

Civil Service Technical Guild, Local 375, Decision No. 45-78, aff'd, Civil Service Technical Guild, Local 375 v. Anderson, rev'd, N.Y.L.J., Oct. 9, 1979, at 10 (Sup. Ct. N.Y. Co.), aff'd, 79 A.D.2d 541, 434 N.Y.S.2d 13 (1st Dep't 1980), rev'd, 55 N.Y.2d 618, 446 N.Y.S.2d 264 (1981) (adopting dissent of A.D. and affirming Board). 22 OCB 45 (BOC 1978) [Decision No. 45-78 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of DECISION NO. 45-78

<u>CITY OF NEW YORK</u>	<u>DOCKET NUMBERS</u>	
	RE-24B-72 and	RU-440-74
<u>-and-</u>	RE-24C-72	RU-443-74
	RE-24H-72	RU-521-75
<u>LOCAL 375, CIVIL SERVICE</u>	RE-241-72	RU-533-75
<u>TECHNICAL GUILD, DISTRICT</u>		RU-561B-76
<u>COUNCIL 37, AFSCME, AFL-CIO</u>		RU-561C-76

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DETERMINATION AND ORDER

This determination deals with the long-standing dispute between the City of New York and Local 375, Civil Service Technical Guild, AFSCME, AFL-CIO, concerning the claimed managerial/confidential status of 40 job titles involving over 500 municipal employees. The rulings herein are based on a record comprised of 1632 pages of testimony, taken over the course of 19 individual hearing dates, 40 affidavits, 65 exhibits, and the parties' briefs. The City and Local 375 were given every opportunity to present evidence in support of their respective positions. This determination also reflects the participation in these proceedings of the "Society of Engineering and Architectural Professionals in New York Public Service."

The Board feels obliged to comment on the extended amount of time consumed in the processing of this case. There have been innumerable delays sought by both the City and Local 375 in which we acquiesced in the hope that the parties might have been able to reach an amicable negotiated

resolution of the disputed issues. There have been several statements made by the parties both "on-the-record" and "off-the-record" concerning their agreements and concessions involving the manner in which the Administrative Engineer title, in particular, should be handled. In fact, a stipulation, dated November 1, 1977, was entered into by the parties but subsequently withdrawn. Such a stipulation, negotiated by the parties themselves, even though not dispositive of the whole of the dispute, would have carried great weight in our consideration and determination of the various managerial/confidential questions presented herein. It was with this in mind, that we indulged the parties' repeated requests for more time in order to provide them with the opportunity to reach a mutually acceptable settlement. It is necessary to add that it would have been most difficult and unsatisfactory to have proceeded and to have issued an earlier ruling on the merits of this case without the cooperation of the parties, who were in possession of relevant information not otherwise readily available.

Section 1173-4.1 of the New York City Collective Bargaining Law (NYCCBL) prohibits the inclusion of managerial and confidential employees in bargaining units and specifically denies such employees the right to bargain collectively. Although the NYCCBL does not define "managerial/confidential," the Board has developed, from many of its prior decisions in

this area, general guidelines for determining whether individuals in particular job titles should be excluded from bargaining on account of their managerial/confidential status.¹ Our rulings in such cases have been aided by reference to Section 201.7 of the Taylor Law, which establishes criteria used by the New York State Public Employment

In making its determinations concerning managerial status, the Board has placed great emphasis on policy formulation and effectuation.

Decision Nos. 73-68; 79-68; 6-69; 43-69;
19-71; 41-72; 76-72.

The regular exercise of significant independent judgment and discretion is indicative of managerial status.

Decision Nos. 6-70; 73-71; 13-74.

Significant representation of management in labor relations is a managerial function.

Decision Nos. 6-69; 9-69; 6-70; 73-71;
46-72.

The Board has also considered as indicia of managerial status the following factors:

- (a) Position in Table of Organization
Decision Nos. 79-68; 6-69; 46-72;
76-72.
- (b) Number of Subordinate Employees
Decision Nos. 79-89; 43-63; 41-72;
76-72.
- (c) Area of Authority
Decision Nos. 6-69; 43-69; 53-70.
- (d) Power to Assign and Transfer Personnel
Decision Nos. 53-70; 70-71.
- (e) Preparation of Budget/Allocation of Funds
Decision Nos. 53-70; 73-71; 8-72.
- (g) History of Collective Bargaining
Decision Nos. 75-68; 43-69; 19A-70.
- (h) Personnel Involvement
Decision Nos. 73-71; 8-72.
- (i) Job Specifications
Decisions Nos. 38-72; 41-72; 76-72.

These principles were applied in a major managerial determination in Decision No. 19-75.

Relations Board (PERB) for dealing with this issue in cases involving employees under its jurisdiction. Section 201.7 states, in pertinent 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 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)."

We have previously pointed out that the criteria set forth in our decisions are substantially equivalent to those set forth in Section 201.7 and, further, that the criteria set forth in the Taylor Law and in our determinations are designed to accomplish the same end.²

The statutory exclusion is based on the premise that if managerial/confidential employees were permitted to bargain collectively it would create conflicts with the employer's right to formulate, determine, and effectuate its labor policies with assistance from employees not represented by a union with which it deals. In addition, the granting of bargaining rights to such employees would interfere with the efficient operation of personnel matters and disrupt managerial

See Board Decision Nos. 73-71, 41-72.

procedures.³ Furthermore, we have expressed our concern about the incongruity of deeming employees to be non-managerial when they formulate policies and determine operating procedures which have the potential for becoming subjects of collective bargaining or grievances.⁴ At the same time, it is important to distinguish between management and high level supervision below the level of management.

In distinguishing managerial employees from supervisory employees, great emphasis has been placed on the former's involvement with the formulation and effectuation of the employer's policies through the regular exercise of independent judgment and discretion.⁵ The managerial role entails the broad and active participation associated with the formulation of objectives or the methods of fulfilling established purposes. The task of delineating between managerial and supervisory employees in the instant case is made even more difficult by the fact that the titles affected, being professional positions, call for the "consistent exercise of discretion and judgment." Therefore, by necessity, we are left with the problem of determining whether the

See Board Decision Nos. 79-68, 43-69, 52-69.

See Board Decision No. 79-68.

See PERB Decision No. 5-3001.

PERB has defined "policy" in the context of government to mean "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."

employees involved are being paid for the exercise of high level professional skills and supervisory functions or for the performance of managerial duties and responsibilities.

Administrative Engineers

There are approximately 230 Administrative Engineers (AEs), making the title the most significant (in terms of the number of employees affected) of the 40 titles involved in this proceeding.⁶ The record reveals wide diversity in the range of assignments and the levels of responsibility of individual AEs. Paid under the City's Managerial Pay Plan, AEs are scattered throughout the first six levels of the plan which was recently amended by Personnel Order No.78/9.⁷ The new schedule, in pertinent part, is as follows: (City Exhibit No.53, based on figures available in February, 1978)

<u>Assignment Level</u>	<u>No. of AEs</u>	<u>Minimum</u>	<u>Maximum</u>
I	105	\$24,000	\$30,000
II	57	26,500	32,000
III	53	29,500	35,700
IV	9	33,000	39,300
V	3	36,500	42,700
VI	4	40,000	46,000
Unidentified	5		

The arguments pressed by the parties with respect to this Title also apply to the Administrative Architect (AA) title. There are approximately 10 AAs, and the Board will treat them, together with the AEs, as one group unless otherwise noted.

