

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,

-and-

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

Petitioner,

DECISION NO. 20-82

-and-

SOCIAL SERVICE EMPLOYEES UNION,  
LOCAL 371, 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-

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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SECOND INTERIM DECISION AND ORDER

On November 18, 1980, the Board of Certification (hereinafter "the Board") issued an interim decision (Decision No. 39-80) in this matter, dealing with the petitions filed by four unions and the intervention of a fifth union, all of whom seek to represent for collective bargaining purposes employees in

the Staff Analyst series of titles (Staff Analyst, Associate Staff Analyst and Administrative Staff Analyst), and also dealing with objections to these representation petitions by the City of New York (hereinafter "the City").

Which asserts that the subject employees are managerial or confidential within the meaning of the New York City Collective Bargaining Law (hereinafter "NYCCBL") and should therefore be excluded from collective bargaining.<sup>1</sup> In that decision the Board determined that a prima facie case had been established as to the managerial or confidential status of two groups of employees:

1. Employees in the title Administrative Staff Analyst; and
2. Staff Analysts and Associate Staff Analysts who were directly covered by a prior Board determination which excluded from collective bargaining employees in titles which were reclassified to the Staff Analyst series and where the employees continue to perform the duties of their predecessor title.<sup>2</sup>

Four of the five unions in this case filed written objections to the interim decision. Further submissions, testimony, and evidence relating to these objections will be received when the hearings in this matter resume.

Interim Decision 39-60 also delineated groups of Staff Analysts and Associate Staff Analysts as to whom the Board found that no prima facie case of managerial or confidential status had been established and as to whom the burden remained with the City to produce additional evidence and argument in support of its claim.<sup>3</sup>

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<sup>1</sup> For a history of these proceedings prior to the issuance of our First interim decision see Decision No. 39-80 at pp. 2-8.

<sup>2</sup> See Decision No. 39-80 at pp. 11-13, for a breakdown of this group of employees.

<sup>3</sup> See Decision No. 39-80 at pp. 14-16, for a breakdown of this group of employees.

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As to these groups of employees, the Board directed that hearings commence as soon as possible.

<sup>4</sup> On January 8, 1981, hearings resumed, in accordance with the Board's order, before the OCB Trial Examiner and proceeded a weekly basis through December 8, 1981. By letter dated December 10, 1981, the City requested that hearings be suspended for a one-month period in order that it might re-evaluate its position in light of a decision of the New York Court of Appeals rendered November 17, 1981 in Civil Service Technical Guild v. Anderson. By letter of December 16, 1981, the Board granted this request, on the condition that the City thereafter provide a comprehensive statement of its position. This the City did by way of a Statement of Position dated January 6, 1982 and a supplemental statement dated February 4, 1982. In March 1982, each of the unions filed a response to the City's position statements. A third submission by the City dated April 16, nearly on 1982 was also received.

#### POSITIONS OF THE PARTIES

##### City's Position

The City now seeks a determination by the Board that employees in the titles of Administrative Staff Analyst and

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<sup>4</sup> No. 521 (N.Y. Ct. App., Nov. 17, 1981). In this decision, the Court of Appeals reversed an order of the Appellate Division, First Department (79 A.D. 2d 541, 434 NYS 2d 13 (1980)) and dismissed the Article 78 petition filed by Local 375, Civil Service Technical Guild, which sought to annul the Board of Certification's Decision No. 45-78 in which employees in the title Administrative Engineer, inter alia, were declared managerial.

Associates Staff Analyst are managerial and that prima facie case has been established on the managerial and/or confidential status of employees in the title of Staff Analyst.<sup>5</sup> In conjunction with its recommendation concerning Staff Analysts, the City requests that the Board order the petitioning unions to submit any evidence have to rebut the City's case.

