director of the James Satterwhite Academy. She manages and implements the Common Core training program, a State initiative to provide

¹⁰ The sample budgetary duties listed are derived from the testimony and surveys of the following individuals: at ACS, Nancy Hruska (Executive Assistant to the Deputy Commissioner) and Judith Wolpoff (Deputy Budget Director); at the Department of Finance ("DOF"), Jacquelyn Cheeseborough (Manager of Banking Relations) and Eva Gambino (Administrative Liaison); at DOHMH, Pamela Harmon (Director of the Call Center), Allen Harris (Administrator), Daria Luisi (Director of the Work Site Wellness Program), Janel Nival (Program Management Officer), and Bonnie Washburn (Administrative Director); at the Department of Investigation ("DOI"), Linda Maxwell (Director of Office Services); at the Department of Sanitation ("DSNY"), Thomas Clavin (Director of Administration and Fiscal Services); at the Fire Department ("FDNY"), Mark Aronberg (Deputy Director of Technical Services); at the Kings County DA's Office, George Diaz (Manager of Technical Services) and Aleksander Drusman (Deputy Chief); at the NYPD, Patricia Izzo (Director of Management and Budget Analysis), Debra Melito, and Ann Rutherford (Commanding Officer of the Financial Control Section of the Support Services Bureau); and at the Office of the Queens Borough President, Mark Scott (Director of the Capital Budget and Director of Youth Services).

foundation training to all child welfare staff. She coordinates meetings, including advisory board meetings, does training needs assessments, identifies gaps in implementation, and works to address those gaps. Concerning implementation gaps, she and advisory board committee members determined that the State's curriculum for case workers and supervisors would not be effective without training for managers and that supervisors needed an additional coaching component to help with implementation. She managed the contracts with the consultants who developed the coaching component, explained the scope of the project to them, and, at curriculum meetings with them, gave input on mentoring and coaching and communicated the goals of the Executive Director of the James Satterwhite Academy. She facilitates meetings with Assistant Commissioners and Executive Directors of contract agencies by opening the meeting, keeping the group on task, setting dates, and reading minutes. The Project Manager for the Common Core Training System and the Executive Deputy Director of Professional Development and In-Service Training positions involve high-level administrative and/or supervisory work but do not involve policy formulations.¹¹

Tatyana Gimein is the Director of Curriculum at the James Satterwhite Academy and reports to the Executive Deputy Director of Training. She and the four curriculum developers she supervises conduct focus groups in field offices to assess the need for training. In addition, she and her team receive assignments from the Commissioner's office. She supervises her team's development of the work plan and hires consultants if needed. She is on two advisory board sub-committees of the Visitation Improvement Policy Task Force, which is under the supervision of the Commissioner's office: one subcommittee concerning immigration and language guidelines and the other concerning training. Her role on both subcommittees was primarily, but not limited to, the development of

¹¹ Christiana Cummings is also discussed in the Confidentiality Section below.

training programs. Her recommendations concerned training and implementation of new policies. Her involvement in these committees constitutes regular participation in policy implementation, not formulation. Therefore, the Director of Curriculum position is eligible for collective bargaining.

Judith Wolpoff is the Deputy Budget Director for Child Welfare. She oversees the child welfare portion of HRA's budget, reviews her staff's budgetary analysis, and assists in preparing analysis for and negotiating with OMB. She meets regularly with private service contractors to report on the status of the preventive services budget, to update them on the approval process, or to explain the "cost of living adjustment" agreement negotiated by the Human Services Council. When the Commissioner wanted to define productivity, a term in the cost of living adjustment agreement, and determine how it applied to the contractor agencies and the Mayor's Office asked ACS to come up with suggestions, Wolpoff made suggestions in discussions with ACS directors. During negotiations with homemaking contractors, Wolpoff was among those brought in to assess affordability. During the layoff process, she was one of two people asked to do analysis, and she saw the list of who would be laid off. She regularly attends meetings with high-level employees in Child Welfare at which policy is formulated concerning issues such as an investment plan. She is the budget representative at these meetings and advises on financial feasibility. It is clear that the Deputy Budget Director for Child Welfare has high level budget responsibilities. Nevertheless, in the absence of a regular role in policy making, we find the position eligible for collective bargaining.

Department of Design and Construction ("DDC")

James Atkinson was the Director of Finance in the Administrative Division of the Chief

Financial Office.¹² He oversaw the day-to-day operations of the Capital and Expense Payments units, the Revenue and Banking unit, the Personal Expense and Reimbursements unit, and the Vendor Relations unit. He ensured prompt payment of invoices, maintained the tracking system for payments, and was a liaison with oversight City agencies regarding payments, liens, and personal injury claims. He made recommendations to Assistant and Deputy Commissioners regarding payment processes and problems associated with particular contracts. For example, he recommended that the agency “competitively bid out” the process for out-of-town travel and streamline the paperwork submitted to City Hall for approval. (Tr. 752). In addition, in order to get invoices paid in a timely manner, he initiated a process requiring agency personnel to submit backup documents for purchase orders under \$250 within 48 hours, notifying supervisors when payments were withheld for failure to submit documents within 48 hours, and creating a tickler system to flag old invoices. While Atkinson addressed operational concerns, he was not formulating policy. Accordingly, the Director of Finance position is eligible for collective bargaining.

DEP

Thomas Arnold, Frank Milazzo, and Eugene Sass each hold the position of Captain in the Police Division, report to Assistant Chief Benedetto, discussed above, and supervise EPOs. The three Captains, the Assistant Chief, and the Chief comprise the command staff. The three Captains, along with Assistant Chief Benedetto and the Chief, are rewriting the patrol guide that governs the daily actions of EPOs and developing new State-mandated policies needed to become a State accredited police agency. The patrol guide covers topics such as uniforms, behavior in public, and

¹² In its post-hearing brief, the City indicated that James Atkinson is no longer an AM and sought a managerial designation for the Director of Finance position.

operations during investigations as well as newly-created specialized units. The Captains get input from EPOs holding the in-house title of lieutenants and submit drafts of the patrol guide to the Chief for his approval. According to Captain Arnold, the changes in the patrol guide are minimal in scope. In addition, the Captains have gathered information for the Chief to be submitted to the New York City Office of Labor Relations (“OLR”) concerning the agency’s salary and benefit goals for negotiations. The Captains have a role in the command discipline process.

Captain Arnold is responsible for the East of Hudson command operations. He schedules EPOs to facilities and patrol duties; oversees patrol vehicles, evidence, property, and communications; and coordinates police operations. He has daily discussions with Assistant Chief Benedetto regarding the deployment of EPOs, the operational status of the East of Hudson command, and counter-terrorism intelligence. In the absence of Assistant Chief Benedetto, Captain Arnold will submit patrol advisories concerning non-classified information.

Captain Milazzo runs the Special Operations Division, which includes the DEP police academy, in-service training, the emergency service unit, aviation, K-9, and strategic patrol with bicycles and ATVs. This division operates in nine different upstate counties. Milazzo does some teaching at the academy, meets with the academy class weekly to ensure that there are no issues with their training, and reviews on the training program lesson plans for compliance with the State’s criteria before forwarding the lesson plans to the State Division of Criminal Justice Services. He regularly attends Joint Terrorism Task Force meetings for upstate and City zones. In the absence of a Principal Administrative Associate, he prepares and tracks purchase orders for the DEP police. In addition, he makes purchase recommendations based on the needs of the Special Operations Division and the precincts, but the Chief has the final say.

Captain Sass is the West of Hudson division commander. For five precincts, he reviews schedules to ensure adequate staffing and prepares reports for Assistant Chief Benedetto. He attends meetings with town, county, and State police. He is in charge of the firearms section of the department and has made recommendations to update the patrol guide on firearm health and safety issues, such as lead exposure, hearing and eye protection, weapon handling, and investigations into accidental discharges. He discusses the activities of the five precincts with Assistant Chief Benedetto. At town meetings, he dispels rumors and responds to concerns. From time to time, he is an instructor at the DEP academy.

While Captains Arnold, Milazzo, and Sass are high-level supervisors, their duties do not rise to the level of formulating policy. Unlike Assistant Chief Benedetto, they are not deciding how to best protect the water supply system. The policies and procedures they develop for the EPO patrol guide are not self-initiated; rather they are required by the State for accreditation. *See New York City Deputy Sheriffs Ass'n*, 70 OCB 3, at 10 (BOC 2002) (finding eligible Administrative Sheriffs who had revised a policy and procedure manual). Therefore, the Captain positions in DEP's Police Division are eligible for collective bargaining.¹³

Mark Donecker is the Special Technical Assistant to the Director of the Division of Regulatory Compliance and Facilities Remediation. He gives technical advice on negotiations with the United States Environmental Protection Agency, the State Department of Environmental

¹³ Subsequent to the testimony in this proceeding from Captains Arnold, Milazzo, and Sass, the Board issued a decision regarding the appropriate bargaining unit placement of EPOs, whom the Captains supervise. In *LEEBA*, 76 OCB 3, at 19 (BOC 2005), the Board held that EPOs, whose primary function is law enforcement, are not appropriately included in a bargaining unit with employees who do not have that characteristic. In light of this decision, we address the appropriate placement of Administrative Managers in the position of Captain in DEP's Police Division in the Conclusion section of the Discussion.

Conservation, and the State Department of Health for consent orders regarding DEP compliance with federal and State regulations. Based on his communications with federal and State agencies, he makes technical recommendations to the Assistant Commissioner and First Deputy Director of the Water Bureau regarding implementation of special projects he had developed to limit environmental contamination. He has developed standard operating procedures for the Bureau of Water Supply. A court directed DEP to create agency-wide health and safety policies, and Donecker, in conjunction with a consultant, is reviewing those policies and making recommendations. During his review, he consults State and federal law to ensure that DEP is complying. This position requires a high level of technical expertise to ensure compliance with federal and State regulations but does not involve policy formulation. Accordingly, the position of Special Technical Assistant to the Director of the Division of Regulatory Compliance and Facilities Remediation is eligible for collective bargaining.

DOF

Jacquelyn Cheeseborough is the Manager of the Banking Relations Unit in the Bureau of Treasury. Reporting to an Administrative Procurement Analyst, she provides support for the members of the Banking Commission, works on distributing the City's accounts among banks to minimize charges, handles the unit's correspondence, and identifies abandoned City assets for recovery. She makes recommendations to the Associate Commissioner regarding the amount of interest to be charged to delinquent real estate taxpayers based on fluctuations in the prime rate. She also makes recommendations regarding changes to banking relationships based on pricing to the Associate Commissioner. At division meetings, Cheeseborough has made recommendations on ways to save money for programs to eliminate the gap ("PEGs"). In sum, the Manager of the Banking Relations Unit is primarily a resource person to the members of the Banking Commission

and does not formulate policy. Therefore, the position is eligible for collective bargaining.

DOHMH

Pamela Harmon is the Director of the Call Center in the Division of Administrative Services. She was the head of a task force that, in order to set up the call center, visited another City agency's call centers, saw how they were run, determined what did and what did not need to be done at DOHMH, and wrote the manual for the agency's call center operations. During an emergency, she worked out the logistics of setting up a temporary call center within 24 hours. Regarding various health programs, she estimates how long it will take call agents to handle incoming calls and conduct follow-up surveys and, from that, calculates the cost of a program. While she answers questions and gives advice in meetings to determine whether it is cost-effective to outsource calls for a certain program and whether, based on skills needed, to staff a particular hotline with nurses, ultimately program decisions are made by Assistant or Associate Commissioners. As her primary role is to implement initiatives relating to the call center's operations, the Director of the Call Center is not involved in policy formulation.¹⁴

Raymond Henriques, the Deputy Director of the Call Center, reports to Pamela Harmon. He drafted the manual for call center operations and presented it to Harmon. He is on the core emergency team and is, accordingly, a group leader for the call center during an emergency. Henriques participated in setting up structures to "spike the staffing load" during an emergency. (Tr. 1966). Like Harmon, he implements policy rather than formulating it.¹⁵

¹⁴ Pamela Harmon is also addressed below in the Labor Relations/Personnel Administration Section.

¹⁵ Raymond Henriques is also addressed below in the Labor Relations/Personnel Administration Section.

Allen Harris is the Administrator for the Division of Administrative Services. He provides administrative and fiscal oversight and assists the division's programs: the Program Management Officer, the Agency Chief Contracting Officer, Procurement, Human Resources, and Facilities Management. At capital projects meetings, he has made recommendations regarding spending time frames and the need for additional personnel to implement the processes. On a daily basis, he tracks and assesses programs' spending patterns. If additional funds are necessary for one program, he recommends borrowing from other programs, and his supervisor, the Deputy Commissioner, negotiates these recommendations with the Finance Department. Harris reviews overtime accumulations for his supervisor, who controls the overtime for the agency, but Harris has no involvement in collective bargaining. When asked to review the agency's OTPS spending policy in order to reduce costs, he recommended ways to consolidate spending on needles, such as using only one type of needle and using only one vendor. Harris has recommended that improvements be made in certain areas, but he testified that it was not his role to make recommendations to change policy. The Administrator for the Division of Administrative Services has high level fiscal responsibility but does not have a direct role in policy formulation. The position is, therefore, eligible for collective bargaining.

Daria Luisi is the Director of the Work Site Wellness Program in the Chronic Disease Bureau. She oversees the design and implementation of health promotion activities at senior centers and 120 work sites, including City agencies, Health and Hospitals Corporation facilities, the United Nations, and private-sector companies. She and her staff approach organizations and "provide technical assistance to implement a workplace health promotion program" geared toward chronic disease risk factors—such as lack of physical activity, poor diet, and smoking. (Tr. 1822). Using her expertise,

she designs the organizations' wellness programs based upon the available resources and the specific chronic diseases on which her bureau is focusing. She has also written a strategic plan for the work site program's resource center, which provides technical services to the organizations. The Director of the Work Site Wellness Program's role is to implement DOHMH's policies rather than to formulate them. Therefore, the position is eligible for collective bargaining.

Bonnie Washburn is the Administrative Director in the Bureau of Administration for the Division of Mental Hygiene. She oversees this division's Office of Management Information Systems ("MIS"), Office of the Budget, Office of the Designated Human Resources Liaison, and Office of Office Services. She attends senior management leadership meetings and senior operations meetings. As part of the Quality Improvement Steering Committee, she developed a project management template to standardize and track the approach to the continuous quality improvement project, which is the division's initiative to streamline work flows. For the four offices she oversees, she has established procedures to standardize certain business processes. She has also developed division-wide procedures for the mail room, the tracking of inventory, and the processing of MIS requests from internal and external constituencies. When PEGs are announced, her office works with the Program Services Office to coordinate programs to be considered and puts together a package for the agency's Department of Finance. When the annual budget request is prepared, Washburn, the Budget Director who reports to her, and her supervisor, the Division of Mental Hygiene's Chief Administrative Officer, meet to determine historical trends; anticipate expenses; decide whether to spend resources on training, conferences, hardware, or software; and prepare the division's plan for the fiscal year, which is submitted to the Executive Deputy Commissioner. There is insufficient evidence in the record to support a managerial designation for the Administrative

Director position in the Division of Mental Hygiene's Bureau of Administration. Accordingly, the position is eligible for collective bargaining.

Department of Information Technology and Telecommunications ("DOITT")

Fernando DeGuia was the Assistant to the Deputy Commissioner/General Counsel.¹⁶ In conjunction with the Law Department and occasionally the Economic Development Corporation, DeGuia assisted his supervisor in developing the City's telecommunications policies and strategies by ensuring that legislation and regulations are developed, that authorizing resolutions are in place to release requests for proposals ("RFPs"), and that the language of RFPs is crafted to promote certain things. DeGuia worked on RFPs and ensured that responses to RFPs went through an evaluation process. He had discussions with the General Counsel and the Law Department regarding changes to regulations and RFPs and consulted with them regarding DOITT's strategy to respond to litigation filed by telecommunication vendors, such as cable providers, pay phone companies, and cellular service carriers. DeGuia reviewed the General Counsel's budget documents and conveyed information from the General Counsel, such as whether monies could be used for a particular purpose, to DOITT's budget office. In the course of working on a cost analysis of proposed "application fees for payroll and permits," he asked OMB about the process for conducting a cost analysis, including the acquisition of salary information. (Tr. 969). His duties do not rise to the level of policy formulation.

¹⁶ In its post-hearing brief, the City indicated that Fernando DeGuia is no longer the Assistant to the Deputy Commissioner/General Counsel and sought a managerial or confidential designation for successors in that position. The position formerly held by DeGuia is also discussed below in the Confidentiality Section.

Department of Juvenile Justice (“DJJ”)

Anthony Ferguson was former Director of Support Services at the Bridges Juvenile Facility, a secure juvenile facility.¹⁷ He oversaw employees responsible for food services, plant management, property management, and security. He ensured that security personnel meet the State guidelines for safety and security and received proper training and supervision. He attended meetings with his supervisor, the Executive Director of the facility, with other facility directors, with staff, and with other Directors of Support Services as well as GOALs meetings at which logistics, statistics, and status of the facility as a whole and by department are discussed. At meetings, he made recommendations such as improving the method of conducting the key count, maintaining a logbook, keeping keys in a more secure location, and locking certain doors and elevators at a certain time. He supervised the facility’s fiscal coordinator, who advised him on the budgetary status of the facility, briefed the Executive Director, and made recommendations on spending to the Executive Director, who would make the final determination. The Director of Support Services position does not have a role in policy formulation.

Donna Locke is the Executive Director of the Crossroads Juvenile Center.¹⁸ She directs the operations of a secure detention facility and handles the custody and care of youths. She is responsible for implementing agency policies, interpreting those policies for staff, and upholding

¹⁷ In its post-hearing brief, the City indicated that Anthony Ferguson is no longer an AM and sought a managerial designation for successors in the Director of Support Services position at the Bridges Juvenile Facility. Ferguson is also discussed below in the Labor Relations/Personnel Administration Section.

¹⁸ Donna Locke submitted a survey but did not testify. The City did not indicate the basis for its assertion that her position is managerial. To the extent that the City asserts that she has significant involvement in labor relations/personnel administration, we find that her duties are supervisory in nature.

staff accountability. She attends meetings regarding management targets, operational issues, overtime management, budget issues, staffing, policy development, and uniformity of procedures. She has made recommendations, on subjects such as the clarification of policy and the definition of incident categories, but she does not assert that she formulates policy. There is insufficient evidence to support a managerial designation. Accordingly, the position of Executive Director of the Crossroads Juvenile Center is eligible for collective bargaining.

Department of Transportation (“DOT”)

Anita Garrison is the Director of the Highway Inspections and Quality Assurance Unit. She oversees day-to-day operations of highway inspections for the five boroughs and manages the Summons Environmental Control Board Unit, which is currently without a head. She monitors the overtime budget for inspectors in her division to ensure that it is not exceeded, that employees don't go beyond 25%, and that overtime is staggered over the year. She meets with her supervisor, the Assistant Commissioner of Highway Inspections and Quality Assurance /Street Assessment, to deal with issues that arise, such as ensuring that summonses are written correctly and addressing public concerns; setting productivity goals, such as the number of inspections per week; and setting bureau policies for the boroughs. For example, she and the Assistant Commissioner instituted a rotation of inspectors from borough to borough every two years in order to prevent corruption. She meets with utility companies to resolve noise complaints caused by shifting road plates and is the liaison with the Environmental Control Board. She recommended to the Assistant Commissioner that the fines for summonses be increased, but that decision was made at a higher level. She testified that she does

not formulate policy at the agency level.¹⁹

Elliot Jacobs is the Deputy Director of Finance and Administration for the Parking Bureau. He sets revenue targets and monitors the revenue produced by the parking bureau. He oversees two units: the Pre-Paid Parking Unit, which sells parking cards and establishes multi-space meters, and the Permit Unit, which sells permits to City parking fields. He monitors overtime usage for the entire bureau. He provides revenue information to OMB and responds to PEGs by developing programs, such adding meters or increasing rates, to generate additional funds. He prepares monthly revenue reports for his supervisor, the Director of Administration, and the Assistant Commissioner to whom she reports. He gathers information from engineering staff and submits recommendations to the Assistant Commissioner, who has the final say on which recommendations are implemented. One of many of Jacobs' recommendations that were implemented was to add multi-space meters to expand commercial parking on avenues, which increases revenue and decreases traffic congestion. For specific blocks, he anticipated the manpower and equipment needed and calculated revenue projections. Jacobs does not participate in deciding which recommendations will be implemented. Accordingly, we find the Deputy Director of Finance and Administration position eligible for collective bargaining.²⁰

Department of Youth and Community Development (“DYCD”)

Robin Berlin works in the Programs Operation Unit. She oversees the community action

¹⁹ Anita Garrison is also discussed below in the Labor Relations/Personnel Administration Section.