Since some raises were being processed at the time of the Hearings, it is possible that the current salaries of all AEs have not as yet been adjusted to the new levels which became effective on January 1, 1978.

The record contains the testimony of 25 AEs called as witnesses by the City and Local 375 (the Union). Affidavits of 36 additional AEs were submitted by Local 375. The voluminous information in the record concerning the Administrative Engineer title raises many interesting problems of first impression for the Board. Local 375 insists that a great majority of AEs do not qualify as managers, but rather perform and are compensated for high-level skills and supervisory responsibilities like other professionals in the City service previously found eligible for bargaining.⁸ The City contends that the Administrative Engineer title covers a wide-range of assignments and provides the flexibility needed to manage and run various complex municipal agencies. Acknowledging that not all AEs are currently performing on an equal plane, the City emphasizes that each of the employees involved can be assigned to the highest range of duties detailed in the job specification and that all of the employees are paid under the Managerial Pay Plan.

Examination of the job specification for the Administrative Engineer title illustrates the extremely broad outlines within which an AE may be validly assigned. (City Exhibit No.15)

Local 375 holds the bargaining certificate for the professional, scientific, and technical unit in the City which currently numbers approximately 3,000 employees.

"Under direction, with broad scope for the exercise of independent initiative and judgment, serves as division engineer in charge of a major design division, field division or equivalent, or serves as a consultant on major engineering matters to an agency, or is responsible for the review of the design of structures of all types and the examination of plans for the construction, alteration or repair of buildings under the jurisdiction of the Department of Buildings, and performs highly responsible supervisory work or highly difficult and responsible work in engineering; performs related work.

"Under direction of the executive engineer or the chief engineer, with great latitude for the exercise of independent judgment, heads an engineering bureau consisting of two or more divisions and is responsible for the execution of engineering programs and projects involving, for the most part, normal design, construction, and related problems; may consult on novel and unusual problems; with general instructions, may represent the agency at or before boards, commissions, civic groups, legislative bodies, or other government agencies; or assignments equivalent to those described; performs related work.

"Under direction of the executive engineer or the chief engineer, with great latitude for the exercise of independent judgment, heads an engineering bureau consisting of two or more divisions involving for the most part design, construction, and related problems which are extraordinary in one or more of the following characteristics: size and capital cost, or requirements or professional competence and creativity, or major impact on community relations and other important projects; may act as a consultant to or represent the chief engineer or the agency head in high level conferences and negotiations or perform research or supervise a unit engaged in research on novel and unusual problems which are extraordinary in one or more of

the characteristics of size and capital cost, or requirements of professional competence and creativity, or major impact on the community and other important projects; or assignments equivalent to those described; performs related work.

"Under general direction, with the greatest latitude for the exercise of independent judgment, serves as the chief engineer of an agency or the chief engineer for a major program, with two or more engineering bureaus engaged in the execution of projects involving, for the most part, normal design, construction and related problems; serves as the chief engineer of a major bureau of an agency with responsibility for major design and construction programs and for administration of on-going maintenance and operational activities; may act as executive engineer to the chief engineer of an agency with two or more engineering bureaus and engaged in several programs of extraordinary size and capital cost, or requirements of professional competence and creativity, or extraordinary impact on the community and other important projects; or assignments equivalent to those described; performs related work."

"Under general direction, with the greatest latitude for the exercise of independent judgment, serves as chief engineer of any agency with two or more engineering bureaus and engaged in several programs of extraordinary size and capital cost, or requirements of extraordinary professional competence and creativity, or extraordinary impact on the community and other important projects; or assignments equivalent to those described; performs related work."

A reading of this job specification demonstrates that an AE may be assigned duties which can be characterized as ranging from the performance of "highly responsible supervisory work or highly difficult and responsible work in engineering" to

work requiring "extraordinary professional competence and creativity."

The wide scope of responsibilities to which AEs can be assigned is possibly attributable to the earmarking for present permanent incumbents only of both the senior and Principal Engineer titles.⁹ This left the Administrative Engineer title as the only non-earmarked title in the Engineering occupational series with supervisory responsibilities. A comparison of the job specifications of the Senior and Principal titles with that of the Administrative Engineer title reveals many striking similarities in responsibilities and possible assignments between employees in the two earmarked titles and employees performing duties pursuant to the first two paragraphs of the Administrative Engineer job specification. This overlapping of function helps to explain why, upon becoming Administrative Engineers, some employees were, and in some cases still are, performing the same duties they performed in their lower titles.

It is possible that this situation is an inevitable by-product of the "broad-banding process" which combines several related but distinct titles under one general heading.

The Senior Engineer title was earmarked by City Civil Service Commission Resolution No.73-59, dated August 1, 1973. The Principal Engineer title was earmarked by Resolution No.69-37, dated April 18, 1969, which also established the Administrative Engineer title.

There are currently 119 Senior Engineers, 20 Senior Architects, 5 Senior Landscape Architects, and 2 Principal Engineers on the City payroll.

What makes the change of title an exceedingly difficult problem to deal with herein is the alleged accompanying change of status which the City claims applied to those employees who voluntarily elected to be reclassified to the Administrative Engineer title.

Personnel Order "No.83/68, dated October, 1968, which provided for the establishment of the Administrative Engineer title, specifically excluded the title from the Career and Salary Plan and referred to the title as part of a "management class of positions." This Personnel Order and the ensuing Civil Service Commission Resolution, No.69-37, in addition to clearly indicating that the Administrative Engineer title is a part of the "Managerial Service," specifically state that within the Administrative Engineer class "there may be assignments at different levels of responsibilities."

When the Senior and Principal Engineer titles were earmarked for present incumbents only, the employees affected were given an option of taking a qualifying examination for appointment to the Administrative Engineer title or remaining in their respective titles.¹⁰ The chief classification consultant in the Department of Personnel stated that the examination was given to insure that those engineers who

Principal and Chief Engineers were eligible to take the examination not only at the time of the earmarking of their respective titles in 1969, but also again in 1973, when the examination was given to Senior Engineers.

chose to elect entry into the new title were capable of performing all the functions that might be assigned them as AEs. (T-3/20/78-pp.809-815)¹¹ The statements contained in the applicable Civil Service Commission Resolution and Personnel Order, together with the option presented to those engineers qualified to take the aforementioned examination, make clear that those engineers who became AEs, either knew or should have known that their new title was intended by the City to be part of the "managerial Service" and something more than a high level supervisory position.

Throughout the course of this proceeding, the parties were made aware that a rebuttable presumption of manageriality would be established upon presentation by the City of job specifications for a title which included clear authorization for the assignment of managerial duties and proof that the title was included in the Managerial Pay Plan. We hold the view that salaries alone are not determinative of managerial status but they do give an indication of the level of performance expected of the employees involved. Even though all AEs are currently paid under the Managerial Pay Plan, the problem of deciding whether those AEs performing at the lower end of the broad spectrum of assignments for which AEs are eligible, are being paid for their professional expertise and supervisory roles rather than for their managerial responsibilities still proves troublesome.

References to the Hearing Transcripts will begin with "T", followed by the date of the particular hearing and the appropriate page number(s).

