

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

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

Petitioner,

DECISION NO. 39-80

-and-

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

Petitioner

DOCKET NOS.

RU-521-75

RU-533-75

RU-702-79

RU-704-79

RU-707-79

RU-730-79

-and-

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

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 1180,

Petitioner,

-and-

CITY EMPLOYEES UNION, LOCAL 237,  
IBT,

Intervenor,

-and-

THE CITY OF NEW YORK,

Respondent.

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INTERIM DECISION AND ORDER

This proceeding concerns petitions filed by four unions, and the intervention of a fifth union, all seeking to represent for

Decision No. 39-80

2

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

purposes of collective bargaining employees working in the Staff

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

Analyst series of titles (Staff Analyst, Associate Staff Analyst and Administrative Staff Analyst).<sup>1</sup> Each of the unions seeks to accrete the Staff Analysts to a bargaining unit which it represents. The City of New York, appearing by its Office of Municipal Labor Relations (hereinafter the City), has objected to the representational claims, arguing that the employees are managerial or confidential within the meaning of the New York City Collective Bargaining Law (NYCCBL) and therefore excluded from collective bargaining.

#### BACKGROUND

The Staff Analyst title series was created when the City Personnel Director by Resolution No. 77-25, dated April 20, 1977, reclassified, or broadbanded, 17 Civil Service titles to the three Staff Analyst titles. On May 25, 1978, the City filed a petition with the Board of Certification (hereinafter the Board) requesting that employees in the Staff Analyst titles be declared managerial or confidential and therefore excluded from collective bargaining (Docket No. RE-97-78). This petition was opposed by four unions and a hearing was held in the matter on February 21, 1979. Subsequently, the City requested by letter received

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<sup>1</sup> The petitions and intervention also involve claims of representation of employees working in the titles Quantitative Analyst and Program Research Analyst. However, this interim decision and order does not concern the representational claims for these two titles or the City's objections thereto.

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

March 8, 1979 that it be permitted to withdraw its petition and, over the objection of one of the unions, the Board approved the withdrawal of the petition in Decision No. 12-79, dated March 28, 1979.<sup>2</sup>

In the meantime, Civil Service Technical Guild, Local 375, AFSCME, AFL-CIO (hereinafter Local 375) filed on March 15, 1979 a petition to represent employees in the Staff Analyst title series (Docket No. RU-702-79). Thereafter, Local 1407, District Council 37, AFSCME, AFL-CIO (hereinafter Local 1407) petitioned on March 29, 1979 to represent employees in the Staff Analyst title series (Docket No. RU-704-79) and Social Service Employees Union, Local 371, AFSCME, AFL-CIO (hereinafter Local 371) also petitioned, on April 23, 1979, to represent Staff Analysts. In addition, Communication Workers of America, Local 1180 (hereinafter Local 1180) filed on December 6, 1979 a petition to represent employees in the Staff Analyst series (Docket No. RU-730-79). Local 237, I.B.T. (hereinafter Local 237) had moved to intervene in the case by letter received on April 13, 1979. The City objected to each of the petitions on the grounds that the employees in the titles are managerial or confidential.

The Board began its investigation of the representational claims and the City's objections by ordering hearings before a Trial Examiner. The hearings commenced on June 5, 1979, continued for eleven

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<sup>2</sup> In this decision, the Board also again ordered the consolidation of petitions to represent employees working in the titles Quantitative Analyst and Program Research Analyst with all relevant petitions to represent Staff Analysts.

sessions through April 22, 1980 and have not been closed.<sup>3</sup> The transcript of the February 1979 hearing on the City's petition concerning Staff Analysts was incorporated into the record of the instant proceeding. In April 1980, it was decided that the Board's investigation would be facilitated if an effort were made to identify Staff Analysts who previously held a title and continued to perform the work of the title, or who now performed the work of a title, on which the Board had previously made a determination of manageriality or confidentiality and which was a component title that had been broadbanded to one of the three Staff Analysts titles. It was agreed by all parties that the Board's investigation would proceed in an informal manner so as to aid the gathering of the information.