²⁰ The City did not seek a confidential designation for Elliot Jacobs. We note that while, on one occasion, he had advance knowledge of layoffs from the Human Resources department and had to notify one of his supervisees that her position was a possible target for layoffs, this indicates supervisory duties and does not warrant a confidential designation.

board, a Citywide advisory board to DYCD comprised of representatives of the poor, elected officials, and members of the private sector, and coordinates their meetings. She drafts an agenda, has a pre-meeting with the Deputy Commissioner and Assistant Commissioner regarding the agenda, sends out meeting notices and materials—such as handouts or a newsletter, and prepares the minutes. She works with staff that are the liaisons for the neighborhood boards and is the liaison with the agency's Information Technology Unit concerning the Programs Operation Unit's database. Berlin's primary duties do not involve participation in policy formulation, and, therefore, her position is eligible to participate in collective bargaining.

District Attorney's Office for Kings' County

George Diaz is the Manager of the Technical Services Unit. He deploys staff to crime scenes to gather physical or electronic evidence and take photographs. Whether the unit's services are needed at a particular crime scene is determined by someone other than Diaz. Diaz decides what is the best technology to use, which skills are needed at a location, and who is deployed. His unit also provides continuing legal education; conducts moot court training and training on the retrieval and processing of 911 information; prepares multimedia cable broadcasts; arranges the presentation of children's grand jury testimony by closed circuit; and redacts names, phone numbers, and addresses from digital media presented to the grand jury. Diaz does not determine who receives training, but does prepare the training materials. For his unit, he does a cost analysis and makes cost containment recommendations such as redeploying staff, purchasing equipment or supplies, using new technology, or applying for particular grants. When a Chief Assistant recommended switching from film to digital photography, he analyzed the initial capital outlay and amount of time to create a savings; recommended the equipment to purchase and a vendor; and provided training on use of the

equipment, handling of materials, and coding and storage of evidence. The Manager of the Technical Services Unit position does not have a regular or significant role in policy formulation.²¹

Henna White is the Jewish Community Liaison and reports to a Deputy District Attorney. She schedules meetings with the Jewish community for the District Attorney, accompanies him, and gives him information and advice about the community. It was her idea for him to meet with the Russian Jewish community. She regularly speaks on behalf of the District Attorney and responds to inquiries at public meetings that the District Attorney cannot attend. Her role is to ensure that the District Attorney's message, on issues such as elder abuse and child abuse, is heard in the community. She prepares her own statements when she speaks with the press and interacts with politicians representing the Jewish community. She organizes and prepares materials for training sessions to teach the community about the criminal justice system, training for mental health professionals, and continuing legal education classes on the differences between secular and Jewish courts. She decides what training sessions are needed. If there are issues with the community, the District Attorney will call her to discuss it, get her advice, or give her his suggestions. She applies for grants for the community. A grant for domestic violence victims was approved, and she oversees that program by working with a social worker she hired, speaking in the community, and following-through on grant requests. For high-profile cases, such as riots and allegations of police officer misconduct, she gives updates to the District Attorney and has confidential case information. She implements the District Attorney's policies by conveying his message to the Jewish community and relaying their concerns to him. The Jewish Community Liaison is a high level administrative

²¹ George Diaz is also discussed below, in the Labor Relations/Personnel Administration Section.

position within the District Attorney's Office. Nevertheless, the evidence presented does not show that the position has a regular and significant role in policy formulation. Therefore, the position is eligible to participate in collective bargaining.

Financial Information Services Agency ("FISA")

John Manfredi was the Director of Facility Operations in the Office Management Services Division.²² His department is responsible for cleaning; repairs; employee relocations; office construction; ordering materials; warehousing; records management; maintaining the infrastructure, including the electrical and air conditioning systems, of the data center, which is responsible for the City's budget, paychecks, and checks to vendors; design and distribution of City forms; design and storage of City checks; and relinquishment of City assets through DCAS. His role in the project of transferring the distribution of pension checks from the Comptroller's Office to FISA was evaluating and purchasing check inserting machines; designing pension checks, which involved ensuring that computer systems were compatible so that information on the check would line up when printed; testing alignment forms; and working on procedures to get checks to the post office. He attended high level CityTime meetings at which he reported on the status of his portion of the project, which was implementation of equipment, including hand scanning data collection devices. He also was involved in implementing a disaster recovery project so that other agencies would be able to continue operating their data centers in the event of an emergency. He was responsible for formulating facility operation policies concerning phone usage, long distance usage, and emergency evacuation procedures. He was responsible for the lease budget, managed the contracts for cleaning, electrical,

²² In its post-hearing brief, the City indicated that John Manfredi was no longer an AM, Level I or II, and sought a managerial designation for successors in the Director of Facility Operations position.

engineering, and security services, and worked with OMB when lease and contract prices increased. He put together a package for OMB regarding upgrading the infrastructure of the uninterrupted power supply system. His role involved implementation of policies and procedures. Accordingly, the Director of Facility Operations position is eligible to participate in collective bargaining.

Human Resources Administration (“HRA”)

Ranti Makinde is the Director of the Ombudsman Services Unit in Office of Housing and Homeless Services Region in the Family Independence Administration (“FIA”). Several years ago, landlords complained that there was no one at HRA to whom they could address their problems with HRA clients. The City decided to set up an ombudsman unit, and Makinde was asked to research the problem and come up with a solution. He was part of the team that determined how to set up the ombudsman program. As the first director of the unit, he responds to landlords’s requests, negotiates on their behalf with other parts of HRA, and authorizes the replacement of returned shelter allowance checks after his staff has investigated why they were returned. He has the authority to change program operations. For example, he determined that the unit should respond to issues raised in correspondence that accompanied returned shelter allowance checks. He reports to the First Deputy Regional Manager and, when she is out of the office, attends meetings with DHS and HPD, at which he has authority to make decisions that pertain his unit. At intra-agency meetings, he is called on to present his knowledge pertaining to landlord issues. He addresses operational concerns but does not formulate policy. Accordingly, the position of Director of the Ombudsman Services Unit in Office of Housing and Homeless Services Region is eligible for collective bargaining.

Judith Mittelman is the Assistant Deputy Commissioner for the Office of Business and Communications Services, which includes the print shop, three mail rooms, the archives, the print-

to-mail system, the print-on-demand area, and the graphics division. She reports to the Deputy Commissioner for the Department of General Support Services. She administers HRA's online policies, procedures, and forums and is HRA's records officer and the Local Law 11 liaison. In compliance with Local Law 11, any policy or new initiative going to the Mayor or the City Council must be sent to her so that she can send those documents to the City's Division of Information Records Systems and its library in the proper format. She works with the HRA's budget office to get funding for new initiatives. For example, the Executive Deputy Commissioner for Budget agreed to her office's proposal to get high-speed color printers for the print shop and upgrade HRA's printing system in exchange for the office's taking over a sizable mailing, which would save \$3 million in vendor fees. In addition, she participated in a presentation to OMB recommending that HRA use a print-to-mail system that will reduce postage costs. OMB agreed to fund that initiative, which will be a pilot program for the City. She was the project leader of the HRA team implementing the print-to-mail system that selected vendors and, based on a cost analysis, decided to handle certain matters in-house instead of renewing vendor contracts. She attends various meetings with the Commissioner's senior team, the head of FIA, and the Press Secretary to assess what the Office of Business and Communications Services can realistically do to implement a new initiative or campaign. She has significant involvement in determining printing and mailing operations, but does not formulate policy for HRA. Therefore, the position of Assistant Deputy Commissioner for the Office of Business and Communications Services is eligible for collective bargaining.

NYPD

Nancy Brandon is the Deputy Director of the Stolen Property Inquiry Section in the Criminal

Records Division, in the Support Services Bureau. She determines methods for the efficient operation of her section and the prompt and accurate dissemination of information and implements changes as necessary. For example, she implemented the double checking of paperwork and determined that it would be more efficient for her office, rather than precincts, to handle inquiries from insurance companies. In addition, she requested from Albany an additional New York State Police Information System terminal to have as back up to make sure that her office is able to provide confirmations within the federally required ten minute response time. Brandon also put together a plan for emergency situations including procedures for office and system relocation. She adjudicates command disciplines for those under her supervision. Her duties do not rise to the level of policy formulation. Accordingly, the position of Deputy Director of the Stolen Property Inquiry Section is eligible to participate in collective bargaining.

Patricia Izzo is the Director of the Management and Budget Analysis Section in the Financial Management Division. Her unit is responsible for monitoring the agency's overtime budget, making projections, preparing allocations to the department commands, submitting information to OMB, analyzing new needs requests, and making recommendations to the Deputy Commissioner concerning new needs requests. Her unit conducts deployment analysis for events, such as the St. Patrick's Day parade, to determine the overtime cost of a certain deployment level. She does not determine the appropriate level of deployment. In addition, her unit monitors and allocates the asset forfeiture budget. She is a member of the overtime assessment committee chaired by the First Deputy Commissioner, for which she prepares handouts concerning the overtime costs associated with specific events, such as parades. When her supervisor, the Assistant Commissioner, is on leave, she attends meetings concerning her section and responds to inquiries from the Deputy

Commissioner. Her role in collective bargaining is “after the fact.” (Tr. 3953). She receives information from OMB concerning how much OMB will give to fund collective bargaining agreement for uniformed employees and analyzes the overtime portion, and the NYPD will agree or disagree with OMB regarding the NYPD’s funds. Her role is that of a resource person, not a policy formulator. Therefore, the position of Director of the Management and Budget Analysis Section is eligible for collective bargaining.

Ann Rutherford is the Commanding Officer of the Financial Control Section of the Support Services Bureau. She oversees the budget of four sections of the Support Services Bureau: Fleet Services, Central Records, Property Clerk, and Printing. She approves or disapproves their budget requests, conducts audits, briefs the commanding officers of those groups and the Chief of Support Services biweekly, and makes recommendations, such as how the sections should comply with City directives on subjects such as bank reconciliations. She approves or disapproves the commanding officers’ requests to transfer money from one area to another based on funding, intended use, and availability of alternative funding. She also handles E-Z pass monitoring for the NYPD and, for the Support Services Bureau, purchasing of equipment and supplies and RFPs. She audits the financial statements of vendors and is on the vendor selection committee. She performs audits of confidential funds and has access to confidential financial information. At a meeting with the Deputy Commissioner, Chiefs, and bureau heads regarding homeland security, her role was “informational . . . fact-finding” to determine needs to prepare a package to secure funds. (Tr. 3832). She ensures that policies regarding financial information are followed and develops accounting policies if there is a hole in internal controls. While Rutherford has significant budgetary responsibility, the evidence does not support a finding that she is formulating policy. Accordingly, the position of Commanding

Officer of the Financial Control Section is eligible to participate in collective bargaining.

Denise Williams is the Director of the Identification Section in the Criminal Records Division. She is responsible for the dissemination of criminal record information, the automated fingerprint system, the inputting of orders of protection, and the sealing and unsealing of criminal records. She implements procedures to better serve commands using the automated fingerprint system and to improve the workflow of processing fingerprints. She, her supervisor, the Deputy Director of the Criminal Records Division, and the Director of the Criminal Records Division meet with commands to discuss how to better serve them. She reviews the operating procedures of the section to ensure that work flows smoothly. She adjudicates command disciplines in her unit and has access to confidential computer codes, names of undercover police officers, and sealed criminal records. Her duties do not rise to the level of policy formulation. The position of Director of the Identification Section is, therefore, eligible for collective bargaining.

New York City Police Pension Fund

Theodore Brooks is the Director of Security. He monitors the performance of contracted security personnel, schedules their tours, and trains them how to evacuate the staff in case of a catastrophic event. He developed standard operating security procedures for individuals seeking to enter the agency as well as temporary operating procedures for a particular visit, such as by the Mayor or Police Commissioner. He monitors access to members' pension records, which contain sensitive information, such as family history, financial information, and the identity of undercover police officers. He explains the background check process to employment applicants and employees and maintains their background check records until their interview with the applicant investigation unit of the NYPD, which he schedules. He has advised the Executive Director on security issues,

such as how to enhance the security component of the business continuity plan and what security purchases and upgrades to make. Regarding access cards, he decides, after consulting with directors, the level of access employees will have. He has prior knowledge of firings in order to prevent the removal of agency documents and to cancel employee security access. He formulated the evacuation plan for situations not involving a fire and decides whether they will evacuate. He attends the Executive Director's biweekly meeting of directors and department heads, at which the Executive Director reports on issues and/or objectives and seeks input. At these meetings, Brooks has made recommendations such as methods to curtail employees' improperly gaining access to the executive floor. While the Director of Security formulates security procedures, he does not have a role in formulating policies concerning police pensions. The position is, therefore, eligible for collective bargaining.

Office of the Comptroller

Gail Benzman is a Policy Analyst in the Office of Policy Management. In regards to housing and domestic violence, she represents the Comptroller at meetings with task forces, legislators, and district attorneys; writes reports; helps organize conferences; oversees press releases; advises on the Comptroller's speeches and testimony; analyzes proposed legislation; and gives inter-office advice on constituent problems. For example, she was the Comptroller's representative on the Mitchell-Lama task force and worked with coalitions to poll information from Mitchell-Lama tenants. She decided to prepare a report on the location of Mitchell-Lama and limited dividend housing; how long tenants had to stay; their mortgages; and the effects on the City from the loss of lower middle-income housing, such as how many people would be affected and need additional funding to stay in their homes. The Mitchell-Lama report was accepted by the Deputy Comptroller, distributed Statewide,

and used by the Mayor's Office, the Borough Presidents' Offices, legislators in Albany, and schools. To prepare the Comptroller for testimony, she reviews the report; decides where the testimony should go; further investigates parts that would affect the City; drafts testimony based on her research and analysis for review by her supervisor, the Director of Policy Management, and the Deputy Comptroller; and adds, subtracts, or changes the direction of the testimony as requested. She testified that, at inter-departmental meetings, she contributes information needed for others to make decisions, but does not make decisions herself. She is a resource person, not a policy formulator. Accordingly, the Policy Analyst position is eligible for collective bargaining.

James Bradley is an Audit Manager in the Bureau of Management Audits, which evaluates program effectiveness rather than financial records. He and his staff conduct risk assessments of City agencies and recommend audits to his supervisor, the Director of Management Audit. The Director; the Director's supervisor, the Deputy Comptroller for Policy, Audit, Contracts and Accountancy; and the Comptroller decide which agencies get audited. He was responsible for seven of the 35 audits conducted in one year. He works with audit teams to determine the areas of an agency's operations to be reviewed and the plan for conducting research. Bradley assists in developing the findings and recommendations of the audits and in preparing the preliminary report, which is reviewed by the Director and the Deputy Comptroller. For certain audits, he, the Director, and the Deputy Comptroller will brief the Comptroller. He and his teams conduct an exit conference with the audited agency to obtain their feedback to the preliminary report, prepare a draft report to which the agency submits a written response, and, for certain audits, review the Comptroller's statement prior to the press conference. He testified that the audits have policy implications for the audited agencies. For example, he was the audit manager for the FDNY and Department of

Correction civilianization audits, which identified uniformed positions that could be performed by civilian employees in order to save money. He was also the manager for a Housing Authority audit, which recommended automatically scheduling tenant eligibility interviews and developing written standards for the handling health emergency applications, an ACS audit, which recommended the development of a better tracking system for capital improvements of day care centers, and a Department of Education/Snapple audit, which recommended using a formal RFP process for concession opportunities. While the audited agencies may make policy changes in response to audits, the supervision and preparation of those audits does not rise to the formulation of policy at the Office of the Comptroller. The Audit Manager position is, therefore, eligible for collective bargaining.

Kathleen Martino is the Deputy Director of Economically Targeted Investments (“ETI”). Her unit, which includes one subordinate, recommends investments primarily concerning affordable housing, job development, and business development to the Boards of Trustees of the five pension funds. She looks for new investments, such as construction loans on affordable housing, to be vetted internally and oversees the administration of certain investment programs. She drafted the Comptroller’s recommendation to the pension Boards of Trustees regarding the parameters governing ETIs, i.e., the kinds of investments, their targets, the minimum requirements, the evaluation criteria, and the roles of the board, the Comptroller’s office, the legal staff, and the consultant staff. The parameters were reviewed by her supervisor, the Managing Director of Private Markets, the Deputy Comptroller for Pensions, and the First Deputy Comptroller before being presented to the Trustees, who have the final say in setting pension funds’ policy. While she provides financial and investment information to the pension fund Boards, she is not formulating

policy. The position of Deputy Director of Economically Targeted Investments is, therefore, eligible for collective bargaining.

Office of the Manhattan Borough President

Richard Muller is the Environmental/Transportation Policy Analyst. He reads newspapers and advocacy materials; talks to those in the industry and business communities; generates memoranda advising the Borough President on environmental or transportation issues, such as subways, air quality, and water supply; and recommends positions. He does not have “a lot of access” to the Borough President and discusses issues primarily with the Deputy Borough President. (Tr. 2803). He hosts the Manhattan Citizens Solid Waste Advisory Board and the Helicopter Task Force, attends community board meetings, and handles constituent complaints about environmental and transportation issues. He reviews the budgets of DOT, DSNY, DEP, and the Metropolitan Transit Authority, discusses budget priorities with community boards, and prepares a budget priorities report. As the project manager for grant-funded studies, he drafts the RFPs, oversees the evaluation committee that selects a consultant, and drafts the contract under supervision of counsel. His role is primarily that of a resource person. Accordingly, the Environmental/Transportation Policy Analyst position is eligible for collective bargaining.

Office of the Queens Borough President

Mark Scott is the Director of the Capital Budget and the Director of Youth Services. Regarding youth services, he reports on funding deficiency problems, does briefings for the Borough President, advises on problems with RFPs coming from youth service agencies, and prepares a yearly expense budget indicating needs and cuts in youth services. Regarding the capital budget, he prepares a list of all Borough President-funded projects in Queens, broken down by agency,

indicating the status and whether the project is funded by other elected officials. He recommends to the Chief of Staff how much funding should be earmarked for a particular project and sets up meetings with elected officials to work on the capital budget. The evidence does not indicate that he is involved in policy formulation. Accordingly, the Director of the Capital Budget and the Director of Youth Services positions are eligible for collective bargaining.

B. NYCHA

First, we note that NYCHA's organizational structure, use of certain in-house titles, and use of assignment levels are insufficient to provide a basis for a determination for all AMs as a whole or by assignment level, as requested by NYCHA. The Board makes its eligibility determination based on actual duties performed, and AMs have a wide range of duties and responsibilities. *See, e.g., OSA, 78 OCB 1 (BOC 2006); see also City of New York v. District Council 37, 181 Misc. 2d 131, 135, 141 (Sup. Ct. N.Y. Co. 1999) (affirming Board's splitting of a title in DC 37, 60 OCB 4 (BOC 1997)); Assistant Deputy Wardens Ass'n, 56 OCB 11, at 19-20 (BOC 1995) (noting that job descriptions are not "controlling proof as to what duties an individual actually performs")*. Accordingly, we review the positions at issue here individually.

We also note that, in several instances, NYCHA argued that the duties of individual AMs were comparable to employees found to be managerial in prior decisions. We have considered and rejected these arguments because NYCHA misconstrued our prior decisions and relied on facts upon which the Board did not base its managerial determinations.