In order to answer this question definitively, it would be necessary to have each and every AE testify as to his duties and functions. Not only would this procedure be objectionable from an administrative standpoint, but a finding that some AEs are currently non-managerial would probably interfere with the right of the City to assign these employees at some later date to higher level responsibilities properly within the boundaries of their job title. Therefore, we have decided to follow our policy of refraining from splitting a title wherever possible and we will treat the Administrative Engineer title as a single entity for purposes of determining the managerial issue.¹² Splitting the title at the M-I level would have meant that all AEs being paid pursuant to the M-I step of the Managerial Pay Plan would be eligible for collective bargaining and the remaining AEs, those paid at the M-II through M-VI levels, would be declared managerial. We decided against doing so

In Decision No. 38-72, we followed this policy even where a significant number of the employees involved were not being paid under the Managerial Pay Plan at the time of our ruling, upholding the City's position as to manageriality of the title in dispute. We stressed our strong feelings in Decision No. 38-72 that the City has the duty to see to it, that if persons are assigned to or claimed to be assigned to managerial duties, that such persons should be paid under the Managerial Pay Plan. Thereafter, the City, to the best of our knowledge, paid the employees found to be managerial by our Decision, under the Managerial Pay Plan.

because we were troubled not only by the fact that the record shows that there are AEs at the M-I step who are performing as managers, but by the potential assignment of unquestionably managerial responsibilities to all AEs compensated at the M-I level.

The fact that there may be significant numbers of AEs currently performing at a level below that required for a finding of manageriality is supported by the provisions of the parties' aforementioned withdrawn stipulation. Part I,B. of that agreement had provided that employees in the Administrative Engineer title were to have a one-time opportunity to be reclassified into the "Principal" title without loss in compensation or benefits, subject only to a review of whether the employees' actual duties and responsibilities were managerial. The parties' recognition of the disparity in assignments underscores the problem faced by the Board in dealing with this "broad-banded" title.

The course of action we have decided to pursue in response to the questions raised by our investigation of this title, while consistent with principles well-settled in our earlier decisions, involves application of those principles in circumstances significantly different from those with which we have dealt in the past. The title, established in 1968, has never been eligible for collective bargaining and has been a subject for discussion and negotiation since 1972 when the City filed its petition to have

the title declared managerial/confidential.

Local 375 argues that when the promotional exam for the administrative title was given to Senior Engineers, it was done with the Union's approval as a means to get salary increases for these employees. Pointing to the 36 submitted affidavits as proof of its contention that the duties and responsibilities of the affiant employees have remained the same despite the change of job titles, Local 375 claims that "it was never contemplated that there be a change in status of the people who were having their title changed." (Union Brief, p.14) It is the union's position that if there was a change "it was not in the work performed but rather in the degree or amount of people or projects supervised" and that the employees in question are a part of the "pre-existing negotiating unit" although their new title is not.

Local 375 would have this Board disregard its prior decisions concerning manageriality and apply the aforementioned Section 201.7 standards, as the Union claims those criteria have been interpreted by PERB. We question the accuracy of the Union's perception in this regard, but address the Union formula for Board action in this area which maintains:

"Any Criteria Used by the OCB That is Not Directly Interrelated to the Four Statutory Criteria is Improper, Invalid and Illegal." (Union Brief, p.15)

Specifically, the Union singles out for attack as "illegal" and "invalid" criteria for a decision in this area the fact of a title's placement in the Managerial Pay Plan and of its position in the table of organization of the employing agency. Inclusion in the Managerial Pay Plan is not indicative of anything, the Union concludes, because there are titles in collective bargaining with higher salaries than those of some Administrative Engineers in the lower steps of the Pay Plan. With respect to the criterion of "position in table of organization," Local 375 says that reliance on this factor would

"... allow the employer to design its operation into small enough units to enable it to place more people at top positions in organizational charts ... (and thus) subvert and negate the intent of the law." (Union Brief, p.17)

The Union also relies on several PERB determinations¹³ concerning the managerial status of school principals and applies the reasoning of those decisions to the factual situation in the instant proceeding. The Union contends that formulation of policy must "involve the entire City or at the very minimum an entire agency," and concludes therefore that an Administrative Engineer

The Union's Brief at pp.5-13 discusses Board of Education, City of New York, 6 PERB 4017 (1973), Bd. of Ed., Beacon School Dist., 4 PERB 4024 (1971), Whitehall Central School Dist., 5 PERB 4013 (1972), and Coplaque Public Schools, 6 PERB 3001 (1973).

"who is a squad leader or section Chief or division head within a bureau of an agency, even if he has some interaction with a Deputy Commissioner, could not reasonably be deemed a policy formulator requiring exclusion from coverage of the (Taylor) Act."
(Union Brief, p.7)

The City argues that the Administrative Engineer has been classified in the Managerial Service with job title specifications which provide for duties at various assignment levels. Citing from the transcript and from several of its exhibits, the City states:

"The testimony taken as a whole shows that individuals in the titles of Administrative Engineer and Administrative Architect have wide latitude for decision-making in their areas of responsibility, responsibility for final binding decisions in a variety of areas, involvement in the selection, assignment and review of employees for the staffs under their supervision, and a relatively high rank in their Department's organizational hierarchy. Several witnesses testified that they were directly involved in labor relations."
(City Brief, p.11-12)

The City contends that it has developed a personnel structure based both on the right of public employees to organization and bargain collectively and the necessity to exclude from bargaining employees responsible for managing its operations.

"Management clearly does not and cannot mean only those at the very highest level of decision making, such as Commissioners or Deputy Commissioners. Common sense dictates that employees like those involved in this proceeding -- in charge of operational units in various City Departments -are managers." (City Reply Brief, p.2)

Examination of the record supports the City's claim that there are AEs in high positions throughout several municipal agencies, who are responsible for the supervision of hundreds of employees and who possess wide authority over the direction and operation of their bureaus, divisions, and squads. (T-1/26/77-p.241, 5/10/78-pp.919,957, 5/12/78-p.1036) Throughout the hearings and in its brief, Local 375 has repeatedly expressed its

position that AEs who perform in such capacities, do so pursuant to "in-house" office titles rather than according to the boundaries of their civil service title. The Board, although its determinations in this area are made on a title basis, is also concerned with the duties and demands of a particular position.

Job specifications are of value in making a determination as to the nature of the duties performed by the employees in a title, although such specifications cannot be considered controlling proof.¹⁴ The job specification quoted at pages 8-9 is of such a broad nature that it covers all the professional activities testified to by the various witnesses, as well as those duties described in the filed affidavits. The Union's argument that AEs performing managerial functions are doing so according to "in-house" titles does not preclude a finding that such duties are also within the very broad scope of the civil service Administrative Engineer title.

It is clear that there are many AEs who are performing managerial duties. A majority of these play a significant role in the formulation of policy as that concept has been previously interpreted and applied by the Board.¹⁵

See Decision No. 43-69, p.10.

See Decision Nos. 43-69, 6-70, 41-72.

The Union argues that all policy decisions filter down from the Mayor, Commissioners, and Deputy Commissioners. Although a Commissioner would have the ultimate responsibility for every policy decision affecting his agency, policies emanating from a Commissioner's desk are usually general in nature and are reached after consultation with the heads of various organizational segments of an agency who are responsible for policy implementation. Our investigation is not limited to the final act of policy formulation, wherein a proposal becomes a directive or policy statement, but covers the essential process which produces the decision. Significant and responsible participation in that process is probative evidence of managerial status.

