

City v. DC37, CWA, 22 OCB 33 (BOC 1978) [Decision No. 33-78  
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of the Application of

The City of New York,

Petitioner,

Decision No. 33-78

Docket No. RE-79-77

For an Order declaring employees of  
the FINANCIAL INFORMATION SYSTEMS AGENCY  
managerial or confidential pursuant to  
Section 2.20 of the Revised Consolidated  
Rules of the Office of Collective Bargaining

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor-Respondent,

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Intervenor-Respondent

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DETERMINATION AND ORDER

On June 29, 1977, the City of New York, appearing by the Office of Municipal Labor Relations (OMLR), filed a petition seeking a determination "that persons employed in the Financial Information Systems Agency (FISA) are managerial or confidential within the meaning of Section 1173-4.1 of the Administrative Code of the City of New York."

District Council 37 (D.C. 37) and the Communications Workers of America (CWA) moved, on August 4 and August 9, 1977, respectively, to intervene in this proceeding for the purpose of opposing OMLR's petition. Both D.C. 37 and the CWA allege they represent certain of the employees which OMLR seeks to have declared managerial and/or confidential by virtue of their employment in FISA.

The Board of Certification (the Board) granted the motions to intervene and directed that a hearing be held in this matter for the purpose of receiving evidence on whether all employees of FISA are managerial and/or confidential as alleged by the petition.

Hearings were held on December 15, 1977 and February 1, 1978<sup>1</sup> at which the parties were afforded full opportunity to present oral and written evidence, provide oral argument and otherwise support their respective positions. During the course of the latter hearing, counsel for D.C. 37 moved to dismiss OMLR's petition "on the grounds that [OMLR has] the burden of proof and that they have failed to make a prima facie case."<sup>2</sup> We will dismiss the instant petition based upon our administrative investigation, but without prejudice to the filing of a new petition seeking managerial and/or confidential designation of individuals employed in the agency.

#### BACKGROUND

FISA was created by Mayor's Executive order No.70, (herein after E-O-70), issued September 15, 1976, as the agency to administer "a single data center for organizing, compiling and coordinating of the City's financial records and providing for

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The matter was held in abeyance at the request of the parties until February 1, 1978 pending completion of the broadbanding (reorganization) of data processing titles which are employed in FISA.

Tr. 17 (references are to the pages of the transcript of the hearing held on February 1, 1978).

appropriate use of and access to such information, and to provide for the management and direction of such center." Section 3 of E.O.70 provides:

[FISA] shall support the development and implementation of [the Integrated Financial Management System (IFMS)] until the completion of the Project. Upon completion, [FISA] shall have control over and be responsible for all of the data processing functions and operations of the City which support the activities of those officers, employees, departments and agencies of the City responsible for organizing, compiling, coordinating and reporting upon the City's central financial records, data and other related information. FISA will be responsible for providing efficient, coordinated and rapid access to such information for the use of those officers, employees, departments and agencies of the City.

Section 5 states:

[FISA] may also render services to and receive information and assistance from such other bodies as are defined as 'covered organizations' in the New York State Financial Emergency Act for the City of New York, as amended, upon such terms and conditions as may be agreed upon by the Agency and each such body.

Thus, FISA maintains and operates the unified computer system under which citywide budgeting, accounting, purchasing and payroll functions are being and have been brought together.<sup>3</sup> FISA's responsibilities within the unified system are to:

Maintain and upgrade, as required, the hardware and software to ensure maximum system effectiveness.

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An Introduction to IFMS (Urban Academy: December 1977)  
[Union Exhibit 4] , p. 8.



Centralize the operations of IFMS to ensure consistent handling of IFMS data processing products.