1. Managers Who Formulate Policy

Lillian Harris is the Executive Assistant to the Deputy General Manager for Policy, Planning and Management Analysis. She provides oversight for projects in three departments, Audit,

Research and Management Analysis, and Program Assessment and Policy Development, provides technical assistance to the departments' Directors, reviews their work, and makes recommendations. She was involved in drafting and reviewing the annual plan of NYCHA's initiatives and goals for the upcoming year, which involved drafting correspondence to residents, attending town hall meetings, and participating in multi-department committees that made recommendations on issues such as what criteria would be used to increase rent, reviewed data analysis, and came to a consensus on recommendations. Her role at APTS meetings, a management tool used by executive staff to critique NYCHA, is to review materials for distribution to the evaluators, recommend how to improve the way information is summarized, and participate in meetings. When the Deputy General Manager is unavailable, she attends or facilitates meetings on her behalf and can approve certain documents and transactions, such as grant applications and small equipment requests. For example, she has conducted inter-departmental committee meetings regarding how to meet a federal Department of Housing and Urban Development requirement within three months and thereby avoid sanctions, at which she identified problems to be addressed, prioritized tasks, asked followed up questions, and made recommendations. When the Deputy General Manager was available, her role at these meetings was that of a regular committee member: actively participating in discussions and giving her opinion on what to prioritize. She also serves as a committee member on an operations and services committee and a workforce issues committee, both of which deal with aspects of compliance with federal and City language access requirements. She participates in analyzing the demand for foreign language translations and is responsible for creating a cost-analysis of these translations and making cost-saving recommendations. The committees' recommended responses to the increased translation demand will be presented to the General Manager for implementation

or changes. When the Deputy General Manager proposed the creation of an office of strategic planning, Harris recommended a staffing level, the required expertise and focus, and inclusion of an internal efficiency office to monitor performance, make recommendations to increase efficiency, maximize or reallocate current resources, and streamline operations. The Deputy General Manager incorporated Harris' recommendation into her proposal and submitted the proposal to the General Manager, who approved it. We find that the Executive Assistant to the Deputy General Manager for Policy, Planning and Management Analysis position has a regular, active, and significant role in the formulation of the means and methods by which NYCHA will achieve its mission and is, therefore, designated managerial.²³

2. Employees Who Do Not Formulate Policy

The following employees' duties, while significant, do not rise to the level of formulating policy under the NYCCBL. As discussed above in the introduction to the Policy Formulation Section, budgetary duties are only indicative of managerial status to the extent that such duties involve formulating policy or having a significant role in labor relations or personnel administration. *See, e.g., CWA*, 78 OCB 3, at 39, 45, 51 (BOC 2006); *OSA*, 78 OCB 1, at 21, 25-26, 34, 36 (BOC

²³ Lillian Harris is also responsible for formulating a spending plan for the Office of the Deputy General Manager's budget, monitoring three departmental budgets, recommending that the Deputy General Manager approve or disapprove certain departmental budget actions, and recommending ways to reduce expenses or increase revenue. Note that the managerial designation for the Executive Assistant to the Deputy General Manager for Policy, Planning, and Management Analysis position is not based on these budgetary duties as there was no evidence that she formulated policy through the performance of these duties. Similarly, Harris coordinates all personnel action requests for three departments, including drafting postings, and participates in interviews for managerial candidates and recommends whom to hire. Her managerial designation is based on her policy formulating duties, not these supervisory and/or routine personnel administration functions. Harris is also discussed below in the Confidentiality Section.

2006). Fiscal responsibility alone does not rise to the level of formulating policy.

Robert Algozini, Jr. is the Assistant Director of Office Services, reporting to the Deputy Director of the General Services Department. As the third highest ranked employee in the General Services Department, Algozini oversees Mail Center operations, Printing Service operations, and the Oracle Buying Group, which handles procurement for all the Central Office departments, and co-manages the Print Shop initiative, a business that generates approximately \$1000 a month. He participates in developing “policy procedures” with the Director and Deputy Director of General Services. (Tr. 4943). In response to a request for departments to think of revenue producing ideas, he and the Deputy Director of General Services suggested converting the Print Shop into a business. Algozini thought of things people would pay for, such as photo cards and greeting cards, and appraised the end product. They put together a business plan, a pressing schedule, and a marketing schedule. In addition, Algozini and the Deputy Director of General Services originated the idea of replacing copiers with multi-functional devices. Algozini was the sole employee from the General Services Department on a committee that decided to hire a vendor to analyze NYCHA’s needs, decided how many copiers to replace and where to place the devices, put a proposal together, and selected a vendor to provide the devices. He was an active participant of the committee, made recommendations concerning the selection of the type of multi-functional device, including both the features and the pricing scheme, and provided accurate feedback to the department. He then coordinated with the Information Technology Department and the Facility Planning Administration Department to implement placement of the devices throughout NYCHA. He was on the committee that formulated the “policy and procedures” for implementation of the Oracle Financial System, such as the procedure to create a new purchase order and the definition of who would handle specific

goods and services, and the procurement standard procedure. (Tr. 4993). Algozini oversees the budget for the Mail Center and office equipment. If there are insufficient funds in the centrally managed accounts, he requests monetary contributions from the departments, for items such phones. He and the Oracle Buying Group will notify requesting departments if they have insufficient funds for their requests. He is responsible for working with other departments on large mailings to determine the most cost effective way of sending the mailing. Algozini, Alex Ho, and Robin Wall, both of whom are discussed below, designed the Mail Center's User Service Guide. In the absence of the Deputy Director of General Services, Algozini will assume his duties. For example, he attended meetings to redesign the quarterly mailings of the Annual Income Review booklet to all NYCHA residents. While Algozini was among those who suggested using the Print Shop to generate revenue, we do not consider his involvement to constitute a significant role in formulating policy under the NYCCBL since all revenue generating ideas are filtered up through the chain of command and ultimately must be approved by NYCHA's Board.²⁴ Similarly, his involvement in the procurement process does not warrant a managerial designation. *See Local 621, SEIU, 78 OCB 2, at 20 (BOC 2006)* (finding eligible employees whose procurement duties included devising a system to centralizing purchasing of expensive vehicles). Therefore, the Assistant Director of Office Services position is eligible to participate in collective bargaining.

Alexander Ho is the Mail Center Manager, reporting to Robert Algozini.²⁵ He oversees the

²⁴ The testimony providing an overview of NYCHA's organizational structure, budgetary system, and policy formulation processes are summarized above in the Background.

²⁵ Note that there is conflicting evidence in the record concerning Alexander Ho's in-house title, which is also identified as Manager of the Mailing Operations, Manager of Operations, Chief of Mail Center Operations, and Chief of Mail Center Services Operation.

daily flow of communications and internal mail deliveries. He handles the technological and operational aspects of the Mail Center, such as operating the metering equipment. Along with Algozini and Robin Wall, discussed below, he designed the Mail Center's User Service Guide. He and Wall represent the General Services Department at the Post Office Customers Council. In Algozini's absence, Ho will assume his responsibilities pertaining to the Mail Center. For example, he will attend meetings regarding mailing issues, such as formatting; decide whether changes can be made to meet a department's mailing requirements; and consider time constraints. He can speak on behalf of Algozini or the Deputy Director of General Services regarding the Mail Center. The record does not establish that Ho has a role in policy formulation. Accordingly, the Mail Center Manager position is eligible for collective bargaining.

Sean Younger is the Manager, Mailing Operations, reporting to Alex Ho.²⁶ He handles the administrative and logistic functions of the Mail Center. His position overlaps with Ho in reviewing day-to-day operations. Concerning the design and conception of the Annual Quarterly Review, he recommended the format of the document and suggested ways to put the document together. He was also involved in the creation of the Mail Center Services Print Shop operation. He provided input on how to best handle services and improve efficiency. His involvement in operational matters does not rise to the level of policy formulation. Therefore, the position of Manager, Mailing Operations is eligible for collective bargaining.

Robin Wall is the Administrator for Mail Services, reporting to Sean Younger.²⁷ She is the

²⁶ Note that there is conflicting evidence in the record concerning Sean Younger's in-house title, which is also identified as Mail Center Manager and Manager of Operations.

²⁷ Note that there is conflicting evidence in the record concerning Robin Wall's in-house title, which is also identified as Supervisor of Administrative Mailing Services.

main contact with the United States Postal Service and handles all postal regulations. Along with Robert Algozini and Alex Ho, she designed the Mail Center's User Service Guide. She and Ho represent NYCHA on the Post Office Customers Council. She worked with Algozini and the Deputy Director of General Services on the creation of the Mail Center. Algozini designates her or Younger to attend Mail Center meetings on his behalf. The evidence indicates that she is not involved in policy formulation. The position of Administrator for Mail Services is, therefore, eligible to participate in collective bargaining.

Karen Barksdale is the Executive Assistant to the Assistant Deputy General Manager for Development, who reports to the General Manager. She worked with the Facilities Management Department to reconfigure the floor plan to allow employees working together to sit near each other. With the Deputy Directors, she reviews developers' proposals submitted in response to RFPs to see if they comply with established guidelines and recommends whether or not to accept the bid. When the Department of Development became a stand-alone department and was given its own budget, she compiled a list of needed items and prices prepared by the Deputy Directors, with input from their staffs, and participated in a meeting with the Assistant Deputy General Manager and the Deputy Directors to assess if prices were justified, if the items were needed now or later, and if there was funding and room for the items. Barksdale manages and approves all orders placed by the department for items such as supplies, training requests, and seminars and must stay within the department's budget. She is the final decision maker for supplies and OTPS. There is one other approver, and only Barksdale and the Assistant Deputy General Manager are approved to do budget modifications. While she has budgetary responsibilities, the Executive Assistant to the Assistant

Deputy General Manager for Development is not involved in policy formulation.²⁸

Shireen Brasse is the Executive Assistant to the Secretary of the Housing Authority, who reports directly to the Chairman. She oversees the Office of the Secretary, which includes the Employee Suggestion Unit, the Docketing Calendar Unit, the Impartial Hearing Unit, the Freedom of Information Act (“FOIA”) Unit, and the Applicant Appeals Unit. For these offices and units, Brasse reviews the budget to ensure that there are funds in the accounts for purchases and payments, moves funds from one account to another to cover payments, requests additional money, and verifies staffing levels. When there are PEGs, she and the Secretary review where in the budget they can reduce spending. When NYCHA department Directors submit Board resolutions for purchases above \$250,000 to the Secretary to be presented to the Board, she reviews the Board resolutions to ensure that they are accurate, consistent, and identify the correct amounts. Everything going to the Secretary first goes to Brasse. In the absence of the Secretary, Brasse supervises the Secretary’s subordinates, addresses issues that arise, such as time and leave issues, and approves resolutions for presentation to the Board. She attends Board meetings and the Board’s executive disciplinary and tenancy meetings. She attends and participates in the Secretary’s meetings with her subordinates by recommending resolutions to problems, improvements to efficiency, how to provide better reports, and how to increase use of electronic delivery. She has discussed with the Secretary issues such as ensuring that the FOIA Unit has proof that individuals requesting personnel records are, in fact, the former employees they claim to be. She participated in discussion with NYCHA’s Law Department when they established the “standard procedure” for appointing guardians *ad litem*. (Tr. 4681-4682).

²⁸ Karen Barksdale is also discussed in the Labor Relations/Personnel Administration Section and the Confidentiality Section.

The record does not establish that Executive Assistant to the Secretary has an regular, active, and significant role in policy formulation.²⁹

Geneve Davis is the Records Access Officer of the FOIA Unit and reports to the Secretary. She reviews FOIA requests, recommends to which department it should be referred, works with department Directors to obtain the information requested, and works with the Law Department to ensure that the information is disclosable. Davis attends meetings with the Secretary and her Executive Assistant, Shireen Brasse, to keep the Secretary informed about issues in the FOIA Unit, such as a FOIA request from a politician. The Records Access Officer of the FOIA Unit does not have a role in policy formulation.³⁰

Vivian Figueroa is a Special Projects Manager in Building Systems Unit of the Capital Projects Department. The Director of Building Systems, Figueroa's supervisor, assigns her projects, and she is responsible for recommending a solution to the problem. She has worked on the Close Out project and on the Primavera project, which involved the introduction of industry standard software to NYCHA. She manages the Primavera contract and ensures that requirements are delivered, that deadlines are met, and that the consultant understands NYCHA's needs. She was involved in the Accounts Payable Interface project, which linked financial information to Primavera in order to easily identify where NYCHA is with its payments to contractors and improve processing of timely payments. Her role in the Accounts Payable Interface project was to get consultants to develop a payment process, present it to the Finance Department, and get it implemented. As the

²⁹ Shireen Brasse is also discussed in the Labor Relations/Personnel Administration Section and the Confidentiality Section.

³⁰ Geneve Davis is also discussed in the Confidentiality Section.

individual who manages the Primavera consulting contract, she is accountable for the project, reviews the consultants' time sheets, assigns them work, rearranges consultant staff, and can release consultants before a project is completed and use those funds to extend the contract for other consultants at no cost to NYCHA. She has prepared Board resolutions requesting additional funding to amend the consulting contract, has prepared back up documentation and a formula, and has presented proposed resolutions to the Board explaining unforeseen issues, such as technical difficulties and the need to train staff on Primavera. At APTS meetings, she provides support to her Director and gives advice on issues relating to her work and Primavera. Concerning the five year budget plan, she meets with the Manhattan Borough Director to present how much funds are available and the existing work that was currently designed, to discuss problems with contracts that were causing delay or change orders, and to negotiate for existing funds. She is responsible for using her "technical expertise" to implement projects assigned to her but does not formulate policy.³¹ (Tr. 5194).

Carmen Matias is the Assistant Director of Office of Strategic Planning and Change Management. She currently reports to the Deputy General Manager for Policy, Planning and Management Analysis.³² Currently, her role is to reach out to entities, such as community-based organizations, to see if there is room for collaborations and partnerships to add or replace resources and services. For example, when she learned of a hospital providing free bone density screening, she canvassed departments and worked with the hospital and the Department of Community

³¹ Vivian Figueroa is also discussed in the Confidentiality Section.

³² Her role may change as the newly created office is formed and a Director, Deputy Director, and staff are hired.

Operations to develop a program to provide free screenings at ten community centers. She participates in three committees regarding resource development. She is on the language access committee addressing workforce issues, during which she contributed to discussions and committee recommendations to the General Manager regarding how to increase volunteerism and recruit bilingual staff. On an interagency strategic planning committee, she participates in roundtable discussions with representatives from City agencies regarding best practices for implementing, operating, and recruiting for a strategic planning office. As the chair for the committee on staff development, she is responsible for creating the framework to run a training program for staff specializing in research, strategic planning, and policy; deciding how to select guest speakers and topics; establishing a time line; and reviewing the work of committee members. She was the project manager for the Capstone project, which looked for advertising and partnership opportunities to generate income or services and presented a document for the executive staff. Her involvement in exploring partnership opportunities and participating in committees does not rise to the level of policy formulation. Accordingly, the Assistant Director of Office of Strategic Planning and Change Management is eligible for collective bargaining.

Monique McLeod is the Executive Assistant to the Deputy General Manager of Community Operations, the Housing Authority's second largest department, which is divided into nine departments and two units. She acts on the Deputy General Manager's behalf at meetings, sometimes makes decisions in his absence, handles all correspondence, and works on special projects and initiatives. If Directors in the Community Operations Department call with issues or concerns, such as whether a politician can hold a rally at a NYCHA community center or whether the Chairman could throw the first ball at a particular baseball game, and the Deputy General Manager

is unreachable, she asks them to submit information to her, provides feedback and guidance, and gives approval for time sensitive matters. She will notify the Deputy General Manager of decisions made in his absence, and he does not sign off on those decisions as they have already been made. At meetings McLeod attends on the Deputy General Manager's behalf, she either gives feedback or brings information back to the Deputy General Manager so that he can follow up. For example, at a meeting with DYCD regarding the summer youth employment program, she indicated what responsibilities Community Operations could perform, and at a meeting with the Law Department, she advised them on the status of resident participation activities and program logistics. She attends meetings with department Directors, the Chairman, and Deputy General Managers. Concerning family day celebrations, she meets with Chairman to recommend which developments to visit or not visit depending on particular demographics or issues. In the Deputy General Manager's absence, she meets with Board Member Lopez to discuss the Board Member's initiatives to enhance operations and get feedback on what would work best. Regarding an initiative concerning 21 developments that are not federally financed, McLeod met with Board Member Lopez to inform her of the resident leader's concerns and the information to be conveyed to the community and to suggest developments where the Board Member would be well received. McLeod attends all APTS meetings and follows up on the Community Operations Department's outstanding items.

McLeod administers the budget for the NYCHA youth chorus, reviews their invoices and consulting contracts for accuracy and operational value, assesses whether to charge a fee for a performance or request transportation, generates new ideas for recruitment and advertising, and ensures that the registration targets are met, that members are active, and that their facilities are up to standards. She also has oversight of the Deputy General Manager's OTPS budget, which includes

capital needs, to ensure that spending is on target. Regarding implementation of a revenue collection policy, McLeod did a budget analysis to determine the amount of revenue each facility could generate based on projected rentals and participation in summer programs. She also decided who should participate on a committee to discuss subjects such as logistics and security concerns relating to revenue collection. McLeod and another executive assistant prepared the policy language and the mechanics of revenue collection for the final draft that was submitted to the Policy Planning and Management Analysis Department. The mechanics included accepting postal money orders instead of cash, where the money orders would be stored, how often pick ups would be made, and scheduled training for community center staff on the policy and on dealing with resident leaders. McLeod acts as a coordinator between government agencies and appropriate department Directors on various programs. For example, she coordinated with the Mayor's Fund to Advance New York and Publicolor to select NYCHA sites to be repainted and organized a publicized kick-off event. Concerning DYCD's initiative to make after school program funding more competitive, she selected NYCHA facilities to be included in their RFP process, analyzed the cost of maintaining those facilities, and looked at what requirements should be included for organizations that want to run programs at those facilities. For the Department of Education's New York City Early Learning Literacy program, she worked with the Mayor's Office and the Department of Education to develop a curriculum for toddlers and select a site at which to start the program. The Executive Assistant to the Deputy General Manager of Community Operations implements policy but is not a policy formulator.³³

³³ Monique McLeod is also discussed below in the Labor Relations/Personnel Administration Section and the Confidentiality Section.

Diana Rodriguez is the Office Manager of the Impartial Hearing Office and reports to the Secretary. The office administers termination of tenancy cases, tenant grievances, and Section 8 voucher cases, prepares the legal tenancy calendar for the NYCHA Board to approve the disposition of cases, and processes tenants' reopen default requests. Rodriguez ensures that deadlines are met and reviews the calendar before it is presented to the Board. She attends meetings with the Secretary and her Executive Assistant, Shireen Brasse, discussed above, to keep the Secretary informed about the office. The record does not support a finding that the Office Manager of the Impartial Hearing Office formulates policy.³⁴

Paul Sawyer is the Assistant to the Director of the Equal Opportunity Department, one of the departments that reports directly to the Chairman. He is responsible for monitoring and tracking the department's OTPS budget and advising on spending patterns, how to save, and when to transfer funds to cover a needed expense. He is expected to evaluate whether there are sufficient funds in the budget to attend trade shows and other events to promote contracting opportunities with minority-owned or women-owned businesses, to participate in recommending whether the department should participate in these events and to prepare a budget justification for the Chairman's office if funds for participation are insufficient.³⁵ In addition, he is expected to recommend ways to make programs more efficient or effective and to recommend "different kinds solutions" to problems

³⁴ Diana Rodriguez is also addressed in the Confidentiality Section.

³⁵ Paul Sawyer had been in his position for two weeks at the time his supervisor testified regarding his duties. We consider only those duties actually performed or reasonably expected to be performed. *See, e.g., DC 37*, 78 OCB 7, at 19 (BOC 2006), *aff'd sub nom. City of New York v. NYC Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007). We do not address those alleged future duties that are speculative in nature. *See New York State Court Clerks Ass'n*, 4 OCB 4, at 6 (BOC 1969).

that arise. (Tr. 4578). For example, he recommended, and the Director approved, putting up a board identifying all the office's high priority projects and their project deadlines. He is on the language access committee dealing with work force issues involved in the delivery of language services to residents and applicants and is expected to also be on the language access committee dealing with documents to be translated. On these committees, he is expected to have input on recommendations regarding issues and solutions and follow the department's goal of ensuring compliance with anti-discrimination laws. He is responsible for ensuring that the Director's subordinates meet their project deadlines and have what they need for their projects and for assisting with resolutions to project problems. The Director's subordinates are expected to raise issues with Sawyer before they are presented to the Director for decision or implementation. Biweekly reports on accomplishments, issues, or problems are submitted to Sawyer for editing prior to being submitted to the Director. He also reviews and edits statistics and write-ups for inclusion in the monthly report to the Chairman. We reiterate that mere membership on a committee is insufficient for a managerial designation in the absence of evidence of actual policy formulation.³⁶ *See, e.g., OSA, 78 OCB 1 (BOC 2006).*

Tom Walsh is the Chief of the Utility Control Division of the Energy Department. He reports to this department's Assistant Director and is responsible for approving NYCHA's sizable utility bills for heating gas, cooking gas, oil, steam, and electricity. He does not approve payments when the utility has overcharged, estimated costs, or not broken down costs and consumption by month, and he resolves issues, such as bill distribution, with utility executives. He is involved in the oil contract, ensures regulatory compliance, attends outside seminars, gives seminars on regulatory compliance, is the coordinator of the emergency fuel system, writes procedures, and oversees entry

³⁶ Paul Sawyer is also discussed in the Labor Relations/Personnel Administration Section.

of data into the energy management information system that is used to forecast utility budgets and to prepare semi-annual reports to a regulatory agency. Walsh put together the emergency fuel system, which monitors the fuel oil on hand at each development. Based on usage reports, he strategizes and prioritizes oil deliveries to the developments to prevent developments from running out of oil, particularly during a gas curtailment. He decides whether to call in NYCHA's Fuel Oil Remediation Department to make an emergency delivery. To ensure regulatory compliance, he decided to apply for a State facility permit for a property whose pollutant levels are borderline depending on how often the property runs gas or oil. He attends biweekly Chief meetings with the Director of the Energy Department at which each Chief reports on priority items and makes recommendations. At these meetings, he gives opinions on the structure of rates, gas curtailment, procedural changes, regulatory compliance, and degree days. For example, since oil prices are high, he recommended locking in a lower firm gas rate for an extended period of time in order to save a considerable amount of money and avoid possible gas curtailment penalties. In an attempt to avoid the penalties imposed by the utility company during gas curtailments for failure to switch to oil at a specified time, he has recommended calling development superintendents in advance so that there is sufficient time to address any problems. He was involved in preparing a RFP for management of certain boiler rooms. His role was to ensure that the RFP's scope of work followed established NYCHA heating procedure. He attends meetings in the absence of the Assistant Director if the issue pertains to his division. We find that selecting a cheaper fuel source, ensuring that developments have a sufficient amount of heating fuel, complying with regulations, avoiding fines, and paying utility bills, even expensive ones, do not rise to level of formulating policy. Therefore, the Chief of the Utility Control Division is eligible to participate in collective bargaining.