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The operation of most agencies requires a steady flow of information among all levels of a command structure. Directives which filter down from a Commissioner's office become increasingly specific as they descend through the various levels of an agency leaving less room for the exercise of at each succeeding level. AEs on the second, third, and fourth discretion the fact that there are levels of departmental hierarchies (City Exhibits Nos.47-49,51), renders unconvincing the Union's argument that AEs do not become involved with policy formulation to the extent required to support a finding of manageriality. The Administrative Engineer, as an agency's highest level representative on a variety of projects of great

size, in terms of personnel, equipment, and facilities under his control -- and of the area and scope of the service rendered under his direction, regularly exercises significant independent judgment and discretion.

"Management functions, such as policy formulation and the development of operational procedures and production standards, can be carried out only through the services of high level personnel. Such personnel, of necessity, are required to make, or significantly assist in reaching, decisions essential to the managerial function and which, in many instances, relate to subjects, or potential subjects of collective bargaining."¹⁶

We are not persuaded by the Union's claim that PERB's decisions concerning the manageriality of school principals are controlling herein. (See Footnote 7) The legislative intent underlying the 1971 amendments to Section 201.7 of the Taylor Law, specifically cautioned that the statutory criteria be applied conservatively by PERB so as to preserve existing units of principals and other school administrators.¹⁷ Principals and

Decision No. 6-70, p.8.

L.1971, C.503 as amended by L.1971, C.504 and L.1975, C.854 provides:

"It is the intention of the Legislature that designations of employees as management or confidential pursuant to subdivision seven of section two hundred of the civil service law as amended by this act reflect the extent to which a public employer has from time to time organized itself for collective negotiations. It is not the intention of the Legislature to destroy existing employer-employee negotiating units such as principals or other school administrators who do not formulate

(over)

school administrators, having had a long history of collective bargaining and being specifically singled out in the accompanying statement of legislative intent are not an appropriate group from which to draw conclusions concerning PERB's application of its managerial standards.

In a major case concerning the alleged managerial/confidential status of professional employees, PERB approved, with some exceptions, a list submitted by the State of New York of those employees who were strongly claimed to be managerial. In this connection, PERB stated that "... those who supervise professional, scientific, and technical employees are generally at the managerial level...."¹⁸ Over 40 engineering titles were among those deemed by PERB to be managerial.

We do not agree with Local 375 that AEs are in reality a part of a pre-existing unit. The Administrative Engineer title has never been certified to Local 375 or any other bargaining representative. Since its creation in 1968, the title has never been included in a bargaining unit nor covered by the terms of a collective bargaining agreement. Although the employees who are now AEs were in bargaining as Senior and Principal Engineers, this is not analogous to the school principal and administrator situation, in that the employees in the PERB cases did not undergo a change of title involving as did the advance to Administrative Engineer status, a qualifying examination and in almost all cases an increase in pay.

Certain AEs play important roles as management

Footnote 17 continued

policy or who do not have a significant role in employee relations as described in subdivision seven of section two hundred one of such law as amended by this act. Nor is it the intention of the Legislature to impede, impair or otherwise interfere with the exercise of rights of organization and representation of public employees such as principals or other school administrators who do not formulate policy or who do not have a significant role in employee relations as described in subdivision seven of section two hundred one of such law as amended by this act provided the determination of managerial or confidential status of such employees shall be made in accordance with the same standards established pursuant to this section for the determination of such status with respect to public employees such as principals or other school administrators who are in existing employer employee negotiating units.

representatives in various labor relations settings. One Administrative Engineer testified that he negotiates directly with union officials concerning working conditions and other items not covered by the applicable Comptroller's Determination.¹⁹ (T-5/10/78-pp.925,932) Another AE spoke of his role as Chairman of a labor-management committee which serves as a forum for discussion of division-wide working conditions and policies. (T-5/12/78-pp.1039,1040) Some AEs are called upon by the City's Office of Municipal Labor Relations to supply suggestions and other forms of information used to formulate and support collective bargaining positions. (T-5/10/78-pp.926,961, 5/12/78-p.1041)

Many AEs are also responsible for various personnel functions. Several witnesses testified that they have the power to assign and transfer personnel and the authority to set

Section 220 of the New York State Labor Law provides that certain employees, i.e.- laborers, workmen, mechanics - be paid the "prevailing rate" for a legal day's work as determined, in the case of New York City, by the City Comptroller. All non-economic matters are negotiated in the usual manner by the certified representative and the City.

priorities for the filling of vacancies. (T-1/26/77-pp.216, 248, 5/10/78-pp.913,924,960, 5/12/78-p.1043, 5/16/78-pp.1091, 1169)
There is ample evidence in the record that some AEs play important roles in the disciplinary process and are instrumental in the hiring and firing of subordinate employees. (T-1/26/77-p.253, 5/12/78-pp.991,1038) One AE spoke of his involvement with personnel and contract administration in the following way:

"I am responsible to see that the disciplinary procedure and the related grievance procedures are carried out in accordance with agreement and with the law." (T-5/10/78-p.961)

Budget preparation and allocation of funds are significant indicia of management status attaching to the Administrative Engineer title. (T-1/26/77-p.244, 5/10/78-p.9260, 5/16/78-p.1168)
AEs who head divisions or bureaus are responsible for planning budgets for personnel and "other-than-personnel-services," and coordinating these needs with programs already in existence and others currently being developed. (T-5/10/78-p.960, 5/12/78-p.1044) The budgets in question range from a few million dollars to \$100 million for the capital budget of one of the divisions of the Department of Transportation, Bureau of Highway Operations. (T-5/16/78-p.1149)

Reference is also made to the filed affidavits and the Managerial Assignment Questionnaires received in

evidence.²⁰ Examination of these documents reflects the high level supervisory roles and the key staff positions filled by AEs. In instances where the supervisory function of an Administrative Engineer is minimal, it is often counter-balanced by the individual's role as a consultant to the Director and Deputy Directors of an agency on a wide range of complex and important matters.

In summary, when all of these factors - policy formulation and effectuation, independent judgement and discretion, participation in labor relations position in table of organization, power to assign and transfer, involvement in discipline and discharge, personnel involvement, job specifications, inclusion in the Management Pay Plan, number of subordinate employees, preparation of budget/allocation of funds, role as consultant - are considered together, they present a convincing case for the City's position that the Administrative

Local 375 objected to the receipt of the Managerial Assignment Questionnaires (MAQs) into evidence, maintaining that the employer coached and otherwise influenced the employees in the preparation of these documents. We feel that the MAQs are of probative value, there being no evidence that the employees were coerced or improperly influenced in any manner. See Decision No. 46-72, involving Assistant Directors of the Department of Social Services, wherein at p.10 we stated:

"As to the form of the answers they gave (in MAQs) and the fact that the employer provided the employees with model questionnaires and with other forms of guidance and assistance in filling out the forms, we note that these employees are college graduates and professionals, that they were aware of the fact that the questionnaire constituted a sworn statement and in light of these facts, we find it fair to presume that their answers are substantially accurate and true"

Engineer title is managerial.

We are aware that the currently assigned duties of man AEs, while involving significant professional skills and supervisory responsibility, do not reach the level necessary to support a finding of managerial status. In fact, as the Union repeatedly pointed out throughout the hearings, many AEs are presently performing duties similar to those assigned them as Senior or Principal Engineers. As we remarked earlier, this situation may be attributable to the City's pursuit of its goal to gain greater flexibility in its authority to assign employees to different functions through "broadbanding." On this point it is instructive to refer again to the testimony of the chief classification consultant in the Department of Personnel, who in response to a question concerning the variance in job level assignments of Administrative Engineers stated:

"...The answer is that when we originally put the title into management, these levels existed, and it was the Personnel Department's conclusion that it was not practicable to meaningfully distinguish between these levels in terms of testing, which would have left it in the old setup and not part of the management team.