The assertion that Administrative Staff Analysts should be managerial is based in part on the duties set forth in the job specification which involve budget and personnel work allegedly at a level of "extraordinary difficult," and on the fact that employees in this title are classified in the Managerial Service are paid pursuant to the Managerial Pay Plan (minimum salary: \$25,920

Similarly, the assertion that the Associate Staff Analysts should be declared managerial is based upon the duties described in the Job specification, which include budget, personnel, and labor relations work. Further, the City maintains that Associates may be used interchangeable, in any of these areas. It argues that, since an ASA who is not currently performing managerial duties may, at any time, be assigned to such functions, the title should be found managerial.

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<sup>5</sup> Hereinafter, the names of the three titles which are the subject this case will, at times, be abbreviated as follows: Administrative Staff Analysts may be referred to as "Administratives"; Associate Staff Analysts may be referred to as "Associates" or as "ASAs"; Staff Analysts may be referred to as "SAs". The word "analysts" is used to refer to employees in any or all of the three titles.

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To support its claim that ASAs are functionally interchangeable, the City points to the examination required for appointment to the Associate title. This exam includes an essay question in a subject area selected by the applicant from among several choices (labor relations, budget, etc.). Despite an applicant's choice of essay, however, it is alleged that appointments are made from a single list of successful candidates, with the result that an applicant who wrote an essay on a labor relations question may be offered an analyst position in another functional area (budget, personnel, etc.) and, if he refuses the position, he forfeits his position on the list.

The City also argues that the salary range of Associate Staff Analysts (\$24,947 to \$32,522) is a factor which evidences their managerial status. This range straddles the Managerial Pay Plan minimum of \$25,920. Further, the City claims, 40% of all ASAs are paid at the Pay Plan entry level or higher.

The City asserts that 352 out of a total number of 692 Staff Analysts have already been shown to be performing personnel, labor relations or budget functions.<sup>6</sup> Thus, according to the City, 340 SAs remain in contention.

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<sup>6</sup> This number includes the 109 SAs facie excluded by Interim Decision 39-80, 174 SAs listed in the City's response to an OCB questionnaire as performing personnel administration functions and 69 SAs listed in the response to the questionnaire as performing budget-related functions. (For a discussion of the questionnaire developed in the early stages of this case to facilitate the Board's investigation, see Decision No. 39-80 at pp. 4-8.)

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The City asserts that the record to date includes testimony concerning over 114 SAs which demonstrates that "over 61% of the Staff Analysts about whom there is testimony are performing personnel, budget and labor relations functions." In addition, the City claims, the record shows that these Staff Analysts are privy to confidential information and that they assist, in a confidential capacity, employees who perform personnel administration and labor relations duties.

The City again argues that, even though a particular analyst may not currently be performing managerial or confidential duties, since it is possible, based on their selection from a single list, for SAs to perform any of the duties listed in the job specification, all Staff Analysts should be excluded from bargaining. According to the City, the record shows that Staff Analysts "are called upon or may be called upon to assist in the planning and coordinating of agency activities in personnel administration and labor relations, collective bargaining negotiations, mediation, impasse, grievance, and other proceedings."

Citing City of Binghamton, 12 PERB 4,14022 (1979), a decision of PERB's Acting Director of Public Employment Practices and Representation, the City maintains that there is authority for the view that an employee may be designated "confidential" even though he is not currently performing duties which warrant such a designation.

CONFIDENTIAL

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The City also argues for the extension to confidential employees of the Board's Decision No. 41-72 which held that the fact that not all employees in a title alleged to be managerial exercise the discretion inherent in the position does not refute the claim of managerial status.

Finally, the City focuses the Board's attention on a factor which, it is alleged, distinguishes this case from others of its kind, namely, the use of the Staff Analyst Occupational Group in connection with the "decentralization" to line agencies of public administration functions resulting from a 1976 revision of the City Charter. The City argues that decentralization has resulted in the expansion of the scope of Staff Analysts' functions. While they were once part of a hierarchical structure within an agency devoted to one specialty (e.g., Department of Personnel), they are now allegedly relied upon by their non-specialist supervisors in line agencies as "experts" in personnel, budget or labor relations within those agencies. If the Staff Analysts were permitted to be in collective bargaining, the City argues, the City's ongoing efforts to strengthen its managerial capacity would be seriously undermined.