II. Involvement in Labor Relations/Personnel Administration

The second type of manager excluded from collective bargaining under the Taylor Law definition is one “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 of a routine or clerical nature and requires the exercise of independent judgment.” Taylor Law § 201.7(a)(ii). To fall within this definition, an employee must either “be a direct participant in the preparation of the employer’s proposals and positions in collective negotiations and an active participant in the negotiations itself,” “have the authority to exercise independent judgment in the employer’s procedures or methods of operation as necessitated by the implementation of [collective bargaining] agreements,” or, concerning personnel administration, “exercise independent judgment and fundamental control over the direction and scope of the employer’s mission.” *County of Rockland*, 28 PERB ¶ 3063, at 3141-3142 (1995) (quoting *City of Binghamton*, 12 PERB ¶ 4022, *aff’d*, 12 PERB ¶ 3099 (1979)).

There is a “critical and long-standing distinction” between these managers, who are excluded from collective bargaining, and “the broader category of employees who perform supervisory functions,” who are eligible for collective bargaining. *Lippman v. PERB*, 263 A.D.2d 891, 901 (3d Dept. 1999); *see Metro. Suburban Bus Auth. v. PERB*, 48 A.D.2d 206, 211 (3d Dept. 1975) (finding that the distinction between managers and supervisors is “reasonable and has a sound basis”). Accordingly, supervisory employees who “perform an important role in, and have powers directly affecting, personnel administration, for example by making hiring, promotional, disciplinary, staffing and other recommendations” have been found eligible for collective bargaining. *Lippman*, 263

A.D.2d at 901-902 (finding eligible employees who did not “exercise independent judgment reflecting substantial discretionary responsibility, including standard setting”); *see County of Nassau v. Nassau County Public Employment Relations Bd.*, 283 A.D.2d 428, 429 (2d Dept. 2001) (finding eligible supervisors who investigate allegations of employee misconduct and recommend sanctions); *Metro. Suburban Bus Auth.*, 48 A.D.2d at 212 (finding eligible employees with the authority to fire subordinates because “they have no role in establishing the standards for terminating employees”); *DC 37*, 30 OCB 31, at 21 (BOC 1982) (“[P]articipat[ion] in the hiring process . . . is an indicium of supervisory status, not managerial status.”); *see also County of Rockland*, 28 PERB ¶ 3063, at 3142 (“[E]ven those employees occupying what may fairly be termed a high-level supervisory role do not necessarily fall within the ‘managerial’ definition.”).

Duties such as administering employee benefits, processing pay increases, administering the employee blood donation program, handling exit interviews, processing employment applications, and ensuring payment of overtime, shift differentials, and holiday pay have not been found to warrant a managerial designation. *DC 37*, 30 OCB 31, at 23. Similarly, employees who ascertain factual matters when subordinate employees raise complaints and serve as witnesses to factual matters in grievance proceedings have been found eligible. *Metro. Suburban Bus Auth.*, 28 A.D.2d at 211-212 (noting that employees did not make “any major interpretation of the [collective bargaining] agreements” and had “no power to resolve actual grievances once such procedure goes beyond this initial aspect”); *see also County of Rockland*, 28 PERB ¶ 3063, at 3141 (acting as a resource person or observer at the bargaining table or in caucuses and participating in the first level of the grievance process are insufficient for a managerial designation); *Town of Greece*, 27 PERB ¶ 3024, at 3058 (1994) (finding eligible department heads who have twice been assigned to second and third steps

of the grievance procedure).

By public employer, we now address those AMs alleged to be managerial because of their involvement in collective negotiations, administration of collective bargaining agreements, or personnel administration.

A. City

1. Managers Involved in Labor Relations/Personnel Administration

The duties of the following employees warrant a managerial designation as defined by § 201.7(a)(ii) of the Taylor Law because they prepare for and conduct collective negotiations or have a major role in the administration of agreements or in personnel administration that is not of a routine or clerical nature and requires the exercise of independent judgment.

Department of Citywide Administrative Services (“DCAS”)

Cheryl Raфра-Hawthorne is the Director of the Mayor’s Graduate Scholarship Program and the Work Experience Program (“WEP”) in the Bureau of Personnel Development. For WEP, she decides whether approximately 400 employees assigned to work at DCAS by HRA are transferred to various locations throughout the boroughs or, based on conflicts, sexual harassment issues, or criminal acts, whether they continue to be assigned to DCAS. Depending on the reasons for her decision, removal from the program can lead to a hearing that may affect a WEP participant’s public assistance benefits. She is on an HRA task force with other agencies and job search vendors that is considering developing clerical training for WEP participants within DCAS based on HRA’s job search model. She is the leader of the task force’s committee on the material for videos and information processing. She submits DCAS’ WEP budget to HRA for approval. For the Mayor’s Graduate Scholarship Program, she comes up with strategies to let City employees know about the

program, develops relationships with academic institutions, reviews applications and decides whether to forward them to those institutions, and determines whether to extend an individual's deadline date. The schools determine whether someone receives the scholarship. In light of Raфра-Hawthorne's significant involvement in personnel administration, we find that the Director of the Mayor's Graduate Scholarship Program and the Work Experience Program position is managerial.³⁷

Tina Ramsey is the Deputy Director for the Applications Section in the Exam Support Group. She oversees the day-to-day operations of the unit, ensures that there is sufficient staff and that they are logged on to the call center phone system, oversees corrections of inputted data, creates application forms, recommends software to the Assistant Commissioner for the Bureau of Exams, conducts training on the Application Process and Production system, and is one of the reviewers of notices of examinations. She has recommended staffing changes and conducted workflow analyses. As the project leader for the online application system for civil service exams, which feeds into the New York City Automated Personnel Systems, she reviews and recommends changes to the general examination regulations and/or the license examination regulations. Her role is to explain the regulations regarding paper applications and provide guidance in implementing those regulations for on-line applications by, for example, explaining why an on-line filer needs to see certain policies before filing. Regarding late filing procedures, religious observance procedures, accommodation of people with disabilities, and applications for fee waivers, she is on a panel with the Assistant Commissioner for the Bureau of Exams and directors to review whether the regulations are vague and should be changed and to submit to the legal department recommended changes, such as limiting

³⁷ Although the City asserts that, in the alternative, that Cheryl Raфра-Hawthorne is confidential, she is not discussed in the Confidentiality Section as there are no facts alleged supporting a potential confidential determination.

the availability of an alternative testing date to promotional candidates, not open competitive candidates. She has the authority to approve and/or recommend to her supervisor, the Director of the Exam Support Group, application fee waivers for individuals with financial hardships. Her role in personnel administration, particularly her inclusion on the regulation review panel, indicates that her personnel duties go beyond the merely clerical and routine. Accordingly, the position of Deputy Director for the Applications Section is designated managerial.³⁸

DEP

Robert McHale is the Director of Payroll. He ensures that employees are paid in accordance with their collective bargaining agreements and that their leave balances are properly maintained. He has testified at all stages of the grievance process regarding timekeeper audit findings. He has attended collective bargaining sessions, during which his role was to act as an interpreter of the language of the agreements for the Director of Human Resources and the Deputy Commissioner of Human Resources and to explain the technical aspects of how the agreements could be implemented in PMS, the payroll management system. During negotiations with EPOs, he participated in determining the feasibility of the types of payments requested and recommended a system to accommodate those payments to his supervisor, the Assistant Commissioner of Human Resources, who in turn recommended it during collective bargaining. Based on cost-effectiveness, he recommended that start of compressed time schedules be changed from 8 a.m. to 7.a.m., and the recommendation was accepted. His recommendations regarding the system by which union annuity payments should be made were not accepted. He and his staff have access to family court

³⁸ Tina Ramsey is not also discussed in the Confidentiality Section because her access to civil service examination records is insufficient for a confidential designation.

agreements and garnishment orders. McHale's role in the administration of collective bargaining agreements goes beyond that of a routine or clerical nature. Accordingly, we find that the Director of Payroll position is managerial.³⁹

DOF

Eva Gambino is the Administrative Liaison for the Payment Operations Division, which handles the processing of tax issues. For the division, she oversees hiring, firing, work change, work unit change, performance evaluations, and discipline. As the management co-chair of DOF's Quality of Worklife committee, she is involved in brainstorming for ideas such as lunchtime seminars and special programs, ensures that policies are followed, and tries to schedule events at times that minimize the amount of release time needed. She attends out-of-title grievance hearings to ensure that the grievant's manager is not trying to use the grievance process to obtain additional money for staff. She is the first to receive grievance determinations, and she and her supervisor, an Assistant Commissioner, make recommendations to the grievant's manager to avoid repetition of the issue. She has worked on an office move plan and had the sole responsibility to determine what type of equipment was needed and whether an employee received an office or a cubicle. She works with the budget department to make decisions on employee budget lines, decides which titles to use, posts vacancies, interviews, and hires. During layoffs, she and her Assistant Commissioner decided the priority list of who would be laid off. She and her Assistant Commissioner have established policy and procedures such as the definitions of mandatory and voluntary overtime at the borough centers. She has recommended that an employee not receive unemployment and advises managers on administrative and disciplinary issues, such as how to address a situation in which an employee on

³⁹ Robert McHale is also discussed in the Confidentiality Section.

sick leave has not provided the proper documentation. She attends meetings with the Deputy Commissioner when administrative issues arise. At a meeting concerning a hiring panel, she recommended a format to make hiring procedures consistent and ensured that inappropriate questions would not be asked. She monitors hiring pools to ensure compliance with the one-in-three rule. In addition, she has procurement responsibilities. Gambino's personnel duties, particularly her role as management co-chair of the Quality of Worklife committee and her role in layoffs, render her Administrative Liaison for the Payment Operations Division position managerial.

DJJ

Tonia Haynes is the Equal Employment Opportunity ("EEO") Officer. She investigates allegations of discrimination and harassment and conducts EEO training. After interviewing witnesses, she writes a determination, which she submits to the Commissioner, her direct supervisor, for his review. She makes the final determination of whether an employee needs EEO training or whether the matter should be referred for discipline. At monthly EEO meetings with Commissioner, she has recommended addressing repeated complaints against an individual by conducting training at the facility or speaking directly with the individual. Her role in personnel administration goes beyond the routine or clerical. Accordingly, the EEO Officer position is managerial.⁴⁰

DSNY

Thomas Clavin is the Director of Administration and Fiscal Services for the Bureau of Motor Equipment. He is responsible for payroll, timekeeping, human resources, the disciplinary process, overseeing the OTPS budget for the bureau, and contract management for capital contracts for the purchase of vehicles. For the bureau of 780 employees, he is responsible for recruiting, interviewing,

⁴⁰ Tonia Haynes is also discussed in the Confidentiality Section.

and recommending candidates; distributing and reviewing quarterly probation reports; yearly evaluations; and auditing the accuracy of payroll management system reports. He makes the final determination that an employee has passed probation. As the bureau's disciplinary officer, he presides over Step I informal conferences and recommends a penalty or dismissal. He testifies at Steps II, III, and IV of the grievance process, discusses grievances with OLR attorneys, and attends labor-management committee meetings with trades titles throughout the boroughs to discuss working conditions and quality of worklife. Regarding administration, payroll, or labor committees, he gives his opinions on the need for changes in policy or direction to his supervisor, the Assistant Commissioner for Support Services. He and the Assistant Commissioner discuss disciplinary outcomes, but he does not inform his supervisees until a final decision is made. Having discretion in reviewing probation status and determining discipline, he has a role in personnel administration that exceeds the routine and clerical. Accordingly, we designate the Director of Administration and Fiscal Services position managerial.

Rhona Russell is the Assistant Director of Administration in the Bureau of Engineering. For the bureau, she handles recruitment, conducts initial interviews, assists in final hiring decisions, develops tasks and standards for performance evaluations, makes recommendations for promotions or merit increases, and ensures that the internal fund agreement, the staffing subsidiary of the capital budget, is followed. In regard to discipline, she writes disciplinary actions, investigates complaints, acts as a hearing officer at Step I or Step II, makes determinations or recommendations, testifies at Step II hearings, and maintains confidential disciplinary files. We find that her involvement in personnel administration warrants designating the Assistant Director of Administration position managerial.

District Attorney's Office for King's County

Roger Eisenhardt is the Deputy Director of Human Resources. He is responsible for the appraisal process; recruitment of paralegals, technical titles and administrative titles; the career development program; disciplinary matters; training of supervisors, managers, and legal staff on performance appraisal methodology and supervisory methodology; conducting studies regarding staff performance and non-legal staff allocation; and, in the absence of the Director of Human Resources, processing new employees, terminating staff with approval of the District Attorney, arranging leaves of absence, and responding to staff questions regarding benefits and pensions. He helps managers devise job specifications and "tasks and standards" and acts as a counselor if they have performance problems with their staff by assessing the problem and giving advice for corrective actions. His training materials and studies are reviewed by the Director of Human Resources and the Assistant District Attorney responsible for human resources. He monitors excessive lateness and excessive absences, meets with staff to determine whether assistance is needed or an accommodation should be offered, and may meet with the Deputy District Attorney responsible for labor relations and disciplinary matters regarding progressive discipline. At Step II, he reviews a grievance and the Step I decision, conducts an investigation of the facts, and renders a written decision. At weekly meetings with the Deputy District Attorney, he reviews on-going business and proposes policy changes for the career development program or the appraisal process. He is conducting a focus group of senior attorneys and managers to revise the appraisal instruments. In response to a shortage of paralegals, he analyzed workflow, assisted with redesigning jobs, recommended specialization for senior paralegals, and ensured that staff were not assigned out-of-title duties. In addition, to retain staff, he recommended, and the District Attorney approved, a higher starting salary for paralegals and

additional increases on a tenure track plan. As he exercises considerable discretion in personnel administration, the position of Deputy Director of Human Resources is managerial.

Sylvia Gerber is Director of Human Resources to whom Roger Eisenhardt reports.⁴¹ She is responsible for recruitment, benefits, wage and salary, employee relations, and statistical reports for the entire agency. She advises executive employees on human resources issues. We find that the Director of Human Resources position is has significant involvement in personnel administration and is, therefore, managerial.

District Attorney's Office for Richmond County

Elizabeth Ann Dalton is the Director of Human Resources. She is responsible for personnel, payroll, timekeeping. She oversees staff and their processing of new employees, job appointments, employee updates, leave adjustments, and workers' compensation. She is responsible for legal and personnel documents for all employees, monitors leave balances, and is the security officer for the payroll management system ("PMS"). She handles new employee orientation on benefits, pension, and deferred compensation. At weekly meetings with her supervisor, the Chief of the Administrative Bureau, she reports on progress in correcting errors in employee records and processing longevity and assignment differentials. Given her significant involvement in personnel administration, we find that the Director of Human Resources position is managerial.⁴²

⁴¹ Sylvia Gerber completed a survey but did not testify.

⁴² Elizabeth Ann Dalton is also discussed in the Confidentiality Section below.

HPD

Amy Marcus was the Director of Labor Relations.⁴³ She conducted Step II grievance hearings and was the agency representative at Step III and arbitrations. She met with unions to address issues before they become grievances, attended labor-management meetings, and worked with the disciplinary unit. She drafted the How to Deal with a Difficult Employee Manual, revised the Code of Conduct, drafted a dress code, and reviewed the EEO policy. Because Marcus had a significant role in labor relations and personnel administration, the Director of Labor Relations position is managerial and excluded from collective bargaining to the extent that AMs, Levels I and II, who succeed her have substantially the same duties and functions. *See DC 37, 34 OCB 16, at 3 (BOC 1984)* (noting that designation runs to successor employees “who perform substantially the same duties and functions as performed by their predecessors”).

New York City Employee Retirement System (“NYCERS”)

Felita Baksh is the Director of Human Resources. She is responsible for meeting with division heads regarding recruiting, approving hires, overseeing the processing of new hires, tasks and standards, performance evaluations, classifying titles, changing levels, reviewing budget reports, and ensuring that units do not exceed their budgets and that training budgets are accurate. She oversees the person handling Step I of the grievance process and makes Step II determinations after consulting the legal department. She is in charge of writing and reviewing policies and procedures for the employee handbook as well as training policies. She meets with her supervisor, the Acting

⁴³ The City did not address any AMs at HPD in its post-hearing brief because the AMs employed at the time post-hearing briefs were submitted had neither testified nor submitted surveys. Nevertheless, the evidence in the record supports a managerial designation for this AM position. We note that the Union, in its post-hearing brief, did not argue that the position is eligible.

Executive Director, and division heads to review evacuation policies and security policies. She is working on drafting a merit pay policy that she will discuss with the unions. She meets with District Council 37 locals monthly. We find that the Director of Human Resources satisfies the criteria for a managerial designation under the NYCCBL.

NYPD

Debra Brown is the Administrator-In-Charge in the Personnel Orders Section. She is responsible for assigning and transferring all civilian employees of the NYPD. With the goal of evenly distributing civilian employees among the commands, she assigns police administrative aides based on the civilian table of organization, which tracks the civilian quota by command as well as the actual numbers. She enters other civilian titles into the system based on where they are assigned. In response to frequent transfer requests from the school safety division command, she determined that employees had to stay in a position for at least a year before they were transferred. She sits on the promotion board for police administrative aides, a panel that reviews personnel records, absence and tardiness records, and evaluations and interview individuals to determine to which command they should be assigned. She makes the final decision on where to assign a police administrative aide, unless instructed by someone like the Commissioner to assign someone in a particular location. She attends monthly planned action report meetings, at which hiring, promoting, and salaries are discussed. She also monitors grants, for hiring mostly police administrative aides, to ensure that employees remain in the position for the requisite number of days and that vacant positions are filled. She has discretion in personnel administration. Therefore, the position of Administrator-In-Charge

in the Personnel Orders Section is designated managerial.⁴⁴

Taxi and Limousine Commission (“TLC”)

Carmen Rojas was the Deputy Director of Human Resources.⁴⁵ She reported to the Assistant Commissioner for Human Resources and supervised the timekeeping supervisor, the payroll supervisor, and a then vacant human resources specialist position. She replied to inquiries from staff regarding time and leave issues, payroll issues, verification of employment, and employment insurance information. She served as the Workers’ Compensation coordinator and the WEP coordinator. As the agency’s EEO officer, she received complaints from staff, conducted investigations, and made recommendations to the Commissioner. She attended management productivity meetings held every two months and discussed issues such as lateness or excessive emergency annual leave. In the absence of the Assistant Commissioner, she assumed her duties, which included providing the Director of Labor Relations with personnel information, notifying employees of discipline or termination, and attending executive staff meetings involving staffing problems. In the absence of the Director of Labor Relations, Rojas responded to inquiries, conducted research, such as whether an employee was entitled to back pay, and implemented actions, such as payroll adjustments or title changes. Had there been layoffs, she and the Assistant Commissioner would have worked together to process the layoff, including reviewing civil service lists and

⁴⁴ Debra Brown is not discussed in the Confidentiality Section because her access to personnel files, the payment management system, and the names and addresses of civilian and uniformed members of the NYPD, is insufficient to warrant a confidential designation.

⁴⁵ In its post-hearing brief, the City indicated that Carmen Rojas is now the Director of Labor Relations and sought a managerial or confidential designation for any successors in the Assistant Deputy Director of Human Resources position. Rojas’s former position is also discussed below in the Confidentiality Section.

determining effected staff. We find that her role in personnel administration goes beyond that of a routine or clerical nature. Accordingly, we find that the Deputy Director of Human Resources position formerly held by Carmen Rojas is managerial to the extent that AMs, Levels I and II, who succeed her have substantially the same duties and functions. *See DC 37, 34 OCB 16, at 3 (BOC 1984)* (noting that designation runs to successor employees “who perform substantially the same duties and functions as performed by their predecessors”).