Ensure the security and integrity of IFMS data.<sup>4</sup>

FISA's role within IFMS is further described as follows:

Primary user agency interface with FISA is via system administrators who work closely with agency personnel in getting data into the system as efficiently as possible and getting the resulting financial information out of the computer and to the users in timely fashion. FISA Computer Center operators work with agency personnel to solve problems related to the CRT network for on-line inquiry. In the future, Application Development staff will help agencies in the production of nonroutine reports.<sup>5</sup>

POSITIONS OF THE PARTIES

In its petition, OMLR alleges, "Employees in FISA are responsible for the collection and organization of data which, as noted in Decision 11-76, is used by the office of Management and Budget in connection with collective negotiations on behalf of the City." OMLR further alleges, "Employees in FISA operate and administer the operation of the central data processing operation of the City which contains the City's central financial records, data and other information all of which is related to the conduct of labor relations by the City." Therefore, OMLR concludes, the nature, function and purpose of FISA within the general framework of the government of the City of New York requires that all persons employed in the Agency be excluded from collective bargaining.

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Id. p. 2 3.

Id. p. 2 5.

At the hearing, counsel for OMLR stated, "... the City does not propose to bring before [the Trial Examiner] evidence with respect to the particular duties of the several titles which from time to time may be employed in this Agency .... since it is the position of the City of New York that regardless of what titles are utilized in this Agency, it is by its very nature and function appropriate to be excluded in toto from collective bargaining."<sup>6</sup>

OMLR's presentation at the February 1st hearing consisted of oral argument by its counsel and the introduction of documentary evidence concerning the new title structure and job descriptions of broadbanded data processing titles.<sup>7</sup> Citing E.O. 70, OMLR argues that FISA, as the central data collection agency for the City, handles "every figure, every dollar, every item which relates to the financial conditions of the City."<sup>8</sup> Therefore, OMLR contends, FISA is analogous to the Bureau of the Budget, whose employees were excluded from bargaining by virtue of their employment in that agency in Board Decision No. 11-76.

OMLR points out that as FISA is relatively newly created, it has no history of prior involvement in the collective bargaining process. OMLR requests that the Board take administrative notice, from a review of the terms of E.O. 70, "that the staff of FISA can very easily be critically involved in the conduct of labor relations by the City."<sup>9</sup>

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Tr. 4.

City Exhibit 1, admitted into evidence.

Tr. 5-6.

Tr. 8.

OMLR concludes that because FISA "is the crucial and essential element in the collection and analysis of the data upon which labor relations discussions are and must be based," to find that employees of FISA are eligible for collective bargaining will mean "the City in essence will be negotiating with itself on both sides of the table."<sup>10</sup>

At the close of OMLR's presentation, counsel for D.C. 37 moved that the City's petition herein be dismissed for failure to make a prima facie case and argued that since the City has failed to sustain its burden of proof, D.C. 37 should not be required to go forward with its case. The Union agreed, however, to present some evidence concerning the status of the agency pending Board decision on the motion to dismiss. Counsel for D.C. 37 stated that it does not seek to represent three titles, Administrative Manager, Administrative Staff Analyst and Computer Systems Manager, because those titles are in the managerial pay plan.<sup>11</sup>

D.C. 37 argues that the employees in FISA are not managerial nor confidential as defined in the Taylor Law<sup>12</sup> or under the NYCCBL. The Union contends that FISA is strictly a data-processing agency which receives raw data from various City agencies and programs such data into the IFMS computer system. D.C. 37 alleges that FISA is only one component of IFMS, the others being the Office of Management-and-Budget (OMB), the Comptroller's Office and the Finance Administration. D.C. 37 points out that

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Tr. 16.

Tr. 21.

§201. 7.

E.O. 70 does not state that FISA is to analyze the data it receives, but that the Executive Order refers only to collecting, processing and organizing the data. The policymaking and analytical functions are reserved to the other components of IFMS under the City Charter, D.C. 37 maintains.

D.C. 37 further argues that access to financial records is not a basis for managerial or confidential designation under the Taylor Law or the NYCCEL, noting that employees who have access to such records in the various payroll departments within City agencies, in the Comptroller's office and the Finance Administration, have not been found managerial or confidential employees. In addition, D.C. 37 contends that the state in which the employees of FISA see the data is public information, discoverable under the Freedom of Information Act, as the data consists of numbers concerning purchases, payrolls, budget modifications and monies in the budget. Counsel for D.C. 37 stated, "It is only where this material is so inseparable from a labor relations function that it becomes confidential in the labor relations sense ..." and noted that counsel for OMLR "failed to give even one example of the kinds of actual material that would be used by FISA which [counsel for OMLR] considers so closely related to labor relations that [FISA's employees have] to be considered confidential."<sup>13</sup>