"We arrived at the conclusion, although they were all at these different levels, that they were all properly part of a management selection in which the selection techniques for picking an individual for an assignment could not validly be done solely through competitive examination but

required other selection devices. And
therefore they put them into management
and used other measurement criteria to
make assignments of people within the
total range." (T-5/19/78-pp.1232-1233)

There is nothing to prevent the City, at any time, from
validly assigning additional and broader duties to "under-
employed" AEs which would clearly establish their manageriality
and, at the same time, be completely consistent with the job
specification for the Administrative Engineer title. In effect,
we believe that an employee may validly be charged with the
responsibility for the performance of any or all of the full
range of the duties properly prescribed for his title by the
appropriate examination announcement or job specification.
Consequently, although we have considered the option of splitting
the title by finding some AEs managerial and others eligible for
bargaining, we decided not to do so because of the City's
unfettered right to assign the employees within the boundaries of
the applicable job specification.

We are mindful of Local 375's reliance on In the Matter of
State of New York, 5 PERB 3001, wherein at page 3004, PERB stated
that

"Only in the event of a very clear instance
of employees in existing units exercising
managerial or confidential responsibilities
should they be excluded from the statute;
all uncertainties should be resolved in
favor of Taylor Law coverage."

We have already disposed of the Union's contention that AES should be considered part of a previously existing unit and furthermore, we are of the view that the above-quoted precept is only applicable to a single or narrow group of titles rather than to the broad-banded title dealt with herein.

Thus, it is the capability of all AEs to be assigned to perform managerial duties, rather than the actual current performance of managerial functions by each individual employee which we regard as the controlling factor herein. This conclusion is consistent both with decisions of the National Labor Relations Board and the federal courts.²¹ Therefore, we find the titles of Administrative Engineer and Administrative Architect to be managerial.

In making this determination we recognize that although there are 119 Senior Engineers and 2 Principal Engineers currently on the City payroll, there is no supervisory title below the "Administrative" level to which employees can now be appointed. This is not typical of other City organizational structures. However, our ruling in the instant case does not preclude the parties from reaching an accord to provide for the reclassification of those AEs who are not currently

See Sasser Tractor Co., Inc. and International Association of Machinists and Aerospace Workers, 179 NLRB No.8, 72 LRRM 1286 (1969) and Retail Clerks v. NLRB, 366 F.2d 642, 62 LRRM 2837 (1966).

performing, or do not wish to perform in the future, any managerial function. Of course, the mechanics of the procedure, the eligibility requirements, and the safeguards to be applied, as well as the overall feasibility of such a plan, are matters best left for discussion between the parties.

Principal Engineer (all specialties and fields of specialization)

Our records reveal that there are two employees with Principal Engineer titles. A witness from the Department of Personnel testified that the title is earmarked for present permanent incumbents only. We have already mentioned that Principal Engineers were given the option of taking an examination which would qualify them for the title Administrative Engineer, and only those who chose not to take the test remain in the "Principal" title. (T-3/20/78-pp.809-815) The examination was given to make sure that engineers in the Principal title would be capable of performing all the functions that might be assigned them as Administrative Engineers. It appears from the materials in the record that Principal Engineers do not perform at a level comparable to that which might be required of Administrative Engineers and therefore, we conclude that they cannot properly be found to be managerial or confidential.

We reach this decision even though the incumbents in the title are being paid under the Managerial Pay Plan. One of the incumbents submitted an affidavit which supports the union's position that the title is non-managerial. In the absence of any evidence to contradict the contents of the filed affidavit, the rebuttable presumption of manageriality will not attach to this title.

Assistant Directors of Technical Services
(Air Pollution Control and Emissions Inventory
Stationary Sources)

The two Assistant Directors of Technical Services still numbered among those involved in this proceeding,²² head small teams of employees charged with the responsibility of gathering and analyzing data concerning air pollution levels within the City. These groups also develop strategies to maintain and/or improve the quality of the City's air, taking into account technical considerations as well as practical and political realities that could impede the success of an otherwise workable plan.

The Assistant Director of Technical Services deploys the manpower and equipment assigned to the unit according to the

The Board, in Decision No. 21-78, granted the City's motion that the title Assistant Director of Technical Services (no specialty) be dismissed from this proceeding, it being a title reserved for the use of the City Council with duties relating to legislation pending before that chamber and therefore inappropriate for inclusion in a unit of various engineering, scientific, and related titles.

priorities of the day. The position calls for the (exercise of disciplinary authority when needed and for all the concomitant duties that are associated with a supervisory role. A professional employee, the Assistant Director of Technical Services, according to the testimony in the record, neither formulates policy nor becomes involved in collective bargaining. Therefore, we find this title, which covers two specialties with incumbents - Air Pollution Control and Emissions Inventory, Stationary Sources, to be non-managerial.

Superintendent of Buildings and Grounds
and Assistant Superintendent of Buildings
and Grounds

The Superintendent of Buildings and Grounds and the Assistant Superintendent of Buildings and Grounds, together with the titles in the Health Facilities Planner Series (see page 35), are unique to the Health and Hospitals Corporation (HHC).

The City takes the position that, unlike the other employing agencies involved in this proceeding, the HHC is empowered by its enabling legislation²³ to create and administer its own personnel structure. Therefore, the City argues, the HHC's classification of the employees in the above-mentioned titles as managerial, is controlling

See the "New York City Health and Hospitals Corporation Act," Sections 7831-7406 of McK. Unconsolidated Laws.

herein.²⁴ However, as the Union points out in its Brief, the applicable legislation also provides that the employees of the HHC be treated like other public employees in New York City in that they come within the jurisdiction of the Office of Collective Bargaining and, as a result, can only be excluded from collective bargaining based on a finding of managerial-confidential status by this Board.²⁵ Moreover,

the New York State Court of Appeals in Civil Service Employees Association v. Helsby, 300 NYS 2d 424, (1969), held that final

The City claims that the titles in question were established pursuant to §7385 paragraph 11 of the enabling legislation, which reads as follows:

"To employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of the plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualifications and prescribe their duties and other terms of employment.

"All such personnel shall be excluded from collective bargaining representation."

§7390 paragraph 5 reads:

"The corporation (HHC), its officers and employees, shall be subject to article fourteen of the civil service law and for all such purposes the corporation shall be deemed "public employees", provided, however, that chapter fifty-four of the New York City Charter and Administrative Code and Executive Order No.52 dated September 29, 1967, promulgated by the mayor of the City of New York, shall apply in all respects to the corporation, its officers and employees

authority to establish appropriate bargaining units rests with the "neutral agency," although public employers may initially designate bargaining units in the course of extending recognition to employee organizations.

The Superintendent of Buildings and Grounds is the employee at each of the City's hospitals charged with the responsibility of managing and operating the institution's physical plant and its grounds. One witness described the position as follows:

"The Superintendent is the highest paid technical person in the hospital administration and his responsibility is to make sure that the physical accommodations of the hospital permit continued patient care." (T-3/2/78-p.538)

The level of responsibility and scope of authority exercised by the Superintendent is directly proportional to the size and activity of the individual institution to which the employee is assigned. This relationship seems to apply in the salary area as well, with the Superintendents of some of the larger institutions being paid at the M-III step of the HHC Managerial Pay Plan while other Superintendents are receiving M-II level salaries.