Teachers’ Retirement System (“TRS”)

Ileana Freeman and Brenda Moore serve in the position of Employee Relations Manager in the Human Resources Department. They report directly to the Director of Human Resources. Freeman and Moore each handle employee relations for several departments within TRS. For these departments, Freeman and Moore are responsible for recruitment, interviewing, employee counseling, grievance administration, performance reviews, salary administration, and exit interviews. Freeman and Moore recruit candidates from the civil service list, schedule interviews, run interviews with the department manager, and ensure that the correct questions are asked. Regarding employee counseling, Freeman and Moore assess the problem and make recommendations with guidance from the Director of Human Resources. Moore determines whether to bring charges against employees for lack of performance, attendance, or punctuality in conjunction with the employee’s supervisor and writes the charges. At Step I of the grievance process, Freeman and Moore meet with the employee and a union representative in an informal conferences to discuss the problem, which usually involves attendance and punctuality. Moore writes a determination of the results of that conference. Freeman has sat in on the few Step II hearings that have occurred; Moore is not involved in the Step II process. Decisions to promote and/or give raises are made by

the respective department's director and the Director of Human Resources. Freeman's role is to ensure that salary is correct, falls within the correct range, and maintains equity in salaries; Moore's role is to ensure that the performance review is complete, to check the attendance and punctuality records, to prepare a salary profile, and to record the information into the database. Freeman and Moore belong to a performance review appeals committee. Their findings can be appealed to the Director of Human Resources. Freeman represents TRS at Department of Labor unemployment claim proceedings along with a DCAS representative. On occasion, Freeman backs up the manager of the payroll and timekeeping unit. At weekly Human Resources managers' meetings, Moore made a recommendation, which is being implemented, that will improve agency managers' interviewing skills and improve performance plan objectives and competencies. At these meetings, Moore also participated in a discussion of whether to change the procedure for recording information on time sheets. As a member of TRS's Quality of Worklife Committee, Moore observes the meetings but does not vote. We find that Freeman and Moore, both of whom are on the performance evaluation appeal committee, exercise independent judgment and have more than a routine role in personnel administration. Accordingly, the Employee Relations Manager positions held by Freeman and Moore are designated managerial.

Dennis Pope was the Human Resources Records and Reporting Manager.⁴⁶ As the supervisor of a timekeeper and a payroll and personnel staff person, he ensured that data entry was done correctly and conformed to City policy and procedures. He conducted health benefit information presentations. He tried to resolve seemingly conflicting regulations and procedures. He made

⁴⁶ In its post-hearing brief, the City indicated that Dennis Pope is no longer the Human Resources Records and Reporting Manager and sought a managerial designation for successors in that position.

decisions as to recurring payments received by employees, such as longevity or differentials, called the City's Office of Payroll Administration for determinations if he had questions, and recommended changes in recurring payments for individuals to his supervisor, the Director of Labor Relations. He acquired market data from a company to be used as a comparison to determine whether the salary ranges of titles used by TRS are competitive or should be changed. With respect to Family Medical Leave Act ("FMLA") leave requests, he reviewed employees' medical information, would ask doctors for clarification if necessary, and made the final decision regarding whether or not to approve these leave requests. Pope attended meetings regarding the plan to move to new location, but did not attend meetings at the director level after the move. He sat in on one or two meetings at which union representatives brought unit-wide complaints to the attention of the Director of Human Resources. When policy issues arose, he reviewed how the policy effected payroll, personnel, or timekeeping and made recommendations to Director of Human Resources. For example, when a new policy provided that terminated employees would not receive their final paycheck and payout of accrued absence or sick time until the proper documentation from the Conflicts of Interest Board was received, he reviewed the memorandum and determined how to translate it into a procedure. He received notices of terminations and processed them by making sure that information was adjusted appropriately and payments made. While layoffs did not occur during his tenure, he had received information not generally available regarding the possibility of lay-offs and procedures to be followed and had to prepare to implement it. While much of Pope's work seems routine in nature, we find that he did exercise independent judgment in determining whether to approve FMLA requests. Accordingly, we find that the Human Resources Records and Reporting Manager position formerly held by Dennis Pope is managerial to the extent that AMs, Levels I and II, who succeed him

have substantially the same duties and functions. *See DC 37, 34 OCB 16, at 3 (BOC 1984)* (noting that designation runs to successor employees “who perform substantially the same duties and functions as performed by their predecessors”).

2. Employees Without a Managerial Role in Labor Relations/Personnel Administration

In contrast, the duties of the following employees do rise to the level of managerial involvement in collective negotiation, administration of collective bargaining agreements, and personnel administration.

The City asserts that certain positions are managerial because of their supervisory duties, such as, among other things: determining staffing needs; updating job responsibilities for a position announcement; screening and interviewing candidates; recommending which candidate to hire; making final hiring decisions; determining hirees’ title and salary in conjunction with a Deputy Commissioner; supervising directly or indirectly a large number of employees; recommending transfers or transferring employees between units; scheduling training classes; assigning projects; assigning staff to work shifts; signing time sheets; determining how many employees can be out on the same day; approving leave requests; signing off on annual leave, sick leave, and overtime; enforcing absence control policy; monitoring work performance; motivating staff; preparing, giving input for, or reviewing performance evaluations; recommending promotions and merit increases; providing coaching; ensuring that verbal and/or written warnings are provided; recommending discipline, including termination; conducting informal resolution of disciplinary issues with employee and union representative; receiving and investigating complaints from union

representatives; and testifying at grievance hearings and worker's compensation hearings.⁴⁷ We reiterate that such supervisory functions are insufficient to establish that a position has a managerial involvement in labor relations or personnel administration.

TRS

Virginia Bubaris is a Employee Relations Manager. She is the back up for Ileana Freeman and Brenda Moore, discussed above, who are also Employee Relations Managers. Bubaris does some interviewing, some exit interviews, and has done one salary conference with the Director of Human Resources, who signed off on the salary information previously obtained by Moore. She has

⁴⁷ Specifically, the City raised supervisory duties as a basis, in whole or in part, for a managerial designation for the following positions: at DCAS, the positions held by Edna Jordan (Deputy Director of Investigations), Cheryl Rafta-Hawthorne (Director of the Mayor's Graduate Scholarship Program and Work Experience Program), and Tina Ramsey (Deputy Director for the Applications Section); at DEP, the positions held by Thomas Arnold (Captain), Mark Benedetto (Assistant Chief of the DEP Police), Frank Milazzo (Captain), and Eugene Sass (Captain); DOHMH, the positions held by Pamela Harmon (Director of the Call Center), Allen Harris (Administrator), Raymond Henriques (Deputy Director of the Call Center), Daria Luisi (Director of the Work Site Wellness Program), and Janet Nival (Program Management Officer); at DOI, the position held by Linda Maxwell (Director of Office Services); at DJJ, the positions held by Anthony Ferguson (Director of Support Services at the Bridges Juvenile Facility) and Donna Locke (Executive Director of the Crossroads Juvenile Center); at DSNY, the position held by Thomas Clavin (Director of Administration and Fiscal Services); at DOT, Anita Garrison (Director of the Highway Inspections and Quality Assurance Unit); at the District Attorney's Office for Kings County, the position held by George Diaz (Manager of Technical Services); at FDNY, the positions held by Mark Aronberg (Deputy Director of Technical Services) and Robert Rampino (Director of the Fire Alarm Inspection Unit); at HRA, the positions held by Ranti Makinde (Director of the Ombudsman Services Unit), Judith Mittelman (Assistant Deputy Commissioner for the Office of Business and Communications Services), and Milton Oliver (Director of Food Stamp Center F-15); at the NYPD, Nancy Brandon (Deputy Director of the Stolen Property Inquiry Section), Patricia Izzo (Director of Management and Budget Analysis), Debra Melito (Expenditures and Personnel Monitoring Unit), and Denise Williams (Director of the Identification Section); at the Office of the Comptroller, the position held by James Bradley (Audit Manager); and at TRS, the positions held by Michelle Marshall (Manager of the Correspondence Unit), Dennis Pope (Human Resources Records and Recording Manager), and Teresa Smith (Manager of the Call Center). The sample supervisory duties listed are derived from the testimony and surveys of these individuals.

sat in on Freeman and Moore's exit interviews. Bubaris is learning to back up the manager of the payroll and timekeeping unit. She helped him with invoices for temp agencies. Her main functions are writing procedures and security. The procedures she has written concern how to collect timekeeping information, how to send and receive payroll information, and how to process TRS members' service and contributions in the computer system. Concerning security, she monitors security videos, takes care of the badge system and building keys, and changes locks. There is insufficient evidence to establish that Bubaris has a managerial role in labor relations/personnel administration.⁴⁸

DCAS

Edna Jordan is the Deputy Director of Investigations in the Bureau of Citywide Personnel Services. She is responsible for office management, such as scheduling candidates for call-ins, assigning cases to investigators, making sure that fingerprints are sent to the State and that the State's responses are sent to investigators, and ordering supplies. If City agencies have questions regarding fingerprint results and what they should do, they direct questions to her, or in her absence, her staff. In response to requests by DCAS' legal department, she has signed affidavits, and she and her staff have copied case files, explained case files, and gathered additional information. She meets with agencies' personnel directors and budget employees regarding types of fingerprinting equipment to explain the benefits, the costs, the set up, and the procedures. When the FBI announced that it would accept fingerprints for civilian employment, she and her supervisor, the Director of Investigations, gathered statistics, prepared a list of sensitive civilian titles for the Commissioner, and recommended submitting all civilian fingerprints to the FBI, rather than submitting those fingerprints solely to the

⁴⁸ Virginia Bubaris is also discussed in the Confidentiality Section.

State. There is no indication that the Deputy Director of Investigations participated in making that decision, and her personnel administration duties are primarily of a routine nature.⁴⁹

DOHMH

Pamela Harmon, the Director of the Call Center discussed above in the Policy Formulation Section, attended labor/management meetings. At those meetings, she explained management decisions to the union representatives. She did not participate in negotiations for the staff's return. She and her Deputy Director, Raymond Henriques, received a list of employees to be laid off before the staff was notified. These duties are consistent with her role as a supervisor and do not warrant a managerial designation. Accordingly, the Director of the Call Center position is eligible to participate in collective bargaining.

Raymond Henriques is the Deputy Director of the Call Center discussed above in the Policy Formulation Section. He attended labor/management meetings to explain the transfer of DOHMH call center staff to DOITT's 311 call center. He was at the meeting during which DOHMH and DOITT developed a memorandum of understanding and expressed his opinions. Like Pamela Harmon, Henriques has a supervisory, not managerial, role. Therefore, the position of Deputy Director of the Call Center is eligible for collective bargaining.

Janet Nival is the Program Management Officer in the Bureau of Emergency Management.⁵⁰ She is a liaison to Human Resources for 14 Public Health Preparedness Grant and Homeland Security Grant programs. In addition to budget reconciliation, OTPS purchasing, and payroll vouchering duties, she is responsible for coordinating and posting job notices, interviewing, checking

⁴⁹ Edna Jordan is also discussed in the Confidentiality Section.

⁵⁰ Janet Nival completed a survey, but did not testify.

references, and completing hiring packages and vacancy reports. There is no evidence that she has major involvement in personnel administration or that her personnel duties are not routine. The Program Management Officer position is, therefore, eligible to participate in collective bargaining.

DOI

Linda Maxwell is the Director of Office Services. She is responsible for telephone and data circuits, office equipment, reception desk, mail room, copy room, and vendors, such as messenger service and equipment maintenance. As the agency coordinator for safety and health, she meets with unions and employees regarding health and safety issues and ensures compliance with Citywide contracted health and safety standards. The evidence does not establish that her role goes beyond that of a routine nature. Therefore, the Director of Office Services position is eligible for collective bargaining.

DJJ

Anthony Ferguson was former Director of Support Services at the Bridges Juvenile Facility, discussed above in the Policy Formulation Section. One of the employees he supervised was the facility's Personnel Coordinator. He recommended procedures to increase fairness in voluntary overtime and compensatory time opportunities. He was familiar with the facility's budgetary status and knew how or whether position vacancies would be filled. When employees request FMLA leave, he maintained a facts file and referred the request to his supervisor, the Executive Director, who sent it to DJJ's EEO office for approval. The record does not support a finding of a managerial level of involvement in labor relations/personnel administration. Accordingly, the position of Director of Support Services at the Bridges Juvenile Facility is eligible for collective bargaining.

DOT

In addition to the duties discussed in the Policy Formulation Section, Anita Garrison, the Director of the Highway Inspections and Quality Assurance Unit, testifies at Step II out-of-title grievances and has testified during a grievance concerning the rotation of inspectors every two years. She had advance knowledge of layoffs and was one of the people who selected, based on seniority, the names of employees to be laid off. Her involvement in labor relations/personnel administration is supervisory, not managerial. Therefore, the position of Director of the Highway Inspections and Quality Assurance Unit is eligible for collective bargaining.

District Attorney's Office for Kings County

In addition to the tasks discussed above in the Policy Formulation Section, George Diaz, the Manager of the Technical Services Unit addresses grievances filed by his ten person staff. He speaks with union representatives to answer their factual questions and schedule meetings with unions and management, if requested. Diaz attempts to resolve grievances by meeting with the aggrieved employee and the supervisor to get their stories. In addition, he can retroactively pay overtime that an employee should have received, restore leave balances if appropriate, and dock pay for inappropriate use of absence or lateness. His role is primarily that of a supervisor. Therefore, the position of Manager of the Technical Services Unit is eligible to participate in collective bargaining.

Aleksander Drusman is the Deputy Chief of the Fiscal Unit. He is responsible for financial reports, internal audits, and the OTPS budget, which includes purchasing, revenue, grants, travel expenses, forfeiture accounts, and confidential funds, such as drug buy funds. In monthly reports, he advises on spending levels and makes recommendations consistent with budget goals. He presents options to the Chief Assistant District Attorney and the First Assistant District Attorney,

and the District Attorney decides how the agency's funds are spent or how to save money. Although layoffs have not occurred, he presented scenarios to the Chief Assistant District Attorney and the First Assistant District Attorney and answered their questions regarding the impact of staff size on the budget. He informed his supervisor, the Chief of the Fiscal Unit, that employees in the Detective Investigator title were not entitled to certain money for travel expenses under the City rules, and his boss conveyed the information to OLR. A resource person rather than a decision-maker, Drusman does not have a significant role in personnel administration. Therefore, the position of Deputy Chief of the Fiscal Unit is eligible to participate in collective bargaining.

Juanita Perez is the Payroll Director in the Payroll Management Unit. She is responsible for entering into the payroll management system information such as new hires, appointments, salary increases, pay class changes (to full-time or to part-time), promotions, demotions, suspensions, and fines. She tracks overtime and sends cut-off letters when an individual approaches the agency's cap. She generates *ad hoc* attendance reports for the Director of Human Resources and a Deputy District Attorney. Monthly, she reviews employees' anniversary dates to determine who now falls within the parameters for longevity increments or experience differentials. At meetings with her supervisor, the Assistant District Attorney responsible for human resources, the Director of Human Resources, and individuals from the fiscal department, she participated in discussions regarding how to divide available funds for raises. The First Deputy District Attorney made the decision on the raises based on the recommendation of the group. The record indicates that the Payroll Director's role in labor relations/personnel administration is of a routine nature.⁵¹

⁵¹ Juanita Perez is also discussed in the Confidentiality Section.

FDNY

Mark Aronberg is the Deputy Director of the Technical Services Division. He and his supervisor, the Director of the Technical Services Division, are responsible for four units: Fire Tools and Equipment, Medical Equipment, Medical Supplies, and Institutional Aides Services. In addition, they are administratively responsible for budgeting and procurement for five units: Special Operations Command, Hazmat, Rescue Services, Mask Services, and Homeland Security Grants. Aronberg handles day-to-day operations of the division and the Fire Tools Unit, assists the Director with grant writing, and was the project manager during DDC's construction of a building for the division. At meetings with upper level management, he makes recommendations regarding equipment needs and discusses maintenance issues. During layoffs, he was involved in deciding which employees in the Technical Services Division would be laid off and informed those individuals. He meets with FDNY's Director of Labor Relations regarding grievances filed in his division. Once, he met with a union regarding their health and safety concerns to assure them that a material used was safe if used properly. His role is primarily that of a supervisor. Therefore, the position of Deputy Director of the Technical Services Division is eligible for collective bargaining.

Maria Dominguez is the Deputy Director of Project Management and Administration. For the Bureau of Technology Development and Systems, she oversees timekeeping, prepares packages for new hires and merit increases, maintains the employees' files, and coordinates training. She meets with directors who want to terminate an employee to discuss the reasons, but the bureau's Assistant Commissioner makes the decision. Dominguez sometimes attends meetings when the employee is notified of the termination in order to document everything. For the Emergency Communication Transformation Project, she tracks due dates and invoices. She reviews purchase

orders and approves some of the invoices. She meets with the budget department to confirm that their head count figures are accurate. She has attended Step I out-of-title grievances to document what occurs. Personnel policies are formed by another bureau, but Dominguez occasionally adds a sentence or two, after consulting with FDNY's Director of Labor Relations, when she distributes those policies within her bureau. There is no indication that the Deputy Director of Project Management and Administration's involvement in personnel administration goes beyond a routine nature.⁵²

Robert Rampino is the Director of the Fire Alarm Inspection Unit. He supervises four employees directly and 20 indirectly. He drafts technical and administrative correspondence such as productivity reports, regarding inspections or revenue, and proposals for personnel actions, such as a request to increase a subordinate's salary. He does not have a role in personnel administration that exceeds that of a supervisor. Accordingly, the position of Director of the Fire Alarm Inspection Unit is eligible to participate in collective bargaining.

HRA

Milton Oliver is the Director of Food Stamp Center F-15, the largest food stamp office, and supervises the directors of two other Food Stamp Centers, F-24 and F-61, on other floors. He handles calls from politicians on behalf of their constituents, prepares reports on the center's activities, does planning to ensure sufficient staffing and overtime to handle the receipt and processing of benefits information sent pursuant to the State Nutrition Improvement Project, and monitors the backlog at sister centers to see where staff should be reassigned. Every two months, he meets with the Deputy Commissioner for the Medical Insurance and Community Services

⁵² Maria Dominguez is also discussed in the Confidentiality Section.

Administration (“MICSA”) to report on the center’s staffing, backlogs, error rates, and fair hearing compliance. He devises and implements techniques and tools to motivate staff, such as postings, ceremonies, and memoranda recognizing employees with good attendance and no lateness, posting staff’s children’s accomplishments, and holding contests. He attends labor-management meetings with District Council 37 representatives to attempt to resolve various center issues, such as an employee feeling picked on by their supervisor, insufficient garbage collection, or incorrect use of forms, and monitors facilities to ensure that the environment is safe and that staff are adhering to rules and regulations. He reviews requests for discipline sent up through the chain of command and, if warranted, prepares a cover memorandum to the MICSA personnel director requesting disciplinary action. He has responded to Step I grievances. Oliver has high-level supervisory responsibilities, but his labor relations/personnel administration duties do not warrant a managerial designation under the NYCCBL. Therefore, the position of Director of Food Stamp Center F-15 is eligible to participate in collective bargaining.

NYPD

Debra Melito works in the Expenditure and Personnel Monitoring Unit in the Financial Management Division. In regard to authorized head count, personnel actions, appointments, civil service actions, promotions, upgrades, and reorganizations of command, she confirms that positions are available and given the correct budget codes and lines in the PS budget; determines the PS budget’s surplus and needs; and makes budget adjustments if there is overspending in one category and underspending in another. Every pay period, she prepares a report of payroll expenditures to date and projections for the remainder of the fiscal year for her supervisor, the Assistant Commissioner of the Financial Management Division, and they submit a planned action report to

OMB. She works closely with OMB and the NYPD's Employee Management Division and the Payroll Section. She supervises associate accountants in regard to recording and monitoring expenditures related to confidential funds, such as surveillance equipment purchases or rent and utilities bills for sting operations. Regarding purchases made with these confidential funds, she is developing procedures such as having the proper invoice approvals and delivery confirmations. She is not privy to confidential information regarding labor relations. Her involvement in personnel administration is of a routine nature. Accordingly, the position held by Melito is eligible for collective bargaining.