D.C. 37 relies on the criteria listed by the Board in Decision No. 11-76 in which the Board found employees of the Bureau of the Budget to be "confidential" and argues that employees of FISA do not perform any of the functions of the Bureau of the Budget except the data-gathering and reporting functions, which the Board cited in Decision No. 11-76 in the context of "preparation of data for and both direct and indirect participation in collective negotiations." D.C. 37 notes that contrary to the allegations of the City, there is no evidence of any participation in collective negotiations by FISA and that the other functions of the Budget Bureau on which the Board based its decision, including preparation of the annual expense budget, active participation in labor relations during the City's fiscal crisis and preparation of wage and salary recommendations for use by the Department of Personnel, are all now authorized to be performed by OMB.

D.C. 37 further alleges that there is nothing in the job specifications for several titles employed in FISA<sup>14</sup> to indicate that the employees may be involved in assisting in the conduct of labor relations. D.C. 37 also cites excerpts from "An Introduction to IFMS",<sup>15</sup> which discusses FISA and IFMS's impact on the City, in support of its position. In conclusion, D.C. 37 maintains that the documents show that FISA is a technical data-gathering agency with no policy-making or labor relations functions and, therefore, its employees are not managerial nor confidential in the labor relations sense under the Taylor Law or the NYCCBL.

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Union Exhibit 3, in evidence.

Footnote 3, supra.

DISCUSSION

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

Employees may be designated As managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the negotiations 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).

In Decision No. 11-76, we applied the criteria stated in the Taylor Law and, pursuant to 91173-4.1 of the NYCCBL, found the work of all employees of the Bureau of the Budget "inherently managerial/confidential" We described the operations of the Bureau in the context of its employees' managerial/confidential functions as follows:

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

The Bureau of the Budget is part of the Mayor's office. It prepares the annual expense budget, surveys agencies for the

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

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

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

In the instant case, OMLR argues that employees of FISA are inherently managerial/confidential on the grounds that they "assist directly in the negotiations for and conduct of collective negotiations" or that FISA's employees "assist and act in a confidential capacity to managerial employees" who perform such functions. OMLR alleges that E.O.70, §3, is evidence of FISA performing such functions. However, the Executive Order<sup>16</sup> speaks of FISA in terms of responsibility for data-processing functions and "organizing, compiling, coordinating and reporting upon the City's central financial records, data and other related information." The job specifications for the broadbanded data processing titles,<sup>17</sup> three of which are presently in bargaining, set forth the duties of the employees in terms of performing data processing functions and/or supervising others who perform such functions. There is no evidence, in E.O.70 or in the job descriptions, that employees of FISA may reasonably be required to assist directly or indirectly in the conduct of collective negotiations. Nor is there any evidence that employees of FISA will act in a confidential capacity to employees who do assist in collective negotiations.

Thus, OMLR's entire case rests on the assertion of the City that employees of FISA are managerial or confidential. PERB has expressly rejected such presumptions in favor of the employer's judgment, stating:

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Quoted on P. 3, supra.

City Exhibit 1.

While an employer's opinion as to the designation of employees as managerial or confidential is entitled to serious consideration, nevertheless, [PERB's] determination is not limited simply to a review of the opinion of the employer and of the reasons supporting such opinion. Rather, the determination is based upon the application of the statutory criteria to all the evidence offered by the parties.<sup>18</sup>

In Decision No. 41-72<sup>19</sup> we also rejected application of such presumptions in favor of the employer's judgment regarding the status of employees.

In Decision 11-76, we dismissed the City's petition to have employees of the Labor Law Complaint Section of the Comptroller's office excluded from bargaining. We did so [b]ased upon the findings of our own administrative investigation and in light of the City's failure to sustain its burden of proof with respect to the alleged manageriality/confidentiality of [the] employees." Investigation of the functions of FISA, based upon the documentary evidence submitted by the City and D.C. 37, reveals that the only function it performs which was formerly the work of the Bureau of the Budget is that of preparation of data. The Board, in finding employees of the Budget Bureau inherently managerial/confidential, cited preparation of data in the context of "both direct and indirect participation in collective negotiations" as a "key function" of the Bureau. As stated above, there is no evidence that FISA has any role in collective negotiations. In Decision No. 69-68,<sup>20</sup>

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State of New York, 5 PERB §3001, p.3003.