The staff supervised by a Superintendent can range from 30 at a small hospital (T-2/28/78-p.456) to 300 at a large

institution (T-1/31/78-p.54) where the Superintendent has the "in-house" title of Associate Executive Director. The authority to hire and fire, to transfer, to approve vacation and overtime schedules, to establish training programs, and to make all other personnel decisions falls within the Superintendent's jurisdiction. (T-1/31/78-pp.77,83,84, 2/3/78-pp.159-61, 220-222, 2/18/78-pp.307,315, 3/2/78-p.540) The Superintendent's position in the table of organization is either directly under the hospital's Executive Director (T-1/31/78-p.54, 2/3/78-p.217, 2/22/78-p.410) or an Associate Executive Director. (T-2/3/78-P.153, 2/8/78-p.299, 2/28/78pp.452,455)

A few of the Superintendents called as witnesses testified that they regularly serve as "senior officer on duty" or "administrator on call" which means that in the absence of the Executive Director, they are vested with full authority over the operation of the institution. (T-1/31/78-p.57, 2/3/78-p.228) One witness spoke of his appointment to serve as a representative of the hospital on a committee of the Health Systems Agency which monitors the health needs of local communities and helps to translate such needs into new health programs and services. (T-1/31/78-p.74)

It appears that almost all of the Superintendents become involved to some extent in budget preparation and allocation. (T-1/31/78-p.73, 2/3/78-pp.163,223,224, 2/8/78-pp.293-297,

3/2/78-pp.547-549) The various budgets for which a Superintendent might be responsible cover such areas as capital improvements, renovations, daily expenses and personnel services. At certain hospitals, Superintendents are called upon to prepare and award contracts to private companies for construction projects that cannot be handled by staff. (T-1/31/78-p.90, 2/3/78-pp.165,227, 2/8/78-p.298) In such cases, the Superintendent serves as a liaison between the outside contractor and the hospital and is responsible for reviewing the progress and quality of the work being performed.

The record also reflects that a majority of, if not all, Superintendents serve on several hospital committees, where their technical knowledge serves as an important resource for other hospital administrators. (T-1/31/78-p.61, 2/13/78 pp.156,218, 2/8/78-pp.310-312, 3/2/78-p.550) Typical of these committees are those dealing with: "Safety," where environmental hazards are explored and procedures for such things as fire drills are formalized; "Space and Planning," where decisions concerning ,new services within existing facilities are discussed; and "Infectious Control," where problems concerning the general cleanliness of the hospital, e.g.- linens, air quality, kitchen equipment, are considered.

The Board recognizes that the responsibilities of a Superintendent of Buildings and Grounds are dependent upon the size of the health facility in which he functions. The

fact that the 12 Superintendents involved herein are instrumental in approving all renovation and major constructional changes that take place in their respective hospitals, and are exclusively responsible for the entire physical plant of some of the largest health institutions in the nation convince us that the title must be declared managerial. We are also convinced that the 7 Assistant Superintendents of Buildings and Grounds fulfill the role of managerial employees. Based on the evidence in the record concerning the title's extent of responsibility, potential for repeated standing-in for the Superintendent in performing managerial functions,²⁶ salary range, and its level in the positional hierarchy of the hospital, we find that the employees in the title of Assistant Superintendent of Buildings and Grounds are performing at a managerial level. (T-2/28/78-pp.466,484,499,506,509,511,515,518,519,521)

Health Facilities Planner Series

The portion of the Health Facilities Planner series involved herein consists of three titles (Senior Health Facilities Planner, Health Facilities Planner, Assistant Health Facilities Planner) exclusively assigned to the Health

In Decision No. 19-71, we held at page 11 that where an assistant is involved in, and familiar with, all functions and activities of his superior (who is a managerial employee) and, in fact, at various times performs all of the duties of his superior and fully replaces him when he is absent, the assistant too shall be deemed managerial.

and Hospitals Corporation.²⁷ As a group, the employees (approximately 15 in number) in these titles are responsible for the design of new hospital interiors and for the architectural work necessary for renovation projects in older health facilities. (T-3/2/78-pp.577-578) Comparison of the job specifications of these three titles with those of Senior Architect, Architect, and Assistant Architect, reveals many similarities of duty and function, between the parallel titles of the two series. The Architect series has been in collective bargaining since July 1, 1965, pursuant to a certification of the New York City Department of Labor, dated May 12, 1965.

A senior Health Facilities Planner (SHFP) is charged with the responsibility of supervising a small group of professional and clerical employees, among whom there might be Assistant Health Facilities Planners (AHFP) and/or Health Facilities Planners (HFP). All personnel decisions regarding this group, though subject to review, are made by the SHFP. The SHFP assigns to his professional staff various projects which usually stem from proposals made by individual hospital administrators. The HFPs and the AHFPs assigned to these projects work primarily on their own and are responsible for

The fourth title in the series, Junior Health Facilities Planner, was added to Local 375's unit by Decision No. 9-78.

evaluating information and preparing studies based on their expertise in the area. Meetings with the involved hospital officials are held to discuss the financial aspects of the plan as well as the timetable for construction and completion of the project. Depending the scope of any particular undertaking, the SHFP may attend or a HFP or AHFP may be assigned to represent the interests of the office. Although this type of work requires the exercise of professional judgment and discretion over a wide-range of complex issues, such professional responsibility must be distinguished from managerial functions.²⁸ In this regard, the definition of a "professional employee" contained in the National Labor Relations Act at Section 2(12) is of interest:

"the term 'professional employee' means ...
any employee engaged in work (i)
predominantly intellectual and varied in
character as opposed to routine mental,
manual, mechanical, or physical work; (ii)
involving the consistent exercise of
discretion and judgment in its performance;
(iii) of such a character that the output
produced or the result accomplished cannot
be standardized in relation to a given period
of time; (iv) requiring knowledge of an
advanced type in a field of science or learning
customarily acquired by a prolonged course of
specialized intellectual instruction and study
in an institution of higher learning or a
hospital, as distinguished from a general
academic education or from an apprenticeship
or from training in the performance of routine
mental, manual, or physical processes..."

The scope of responsibilities attaching to the AHFP and HFP titles fits squarely within the bounds of the above definition of a professional employee. The additional duties exercised by a SHFP, as head of a small professional unit, are those of a supervisor rather than a managerial employee. Moreover, there is no indication that a SHFP either formulates policy or is involved in collective bargaining. Therefore, with a view towards the non-managerial status of the comparable Architect series titles, we find the title of SHFP to be non-managerial and accordingly, also find, the two lower titles in the series, HFP and AHFP, to be non-managerial as well.

Principal Planning Consultant (Land Use)

Principal Planning Consultant (Urban Renewal)

Principal Urban Designer

The one incumbent in the title Principal Planning Consultant (Land Use) was called as a witness and testified that his "Office-title" is Director of the Division of Planning for Staten Island. As Director, he is responsible for all decisions affecting land use and zoning in the borough and serves as a conduit between the residential and business community-of Staten Island and the City Planning Commission. He is also entrusted with the responsibility of making recommendations pertaining to changes in the zoning law, taking into consideration technological and/or sociological develop-

ments in the community.