B. NYCHA

1. Managers Involved in Labor Relations/Personnel Administration

Debbie Amore is the Chief of the Records Control Division reporting to the Deputy Director of the Human Resources Department in Administration. Her division, which has a staff of approximately 50 employees, is responsible for the Kronos automated timekeeping system, approving certain types of leaves of absence, monitoring extended leaves, overseeing the worker's compensation program, administering the unemployment insurance program, maintaining personnel files, updating the human resources manual, distributing human resources memoranda, and responding to information requests. While the approval of leave is based primarily on established criteria, she has discretion in deciding whether to approve up to ten days of anticipated leave. She resolves scheduling disputes between supervisors and employees requesting time for religious observance and can override a supervisor's recommendation to dock pay. Regarding workers' compensation, she makes settlement recommendations at litigation reviews, decides if surveillance is necessary, and recommends to the Human Resources Director whether an employee falls within

the assault clause. She drafts Human Resources memoranda on time and leave procedures. She answers time and leave questions from supervisory and executive staff and makes recommendations regarding how specific situations should be addressed. She also responds to inquiries from union representatives, provides information at labor-management meetings, and is the NYCHA representative regarding time and leave issues at grievance.

In addition, for certain matters, such as requests for reinstatement and requests for anticipated leave beyond ten days, that the Human Resources Director presents to the Personnel Board, Amore reviews and investigates the requests, makes a recommendation, and, sometimes, attends the Personnel Board meetings as a technical expert to interpret NYCHA's policy and explain the implications of granting a request. She was part of an inter-departmental committee that compiled, modified, and created regulations regarding, for example, human resources, equal opportunity, and inspector general policies for the General Regulations of Behavior, which was approved by the General Manager and the NYCHA Board. Amore recommended what sections from the human resources manual should be incorporated into the General Regulations of Behavior. She was involved in analyzing and solving Kronos programming and roll out problems, such as inconsistent application of terms of collective bargaining agreements, and was the system expert for a large committee responsible for drafting a General Manager's memorandum instructing staff on procedures for use of the Kronos system. While she also serves as a technical advisor to higher authorities, there is evidence that the Chief of the Records Control Division position has significant personnel administration responsibilities that involve the exercise of independent judgment and go beyond that of a mere routine or clerical nature. The position is, therefore, designated managerial.⁵³

⁵³ Debbie Amore is also discussed in the Confidentiality Section below.

2. Employees Without a Managerial Role in Labor Relations/Personnel Administration

In contrast, the following individuals do not have sufficient involvement in personnel administration, collective bargaining negotiations, or administration of collective bargaining agreements to warrant a managerial designation as defined by Taylor Law § 201.7(a)(ii).

Many NYCHA employees have supervisory duties. We reiterate that supervisory duties, such as interviewing, recommending hiring or promotion, completing managerial position description forms including a description of duties, deciding to create a position, recommending whether or not to fill a vacancy or change a title, selecting staff for vacancies, ensuring staffing coverage, transferring employees between units, assigning and reassigning work, monitoring performance, handling time and leave issues, conducting provisional or probationary evaluations, conducting and signing off on performance evaluations, timekeeping, signing off on leaves of absences and floating holiday requests, disciplining verbally, issuing a counseling memorandum, recommending that a local hearing or a general trial hearing be initiated, testifying at hearings, and recommending termination, are insufficient for a managerial designation.⁵⁴

Cecelia Adames is a Program Specialist, reporting to the Acting Administrator for Logistics, in Capital Projects Administration. She is responsible for day-to-day supervision of the staff of the

⁵⁴ The sample supervisory duties are derived from the testimony concerning the duties of Cecelia Adames (Program Specialist), Hallima Ali (Administrator of Field Operations (Special Projects)), Robert Algozini, Jr. (Assistant Director of Office Services), Debbie Amore (Chief of the Records Control Division), Karen Barksdale (Executive Assistant to the Assistant Deputy General Manager of Development); Shireen Brasse (Executive Assistant to the Secretary), Geneve Davis (Records Access Officer), Alexander Ho (Mail Center Manager), Monique McLeod (Executive Assistant to the Deputy General Manager of Community Operations), Diana Rodriguez (Office Manager), Tom Walsh (Chief of the Utility Control Division of the Energy Department), Genevieve Wilkerson (Human Resources Coordinator), and Sean Younger (Manager, Mailing Operations).

Logistics Unit, which handles supplies, space management, vehicles, and telecommunication equipment for the division. Adames handles attendance, vacation schedules, receptionist schedules, and monitoring reception staff. She worked with the former Administrator and the Deputy Director of Capital Project Administration in developing protocols for the receptionist and coverage schedules. She enters purchasing orders into the Oracle financial management system and accepts goods. On daily basis, she discusses office supply orders, reconciliation on orders, and receptionist coverage with the Deputy Director of Capital Projects Administration. She has supervisory duties but does not have a managerial level of involvement in personnel administration. Accordingly, the Program Specialist position is eligible for collective bargaining.⁵⁵

Hallima Ali is the Administrator of Field Operations (Special Projects), reporting to the Deputy Director for Capital Projects Administration. She is responsible managing the physical space and office support at four Capital Projects field offices. When health and safety issues, such as repair issues with sewer and sanitation lines, in the four field offices are raised informally or in grievances, Ali is involved in developing a plan to resolve the issue. Four or five times a year, she meets with the Chief of Labor Relations to report on field office health and safety issues, coordinated efforts to remedy problems, and the time line of repairs. Overseeing repairs to remedy health and safety issues does not constitute a major role in the administration of collective bargaining agreements and does not, therefore, warrant a managerial designation for the Administrator of Field Operations (Special Projects) position.⁵⁶

⁵⁵ Although NYCHA also seeks a confidential designation for Cecelia Adames, she is not discussed in the Confidentiality Section as there are no facts asserted in support of a confidential designation.

⁵⁶ Hallima Ali is also discussed in the Confidentiality Section.

Karen Barksdale, the Executive Assistant to the Assistant Deputy General Manager for Development discussed above in the Policy Formulation Section, assists the Deputy Directors in her department with writing personnel action reports (“PARs”) for vacancies and interacting with Human Resources Department. Her administrative support staff handles timekeeping and records management. She advises Deputy Directors on disciplinary issues with their staff. She has not yet disciplined an employee. After a reorganization that created a stand-alone Department for Development, Barksdale worked with the Deputy Directors to establish procedures for staff leave of absence requests and implemented a chart to identify everyone out on a particular day. The role of the Executive Assistant to the Assistant Deputy General Manager for Development in personnel administration is supervisory and of a routine nature, not managerial.⁵⁷

Shireen Brasse, the Executive Assistant to the NYCHA Secretary, in addition to the duties discussed in the Policy Formulation Section above, prepares PARs. If layoffs were to occur, she would meet with the Secretary to discuss who could be laid off. She discusses personnel issues with the Secretary. She oversaw the relocation of the Impartial Hearing Office, including seating assignments in the new office. When there were time and attendance issues with hearing officers, she consulted with Human Resources to determine NYCHA’s policy and ensured that the policy was enforced in all units of the Office of the Secretary. When the Employee Disciplinary Unit sends its Section 75 hearing decisions and Board resolution pages to the Secretary, she reads the decisions and prepares summaries for the Board members. Neither her supervisory and administrative duties nor her preparation of summaries of disciplinary hearing decisions support a finding that the position of Executive Assistant to the Secretary has a managerial role in collective negotiations, the

⁵⁷ Karen Barksdale is also discussed in the Confidentiality Section

administration of collective bargaining agreements, or personnel administration.⁵⁸

Glenn Greenfield is the System Coordinator reporting to the Assistant Director of Systems in the Budget Control and Coordination Division of the Department of Budget and Financial Planning. He manages NYCHA's human resources module, which contains personnel data, and produces reports from the personnel management system. Every pay period, he runs an attrition report, indicating the number of employees no longer at NYCHA and the number hired, and a variance report, comparing actual payroll expenses and budget projections. When departments seek specific personnel reports, he will advise how to tailor the reports to meet their needs. For budget initiatives, he produces reports on various scenarios, including layoff scenarios. Twice a year, he prepares reports indicating how much savings would be generated if specific titles were laid off and which titles would produce the biggest savings. Such reports are submitted up the chain of command, and Greenfield's role is limited to gathering data and providing reports. In addition, Greenfield computes the cost of a one-percent salary raise for all the titles in a given bargaining unit for inclusion in the "one percent book." (Tr. 4220). He also provides information for the Proposed Budget and Financial Plan. Greenfield has the highest level of authorization to access human resources information in order to prepare his data reports. While his reports may be used to make personnel and/or labor relations decisions, there is no evidence that he is involved in making those decisions. A managerial designation for the System Coordinator position is, therefore, inappropriate.⁵⁹

Monique McLeod, the Executive Assistant to the Deputy General Manager of Community

⁵⁸ Shireen Brasse is also discussed in the Confidentiality Section.

⁵⁹ Glenn Greenfield is also discussed below in the Confidentiality Section.

Operations discussed above in the Policy Formulation Section, reviews department budgets, headcounts, and salary levels when departments seek to hire staff and signs PARs on behalf of the Deputy General Manager. She participates in interviews for department Directors, Deputy Directors, and borough administrators. In order to meet the targeted headcount during the 2003 layoffs, she and the Assistant Deputy General Manager compiled a list of candidates recommended by Community Operations' departments and determined the numbers of each title to be laid off based on operational concerns. The Assistant Deputy General Manager and the Deputy General Manager then made the final determination of who was laid off. The role of the Executive Assistant to the Deputy General Manager of Community Operations is primarily supervisory. As she did not make the final determination regarding who would be laid off, her involvement in the 2003 layoffs is insufficient for a managerial designation.⁶⁰

Paul Sawyer, the Assistant to the Director of the Equal Opportunity Department discussed above in the Policy Formulation Section, also prepares PARs. If there is a vacancy in the department, he reviews whether the justification prepared by the supervisor includes the reason for backfilling the position and works with Human Resources to determine if the salary and title for the new hire are correct. His involvement in personnel administration does not go beyond a routine nature. Therefore, the position of Assistant to the Director of the Equal Opportunity Department is eligible for collective bargaining.⁶¹

Genevieve Wilkerson is the Human Resources Coordinator, reporting to the Administrator

⁶⁰ Monique McLeod is also discussed below in the Confidentiality Section.

⁶¹ Paul Sawyer is not discussed in the Confidentiality Section as preparing PARs is insufficient to warrant such a designation.

for Human Resources in Capital Projects Administration. She oversees two programs and supervises two other coordinators, who each oversee two programs. She is responsible for day-to-day timekeeping and substitutes for the Administrator for Human Resources in the Administrator's absence. For the units she oversees, she works on any DOI or Inspector General issues that arise. When an employee in Capital Projects Administration files an out-of-title grievance, she, the Administrator of Human Resources, and senior staff in the program review the grievance description, the employee's workload, and the civil service job description; determine whether the employee is performing duties consistent with the job description; and prepare the Step I response to the grievance. She assists senior staff in the division with developing counseling memoranda or local or general charges and investigates whether their employees are signing in and out improperly. On a daily basis, she discusses updating organizational charts and the status of disciplinary proceedings with the Deputy Director of Capital Projects Administration. Along with the Administrator for Human Resources and the Deputy Director of Capital Projects Administration, she was involved in the development of a stringent overtime approval process. She develops management position descriptions for employees up to M Level 3 to be used by the Human Resources Department in considering promotion requests. The record does not indicate that the labor relations and personnel administration duties of the Human Resources Coordinator position are more than routine or sufficient to warrant a managerial designation.⁶²

III. Confidentiality

“Employees may be designated as confidential only if they are persons who assist and act in

⁶² Genevieve Wilkerson is also discussed in the Confidentiality Section.

a confidential capacity to managerial employees described in clause (ii).”⁶³ Taylor Law § 201.7(a). The definition of confidential includes “a two-pronged test, both prongs of which must be satisfied for designation: (1) the employee to be designated must assist a *Civil Service Law § 201 (7) (a) (ii)* manager in the delivery of labor relations duties described in that subdivision—a duty oriented analysis; and (2) the employee assisting the *section 201 (7) (a) (ii)* manager must be acting in a confidential capacity to that manager—a relationship oriented evaluation. *Lippman v. PERB*, 263 A.D.2d 891, 902 (3d Dept. 1999); *see DC 37, 78 OCB 7*, at 43 (BOC 2006), *aff’d sub nom. City of New York v. NYC Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007). Notably, “work that employees perform for a person who is managerial due to the formulation of policy does not qualify the employees for confidential designation.” *Lippman*, 263 A.D.2d at 902; *see Taylor Law § 201.7(a)*.

Regarding the duty oriented prong of the test for confidential status, it is “the employee’s involvement in collective negotiations, the administration of collective bargaining agreements, or personnel administration makes him or her ineligible for inclusion in collective bargaining.” *OSA*, 78 OCB 5, at 41 (BOC 2006), *aff’d sub nom. HHC v. Bd. of Certification of the City of New York*, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007); *Town of Dewitt*, 32 PERB ¶ 3001, at 3003 (1999) (noting that designations have been based on personnel functions with exposure “to information which has a direct relationship to and impact upon collective negotiations and the administration of collective bargaining agreements”). Thus, the Board has found that employees

⁶³ Managerial employees described in clause (ii) are those “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 of a routine or clerical nature and requires the exercise of independent judgment.” Taylor Law § 201.7(a)(ii).

who assist negotiators by calculating the cost of collective bargaining proposals and union demands are confidential. *See OSA*, 78 OCB 1, at 9-12 (BOC 2006); *see also Town of Ulster*, 36 PERB ¶ 3001, at 3002 (2003) (finding the duty prong satisfied by knowledge of possible personnel reductions and calculation of the cost of a wage proposal before it was made at negotiations). Similarly, employees who provide confidential assistance to managers in Human Resources Departments have been found confidential. *See CWA, Local 1180*, 78 OCB 3, at 12-13 (BOC 2006).

Regarding the relationship oriented prong of the test for confidential status, an employee “must be serving in a position the nature of which is one of trust and confidence, vis-a-vis the § 201.7(a)(ii) manager.” *Town of Ulster*, 36 PERB ¶ 3001, at 3002 (finding the relationship prong satisfied when the manager relies upon the employee’s input in preparation of the town’s budget and negotiating proposals). “As the two parts of the test are distinct, satisfaction of one might not satisfy the other.” *Town of Dewitt*, 32 PERB ¶ 3001, at 3002.

Significantly, “the secretive or highly sensitive nature of an employee’s work alone does not compel a confidential designation.” *OSA*, 78 OCB 5, at 41 (BOC 2006), *aff’d sub nom. HHC v. Bd. of Certification of the City of New York*, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007) (finding that access to proprietary marketing information does not warrant a confidential designation); *see Town of Dewitt*, 32 PERB ¶ 3001, at 3003 (“Simple access to existing personnel or financial information . . . is not sufficient for a confidential designation.”); *see also New York Power Authority*, 38 PERB ¶ 3003, at 3008 (2005) (running a computer program that randomly selects an employee for drug testing does not satisfy the duty prong); *County of Orange*, 31 PERB ¶ 3016, at 3029 (1998) (access to personnel records and exposure to finalized disciplinary matters is insufficient to satisfy duty prong). Thus, employees who have access to sensitive, personal

information regarding investigations of City employees and the public have been found eligible for collective bargaining. See *DC 37*, 78 OCB 7, at 43 (BOC 2006), *aff'd sub nom. City of New York v. NYC Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007); *New York City Dept. of Investigation Investigator's Ass'n*, 72 OCB 2, at 18 (BOC 2003); *Ass'n of New York City Assistant Dist. Attorneys*, 14 OCB 13, at 26 (BOC 1974).

Involvement in budget formulation is also not dispositive. See *Lippman*, 263 A.D.2d at 903 (finding that “limited involvement in budget preparation” does not support a confidential designation when the public employer “has not shown that the information to which they are exposed, and the duties they perform, have a direct relationship to and impact upon collective negotiations and the administration of collective bargaining agreements, or present actual or apparent conflicts of interest, or clashes of loyalties, with their representation”), *aff'g State of New York (Unified Court Sys.)*, 30 PERB ¶ 3067, at 3167-3168 (1997) (finding that employee who prepared the policy committee’s annual budget was not confidential); *DC 37*, 30 OCB 32, at 16-17 (BOC 1982) (finding eligible FISA employees with access to confidential information concerning the City’s budget in the absence of evidence of the relevance to collective bargaining).

Similarly, supervisory duties alone do not warrant a confidential designation. “[K]nowledge of personnel or disciplinary matters is often inherent in supervisory positions and does not warrant a confidential designation where . . . it is limited and does not encompass labor relations information significant to the basic mission of the employer.” *Lippman*, 263 A.D.2d at 903. Accordingly, “employees’ access to and involvement in personnel records and matters . . . [are] insufficient to support a confidential designation.” *Id.*

In an effort to explain the reasoning behind the statutory exceptions from collective

bargaining, this Board has made comments such as, “This analysis is to determine whether the employee regularly has ‘access to confidential information concerning labor relations and/or personnel matters to such an extent that their inclusion in collective bargaining would lead to conflicts of interest inimical to the bargaining process and the full and fair representation of the employer’s interests.’” *OSA*, 78 OCB 5, at 41 (BOC 2006) (citing *DC 37*, 62 OCB 4, at 13-14 (BOC 1998)), *aff’d sub nom. HHC v. Bd. of Certification of the City of New York*, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007). We note that this language was offered merely by way of explanation. Such remarks do not create a standard or test apart from that set forth in the statute. Indeed, the courts have repeatedly rejected efforts to use this language to expand the statute’s limited definition of confidential status. *See HHC v. Bd. of Certification of the City of New York*, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007); *City of New York v. NYC Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007) (affirming *DC 37*, 78 OCB 7 (BOC 2006)).

We now address those AMs alleged by each public employer to be confidential under the definition of the Taylor Law.

A. City

1. Confidential Employees

The following employees meet the two-prong definition of “confidential” set forth in the Taylor Law and are, therefore, appropriately excluded from collective bargaining.

DCAS

Norma Martin is the EEO Officer, reporting directly to the Commissioner. She supervises four part-time EEO counselors, trains DCAS employees on their rights and responsibilities under the EEO policy, provides personnel counseling to managers and supervisors, performs complaint

intake, assists employees in filing internal discrimination complaints, investigates complaints, and issues reports of findings and recommendations to the Commissioner. In her reports to the Commissioner, she might recommend disciplining those who violated the EEO policy and making complainants whole, but she does not have the final say in discipline of violators. She also assists the General Counsel's office in responding to external complaints filed with federal, State, or City agencies and attends mediation sessions concerning external complaints with the Deputy General Counsel. She testified that she is the only person with access to confidential files concerning internal and external EEO complaints. As the disability rights coordinator, she ensures that the reasonable accommodations procedure is adhered to and maintains medical records that are collected. If an employee is denied a reasonable accommodation by his or her supervisor and appeals to the Commissioner, she will meet with the Commissioner and the General Counsel to review the process and the accommodation request to determine if DCAS can make a reasonable accommodation. She was part of a Citywide group of EEO Officers that reviewed aspects of the Citywide EEO policy, such as complaint procedures, to give input into what changes, if any, should be made. She also served on an advisory committee formed by the Equal Employment Practices Commission, which "oversees DCAS' implementation of the Citywide policy," to recommend to the Mayor changes to the reporting structure of the Office of Citywide EEO. (Tr. 2704). She assists the Commissioner with personnel administration. In addition, as indicated by her conversations with the Commissioner and the General Counsel regarding reasonable accommodations and the fact that she is the only person with access to the EEO files, she has a relationship of trust and confidence with the Commissioner. Accordingly, the EEO Officer position is designated confidential.⁶⁴

⁶⁴ The City does not assert that Norma Martin is managerial.

DJJ

Tonia Haynes, the EEO Officer discussed above in the Labor Relations/Personnel Administration Section, assists the Commissioner by conducting confidential EEO investigations of alleged harassment and discrimination. Only she, the Commissioner, and her secretary have access to the EEO investigation files. Accordingly, in addition to a managerial designation, the EEO Officer position is confidential.

DEP

As discussed above in the Labor Relations/Personnel Administration Section, Robert McHale, the Director of Payroll, has assisted the Assistant Commissioner of Human Resources in a confidential capacity during collective bargaining negotiations. He recommended a payment system that the Assistant Commissioner then proposed at the bargaining table. Accordingly, in addition to being managerial, the Director of Payroll position is also confidential.

District Attorney's Office for Kings County

Juanita Perez, the Payroll Director, as discussed in the Labor Relations/Personnel Administration Section, has assisted the First Deputy District Attorney in deciding which individuals would receive a raise. In addition, when a salary increase for employees in the title of Detective Investigator was proposed by their union during collective bargaining, she did a cost analysis to determine how much it would cost the agency to implement the increase. The information was then used in discussion with OMB regarding reimbursements to fund the increases. We find that the Payroll Director position is confidential.