D.C. 37 and The City of New York.

Association of Municipal Statisticians and the City of N.Y..

we found that persons employed as Principal Statisticians are not managerial employees, stating:

That they may supply information used in the formulation of policy by higher personnel, or analyze and interpret the results of research 'in relation to overall policy,' does not constitute them managerial-executives.

(citation omitted)

In the instant matter, there is no evidence that employees of FISA "analyze and interpret" data; E.O.70 speaks only of "organizing, compiling, coordinating and reporting" of data by FISA.

Many of the functions which OMLR claims to be performed by FISA are, under the City Charter, performed by other municipal offices and agencies. We have excluded all employees of those offices and agencies from bargaining because we found their functions and roles to be inherently managerial/confidential. For example, we held "all employees of the Executive Management and Executive and Administrative Services sections of the Mayor's Office, including employees of other departments and agencies who may be on loan to those sections of the Mayor's office, are managerial and/or confidential and, therefore, ineligible for collective bargaining."<sup>21</sup> In the same decision, we held ineligible for collective bargaining all employees covered by, and who are paid pursuant to, the City's Managerial or Executive Pay Plans, with certain noted exceptions. We also held managerial and/or confidential all employees of the Office of (Municipal) Labor Relations and all employees of the Office of Collective Bargaining. Further more, as stated above, we have held all employees of the Bureau

of the Budget inherently managerial/confidential. Pursuant to Local Law No. 5 of 1975, the Office of Management and Budget (OMB) was established to succeed the Bureau of the Budget and performs many of the functions formerly performed by the Budget Bureau.<sup>22</sup> Our finding that Budget Bureau employees are managerial/confidential is applicable to the successor OMB and employees of that agency will continue to be deemed managerial/confidential unless and until it is shown that changed circumstances warrant a different finding by this Board. Thus, the assertion that the City will be left with no one to bargain for it unless all FISA employees are excluded from bargaining is without basis.

Our investigation reveals several additional factors relevant to a determination of the issue before us. We note that various City agencies, including the Office of the Comptroller and the Finance Administration, which are concerned with the use and/or formulation of financial information, employ persons in the same titles as are employed in FISA. Employment in these agencies has not been held automatically to render all employees managerial/confidential as in the case of the Bureau of the Budget, OMLR and others; nor has a petition been filed with this Board for any such finding as to these agencies. The City's petition herein seeks to exclude all 167 employees of FISA from collective

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See generally, Chapter 6 of the New York City Charter.

bargaining. Approximately 30 of these employees are paid pursuant to the Managerial and Executive Pay Plans and, thus, are presumably ineligible for collective bargaining under our holding in Decision 19-75. Moreover, persons employed in several titles within FISA are and have been excluded from bargaining because we previously found those titles or their predecessor titles managerial/confidential.<sup>23</sup> Clearly, within FISA, there are employees responsible for the formulation of policy and personnel administration, and who do represent the City in collective negotiations and contract administration, and, therefore, such employees have been excluded from collective bargaining.

We recognize the importance of FISA within the IFMS system and the role it has in improving municipal budget practices. However, no evidence has been offered herein to warrant a finding that the agency's purpose and functions are such as to render all of its employees inherently managerial/confidential under the NYCCBL. Therefore, based upon the foregoing investigation, the petition to have all employees of FISA declared managerial/confidential is dismissed without prejudice to the filing of a petition seeking managerial and/or confidential designation of individuals employed in particular titles in the agency based on the specific duties and responsibilities of employees in such titles.

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These titles are: Executive Director, Deputy Executive Director, Computer systems manager, Administrative Manager and some predecessor titles to Administrative Staff Analyst and Associate Staff Analyst.



O R D E R

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED that the petition filed herein by the City of New York be, and the same hereby is, dismissed.

DATED: New York, New York  
June 16, 1978

ARVID ANDERSON  
Chairman

WALTER L. EISENBERG  
Member

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ERIC J. SCHMERTZ  
Member