The parties met informally on May 12 and 21, 1980 with the Trial Examiner to discuss how to obtain the information concerning predecessor titles and present job duties of Staff Analysts. It was agreed that OCB would formulate a questionnaire based on past Board decisions dealing with the status of component titles in the Staff Analyst broadbanding, that the questionnaire would be submitted to the City and that it would seek the information

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<sup>3</sup> The large number of parties involved in this matter and the busy schedules of their representatives, which occasioned a number of requests for adjournments, contributed to the length of time it has taken to investigate this matter.

requested from its agencies. The questionnaire was submitted to the City on May 21, 1980. On September 24, 1980, the City submitted a response to the questionnaire and materials related to the collection of the information, and the entire package was forwarded to the unions in a letter dated September 25, 1980 from Chairman Anderson.<sup>4</sup>

The City made several amendments to the information it provided and the unions were given a completely amended copy of the City's listing on October 15, 1980. The information that the City provided consists of listings of Staff Analysts and Associate Staff Analysts by agency under categories set forth in the questionnaire formulated by OCB, supplemented by two additional categories established by the City. The listing names 1077 of 1216 Staff Analysts and Associate Staff Analysts employed by City agencies,<sup>5</sup> the Housing Authority<sup>6</sup> and the Off-Track Betting Corporation.<sup>7</sup> The listing provided no information on the remaining 139 Staff Analysts and Associate Staff Analysts, who presumably do not fall under any past Board determination of manageriality or

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<sup>4</sup> In a letter dated August 11, 1980, the City explained that the delay in gathering the requested information had been caused by the 1980 round of collective bargaining.

<sup>5</sup> The totals concerning the City agencies are current as of June 30, 1980.

<sup>6</sup> The totals concerning the Housing Authority are current as of March, 1980.

<sup>7</sup> The totals concerning the Off-Track Betting Corporation are current as of May, 1980.

confidentiality or "extensions" of the holdings of the decisions, nor did the listing include any Administrative Staff Analysts, of whom, according to the City, there are 381.

Meetings were held with the City and the unions on October 3 and 15 and November 3, 1980 to discuss the information provided by the City. At the October 15th meeting, the principal compilers of the City's listing testified under oath and were questioned by union representatives about the method of gathering and formulating the data. The City also submitted on October 21, 1980 a listing of agency personnel who were responsible for their agency's response to the Staff Analyst questionnaire.

At the meetings, the City argued that the Board should act to find managerial or confidential the Administrative Staff Analysts and all the Associate Staff Analysts and Staff Analysts listed in the documents submitted by the City. The unions raised objections to the City's listing both on substantive and factual grounds. Local 237, in a letter received on October 20, 1980, objected to the City's list on the grounds that the City had not produced any evidence to prove the validity of the document and contended that the Union does not have means available to it to check the validity of the list unless it is given access to employees.

The City was requested by OCB to provide a listing of the Staff Analysts and Associate Staff Analysts not included in the City's prior data, and to state the basis of its claim that these employees are managerial or confidential. In addition, the City was asked to specify whether it is claiming that the Staff Analysts and Associate Staff Analysts listed in the City's documents are managerial or con-

confidential, and if the latter, to state the names of the respective managers with whom the City claims the employees have a confidential relationship. The unions were requested to submit a written statement of their views concerning the further processing of this matter and to state their individual or collective agreement or disagreement with the concept of continuing the managerial or confidential designation of those Staff Analysts or Associate Staff Analysts who are directly covered by a past Board decision excluding from bargaining employees in a title, which is a component title of the broadbanded Staff Analyst or Associate Staff Analyst titles, where the employees continue to perform the duties of the predecessor title and there is no showing of a compelling reason not to adhere to the earlier Board determination. The unions were also asked to express agreement or disagreement with the concept of "extending" the prior Board decisions to exclude from collective bargaining additional groups of Staff Analysts or Associate Staff Analysts not directly covered by a past Board decision. It was emphasized that the unions were not expected at this time to agree or disagree whether in fact an employee or employees fall under the categories defined in the questionnaire and listed in the City's response.