District Attorney's Office for Richmond County

Elizabeth Ann Dalton is the Director of Human Resources. In addition to the personnel

administration duties discussed above, she recently began attending collective bargaining sessions with Detective Investigators and is being trained on the collective bargaining process for all unions, but her supervisor, the Chief of the Administrative Bureau, is primarily responsible for labor relations. If union matters, such as complaints, arise, she will address them with union representatives, but her supervisor has the overall say. Due to her confidential assistance to the Chief of the Administrative Bureau regarding labor relations, the Director of Human Resources position is confidential as well as managerial.

FDNY

Maria Dominguez, the Deputy Director of Project Management and Administration, in addition to duties previously discussed in the Labor Relations/Personnel Administration Section, meets with her supervisor, the Assistant Commissioner of the Bureau of Technology Development and Systems, and bureau directors to discuss potential layoffs and prepares the memorandum or spreadsheet in advance of employee notification. She also meets regularly with the Assistant Commissioner of Personnel to get an update on personnel issues, particularly if she has new hire or layoff packages to submit. The position of Deputy Director of Project Management and Administration is, therefore, designated confidential.

Office of the Borough President of Staten Island

Lorraine Witzak is the Executive Assistant and Confidential Secretary to the Borough President of Staten Island. She prepares confidential documents and letters for the Borough President's signature, arranges his schedule, organizes his conference calls, and handles sensitive issues on which he is working. She types correspondence from the Borough President concerning collective bargaining increases, budget cuts, firings, and layoffs. She assists the Chief of Staff on

confidential office issues. She provides confidential assistance to a manager with significant responsibility in personnel administration. Accordingly, the position of Executive Assistant and Confidential Secretary to the Borough President is confidential.

Office of the Comptroller

Elaine Basso is the Executive Assistant to the First Deputy Comptroller/Chief of Staff. Anything having to do with the Comptroller's correspondence passes through her. She is privy to documents, calls, emails, and faxes pertaining to labor relations, budget, audits, claims, administration, and press releases sent by Deputy Comptrollers to the Comptroller through the First Deputy Comptroller. The Assistant Comptroller for Administration functions as the Director of Labor Relations, and Basso sees some of his communications to the First Deputy Comptroller and knows of upcoming meetings. We find that the position of Executive Assistant to the First Deputy Comptroller/Chief of Staff is confidential.

Magdalene Merola is the Office Associate reporting to the Deputy Comptroller for Legal Affairs/General Counsel, who handles confidential matters concerning pensions, investments, municipal finance, legislation, EEO, and discipline. She logs all items that enter the General Counsel's office and maintains a tracking system of all assignments delegated to attorneys. She is the only clerical employee to have access to and finalizes the General Counsel's correspondence. She has authority to read the General Counsel's emails. When the Deputy General Counsel in charge of disciplinary matters consults with the General Counsel, those matters are "transferred through" Merola, and discussions are held in front of her. She has access to disciplinary documents. There is sufficient evidence that she is providing confidential assistance to the General Counsel, a manager with labor relations duties. Therefore, her Office Associate position is designated confidential.

TLC

Carmen Rojas, the former Deputy Director of Human Resources discussed above in the Labor Relations/Personnel Administration Section, in her role as EEO Officer was the only employee at TLC investigating EEO complaints and shared her results solely with Commissioner, to whom she made recommendations. Since she provided confidential assistance to a manager with significant involvement in personnel administration, we find that the Deputy Director of Human Resources position formerly held by Carmen Rojas is confidential, as well as managerial, to the extent that AMs, Levels I and II, who succeed her have substantially the same duties and functions. *See DC 37, 34 OCB 16, at 3 (BOC 1984)* (noting that designation runs to successor employees “who perform substantially the same duties and functions as performed by their predecessors”).

TRS

Employee Relations Manager Virginia Bubaris reports to the Director of Human Resources. In addition to her personnel administration duties discussed above, she attends the weekly Human Resources managers’ meetings at which current issues, such as contract negotiations or an employee’s allegations of unfair treatment, are discussed. In light of her confidential relationship with the Director of Human Resources, whom she assists with personnel administration, the Employee Relations Manager position held by Bubaris is designated confidential.

2. Not Confidential Employees

Evidence concerning the following individuals does not indicate that they meet the two-prong test to designate employees as confidential.

We reiterate that access to personnel files, training records, performance appraisals, addresses, salaries, salary histories, recurring payments, time, start dates, internal investigations, civil

service exam records, EEO investigations, arrests, license revocations, special patrolmen status revocations, medical information and diagnoses, health plan applications, social security numbers, emergency notification contact information, vacancy lists, and grievance determinations, as well as advance knowledge of personnel relocations and separations in order to implement telephone and office services changes, are insufficient for a confidential designation in the absence of confidential assistance to a manager with significant involvement in labor relations or personnel administration.⁶⁵ Further, access to “confidential” information that does not pertain to labor relations or personnel administration, such as information concerning the City’s pricing structure with certain banks, terrorism investigative and intelligence files, school records, violations information, audit findings and recommendations prior to press release, client records, agencies’ policy considerations, and agency policy initiatives, does not warrant a confidential designation.⁶⁶ *See OSA*, 78 OCB 5, at 41

⁶⁵ The City asserts that the following individuals have access to “confidential information” pertaining to labor relations or personnel administration: at ACS, Judith Wolpoff (Deputy Budget Director for Child Welfare); at DCAS, Edna Jordan (Deputy Director of Investigations) and Tina Ramsey (Deputy Director for the Applications Section); at DEP, Thomas Arnold (Captain) and Frank Milazzo (Captain); at DOF, Jacquelyn Cheeseborough (Manager of Banking Relations) and Eva Gambino (Administrative Liaison); at DOHMH, Bonnie Washburn (Administrative Director); at DOITT, Fernando DeGuia (Assistant to the Deputy Commissioner/General Counsel); at DOI, Linda Maxwell (Director of Office Services); at DJJ, Tonia Haynes (EEO Officer); at DOT, Anita Garrison (Director of the Highway Inspections and Quality Assurance Unit), Elliot Jacobs (Deputy Director of Finance and Administration), and Marlene Probbherbs (Director of Payroll and Timekeeping); at the District Attorney’s Office for King’s County, Roger Eisenhardt (Deputy Director of Human Resources); at FDNY, Maria Dominguez (Deputy Director of Project Management and Administration); at HRA, Judith Mittelman (Assistant Deputy Commissioner for the Office of Business and Communication Supplies); at the NYPD, Debra Brown (Administrator-In-Charge); and at the Office of the Comptroller, Mary Hughes (Division Chief of Timekeeping, Payroll, and Personnel). The list of data to which AMs have access is derived from the testimony and surveys of these individuals.

⁶⁶ The City asserts that the following individuals have access to “confidential information” unrelated to labor relations or personnel administration: at DEP, Thomas Arnold (Captain), Mark Benedetto (Assistant Chief), Frank Milazzo (Captain), and Eugene Sass (Captain); at DOF,

(BOC 2006), *aff'd sub nom. HHC v. Bd. of Certification of the City of New York*, 237 N.Y.L.J. 99 (Sup. Ct. N.Y. Co. Apr. 23, 2007).

ACS

Christiana Cummings is the Project Manager for the Common Core Training System and the Acting Executive Deputy Director of Professional Development and In-Service Training at the James Satterwhite Academy. In addition to the duties discussed in the Policy Formulation Section above, Cummings attends the Executive Director of the Academy's weekly meetings with those employees who report directly to her. Such meetings concern operational issues, including layoffs. When layoffs were discussed at a meeting, she did not participate in the decision-making. She is not involved in labor relations or personnel administration, as required by the first prong of the confidentiality test. Accordingly, the positions of Project Manager for the Common Core Training System and Executive Deputy Director of Professional Development and In-Service Training are eligible for collective bargaining.

DCAS

Edna Jordan is the Deputy Director of Investigations. In addition to the duties discussed above in the Labor Relations/Personnel Administration Section, she and her staff, in the course of their investigations, have access to records of arrests and convictions as well as reasons for termination from a City agency. Mere access to sensitive information is insufficient for a confidential designation. Accordingly, the Deputy Director of Investigations position is eligible to

Jacquelyn Cheeseborough (Manager of Banking Relations); at HRA, Judith Mittelman (Assistant Deputy Commissioner for the Office of Business and Communication Services); at the Office of the Comptroller, James Bradley (Audit Manager). The list of such proprietary information is derived from the testimony and surveys of these individuals.

participate in collective bargaining.

DOITT

Fernando DeGuia, the former Assistant to the Deputy Commissioner/General Counsel discussed above in the Policy Formulation Section, was primarily involved with franchise planning. However, he also accompanied the General Counsel to regular meetings with the Human Resources Department. Once, when a grievance was referred to the General Counsel for advice, DeGuia investigated whether there was evidence and gathered factual background information so that the General Counsel could advise the manager involved. The evidence does not indicate the extent of the General Counsel's involvement in labor relations or personnel administration or establish that the Assistant to the Deputy Commissioner/General Counsel position formerly held by Fernando DeGuia regularly provides confidential assistance in the area of labor relations or personnel administration. *See DC 37,78 OCB 7 (BOC 2006), aff'd sub nom. Matter of City of New York v. NYC Bd. of Certification*, Index No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007) (finding eligible employees who investigate discipline cases). Accordingly, the position of Assistant to the Deputy Commissioner/General Counsel is eligible to participate in collective bargaining.

DOT

Marlene Proberbs is the Director of Payroll and Timekeeping. She ensures that employees' salaries and differentials are paid in an accurate and timely manner. She meets with the Deputy Commissioner for Fiscal Administration on occasion to provide requested information from the payroll management system, such as information concerning time and leave or implementation of changes in salary. She attends meetings with her supervisor, the Director of Personnel, and others at which topics such as pay leave or discipline are discussed. She recommended that DOT use

different payroll codes that more accurately reflect the transaction. She has testified at out-of-title grievances and OATH proceedings. She knows of terminations and suspensions and must keep this information confidential. The record does not establish that she has the type of relationship to a manager involved in labor relations or personnel administration that would warrant a confidential designation. Therefore, the Director of Payroll and Timekeeping position is eligible for collective bargaining.

HRA

Beverly Carrington is the Director of Correspondence in the Executive Office. She opens and thoroughly reads all of the Commissioner's mail, distributes it to the proper HRA office, and gives a copy to the Commissioner. The mail is from elected officials, constituents, other agencies, staff, and, rarely, unions. Letters from staff include requests for promotions, transfers, or help with a hardship or complaints about supervisors. From OLR, the Commissioner receives letters regarding staff on leave without pay. From DCAS, mail concerns personnel issues such as the required use of leave time during the transit strike. For budget materials, such as the tentative financial plan for the upcoming year, she creates a summary for the Commissioner, who then determines to whom the material is sent. She does not open mail marked confidential. However, on occasion, mail that is not marked confidential contains material "that should not be going around the office but is just for [the Commissioner's] eyes," such as complaints from staff regarding how a director is handling staff or that a center is not following procedures. (Tr. 3527). She returns such correspondence to its envelope and marks it confidential so that the Commissioner will "understand and see that it had not been marked that way in the first place and so [she] had the right to open it." (Tr. 3526-3527). She does not receive mail regarding contract negotiation or potential layoffs. A union-represented

employee opens the mail in her absence. Carrington does not satisfy the second prong of the confidentiality test as she does not have a relationship of trust with the Commissioner. The Director of Correspondence position is, therefore, eligible for collective bargaining.

Office of the Comptroller

Mary Hughes is the Division Chief for Timekeeping, Payroll, and Personnel. She reports to the Assistant Chief of Timekeeping and Payroll, who reports to the Assistant Comptroller of Administration. She supervises her unit and ensures that employees are paid properly. If she does not think a FMLA request should be accepted, she has authority to speak with the Assistant Chief or the Assistant Comptroller. She has testified at all steps of the grievance process regarding time and leave records. Regarding labor-management issues, the Assistant Comptroller notifies staff of “things that have come up and that have been passed.” (Tr. 2272). Prior to layoffs, she was among those who received a list of employees who might be laid off and was asked for her input. Her input consisted of information regarding employees’ attendance and other time and leave records. There is insufficient evidence in the record to establish that she has the type of relationship required to satisfy the second prong of the confidentiality test. Therefore, the position of Division Chief for Timekeeping, Payroll, and Personnel is eligible for collective bargaining.

B. NYCHA

1. Confidential Employees

Debbie Amore, the Chief of the Records Control Division, as discussed above in the Labor Relations/Personnel Administration Section, assists the Personnel Board by investigating requests before them, making recommendations, and providing explanations at Personnel Board meetings. In addition, she serves as the technical expert on time and leave during collective bargaining. She

works closely with the Labor Relations Division if workers' compensation is raised during collective bargaining to help decipher the proposal's implications. Similarly, she helps negotiators evaluate the implications of proposals on many topics such as hours, reductions in lateness penalties, or a 1% give back. She provides confidential assistance to employees with significant involvement in personnel administration and collective bargaining negotiations. Thus, in addition to a managerial designation, a confidential designation for the position of Chief of the Records Control Division is appropriate.⁶⁷

Shireen Brasse, the Executive Assistant to the NYCHA Secretary, is discussed above in both the Policy Formulation Section and the Labor Relations/Personnel Administration Section. The Secretary, the Chairman, and the General Manager comprise NYCHA's Personnel Board. As previously stated, Brasse reads the decisions and Board resolution pages prepared by the Employee Disciplinary Unit after its Section 75 hearings and prepares summaries for the Board members. Brasse testified that, generally, the Board members approve the discipline recommended by the Employee Disciplinary Unit and, sometimes, holdover a case over for additional discussion and seek a probationary period in addition to the recommended discipline. There is sufficient evidence that Brasse provides assistance to and has a confidential relationship with the Secretary, a manager with significant personnel responsibilities. Accordingly, although not managerial, the position of Executive Assistant to the NYCHA Secretary is designated confidential.

Glenn Greenfield, as discussed above in the Labor Relations/Personnel Administration Section, is the System Coordinator and prepares personnel reports, such as cost savings of laying off

⁶⁷ Note that the confidential designation for the Chief of the Records Control Division is not based on access to and maintaining the security of sensitive information in personnel files or access to databases.

specific titles and the costs of a 1% increase in salary for all titles in a collective bargaining unit. He receives requests to calculate data for the 1% book, which is shared with OMB and OLR, from an Assistant Director of Labor Relations and provides the data to her. Greenfield is assigned to calculate layoff scenarios by the Director of the Department of Budget and Financial Planning. If a decision is made to proceed with layoffs, Greenfield is advised of the layoffs after notification is given to Directors and Assistant Directors but before other staff and is asked to double check his calculations. As the preparer of attrition reports, he also has advance knowledge of attrition targets. The System Coordinator position held by Greenfield is designated confidential as he provides confidential assistance to managers with a significant involvement in labor relations and/or personnel administration.

Monique McLeod, is the Executive Assistant to the Deputy General Manager of Community Operations discussed above in the Policy Formulation Section and the Labor Relations/Personnel Administration Section. As previously discussed, she assisted the Assistant Deputy General Manager and the Deputy General Manager when they selected employees to be laid off in 2003. She compiled a list of the candidates recommended by Community Operations' departments, and she and the Assistant Deputy General Manager adjusted, for operational reasons, the number of each title that should be laid off. No one else participated in these meetings with the Assistant Deputy General Manager. Accordingly, although not managerial, McLeod's duties satisfy both prongs of the confidentiality test, and the position of Executive Assistant to the Deputy General Manager of Community Operations is appropriately designated confidential.

2. Not Confidential Employees

In contrast, the duties of following employees do not satisfy the two-prong test to warrant a confidential designation under the Taylor Law definition.

As stated above, mere access to personnel records, including salary, salary history, longevity, differentials, pension information, and civil service start dates, is insufficient for a confidential designation in the absence of evidence of confidential assistance to a manager with significant involvement in labor relations/personnel administration.⁶⁸ See Taylor Law § 201.7(a).

Hallima Ali is the Administrator of Field Operations (Special Projects) in Capital Projects Administration. As discussed above in the Labor Relations/Personnel Administration Section, she is involved in developing a plan to cure health and safety issues at four Capital Projects field offices, such as repair issues with sewer and sanitation lines, that are raised informally or in grievances. Four or five times a year, she meets with the Chief of Labor Relations to report on field office health and safety issues, coordinated efforts to remedy problems, and the time line of repairs. Resolving and reporting on unsafe working conditions does not warrant a confidential designation. Therefore, the position of Administrator of Field Operations (Special Projects) is eligible for collective bargaining.

Karen Barksdale is the Executive Assistant to the Assistant Deputy General Manager for Development discussed above in both the Policy Formulation Section and the Labor Relations/Personnel Administration Section. She reviews “mostly all” of the Assistant Deputy General Manager’s correspondence and forwards items requiring follow-up to the appropriate

⁶⁸ The examples of information to which AMs have access is drawn from the testimony regarding Shireen Brasse (Executive Assistant to the Secretary), Glenn Greenfield (System Coordinator), and Lillian Harris (Executive Assistant to the Deputy General Manager for Policy, Planning and Management Analysis).

Deputy Director. (Tr. 5176). The Department of Development is responsible for locating vacant land on NYCHA property where affordable housing could be built. There is no evidence that the Assistant Deputy General Manager's correspondence pertains to personnel administration, collective bargaining, or administration of collective bargaining or that Barksdale has a confidential relationship with the Assistant Deputy General Manager concerning these subjects. Accordingly, the position of Executive Assistant to the Assistant Deputy General Manager for Development is eligible to participate in collective bargaining.

Geneve Davis is the Records Access Officer discussed above in the Policy Formulation Section. She has access to information requested under FOIA, including information that the Law Department determines NYCHA does not have a legal obligation to disclose and personnel records requested by former employees. Davis has meetings with the Secretary and the Executive Assistant to the Secretary during which Davis keeps the Secretary apprised of developments in the FOIA Unit, such as a FOIA request from a politician. Since mere access to personnel record information is insufficient to support a confidential designation, and there is insufficient evidence to establish the type of relationship necessary for a confidential designation, we find that the Records Access Officer position is eligible for collective bargaining.

Vivian Figueroa, the Special Projects Manager in Building Systems Unit of the Capital Projects Department discussed above in the Policy Formulation Section, was asked to sit in on a Step III grievance and to prepare 20 job descriptions for promotions because of her experience from a prior position in human resources, not because of her current position. The record does not indicate whom she was assisting or that her position serves in a confidential capacity to a manager involved in labor relations or personnel administration. Therefore, the Special Projects Manager position is

eligible for collective bargaining.

Lillian Harris, the Executive Assistant to the Deputy General Manager for Policy, Planning and Management Analysis, is discussed above in the Policy Formulation Section. In the course of her attending APTS meetings, she is aware of problems and deficiencies and the staff who are held accountable for substandard performance. In addition, through the course of her work on the language access committees, she has access to employees' salaries. Access to sensitive information and assistance to a manager who formulates policy are insufficient for a confidential designation under the NYCCBL. Thus, while the position is designated managerial because of Harris' role in formulating policy, the position of Executive Assistant to the Deputy General Manager for Policy, Planning and Management Analysis is not also confidential.

Diana Rodriguez is the Office Manager of the Impartial Hearing Office, which handles tenancy matters, and is discussed above in the Policy Formulation Section. She attends meetings with the Secretary and her Executive Assistant to keep the Secretary informed about the Impartial Hearing Office, such as the efforts to increase efficiency by sending documents to the Law Department electronically. This is insufficient to establish the type of relationship necessary for a confidential designation. The Office Manager position is, therefore, eligible for collective bargaining.

Genevieve Wilkerson is the Human Resources Coordinator, reporting to the Administrator for Human Resources in Capital Projects Administration. As discussed in the Labor Relations/Personnel Administration Section above, she has supervisory duties, works on any DOI or Inspector General issues that arise, compares out-of-title grievants' work with their job descriptions, and was involved in the development of a stringent overtime approval process. The

record does not clearly indicate that she has the type of relationship with a managerial employee handling significant personnel or labor relations duties that would warrant a confidential designation. Accordingly, the position of Human Resources Coordinator is eligible to participate in collective bargaining.

Conclusion

The testimony and documentary evidence concerning AMs, Levels I and II, other than the AMs discussed above and found managerial and/or confidential, indicates that they do not formulate policy, do not have a significant involvement in labor relations or personnel administration, and do not assist in a confidential capacity a manager who has a significant involvement in labor relations or personnel administration.⁶⁹ Accordingly, all AMs, Levels I and II, in positions not specifically excluded as managerial or confidential are eligible for collective bargaining.⁷⁰ Those positions designated managerial are listed in Appendix A; those positions designated confidential, in Appendix B.