In response to a question posed by Counsel for the Union concerning policy involvement, the Principal Planning Consultant stated:

"...I will make policy for the agency regarding what directions particular areas of the City, in this case Staten Island and particular areas of Staten Island, will take in terms of their development, whether they will be developed with one-family homes, two-family homes, apartments, whether they will be developed with stores, whether they will be developed in a manufacturing sense.

"I also make policy concerning how, where say for manufacturing land, where it is the City's intention to develop for job production, what kind of procedures would best work in order to carry that out."
(T-3/8/78pp.749-750)

The Principal Planning Consultant reports, directly either to the Commissioner of the agency, who also serves as Chairman of the City Planning Commission, or to the Commissioner's Executive Director. As Director of the Staten Island office, he makes all decisions with respect to personnel and disciplinary matters.

The Union produced no evidence which would contradict the City's submissions on the related title of Principal Planning Consultant (Urban Renewal). An examination of the job specifications of the two Principal Planning Consultant titles shows many similarities in functions, duties, and qualification requirements. Based both on the rebuttable

presumption of manageriality referred to earlier and on the testimony given by the incumbent in the Principal Planning (Land Use) title, we readily conclude that the Principal Planning Consultant (Land Use) and the Principal Planning Consultant (Urban Renewal) titles are managerial.

We are, however, unwilling to uphold the presumption as it relates to the title of Principal Urban Designer. Although, the Union offered no evidence concerning this title, examination of the pertinent job specification reveals that incumbent Principal Urban Designers do not take part, on a regular basis, in the formulation of policy for their respective agencies nor do they occupy high positions in agency hierarchy.

The Principal Planning Consultant (Land Use) testified that his "second in-command" in the Staten Island Planning Office is a Senior Civil Engineer and next in line below is a Principal Urban Designer. (T-3/8/78-p.744) Senior Civil Engineers employed by the Department of City Planning are non-managerial and have been certified to Local 375 and eligible for collective bargaining since 1960.²⁹ We will avoid, wherever possible, creating situations where managerial employees would be subject to the supervision of non-managerial workers. Therefore, despite the presumption in favor of manageriality which could otherwise attach to this group, we find the title of Principal Urban Designer to be non-managerial.

Deputy Director of Planning

Our records indicate that there are 8 Deputy Directors of Planning currently on the City payroll. Of these, two were called as witnesses, and one submitted an affidavit.

One witness testified that his office title within the Department of City Planning is "Director of the Division of Human Resources and Population." He described the work of the Division, in pertinent part, as follows:

"The Division is responsible for the activities of the Planning Commission as they relate to the various agencies concerned with people's services, education, higher education, health and the Health and Hospitals Corporation, Social Service, libraries, the Department of Aging, the Office of the Handicapped. Various functional areas that relate to people's services as contrasted to physical construction and buildings.

"What our Division does is tries to interrelate the various activities of the line agencies, the functional agencies of the City in these areas as they relate to City Planning issues and policies and also the activities of the other non-governmental agencies in these areas as they relate to City activities and policies" (T-5/12/78-p.p.1013-1014)

The Division consists of 35 employees supervised by the witness.

This witness also stated that he often represents the Chairman of the City Planning Commission on various boards, committees, and task forces. When serving in this representative capacity, he is empowered to exercise the Chairman's vote

and commit the agency to wide-ranging policies and actions. (T-5/12/78-pp.1014-1021)

The other witness testified that he is presently serving as the Director of the Brooklyn Office of Planning. As Director, he supervises and makes all personnel decisions with regard to the 29 employees on staff. He reports directly to the Chairman of the City Planning Commission and is responsible for training his employees in some of the more unusual aspects of the job. (T-5/22/78-pp.1328,1331,1334)

The functions of an office like the Brooklyn Office of Planning are varied. The testimony makes reference to the role of the Office as a source of technical expertise and advice for the use of local community boards throughout the Borough. The Office is also responsible for generating local area plans and related priorities and strategies for capital expenditures and community development funds. Policy recommendations are regularly made on a host of far-ranging subjects. (T-5/22/78-pp.1328-1330) Some appreciation of the dimension and scope of the projects that are in the witness' charge can be gained from the following description of a particular land use study:

"... I have spent a major amount of time in the last few months working on a new special zoning district for Bay Ridge, which is a community-wide approach to preservation of neighborhood quality through zoning. It has Citywide implications because it may be seen as prototype for the future of zoning in neighborhoods, and the liaison is doing some of the fundamental research and

analysis, and I am working with her and with the parts of the agency to make sure that basically we are being evenhanded about the application of this; that the Citywide implications are clearly understood so that we are not doing something which is going to be upsetting to the rest of the City, and make sure that it is a complete and comprehensive package which now is being brought before the City Planning Commission for review." (T-5/22/78-p.1333)

The Deputy Director of Planning who filed the affidavit, is an employee in the same Division headed by the first witness mentioned above. Working under the direct supervision of the Director of the Division, he has the office title of Coordinator for Information. He supervises people only occasionally and gets his assignments from the Director, who determines priorities. Participation in agency and interagency conferences on a myriad of planning related topics is also one of his duties.

Viewing the evidence on the Deputy Director of Planning title as a whole, we conclude that the title is managerial. Our determination is founded on the involvement of the incumbent employees with policy formulation and their role as consultants on various planning projects of great import, together with their duties as administrators of divisions and borough offices.

Quantitative Analysis Series, Principal
Management Analyst and Program Research
Analyst

The titles of Quantitative Analyst and Program Research Analyst were earmarked for present incumbents only by Department of Personnel Resolution No.77-25, dated April 20, 1977.³⁰ This resolution also provided for the reclassification of the Senior Quantitative Analyst and Principal Quantitative Analyst titles to Associate Staff Analyst and Administrative Staff Analyst respectively. These latter two titles are part of the Staff Analysis Occupational Group. A witness from the City's Department of Personnel testified that the only reason why the titles of Quantitative Analyst and Program Research Analyst were not similarly reclassified, was "because their salary level fell between the level of Staff Analyst and Associate Staff Analyst." (T-3/3/78-pp.655-656) The witness explained that the Department of Personnel felt that to reclassify these two titles in spite of the salary differences would have needlessly complicated this major broad-banding proposal.

The title of Principal Management Analyst had two classifications until Personnel Resolution No.77-25 provided for the reclassification of Principal Management Analyst (Rule X

The parties' petitions (RU-521-75, RE-24C-72) covering the Quantitative Analysis Occupational Group, also included the title of Supervising Quantitative Analyst. This title was deleted from the Quantitative Analysis series by City Civil Service Commission Resolution No.71-29, dated March 26, 1971.

Managerial Service) to Administrative Staff Analyst. The other classification, Principal Management Analyst (Rule XI-Management Analysis Occupational Group), was earmarked for present permanent incumbents only by City Civil Service Commission Resolution No.71-36.

There is currently pending before us a petition, filed by the City on May 25, 1978, to have the Staff Analysis Occupational Group declared managerial/confidential. In order to avoid possible inconsistencies and to prevent prejudice to any of the parties involved in this new proceeding, which has been docketed as RE-97-78, we will sever the "Analyst titles" from this determination. Accordingly, the titles of Quantitative Analyst, Program Research Analyst, and Principal Management Analyst will be added to the list of titles to be dealt with in the context of RE-97-78.