#### Unions' Position

The unions contend that the record to date does not support the City's claim that Associate Staff Analysts and Staff Analysts are managerial or confidential. They urge that the Board so find or, in the alternative, order the City to continue to present evidence in an effort to meet its burden of proof.



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Specifically, the unions claim that the City has not demonstrated the requisite degree of involvement in formulation, determination and effectuation of policy to support a prima facie finding of managerial status. Further, it is claimed, the City has not demonstrated the substantial involvement or major role in personnel administration or labor relations which the Taylor Law and this Board require. Rather, it is alleged, the ASAs and SAs perform work of a technical, professional or supervisory nature, or of a routine or clerical nature which, the Board has often emphasized, is to be distinguished from managerial work. It is claimed that employees in these titles are more similar to employees who are in bargaining than to those who have been excluded as managerial or confidential. CWA asserts that the duties of these analysts are comparable to those of the Principal Administrative Associate III, a title which is in bargaining.

The unions challenge the position that analysts should be excluded as a group based upon the performance of managerial duties by some. Contrary to the City's assertion, the unions claim that SAs and ASAs are a heterogeneous group and that the variety of duties and functions prescribed in their job specifications attests to the lack of transferability among analysts performing different functions. Further, it is alleged, the fact that any agency may request "selective certification" of a list of eligibles, that is, request that all candidates for a particular job possess specialized skills, militates against the City's position that the analysts are functionally interchangeable.

The unions also note that neither ASAs nor SAs are included in the Managerial Pay Plan. They urge that the payment of some ASAs at a level equivalent to the lower levels of the Pay Plan should be accorded no weight in the Board's deliberations. Further, the unions note, there is no reference in the specifications for the two inferior titles to inclusion in The Managerial Service, nor are they identified as "a management class of positions" as is the case with the Administrative title. The unions argue that the fact that ASAs and SAs were excluded from the Managerial Pay Plan indicates the City's own intention that these titles not be managerial. It is asserted that the City cannot now argue a contrary position when there has been no change in duties since the creation of these titles.

The unions also assert that the City has failed to establish a prima facie case of confidentiality of ASAs and SAs as it has not yet responded to the Board's repeated requests for the names of the individuals alleged to be confidential and the names of the managers with whom it is alleged that a confidential relationship exists. The City's argument that all analysts should be excluded from bargaining because some of them act in a confidential capacity and others may be required to do so is refuted by the unions. They claim that this position is contrary to the Taylor Law, PERB decisions, and decisions of this Board which require that such exclusions be based upon the actual duties performed and that such determinations be made on an individual-by-individual basis. Specifically, it is noted that the decision of the Acting Director

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of Public Employment Practices and Representation in City of Binghamton, cited by the City in its Statement of Position, was reversed in pertinent part by the full Board (12 PERB ¶3099 (1977)), which held that confidential status depends upon the actual performance of confidential duties.

Local 237 objects to the Board's finding that employees in the title of Administrative Staff Analyst are prima facie managerial or confidential. It claims that many Administrative Staff Analyst not performing managerial or confidential duties and requests testimony be taken on this title. Local 237 asserts that the conclusion of a title based solely on the job specification and on its designation as "Administrative" will be included from bargaining when, in fact, employees on the title are out performing managerial duties. Local 375 also objects to the Board's determination with respect to Administrative Staff Analysts, but reserves the right to address this issue at a later date.

#### DISCUSSION

Based upon our review of the City's listing of Staff Analysts and Associate Staff Analysts in categories relating to Board decisions in response to a questionnaire formulated by the office of Collective Bargaining (OCB), upon the transcript of the hearings held in this matter which, as of this date, is more than 4500 pages long, and based also upon our review of the City's Statement of Position dated January 6, 1982, supplemental statement dated February 4, 1982, and letter dated April 16, 1982, as well as

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responses from each of the five unions which are parties to this case, we issue the following second interim decision.

