

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

CITY OF NEW YORK

-and-

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, AFSCME, AFL-CIO

Decision No. 12-79

Docket Nos. RE-97-78
RE-24C-72/RU-521-75
RE-24J-72/RU-561D-76
RU-553-75
RU-702-79

CITY EMPLOYEES UNION, LOCAL 237,
IBT

-and-

LOCAL 1407, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO

-and-

SOCIAL SERVICE EMPLOYEES UNION,
LOCAL 371, AFSCME, AFL-CIO

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DECISION AND ORDER

On May 25, 1978, the City of New York, by its Office of Municipal Labor Relations, filed a petition seeking a determination that persons employed in the titles of Staff Analyst, Associate Staff Analyst and Administrative Staff Analyst are managerial/confidential. The petition, docketed by the Board of Certification as RE-97-78, named Local 375, Civil Service Technical Guild, as respondent. On August 22, 1978, the Board issued Decision No. 45-78 which, inter alia, ordered that pending petitions (filed by the Office of Municipal Labor Relations and Local 375) concerning the titles of Quantitative Analyst (RE-24C-72 and RU-521-75), Program Research Analyst (RU-533-75) and Principal Management Analyst (RE-24J-72 and RU-561D-76) be made a part of this proceeding since the functions of these three "earmarked" titles were subsumed by the staff analyst series of titles.

Prior to the holding of the first and only hearing in this matter on February 21, 1979, Local 371, Social Service Employees Union, and Local 1407, both part of District Council 37, AFSCME; and Local 237, International Brotherhood of Teamsters, all intervened in the proceeding to contest the City's claim about the managerial/confidential status of the disputed titles.

A letter from the City withdrawing its petition in RE-97-78 was received by the Board on March 8, 1979. On March 14, 1979, Local 237 filed a letter opposing the City's request that its withdrawal be "without prejudice" to its right to raise the managerial/confidential issue at some later date. In its letter, Local 237 also announced its intention to file a petition for certification covering the employees in the staff analyst series. The City, in a letter dated March 15th, responded to Local 237's contentions, reiterating its belief that its withdrawal would not prejudice the rights of the interested employee organizations or the subject employees.

On the same day, the Board received a certification petition (Docket No. RU-702-79) filed by Local 375 for the staff analyst series. In the cover letter accompanying its petition, Local 375 argued that, in view of the City's withdrawal of its

petition in RE-97-78, the Board should rule favorably on Local 375's other petitions concerning the Quantitative Analyst (RU-521-75)-and Program Research Analyst (RU-533-75) titles.

DISCUSSION

For reasons indicated below, the Board will accept the City's withdrawal of RE-97-78 without prejudice to its right to raise the managerial/confidential issue.

Firstly, proceeding concerning the alleged managerial/confidential status of municipal employees are investigatory, not Adversary, in nature. Secondly, the Board does not view the withdrawal in no way limits the right of any employee organization to file, in accordance with the provisions of Sections 2.3 or 13.9 of the Revised Consolidated Rules of the Office of Collective Bargaining, either a certification petition for the staff analyst series, or an intervention relating thereto. Nor does the Board agree with Local 237 that the instant withdrawal amounts to an abuse of Board procedures. If the City raises the managerial/confidential issue in the face of a union petition for certification,

any party can move to incorporate in that proceeding the testimony taken at the February 21st hearing, thus avoiding any undue delay.

The certification petition filed by Local 375 on March 15th seeks to add the titles in the staff analyst series to the union's existing bargaining unit (Cert. No. 26-78, as amended). However, it is not clear that these titles belong in Local 375's Engineering, Scientific and Technical unit as evidenced by, among other things, the involvement of three other employees organizations in the Re-97-78 proceedings, each of which contended that the staff analyst titles belong in a different collective bargaining unit. Nor does the Board have any reason to believe that its prior consolidation of Local 375's Quantitative Analyst and Program Research Analyst was ill advised. Rather, we will again consolidate all relevant petitions and proceed to the matter of determining which unit or units are appropriate, allowing the City to make its views known and any union to petition or intervene.

In addition, the Board views the City's withdrawal of RE-97-78 as constituting a constructive withdrawal of its petitions in RE-24C-72 and RE-24J-72, which sought finding that the titles of Quantitative Analyst and Principal Management Analyst, respectively, are managerial/confidential. Therefore,

the former petition, will be dismissed without prejudice to the City's right to raise the managerial/confidential issue if it so chooses. In regard to the latter petition, however, our records reveal that the title of Principal Management Analyst is currently vacant, and we have been informed by the Department of Personnel that the title will be deleted from the classification in the immediate future. Consequently, the dismissal of the City's petition as regards Principal Management Analyst (as well as Local 375's petition for the same title) is with prejudice.

O R D E R

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

ORDERED that the City's withdrawal of its petition (RE-97-78), without prejudice to its right to raise the managerial/confidential issue concerning staff analyst titles, be approved; and it is further

ORDERED that the petition of the City in RE-24C-72 be dismissed without prejudice to the City's right to raise the managerial/confidential issue concerning the Quantitative Analyst title; and it is further

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ORDERED that the petition of the City (RE-24J-72) and the petition filed by Local 375 (RU-561D-76), regarding Principal Management Analyst, are dismissed with prejudice; and it is further

ORDERED that Local 375's petition RU-702-79 be consolidated with its petitions in RU-521-75 and RU-533-75, for purposes of hearing on the matter of determining the appropriate unit or units and on any other matter that may properly be raised, such as manageriality/confidentiality and showing of interest. (See attached Memorandum)

DATED: New York, New York
March 28, 1979

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

ERIC J. SCHMERTZ
Member

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MEMORANDUM ACCOMPANYING
DECISION AND ORDER

The Board emphasizes that the attached decision should not be interpreted as indicating any finding or determination by the Board that the petitioned titles are or are not managerial/confidential in nature, nor as indicating that the Board has made any determination that the petitioned titles, together, separately, or in any combination thereof with or without any other title or titles, constitute an appropriate unit or units for collective bargaining purposes.

The Board also emphasizes that its ultimate unit determination(s) may necessitate that employee organizations, seeking to represent the employees in the unit or units found appropriate, submit the proof of interest required by our Rules in order to be certified or to participate in any election(s) held.