Project Manager

Project Managers are responsible for various duties involved with the development of capital projects from the planning stage through completion and opening of a particular facility. The City made no attempt to demonstrate how these duties would qualify Project Managers for designation as managerial employees. In fact, one City witness testified that the title is not even included in the Managerial Pay Plan of the employing agency. (T-2/21/78-p.346) Therefore, we

find that the title of Project Manager is not managerial/confidential.

Other Titles

The following list of titles, based on the City's presentation of job specifications and related evidence, including coverage by the Managerial Pay Plan, and in the absence of any Union evidence in opposition (other than the filing of one of the certification petitions herein), are found to be managerial and/or confidential and, therefore, ineligible for collective bargaining:

Managerial/Confidential

Administrative Project Director

Administrative Purchase Inspector

Administrative Space Analyst

Administrative Superintendent of Buildings and Grounds

Administrative Superintendent of Highway
Operations

Administrative Transportation Planner

Associate Director of Industrial Engineering

Chief Architect Civil Engineer (Water Supply, Rule X)³¹

Coordinator of Traffic (Plans and Surveys)³²

Coordinator of Traffic (Signals and Communications)

Senior Project Manager

The managerial Assignment Questionnaire of the one incumbent in the title was accepted in lieu of a job specification.

The one incumbent in the title was called as a witness due to the City's inability to produce a job specification for the position. The testimony given by the witness met the City's burden of proof in the absence of any Union opposition. (T-5/22/78-pp 1277-1296)

Consistent with Board of Certification Decision No. 19-75, we make no determination at this time with respect to titles that are currently vacant.³³ These titles are as follows:

Vacant Titles

Administrative Landscape Architect
Assistant Administrator (Program Analysis)
Assistant Administrator (Program Analysis and
Development)

Assistant Administrator (Program Analysis and
Development) (Model Cities)

We will also make no determination concerning the titles of Assistant Administrator (Construction Coordination) and Assistant Administrator (Planning and Research). Neither the City nor Local 375 presented any evidence on these two titles, though the City did produce a letter from the Department of Personnel to the effect that a resolution was being prepared to delete these two titles and replace them with new ones in accordance with changes in the City Charter.³⁴

Decision No. 19-75, p.4:

“With respect to any existing titles in the Managerial and Executive Pay Plans which are vacant as of the date of this decision, and which are subsequently filled, a rebuttable presumption will attach that employees in such titles are managerial and/or confidential and are ineligible for collective bargaining, unless and until this Board rules otherwise.

A related title, Assistant Administrator (Planning), included in the parties' petitions (RU-561B-76, RE-24H-72) was deleted by City Civil Service Commission Resolution No.76-36, dated May 26, 1976.

DETERMINATION AND ORDER

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

DETERMINED, that employees in those titles listed below are, within the meaning of the New York City Collective Bargaining Law, managerial and/or confidential and, therefore, excluded from collective bargaining:

Managerial/Confidential

- Administrative Architect
- Administrative Engineer
- Administrative Project Director
- Administrative Purchase Inspector
- Administrative Space Analyst
- Administrative Superintendent of Buildings and Grounds
- Administrative Superintendent of Highway Operations
- Administrative Transportation Planner
- Assistant Superintendent of Buildings and Grounds
- Associate Director of Industrial Engineering
- Chief Architect
- Civil Engineer (Water Supply, Rule X)
- Coordinator of Traffic (Plans and Surveys)
- Coordinator of Traffic (Signals and Communications)
- Deputy Director of Planning
- Principal Planning Consultant (Land Use)
- Principal Planning Consultant (Urban Renewal)
- Senior Project Manager
- Superintendent of Buildings and Grounds;

and it is further

DETERMINED, that the employees in those titles listed below are not managerial or confidential and, therefore, are eligible for collective bargaining:

Eligible for Collective Bargaining

Assistant Director of Technical Services
(Air Pollution Control)

Assistant Director of Technical Services
(Emissions Inventory - Stationary Sources)

Assistant Health Facilities Planner
Health Facilities Planner

Principal Engineer (all specialties and fields
of specialization)

Project Manager

Principal Urban Designer

Senior Health Facilities Planner;

and it is further

ORDERED, that Certification No. 26-78 be, and the same hereby is amended to include the titles listed above as "Eligible for Collective Bargaining," subject to existing contracts, if any, it appearing to the satisfaction of the Board that a majority of the employees in the unit as amended herein have authorized check-off of dues in behalf of Local 375; and it is further

ORDERED, that the titles of Quantitative Analyst, Principal Management Analyst, and Program Research Analyst, be severed from this proceeding, and that they be made a part of Board of Certification Docket No. RE-97-78; and it is further,

ORDERED, that any aspects of the following cases that have not been previously decided by the Board, determined

herein, or expressly reserved for future determination on the basis of outstanding petitions be, and the same hereby, are, dismissed:

<u>RE-24B-72</u>	<u>RU-440-74</u>
<u>RE-24C-72</u>	<u>RU-443-74</u>
<u>RE-24H-72</u>	<u>RU-521-75</u>
<u>RE-241-72</u>	<u>RU-533-75</u>
	<u>RU-561B-76</u>
	<u>RU-561C-76.</u>

DATED: New York, N.Y.
August 22, 1978

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER

Decision No. 45-78

The titles and title code numbers of the employees affected by this decision are as follows:

Managerial/Confidential

<u>Administrative Architect</u>	<u>10004</u>
<u>Administrative Engineer</u>	<u>10005</u>
<u>Administrative Project Director</u>	<u>95596</u>
<u>Administrative Purchase Inspector</u>	<u>10035</u>
<u>Administrative Space Analyst</u>	<u>10037</u>
<u>Administrative Superintendent of Buildings and Grounds</u>	<u>10040</u>
<u>Administrative Superintendent of Highway Operations</u>	<u>10039</u>
<u>Administrative Transportation Planner</u>	<u>10041</u>
<u>Assistant Superintendent of Buildings and Grounds</u>	<u>91602</u>
<u>Associate Director of Industrial Engineering</u>	<u>03938</u>
<u>Chief Architect</u>	<u>21244</u>
<u>Civil Engineer (Water Supply) (Rule X)</u>	<u>93435</u>
<u>Coordinator of Traffic (Plans & Surveys)</u>	<u>22388</u>
<u>Coordinator of Traffic (Signals and Communications)</u>	<u>22385</u>
<u>Deputy Director of Planning</u>	<u>22140</u>
<u>Principal Planning Consultant (Land Use)</u>	<u>22142</u>
<u>Principal Planning Consultant (Urban Renewal)</u>	<u>22139</u>
<u>Senior Project Manager</u>	<u>03972</u>
<u>Superintendent of Buildings and Grounds</u>	<u>91660</u>

Certified Titles

<u>Assistant Director of Technical Services (Air Pollution Control)</u>	<u>10088</u>
<u>Assistant Director of Technical Services (Emissions Inventory - Stationary Sources)</u>	<u>10086</u>
<u>Assistant Health Facilities Planner</u>	<u>22081</u>
<u>Health Facilities Planner</u>	<u>22082</u>
<u>Principal Engineer (all specialties and fields of specialization)</u>	<u>20250,</u> <u>20260,</u> <u>20350,</u> <u>20450,</u> <u>20550,</u> <u>20620</u>
<u>Project Manager</u>	<u>03971,</u> <u>22503</u>
<u>Principal Urban Designer</u>	<u>22095</u>
<u>Senior Health Facilities Planner</u>	<u>22083</u>