First we shall reaffirm our interim Decision No. 39-80 and the rulings made therein. Although all five unions filed objections to Decision No. 39-80, none has yet offered evidence or argument in opposition which would warrant a reconsideration of our decision or any part thereof at this time. We emphasize that, while no testimony, has been received concerning the duties of employees in the title of Administrative Staff Analyst, our determination that a prima facie case has been established as to the managerial or confidential status of these employees (hereinafter sometimes referred to as a prima facie determination or ruling) was based not only upon the duties set forth in the job specification, but also upon the fact 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 its Decision No. 19-75 (the sixth title was neither designated managerial or confidential nor certified to be represented by a labor organization before it was deleted from the Classified Service), and on the fact that the title is included in the Managerial Pay Plan. Our prima facie ruling with respect to groups of ASAs and SAs was based upon the fact that these employees continue to perform or are successors to those who performed the duties of a predecessor title which was found managerial or confidential in a prior Board decision.

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As in all cases dealing with the issues of managerial or confidential status, we were and are guided by section 201.7 of the Taylor Law, which provides 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).

In accordance with this provision, we now find that the evidence submitted by the City is sufficient with respect to the employees in the title Associate Staff Analyst who perform duties in the areas of personnel, labor relations or budget and who are paid at an annual salary rate equal to or in excess of \$25,920, the minimum pay level of employees in the Managerial Pay Plan, to warrant extending the finding of our first interim decision to cover these employees. Thus, we find that a prima facie case has been established as to the managerial status of these employees. We are also persuaded that the evidence offered by the City concerning Associate Staff Analysts who perform duties in the areas of personnel, labor relations or budget and who are paid at an annual salary rate which is below the minimum level of the Managerial Pay Plan establishes a prima facie case as to the confidential status of these employees. We find that a prima facie

case has also been established as to the confident status of Staff Analysts who perform personnel, labor relations or budget functions.

We note, however, that the Taylor Law requires that determinations of confidential status be made on an individual basis and that such determinations be based upon a relationship in which the confidential employee assists and acts in a confidential capacity to a manager or managers who have an active role in collective bargaining negotiations, contract administration or personnel administration. Therefore, with respect to the employees we have found to be prima facie confidential, our finding is contingent upon the City providing the names of the managerial employees with whom these ASAs and SAs allegedly have a confidential relationship.

The employees covered by the above determinations include:

1. the 284 Staff Analysts and Associate Staff Analysts identified in the City's response to the questionnaire formulated by OCB, at paragraphs 6 and 7, who work in agencies other than the Department of Personnel and who either held a Personnel Examiner title prior to the adoption by the City Personnel Director of Resolution 77-25 (the Staff Analyst broadbanning resolution), and who continue to perform these duties, or those who never held a Personnel Examiner title but do perform personnel examiner duties;
2. the 63 Staff Analysts and Associate Staff Analysts identified in the City's response at paragraph 8 as working on the preparation of examinations in the Bureau of Examinations of the Department of Personnel and who, since there is no longer a Bureau of Examinations in the Department, perform the work of preparing examinations in the line agencies, in addition to other duties;  
and

3. the 125 Staff Analysts and Associate Staff Analysts identified in the City's response at paragraphs 16 and 17 who fall under categories not established in the OCB questionnaire and no covered by any past Board decision but who 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.<sup>7</sup>

We recognize that, since the formulation and completion of the OCB questionnaire in 1980, there have been many changes in personnel and that there continue to be changes. Nevertheless, we refer to the categories established in the questionnaire in describing the groups of analysts as to whom we find a prima facie case has been established because these categories accurately delineate the functions of those individuals who are contemplated by our decision. There are undoubtedly many individuals in the City's responses to the questionnaire who no longer occupy the positions in which they are listed as well as individuals not listed who do perform the functions which we determine to be indicative of managerial or confidential status.