Although DEP Captains Thomas Arnold, Frank Milazzo, and Eugene Sass are eligible for collective bargaining, they have law enforcement duties that are described in detail in the Policy Formulation Section. Subsequent to the Captains' testimony in this case, the Board found that employees whose primary function is law enforcement are not appropriately included in a bargaining unit with employees who do not have that characteristic. *See LEEBA*, 76 OCB 3, at 19 (BOC 2005)

⁶⁹ An illustrative list of in-house titles of the eligible City employees not discussed in detail above can be found in Appendix C. The in-house titles of those eligible NYCHA employees not discussed in detail above can be found in NYCHA section of the Background.

⁷⁰ To the extent that employees no longer hold the positions about which they testified, our decision runs to the position, not the individual, and applies to their successors who perform substantially the same duties and functions. *See DC 37*, 34 OCB 16, at 3 (BOC 1984).

(removing EPOs, who are supervised by Captains Arnold, Milazzo, and Sass, from their former bargaining unit). In light of this decision, we find that the Captain positions in DEP's Police Division are not appropriately placed in the Union's bargaining unit, which includes titles such as Principal Administrative Associate and Coordinating Manager, Level A and B.

With the exception of the DEP Captains, the Board is satisfied that no evidence was presented to rebut the Union's assertion that eligible AMs, Levels I and II, have a sufficient community of interest with members of the Union's bargaining unit. Accordingly, excluding those positions found to be managerial and/or confidential and the Captain positions in DEP's Police Division, employees in the title AM, Levels I and II, are appropriately added to Certification No. 41-73.

ORDER

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3), it is hereby

ORDERED that employees in the title Administrative Manager, Levels I and II, (Title Code No. 10025) are eligible for collective bargaining, except for the positions currently held by those employees set forth in Appendices A and B, which are designated managerial and/or confidential and excluded from collective bargaining; and it is further

ORDERED that Certification No. 41-73 (as previously amended) be, and the same hereby is, further amended to include the title Administrative Manager, Levels I and II, (Title Code No. 10025), subject to existing contracts, if any, and exclude Administrative Managers employed in

Captain positions in the Police Division of the Department of Environmental Protection.

Dated: April 8, 2009
New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER

Appendix A			
MANAGERIAL DESIGNATIONS			
Agency/Employer	Name	Department/Division	Functional Title
Administration for Children's Services	Hruska, Nancy	Policy and Planning	Executive Assistant to the Deputy Commissioner
Department of Citywide Administrative Services	Rafra-Hawthorne, Cheryl	Bureau of Personnel Development	Director of the Mayor's Graduate Scholarship Program and the Work Experience Program
	Ramsey, Tina	Applications Unit	Deputy Director
Department of Environmental Protection	Benedetto, Mark	Police Division	Assistant Chief
	McHale, Robert	Administration Bureau	Director of Payroll
Department of Finance	Gambino, Eva	Payment Operations Division	Administrative Liaison
Department of Health and Mental Hygiene	Green, Lisa	Division of Mental Hygiene	Director of Housing Services
	Rippon, David	Bureau of Emergency Management	Senior Emergency Planner
	Rohner, Christopher	Bureau of Emergency Management	Senior Emergency Manager
Department of Housing Preservation and Development	Marcus, Amy	Labor Relations	Director of Labor Relations

Appendix A			
MANAGERIAL DESIGNATIONS			
Agency/Employer	Name	Department/Division	Functional Title
Department of Juvenile Justice	Haynes, Tonia	Central Office	EEO Officer
Department of Sanitation	Clavin, Thomas	Bureau of Motor Vehicles	Director of Administration and Fiscal Services
	Russell, Rhona	Bureau of Engineering	Assistant Director of Administration
Department of Small Business Services	Waldrup, Jeremy	Division of Business and District Development	Executive Director of NYC Business Solutions
District Attorney's Office-Kings County	Eisenhardt, Roger	Human Resources	Deputy Director
	Gerber, Sylvia	Human Resources	Director of Human Resources
District Attorney's Office-Richmond County	Dalton, Elizabeth Ann	Administration Bureau	Director of Human Resources
New York City Employees' Retirement System	Baksh, Felita	Human Resources	Director of Human Resources
Police Department	Brown, Debra	Personnel Orders Section	Administrator-In-Charge
Taxi and Limousine Commission	Rojas, Carmen	Human Resources	Deputy Director
Teachers Retirement Fund	Freeman, Ileana	Human Resources	Employee Relations Manager

Appendix A			
MANAGERIAL DESIGNATIONS			
Agency/Employer	Name	Department/Division	Functional Title
	Moore, Brenda	Human Resources	Employee Relations Manager
	Pope, Dennis	Human Resources	Human Resources Records and Reporting Manager
Housing Authority	Amore, Debbie	Human Resources	Chief of the Records Control Division
	Harris, Lillian	Policy, Planning, and Management Analysis	Executive Assistant to the Deputy General Manager

Appendix B			
CONFIDENTIAL DESIGNATIONS			
Agency/Employer	Name	Department/Division	Functional Title
Borough President's Office-Staten Island	Witzak, Lorraine	Executive Office	Executive Assistant & Confidential Secretary
Department of Citywide Administrative Services	Martin, Norma	Executive Division	EEO Officer
Department of Environmental Protection	McHale, Robert	Administration Bureau	Director of Payroll
Department of Juvenile Justice	Haynes, Tonia	Central Office	EEO Officer
District Attorney's Office-Kings County	Perez, Juanita	Payroll Management Unit	Payroll Director
District Attorney's Office-Richmond County	Dalton, Elizabeth Ann	Administration Bureau	Director of Human Resources
Fire Department	Dominguez, Maria	Bureau of Technology Development and Systems	Deputy Director of Project Management and Administration
Office of the Comptroller	Basso, Elaine	Executive Office	Executive Assistant to the First Deputy Comptroller/ Chief of Staff
	Merola, Magdalene	General Counsel's Office	Office Associate
Taxi and Limousine Commission	Rojas, Carmen	Human Resources	Deputy Director

Appendix B			
CONFIDENTIAL DESIGNATIONS			
Agency/Employer	Name	Department/Division	Functional Title
Teachers Retirement Fund	Bubaris, Virginia	Human Resources	Employee Relations Manager
Housing Authority	Amore, Debbie	Human Resources	Chief of the Records Control Division
	Brasse, Shireen	Office of the Secretary	Executive Assistant to the Secretary
	Greenfield, Glenn	Budget & Financial Planning	System Coordinator
	McLeod, Monique	Community Operations	Executive Assistant to the Deputy General Manager

Note that some employees are both managerial and confidential and, therefore, appear on both Appendix A and Appendix B. To the extent that there are any discrepancies between the decision and the appendices, the Board's determinations are those set forth in the decision.

Appendix C: Illustrative List of City Positions at Issue⁷¹

ACS

Director for the Division of Youth Children and Financial Services Statewide Services Payment
System Manager in the Financial Services Division

Director of the Office of Advocacy in Community Affairs Division

Director of the Office of Program Development in the Division of Policy and Planning

Director of the Professional Development Program at the James Satterwhite Academy

Division Director of Administrative Affairs in the Division of Policy and Planning

Records Manager

Civilian Complaint Review Board

Director of Statistics and Research

DCAS

Deputy Director of Security

Director of Media Design Services

Director of New Media

Director of Purchasing

Office Manager

DDC

Chief of Staff in the Division of Technical Support

DEP

Borough Manager in the Bronx Office of the Bureau of Customer Services

Bureau Administrator, Director of Personnel, and Bureau EEO Liaison in the Bureau of Customer
Service

Call Center Manager in the Bureau of Customer Services

Contract Manager for the Environmental Control Board

Customer Service Manager of the Technical Services Division

Deputy Director of Landfill Operations in the Site Assessment Unit

Director of Security in the Management and Budget Division

Director of Training

Manager of Administration and Operations Engineering in the Bureau of Water and Sewer
Operations Engineering

Manager of the Processing Center in the Bureau of Customer Service

Office Manager of the Compliance Monitoring Section

Operations Manager of the Environmental Control Board

Public Information Officer for the New York City Water Board

Revenue Manager of the Environmental Control Board

DOF

Borough Manager of the Brooklyn Business Center

Borough Manager of the Queens Business Center

⁷¹ While most AMs have a different in-house title, some do not. The illustrative list does not include the City positions discussed in the decision.

Deputy Director of Customer Service
Director of Executive Operations in the Adjudication Division
Director of Hearing by Mail, Claims, Hearing by Web, and ParkTix in the Adjudication Division
Office Manager in the Office of Technology Solutions
Tax Lien Ombudsperson

DOHMH

Assistant Director of the Cessation Unit in the Bureau of Tobacco Control
Case Coordinator in the Lead Poisoning Prevention Program in Environmental Health Services
Coordinator of the Family Planning Initiative in the Bureau of Maternal, Infant and Reproductive Health
Deputy Director of the HIV Epidemiology Program and Director of Surveillance for the Epidemiology Program in the HIV/AIDS Bureau
Director of Ancillary Services in the Bureau of School Health
Director of Clinical Systems Improvement in the Chronic Disease Division
Director of Cross-Cultural Communications in the Bureau of Communications
Director of the Birth and Death Registration Unit in the Bureau of Vital Statistics
Director of the Civil Service Administration in the Human Resources Department
Director of the Correction-Community Linkage Program in the Division of Health Care Access and Improvement
Director of the Health Media and Marketing Group in the Bureau of Communications
Director of the Office of Lesbian, Gay, Bisexual and Transgender Health in the HIV/AIDS Bureau
Director of the Research Unit in the HIV Epidemiology Program
Director of Training and Staff Development for the Asthma Initiative in the Bureau of Chronic Disease Prevention
Facility Manager in the Bureau of Operations
HIPAA Privacy Officer for the Bureau of Administrative Services
Library Manager in the Bureau of Public Health Training, Division of Epidemiology
Program Management Officer in the Bureau of Sexually Transmitted Disease Control
Special Assistant to the Assistant Commissioner of Veterinary and Pest Control in the Division of Environmental Health Services
Special Assistant to the Chief of Staff in the Commissioner's Office
Special Assistant to the Deputy Commissioner for Financial and Strategic Management
Special Assistant to the Executive Deputy Commissioner for the Division of Mental Hygiene

HPD

Director of Staffing Management
Director of the Initiatives and Enhanced Subsidies Unit

DOITT

Director of Administration and Facilities for NYC TV
Tour Manager in the 311 Call Center

DOI

Director of Office Services

DJJ

Community Based Intervention Coordinator at the Horizons Juvenile Detention Center

Director of Operations at the Bridges Juvenile Center
Director of Operations at the Horizons Juvenile Detention Center
Director of Program Services and Director of the 145th Street Facility
Director of Records Management
Director of Support Services at the Crossroads Juvenile Center
Director of the Movement Control and Communication Unit

DSNY

Director of Administration and Budget in the Bureau of Cleaning and Collection
Director of Administration in the Lot Cleaning Division
Executive Assistant to the Assistant Chief of the Lot Cleaning Division and Legal Liaison
E-Z Pass Coordinator for the Bureau of Cleaning and Collection
Manager of the Lot Cleaning Division

SBS

Director of Policy and Planning in the Division of Economic and Financial Opportunity
Director of Workforce Technology

DOT

Director of Construction Coordination for Lower Manhattan of the Borough Commissioner's Office
Director of Special Events in the Sidewalks and Inspections Management Division
Executive Assistant/Office Manager to the First Deputy Commissioner

DYCD

Contract Reviewer

District Attorney's Office for Kings County

Application Development Manager in the Information Technology Bureau
Art Director in the Graphics Unit
Bureau Director in the Alternative Sentencing Unit
Chief of Operations in the Operations Unit
Community Outreach Coordinator in the Alternative Programs Unit of the Red Hook Bureau
Compliance Monitor in the Alternative Sentencing Unit
Coordinator of the Elder Abuse Unit
Department Manager for the Criminal Court
Department Manager in the Sex Crimes Bureau in the Special Victims Division
Department Manager in the Rackets Bureau
Department Manager of the Domestic Violence Bureau in the Special Victims Division
Deputy Bureau Chief of the Truancy Unit
Deputy Manager of the Clerk's Office
Director of Clinical Services in the Counseling Services Unit
Director of Legal Lives
Director of Office Services
Director of the Counseling Service Unit
Manager of Records Management
Manager of the Word Processing Center
Network/User Support Manager in the Information Technology Bureau
Project Manager for Legal Lives

Project Manager in the Community Relations Bureau
Relocation Coordinator in the Relocation Unit
Senior Citizen Counselor in the Crime Prevention Division
Senior Community Specialist in the Community Relations Bureau
Unit Chief of Grand Jury Reporters
Unit Manager in the Property Release Unit in the Early Case Assessment Bureau

FDNY

Association Director of the Motor Transport Fleet Services Unit
Director of Fire Prevention Enforcement
Director of Special Projects and Events
Director of the Medical Supply Unit

FISA

Systems Analyst

HRA

Deputy Director in the Office of Quality Assurance
Deputy Director of a Job Center
Deputy Director of Eligibility Verification
Deputy Director of five sections in the Eligibility Division
Deputy Director of Payroll
Deputy Director of the Centralized Eligibility Redetermination Program
Deputy Director of the Centralized Eligibility Renewal Program
Deputy Director of the Manhattan We Care Hub
Deputy Director of the Office of Central Processing
Deputy Director of the Out Station Eligibility Division
Deputy Director of the Residential Treatment Service Center
Director of Administrative Services in the Office of Staff Resources
Director of Administrative Support Services for the Finance Office
Director of a Food Stamp Office
Director of Classification in the Personnel Office of the Office of Revenue and Investigation
Director of Eligibility Procedures
Director of Employment Eligibility Verification
Director of Food Stamp Programs at Centers F-51 and F-99
Director of General Support Services in Facility Operations
Director of Security Administration
Director of Security Contracts
Director of the Bureau of Vendor Payment
Director of the Central Eligibility Division
Director of the Community Alternative Service Agency Home Care Services
Director of the Division of Automated Check Inventory and Tracking
Director of the HRA Information Line
Director of the Office of Central Processing
Director of the Office of Project Support; Director of Data Management in the HIV and AIDS
Services Administration

Director of the Payment and Claiming System
Liaison for Vanguard and the Office of Mail Renewal
Manager of a Food Stamp Office
Manager of Medical Assistance Program Centers F-43 and F-22
Project Manager in the Medical Assistance Program

NYCERS

Deputy Director of Administrative Services
Deputy Director of Document Control and Plant Manager
Deputy Director of Member Services

NYPD

Administrator in Charge of the Criminal Records Section
Commanding Officer of the Executive Development Unit of the Police Academy
Deputy Director of the Central Records Division
Director of the Health Insurance Section
Director of the Occupational Safety and Health Section
Division Fiscal and Personnel Officer for the Facilities Management Division

Office of the Comptroller

Accountant
Administrative Assistant in the Bureau of Accountancy
Assistant Division Chief in the Office of Contract Administration
Associate Director of the Community Relations Office
Auditor
Community Coordinator
Computer Systems Analyst in the Financial Audits Unit
Computer Systems Manager in the Bureau of Information Systems
Contract Information Manager in the Office of Contract Administration
Creative Services Manager in the Press Office
Deputy Director of Fiscal Services
Deputy Director of the Community Action Center
Executive Assistant to the Bureau Chief of the Budget Office
Executive Secretary to the Deputy Comptroller for Policy, Audits, Contracts, and Accountancy
Executive Assistant to the Director of Intergovernmental Affairs
Investment Analyst-International and Emerging Markets in the Bureau of Asset Management
Legislative Counsel in the Bureau of Intergovernmental Affairs
Manager in the Contract Unit of the Law and Adjustments Bureau
Manager of Social Issues in the Bureau of Asset Management
Outreach Liaison in the Commercial Banking Unit
Payroll Inspector
Purchasing Manager/Agency Chief Contracting Officer
Senior Policy Analyst/Advisor in the Office of Policy Management
Special Events Coordinator
Supervisor of the Payment Unit

Office of the Queens Borough President

Deputy Counsel

Director of the Health and Human Services Unit

Special Assistant for Education

TLC

Executive Director of the Call Center

Executive Director of the Management Accountability Productivity Program

TRS

Assistant Manager of the Call Center

Assistant Manager of the Communications Unit

Assistant Manager of the Correspondence Unit

Assistant Manager of the Document Management Division

Assistant Manager of the Member Status Unit

Communications Manager

Manager of the Banking Unit

Manager of the Case Management Unit

Training Manager in the Member Education Unit

Appendix D: Index

Background. 2
 City.. . . . 4
 NYCHA. 4
 City
 Appendix of Confidential Designations.. . . . 123
 Appendix of Managerial Designations. 120
 Background. 4
 Confidential Employees.. . . . 101
 Employees Who Do Not Formulate Policy. 21
 Employees Without a Managerial Role in Labor Relations/Personnel. 80
 Illustrative List of City Positions. 125
 Managers Involved in Labor Relations/Personnel Administration. 66
 Managers Who Formulate Policy.. . . . 15
 Not Confidential Employees. 106
 Position. 7
 Confidential Employees.. . . . 101
 Appendix of Confidential Designations.. . . . 123
 DCAS.. . . . 101
 DEP. 103
 District Attorney’s Office for Kings County. 103
 District Attorney’s Office for Richmond County. 103
 DJJ. 103
 FDNY.. . . . 104
 NYCHA. 111
 Office of the Borough President of Staten Island. 104
 Office of the Comptroller.. . . . 105
 TLC. 106
 TRS. 106
 Confidentiality. 97
 Discussion. 10
 Conclusion. 117
 Confidentiality. 97
 Formulation of Policy. 12
 Introduction. 10
 Involvement in Labor Relations/Personnel Administration.. . . . 64
 Employees Who Do Not Formulate Policy. 21
 ACS. 22
 DDC.. . . . 24
 DEP. 25
 District Attorney’s Office for Kings’ County. 36
 DJJ. 33

DOF.....	28
DOHMH.....	29
DOITT.....	32
DOT.....	34
DYCD.....	35
FISA.....	38
HRA.....	39
New York City Police Pension Fund.....	43
NYCHA.....	50
NYPD.....	40
Office of the Comptroller.....	44
Office of the Manhattan Borough President.....	47
Office of the Queens Borough President.....	47
Employees Without a Managerial Role in Labor Relations/Personnel.....	80
DCAS.....	82
District Attorney’s Office for Kings County.....	85
DJJ.....	84
DOHMH.....	83
DOL.....	84
DOT.....	85
FDNY.....	87
HRA.....	88
NYCHA.....	92
NYPD.....	89
TRS.....	81
Formulation of Policy.....	12
Involvement in Labor Relations/Personnel Administration.....	64
Managers Involved in Labor Relations/Personnel Administration.....	66
Appendix of Managerial Designations.....	120
DCAS.....	66
DEP.....	68
District Attorney’s Office for King’s County.....	72
District Attorney’s Office for Richmond County.....	73
DJJ.....	70
DOF.....	69
DSNY.....	70
HPD.....	74
NYCERS.....	74
NYCHA.....	90
NYPD.....	75
TLC.....	76
TRS.....	77

Managers Who Formulate Policy.. 15

 ACS. 16

 Appendix of Managerial Designations. 120

 DEP. 16

 DOHMH. 17

 NYCHA. 48

 SBS. 20

Not Confidential Employees. 106

 ACS. 108

 DCAS. 108

 DOITT. 109

 DOT. 109

 HRA. 110

 NYCHA. 114

 Office of the Comptroller. 111

NYCHA

 Appendix of Confidential Designations.. 124

 Appendix of Managerial Designations. 122

 Background. 4

 Confidential Employees. 111

 Employees Who Do Not Formulate Policy. 50

 Employees Without a Managerial Role in Labor Relations/Personnel. 92

 Managers Involved in Labor Relations/Personnel Administration. 90

 Managers Who Formulate Policy.. 48

 Not Confidential Employees. 114

 Position. 8

Order. 118

Positions of the Parties.. 7

 City. 7

 NYCHA. 8

 Union. 9

NOTICE OF DESIGNATION

This notice is to acknowledge that the Board of Certification has issued a Decision and Order designating positions managerial and/or confidential as follows:

DATE: April 8, 2009 **DOCKET #:** RU-1159-94

DECISION: **2 OCB2d 13 (BOC 2009)**

EMPLOYER: The City of New York, represented by the Office of Labor Relations
40 Rector Street, 4th Floor
New York, NY 10006

New York City Housing Authority
250 Broadway
New York, NY 10007

CERTIFIED/RECOGNIZED BARGAINING REPRESENTATIVE:

Communications Workers of America, Local 1180
6 Harrison Street, 4th Floor
New York, NY 10013

DESIGNATION: The Administrative Manager, Levels I and II, positions currently held by employees listed in attached Appendices A and B are designated managerial and/or confidential and, therefore, excluded from collective bargaining