On November 6, 19 80, the City provided a list by name and agency of 126 Staff Analyst who do not fall under any of the categories set forth in prior listings. This listing was amended,



Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

in a memorandum received on November 14, 1980, to delete one person listed. The November 14th memorandum also revised the October 15th listing by adding the names of five employees.

#### THE ISSUE

This Interim Decision concerns a motion made by Local 371 in a letter dated October 31, 1980, in which all the other unions joined at the November 3rd meeting. Local 371 requests that the Board "make an initial determination as to whether the City has established a prime facie case on [the issues of manageriality or confidentiality], so as to shift the burden of going forward to the unions." Local 371, in its letter, also asks that it and the other unions be given an opportunity to submit briefs in support of their position that, as a matter of law, the City has not met its burden of proof in this matter. Local 371 argues that, based on its review of the testimonial and . documentary evidence presented by the City during the course of the hearings in this matter and of the City's listing of Staff Analysts and Associate Staff Analysts submitted in response to the OCB questionnaire, the City has failed to establish a case for exclusion of the employees from collective bargaining. The Union maintains that the City has the burden to establish the exclusions based upon the actual duties being currently performed by the employees.

DISCUSSION

Upon our review of the transcript of and exhibits submitted during the course of the hearings in this matter, the City's listing of Staff Analysts and Associate Staff Analysts under categories related to past Board decisions, the oral reports by members of the OCB staff concerning the meetings with the City and unions, and Local 371's letter of October 31st, we make the following interim decision. we recognize, at the outset, that this interim decision is being made without the aid of briefs from any of the parties, but it is our opinion that the record in this case is sufficient for purposes of an interim decision and that submission of briefs will add to the delay and to the increasingly litigious nature of the investigation in this matter. As in all other cases dealing with the issues of managerial or confidential status of employees, our interim decision is guided by the provisions of section 201.7 of the Taylor Law and section 1173-4.1 of the NYCCBL.

We decide that a prima facie case has been established as to the managerial or confidential status of employees working in the title Staff Analyst. We rely on the statement of the duties of an Administrative Staff Analyst, set forth in the job specification, which includes the conducting, under supervision, "of management surveys and studies of extensive organization and operating problems of major difficulty and involving great financial responsibility," the making of recommendations "to obtain

optimum efficiency in the utilization of manpower, machines and equipment," planning and supervising the work of a unit of professional staff and the coordination of their work with the work of other organizational units, and other duties of "extraordinary difficulty" relating to quantitative analysis and cost effectiveness. We note also that employees in five of the six titles which were reclassified to the Administrative Staff Analyst title were determined to be managerial or confidential by the Board in Decision No. 19-75. The sixth title, Principle Quantitative Analyst, was neither designated managerial or confidential nor certified to be represented by a labor organization before it was deleted from the Classified Service of the City of New York. Our decision is also based on evidence showing that the title is included in the Managerial Pay Plan.

Our determination that a prima facie case has been established as to the managerial or confidential status of employees in the title is not intended to foreclose any of the unions from presenting evidence or argument explaining why employees in the title should not be excluded from collective bargaining. We direct that, if any union seeks to challenge the prima facie case on the Administrative Staff Analyst, it must notify the Board and the City of the challenge within, and including, 15 days after receipt of this Interim Decision, and it must perfect its challenge within 10 days after the notice is filed. If the challenge raises factual issues or there is a need for additional evidence or arguments from the parties, we direct that a hearing

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

be scheduled before a Trial Examiner as soon as possible after the challenge is perfected.

We find that a prima facie case has been established for the exclusion from collective bargaining of Staff Analysts and Associate Staff Analysts who are directly covered by a prior Board determination which excluded from collective bargaining employees in titles that were reclassified to the Staff Analyst series and where the employees continue to perform the duties of their predecessor title. This decision is based on our policy, stated in Decision No. 28-80, that in cases where a party seeks reversal of a prior Board determination regarding the managerial or confidential status of employees, the party must plead and show that a change in circumstances has taken place since the prior Board decision which is sufficient to warrant a different Board determination.