In light of the New York Court of Appeals' affirmance of our decision in City of New York and Local 375, Civil Service Technical

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<sup>7</sup> We take administrative notice of the fact that the duties performed by these analysts are intimately related to personnel and labor relations matters, including management decision on hiring, layoff projections, and preparation for collective bargaining negotiations.

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Guild (Decision No. 45-78),<sup>8</sup> we feel justified in relying upon broad criteria and in applying guidelines used in our prior determinations of managerial and confidential status, such as the job specifications for the titles in dispute and the criterion of inclusion in the Managerial Pay Plan.

Our decision to extend the first interim decision to cover the additional groups of employees outlined above is based in part on the duties described in the job specifications for the two titles. The specification for Associate Staff Analyst includes the following "General Statement of Duties and Responsibilities":

Under general supervision, performs difficult professional work, in the preparation and conduct of management surveys, reviewing budgeting requirements, maintenance of budgetary controls, administrative and procedure analysis and evaluation of organizational structures, policies, programs, projects, contracts, and operations of City agencies; performs technical work in personnel management and public employee labor relations; may utilize quantitative analysis and cost accounting techniques, performs related work.

In addition, the following are among the enumerated "Examples of Typical Tasks":

Conducts job analyzes, personnel testing, classification, performance evaluation, and employee development activities, personnel and labor relations, employee benefit programs, and other related areas. Play serve as personnel officer in an agency of moderate size.

Plans and coordinates agency activities in personnel administration and labor relations.

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<sup>8</sup> See note 4 supra.



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Participates in collective bargaining negotiations, mediation, impasse, grievance and other labor relations proceedings; performs research concerning union presentations, fact finding proceedings, settlement agreements and other complex matters; conducts wage and fringe benefit surveys and contract administration and interpretation, represents agency at grievance hearings.

The Staff Analyst job specification includes the following "General Statement of Duties and Responsibilities" and "Examples of Typical Tasks":

Under direct supervision, performs professional work of ordinary technical difficulty and responsibility assisting in the preparation and conduct of management surveys, maintenance of budgetary controls, administrative and procedural analyzes and evaluation of organizational structures, policies, programs, projects, contracts, practices and operations of City agencies; performs technical work in personnel management and public employee labor relations; may utilize quantitative analysis and cost accounting techniques; performs related work.

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Assists in the conduct of job analyzes, personnel testing, classification and employee development activities and in employee benefit programs.

Assists in the planning and coordinating of agency activities in personnel administration and labor relations.

Assists in the collective bargaining negotiations, mediation, impasse grievance and other proceedings; provides research support; assists in conduct of wage and fringe benefit surveys and contract administration.

We are persuaded by the record that Associate Staff Analysts and Staff Analysts dc, in fact, perform the above-described tasks,

and we recognize that any analysts who, although assigned to the areas of personnel, labor relations and budget, are currently not performing these functions, or whose role is merely of a "routine or clerical nature", maybe assigned to the managerial or confidential duties at any time.

Our determination that a prima facie case has been established for the exclusion from collective bargaining of Associate Staff Analysts performing personnel, budget and labor relations functions and who are paid at a salary rate equal to or greater than the minimum salary of employees in the Managerial Pay Plan recognizes that salary, while not a controlling factor, is relevant to a finding of managerial status.<sup>9</sup> We do not intend, by considering this factor, to extend our prior reliance upon inclusion in the Managerial Pay Plan as a criterion upon which to base a determination of manageriality, to include those who, while not in the Pay Plan, are paid equivalent rates. Rather, we merely consider salary at the level of the Managerial Pay Plan to be one factor which may indicate a level of responsibility more consistent- with managerial status than a lesser salary would indicate.

For the foregoing reasons, we find that the City has met its burden of establishing a prima facie case as to the managerial status of employees in the Associate title described above.<sup>10</sup>

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<sup>9</sup> Decision Nos. 73-71 and 45-78.

<sup>10</sup> We rely, in part, upon our determination in Decision No. 41-72 in which we held that the fact that not all the employees in a title alleged to be managerial exercise the discretion inherent in the position does not refute the claim of managerial status.

As to the Associate and Staff Analysts whom we are prepared to find prima facie confidential, disclosure by the City of the names of managers with whom the alleged confidential relationships exist will satisfy the Taylor Law and will be consistent with our decisions where we have defined as confidential employees who regularly assist and act in a confidential capacity to managerial employees and who regularly have access to confidential information relations and personnel matters.<sup>11</sup>

We are not persuaded, however, by the City's argument that analysts who are currently performing the duties of the former Assistant and Associate Methods Analyst titles or any functions other than personnel, labor relations or budget are interchangeable with analysts who do perform these functions. There is no evidence to support the City's contention in this regard. Therefore, we find that no prima facie case has been established as to the managerial or confidential status of employees in the Associate and Staff Analyst titles other than those listed above and in our Order herein. In addition, we make no ruling as to the status of the twenty employees in the titles Quantitative Analyst and Program Research Analyst concerning whom no testimony has been offered.

In is our view that the City has made a substantial showing in support of its case and that it is now appropriate to shift to

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<sup>11</sup> See, e.g., Decision No., 70-68. See also, City of Binghamton, 12 PERB ¶3099 (1979). We deem the scope of confidential information also to include budget and fiscal data not intended to be disclosed to unions or their representatives. We reject, however, the City's argument that the principle enunciated in Decision No. 41-72 (see note 10 supra) should be applied to determinations of confidential status.

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the respective unions the burden of going forward and of refuting, if possible, the prima facie case established by the City to date. We recognize that the City has not completed its affirmative case in this matter; nevertheless, it is our view that shifting the burden onto the unions may facilitate and expedite the resolution of this matter.

#### 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, and pursuant to Section 1173-4.1 of the New York City Collective Bargaining Law, it is hereby

ORDERED, that Decision No. 39-80 be, and the same hereby is, reaffirmed; and it is further

DETERMINED, that there has been established a prima facie case as to the managerial status of employees working in the title Associate Staff Analyst who, it is alleged, perform personnel, labor relations or budget functions (these employees are listed in the City's response to the questionnaire formulated by the Office of Collective Bargaining under paragraphs numbered 6, 7, 8, 16 and 17) and who are paid at a rate which is equal to or exceeds \$25,920 per annum, the minimum pay level for employees in the Managerial Pay Plan; and it is further

DETERMINED, that there has been established a prima facie case as to the confidential status of employees working in the title Associate Staff Analyst who, it is alleged, perform personnel,

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labor relations or budget functions (these employees are listed in the City's response to the questionnaire formulated by the office of Collective Bargaining under paragraphs numbered 6, 7, 8, 16 and 17) and who are paid at a rate of less than \$25,920 per annum, subject to the City's providing the names of the managerial employees with whom these Associate Staff Analysts have a confidential relationship, which shall be filed with this Board and furnished to the unions no later than thirty (30) days after receipt by the City of this Determination and order; and it is further

DETERMINED, that there has been established a prima facie case as to the confidential status of employees working in the title Staff Analyst who, it is alleged, perform personnel, labor relations or budget functions (these employees are listed in the City's response to the questionnaire formulated by the office of Collective Bargaining under paragraphs numbered 6, 7, 8, 16 and 17), subject to the City's providing the names of the managerial employees with whom these Staff Analysts have a confidential relationship, which shall be filed with this Board and furnished to the unions no later than thirty (30) days after receipt by the City of this Determination and Order; and it is further

DETERMINED, 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

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Associate Staff Analyst, other than employees covered by the second, third and fourth decretal paragraphs of this Order, are managerial or confidential.

DATE: June 10, 1982  
New York, New York

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

MILTON FRIEDMAN  
MEMBER