There are several groups of Staff Analysts and Associate Staff Analysts who, the City has alleged, held, or are direct successors to those who did hold, a title found by the Board to be managerial or confidential, and who continue to perform the duties of the title. Among these titles are:

The 56 Staff Analysts and Associate Staff Analysts identified in the City's response numbered 1 who are employed in the office of Collective Bargaining, the Office of Management and Budget and the Office of Municipal Labor Relations -- all employees in these agencies were excluded from collective bargaining by the Board in Decision No. 75-74 (OCB and OMLR) and Decision No. 11-76 (OMB);

The 16 Staff Analysts and Associate, Staff Analysts identified in the City's response numbered 2 who work in the labor relations units of the Department of Housing Preservation and Development, the Housing Authority, the Human Resources Administration, the Off-Track Betting Corporation and the Police Department -- employees in the formally designated labor relations units of these agencies were excluded from collective bargaining by the Board in Decision No. 19-75;

The 25 Staff Analysts and Associate Staff Analysts identified in the City's response numbered 3 who work in the Executive Management or the Executive and Administrative Services sections of the Office of the Mayor -- employees of these sections of the Mayor's Office were excluded from collective bargaining by the Board in Decision No. 19-75;<sup>8</sup>

The 106 Staff Analysts and Associate Staff Analysts identified in the City's responses numbered 4 and 5 who work in the Department of Personnel and who formerly held the title Assistant Personnel Examiner, Associate Personnel Examiner, or its predecessor Senior Personnel Examiner, or who are successors to employees who held one of these titles, and who continue to perform, in the Department of Personnel, the duties of the personnel examiner titles -- personnel examiners working in the Department of Personnel were excluded from collective bargaining by the Board in Decision No. 70-68;

The two Associate Staff Analysts identified in the City's response numbered 9 who work in the legal division of the Department of Personnel -- employees in

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<sup>8</sup> It appears that, since our prior decision in 1975, the Executive Management section of the Mayor's Office has been merged into the Executive and Administrative Services section.

the legal division of the Department were excluded from collective bargaining by the Board in Decision No. 11-76;

The one Associate Staff Analyst identified in the City's response numbered 10 who works as an Assistant to the Deputy Personnel Director -- employees in this position were excluded from collective bargaining by the Board in Decision No. 11-76; and

The six Staff Analysts and Associate Staff Analysts identified in the City's response numbered 11 who hold office titles in labor relations units in the Fire Department, the Off-Track Betting Corporation and the Human Resources Administration -- employees in these office titles were excluded from collective bargaining by the Board in Decision No. 19-75.

Our determination is that, as the City has alleged that these employees are directly covered by a past Board decision, the burden is now on the unions to explain why the Board should not continue to exclude these employees from collective bargaining. The union's case in this regard must include a showing that a change in circumstances has taken place since the prior Board determination sufficient to warrant a reversal of the previous Board decision. If a union or unions decide to present such a case, we direct that they notify the Board and the City of their intention within, and including, 15 days after receipt of this Interim Decision and that the union perfect its case within 10 days after the notice is filed. If the union's case raises factual issues or there is a need for additional evidence or argument from the parties, we direct that a hearing be scheduled before a Trial

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

Examiner as soon as possible after the case is perfected.

With regard to the other groups of Staff Analysts and Associate Staff Analysts listed in the City's response to the questionnaire and the 125 Staff Analysts and Associate Staff Analysts not covered by the questionnaire and listed on a City document dated November 6, 1980, amended November 14, 1980, we find that there has not been established, at this time, a prima facie case for exclusion of these employees from collective bargaining and that, therefore, the burden is on the City to produce additional evidence and argument to support its claim that these employees are managerial or confidential. The groups of Staff Analysts and Associate Staff Analysts listed on the City's response to the Staff Analyst questionnaire, concerning which we find that there has not been established a prima facie case, include the following:

The 284 Staff Analyst and Associate Staff Analyst identified in the City's responses numbered 6 and 7 who work in agencies other than the Department of Personnel and who either held a Personnel Examiner title prior to the Staff Analyst broadbanding and continue to perform personnel examiner duties or never held a Personnel Examiner title but do perform personnel examiner duties -- these two groups are related to the City's responses numbered 4 and 5 and Board Decision No. 70-68;

The 63 Staff Analysts and Associate Staff Analysts identified in the City's response numbered 8 as working on the preparation of examinations in the Bureau of Examinations of the Department of Personnel -- we excluded from collective bargaining all employees working on

examinations in the Bureau of Examinations in Decision No. 11-76 but it is our understanding that there is no longer a Bureau of Examinations in the Department and that the work of preparation of examinations is performed by members of several Task Forces who also perform a number of other duties and, therefore, our prior decision is not directly applicable;

The 490 Staff Analysts and Associate Staff Analysts who are identified in City responses numbered 12, 13, 14 and 15 -- these employees are alleged either to have held the titles Assistant Methods Analyst (or its predecessor Junior Methods Analyst) and who continue to perform the duties of the titles or who did not hold the titles but who now do perform the duties of one of the aforementioned methods analyst titles -our decision to exclude Junior Methods Analysts, Methods Analysts, and Senior Methods Analysts from bargaining (Decision No. 11-69) was based on a stipulation of agreement between the City and the Association which then represented these titles, and since the decision was not based on evidence and did not involve an adjudication of the merits of the claim that the employees were managerial or confidential, this decision is not entitled to the weight ordinarily given to a prior Board determination of status;

Finally, there are the 125 Staff Analysts and Associate Staff Analysts identified in the City's responses numbered 16 and 17 who fall under categories not established in the OCB questionnaire and not covered by any past Board decision but which were added by the City and described as employees who formerly held the titles Assistant Budget Examiner or Associate Budget Examiner and who continue to perform the duties of these titles or who did not hold these titles but who now do perform the duties of the titles.



Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

In addition to these categories of Staff Analysts and Associate Staff Analysts, there is also [the group of 125 Staff Analysts and Associate Staff Analysts who are not listed on the City's response with regard to both of these groups the City has the burden of going forward with additional evidence and argument to support its claim that the employees are managerial or confidential. We direct that hearings on these groups of Staff Analysts and Associate Staff Analysts commence as soon as possible.

We point out again that our processing of this representation case, as with other representation cases, is in the nature of an investigation rather than an adversarial hearing. As must be evident, our investigation of this case to date has been greatly aided by the City's compilation of Staff Analysts into various categories in response to a questionnaire formulated by OCB. We understand that there may be questions of fact concerning the placement of individuals in a particular category. Rather than dictate a procedure for handling such factual issues, we request that the City and the unions work with the staff of the OCB for the purpose of establishing a method of investigating and resolving factual issues which may arise during the future course of this proceeding.

ORDER

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

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

ORDERED, that there has been established a prima facie case on the managerial or confidential status of employees working in the title Administrative Staff Analyst; and it is further

ORDERED, that there has been established a prima facie case on the managerial or confidential status of employees working in the titles Staff Analyst or Associate Staff Analyst and who are listed on the City's response to the questionnaire formulated by the Office of Collective Bargaining under paragraphs numbered 1, 2,3,4,5,9,10, and 11 and it is further

DIRECTED, that if any of the unions which is a party to this proceeding wishes to present evidence or argument in opposition to the prima facie case, the union must file notice of its objection with the office of Collective Bargaining and serve the City within, and including, 15 days after the date of receipt of this Interim Decision and Order and that the union's case in opposition must be perfected within, and including, 10 days after service of the notice of objection; and it is further

ORDERED, that the City of New York has the burden of producing additional evidence and argument in support of its claim that employees working in the titles Staff Analyst or Associate Staff

Decision No. 39-80

19

Docket Nos. RU-521-75, RU-533-75, RU-702-79,  
RU-704-79, RU-707-79, RU-730-79

Analyst, other than the employees covered by the second  
decretal paragraph of this Order, are managerial or confidential.

DATED: November 18, 1980  
New York, New York

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

WALTER L. EISENBERG  
MEMBER